



FACT SHEET

THE RIGHTS OF LGBTQ+ AND GENDER-DIVERSE STUDENTS

August 2025

Discrimination against LGBTQ+ people is illegal. Courts increasingly have recognized the rights of students who identify as lesbian, gay, bisexual, transgender, or queer, as well as students who are nonbinary or gender diverse. Students who are LGBTQ+ or gender diverse have the right to be their full, authentic selves in school, free from any harassment, discrimination, or stigma. Under Pennsylvania law, schools have a duty to prevent discrimination against students based on sex, which includes sexual orientation, gender identity, or gender expression.

Despite recent litigation about Title IX rules and federal executive orders, schools have continuing obligations to protect LGBTQ+ students from discrimination under case law interpreting Title IX and the Constitution, the 2020 Title IX rule, and Pennsylvania anti-discrimination law, described below. This fact sheet reflects the requirements that schools *must* meet under current law as well as what they *can and should do* to continue protecting LGBTQ+ students. ELC continues to advocate for the rights of LGBTQ+ students. If you are a student or parent/guardian of a student facing LGBTQ+ discrimination and are interested in helping expand protections in these areas, please call ELC's Helpline at 215-238-6970.

DISCRIMINATION IS AGAINST FEDERAL & STATE LAW

Federal law: The U.S. Supreme Court and many federal courts have affirmed that discrimination on the basis of sexual orientation, transgender status, gender identity, or gender expression is unlawful discrimination “on the basis of sex” and that preventing LGBTQ+ students from accessing programs and facilities in schools violates Title IX (prohibiting sex discrimination) and other civil rights laws.¹ Pennsylvania’s highest federal court, the U.S. Court of Appeals for the Third Circuit, recognized in 2018 that “transgender students face extraordinary social, psychological and medical risks and the school district clearly had a compelling state interest in shielding them from discrimination.”²

Court decisions. Unfortunately, these rights are under attack. ELC is monitoring case decisions as

Terms to Know

LGBTQ+ is an acronym that stands for lesbian, gay, bisexual, transgender, queer, and others.

Sexual orientation refers to a person’s physical or emotional attraction to another person. People may define their sexual orientation as lesbian, gay, bisexual, pansexual, asexual, queer, straight, or another term.

Gender identity refers to a person’s self-conception or deeply felt understanding of their gender, such as male, female, genderqueer, or nonbinary. Gender identity may vary over time. A student’s gender identity may or may not align with their chromosomes, genitalia, hormone levels, or other biological indicators of sex.

Gender expression refers to the ways a person outwardly displays their gender identity and how society perceives those markers as masculine, feminine, or androgynous – for example, haircuts, clothing, accessories, or mannerisms.

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challenges make progress in the courts. For example, the U.S. Court of Appeals for the Seventh Circuit has ordered a rehearing to consider whether its prior decisions finding schools liable for failing to provide access to a gender-affirming bathroom to a trans student should stand after the U.S. Supreme Court's holding in *United States v. Skrmetti*. In that case, the Supreme Court ruled that denying transgender minors gender-affirming healthcare does not constitute sex discrimination under the Equal Protection clause.³ Additionally, the U.S. Supreme Court has granted cert to review two challenges to decisions permitting trans student athletes to play on school sports teams aligned with their gender identity.⁴ This fact sheet provides the state of the law at the time of publication.

Regulations. The U.S. Department of Education's Office for Civil Rights can issue rules or regulations to implement and enforce the nondiscrimination requirements of Title IX. The Title IX rules published in August 2024 sought to make explicit that Title IX protections include gender identity and sexual orientation.⁵ The 2024 rules were challenged in court by six state-plaintiffs that do not want to recognize gender identity protections, and the 2024 rules were ultimately struck down in the courts.⁶ Currently, schools must follow the administration's 2020 Title IX rule, which defines sex-based discrimination as discrimination against someone based on their sex assigned at birth.⁷ It is important to remember, however, that **the 2020 rule represents a floor, not a ceiling, to the kinds of protections that schools can and should offer their LGBTQ+ students.**⁸ Moreover, the preamble to the 2020 regulations expressly affirms that "[t]hese final regulations focus on prohibited conduct, irrespective of a person's sexual orientation or gender identity. ... The Department will not tolerate sexual harassment ... against any student, including LGBTQ students."⁹

Executive orders. In 2025, the federal administration issued several executive orders attacking the rights of LGBTQ+ people, particularly transgender and gender-diverse people.¹⁰ These orders represent a policy shift for federal agencies such as the U.S. Department of Education and Department of Justice, but **executive orders cannot rewrite Title IX or case law interpreting Title IX and the Constitution.** These executive orders are being challenged in court.¹¹ You can learn more in this ELC [analysis](#) and recorded webinar "[The Truth About Executive Orders and the Rights of Transgender Students in Pennsylvania K-12 Schools.](#)"

Schools also are required to adhere to state law protections that do not conflict with federal statutes.¹²

Terms to Know

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Cisgender refers to people who feel that their gender identity matches the gender they were assigned at birth.

Transgender refers to many different kinds of people who do not identify with their expected gender role or whose gender identity does not match some or all of their biological indicators of sex besides their gender identity. A student who identifies as transgender may identify as a male, female, nonbinary, genderqueer, or another term.

Gender diverse or gender expansive refers to people whose gender expression does not conform to society's expectations for people of a given gender or does not conform to expectations based on assigned gender.

Nonbinary is an umbrella term for people who identify as a gender that is neither entirely male nor entirely female, or do not identify with any gender. Some people may use the terms "gender fluid" or "genderqueer."

For more information, see www.translanguageprimer.com.

