

LEGAL & EMPLOYMENT GUIDANCE

What Educators Should Know About LGBTQ+ Rights

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This guidance provides general legal information about the rights of LGBTQ+ students, educators who advocate for these students' rights, and LGBTQ+ educators themselves as employees. Nothing in this guidance should be considered legal advice about any particular situation; you should always consult with a union representative or legal counsel who has knowledge of the specific facts and the governing state and local laws and school district policies.

Because this area of the law is changing rapidly, we begin with an overview of the current legal trends and political climate at the federal level and major developments at the state level. When this guidance is updated, new developments will be highlighted here at the beginning of the document for easy reference.

Updated: January 15, 2025

OVERVIEW OF THE CURRENT CLIMATE AT THE FEDERAL LEVEL

Over the past four years, defenders of LGBTQ+ rights have been able to rely on federal law as a backstop against harmful state and local laws and school policies that target transgender students and censor LGBTQ-inclusive curricula. Under a second Trump administration, the inverse will likely be true: the federal government will push to roll back rights, and any affirmative protections for LGBTQ+ individuals and inclusive schools will come from states, municipalities, and individual school districts.

Project 2025 outlines many potential steps the federal government might take that would be detrimental to LGBTQ+ people.¹ Trump is expected to issue directives in line with many of these recommendations—in particular, targeting transgender and other gender expansive students. It is important to know that presidents cannot unilaterally change civil rights laws. Most policies will require action by federal agencies, or Congress passing new laws, or decisions by the Supreme Court—all of which take time. The NEA, alongside many other civil rights organizations, is following policy developments and strategizing effective responses, which may include challenging unlawful action in court.

¹ See [Project 2025 Mandate for Leadership Chapter 11 \(Department of Education\)](#); [Agenda 47/2024 RNC Platform](#).

While no one can say with certainty exactly which policies will come to fruition, educators should expect a fundamental enforcement reversal, where they will not be able to rely on the federal government to protect against harmful policies or to pursue complaints of discrimination based on gender identity.

Shortly after inauguration, President Trump is expected to issue an executive order redefining “sex discrimination” in a way that tries to exclude protections against discrimination based on gender identity, and to make federal protections against discrimination very narrow. This type of executive order is likely to be an instruction by the president to federal agencies about how to interpret or carry out federal civil rights laws including Title IX, which prohibits discrimination based on sex in schools and colleges that receive federal funding.

Executive orders are a way for presidents to quickly announce a policy initiative and get media attention, but they rarely have immediate force of law. To have the effect of law, an executive order would have to stem from a power the Constitution or Congress specifically gives the president.² Changing the actual substance of civil rights statutes would require legislation by Congress, and no president can bypass that simply by issuing an executive order.

Nevertheless, a president directing agency interpretation of statutes or telling agencies not to enforce certain statutes can have a meaningful impact on the ground. For example, the U.S. Department of Education may quickly issue guidance or a “notice of interpretation” adopting a restricted definition of “sex discrimination” and stating that it will not enforce protections against discrimination based on gender identity or expression. It may also begin the formal rulemaking process to amend Title IX regulations. The formal rulemaking process can take several months or more, but in the meantime, the Department’s Office for Civil Rights is unlikely to bring new enforcement actions to protect transgender students and educators, and it may close out existing investigations.

An effort by Trump to roll back protections against discrimination based on gender identity will almost certainly be challenged in court, potentially in several different lawsuits. Those lawsuits will no doubt take some time to resolve. In the meanwhile, advocates should understand that even if the federal government

² See, e.g., [National Constitution Center, “Executive Orders 101: What are they and how do Presidents use them?” \(2017\)](#); [Congressional Research Service, “Executive Orders: An Introduction” \(2021\)](#).

declines to enforce civil rights protections for certain disfavored groups, Title IX as a statute, as well as other federal statutory protections and provisions of the U.S. Constitution, remain the law of the land. School districts that violate them will be vulnerable to private lawsuits by individuals and civil rights organizations.

OVERVIEW OF STATE LAW DEVELOPMENTS

Just as the legal landscape is changing at the federal level, there are also ongoing developments at the state level.

New Protective Laws

In addition to the specific laws providing additional protections against discrimination in employment and education (see below in the sections on employment protections and protections for students), many states have passed other laws protecting LGBTQ+ rights. As of this writing:

- [16 states](#) and the District of Columbia protect access to transgender health care.
- [24 jurisdictions](#) ban conversion therapy for minors entirely, and an additional 6 jurisdictions ban it partially.
- [7 states](#) explicitly require LGBTQ+ inclusion in state curricular standards.

States and municipalities that want to protect their LGBTQ+ communities against attacks by the federal government may pass additional laws in the upcoming legislative sessions.

State Laws Restricting Civil Rights

In the past several years, many states defied long-standing interpretations of federal law, Supreme Court precedent, and the Biden Administration's directives as to how federal civil rights laws should be interpreted, to pass laws restricting the rights of LGBTQ+ students, families, and educators. Many of those laws have been successfully challenged in court, but with the changing political landscape, more such state laws are expected.

As of this writing:

- [14 states](#) have passed some form of bathroom ban affecting K-12 schools.

- [19 states](#) have passed laws that attempt to erase LGBTQ+ history and individuals from the curriculum, including “Don’t Say Gay” laws and parental notification/opt-outs for LGBTQ-related content.
- [26 states](#) have enacted laws or regulations preventing transgender youth from participating on sports teams that align with their gender identity.
- [8 states](#) have laws forcing the outing of transgender youth in schools, and 5 more states have laws promoting (but not requiring) it.
- [26 states](#) have enacted complete bans on gender affirming care for transgender minors, denying medical treatment to transgender youth that their parents and treating medical professionals support.

