



## Students: Know Your Rights

The following is for informational purposes only and not for the purpose of providing legal advice. If you desire legal advice, please contact a competent legal counsel in your state. Because the law changes and can vary from state to state, this information is not guaranteed to be up to date or applicable to your exact situation.

### Bullying and Discrimination

- I'm called anti-LGBT names or threatened by other students.
- My teacher or other adult at school says anti-LGBT things to me or about me.

If anyone, including a teacher or school administrator, is harassing or bullying you at school, the most important thing you can do is to report it to your vice principal, principal, or superintendent. Keep a journal of each time the harassment occurs and describe who was involved, where and when it happened, and to whom you reported it.

- I told the school about the bullying, but they didn't do anything to stop it.

When schools become aware of harassment or bullying – both verbal and physical – they must take action to investigate and ensure that it stops. Public schools that ignore or inadequately respond to harassment and bullying of LGBT students have paid damages awards or settlements as high as \$1.1 million. *Flores v. Morgan Hill Unified School District*, 324 F.3d 1130, 1134-35 (9th Cir. 2003); see also *Nabozny v. Podlesny*, 92 F.3d 446, 458 (7th Cir. 1996) (\$962,000 in damages).

If you've reported anti-LGBT bullying or harassment to school officials, and they have done little to stop it, please contact the Southern Poverty Law Center.

- My school won't let me hold hands with my girlfriend or boyfriend.

The Fourteenth Amendment to the U.S. Constitution requires the government to treat all of its citizens equally. Public schools, which are part of the government, cannot treat LGBT students differently from straight students just because of their sexual orientation.

If straight students are routinely allowed to hold hands, hug, or kiss at school, but the school won't let you do the same, please contact the Southern Poverty Law Center.

### Proms and Other School Events

- My school won't let me take my girlfriend or boyfriend to a school dance.

Courts have found that the right to take a same-sex date to a school dance falls within the First Amendment right to free expression.

Over twenty years ago, Aaron Fricke decided he wanted to go to his senior prom with Paul Guilbert. His principal feared that other students might be offended or become violent, so Aaron was told he couldn't go with Paul. A federal court in Rhode Island ruled that Aaron's school must allow him to attend the dance with Paul, and in fact, the court even made the school provide enough security so Aaron and Paul would be safe. *Fricke v. Lynch*, 491 F. Supp. 381, 382 (D.R.I. 1980).

If your school is preventing you from attending the prom or other school event with a member of the same sex, please contact the Southern Poverty Law Center.

**- My school threatened to cancel the prom if I went with my girlfriend or boyfriend.**

Your school may be violating your First Amendment rights by threatening to cancel your prom if you bring a same-sex date. In 2010, Constance McMillen asked school officials if she could bring her girlfriend as a date to their high school prom. The school officials told Constance that she and her girlfriend could attend separately but not together as a couple. When Constance's attorneys sent a letter demanding that the school change its policies, the school announced that it would cancel the prom. Constance sued and a federal court in Mississippi ruled that the school violated Constance's First Amendment rights when it cancelled the prom rather than let her bring her girlfriend as a date. *McMillen v. Itawamba County School District*, 702 F. Supp. 2d 699 (N.D. Miss. 2010).

If your school threatens to cancel the prom or other school function if you bring a same-sex date, please contact the Southern Poverty Law Center.

## **Keeping My Sexual Orientation or Gender Identity Private**

**- My school "outed" me to my parents or someone else without my permission.**

It is against the law for a school to disclose your sexual orientation or gender identity to your parents or anyone else without your permission, absent a compelling reason. The constitutional right to privacy protects your right to control how personal information about you is released. *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *Bloch v. Ribar*, 156 F.3d 673, 685 (6th Cir. 1998). Even if you are open about your sexual orientation or gender identity at school, you still have the right to control who knows about your LGBT status. *C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).

If your school is threatening to "out" you without your permission, contact the Southern Poverty Law Center immediately.