State law: The Pennsylvania Constitution prohibits discrimination based on sex.¹³ Pennsylvania’s anti-discrimination statute, the Pennsylvania Human Relations Act (PHRA),¹⁴ also prohibits discrimination in schools on the basis of sex, including gender identity, sexual orientation, and other characteristics.¹⁵ At this time, there are few cases where courts have interpreted the PHRA in schools, but the Pennsylvania Human Relations Commission (PHRC) investigates complaints and enforces this law at the administrative level.

Effective Aug. 16, 2023, PHRA’s regulations were amended to more explicitly identify conduct that constitutes illegal sex-based discrimination.¹⁶ It’s important to note that the PHRA states that its prohibitions against discrimination “shall be construed liberally.”¹⁷ Students are protected against discrimination on the basis of sex, including “sex assigned at birth, gender identity or expression, affectional or sexual orientation, and differences in sex development.”¹⁸ PHRC guidance expansively protects gender identity, which is one’s “innermost concept of self as male, female, a blend of both or neither.”¹⁹

Gender expression is also broadly defined as the external “appearance of one’s gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.”²⁰ All gender identities and expressions, including those held by transgender students, are protected by the PHRA.²¹ This protection is also inclusive of the ways that students’ understanding of these identities evolve over time. A lawsuit is currently challenging the PHRA’s gender identity regulations, but the court has not yet issued a decision. The PHRA and regulations remain in full effect while that lawsuit is pending. For information about the lawsuit, see ELC’s [“Summary of Pending Lawsuit Challenging Gender Identity Regulations.”](#)

Students who face illegal sex-based discrimination at school can file a complaint with the PHRC, which can investigate and seek to resolve complaints of discrimination.²² To learn more, see ELC’s [fact sheet about filing a PHRC complaint](#). For more information about sex discrimination in schools, [contact ELC](#) or review our fact sheet [Challenging Sex- or Gender-Based Harassment at School: Student Rights & Complaint Options](#).

LGBTQ+ YOUTH OF COLOR FACE HOSTILE ENVIRONMENTS & HIGH RATES OF DISCRIMINATION

Studies show that schools nationwide are hostile environments for LGBTQ+ youth of color in particular. They experience victimization and discrimination based on race, sexual orientation, gender identity, or all of these identities.²³ Black LGBTQ+ students are highly likely to be targeted with biased remarks, including homophobic and racist messages.²⁴ They are also likely to be victims of sexual harassment and assault.²⁵ Moreover, due to anti-Black racism by adults and the threat of school discipline, Black LGBTQ+ youth are less likely to report their experiences in school and more likely to experience victimization and feel unsafe in school, leaving them with limited or no access to in-school resources that could improve school climate and students’ experiences.²⁶ These high rates of victimization negatively impact school attendance²⁷ and academic achievement and undermine these students’ psychological well-being.²⁸

Students can file complaints about multiple types of discriminatory conduct in the same incident if necessary. To learn more about students' rights to be free from race-based discrimination, see ELC's fact sheet "[The Right to Be Free from Racism at School](#)."

THE RIGHT TO BE OUT

Students have the right to be open about their sexual orientation²⁹ and the right to express their transitioned gender.³⁰ Schools cannot tell students to be silent about their sexual orientation or punish them for wearing LGBTQ-affirming clothing or accessories so long as they are following dress rules that apply to all students.³¹

ACCESS TO BATHROOM & LOCKER ROOM FACILITIES

Multiple courts, including the highest federal court in Pennsylvania, have held that school districts cannot discriminate against transgender and nonbinary students by requiring them to use a bathroom or locker room that does not match their gender identity.³² Schools may provide a gender-neutral/all-genders bathroom option for students who identify as nonbinary or gender-expansive and others who may feel safer using that option, but cannot require students to use only gender-neutral facilities.³³

The 2020 Title IX rule stipulates that a school "may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex."³⁴ The 2020 Title IX rule does NOT require schools to use only sex-separate bathrooms.

Some people have tried to restrict the rights of transgender students by claiming that cisgender students' privacy is violated if trans students are allowed to use the same bathroom, for example. This has been rejected by courts, including Pennsylvania's highest federal court, the Court of Appeals for the Third Circuit, which held that there is no privacy violation in requiring transgender and cisgender students to share space in a bathroom or locker room facility.³⁵

Several school districts across Pennsylvania have proposed or implemented school board policies that discriminate against students by restricting facilities' use based on sex assigned at birth. **These policies fly in the face of established case law under Title IX and Equal Protection, and they would violate the PHRA as well.** If your school has a discriminatory bathroom policy, please [contact ELC](#) for advice about filing a complaint to challenge this policy.

SCHOOLS MUST UPHOLD A STUDENT'S RIGHT TO PRIVACY

Courts have also held that schools cannot "out" students to anyone without their permission.³⁶ Pennsylvania educators have a "primary professional obligation ... to the students they serve" and "shall respect a student's right to privacy..."³⁷ Schools cannot require students to provide a birth certificate to "prove" their sex at enrollment or for participation in sex-segregated activities. Students' right to enroll in public school may not be conditioned on providing documents other than those showing proof of a child's age, residence, and immunizations as required by law.³⁸ Even for these required items, the Pennsylvania Department of Education is clear that a "school district can never demand only one kind of document."³⁹

The federal Family Educational Rights and Privacy Act (FERPA) forbids schools from disclosing a student's private information, including medical information regarding a student's gender assigned at birth, without permission from the student or guardian.⁴⁰ Although FERPA gives parents the right to view the school records of their minor children, it does not require schools to proactively contact parents about any content in or changes to student records. Nor does FERPA require a school to document a student's use of a new name or pronoun in the official school record. There is no requirement in law that a Pennsylvania school notify parents if a student requests to be called by another name or pronoun.

Schools should continue to support their transgender and nonbinary students by implementing policies to safeguard their privacy, including maintaining the confidentiality of a student's birth name or sex assigned at birth if the student wishes to keep this information private.