Tracking of state laws can be found [here](#) and [here](#).

WHAT EMPLOYMENT PROTECTIONS DO I HAVE AS A PUBLIC SCHOOL EMPLOYEE?

Employees have protections against discrimination in employment under federal law, often also under state and/or local law, and frequently under collective bargaining agreements or state tenure laws. Federal civil rights laws apply broadly to all public school employees. However, state and local laws may contain stronger protections, and it may be easier to remedy discrimination under collective bargaining agreements or by directly invoking school district policies and procedures. These more local and direct ways to enforce rights are particularly important when federal agencies cannot be counted on to vigorously defend against LGBTQ+ discrimination.

The various sources of protections are described below in order of how generally they apply—starting with federal law, then the state or local level, and then the individual collective bargaining agreement and/or school district policy level.

KNOW YOUR RIGHTS AS AN EMPLOYEE

If you have been discriminated against or harassed based on your sexual orientation or gender identity:

- Consider filing a complaint with the EEOC or your state enforcement agency, under Title VII and the Supreme Court's decision in *Bostock v. Clayton County*. This must be done within 180 days (or 300 days, depending on the state) of the discrimination.
- Check your school district or higher education institution's Title IX policies, and consider filing a complaint through this process.
- Consider whether your state or local law provides better protections than federal law, such as longer time periods to file complaints or better enforcement prospects. This may be particularly important if the federal government is not acting to protect against SO/GI discrimination and where cases are not being vigorously pursued through the federal agency (EEOC).
- Look at your collective bargaining agreement and/or school district/institution policies, especially any policies about reporting harassment. It may be faster and easier to get relief under your internal policies, and in some cases, it may be important to show that you complained to your employer.
- In all cases, keep detailed notes documenting the time, place and circumstances of any incidents of harassment and discrimination, including any witnesses. If you raise complaints with your administration, keep records (such as copies of emails) of these complaints.
- Contact your union representative or legal counsel with any questions about your rights.

Federal Law

Educators are protected against sex discrimination under both Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment, and Title IX of the Education Amendments of 1972, which prohibits sex-based discrimination in any school or education program that receives federal funding.

Title VII: Title VII forbids discrimination against employees based on numerous characteristics, such as race, color, sex, religion, and national origin. Title VII is enforced by the Equal Employment Opportunity Commission (EEOC).

Under federal law – as confirmed by the U.S. Supreme Court in its 2020 decision in *Bostock v. Clayton County*³ – discrimination based on sexual orientation and/or gender identity is considered a type of sex discrimination and is therefore illegal under Title VII. This means that employers cannot consider an employee’s sexual orientation or gender identity when deciding who to hire, fire, or promote, or in assigning responsibilities, setting salary, providing benefits, or determining any other significant aspect of employment. Employers also cannot harass employees based on their LGBTQ+ status or allow others to create a hostile work environment for LGBTQ+ employees.

Title IX: Title IX is typically thought of as a statute protecting students’ rights, but it also applies to employees of all public schools and institutions of higher education, as well as all private institutions that receive any kind of federal funding. Title IX is enforced by the Department of Education’s Office for Civil Rights (OCR).

Although educators as employees are covered by Title IX, because complaints of sex-based discrimination in employment are also covered by Title VII, if you file a Title IX complaint with OCR, it will typically be referred to EEOC to handle. For this reason, and because of the unsettled scope of protections under Title IX (see below in “What Protections Do My Students Have?”), it is probably best to pursue claims of sexual orientation and gender identity discrimination primarily under Title VII if you are filing a complaint with a federal agency. However, Title IX does protect against some forms of discrimination not specifically included in Title VII, such as discrimination in fringe benefits; selection and financial support for training and conferences; employer-sponsored activities, including those that are social or recreational; and leave related to pregnancy, childbirth and termination of pregnancy.⁴

Title IX also requires schools to have policies and procedures for addressing sex-based harassment, so it is always a good idea to check your school district or institution’s Title IX policy, and consider bringing a complaint using the school’s reporting procedures, in addition to any employment policies for reporting discrimination.

³ [*Bostock v. Clayton County, Georgia*, 590 U.S. 644 \(2020\)](#).

⁴ Employees also have rights to pregnancy-related leave under the [Pregnant Workers Fairness Act](#).

State and Local Laws

States and municipalities often have anti-discrimination laws of their own that go beyond the protections of federal law.

➤ Currently, 28 states/jurisdictions have state laws that explicitly prohibit employment discrimination based on sexual orientation and/or gender identity:

- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Guam
- Hawaii
- Illinois
- Iowa
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- Oregon
- Puerto Rico
- Rhode Island
- Utah
- Vermont
- Virginia
- Virgin Islands
- Washington
- Wisconsin (sexual orientation only)

➤ An additional 10 states with laws prohibiting sex discrimination in employment explicitly interpret the state law to include sexual orientation and/or gender identity:

- Alaska
- Arizona
- Florida
- Kansas
- Kentucky
- Nebraska
- North Dakota
- Ohio
- Pennsylvania
- Texas

Keep in mind that because the protections in the ten states listed above are based on statutory interpretations (rather than expressly prohibiting discrimination based on sexual orientation and gender identity in the law itself), these state law protections are more vulnerable to re-interpretation by politicians and judges that are hostile to LGBTQ+ rights. It is important for activists and civil rights lawyers in these states to continue to advocate for LGBTQ+ protections that are in line with existing state law precedent.

