

LGBTQ STUDENTS KNOW YOUR RIGHTS: YOU HAVE THE RIGHT TO BE YOURSELF



When you're at school, you have the right to be treated fairly and with respect by other students and all school employees, including teachers, the principal, custodians, and bus drivers. You have the right to be free from bias, harassment and discrimination; to feel comfortable; and, most importantly, you have the right to be yourself!

At times, school can be rough for any student, but it can be even harder for lesbian, gay, bisexual, transgender or questioning youth, or those perceived as LGBTQ. We're lucky to live in California, where laws are among the most progressive in the country and many groups exist to actively support LGBTQ youth. Unfortunately, these laws often only cover public or charter schools, not private or religious schools. But sometimes the laws protect students in non-religious private schools as well.

Knowing your rights is the first step in making sure you're treated equally, and youth across the state are taking steps to uphold their rights and be themselves.

This guide will show you what the law says about your rights in school, allowing you and your friends to take the lead in making the future of LGBTQ students as bright and fair as possible.

HARASSMENT OF LGBTQ STUDENTS

Bullying, physical threats, hate-graffiti or name-calling of LGBTQ students is harassment, and is no joke. The good news, however, is that California has laws designed to help and protect LGBTQ youth.

The law is on your side. Public, charter, and non-religious private schools that receive state or federal funding are legally required to protect against harassment of LGBTQ students. Sections 200-220 of the California Education Code say that schools must protect students from different kinds of bias and discrimination, including harassment based on actual or perceived sexual orientation, gender identity, or gender expression. This means that you can't be harassed for being LGBTQ, for people thinking you are LGBTQ, or for having friends or family members who are LGBTQ. It also means that transgender and gender non-conforming students can't be harassed for gender-related appearance and behavior, such as a boy wearing a skirt or makeup. School administrators can't just ignore anti-LGBTQ harassment or discrimination of students by saying that such students should "expect" to be harassed or have brought the harassment upon themselves by being open about their gender identity or sexuality. Under Education Code Sections 234-234.5, administrators, faculty and staff are required to intervene when they witness discrimination, harassment or bullying if they can do so safely. In addition, both the California and U.S. Constitution guarantee all students equal protection under the law.

Unfortunately, harassment still happens. For example, Rochelle Hamilton, a lesbian student from Vallejo, CA, came to the ACLU for help after she was harassed repeatedly by staff at her high school. Rochelle fought for her rights and won. At her school today, every teacher and student attends anti-harassment training and the school district has issued clear guidelines about how LGBTQ students can report harassment to prevent it from happening again in the future.

Know your school policy and how to make complaints. If you're being harassed or see it happening to someone else, you should report it immediately to the principal, a counselor, or another school official. Schools are legally required to have an anti-harassment policy, which must be clearly posted around the school, as well as a clear process for filing complaints. Schools are also responsible for preventing anyone from retaliating against you for reporting them and for keeping complaints strictly confidential.

RESPECTING TRANSGENDER AND GENDER NON-CONFORMING STUDENTS' RIGHTS

California Education Code Section 220 prohibits discrimination on the basis of gender identity and gender expression—in addition to sexual orientation and other protected characteristics—in public schools or non-religious private schools. This means that a school must respect a transgender or gender

non-conforming student's gender identity and/or expression. This includes calling you by your chosen name and gender pronoun, allowing you to dress in conformity with your gender identity or in gender non-conforming ways, and providing access to sex-segregated spaces such as restrooms and locker rooms, and activities such as gym class, in a way that corresponds to your gender identity. If you need or desire more privacy, your school must give you access to a single stall or gender-neutral restroom or changing area. Title IX and the U.S. Constitution provide similar protections by prohibiting schools from stereotyping based on sex and from reinforcing stereotypical gender norms. For some good examples of the types of policies and practices schools should have in order to ensure transgender and gender non-conforming students are respected, check out <http://www.casafeschools.org/csscmodelpolicy1209.pdf>.

FREEDOM OF SPEECH AND EXPRESSION

Under the First Amendment of the U.S. Constitution, student expression is protected both on campus and outside the classroom and California's Constitution has even stronger freedom of speech protections. Section 48907 of the California Education Code also protects your right to discuss LGBTQ issues and topics in school. In addition, under Section 48950, no public school, charter school, or non-religious private high school can discipline you for talking about being LGBTQ or for discussing LGBTQ issues.