STUDENTS CAN CORRECT THEIR EDUCATION RECORDS

A parent's rights with respect to their child's educational records transfer to the student when they reach the age of 18 or attend a school beyond the high school level.⁴¹ When this occurs, current or former students have a right to seek to amend their school records if the records are "inaccurate, misleading, or in violation of the student's rights of privacy."⁴² Pursuant to this authority, transgender students wishing to change their name and gender marker on their educational records can seek an amendment under federal law.

THE RIGHT TO AFFIRMING NAME & GENDER IDENTITY IN SCHOOL

If a student who is transgender, gender-nonconforming, or nonbinary identifies an affirming name and pronouns, school staff should use that name and pronoun for all interactions (*i.e.*, written, digital display name on Google Classroom, and verbal daily roll call) except where required by law to use a child's legal name (*i.e.*, official school record).⁴³ The Pennsylvania Department of Education permits schools to update a student's gender and name in data that must be submitted to the state.⁴⁴

Parent notice and consent are not required. In early 2025, the federal administration issued an executive order and guidance asserting that a school must notify parents and confirm their consent before using a student's affirming name and pronoun. It has also targeted investigations against districts and states with affirming policies.⁴⁵ But that [guidance is not law](#), and this question is currently being litigated in a number of lawsuits nationwide.⁴⁶ In our region, courts addressing the issue of parental notice when engaging students on gender identity in school have had mixed results.⁴⁷ However, the weight of legal authority does not support a requirement that a school must obtain parental consent before upholding their nondiscrimination obligation and affirming students' gender identity in school.⁴⁸ Affirming a student's request for supportive gender identity policies is distinguished in case law from allegations that "school officials ... proactively coerce students."⁴⁹ Courts have approved school policies that identify the goal of collaborating with a student and their family about a student's gender identity, while acknowledging that "in some cases, transgender and gender-nonconforming students may not openly express their gender identity at home because of safety concerns or lack of acceptance" and even in those cases, "staff will support ... a student-led plan that works toward inclusion of the family."⁵⁰

Persistent misgendering is harassment. Federal courts have held that intentionally and persistently misgendering a person constitutes sex-based harassment and creates a hostile environment.⁵¹ A federal court in Pennsylvania held in 2020 that “in addition to being misgendered,” calling a transgender woman by her prior name (“deadnaming”) “was sufficiently severe or pervasive to support her [hostile work environment] claim.”⁵² A policy permitting or promoting the persistent misgendering or deadnaming of students could also create a hostile environment under the Pennsylvania Human Relations Act.⁵³

Teacher religious objections. Some teachers may claim they do not have to use a student’s name and pronoun if they have a religious objection to transgender people’s civil rights. There are some cases still developing on this issue,⁵⁴ and other cases establishing that speech in the classroom by teachers in K-12 public schools is not personal, but rather part of their job duties as a government actor.⁵⁵ ELC will continue monitoring cases in this area and advocate to ensure that teachers are not stigmatizing and discriminating against students in the classroom.

THE RIGHT TO PARTICIPATE IN SCHOOL ACTIVITIES

Students have the right to form and meet as a Gender Sexuality Alliance (GSA) at school if other nonacademic clubs are allowed to meet at school.⁵⁶ Schools cannot impose a different set of student conduct rules for GSAs compared other clubs.⁵⁷

Schools cannot restrict a student from going to prom or another school activity with a same-gender date.⁵⁸

The 2020 Title IX rule explicitly states that preventing a student from participating in an education program or activity on the basis of sex is prohibited by Title IX. Schools are required to allow students to participate in classrooms, extracurriculars, and educational programs without discriminating based on sex.⁵⁹

THE RIGHT TO PARTICIPATE IN SCHOOL SPORTS

Playing sports is associated with higher grades and standardized test scores, as well as higher rates of school completion.⁶⁰ There is no evidence that permitting transgender and intersex students to play on sports teams aligned with their gender identity harms anyone.⁶¹ The foundational premise of sports-ban policies – that trans girls are not “real” girls and trans boys are not “real” boys – is based on discriminatory stereotypes prohibited by Title IX case law and the Pennsylvania Human Relations Act and regulations.⁶²

And yet, transgender, nonbinary, and intersex students in Pennsylvania and around the country are being targeted through federal executive actions, proposed statewide legislation, and school district policies that prevent them from participating on a school sports team that aligns with their gender identity.⁶³

Although there is some mix among the decisions, most courts that have addressed the issue on the merits have overturned anti-trans sports bans.⁶⁴ In fact, every federal circuit court that has addressed transgender sports bans on the merits has found in favor of transgender student athletes’ right to play.⁶⁵ A federal district court in Pennsylvania in August 2025 rejected a request

from a cisgender athlete to issue an injunction prohibiting transgender girls from competing in women's sports⁶⁶ and subsequently dismissed all of her Title IX and constitutional claims.⁶⁷

The U.S. Supreme Court announced in July 2025 that it would hear challenges to two cases that had awarded injunctions allowing a high school trans student and a college trans student to continue to play sports at their schools.⁶⁸ ELC continues to monitor developments in this area and to advocate for all students' right to play. Learn more in ELC's analysis "[Equity in School Sports](#)." If your school limits the way transgender students can play sports, contact the [Education Law Center](#).

EXPRESSING YOUR GENDER IDENTITY

Schools cannot discipline students for expressing their gender identity.⁶⁹ Your school should not stop transgender, nonbinary, or gender-expansive students from wearing clothes that they let cisgender students wear.