You can check the [status of laws in your state here](#).

In addition to state law protections, in all but two states, local municipalities may pass non-discrimination ordinances that provide protections against discrimination based on sexual orientation and gender identity. (Arkansas and Tennessee state laws prohibit municipalities from passing or enforcing local nondiscrimination ordinances).

➤ Municipalities with such protections include cities and towns within states that lack protections and may even be openly hostile to LGBTQ+ rights at the state level, including:

- Birmingham, AL
- Atlanta, GA
- Savannah, GA
- Bloomington, IN
- Indianapolis-Marion County, IN
- New Orleans, LA
- Shreveport, LA
- Jackson, MS
- Kansas City, MO
- St. Louis, MO
- Bozeman, MT
- Missoula, MT
- Durham, NC
- Greensboro, NC
- Charleston, WV
- Morgantown, WV

An updated list of [local ordinance coverage can be found here](#).

Be aware, however, that states may pass laws that preempt (override) local ordinances. If your state passes a law restricting LGBTQ+ rights, be sure to check with an attorney at your state or local affiliate about whether the local ordinance conflicts with the state law and would be overridden by the state law.

Rights Under Collective Bargaining Agreements, Tenure Protections, and School District Policies

In jurisdictions with bargaining rights, collective bargaining agreements can be an important source of rights, and often provide the easiest and quickest way to address employment discrimination. Your collective bargaining agreement may contain explicit nondiscrimination provisions that include sexual orientation or gender identity. Even where there are no such explicit protections, if your employer takes an action against you for a discriminatory reason, you may be able to use evidence of discriminatory motives to show that the employer has not met the standard for “just cause.” Be aware that even if your collective bargaining agreement contains protections against discrimination, you also have individual rights under federal (and often state) civil rights laws, but you need to assert those rights within certain time periods. State tenure laws may also provide general protections that could apply to discriminatory discipline or termination. Consult

with your union representative or an attorney if you have any questions about your options for pursuing a claim of discrimination.

Whether or not you are covered by a collective bargaining agreement, it is also important to look at school district or institution policies to see if there are any protections that may apply to your particular situation. For example, nearly all employers have policies for preventing and addressing sex discrimination and harassment, and these policies typically contain a reporting procedure for raising complaints. Also, school districts and higher education institutions are required to have policies for reporting and addressing sex-based harassment under Title IX. Although the requirements for these policies will vary from state to state (see below in “What Protections Do My Students Have?”), if your complaint is about something that the school has an obligation to address under its own Title IX policy or a general sexual harassment policy, the reporting procedures specified in your district policies may be your best starting place.

In any case, members should contact their union representative or legal counsel for questions about state and local law, district policies, and any rights under collective bargaining agreements or tenure laws.

WHAT PROTECTIONS DO MY STUDENTS HAVE?

LGBTQ+ students and allies are also protected against discrimination and harassment based on sexual orientation, gender identity or expression, and other ways that individuals may be targeted based on sex. As with protections against employment discrimination, student rights may be found at the federal, state, and local levels, including within individual district or institutional policies.

KNOW YOUR STUDENTS' RIGHTS

If you are concerned about discrimination or harassment of LGBTQ+ students:

- Look at your school/higher education institution's Title IX policy and any other policies about discrimination or harassment of students.
- Don't forget that there may be other constitutional or federal law protections in addition to Title IX. For example, student expressions of their gender identity or support for LGBTQ+ inclusivity may be protected speech under the First Amendment.
- Find out if your state or local municipality have laws or regulations prohibiting SO/GI discrimination in schools.
- Find out whether there are anti-bullying or harassment state or local laws or school district policies that may apply.
- Consider advocating for school board policies that express support for LGBTQ+ students' rights and inclusion, and that seek to ensure a safe, affirming and welcoming environment for all students.
- In all cases, keep detailed notes documenting the time, place and circumstances of any incidents of harassment and discrimination, including any witnesses. If your school/institution has anti-LGBTQ+ policies, note and keep records of the negative impact of these policies on students, for example, any observations of students missing more school, being excluded from activities, or having challenges academically. If you raise complaints with your administration, keep records (such as copies of emails) of these complaints.
- Contact your union representative or legal counsel with any questions about the law in your state and specific policies that may apply.

Federal Law

Title IX is the primary federal law protecting students against sex-based discrimination in schools. There are, however, other federal statutes and protections under the U.S. Constitution that may also provide rights for students who are targeted based on their gender identity or sexual orientation. These other sources of federal protections may become increasingly important, particularly for transgender, nonbinary, and intersex students, if the federal government acts as expected to try to re-interpret Title IX in a narrow way that authorizes discrimination against students based on gender identity.

Title IX – Federal Civil Rights Statute

Title IX is a federal civil rights law prohibiting sex-based discrimination. The language of the statute itself is quite simple: it prohibits exclusion from participation in, being denied the benefits of, or being subjected to discrimination under any federally funded program or activity “on the basis of sex.” All public and private elementary and secondary schools, school districts, colleges and universities that receive federal funds are required to comply with Title IX. Title IX covers a student’s entire school experience, meaning that schools cannot discriminate against students on the basis of sex in extracurricular activities, school sports, dress codes, and facilities, including bathrooms.

Title IX rights can be enforced in a few different ways. First, schools are required by the regulations interpreting Title IX to have policies and procedures to address certain violations of Title IX. As discussed below, what these policies must contain may vary depending on the Title IX regulations that are in effect. But in any case, the first level of possible enforcement of Title IX will be at the level of the school district or higher education institution. Second, an individual claiming a violation of their rights under Title IX, or an individual or group challenging a school policy or practice that conflicts with Title IX, can file a complaint with the Department of Education Office for Civil Rights (OCR) – the administrative agency with authority to enforce the statute. Third, because Title IX contains a “private right of action,” an individual or group can bring a lawsuit directly in federal court.

