

Protections Against Discrimination and Harassment: THE LAW IS ON YOUR SIDE

SHARE THIS FACT SHEET WITH PARENTS, EDUCATORS AND OTHER STUDENTS TO INFORM THEM ABOUT THE RIGHT TO BE FREE FROM ANTI-LGBTQ DISCRIMINATION AND HARASSMENT AT SCHOOL.

This toolkit provides important information about general legal principles, but it is not legal advice. If you need information about how the laws described here apply to your particular situation, contact Lambda Legal.

THE CONSTITUTION

The Constitution guarantees all people, including LGBTQ people, “equal protection of the laws.” State constitutions contain similar protections. This means that public schools can’t single out LGBTQ students for negative treatment just because school officials disapprove of being gay or feel uncomfortable around people whose gender expression falls outside the norm. When it comes to peer conflicts and abuse, courts have made clear that the federal Constitution prohibits public schools from taking bullying and harassment any less seriously just because the targets are LGBTQ.

You don’t have to be out to be protected under the Constitution from anti-LGBTQ discrimination. You don’t even have to be LGBTQ. Discrimination based on *perceived* sexual orientation or gender identity violates your constitutional rights, as may discrimination based on your friendship, family relationship or other association with LGBTQ people.



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Derek Henkle Took Action

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TITLE IX

A federal law called Title IX, which bans discrimination based on sex, protects students at schools that receive federal funds. Courts have agreed that the sex discrimination prohibited by Title IX not only includes discrimination for being a girl or boy, but also includes sexual harassment and discrimination for failing to conform to gender stereotypes. LGBTQ targets of sex discrimination and harassment have successfully relied on Title IX's protections in several court cases involving schools.

STATE LAWS

A growing number of states are taking additional steps to protect LGBTQ youth by explicitly including sexual orientation, gender identity, and gender expression in laws that protect against discrimination and harassment in schools. States can vary widely in how they structure, apply and enforce these laws, and you should consult Lambda Legal or a local attorney if you are facing discrimination and need more specific information about laws in your area.

Some of the strongest and most detailed safeguards exist in **California, Iowa, Maryland, New Jersey, and Vermont**. Laws in all of these states require local school boards to enact antiharassment policies that specifically include sexual orientation and gender identity/expression. The policies must allow for complaints and investigations, impose consequences for violations and protect students who report harassment from retaliation. Schools must also make sure students learn about these policies.

While laws in other states may not take the same form or go into the same detail, they may still protect against abuse and discrimination at school. For example, in addition to the states listed above, **Colorado, the District of Columbia, Illinois, Maine, Minnesota, Oregon, Rhode Island and Washington State** have laws barring discrimination against students based on sexual orientation and gender identity/expression. In **Connecticut, Massachusetts, New York, and Wisconsin**, state laws prohibit discrimination against students based on sexual orientation. At press time, the student protections in these last four states did not yet specifically reference gender identity or gender expression, but some courts have interpreted laws addressing sex discrimination to prohibit discrimination based on gender identity/expression.

Many other states have enacted antibullying laws without specifically mentioning (that is, without "enumerating") sexual orientation or gender identity/expression. But this doesn't mean that schools can ignore anti-LGBTQ bullying. Remember, Title IX covers all schools that receive federal funds (nearly all schools in the country), and the federal Constitution requires states to apply antibullying protections equally to all public school students.

TAKING ACTION:

Derek Henkle

From the age of 14, when Derek Henkle came out on public-access television, his life in the Nevada school system was a nightmare. "I would be spit on, punched and kicked," he remembers. "I was humiliated every day." School administrators and teachers stood by while other students harassed, threatened and physically assaulted Derek. One assistant principal actually laughed after students tried to tie Derek to a truck and drag him down the street. Rather than addressing the antigay harassment and violence, school administrators transferred Derek to other schools — as if he were the problem. At 16, Derek, who had been in a program for gifted and talented students since the fourth grade, was forced to resort to adult-education classes, where it was impossible to obtain a high school diploma. Derek fought back. He contacted Lambda Legal and with our help secured a precedent-setting court ruling recognizing the rights of gay students. After the ruling, the school district agreed to sweeping policy changes to protect students from harassment, a \$450,000 settlement payment, and put a letter in his academic file explaining why his education was cut short.

LOCAL LAWS AND SCHOOL DISTRICT POLICIES

Even if your state legislature hasn't specifically banned anti-LGBTQ discrimination and harassment in school, city ordinances and local school districts within your state may have done so. More and more communities — from small rural towns to large urban areas like Dallas, Miami-Dade, Nashville and Philadelphia — have enacted rules protecting students from discrimination and harassment based on sexual orientation and/or gender identity. Consult with a friendly school official, a local attorney or Lambda Legal to learn more.

PROTECT YOURSELF EVEN IF THE LAW IS SUPPOSED TO PROTECT YOU

Remember that school officials and employees sometimes don't know about, don't understand or simply refuse to comply with their legal responsibilities to address anti-LGBTQ discrimination and harassment. Even authorities in an area with strong protections written into the law might not respond in a helpful way to anti-LGBTQ

mistreatment at school. Take steps to protect yourself and to document and report bad treatment, no matter where you live. For more information, check out our "Stand Up for Your Right to Be Safe" insert.

And if you live in a state or city without specific protections against anti-LGBTQ discrimination and harassment, consider joining efforts to get a law or policy approved. For organizing tips, check out resources on GLSEN's website, www.glsen.org.

PRIVATE SCHOOLS

Private schools are often governed by a very different set of legal rules from those described above. If you have questions about what sorts of protections exist for private school students in your state, contact Lambda Legal's Help Desk at 1-866-542-8336 or email legalhelpdesk@lambdalegal.org.