This area of case law is still developing, but there are strong arguments that gendered dress codes constitute illegal sex discrimination.⁷⁰ Schools should apply dress and grooming codes, where they exist, that are consistent with a student's gender identity.⁷¹

INTERACTING WITH SCHOOL POLICE OR SCHOOL RESOURCE OFFICERS

Police have historically targeted LGBTQ+ and nonbinary people — and those who identify as Black or Brown in particular — for disproportionate stops, searches, and harassment. This is discrimination and should not be happening in schools. School police officers cannot search you or your bag without a reasonable suspicion of wrongdoing.⁷² They cannot search you just because of your sexual orientation, gender identity/expression, or race.

You should email or write a complaint to your principal and your city's police review board if a school police or resource officer is inappropriate with you. In the School District of Philadelphia, you can submit an [anonymous complaint online](#).

THE RIGHT TO BE SAFE AT SCHOOL

You have the same right to be safe in school as every other student. Unfortunately, LGBTQ+ students — and LGBTQ+ students of color in particular — are disproportionately subjected to bullying and harassment, with insufficient intervention by school staff. Behavior may qualify as harassment if the offensive conduct relates to gender, sex, sexual orientation, gender identity or expression, race, color, national origin/ethnicity, age, disability, or religion. Your school's actions may qualify as discrimination if a school staff member is treating you badly because of your sexual orientation, gender identity, or gender expression, or another student is treating you badly because of your sexual orientation, gender identity, or gender expression, and your school does nothing to stop it.⁷³

Your school has an affirmative duty to address harassment against LGBTQ+ students in the same way it would address harassment against any other student. In addition, Title IX and the Pennsylvania Human Relations Act prohibit your school from ignoring harassment based on gender stereotyping.⁷⁴

If you are being bullied or harassed, see our fact sheet and tools for more information: "[The Right to be Free from Bullying and Harassment](#)."

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ See, e.g., *Bostock v. Clayton Cnty.*, 590 U.S. 644, 140 S.Ct. 1731 (2020) (holding that dismissal of an employee for being gay or transgender is sex-based discrimination under Title VII); *B.P.J. by Jackson v. W. Virginia State Bd. of Educ.*, 98 F.4th 542 (4th Cir. 2024), *cert granted*, -- S.Ct. --, 2025 WL 1829164 (2025); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), as amended (Aug. 28, 2020); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017) (Title IX); *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018) (Title IX). See also *Parents for Privacy v. Barr*, 949 F.3d 1210, 1239-40 (9th Cir. 2020) (Title IX); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 535 (3d Cir. 2018) (Title IX); *United States EEOC v. Scott Med. Health Ctr., P.C.*, 217 F. Supp. 3d 834, 841 (W.D. Pa. 2016) (gay male employee stated a claim of sex discrimination based on sex stereotyping that a person should conform to heterosexuality).

² *Doe v. Boyertown Area School Dist.*, 897 F.3d at 528.

³ *D.P. by A.B. v. Mukwonago Area Sch. Dist.*, 2025 WL 1794428 (7th Cir. Jun. 30, 2025)(vacating and ordering rehearing based on *United States v. Skrametti*, 605 U.S. --, 145 S.Ct. 1816 (2025)). In *Skrametti*, the Court held that a state law prohibiting certain gender-affirming medical treatments for transgender minors was not subject to heightened scrutiny as sex discrimination because the bill was based on age and medical use only and therefore subject to rational basis review.

⁴ See *Little v. Hecox*, No. 24-38, -- S.Ct. --, 2025 WL 1829165 (Jul. 3, 2025); *West Virginia v. B.P.J.*, No. 24-43, -- S.Ct. --, 2025 WL 1829164 (Jul. 3, 2025).

⁵ See 34 C.F.R. § 106.10 (Aug. 1, 2024), vacated by *Tennessee v. Cardona*, 737 F. Supp. 3d at 510, 521 (E.D. Ky. 2024).

⁶ See *Tennessee v. Cardona*, 737 F. Supp. 3d 510, 521 (E.D. Ky. 2024), *appeal dismissed sub nom. Tennessee v. McMahon*, No. 24-5588, 2025 WL 848197 (6th Cir. Mar. 18, 2025) (striking down Biden-era Title IX regulations affirming protections for transgender students, pregnant and parenting students, and victims of sexual assault); Dear Colleague Letter from Craig Trainor, Acting Assistant Sec'y for Civil Rights, U.S. Dep't of Educ. (Feb. 4, 2025), <https://www.ed.gov/media/document/title-ix-enforcement-directive-dcl-109477.pdf> ("in light of a recent court decision, the United States Department of Education's (ED) Office for Civil Rights (OCR) will enforce Title IX under the provisions of the 2020 Title IX Rule, rather than the 2024 Title IX Rule").

⁷ 34 C.F.R. § 106 (2025); see Dear Colleague Letter from Craig Trainor, *supra* note 6.

⁸ See, e.g., *Title IX Sexual Harassment*, SCH. DIST. OF PHILA., <https://www.philasd.org/studentrights/bhd/#titleix> (last visited June 26, 2025) (explicitly stating that "[c]onduct on the basis of sex includes conduct on the basis of sexual orientation and gender identity").

⁹ 85 Fed. Reg. 30178 (May 19, 2020).

¹⁰ See, e.g., Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 30, 2025); Exec. Order No. 14190, 90 Fed. Reg. 8853 (Jan. 29, 2025); Exec. Order No. 14201, 90 Fed. Reg. 9279 (Feb. 11, 2025).

¹¹ See Education Counsel, *Summary and Analysis of Trump Administration Executive Actions Impacting Education*, https://docs.google.com/document/d/1UJ4Svb3xul-dhnf_OOQ4KtBFoLxcF2Rg/edit?usp=sharing&ouid=101821434849568682361&rtpof=true&sd=true, (last visited Aug. 27, 2025); Democracy Forward, *Executive Order Legal Response Center*, DEMOCRACY 2025, <https://www.democracy2025.org/response-center> (last visited July 2, 2025).