It is important to keep in mind that whatever variation or changes in interpretation or regulations that may be undertaken by the president or OCR, Title IX’s statutory prohibitions against discrimination “on the basis of sex” cannot be changed except

by Congress. This means that even if the Title IX regulations are changed or not enforced, or there are other administrative efforts to redefine “on the basis of sex,” individuals and civil rights organizations will be able to continue to bring cases in federal court to protect and vindicate the rights of LGBTQ+ students. It also means that school districts and higher education institutions will continue to have potential liability for violating LGBTQ+ students’ Title IX rights.

Many federal courts that have considered cases involving Title IX claims have interpreted Title IX to provide protections against discrimination based on sexual orientation and gender identity, including federal appellate courts in the Fourth, Seventh and Ninth circuits to date, with more appellate courts likely to weigh in on the issue.⁵

➤ This means that federal courts in the following states are bound by precedent holding that discrimination based on sexual orientation, gender identity, or both are prohibited under Title IX:

Fourth Circuit

- Maryland
- North Carolina
- South Carolina
- Virginia
- West Virginia

Seventh Circuit

- Illinois
- Indiana
- Wisconsin

Ninth Circuit

- Alaska
- Arizona
- California,
- Hawaii
- Idaho
- Montana
- Nevada
- Oregon
- Washington

⁵ *B.P.J. by Jackson v. W. Va. State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024), petition for cert. filed (July 16, 2024) (24-44); *Grabowski v. Ariz. Bd. of Regents*, 69 F. 4th 1110 (9th Cir. 2024); *A.C. by M.C. v. Metro. Sch. Dist. of Martinsville*, 75 F.4th 760 (7th Cir. 2023), cert. denied, 144 S. Ct. 683 (2024); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), cert. denied, 141 S. Ct. 2878 (2021); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd of Educ.*, 858 F.3d 1034 (7th Cir. 2017).

District courts in additional states have also found that Title IX prohibits sexual orientation and gender identity discrimination.⁶

Title IX Regulations

With all general civil rights statutes that provide broad rights under federal law, an administrative agency is charged with issuing regulations that specify how that law is interpreted, applied and enforced. In the case of Title IX, the Department of Education, specifically its Office for Civil Rights, is responsible for drafting, implementing and enforcing Title IX regulations.

The process for issuing new regulations or amending existing ones often takes anywhere from several months to a year or more, as agencies are required to first issue a Notice of Proposed Rulemaking, spelling out what they intend to do; must then allow for members of the public to comment on that proposal; must review and take into consideration all the comments they receive; and then issue a final rule, along with an analysis explaining the agency's rationale for various parts of the rule and responding to the feedback received in public comments. Final regulations under Title IX are frequently challenged in federal court, where opponents of the rule bring claims about the process undertaken by the agency as well as the substance of the rule itself, including claims that the regulation is not consistent with the Title IX statute or that it violates other federal laws or infringes on constitutional rights. OCR also issues guidance and statements about its interpretation of the statute, but these documents do not have the force of law.

Background on the 2024 Regulations

In 2020, the former Trump Administration issued Title IX regulations limited to how schools and higher education institutions deal with claims of sexual harassment.⁷ Although there was a background of federal court decisions and prior OCR guidance about specific protections for LGBTQ+ students (which the Devos Department of Education withdrew),⁸ the 2020 Title IX rule did not address one

⁶ *E.g., Tirrell v. Edelblut*, --- F. Supp. 3d ---, 2024 WL 389544, at *5 (D.N.H. Aug. 22, 2024) (New Hampshire); *Dimas v. Pecos Indep. Sch. Dist. Bd. of Educ.*, 2022 WL 816501, at *4 (D.N.M. Mar. 17, 2022) (New Mexico).

⁷ [Final Rule, Issued May 19, 2020.](#)

⁸ *See* [May 13, 2016 Dear Colleague Letter on Transgender Students](#); [February 22, 2017 Letter Withdrawing Guidance.](#)

way or another what Title IX’s protections are for individuals who face discrimination based on sexual orientation or gender identity.

In 2024, OCR under the Biden Administration finalized a regulation that, among other things, codified that under Title IX, “sex discrimination” includes discrimination based on sexual orientation, gender identity, sex characteristics, and sex stereotypes (as well as pregnancy and related conditions) (“the 2024 Rule”).⁹ Although this was not a new interpretation, it was the first time that this explicit protection against sexual orientation and gender identity discrimination was formalized in Title IX regulations, giving it the force of law. This interpretation was based the statutory text, a long history of caselaw and guidance, and the Supreme Court’s *Bostock* decision’s reasoning that discrimination “based on sex” necessarily includes discrimination based on sexual orientation and gender identity.¹⁰

The 2024 Rule made a number of other changes, including requiring schools to have a policy prohibiting all forms of sex-based discrimination (not just sexual harassment), and procedures to address complaints of sex-based discrimination or harassment. It also forbids schools from discriminating against students based on gender identity in a number of ways that are important for the well-being and inclusion of transgender and other gender expansive students:

- Sex-segregated activities and facilities: Transgender bathroom bans are prohibited, as are other blanket denials of participation in school programs or activities based on gender identity.¹¹
- Pronouns: Repeated misgendering of a student or educator may be considered illegal sex-based harassment. Although a “stray remark,” such as a mistaken misuse of a student’s name, is not considered harassment,

⁹ [Final Rule, Issued April 29, 2024.](#)

¹⁰ See [Preamble to the 2024 Final Rule, Section IV](#) (analyzing statutory text, referring to current and prior Department guidance, and collecting cases). The Department also cites cases that rely on a gender-stereotyping theory that courts had recognized long before *Bostock*. E.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Grabowski*, 69 F.4th at 1117; *Whitaker*, 858 F.3d at 1049; *Pederson v. La. State Univ.*, 213 F.3d 858, 880 (5th Cir. 2000); *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151, 1160 (C.D. Cal. 2015); *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 152 (N.D.N.Y. 2011).

