

# Updates Clarify LGBTQI+ Protections in Title IX

## 83%

of LGBTQI+ students were harassed or assaulted in schools in 2021-2022<sup>1</sup>

## 62%

of LGBTQI+ students who were harassed never reported the incident to school staff<sup>2</sup>

## 25

states categorically ban transgender students from school sports teams<sup>3</sup>

GLSEN supports updates to Title IX regulations that explicitly clarify protections for LGBTQI+ students. GLSEN urges that states and schools implement comprehensive and inclusive policies that support LGBTQI+ students in reporting harassment and discrimination, while also guaranteeing access to school-based programs, activities, and facilities.

Clearer regulations will also help ensure that students know they are protected on the basis of their identity and hold administrators and school staff accountable for fostering inclusive school environments. The updated regulations clarify that students are protected against "sex-based" harassment, instead of only "sexual" harassment,<sup>9</sup> which better describes the various forms of verbal and physical harassment that LGBTQI+ students may face. The updates also require that schools consider supportive measures in addressing sex-based harassment. Currently, nearly one-in-six LGBTQI+ students (16.2%) change schools because they feel unsafe,<sup>10</sup> and these regulatory requirements will hopefully support LGBTQI+ youth in improving the safety of their current learning environment.

In April 2024, the U.S. Department of Education updated Title IX regulations that prohibit sex-based discrimination in education programs and activities to explicitly protect LGBTQI+ students and ensure students can access sex-separated spaces consistent with their gender identity.<sup>4</sup> These updates are consistent with decades of legal precedent, culminating in the U.S. Supreme Court's 2020 decision in *Bostock v. Clayton County*, that affirms how federal sex discrimination laws also protect against discrimination on the basis of sex stereotypes, sexual orientation, or gender identity. The recent updates to Title IX constitute a historic step in remedying the persistent harassment and discrimination faced by LGBTQI+ youth, ultimately building safer and more inclusive learning environments for all students.

Reducing harassment of LGBTQI+ students will contribute to a more inclusive school climate by improving academic, social, and mental health outcomes. LGBTQI+ students who are victimized more often report poorer academic performance - including lower GPAs than their peers, higher rates of absenteeism to avoid unsafe situations in school, and a lower interest in pursuing post-secondary education.<sup>11</sup> In addition, impacted LGBTQI+ students have lower self-esteem and higher rates of depression, anxiety, and suicidal ideation.<sup>12</sup>

## Clearer Protections for LGBTQI+ Students

For the first time ever, federal Title IX regulations now explicitly state that discrimination on the basis of sexual orientation, gender identity, and sex characteristics (inclusive of intersex traits) violates federal law.<sup>5</sup> This clarity is critical in addressing the higher rates of in-person victimization faced by LGBTQI+ students, including bullying, harassment, and assault. In the 2021-2022 school year, GLSEN identified that 83% of over 16,000 surveyed LGBTQI+ students were victimized in school.<sup>6</sup> Schools face specific challenges in addressing patterns of in-person victimization due to systemic underreporting, with 62% of LGBTQI+ students who faced in-person victimization never reporting an incident to school staff.<sup>7</sup> Clear legal protections may help address the gap in trust between LGBTQI+ students and school staff, as roughly two-thirds of students who never reported an incident expressed a lack of confidence that school staff would do anything or effectively address their victimization.<sup>8</sup>

When implementing these Title IX updates, states and schools can provide further clarity by adopting anti-bullying policies that enumerate protected groups of students, such as LGBTQI+ students. There is no federal requirement to issue anti-bullying policies, but 23 states require school districts not only issue such policies, but specifically enumerate protections on the basis of sexual orientation and gender identity.<sup>13</sup> GLSEN supports the Safe Schools Improvement Act (H.R. 6031/S. 3105), which would establish a federal requirement that all school districts issue an anti-bullying policy that enumerates protected groups inclusive of LGBTQI+ students. Enumeration for LGBTQI+ students makes a difference: students in schools with comprehensive anti-bullying policies report lower rates of victimization, fewer anti-LGBTQI+ comments, and higher rates of intervention from school staff.<sup>14</sup> LGBTQI+ students in schools with comprehensive policies are 54% more likely to report assault or harassment to school staff and 39% more likely to report staff's response as effective than students in schools with a generic anti-bullying policy.<sup>15</sup>

## Affirming Transgender and Nonbinary Students

The updates to Title IX provide greater clarity to address discrimination on the basis of gender identity, which is especially critical as transgender and nonbinary students face disproportionate rates of victimization. Transgender students are also 75% more likely to encounter discriminatory school policies or practices than their cisgender LGB peers.<sup>16</sup> Discriminatory school policies and practices, driven by or coupled with a lack of acceptance or affirmation by school staff, can result in higher rates of discipline and impact a student's comfort with their own identity, overall mental health, and sense of belonging in the broader school community.

The Title IX updates clarify that schools should not exclude students from sex-separated programs or activities that are consistent with their gender identity.<sup>17</sup> This provision will impact transgender and nonbinary students' access to facilities such as bathrooms and locker rooms, overnight accommodations, sex education and physical education classes, and school sports. Even though the U.S. Department of Education is still considering further rulemaking on athletics, Title IX's non-discrimination mandate - which is now inclusive of gender identity - should be robustly enforced to stop discriminatory policies from excluding LGBTQI+ students from any part of the school experience.