¹² See *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372-73 (2000) (state law must yield to federal law where Congress intends federal law to “occupy the field,” and state law is naturally preempted due to a conflict with a federal statute, such as making it impossible to comply with both state and federal law).

¹³ See Pa. Constit. Art. I, § 28 (“Equal Rights Amendment”); see also *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Human Svs.*, 309 A.3d 808, 868-69, 869 n. 51 (Pa. 2024) (finding a sex-based distinction is presumptively unconstitutional and requires a compelling state interest).

¹⁴ Pa. Human Relations Act, 43 PA. STAT. ANN. § 953.

¹⁵ *Id.*; *id.* § 954(l).

¹⁶ Protected Classes Under the PHRA and PFOA, 16 PA. CODE §§ 41.201-41.207 (final regulations defining terms related to sex, sexual orientation, and gender identity used in the PHRA and PFOA); Pennsylvania Human Relations Commission, Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act 2-3 (Mar. 3, 2021), <https://www.phrc.pa.gov/AboutUs/Documents/APPROVED%20Sex%20Discrimination%20Guidance%20PHRA.pdf> (delineating prohibitions in the PHRA against discrimination on the basis of sex, prohibit discrimination on the basis of sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression).

¹⁷ 16 Pa. Code § 42.2.

¹⁸ 16 Pa. Code § 41.206.

¹⁹ Pennsylvania Human Relations Commission, *Guidance on Discrimination on the Basis of Sex Under the Pennsylvania Human Relations Act 3* (Mar. 3, 2021), <https://www.pa.gov/content/dam/copapwp-pagov/en/phrc/documents/SexDiscriminationGuidancePHRA-3-3-2021.pdf>.

²⁰ *Id.*

²¹ 16 Pa. Code § 41.204 (definition of gender identity); 16 Pa. Code § 41.206 (sex discrimination includes gender identity).

²² Pa. Human Relations Act, 43 PA. STAT. ANN. § 957(f).

²³ Nhan L. Truong et al., GLSEN and Nat’l Black Just. Coal., *Erasure and Resilience: The Experiences of LGBTQ Students of Color*, (2020), <https://www.glsen.org/sites/default/files/2020-06/Erasure-and-Resilience-Black-2020.pdf>.

²⁴ *Id.* at p. xvi (reporting that 97.9% of Black LGBTQ students heard “gay” used in a negative way; nearly three-fourths (71.5%) heard this type of language often or frequently. 94.7% of Black LGBTQ students heard other homophobic remarks, and over half (58.7%) heard this type of language often or frequently).

²⁵ *Id.* Black LGBTQ students also experience high rates of harassment or assault at school based on personal characteristics, including sexual orientation (65.1%), gender expression (57.2%), and race/ethnicity (51.9%).

²⁶ *Id.* at xvii and xix. Over half of Black LGBTQ students (52.4%) who experienced harassment or assault in the reporting year never reported victimization to staff, most commonly because they did not think that staff would do anything about it (62.9%). Only a third (33.8%) reported that staff responded effectively when students reported victimization. Only two-fifths of Black LGBTQ students (40.5%) reported having somewhat or very supportive school administration.

²⁷ *Id.* Nearly a third of Black LGBTQ students (30.4%) reported missing at least one day of school in the last month because they felt unsafe, and 10.3% missed four or more days in the past month.

²⁸ Joseph G. Kosciw et al., GLSEN, *The 2017 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation’s schools* (2018); Anna S. Mueller, *Suicide ideation and bullying among US adolescents: Examining the intersections of sexual orientation, gender, and race/ethnicity*, 106 AM. J. PUB. HEALTH 980 (2015); S.T. Russell & N. Truong, *Adolescent sexual orientation, race and ethnicity, and school environments: A national study of sexual minority youth of color*, In TROUBLING INTERSECTIONS OF RACE AND SEXUALITY: QUEER STUDENTS OF COLOR AND ANTI-OPPRESSIVE EDUCATION 113 (K. Kumashiro ed., 2001).

²⁹ See, e.g., *Henkle v. Gregory*, 150 F.Supp.2d 1067, 1075-76 (D.Nev. 2001) (student stated a claim for First Amendment violation alleging school censored his speech about being gay; no qualified immunity because the broad right established in *Tinker* “would encompass the right of a high school student to express his sexuality”).

³⁰ See *Richards v. Thurston*, 424 F.2d 1281, 1285 (1st Cir. 1970) (protecting a male student’s right to wear their hair as they wish); see also Harper Seldin, *Trans Students Should Be Treated With Dignity, Not Outed by Their Schools*, ACLU (Jan. 26, 2023), <https://www.aclu.org/news/lgbtq-rights/trans-students-should-be-treated-with-dignity-not-outed-by-their-schools>.

³¹ See *Tinker v. Des Moines Ind. Comm. Sch. Dist.*, 393 U.S. 503 (1969) (student may not be punished for expressing views unless the school has reason to believe the speech or expression will “materially and substantially disrupt the work and discipline of the school”); *Gillman v. School Board for Holmes County, Florida*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008) (a school district’s censorship of T-shirts advocating fair treatment for LGBT people was unconstitutional).