## **Clothing and Dress Codes**

**- My school won't let me wear my gay pride t-shirt or accessories that support LGBT rights.**

The First Amendment to the U.S. Constitution protects your right to free speech and expression. The U.S. Supreme Court has made it clear that students have constitutional rights to freedom of speech even when they're at school. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969). For example, wearing a t-shirt or accessory expressing your support for LGBT people is protected by your First Amendment rights.

The school can, however, prevent you from wearing anything that is obscene, threatening, lewd, or vulgar. Also, the school can prevent you from wearing anything that will significantly disrupt classes. But importantly, the school's fear of disruption must be backed up by facts. If the school is telling you that you can't wear your t-shirt because other students might react badly, it's the school duty to punish those students and not censor your speech.

In Holmes County, Florida, the school board banned students from wearing pro-gay symbols or slogans such as "I Support My Gay Friends," "Gay? Fine By Me," and "I Support Equal Marriage Rights." A student, Heather Gillman, sued the school board in federal court and won. The court struck

down the ban, saying that the slogans weren't vulgar, lewd, obscene, plainly offensive, or violent. Instead, the court said that the messages expressed tolerance, acceptance, fairness, and support for a marginalized group. The court ruled that the school board violated the students' free speech rights and ordered the school board to pay \$325,000 for the students' legal fees and expenses. *Gillman v. School Board for Holmes County, Florida*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008).

Your school can have a dress code as long as it is enforced equally among all students. So, if your school's dress code allows students to wear t-shirts about their beliefs, then it's illegal for your school to ask you to take off your shirt just because it endorses gay pride.

Remember, if your school won't let you wear a LGBT pride t-shirt or accessory, don't refuse to change shirts. Be respectful and follow the rules. Document who asked you to change shirts, the reasons they gave, and keep any document the school gives you, such as any disciplinary citations. You should also find out whether similar t-shirts have been worn to school and what if anything happened.

If you get in trouble for wearing LGBT-supportive clothing, please contact the Southern Poverty Law Center.

**- I'm a girl who wants to wear a tuxedo in my school yearbook, but my school won't let me.**

The law isn't entirely clear on what you can wear in your school yearbook, since the school yearbook is usually considered the school's speech, not yours. However, in one recent case, a federal court required a school district to explain what non-discriminatory reasons it had to require a female student to wear a drape, instead of a tuxedo, in her senior year portrait. *Sturgis v. Copiah County School District*, No. 3:10-CV-455, 2011 WL 4351355 (S.D. Miss. Sept. 15, 2011).

If your school is trying to keep you from wearing a tuxedo in the school yearbook, please contact the Southern Poverty Law Center.

**- I'm a girl who wants to wear a tuxedo to the school prom.**

In 2010, Constance McMillen wanted to wear a tuxedo to her senior prom, but school officials told her that only boys could wear tuxedos. Constance filed a federal lawsuit against the school and won. A federal court found that Constance's desire to wear a tuxedo was protected speech. When the school denied Constance's request to wear a tuxedo to her prom, the school violated her First Amendment rights. *McMillen v. Itawamba County School District*, 702 F. Supp. 2d 699 (N.D. Miss. 2010),

If your school is trying to keep you from wearing a tuxedo or other gender non-conforming clothes to the prom or other school event, please contact the Southern Poverty Law Center.

**- I'm a boy or transgender female who wants to wear a dress to prom.**

In a case in Indiana, K.K. Logan, a transgender female student, wore a dress to her prom. When the principal saw K.K., the principal stretched her arms across the door, preventing K.K. from entering the prom. K.K. was never allowed to attend her prom and filed suit. K.K. sued and a federal court ruled that K.K. could go forward with her lawsuit against the school for violating her First Amendment rights. *Logan v. Gary Cmty. Sch. Corp.*, 2008 U.S. Dist. LEXIS 79390, \*\*10-11 (N.D. Ind. Sept. 25, 2008). As a result of K.K.'s suit, the school agreed to change its dress code and non-discrimination policies, which now protect LGBT students.

If you are a transgender student and your school won't let you wear gender non-conforming clothes to the prom or other school event, please contact the Southern Poverty Law Center.

