

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 school officials, including everyone from custodians to teachers. You have the right to be free from bias, harassment or discrimination and to feel comfortable. 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.

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. Both public and charter schools 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, including harassment based on sexual orientation or gender identity. 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 you can't be harassed for gender-related appearance and behavior, such as if a boy wants to wear a skirt. 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. In addition, both the California and U.S. Constitutions 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. 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.

FREEDOM OF SPEECH

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. A public school can't keep you from talking about being LGBTQ or from 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 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 the country. 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.

PRIVACY AND "OUTING" STUDENTS

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

Under the law, you have a protected right to privacy, but this right is not absolute. It depends upon whether you have a "reasonable expectation" that information will remain private. For example, when the principal at Charlene Nguon's high school in Orange County told her parents that



CONTINUED LGBTQ STUDENTS KNOW YOUR RIGHTS

she was gay without Charlene's permission, the court ruled that students have a protected right to keep information about their sexual orientation private, if they can reasonably expect such information to remain private.

This means that even if your sexual orientation is already known on campus, if you're not 'out' to your parents at home, and can reasonably expect that they're not going to find out, then a teacher 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.

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, 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. In 2007, 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.

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.

SEX ED

Under Sections 51930-51939 of the California Education Code, a sex ed class 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 can't assume that all students are straight, or teach that being LGBTQ is different, unnatural, unhealthy, or wrong. 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.

It's important to remember that sexual education means instruction or materials about human reproductive organs and their functions. Instruction or materials about gender or sexual orientation, like discussion of LGBTQ people or families, is not sex ed.

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 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,
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. Also take notes about any additional conversations you have with school administrators, and be sure to write down the dates for those too.

File a complaint!

Your school is required by law to have a clear process for filing complaints of harassment. Ask what this process is, and follow it. 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 soon on its website at: <http://www.cde.ca.gov/re/di/eo/>.

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 Northern California

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

ACLU of Southern California

www.aclu-sc.org, (213) 977-9500

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

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