³² The Third Circuit, the controlling federal court for Pennsylvania, in 2018 held that a school district’s policy allowing transgender students to use the bathroom consistent with their gender identity does not violate cisgender students’

right to privacy or rights under Title IX. *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018). The U.S. Supreme Court declined to review this case, leaving the decision to stand. *Doe v. Boyertown Area Sch. Dist.*, 139 S. Ct. 2636 (2019). Other federal courts in Pennsylvania have also affirmed the rights of transgender students to use school facilities. See *Evancho*, 237 F. Supp. 3d at 288 (school board resolution limiting transgender students' access to bathrooms was found likely to succeed on Equal Protection claim); *A.H.*, 290 F.Supp.3d 321 (transgender student prohibited from using girls' bathroom stated a claim for violation of Title IX and Equal Protection Clause). The vast majority of other federal courts have also affirmed transgender students' right to use school facilities. See *Grimm*, 972 F.3d 586, *cert denied*, 141 S.Ct. 2878 (2021) (District court and Fourth Circuit held that school violated Title IX and Equal Protection Clause when they prohibited Grimm from using the same restrooms as other boys and forced him to use separate restrooms because of his transgender identity; US Supreme Court denied cert); *Whitaker*, 858 F.3d at 1055 (transgender student denied access to facilities that matched their gender identity was likely to succeed as claim of sex discrimination under Title IX).

³³ Notably, such cases that focus on the issue of transgender students and bathroom policies have found that the option for students to use a single-user, gender-neutral bathroom is not sufficient and not an appropriate remedy. A better policy example is to provide a gender-neutral bathroom in every school building, like the School District of Philadelphia. See Kristen Graham, *A gender-neutral restroom in every school: Philly plans changes to make transgender kids feel safe*, PHILA. INQUIRER, Jul. 12, 2021, <https://www.inquirer.com/education/gender-neutral-bathrooms-philadelphia-schools-lgbtq-students-20210712.html>.

³⁴ 34 C.F.R. § 106.33

³⁵ *Boyertown Area Sch. Dist.*, 897 F.3d at 518 (rejecting the argument that a school policy permitting transgender students to use the locker rooms and restrooms that correspond to their gender identity violated the privacy of cisgender students).

³⁶ See *Nguon v. Wolf*, 517 F. Supp. 2d 1177, 1192-95 (C.D. Cal. 2007) (student had a reasonable expectation of privacy about her sexual orientation, and even though she was out at school, she had protected interest in not being outed to her parents by school officials); *Sterling v. Borough of Minersville*, 232 F.3d 190 (3d Cir. 2000) (police officer's threat to out a teenage arrestee as gay to the teen's grandfather violated the teen's constitutional right to privacy).

³⁷ 22 Pa. Code § 235.5a (PA Code of Professional Practice and Conduct for Educators).

³⁸ See 22 PA. CODE § 11.11.

³⁹ See Pa. Dep't of Educ., *Basic Education Circular: Student Enrollment FAQ*, <https://www.pa.gov/agencies/education/resources/policies-acts-and-laws/basic-education-circulars-beecs/purdons-statutes/enrollment-of-students/student-enrollment-faq.html>; Pa. Dep't of Educ., *Basic Education Circular: Enrollment of Students*, <https://www.pa.gov/agencies/education/resources/policies-acts-and-laws/basic-education-circulars-beecs/purdons-statutes/enrollment-of-students.html>.

⁴⁰ See 20 U.S.C.A. § 1232g. See also *Doe v. Pennsylvania Dep't of Corrections*, 2019 WL 5683437 (M.D.Pa. Nov. 1, 2019) (stating courts have long recognized that the harms arising from disclosing a person's transgender status are among those that make protection by pseudonym appropriate).

⁴¹ 34 C.F.R. § 99.4-5.

⁴² 34 C.F.R. § 99.7(a)(2)(ii)).

⁴³ See, e.g., *Vesely v. Illinois Sch. Dist.* 45, 669 F. Supp. 3d 706 (N.D.Ill. 2023) (rejecting parent's objection to a school district's policy allowing students to socially transition to a different gender identity at school without one parent's consent; finding that the district's policy had a reasonable relation to its legitimate interest in protecting transgender students). See *infra* note 48.

⁴⁴ See Pa Dep't of Educ., Pa. Information Management System (PIMS) User Manual, Vol. 1, at 15 (Feb. 25, 2025), available at <https://www.elc-pa.org/Challenging-Sex-Gender-Based-Harassment-at-School>.

⁴⁵ Exec. Order No. 14190, 90 Fed.Reg. 8853, (Jan. 29, 2025); Sec'y McMahon and Student Privacy Policy Office, Dear Colleague Letter (Mar. 28, 2025), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Secretary_Comb_SPPO_DCL_Annual%20Notice_0.pdf. For information about the administration's targeted investigations, see Public Interest Privacy Center, *Recapping U.S.E.D.'s Recent Surge in FERPA Enforcement Activities* (Apr. 17, 2025), <https://publicinterestprivacy.org/ferpa-enforcement-recap/>.

⁴⁶ Often these cases are dismissed because they are brought by individuals without legal standing. See, e.g., *Doe v. Pine Richland Sch. Dist.*, 2024 WL 2058437 (W.D.Pa. May 7, 2024) (parent's challenge to affirming gender identity policy dismissed because their child was not implicated by the policy, not at risk of harm).

⁴⁷ Compare *Doe v. Delaware Valley Regional High Sch. Bd. Of Educ.*, 2024 WL 706797 (D.N.J. Feb. 21, 2024) (rejecting a temporary restraining order where parent did not demonstrate likely success on claims alleging a school policy violated his parental right to control his child and school had obligation of nondiscrimination) with *Tatel v. Mt. Lebanon Sch. Dist.*, 637 F.Supp. 3d 295, 336 (W.D.Pa. 2022) (parents asserted plausible substantive due process claim

against teacher who discussed gender dysphoria and transitioning with 1st graders without notice to parents; court found the topics implicated a core parental interest in forming the identity of their children).

