



National Center for  
**TRANSGENDER  
EQUALITY**

# TRANSGENDER AND GENDER NON- CONFORMING STUDENTS: YOUR RIGHTS AT SCHOOL

June 2012

*Bullying, harassment, or discrimination against transgender or gender nonconforming students is covered by Title IX, a federal law that prohibits sex discrimination in schools. This resource outlines the rights trans and gender nonconforming students have in schools and how to file formal complaints. While NCTE does not provide legal services, we encourage anyone who cannot resolve issues through the complaint processes discussed here to seek legal counsel.*

## WHAT LAWS PROTECT YOU AT SCHOOL?

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The following laws offer protection for trans and gender non-conforming students:

- **Title IX** is a federal law prohibiting sex discrimination in schools. Courts and federal agencies have concluded that discrimination or harassment because a person is transgender or gender non-conforming constitute sex discrimination. Title IX applies to all schools (K-12 and post-secondary) that accept federal funds, including nearly all public schools. Complaints of discrimination or harassment can be filed with the U.S. Department of Education.
- **State laws and school district policies** in many jurisdictions also explicitly prohibit discrimination in schools based on gender identity or expression as well as sexual orientation. As of May 1, 2012, California, Colorado, Connecticut, the District of Columbia, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Jersey, Oregon, Vermont and Washington State have such laws, which are enforced by state civil or human rights agencies. Many school districts also have policies prohibiting discrimination based on gender identity or expression or sexual orientation.
- **The Equal Access Act** requires all school-affiliated student organizations, such as a Gay-Straight Alliance or Pride Alliance, to be treated equally. This means that schools cannot ban certain types of groups or single them out for worse treatment.
- **The Family Educational Rights and Privacy Act** protects personal information about students in school records, and in most circumstances prohibits release of this information without consent.
- **The First Amendment** of the U.S. Constitution protects the right of students to free speech and freedom of expression, including expression of one's gender identity.

## WHAT ARE YOUR RIGHTS AT SCHOOL?

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**You have the right not to be targeted for bullying or harassment** because you are transgender or gender non-conforming. If school administrators become aware of bullying or harassment they have an obligation to take action to stop it.

**You have the right to equal educational opportunities** regardless of your gender identity or expression. This includes not being disciplined or excluded from school, athletic or extracurricular activities, or other school events because you are transgender or gender non-conforming. You also have the right to be free from discrimination based on your race, color, national origin, or disability.

## WHAT ARE YOUR RIGHTS AT SCHOOL? (CONTINUED)

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**You have the right to wear clothing and otherwise present yourself in a way that is consistent with your gender identity**, so long as you follow rules for appropriate dress that apply to all students. Disciplining you for doing so may constitute discrimination or violate your right to free expression.

**You have the right to privacy concerning your transgender status and gender transition.** Any such information that is recorded in school records must be treated as confidential and not disclosed to others without your consent. You have the right to form and participate in student groups, such as a Gay-Straight Alliance or Pride Alliance, and to have your group treated like other student groups.

## WHAT CAN YOU DO ABOUT DISCRIMINATION AT SCHOOL?

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If you or someone close to you has experienced bullying, harassment, or intimidation, you can start by bringing your concerns to school and district officials. Contact your school district, find out about its nondiscrimination and anti-bullying policies, and to try to reach an appropriate resolution.

If you cannot resolve the issue at the district level or if you fear retaliation, filing a formal complaint of discrimination is one major action you can take. These complaints can lead to actions by schools to stop ongoing problems, change policies, train staff, and take other steps to protect students. They also help build a record of discrimination against trans and gender non-conforming students, which can be used to advocate for stronger protections at the local, state, and national level.

The U.S. Department of Education, through its Office for Civil Rights (OCR), is charged with enforcing Title IX. Complaints of gender-based bullying, harassment, or discrimination at school, you can file a complaint directly with OCR. In cases where OCR declines to pursue a case, state and local laws may offer additional protections.

In addition to addressing individual complaints, OCR's field offices also engage in a variety of activities to help schools better address bullying, harassment, and discrimination. Parents, students and community organizations can contact OCR field offices to see how they can work with you to enhance your local schools' capability to prevent and respond to bullying, harassment and discrimination.

## HOW DO I FILE A COMPLAINT?

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You can file a complaint with OCR by filling out a complaint form online at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>. You can also download a complaint form to submit by mail or email here: <http://www2.ed.gov/about/offices/list/ocr/complaintform.pdf>.