Of course, this doesn't mean that you can say whatever you want at any time—your speech isn't protected if it disrupts class time, if it's intended to encourage other students to break school rules, if it's obscene, or if it's something untrue about someone that could damage their reputation. Your school can also put some limits on where and when certain kinds of speech are allowed, but generally, if other students are allowed to speak at an event or in class at school, you should also be allowed to talk about LGBTQ issues.

Expressing Your Opinion. Your school is required to let you express your opinion, including about LGBTQ issues, on badges, buttons, armbands, bulletin boards, printed materials, petitions, and school publications.

T-shirts. If your school allows other students to wear t-shirts (or other types of clothes) that express their beliefs or political views, then the school can't tell you to take off something expressing your opinion on LGBTQ issues. For example, in 2008, when a school in Big Bear Lake, CA, told senior Mariah Jimenez that she couldn't wear a t-shirt opposing Prop. 8, she stood up for her right to express her views, and the school apologized.

Class Projects. Your school also can't prevent you from doing a class project about an LGBTQ topic or book, so long as it meets the requirements of the assignment. For example, officials in Ramona, CA, tried to prevent sixth grader Natalie Jones from giving a report in class on Harvey Milk, the first openly gay elected official in California. This violated both federal and state freedom of speech protections, and with the help of the ACLU, Natalie was allowed to give her presentation in class like all the other students.

Prom. A large part of your freedom of expression is your right to be 'out' about your sexual orientation and/or gender identity. Nobody can censor who you are. This includes the right to bring a same-sex or gender nonconforming date to your prom or other school dances, to wear gender non-conforming clothing and to run for prom king or queen regardless of your sex. For example, Constance McMillen bravely stood up for both her right to bring her girlfriend to her school's prom and wear a tuxedo. With the ACLU's help, Constance established that students have the right to the prom date of their choice and to wear clothing that may not match up to norms for how boys or girls are "supposed" to dress.

Senior Portraits and Yearbook Photos. Your right to be yourself and dress in a gender non-conforming manner extends to what you wear in your school photos. For example, when Ceara Sturgis chose to wear a tuxedo for her senior yearbook photo, rather than the drape typically reserved for girls, her school excluded her picture from the yearbook. With the ACLU's help Ceara fought her school and won: Ceara's photo was added to the wall of senior photos at the school and her school improved its senior photo dress and anti-discrimination policies.



CONTINUED LGBTQ STUDENTS KNOW YOUR RIGHTS

PRIVACY AND “OUTING” STUDENTS

Generally, your school, whether public or private, doesn't have the right to 'out' you as LGBTQ to anyone without your permission, including your parents.

Under the California and U.S. constitutions, you have a protected right to privacy, which includes the right to keep your sexual orientation, gender identity or that you are transgender private (what courts call a “reasonable expectation of privacy”). In other words, you have the right to control to what extent and to whom you disclose highly personal information about your sexual orientation or gender identity. This means that even if you are “out” about your sexual orientation or gender identity at school, if you're not 'out' to your parents at home, and you can reasonably expect that they're not going to find out, then school staff can't tell your family that you are LGBTQ without your permission. Being open about your sexuality in school doesn't mean you automatically give up your right to privacy outside school.

However, under some limited circumstances your school can tell your parents something about your sexual orientation or gender identity—but only if they have a very good reason for doing so. It really depends on the circumstances. But they can't do it just to punish you, harass you, discriminate against you, or retaliate against you for complaining about something. For example, if you complain to the principal about a teacher making or allowing anti-LGBTQ comments in class, they can't then call your parents (or threaten to call them) and discuss anything about your actual or perceived sexual orientation. If your principal or teachers are threatening to “out” you to your parents and you need advice, give us a call. You should also explain your desire and your right to keep this information private.

GAY-STRAIGHT ALLIANCES

Gay-Straight Alliances (GSAs) are student clubs that allow youth who are committed to equality to get together for activities and discussion.

GSAs are a great way to promote awareness of LGBTQ issues, and your school's support of a GSA could help the school to meet its obligation to protect students from anti-LGBTQ harassment and discrimination. Unfortunately, sometimes schools want to treat GSAs differently from other clubs, or even try to prevent students from starting one. This is wrong, and the law can help you.