¹¹ [34 C.F.R. § 106.31\(a\)\(2\).](#)

- repeated misgendering or deadnaming that is “severe or pervasive” could be considered prohibited harassment.¹²
- Dress Code: Where schools have gender-specific dress codes, schools cannot prevent transgender students from following the dress code rules that match their gender identity.¹³

The 2024 Rule also prohibits anti-LGBTQ+ harassment. Harassment can consist of offensive comments, gestures, and physical acts of a sexual nature, or can be non-sexual but related to sex (including sexual orientation or gender identity), by school staff or other students. If the school is aware of harassment that is so severe OR pervasive (frequent) that it prevents a student from participating in school activities or having equal access to education, the school is required by federal law to take steps to address this.¹⁴

Lawsuits and Decision Vacating the 2024 Rule

The codification of protections in the 2024 Rule furthered backlash from states that were already hostile to LGBTQ+ rights, particularly those with laws and policies targeting transgender students. Several groups of states, as well as right-wing activist groups like Moms for Liberty, sued the Department of Education to prevent OCR from enforcing the new Rule.¹⁵

On January 9, 2025, a federal district court judge issued [a decision](#) in *Tennessee v. Cardona* invalidating the entire 2024 Rule nationwide. Prior to this decision, OCR had already been temporarily enjoined (forbidden) from enforcing the Rule in 26 states, as well as certain individual schools in other states.¹⁶ In those places, OCR could not rely on the 2024 Rule to bring an enforcement action against a school

¹² [Preamble to 2024 Final Rule.](#)

¹³ [Preamble to 2024 Final Rule.](#)

¹⁴ 34 C.F.R. § 106.2.

¹⁵ *Louisiana v. U.S. Dep’t of Educ.*, No. 3:24-cv-563 (W.D. La.); *Tennessee v. Cardona*, No. 2:24-cv-72 (E.D. Ky.); *Kansas v. U.S. Dep’t of Educ.*, No. 5:24-cv-4041 (D. Kan.); *Texas v. United States*, No. 2:24-cv-86 (N.D. Tex.); *Alabama v. Cardona*, No. 7:24-cv-533 (N.D. Ala.); *Oklahoma v. Cardona*, No. 5:24-cv-461 (W.D. Okla.); *Arkansas v. U.S. Dep’t of Educ.*, No. 4:24-cv-636 (E.D. Mo.).

¹⁶ The injunctions cover: Alabama; Alaska; Arkansas; Florida; Georgia; Idaho; Indiana; Iowa; Kansas; Kentucky; Louisiana; Mississippi; Missouri; Montana; Nebraska; North Dakota; Ohio; Oklahoma; South Carolina; South Dakota; Tennessee; Texas; Utah; Virginia; West Virginia; and Wyoming. Individual schools covered by the injunctions were [linked on this page.](#)

district or higher education institution. But the *Tennessee v. Cardona* decision goes further – it effectively wipes the 2024 regulation off the books nationwide. The court’s decision may be appealed, but it is all but certain that the Trump Administration will not defend the 2024 regulation in that appeal. It is possible that an outside organization may seek to enter the litigation to defend the regulation or limit the ruling.

Current Status of Title IX Regulations

With the 2024 Rule invalidated at this time, the regulations revert back to the [2020 Rule](#) issued by the first Trump Administration.

Although OCR will not be empowered to enforce provisions that go beyond the 2020 Rule, schools themselves may implement and enforce more protective Title IX policies, provided these policies do not conflict with the 2020 regulations. Importantly, the 2020 regulations do not say one way or the other whether harassment based on gender identity violates Title IX; the old rule *does not prohibit* states, localities, districts, schools, or institutions of higher education themselves from issuing policies that prohibit gender identity and sexual orientation discrimination. Therefore, the *Tennessee v. Cardona* decision does not appear to prevent institutions that incorporated the 2024 regulations in their policies from maintaining many of these core protections.

In addition, school districts and higher education institutions may continue to maintain policies separate from and in addition to their Title IX policies that prohibit sex-based harassment, assault, bullying and discrimination based on sexual orientation and gender identity. In fact, as discussed below, many schools and institutions may be required to do so by state laws, local ordinances, or school district policies.

No matter what ultimately happens with the 2024 Rule, private litigants may still bring suit to enforce Title IX’s protections and may draw on federal court precedents that have interpreted Title IX to prohibit discrimination on the basis of sexual orientation or gender identity, as well as precedents recognizing that gender stereotyping (and discrimination based on those stereotypes) is also a form of “sex

discrimination.”¹⁷ In addition, state and local laws (discussed below) may provide protections against sexual orientation and gender identity discrimination or harassment, as well as bullying, providing other potential bases for liability if a school fails to address such discrimination or harassment.