There are a few important things to know about filing a complaint:

- **File as soon as possible.** A complaint must be filed within 180 days of when the discrimination or bullying and harassment occurred. If the complaint is not filed on time, you should provide the reason for the delay and request a waiver of the deadline.
- **Report it as “sex discrimination.”** In order to for the claim to be covered under Title IX, it is important to report “sex” as the basis of the discrimination.
- **Complete the entire form.** Incomplete complaints won't be investigated. If OCR needs more information in order to process the complaint, it may contact you for more information. You will then have 20 calendar days within which to respond to OCR's request for information.
- **Provide details.** Include in your complaint as many details as you can regarding the people and events involved, and when and where events occurred.
- **Complaints are confidential.** Information about your complaint will not be shared without permission.

## HOW DO I FILE A COMPLAINT? (CONTINUED)

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- **Family, friends, or other supporters can file a complaint.** Complaints do not need to be filed by the person(s) experiencing the bullying, harassment or discrimination. Anyone, including friends, family, and school staff, can file the complaint.
- **The school can't retaliate against you.** It is illegal for a school to retaliate in any way because a person made a complaint or testified, assisted, or participated in any manner in a complaint under Title IX.

## WHAT HAPPENS AFTER I FILE A COMPLAINT?

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The Office for Civil Rights will investigate and attempt to resolve the complaint, provided it involves some form of harassment or discrimination based on sex, race, color, national origin, or disability. If OCR finds that discrimination has occurred, it will work with the school to develop a voluntary agreement to resolve the problem. Such agreements can involve adopting anti-bullying policies, training for staff and students, and specific actions to address the specific incidents that occurred and help the student(s) affected. Most cases are resolved voluntarily. In the rare event that it cannot obtain a voluntary agreement, OCR has the power to cut off federal funding for the school, or to refer the case to the Department of Justice for legal action.

In some situations where OCR dismisses a complaint, state or local laws or policies may offer greater protection. For example, if your state explicitly prohibits gender identity and sexual orientation discrimination in schools, you can file a complaint with your state's human or civil rights enforcement agency on that ground. The U.S. Department of Justice keeps a list of contact information for state human rights agencies here: <http://www.justice.gov/crt/legalinfo/stateandlocal.php>.

## CAN I FILE A LAWSUIT?

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You may choose to file a discrimination claim in federal or state court, regardless of OCR's findings. You do not have to first go through the OCR process in order to file a lawsuit. However, filing a lawsuit first means you cannot use the OCR complaint process. This type of lawsuit is complex and you will probably need to hire a lawyer to help you.

## GET HELP

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We strongly encourage you to contact the national offices of GLSEN (Gay, Lesbian and Straight Education Network) at <http://www.glsen.org> or PFLAG at <http://www.pflag.org> with any questions regarding the OCR complaint process or for help with crafting a complaint.

If you are considering filing a lawsuit, we strongly encourage you to seek legal counsel. While NCTE does not provide legal services or referrals, there are many other groups that may give you referrals or maintain lists of local lawyers. Local legal aid or legal services organizations may provide free help for certain types of legal problems if your income is below a certain threshold. There are many larger groups – such as Lambda Legal, the National Center for Lesbian Rights, the ACLU, the Transgender Law Center, and others listed on NCTE's website – that may help if they feel that your case is particularly strong and fits within their priorities and strategy; however, they usually hear about many more cases than they can pursue. If they cannot help you directly these organizations may give you referrals or maintain lists of local lawyers with expertise in LGBT issues.

## SHARE YOUR STORY

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If you are facing discrimination, consider sharing your story with NCTE so we can use it in advocacy efforts to change policies and improve school environments for trans and gender nonconforming people. If you successfully resolve issues in your school, and especially if any of the material here helped, we want to hear from you as well.

## **Additional Resources**

**U.S. Department of Education, Office for Civil Rights:** <http://www.ed.gov/ocr>

**OCR “Dear Colleague” Letter to School Administrators:** <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

**Claim Your Rights resources from PFLAG and GLSEN:** <http://community.pflag.org/claimyourrights>

**Model School District Policy on Transgender and Gender Nonconforming Students from NCTE and GLSEN:** [http://transequality.org/Resources/Model District Trans and GNC Policy FINAL.pdf](http://transequality.org/Resources/Model%20District%20Trans%20and%20GNC%20Policy%20FINAL.pdf)

**Gender Spectrum:** <http://www.genderspectrum.org>

**Trans Youth Family Allies:** <http://www.imatyfa.org>

**Links to State and Local Human Rights Agencies:** <http://www.justice.gov/crt/legalinfo/stateandlocal.php>

**Links to LGBT Legal Organizations:** <http://transequality.org/Resources/links.html#legal>

**Links to Legal Services Organizations:** <http://www.lsc.gov/map/index.php>