Over two-thirds of transgender students and a plurality of nonbinary students face discriminatory school policies that restrict access to facilities, such as restrooms or locker rooms.<sup>18</sup> Ten states currently ban K-12 schools from allowing students to use facilities consistent with their gender identity.<sup>19</sup> These restrictions harm students, resulting in lower rates of school belonging and higher rates of avoiding certain spaces and overall absenteeism.<sup>20</sup> As only 37% of transgender and nonbinary students attend a school with a gender-neutral bathroom, access to sex-separated facilities that are consistent with a student's gender identity is crucial to meet a child's basic physical and physiological needs, maintain focus and academic performance throughout the school day, and mitigate unsafe scenarios that could result in bullying or assault.<sup>21</sup>

## Fully Realizing Title IX's Promise

In addition to updating Title IX regulations, the U.S. Department of Education can investigate school districts for their compliance with federal law. Anyone can file a Title IX complaint, even if they are not the direct victim of discriminatory actions. In recent years, Title IX investigations resulted in findings that addressed school policies or actions that targeted LGBTQI+ students. In Pennsylvania, a school adopted a gender-neutral dress code after a male student was reprimanded for wearing an earring.<sup>22</sup> In Georgia, a school district was investigated for failing to address student complaints after books - including LGBTQI+-themed books - were removed from the school library.<sup>23</sup> In California, a college was found in violation of Title IX after school staff repeatedly and intentionally misgendered a transgender student.<sup>24</sup>

"I feel like my 11-year-old kid has a great support system at home, but it's scary to send them out into the world because you don't know if they are getting the same treatment. We worry about what teacher they will have this year and if they'll be supportive. There are three or four people who will stick up for my kiddo, and that's important because school is the other place my kid spends most of their time. If the student doesn't feel safe and seen, then there is no learning."

Hailey, parent of a nonbinary child  
Salt Lake City, Utah

Even though states and schools should move expeditiously to implement inclusive policies in compliance with the updated Title IX regulations, some LGBTQI+ students may have to vindicate their rights in court. For example, in April 2024, the Fourth Circuit affirmed that a categorical state ban of transgender student athletes violates Title IX.<sup>25</sup> 25 states have adopted these sports bans, even though the U.S. Department of Justice cautioned as early as 2021 that these policies violate Title IX.<sup>26</sup> Robust enforcement of Title IX rights at all levels will be a critical step in building safer and more inclusive school environments for the next generation of LGBTQI+ students.

## ENDNOTES

- 1 Kosciw JG, Clark CM, Menard L. The 2021 National School Climate Survey. GLSEN, at 19, <https://www.glsen.org/sites/default/files/2022-10/NSCS-2021-Full-Report.pdf> ("GLSEN NSCS").
- 2 GLSEN NSCS, *supra* n.1, at 25.
- 3 GLSEN Navigator. Map: Trans and Nonbinary Interscholastic Athletic Inclusion Policies. <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/> (last updated Mar. 2024).
- 4 U.S. Department of Education. Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance. (April 2024) ("Final Title IX Rule").
- 5 Final Title IX Rule, *supra* n.4, at .
- 6 GLSEN NSCS, *supra* n.1, at 19.
- 7 GLSEN NSCS, *supra* n.1, at 25.
- 8 GLSEN NSCS, *supra* n.1, at 25.
- 9 Final Title IX Rule, *supra* n.4, at .
- 10 Final Title IX Rule, *supra* n.4, at .
- 11 GLSEN NSCS, *supra* n.1, at 34-37.
- 12 GLSEN NSCS, *supra* n.1, at 41-44.
- 13 GLSEN Navigator. Map: Enumerated Anti-Bullying and Harassment Policies. <https://maps.glsen.org/enumerated-anti-bullying-and-harassment-policies> (last updated Mar. 2024). 14 GLSEN NSCS, *supra* n.1, at 70-72.
- 15 GLSEN NSCS, *supra* n.1, at 73.
- 16 GLSEN NSCS, *supra* n.1, at 91.
- 17 Final Title IX Rule, *supra* n.4, at .
- 18 NSCS, *supra* n.1, at 92.
- 19 Movement Advancement Project. Map: Bans on Transgender People Using Bathrooms and Facilities According to Their Gender Identity. [https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom\\_bans](https://www.lgbtmap.org/equality-maps/nondiscrimination/bathroom_bans) (last updated Mar. 2024). 20 GLSEN NSCS, *supra* n.1, at 9-12, 88, 94.
- 21 See The Trevor Project. 2023 U.S. National Survey on the Mental Health of LGBTQ Young People (2023). <https://www.thetrevorproject.org/survey-2023/>.
- 22 U.S. Department of Education, Office for Civil Rights. Letter to Gregory Frigoletto, Superintendent of Wayne Highlands School District (July 5, 2022). <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03201279-a.pdf>.
- 23 U.S. Department of Education, Office for Civil Rights. Letter to Dr. Jeff Bearden, Superintendent of Forsyth County Schools (May 19, 2023). <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04221281-a.pdf>.
- 24 U.S. Department of Education, Office for Civil Rights. Letter to Brock McMurray, Superintendent/President of Taft College. OCR Case No. 09-21-2010 (Oct. 19, 2023). <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09212010-a.pdf>.
- 25 B.P.J. v. West Virginia State Board of Education, No. 23-1078 (4th Cir., Apr. 16, 2024). <https://wp.api.acu.org/wp-content/uploads/2024/04/Document.pdf>.
- 26 See GLSEN Navigator, *supra* n.3.