Other Federal Protections

Although Title IX is a very important source of rights for students, it is not the only federal protection against some of the ways in which discrimination on the basis of gender identity and sexual orientation can arise. Discrimination against LGBTQ+ students (and with respect to Equal Protection, educators as well) by public schools and universities may violate constitutional rights, and there are also other federal laws that provide important protections for students’ rights to form clubs to support each other and to protect the privacy of transgender students.

Equal Protection Clause of the Fourteenth Amendment

Discrimination against gay or transgender students (or educators) by public schools and universities may violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. As a general matter, where a public school is violating Title VII or Title IX by treating a transgender educator or student differently from cisgender individuals, this may also violate the Equal Protection Clause.¹⁸ There are also strong legal arguments that LGBTQ+ should be

¹⁷ See, e.g., *Grabowski*, 69 F.4th at 1117 (holding that discrimination against a student because they do not conform to a particular masculine or feminine sex stereotype is prohibited under Title IX); *Whitaker*, 858 F.3d at 1049 (“A policy that . . . punishes [an] individual for his or her gender non-conformance . . . violates Title IX.”); *Pederson v. La. State Univ.*, 213 F.3d 858, 880 (5th Cir. 2000) (recognizing that a university violated Title IX when its athletic funding decisions were based on “paternalism and stereotypical assumptions about [women’s] interests and abilities,” and a “remarkably outdated view of women and athletics”); *Videckis v. Pepperdine Univ.*, 150 F. Supp. 3d 1151, 1160 (C.D. Cal. 2015) (“It is undisputed that Title IX forbids discrimination on the basis of gender stereotypes.”); *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 152 (N.D.N.Y. 2011) (holding that allegations of peer harassment based on nonconformity or perceived nonconformity with sex stereotypes state a claim under Title IX).

¹⁸ “[T]he disparate treatment standard of Title VII applies as well to [sex discrimination] claims

considered a “suspect classification,” based on historical victimization by societal discrimination, which means that statutes treating LGBTQ+ people differently would receive heightened scrutiny.¹⁹ This is an evolving area of the law.

First Amendment

Under the First Amendment of the Constitution, students have free speech rights at school. Generally, schools cannot censor student speech unless there is reason to think that it will substantially disrupt school activities or infringe others’ rights.²⁰ That means students should be allowed to wear or display Pride gear and speak out about LGBTQ+ issues.

There are also cases recognizing a First Amendment interest in expressing gender identity in how one wears their hair, clothing, and accessories.²¹ Although this is also an evolving area of law, it may be a basis on which a transgender, nonbinary or other gender expansive student may claim a constitutionally protected right to self-expression, regardless of restrictive school policies.

Equal Access Act

Under the federal Equal Access Act, students in secondary schools also have the right to form GSAs (Gay-Straight Alliances or Gender-Sexuality Alliances), so long as the school authorizes any other extracurricular student groups and the group is student-initiated. Schools cannot single out GSAs for extra restrictions or

arising under the equal protection clause and Title IX.” *Lipsett v. Univ. of Puerto Rico*, 864 F.2d 881, 897 (1st Cir.1988). State-sanctioned “gender discrimination” is unconstitutional unless the discrimination is substantially related to an important government purpose and state action that perpetuates gender stereotypes likewise constitutes sex discrimination, *See Craig v. Boren*, 429 U.S. 190, 197, 198–99 (1976).

¹⁹ *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 610 (4th Cir. 2020), *as amended* (Aug. 28, 2020) (“transgender people constitute at least a quasi-suspect class”); *see also* James Casey Edwards, “Justifying the Margins: Granting Suspect Classification to Trans* Individuals in the U.S. Judicial System,” 55 UIC L. Rev. 403, 407 (2022). In addition, some scholars have advocated for the application of the Equal Protection Clause to anti-trans laws as unconstitutionally motivated by animus towards transgender people. Scott Skinner-Thompson, “Trans Animus,” 65 B.C. L. Rev. 965, 968 (2024).

²⁰ *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

²¹ *E.g.*, *Monegain v. Virginia Dep’t of Motor Vehicles*, 491 F. Supp. 3d 117 (E.D. Va. 2020); *McMillen v. Itawamba Cnty. Sch. Dist.*, 702 F. Supp. 2d 699, 705 (N.D. Miss. 2010); *Vuz v. DCSS III, Inc.*, No. 3:20-cv-246, 2020 WL 7240369 (S.D. Cal. Dec. 9, 2020).

prevent them from using school bulletin boards, making announcements, hosting fundraisers, or engaging in other activities that the school allows other extracurricular groups to do.²²

Right to Privacy Under FERPA

The Family Educational Rights and Privacy Act (FERPA) protects the privacy interests of parents/guardians and students in a student’s “educational records,” which likely includes medical records that may be a part of a student’s records. Transgender students who seek to change their name and gender marker on their educational records should be able to seek an amendment to their records under FERPA.²³ Parents (for students under 18) or students (for those over 18) are entitled to a hearing to challenge the content of their records to ensure that they are not inaccurate, misleading or in violation of their privacy rights.²⁴

State Laws

State laws may have explicit protections to prevent LGBTQ+ students from being unfairly denied access to facilities, sports teams, or clubs. In addition, some states have passed laws that protect LGBTQ+ students from bullying by other students or staff.

Non-Discrimination Laws

➤ 22 states/jurisdictions have state laws prohibiting discrimination against students on the basis of sexual orientation and/or gender identity:

- California
- Colorado
- Connecticut
- District of Columbia
- Hawaii
- Illinois
- Iowa
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- Oregon
- Puerto Rico
- Vermont
- Virginia

²² 20 U.S.C. § 4071.

²³ [A Transgender Advocate’s Guide to Updating and Amending School Records | Lambda Legal Legacy](#)

²⁴ 34 C.F.R. § 99.7(a)(2)(ii).