⁴⁸ See, e.g., *Regino v. Staley*, 2023 WL 4464845 (E.D.Cal. Jul 11, 2023) (school policy to follow student request for name and pronoun and not tell parents without student consent was reactive and did not violate parental substantive due process rights); *Littlejohn v. Sch. Bd. Of Leon Cty Florida*, 647 F.Supp.3d 1271, 1282-83 (N.D.Fla. 2022) (school's gender identity support plan requested by student did not violate liberty interests in familial privacy and upbringing of child); *Willey v. Sweetwater Cty Sch. Dist. No.1 Bd of Trustees*, 2023 WL 4297186, *12-16 (D.Wy. Jun. 30, 2023) (school addressing child by requested name and pronoun did not amount to "treatment" interfering with parent right to make medical decisions); *Vesely v. Illinois Sch. Dist. 45*, 669 F. Supp. 3d 706 (N.D.Ill. Apr. 18, 2023) (school's support of child's gender identity did not violate parental rights under federal and state constitution).

⁴⁹ See *Delaware Valley Regional*, 2024 WL 706797 at *9-10 (reviewing cases).

⁵⁰ *John & Jane Parents 1 v. Montgomery Cty. Bd. of Educ.*, 622 F.Supp.3d 118, 129 (D.Md. Aug. 18, 2022) (holding parents do not have fundamental right to be informed of child's gender identity stated to school; school policy served legitimate interest in an affirming environment for all students), vacated on standing grounds, 78 F.4th 622 (4th Cir. 2023). See, e.g., *supra* note 48.

⁵¹ See *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 633 (1999) (recognizing claims of indirect discrimination under Title IX where school had actual notice of harassment between students but failed to address it); *Whitaker*, 858 F.3d 1034 (applying Title IX to discrimination based on transgender status).

⁵² *Doe v. Triangle Doughnuts, LLC.*, 472 F. Supp. 3d 115 (E.D. Pa. 2020) (citing *Bostock*, 140 S.Ct. 1731) (applying *Bostock*, the court held that, "in addition to being misgendered," an employer deadnaming a transgender woman "was sufficiently severe or pervasive to support her [hostile work environment] claim").

⁵³ See 16 Pa. Code § 41.206; *Wible v. School District of Philadelphia*, No. 15-043169, 1392 CD 2018 (Phila. Cty. Ct. of Comm. Pls. 2018) (judgment entered for student plaintiff in the amount of \$500,000 damages and an additional \$578,000 in attorney fees for school's failure under PHRA to address harassment based on gender presentation), <https://www.berneylaw.com/wp-content/uploads/2017/10/Opinion-Rule-1925.pdf>.

⁵⁴ See *Kluge v. Brownsburg Community Sch. Corp.*, -- F.4th--, 2025 WL 2218112 (7th Cir. Aug. 5, 2025) (teacher claimed religious accommodation needed to avoid using trans student's affirming name; remanded to lower court to develop fact issues whether teacher's use of only student last names imposed undue burden on school's nondiscrimination mission).

⁵⁵ See *Bradley v. Pittsburgh Bd. of Educ.*, 910 F.2d 1172, 1176 (3d Cir. 1990) (teacher has no First Amendment right of academic freedom extending to classroom management techniques); *Kahan v. Slippery Rock Univ. of Pa.*, 50 F.Supp.3d 667, 707 (W.D.Pa 2014) (applying 3d Circuit precedent and finding teacher "does not personally hold a First Amendment 'teaching right' concerning classroom management, class content, student conduct, and use of testing materials. A teacher's 'in-class' conduct concerning what may be taught and how it will be taught is not protected by the First Amendment.").

⁵⁶ See 20 U.S.C. 4071 (Equal Access Act); *Straights & Gays for Equality v. Osseo Area Sch. Dist. No. 279*, 540 F.3d 911 (8th Cir. 2008) (Equal Access Act prohibited school from denying non-curricular gay equality group meeting when other noncurricular groups can meet).

⁵⁷ Courts have made clear that any school rules relating to order and discipline on school property, student and staff well-being and attendance must be applied to all student groups. School officials cannot censor groups because they express unpopular viewpoints. See, e.g., *Gonzalez v. School Board of Okeechobee County*, 571 F. Supp. 2d 1257, 1268 (S.D. Fla. 2008) (holding that a school failed to show that the GSA's discussions would cause material disruption to the school); *Colin v. Orange Unified School District*, 83 F. Supp. 2d 1135, 1147-49 (C.D. Cal. 2000) (holding that the "limited open forum" principle must apply to all school groups equally).

⁵⁸ *McMillen v. Itawamba Cty. Sch. Dist.*, 702 F. Supp. 2d 699 (N.D. Miss. 2010) (school violated female lesbian student's First Amendment rights when they prevented the student from attending prom wearing a tuxedo and with her girlfriend as her date); *Aaron Fricke v. Richard B. Lynch*, 491 F.Supp. 381 (D.R.I. 1980) (school violated male gay student's First Amendment rights when they tried to prevent the student from attending prom with his male date).

⁵⁹ 34 C.F.R § 106.31(a).

⁶⁰ *Title IX at 45: Advancing Opportunity through Equity in Education* 41, NAT'L COAL. FOR WOMEN AND GIRLS IN EDUC. (2017), <https://www.ncwge.org/TitleIX45/Title%20IX%20at%2045-Advancing%20Opportunity%20through%20Equity%20in%20Education.pdf>.

⁶¹ An analysis of Centers for Disease Control and Prevention data found that there was no negative impact on the participation of girls and women in school sports in states that had implemented trans-inclusive state athletics policies. Shoshana K. Goldberg, *Fair Play: The Importance of Sports Participation for Transgender Youth 14-16*, CTR. FOR AM. PROGRESS (February 8, 2021), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2021/02/08/495502/fair->

[play](https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/). See GLSEN and TransAthlete.com, *Navigator: Trans and Nonbinary Athletic Inclusion Policies* (2022), <https://maps.glsen.org/trans-and-nonbinary-athletic-inclusion-policies/>.

⁶² The PHRA has not yet been applied to a case addressing transgender student athletes.