Under the federal Equal Access Act, the First Amendment, and Section 220 of the California Education Code if your public school allows other non-curricular clubs to meet, it must also allow the GSA to meet and treat it like any other non-curricular student group. Non-curricular clubs are groups that aren't directly related to classes taught in school. For example, a Math Club is a curricular club, but a Snowboarding Club is non-curricular. The GSA must get the same privileges and access to meeting facilities as other non-curricular clubs. So if your school lets other clubs meet in classrooms and put up posters, then it has to let the GSA meet in classrooms and put up posters too.

If you're having difficulty forming a GSA, or feel that your GSA is being treated differently, you should raise your concerns with school officials and explain that the law requires the GSA be treated like other non-curricular clubs. Students in Madera, CA, negotiated with administrators who had been blocking the formation of a GSA club for over two years. They explained that the actions of the school violated the law and the club was finally allowed to develop. Student members of a GSA in Hesperia, CA fought back against school administrators who were censoring the GSA's announcements and posters, and not allowing them to screen movies about LGBTQ issues.

Starting a GSA Club. Starting a GSA is like starting any other club. Find out what your school's rules are and then follow those rules carefully. So long as the procedures for setting up the club are the same as for other non-curricular groups, it's okay.

UNBIASED AND LGBTQ INCLUSIVE INSTRUCTION

Under California Education Code Section 51500, public schools can't provide instruction or sponsor activities that promote or reflect bias or discrimination against any person on the basis of their sexual orientation, gender identity, gender expression, or gender. This means that your school can't teach biased or discriminatory things about LGBTQ people or promote and reinforce gender stereotypes. For example, if your teacher discusses gender, sexual orientation, or families, they must discuss all genders, sexual orientations

and family types. But your right to LGBTQ inclusive instruction does not end there. The FAIR Education Act (Ed. Code Sections 51204.5 and 60040) require that your school teach the role and contributions of LGBT Americans throughout history. For example, this might include discussion of Harvey Milk or famous transgender rights advocate, Theresa Sparks.

Under Sections 51930-51939 of the California Education Code, a sex ed class, like all other classes, can't reflect or promote bias against any person on the basis of their gender or sexual orientation. This means that your school's sex ed class or required HIV/AIDS instruction can't assume that all students are straight, or teach that being LGBTQ is different, unnatural, unhealthy, or wrong. Nor can your school use religious materials in their instruction. Abstinence-only sex ed is also not allowed in California. If your school has a sex ed class, then it must teach unbiased, comprehensive and accurate information, covering issues such as contraception and sexually transmitted infections. But even with the law on our side, we sometimes still have to fight for our rights; the ACLU of California is now challenging the Clovis Unified School District's abstinence only sex ed curriculum. Check our website for updates on the fight!

GENERAL ADVICE

If you suspect that your school is mistreating you because of your sexual orientation or gender identity, here are some basic rules to help you out:

Be respectful and follow the rules!

Don't give your school any excuses for treating you badly by behaving badly yourself. This can make things harder to solve in the long run. Explain your grievances in a mature, respectable and respectful manner.

Document everything!

Keep a record of the 'Six Ws' each time you are harassed:

1. WHO was involved,
2. WHAT happened,
3. WHERE it happened,
4. WHEN it happened,
5. WHO you reported it to, whether they did anything about it, and when,
6. And if there were any WITNESSES.

Keep copies of anything in writing that you file with the school and be sure to write down the date (or even better, ask them to stamp it as received, with the date). Also take notes about any additional conversations you have with school administrators and any actions they take (or fail to take), and be sure to write down the dates for those too.

FILE A COMPLAINT!

Your school is required by law to have a clear and publicized process for filing complaints of harassment. If the process is not posted around campus like it should be, ask what this process is, and follow it—you may also remind your school of their obligation to post these materials. Your school must keep your identity confidential and protect you from retaliation. The California Department of Education also has its own Discrimination Complaint Process, and information will be available on its website at: www.cde.ca.gov/re/di/eo/complaint.asp

CONTACT US

If you have more questions or if you think that your school isn't complying with the law, please contact us:

ACLU of Southern California
www.aclu-sc.org, (213) 977-9500

ACLU of Northern California
www.aclunc.org, (415) 621-2493; counselors' direct line: (415) 621-2488

ACLU of San Diego & Imperial Counties
www.aclusandiego.org, (619) 232-2121

Always remember that you are the most important person in upholding your own rights, and that includes the right to be yourself!

Get more information at:

www.aclunc.org/SchoolsForAll and www.aclu-sc.org/SRP

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