

TITLE IX

FACT SHEET

Title IX Protections from Bullying and Harassment in Schools: FAQs for LGBT or Gender Nonconforming Students and Their Families

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Under Title IX you have a right to be protected from sex-based harassment in school. Your school must work to prevent harassment and stop any harassment that does occur. Below are answers to frequently asked questions from LGBT and gender nonconforming students about how Title IX can be used to make them safer in school.

Are LGBT and gender nonconforming students protected by federal law from bullying and harassment?

In some cases, yes. Title IX is a federal law that bans discrimination on the basis of sex in education programs. The U.S. Department of Education's Office for Civil Rights (OCR), the agency that enforces Title IX, has explained that Title IX does not explicitly cover discrimination on the basis of sexual orientation, but it has not yet clarified whether Title IX covers discrimination on the basis of actual or perceived gender identity.¹

However, it is clear that bullying and harassment of LGBT or gender nonconforming students that is gender-based harassment—meaning harassment or bullying because a student does not conform to stereotyped notions of masculinity or femininity—is covered by Title IX. Also, depending on where you live, you may be protected by state anti-discrimination law on the basis of sexual orientation or gender identity, as well as sex. And the Student Non-Discrimination Act, pending in Congress, is an important federal law that would explicitly protect LGBT students from discrimination in K-12 public schools.

What is Title IX and how does it apply here?

Title IX, passed in 1972, is a federal law that prohibits discrimination on the basis of sex—including sex-based harassment and bullying, as well as sexual assault—in schools that receive federal funding. Under Title IX, schools must protect students from sex-based harassment at school, on the school bus, and on field trips

or at any school-sponsored events. If such harassment by your peers, teachers, or other adults is so serious that it interferes with your education and it is encouraged, tolerated, not adequately addressed, or simply ignored by school employees, your school may be violating Title IX.

What exactly is "harassment"?

Conduct that you may think of as "bullying" may actually be harassment. Harassment can take many forms. It can be verbal acts, like name-calling; images and graphics; written statements; or other actions that may be physically threatening, harmful, or humiliating. Harassment can include the use of cell phones or the internet (sometimes known as "cyberbullying"). The harassing student and target do not have to be of the opposite sex.

Examples of prohibited harassment:

- A female student, who has short hair and wears T-shirts, baggy jeans, and sneakers, had a relationship with another girl at school, and now a group of students are repeatedly texting her and tweeting about her at school, calling her a "slut," "whore," "dyke," and "butch."
- A male student has mostly female friends, he sings Lady Gaga songs in the hallway and is on the dance team. Fellow students call him a "fairy," "gay boy," or "queer," both in-person and online, and knock his books out of his hands in the hallway. He has also been physically assaulted and threatened on the school bus.

- Students maliciously use “she” and “her” to refer to a transgender classmate, even though they know he identifies as a boy. The principal has told him to “just act like a girl.” The student enrolled in an auto shop class, and is being taunted by classmates, who make sexually suggestive jokes about the student’s “tool” and ask what’s “under the hood.”
- In the locker room at school a group of boys surround a younger boy, grab his genitals, and tell him that they “heard he liked that.”

What should I do if I’m experiencing harassment?

Harassment often escalates if ignored. Report the behavior to a teacher, counselor, or administrator and, if you feel safe doing so, tell the harasser or harassers to stop. If your school knows or should know about the harassment, it must investigate and do something about it. It must also protect you from being retaliated against because you stood up for your rights. Find out if your school or district has a Title IX coordinator and if they have a policy on harassment with instructions on what students should do or to whom they should complain.

What can my school do to help if I’m experiencing harassment or bullying?

There are many ways that your school can respond to harassment and do all it can to stop it and eliminate the harm it caused. It could separate you and your harasser, provide counseling for you and/or the harasser, and provide training to the school community as a whole so that all students, families, and school staff can recognize harassment and know what steps to take. Your school should not discipline you because you have been bullied or harassed, nor should it require you to change your class schedule or activities to avoid the harasser. And your school must take steps that are effective, so if it tries something that does not work, it must try something else to stop the harassment.

What if my school already has an anti-bullying policy?

Having an anti-bullying policy—even one that specifically applies to bullying based on sexual orientation or gender identity—does not mean the school’s work is done. Even if it has policies in place that prohibit bullying and harassment, your school is responsible for investigating, ending, and preventing harassment, as well as remedying the harm done.

What if my school says it can’t do anything because of the bully’s right to free speech?

In many cases that will not be true, even in a public school where some free speech rights apply. Students, especially students in K-12 schools, have fewer free speech rights than adults, and schools may restrict speech that

threatens to substantially interfere with the school environment. Schools may also restrict vulgar, lewd, or offensive speech, or “true threats.” A federal court of appeals has explained that “[i]ntimidation of one student by another, including intimidation by name calling, is the kind of behavior school authorities are expected to prevent. There is no constitutional right to be a bully.”²

Are there any other laws that might protect me?

Very likely, yes. Almost every state has its own anti-bullying law, which may add additional protections and requirements to Title IX’s, and a [handful of states](#) have laws that specifically protect LGBT students from discrimination based on sexual orientation and/or gender identity. In addition, some cities and counties have antidiscrimination policies or laws that include sexual orientation and/or gender identity. You might also be covered by local anti-bullying laws. Check your state anti-bullying laws on stopbullying.gov and your state’s antidiscrimination laws at the [Human Rights Campaign’s website](#), contact your state’s Department of Education, [contact us](#), or ask a local attorney to find out if you have additional protections.

But even if there aren’t any anti-discrimination laws that expressly include sexual orientation or gender identity in your area, the United States Constitution guarantees “equal protection of the laws” to all people. Some courts have said that employees at public schools may not treat you differently based on prejudice against LGBT people. For example, courts have explained that public schools can’t take claims of bullying and harassment of LGBT students less seriously than they take similar allegations by straight students.

What are my legal options?

Schools are responsible for complying with Title IX, and this responsibility can be enforced by the U.S. Department of Education’s Office for Civil Rights—you can [file a complaint with OCR online](#) without a lawyer—or through a lawsuit in federal court. You may want to [contact us](#) or talk to a lawyer about these options, particularly if you’re thinking about filing a lawsuit, since there are time limits on your ability to file. Depending on where you live, state or local laws may provide additional protection and a lawyer could also help assess whether you have a claim under the various state, local, and federal laws that may apply.

Where can I get more information?

Read our [FAQs about Title IX and bullying and harassment](#) for more information about your legal rights and options. If you have further questions or need help, please contact the National Women’s Law Center at info@nwlc.org, or (202) 588-5180.

¹Other agencies have determined that “sex” includes gender identity.

²*Sypniewski v. Warren Hills Regional Bd. of Educ.*, 307 F.3d 243, 264 (3d Cir. 2002).