



FACT SHEET

THE RIGHT TO BE FREE FROM RACISM AT SCHOOL

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Students deserve affirming and safe school environments that celebrate them for who they are and provide robust opportunities to learn. Schools have a legal obligation to ensure that students are not being denied opportunities, treated differently, discriminated against, or harassed because of their race, color, or national origin. Schools must have policies and procedures to prevent and address bullying and harassment based on race and must ensure equal opportunities for students of color.

It is well-documented that the incidence of school-based acts of racist hatred is on the rise across the country and across Pennsylvania.¹ In fact, racism is the leading motivation behind reported acts of hatred at school.² We know that the vast majority of incidents of hate at school are never reported at all,³ and reports do not begin to reflect the range of abuses that Black and Brown and other students of color experience daily.

However, responding to school-based incidents of hate is not enough. Rather, schools must acknowledge and address the fact that our education system in this country was built on a foundation of systemic and anti-Black racism that still continues today. School communities must focus on developing an affirming and equitable school climate for students of color.

IS RACIAL DISCRIMINATION ILLEGAL?

Yes. Discrimination based on race is illegal under federal and state laws as well as the U.S. Constitution and Pennsylvania's Constitution. As part of their duty to ensure equal treatment, public schools (as a recipient of federal funding) must provide programs, services, aids, and benefits in a nondiscriminatory manner and in an environment that is free from discriminatory harassment that limits educational opportunities.

WHAT ARE THE LAWS THAT PROTECT STUDENTS FROM RACIAL DISCRIMINATION?

- As the Supreme Court explained in *Brown v. Board of Education* in 1954, racial discrimination in schools violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.⁴ It also violates similar provisions of Pennsylvania's state Constitution⁵ as well as the Pennsylvania Human Relations Act.⁶
- Racial discrimination also violates Title IV of the Civil Rights Act of 1964, which prohibits discrimination in schools on the basis of race, color, religion, sex, or national origin.⁷ Racial discrimination is also prohibited by Title VI of the Civil Rights Act of 1964, which forbids schools that receive federal financial assistance—which is virtually all public schools—from discriminating against students based on race, color, or national origin.⁸ Title VI allows students to assert private lawsuits based on evidence of intentional discrimination but not by

showing a policy or action has a disparate negative impact.⁹ The Equal Educational Opportunities Act of 1974 also prohibits, among other conduct, deliberate segregation on the basis of race, color, and national origin.

- Racial discrimination may also take place at the intersection of other identities a student may hold, including sex, gender identity, or sexual orientation. For example, Black girls are often illegally denied educational opportunities both because they are Black AND because they are girls. Under Title IX, both types of discrimination (race and sex) are illegal.¹⁰

WHAT RIGHTS AND PROTECTIONS DO STUDENTS HAVE TO BE FREE OF RACISM AT SCHOOL?

- All students have the right to be free from discrimination or mistreatment at school and at school events because of their race, skin color, national origin, and immigration status.
- Students have the right to enroll and fully participate in school, regardless of their race, ethnicity, religion, immigration status, or English language skills.¹¹
- Students have the right to attend school without having to present a green card, visa, Social Security number, or any other proof of citizenship.¹²
- Students have an equal right to keep their education records private, including from police, federal agents, and immigration officials.¹³
- Students have the right to be free from harassment based on their race, religion, or national origin, and other protected identities they may hold.
- Students have the right to learn in an environment free from racist hate, such as slurs and hate symbols, and school officials have a legal duty to stop and prevent this type of toxic school environment.

HOW IS RACIAL DISCRIMINATION DEFINED?

Racial discrimination is any conduct that treats a student differently and unfavorably because of the student's race, color, ancestry, national origin, personal characteristics associated with race (such hair texture or wearing one's hair in natural or protective styles), or a student's association with a person of a certain race or color. Racial discrimination includes any denial of equal educational opportunities based on race.

Racial discrimination in school can take many forms. It can involve racist comments, racist behavior, or entire school policies and practices that perpetuate racism or allow it to continue uninterrupted. Racism does not happen in isolation and impacts school communities as a whole, even when it happens in between students. Some examples include:

- Qualified students are denied admission to a school or class for racially discriminatory reasons.
- Students are denied opportunities in school, in extracurriculars, or for scholarships because of a student's race, color, national origin, or immigration status.
- Classmates harass or bully a peer based on race, ancestry, or national origin.
- School officials create a climate where students are denied opportunities with disrespect and hostility because of their race, ancestry, national origin, or immigration status.

- In a school, Black students and other students of color are disciplined more often and more harshly, when compared to white peers who engage in the same behavior just as frequently.¹⁴
- School personnel treat and discipline a young Black girl more harshly than a young white girl for the same behavior.
 - For example, [adultification bias](#) is a well-documented form of racial discrimination which results in adults viewing Black girls as being less innocent and in need of less nurturing than their white female counterparts. As a result of those racially biased assumptions, adults treat normal childlike behaviors of Black girls as intentional acts of defiance and punish them in harsh and unwarranted ways. To learn more about how adultification bias affects Black girls, see [Epstein, Blake, & Gonzalez, *Girlhood Interrupted: The Erasure of Black Girls' Childhood*, \(2017\)](#).