⁶³ See more discussion in ELC's analysis, "[Equity in School Sports for Transgender, Gender Diverse and Intersex Students](#)."

⁶⁴ See, e.g., *Hecox v. Little*, 79 F.4th 1009 (9th Cir. 2023) (finding Idaho statute that categorically banned transgender women and girls from participating in student athletics and subjected all female athletes to intrusive sex verification process "likely" violated Equal Protection Clause and Title IX and hence enforcement of the Act was properly enjoined), *Hecox v. Little*, 104 F.4th 1061 (9th Cir. 2024) (affirming likelihood of success on Equal Protection claims; remanded to clarify scope of preliminary injunction); *B.P.J.*, 98 F.4th at 564-65 (holding that the district court erred in granting summary judgment to defendants on an equal protection claim brought by a transgender girl, finding that applying the West Virginia Save Women's Sports Act to the plaintiff would violate Title IX, as it treated her worse than similarly situated individuals based on sex and caused her harm); *Doe v. Horne*, 115 F.4th 1083, 1112 (9th Cir. 2024) (finding that the district court did not abuse its discretion by preliminarily enjoining an Arizona law prohibiting transgender athletes from playing on women's sports teams under the Equal Protection Clause, though not deciding on the lower court's determination that the law also violated Title IX); *A.M. v. Indianapolis Pub. Sch.*, 617 F.Supp. 3d 950, 966 (S.D. Ind. 2022) (granting preliminary injunction for trans student denied access to girls sports team because "[t]he singling out of transgender females is unequivocally discrimination on the basis of sex, regardless of the policy argument as to why that choice was made."), *vacated for mootness*, 2023 WL 11852464 (S.D.Ind. Jan. 19, 2023).

⁶⁵ See, e.g., *supra* note 64; see also *Boyertown Area Sch. Dist.*, 897 F.3d at 518 (rejecting the argument that a school policy permitting transgender students to use the locker rooms and restrooms that correspond to their gender identity violated the privacy of cisgender students).

⁶⁶ Order Denying Plaintiff's Motion for a Temporary Restraining Order, *Magalengo v. U.S. Dep't of Educ.*, No. 25-cv-00325, (E.D. Pa. Mar. 4, 2025). See Maddie Hanna, *A federal judge rejected a Quakertown student's motion to bar transgender athletes from girls' sports*, PHILA. INQUIRER (Mar. 4, 2025), <https://www.inquirer.com/education/trans-athlete-quakertown-colonial-plymouth-whitemarsh-20250304.html>

⁶⁷ *Magalengo v. PIAA et al*, No. 25-325, 2025 WL 2200916 (E.D.Pa. Aug. 1, 2025).

⁶⁸ *Little v. Hecox*, No. 24-38, -- S.Ct. --, 2025 WL 1829165 (Jul. 3, 2025); *West Virginia v. B.P.J.*, No. 24-43, -- S.Ct. --, 2025 WL 1829164 (Jul. 3, 2025).

⁶⁹ See *Tinker*, 393 U.S. 503; *McMillen v. Itawamba Cty. Sch. Dist.*, 702 F. Supp. 2d 699 (N.D. Miss. 2010) (lesbian student's desire to wear a tuxedo to her prom is protected by the First Amendment). See also *Gillman*, 567 F. Supp. 2d 1359 (a school district's censorship of T-shirts advocating fair treatment for LGBT people was unconstitutional).

⁷⁰ See *Sturgis v. Copiah Cty. Sch. Dist.*, No. 3:10-CV-455-DPJ-FKB, 2011 WL 4351355, at *1 (S.D. Miss. Sept. 15, 2011) (refusing to dismiss a gender-nonconforming student's Equal Protection and Title IX challenges of her school's policy that differentiated what students may wear in yearbook pictures on the basis of sex); see also *Peltier v. Charter Day Sch.*, 37 F.4th 104 (4th Cir. 2022) (finding school dress code requiring girls wear skirts to violate Equal Protection and remanded to assess Title IX claim); Galen Sherwin et al., 4 Things Public Schools Can and Can't Do When It Comes to Dress Codes, ACLU (Sep. 21, 2022), <https://www.aclu.org/news/womens-rights/4-things-public-schools-can-and-cant-do-dress-codes>; Letter from James D. Esseks, Director of ACLU's Lesbian Gay Bisexual Transgender & HIV Project (Aug. 26, 2020), <https://www.aclu.org/letter/open-letter-schools-about-gendered-dress-codes>, (last visited May 30, 2023).

⁷¹ See, e.g., School District of Pittsburgh, *Policy 102.3 Nondiscrimination - Transgender and Gender Expansive Students* (June 2016),

[https://go.boarddocs.com/pa/pghboe/Board.nsf/files/AAVNG25B8B5D/\\$file/102.3_Nondiscrimination_Transgender_and_Gender_Expansive_Students_June2016.pdf](https://go.boarddocs.com/pa/pghboe/Board.nsf/files/AAVNG25B8B5D/$file/102.3_Nondiscrimination_Transgender_and_Gender_Expansive_Students_June2016.pdf) ("[s]tudents shall have the right to dress in accordance with their gender identity ..."); School District of Philadelphia, *Policy 252 Transgender and Gender Non-Conforming Students* (June 16, 2016), <https://www.philasd.org/schoolboard/wp-content/uploads/sites/892/2017/06/252.pdf> ("students shall have the right to dress in accordance with their stated gender identity and/or expression ...").

⁷² *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (search of student generally permissible if there are reasonable grounds for suspecting the search will turn up evidence that student is violating the law or school rules and the search is no more intrusive than necessary).

⁷³ See, e.g., *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. at 633 (1999).

⁷⁴ 34 C.F.R. § 106.45(b)(1)(iii). See also 20 U.S.C. 1681 et seq.; *Wible v. School District of Philadelphia*, *supra* note 53.