

LGBTQ LEGAL ISSUES IN SCHOOLS: AN OVERVIEW

Schools and school employees have a legal duty to take reasonable action to address harassment and discrimination, and to preserve the safety and educational opportunities of all students.



FEDERAL LAW

- Applies to institutions receiving federal funding, as well as employees of those institutions
- Under federal law, schools and employees can be held liable for failing to adequately address anti-LGBTQ harassment and discrimination


Sources of Federal protections for LGBTQ students, families, and staff:

- U.S. Constitution:
 - Equal Protection Clause of the 14th Amendment (schools must not address anti-LGBTQ harassment and discrimination less adequately than other forms of harassment and discrimination)
 - 1st Amendment (free speech and assembly rights attach to situations involving issues of sexual orientation and/or gender identity/expression)
- Title IX (prohibits sexual harassment by students and employees, regardless of the sex of the parties involved)
- Equal Access Act (requires schools to provide equal access to school facilities for the purpose of holding student activities; for example, students must not prohibit Gay-Straight Alliances from meeting during lunch on campus if other student groups are allowed to meet then)

Basic standards:

- Schools must address harassment and/or discrimination of which it has “actual knowledge” (such as from direct observation or report). If one or more members of the school staff have actual knowledge of anti-LGBTQ harassment and/or discrimination at the school, that knowledge is often imputed to the entire school
- Schools and school employees must not be “deliberately indifferent” to harassment &/or discrimination in the school
- All forms of harassment and discrimination must be addressed with equal effectiveness
- Liability will attach for failure to address “severe, pervasive, objectively offensive” behavior; this can be a relatively easy threshold for a plaintiff to overcome

CALIFORNIA LAW

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- California Constitution (All California students and staff of public schools are entitled to fair and equal treatment at school.)
 - **AB 537 (Education Code § 220)** (prohibits anti-LGBTQ discrimination / harassment in any school program or activity at an institution receiving state funding or enrolling students receiving state financial aid)
 - California Education Code
 - California educators in grades one through twelve are required to teach contemporary issues. Examples of contemporary issues include same sex marriage, gays in the military, the gay civil rights movement, and family diversity.
 - Students who participate in hate crimes against LGBT persons can be suspended or recommended for expulsion.
 - Every California school is intended to undertake educational activities which will protect students from hate crimes.
 - Negligence law (schools and school employees have a legal duty to act reasonably to provide adequate supervision, safety, and access to educational opportunity—this is a higher standard than that imposed by federal law)
 - **SB 71** (mandates that any sex education curricula must be inclusive of and not biased against LGBTQ students, and states that curricula relating to sexual orientation and gender identity is not, in and of itself, sex education)

CITY / COUNTY LAW

- Individual cities and counties may have enacted ordinances that impose additional duties on schools and school employees

DISTRICT POLICIES

- Check your district’s personnel and student handbooks to determine what policies, if any, are in place regarding LGBTQ students, families, and staff. If your questions have not yet been answered, follow up with district administration to find out if any relevant policies are in place.
- Faculty and staff may have additional protections against harassment and discrimination written into their union’s collective bargaining agreement. Check with your site or district representative for clarification about your rights under your contract if you are concerned about your physical safety or job security in relation to LGBTQ issues.

COMMON LGBT TERMS DEFINED

The following definitions are short working definitions to create a basic understanding of LGBT issues and concerns.

Ally: A heterosexual or LGBT person who supports LGBT people.

Bisexual: A person who is attracted to members of more than one gender.

Biological Sex: A binary system (male/female) set by the medical establishment, usually based on reproductive organs.

Closeted: Describes a person who keeps their sexual orientation or gender identity a secret from other people.

Coming Out: The life-long process of acknowledging one's sexual orientation and/or gender identity to other people.

Cross Dressing: The act of wearing the clothing of the "opposite" sex for performance, sexual encounters, or comfort. Generally, the term cross dresser is preferred to transvestite. See Transvestite.

Drag: Queen, a person who consciously performs femininity, sometimes in an exaggerated/theatrical manner, usually in a show or theatre setting; King, a person who consciously performs masculinity, sometimes in an exaggerated/theatrical manner, usually in a show or theatre setting.

Dyke: Derogatory slang terms used to identify lesbians. This term has been embraced and reinvented as a positive, proud, political identifier when used by lesbians among and about themselves. See: faggot, queer.

Faggot: Derogatory slang used to identify gay men, which has been embraced and reclaimed as a positive, proud, political identifier when used by gay men among and about themselves. See: dyke, queer.

Gay: Usually, but not always, refers to homosexual men. Also used as an umbrella term for the LGBT community.

Gender Identity: A person's inner sense of self as male, female or somewhere in between. Most people develop a gender identity that corresponds to their biological sex but many do not.

Gender Role: The societal and cultural expects of people based upon their biological sex.

Hate Motivated Offenses: Assault, rape, arson, and murder are crimes under any circumstance, but when a victim of such a crime was targeted simply because of their affiliation (or perceived affiliation) with a minority group, the FBI considers the crime a 'hate crime.' In CA, hate crimes carry an additional penalty beyond the standard penalty. Also known as "gay-bashing."

Heterosexual: A person who is only attracted to members of the opposite sex.

Homosexual:

A clinical term for people who are attracted to members of the same sex. More of a medical term, it is considered an outdated term when referring to gay people or communities.

Homophobia:

Fear, anger, discomfort, intolerance, or lack of acceptance toward LGBT people, or experiencing these feelings about one's own non-heterosexual preference.

Intersexed:

People born with "unexpected" genitals. Formerly referred to hermaphrodites, intersexed people are not easily categorized as male or female because of ambiguous genitals. Most intersexed people do not possess "both" sets of genitals, rather a blending or a different appearance that is medically unacceptable to most doctors.

Lesbian:

A woman who is only attracted to other women.

Outing:

To declare a person's identity publicly; people can out themselves, or someone can out them either with or without their permission.

Questioning:

The process of exploring one's on sexual identity, including but not limited to one's upbringing, expectations from others (family, friends, church, etc.), and inner motivation.

Queer:

Derogatory slang terms used to identify LGBT people. This term has been embraced and reinvented as a positive, proud, political identifier when used by LGBT people among and about themselves. See dyke, faggot.

Sexual Orientation:

To whom a person is erotically attracted. Not to be confused with sexual preference: What a person likes to do sexually.

Transgender:

An umbrella term for people whose gender identity does not correspond to their biological sex. They view gender on a spectrum, rather than a polarized, either/or construct. This can range from identification to cross dressing, to undergoing hormone therapy, to sex reassignment surgery and/or to other forms of dress/presentation. Transgender people can include transsexuals, cross-dressers, drag kings/queens, masculine women, feminine men.

Transsexual:

A person whose core gender identity is "opposite" their assigned sex. Transsexuals may live as the opposite sex, undergo hormone therapy, and/or have sex reassignment surgery to "match" their bodies with their gender identity.

Transvestite:

A person who cross-dresses for erotic pleasure or relaxation.