WHAT IS ILLEGAL RACIAL HARASSMENT? HOW DOES IT DIFFER FROM BULLYING?

Racial harassment is racially discriminatory conduct that can include speech or other behavior. Some examples of harassment include racial slurs, offensive or derogatory remarks made about a student's actual or perceived race or color, racially discriminatory dress codes or grooming policies that often target Black students, or the display of racially offensive symbols. Harassment is illegal when it occurs so frequently that it creates a hostile or offensive environment or is so severe that it causes harm to the student.¹⁵

Sometimes, this behavior is incorrectly called bullying by school officials or school policies. Under state law, every local educational agency must adopt an anti-bullying policy as part of its code of student conduct that delineates disciplinary consequences for bullying, identifies appropriate school staff to receive and investigate reports of alleged bullying, and may provide for prevention, intervention and education programs.¹⁶ However, harassment is a legally distinct category of behavior and requires a higher level of response because it involves an aspect of a student's identity that is protected by law, including the right to be free from race-based discrimination. It is important to consider whether the bullying behavior is actually harassment. Behavior qualifies as harassment if the offensive conduct relates to race, color, national origin/ethnicity, and/or immigration status. Harassers can be students, school staff, or even someone visiting the school, such as a student or employee from another school.

WHAT IS THE RIGHT TO BE FREE FROM RACIAL HARASSMENT AT SCHOOL?

Students have the right to be free from harassment based on race, and your school has a duty to protect you from racial discrimination.

If you are being harassed based on race, color, national origin, or immigration status, you should:

- keep notes for yourself of when and how you are harassed;
- tell an adult at the school like a teacher, a principal, or counselor about it;
- report the harassment in writing to your principal or superintendent; and
- follow our guide: [What Can I Do If My Child is Bullied or Harassed? A Parent's Guide to Advocacy in Pennsylvania Public Schools](#).

Complaints can be filed with the U.S. Department of Justice (DOJ) to challenge a school district's failure to address racial harassment and discrimination in school. You may file a DOJ complaint on your own or with the help of a lawyer, [using this link](#). Alternatively, you may also file a complaint with the U.S. Department of Education Office of Civil Rights (OCR) [here](#). In general, a complaint submitted to OCR must be filed within 180 days of the last act of discrimination. Both agencies have a duty to investigate complaints and issue corrective action to remedy violations as necessary. For example, in response to complaints that the Colorado Springs' Falcon School District 49 was not adequately responding to incidents of racial harassment and discrimination in its schools, DOJ required the district to train teachers and students, track and analyze data, and implement appropriate disciplinary responses.¹⁷

DO I HAVE A RIGHT TO SELF-EXPRESSION, SUCH AS WEARING MY HAIR AS AN EXPRESSION OF MY IDENTITY, CULTURE, AND HERITAGE?

Yes. Students have a right to self-expression. While courts have generally upheld the right of school officials to require school uniforms, schools cannot use such policies to prohibit freedom of expression or to treat certain students differently.¹⁸ This includes the right to wear political clothing such as a Black Lives Matter shirt. School policies that prohibit hair styles such as locs, braids, twists, and knots, braided extensions, weaves, and wigs have been found to violate the right to expression and to constitute racial and sex discrimination.¹⁹

Federal legislation, [H.R. 5309](#), known as the CROWN Act (Creating a Respectful and Open World for Natural Hair) was introduced in 2019 and seeks to ensure protection against discrimination based on race-based hairstyles by extending statutory protections to hair textures and styles such as locs, braids, twists, and knots in both public schools and workplaces. While this legislation is still pending, many [states](#) have adopted CROWN Act laws, including California, Colorado, New York, New Jersey, Virginia, and Washington.

CAN I ORGANIZE OR PARTICIPATE IN A BLACK STUDENT UNION AT SCHOOL?

Yes. You have the right to meet ("assemble") with other students about non-school issues if your school allows other groups to meet about non-school issues. For example, if the school allows a chess club to meet, they must also allow Black student organizations to meet.²⁰

DO SCHOOL POLICE HAVE A RIGHT TO SEARCH ME? WHAT CAN I DO ABOUT UNFAIR POLICING?

School police officers cannot search you or your bag or your body (including your hair) without a reasonable suspicion of wrongdoing.²¹ They cannot search you just because of your race, color, ancestry, or national origin.

Many students, communities, and civil rights groups are currently organizing for the removal of school police because of bias and discrimination against Black and Brown students, which has resulted in disproportionate discipline and arrests. You can learn more about these efforts in Pennsylvania from groups such as the [Philadelphia Student Union](#), [Cops Out of Pittsburgh Schools](#), and the [ACLU of Pennsylvania](#).

DO I HAVE A RIGHT TO BE FREE FROM SEGREGATION BASED ON RACE?

Students cannot be segregated based on race. Federal law prohibits deliberate segregation or assignment that results in a greater degree of segregation of students based on race, color, sex, or national origin among schools.²² The Department of Justice continues to enforce many desegregation orders across the country. For example, in *Banks & United States v. St. James Parish School Board*, the District Court for the Eastern District of Louisiana approved a 2017 [consent order](#) that revised where students went to school and created specialized academic programs to desegregate schools, revamped the district's code of conduct to ensure fairness, and took steps to diversify school staff.