**- I'm a boy or transgender female and the school is threatening to punish me because I want to wear clothing traditionally thought of as girls' clothing to school.**

The school may be violating your right to freedom of expression. In 2000, a transgender middle-school student in Brockton, Massachusetts sued her school after she was repeatedly disciplined for wearing female clothes to school. Assigned the male gender at birth, the student identified as a female and wore girls' make-up, shirts, and fashion accessories to school. A Massachusetts state court ruled that the student had a free speech right to express her gender identity through the clothes that she wore, as long as they were not disruptive. *Doe v. Yunits*, No. 00-1060-A, 2000 Mass. Super. LEXIS 491 (Mass. Super. Ct. Oct. 11, 2000).

If you are a boy or transgender student and your school is disciplining you because you are wearing gender non-conforming clothes, please contact the Southern Poverty Law Center.

## **Censorship**

### **- My school won't let me talk about being gay or transgender at school.**

Schools often try to silence LGBT students who are open about their sexual orientation. The U.S. Supreme Court has made it clear that you have a First Amendment right to free speech, even when you are at school. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). This includes the freedom to talk about LGBT matters.

Schools have the right to restrict your speech if it is obscene, threatening, lewd, or vulgar. Schools can also restrict your speech if you are causing a significant disruption in the classroom. You can't, for example, stand up in the middle of a teacher's lecture and yell, "I'm gay!"

If your school is trying to keep you from talking about your sexual orientation, you should contact the Southern Poverty Law Center.

### **- My school won't let me publish a story about being gay in the school newspaper.**

Under the First Amendment, your school can't tell you what you can and can't talk about, as long as you don't do it during class time. Sometimes schools try to silence students who are out, but you have a constitutional right to be out if you want to be.

The law regarding what can be published in school newspapers remains unsettled. Under federal law, the school newspaper is usually considered the school's speech – not yours – because it publishes and pays for the paper. Some state laws give student journalists more rights, however.

In East Bakersfield, California, a high school principal prevented the school newspaper from publishing a series of articles about sexual orientation. California has laws that protect student journalists and newspaper advisors more than federal law. The East Bakersfield principal cited vague threats to gay students as his reason for the censorship. The articles included both the views of the people supportive of LGBT rights and the views of those with religious objections to homosexuality.

The student journalists filed suit to publish the articles, claiming that the right to free speech requires the principal to protect students' free speech, not to allow school bullies to have control. After the suit was filed, the school relented and allowed the articles to be published.

If your school is preventing you from publishing LGBT stories in the school newspaper, you should contact the Southern Poverty Law Center.

### **- My school blocks internet access to non-sexual LGBT websites.**

Recently, schools have used internet filtering software that censors websites advocating the fair treatment of LGBT persons. Such filtering may violate the First Amendment and a federal statute known as the Equal Access Act.

Schools cannot use filtering software to discriminate against websites just because school officials



don't agree with their point of view. In a United States Supreme Court case, the Court said that it was unlawful for the school district to ban books from the library just because the school didn't like the ideas presented in the books. See *Board of Educ. v. Pico*, 457 U.S. 853 (1982). The internet is no different than the school library.

If your school is blocking access to sites such as those of Parents, Family, and Friends of Lesbians and Gays (PFLAG), the Human Rights Campaign (HRC), the Gay Straight Alliance Network, Marriage Equality USA, the Gay and Lesbian Straight Education Network (GLSEN), the Gay and Lesbian Alliance Against Defamation (GLAAD), and Dignity USA (an organization for LGBT Catholics), your school may be violating the First Amendment.

Such internet filters may also violate the Equal Access Act if they prevent student "gay-straight alliance" (GSA) clubs equal access to school resources and privileges available to other student clubs. The Equal Access Act requires public schools that receive money from the federal government to permit all non-curricular student groups to use school resources on equal terms. If your school's internet filter blocks access to sites like [glsen.org](http://glsen.org) and [gsanetwork.org](http://gsanetwork.org), the school may be violating the Equal Access Act by imposing a limitation on GSAs that they do not impose on other student clubs. See *Boyd County High Sch. Gay Straight Alliance v. Board of Educ.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003).