- Washington
 - Wisconsin (sexual orientation only)
- 3 states/jurisdictions prohibit sex discrimination and explicitly interpret that prohibition to include sexual orientation and gender identity:

- North Dakota
- Pennsylvania
- Virgin Islands

Keep in mind that because the protections in these state laws are based on an interpretation of the statutory language (rather than listing sexual orientation and gender identity in the law itself), these state law protections are more vulnerable to re-interpretation by politicians and judges that are hostile to LGBTQ+ rights.

- 4 states/jurisdictions have school regulations or teacher codes that prohibit discrimination based on sex discrimination and/or gender identity:

- Delaware
- Rhode Island
- Utah
- Northern Mariana Islands

Anti-Bullying/Harassment Laws

- 23 states/jurisdictions have laws prohibiting bullying on the basis of sexual orientation and/or gender identity:

- | | | |
|----------------------------------|-----------------|---------------------------|
| • Arkansas | • Maine | • North Carolina |
| • California | • Maryland | • Oregon |
| • Colorado | • Massachusetts | • Rhode Island |
| • Connecticut | • Minnesota | • Vermont |
| • District of Columbia | • Nevada | • Virgin Islands |
| • Guam (sexual orientation only) | • New Hampshire | (sexual orientation only) |
| • Illinois | • New Jersey | • Washington |
| • Iowa | • New Mexico | |
| | • New York | |

- 5 additional jurisdictions have school regulations or teacher codes that prohibit bullying based on sexual orientation and/or gender identity:

- Hawaii
- Northern Mariana Islands
- Puerto Rico
- Utah
- West Virginia

Explicit prohibitions on LGBTQ+ bullying are important for ensuring that all students feel safe at school. However, keep in mind that even in states and localities where anti-bullying laws or policies do not explicitly address bullying based on sexual orientation or gender identity, LGBTQ+ students should be protected because general anti-bullying policies should apply to *any* student who is bullied regardless of the reason.

Check the status of the [law in your state here](#).

District Policies and Procedures

In all but two states, school districts and individual schools may provide still more protections for LGBTQ+ students. Missouri and South Dakota have state laws prohibiting schools or districts from adding LGBTQ+ protections to nondiscrimination and anti-bullying policies. In all other states, school districts should have flexibility to develop policies to protect LGBTQ+ students as long as those policies are in line with other state laws and policies. Even in states with existing protections against anti-LGBTQ+ discrimination, it may be helpful to have a local-level school board policy that articulates the values and rights recognized by the school district.

Check with your state or local affiliate for more information about what additional protections may exist at the local level, and encourage your school and/or district to adopt inclusive policies. See, for example, [NEA's model school board resolution](#).

DO EDUCATORS HAVE FREE SPEECH RIGHTS TO ADVOCATE FOR THE LGBTQ+ COMMUNITY?

Although some [states](#) and individual school districts have passed laws that censor what can be taught about LGBTQ+ history and issues, educators as citizens, parents and advocates still have rights to speak and write about their beliefs and values, and to advocate for inclusive policies that affirm the identities and rights of all students.

As employees, educators' free speech rights are more limited than those of students. You have the strongest protections when you are speaking off school time as private citizens on matters of public concern. That means that educators generally have the right to advocate for the rights of their LGBTQ+ students when they are off duty, for example, by attending a protest or a school board meeting.²⁵

However, when educators are performing their duties as school employees, school districts have the right to set policies around what teachers say in the classroom, what curriculum to use, and what to display.²⁶ If you are unsure about whether something complies with school policy, it is best to seek clarification from an administrator. Union representatives may also be able to advise you about past interpretations of school policies.

In states and districts that implement policies that censor LGBTQ-inclusive curricula, including banning books, if you are instructed to remove materials from classrooms or school libraries, you should comply with this directive and immediately notify your union and local or state legal counsel to discuss options for challenging the policy.

See NEA's [Educator Advocacy Rights](#) guidance for more information.

²⁵ See *Connick v. Myers*, 461 U.S. 138, 146 (1983) (matters of public concern include those that can be "fairly considered as relating to any matter of political, social, or other concern to the community").

²⁶ *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

HOW CAN I SUPPORT MY STUDENTS?

Although some of the ways in which educators can affirm and support their LGBTQ+ students may be restricted by some state laws and school district policies, there are many ways to show support and help students feel included in the school community.

- We know that inclusive curricula and pedagogical approaches are vital for LGBTQ+ students to thrive at school. In states and districts where there are no specific policies prohibiting educators from implementing a more inclusive curriculum, talk to your school principal about the importance of doing so. Acting together with other educators and involving your union can greatly strengthen your advocacy for inclusive classrooms, school practices and curriculum. GLSEN and other organizations have great [resources](#) for developing a more inclusive curriculum.
- Sponsor a GSA. GSAs should be student-initiated, but will often need a faculty sponsor. Sponsoring a GSA can help students know that you support them and are a safe person to talk to.
- Consider posting LGBTQ+ Pride, Safe Space stickers, or other markers of inclusion. If you have not seen others posting similar items in their classroom, make sure to tell your principal in advance so that you can address any concerns they may have. If your principal or another school administrator prohibits you from posting such inclusive posters, consult your union representative about how best to proceed. Posting overtly political materials in your classroom without clear authorization to do so may result in disciplinary action.
- Unless there is a school policy that forbids referring to students by a name or pronoun that is not on their official school records, respect a student's request to use the pronouns or name that aligns with their gender identity. Consider asking all students at the beginning of the school year what name they prefer to be called, including any nickname or preferred name, so that transgender or gender non-binary students will not feel singled out.
- If a student is being harassed by other students, report it to your principal and the school's Title IX coordinator. Students and parents/guardians can also be advised of their rights to file a Title IX complaint for discrimination

or harassment at school or school-related activities. School policies or practices that are having harmful effects on LGBTQ+ students can also be reported as possible Title IX violations. Even in districts where LGBTQ+ harassment is not considered “sex-based harassment” under Title IX, you should still recognize it, report it, and try to stop it.