In 2009, a group of students sued two Tennessee school districts in federal court for unlawfully filtering LGBT content from school computers. The school districts quickly agreed to remove the filters.

If your school is blocking LGBT websites, please contact the Southern Poverty Law Center.

## **Gay Straight Alliance Clubs**

### **- My school said I can't start a GSA.**

Gay-Straight Alliances (GSAs) are student clubs made up of students of any sexual orientation, not just LGBT students. They act as support and educational associations that focus on making schools safe for all students – both gay and straight.

Under the Federal Equal Access Act, if your public school permits non-curricular clubs, then it must allow students to form a GSA. A non-curricular club is any club that doesn't directly relate to classes taught at school. For instance, a math or Spanish club would be a curricular club; a chess or comic-book club would not be a curricular club. Key clubs and other academic honor societies have also been considered non-curricular by the courts. GSAs are typically considered a non-curricular club, too. So if your school has a non-curricular club, it is illegal for the school to deny you permission to start a GSA.

### **- My school threatened to cancel all groups if we try to start a GSA.**

In November 2010, Nikki Peet approached her principal about starting a GSA. Rather than allowing the club to form, the principal threatened to shut down all other non-curricular clubs at the high school. Lawyers representing Nikki argued that the school's threat to shut down all other clubs constitutes an unlawful prior restraint on Nikki's and other students' First Amendment rights. *McMillen v. Itawamba Count Sch. Dist.*, 702 F. Supp. 2d 699 (N.D. Miss. 2010). Ultimately, the school granted Nikki and other students permission to form a GSA.

If you're interested in starting a club, make sure you comply with all of your school's rules for doing so. The law requires that your group be treated the same as others; this means you have to follow the same rules as other groups when starting a group.

If your school has a non-curricular club but won't let you start a GSA, please contact the Southern Poverty Law Center.

**- My school has a GSA, but we're not allowed to meet on school property.**

The federal law known as the Equal Access Act says that schools can't treat some non-curricular clubs different from other non-curricular clubs. A non-curricular club is any club that doesn't directly relate to classes taught at school. For instance, a math or Spanish club would be a curricular club; a chess or comic-book club would not be a curricular club. GSAs are typically considered a non-curricular club. Simply put – your school must treat all non-curricular clubs the same.

**- My school said we can't call our club a "gay-straight alliance."**

If your school allows some non-curricular groups to meet on school property, but it doesn't allow your GSA, your school has violated the Equal Access Act.

*We put posters up to support the GSA, but the school made us take the posters down.*

Similarly, if your school allows other non-curricular groups to put up posters but it won't let you, it has violated the Equal Access Act. Courts have also held that your school cannot require you to remove the word "gay" from your group name or to change the name of your GSA to something like "Tolerance Club" or "Acceptance Club." *Colin ex rel. Colin v. Orange Unified School Dist.*, 83 F. Supp. 2d 1135, 1147 (C.D. Cal. 2000); *Gay-Straight Alliance of Yulee High Sch. v. School Bd. of Nassau County*, 602 F. Supp. 2d 1233 (M.D. Fla. 2009).

**- My school said we have to have a sponsor to start a GSA.**

**- My school told me I need my parent's permission to join the GSA.**

**- My school doesn't allow our GSA to do things that other groups are allowed to do.**

Remember that you do have to comply with the rules your school set up for clubs – as long as the rules apply equally to all groups. If your school requires groups to have a faculty sponsor or to get parental permission to join, then you should comply with these rules.

If your school is treating your GSA differently from other groups, please contact the Southern Poverty Law Center.

## **LGBT Conversion Therapy**

**- My school is promoting therapy that claims to convert LGBT people into straight people.**

Conversion therapy – also known as reparative or sexual reorientation therapy – claims to be able to change a person's sexual orientation through therapy. You should be aware that this kind of therapy has been discredited among major science and medical groups. The American Psychiatric Association and the American Medical Association have both publicly opposed conversion therapy. Persons who have undergone conversion therapy have reported increased anxiety, depression, and in some cases, increased thoughts about suicide.

If your school promotes or encourages students to participate in conversion therapy, please contact the Southern Poverty Law Center.