- Document any adverse effects of school policies or practices that exclude, marginalize or threaten LGBTQ+ students. Information about ways that students are impacted in their ability to engage or participate in educational activities can be helpful in a Title IX investigation and in other legal actions to protect students’ rights. Details about harmful policies or unchecked harassment of students may be helpful in litigation challenging discriminatory policies or seeking damages for violations of students’ rights.
- Vote for and help elect local, state and national candidates who will pass laws to protect LGBTQ+ rights.

HOW DO I FILE A COMPLAINT ABOUT EMPLOYMENT DISCRIMINATION, HARASSMENT, OR RETALIATION?

If you believe you have been discriminated against or harassed based on your LGBTQ+ status or for raising concerns about discrimination or harassment of others, including colleagues or students, you may file a complaint. If you are covered by a collective bargaining agreement, you may be able to file a grievance with your union. But if you want to enforce your rights under state or federal law, you will still need to file a complaint with the appropriate state or federal agency.

Where to File

- [Equal Employment Opportunity Commission](#)

At the federal level, you are required to file with the EEOC before bringing a private lawsuit for employment discrimination under Title VII. A list of EEOC offices, searchable by zip code, can be [found here](#).

There are strict filing deadlines of either 180 or 300 days (depending on the state) from the time of the discriminatory incident to the time when you must file a charge with the EEOC.

➤ State and Local Civil Rights Agencies

Claims filed with state civil rights agencies are automatically “cross-filed” with the EEOC. This means that in states with their own civil rights agency, instead of filing with EEOC, you can file with your state agency, which will usually take the lead in the investigation. This may be an important option if the EEOC is pressured to not enforce LGBTQ+ protections, and in any case, state agencies may be able to process complaints more quickly than the EEOC. In addition, state laws may offer broader protections and different options for pursuing discrimination complaints, in which case it is best to file directly with the state agency. A list of state agencies can be found [here](#).

➤ [U.S. Department of Education’s Office for Civil Rights](#) (OCR).

Because school employees are also protected from sex discrimination under Title IX, employment discrimination complaints can also be filed with OCR, although they will often be referred to the EEOC to handle. OCR has instructions for filing a complaint, available in [English](#) and [numerous other languages](#).

As discussed above, it is possible that OCR under the Trump Administration will be directed not to pursue complaints of gender identity discrimination, and in general, Title VII is a more reliable basis for protections for discrimination against educators. However, OCR is required to respond to each complaint it receives, and filing with OCR may help establish notice of discrimination to the school or higher education institution.

What to Document

When filing a complaint, you will need to provide specific details about discriminatory or harassing conduct and keep records to support a claim.

Therefore, you should:

- Make notes of incidents, including time, location, details, and any witnesses.
- Record and document with a follow-up email any reports you make to the employer.
- Note the ways in which discriminatory actions impact your work and other aspects of your life.

- Observe and document any ways in which discrimination impacts students and the school environment, particularly noting if any students are absent more frequently, unable to participate in certain school activities, or otherwise impacted in their education.

Next Steps

After you file a complaint, make sure to keep a record of all communications with school administrators, and any other witnesses or individuals involved, including students, parents and co-workers. Keep copies of emails and make notes of any conversations. Be alert to and document any actions that appear to be intended to dissuade you from pursuing a complaint or seeking to remedy discrimination.

CAN I BE PUNISHED FOR SPEAKING OUT?

Title VII, Title IX, and the First Amendment all prohibit retaliation against educators for expressing their support of students, complaining about discriminatory or harassing conduct aimed at them, other employees, or their students, or for filing a complaint with a civil rights agency.²⁷

Collective bargaining agreements and due process protections under state laws and tenure rights are also important sources of protection if you are disciplined for exercising legally protected rights.

If you believe you have been retaliated against for speaking out about your rights or those of your students, contact your union and consider filing a claim with a local, state or federal civil rights agency.

²⁷ 42 U.S.C. § 2000e-3(a) (Section 704(a) of Title VII); 34 C.F.R. § 106.71 (Title IX Regulations).

WHERE CAN I GO FOR MORE INFORMATION ON LGBTQ+ RIGHTS?

- LGBTQ+ Know Your Rights Guides
 - [Bostock and Educator Rights](#)
 - [ACLU](#)
 - [GLAD – Primer on Establishing a GSA in Schools \(2021\)](#)
 - [Lambda Legal – Information on GSAs](#)
 - [Lambda Legal – FAQs re FERPA for Transgender Youth](#)
- Advocacy Rights Information
 - NEA [Educator Advocacy Rights Guide](#)
- Advocacy Resources
 - [EdJustice: Defending the Freedom of our LGBTQ+ Students to be Themselves](#)
 - [NEA Sample School Board Resolution](#)
 - [GLSEN Model School District Policies on Implementing Title IX and Other Federal Nondiscrimination \(2024\)](#)
- NEA [LGBTQ+ Resources Toolkit](#)
- Biden Administration Department of Education’s Office for Civil Rights [Resources for LGBTQI+ Students](#) (Archived)