HOW CAN SCHOOL COMMUNITIES ADDRESS RACIAL DISCRIMINATION?

Black and Brown communities have been leading efforts advocating for affirming school environments and culturally responsive and celebratory curriculum for decades and have been working to create community-based educational opportunities. Across the state, many students, parents, educators, advocates, and community members are now focusing on making schools anti-racist and free from prejudice – ensuring a safe, supportive, respectful, and affirming learning environment for children of color. For example, some school boards have adopted equity resolutions and committed to schoolwide changes to create anti-racist school climates.²³ Many teachers are working to build anti-racist curricula that teach students accurate history of Black, Indigenous, and people of color and the many diverse and impactful contributions of Black people, leaders, and thinkers; and acknowledge historic and structural racism and implicit bias, while promoting practices that enhance awareness to live out anti-racist principles. Addressing racism at school requires interventions at the district level, school level, and the individual level.

HOW CAN MY SCHOOL BEGIN TO CREATE A MORE AFFIRMING ANTI-RACIST CLIMATE?

Schools should invest in anti-racist education, developing comprehensive equity policies and practices to ensure students can thrive and ensure that responses to incidents of hate address the system's school climate as a whole. [Rethinking Schools](#) provides a wide range of resources about using schools to break down racial biases. No school community is immune from the systemic and structural racism that pervades our country and culture. Educators and administrators have a legal obligation not to stay silent and to act to confront and prevent racial discrimination, including racist harassment in schools. Equity should be a key [foundational principle](#) for all schools in undertaking this important process.

WHAT IS ELC DOING?

ELC is actively committed to pursuing a variety of legal and advocacy strategies to ensure that schools can become affirming, safe, and celebratory spaces for Black and Brown students and other students of color. We want to reflect and honor the diversity and expertise of the communities we serve. We have specific Black Girls Education Justice initiatives in both of offices, and we are working to ensure that our work centers race and intersectionally serves students.

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, English 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 *Hate At School* 2019, Southern Poverty Law Center available at https://www.splcenter.org/sites/default/files/tt_2019_hate_at_school_report_final_0.pdf.

² *Id.* at p. 5

³ *Id.*

⁴ 347 U.S. 483 (1954)

⁵ The Pennsylvania Constitution builds on the Fourteenth Amendment through Article I, Sections 26 and 28; Article III, Section 32; and Article VIII, Section 1. These provisions have been interpreted to provide an equivalent or greater level of equality than the minimum guaranteed by the United States Constitution.

⁶ The Pennsylvania Human Relations Act (PHRA) prohibits discrimination because of a current student's race, color, sex, religion, ancestry, national origin. See 43 P. S. §§ 951–963; Pennsylvania Fair Educational Opportunities Act, 24 P. S. §§ 5001–5010; and 16 Pa. Code § 47.41 (delineating unlawful discriminatory practices).

⁷ 42 U.S.C. § 2000c-6(a).

⁸ 42 U.S.C. § 2000d.

⁹ *Alexander v. Sandoval*, 532 U.S. 275 (2001)

¹⁰ Title IX of the Civil Rights Act of 1964 is identical to Title VI but applies to gender-based discrimination.

¹¹ Equal Educational Opportunities Act, 20 U.S. Code § 1703(f)

¹² *Plyler v. Doe*, 457 U.S. 202 (1982)

¹³ The Federal Educational Rights and Privacy Act (FERPA) 20 U.S.C. § 1232g; 34 CFR Part 99, prevents schools from releasing students' education records, including information about immigration status, except in exceptional circumstances. A school may only disclose information to ICE officials with the consent of a parent or student (if 18 or older) or if necessary to comply with a judicial order or a subpoena signed by a judge. If a school receives an administrative subpoena, school officials can still seek review by legal counsel and could potentially challenge the reasonableness of the subpoena.

¹⁴ See e.g., ProPublica's Miseducation Report, Pennsylvania Page (source: U.S. Department of Education's Office for Civil Rights Data) available at <https://projects.propublica.org/miseducation/state/PA> and Morris, M. W. (2016). *Pushout: The criminalization of Black girls in schools*. New York: The New Press.

¹⁵ *Dear Colleague Letter: Harassment and Bullying* 2, n.7 (Oct. 26, 2010), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

¹⁶ See 24 Pa PS 1303.1-A; 22 Pa. Code § 12.3(c) (relating to school rules).

¹⁷ See Falcon District 49 Settlement Agreement at <https://www.justice.gov/sites/default/files/crt/legacy/2014/10/21/falcon49agree.pdf>.

¹⁸ See e.g., *Barber v. Dearborn Public Schools*, 286 F.Supp.2d 847 (E.D. Mich. 2003) (upholding the right of student to wear a T-shirt with a picture of the U.S. president and the words "International Terrorist"); *Newsom v. Albemarle County School Bd.*, 354 F.3d 249 (4th Cir. 2003) (upholding the right of student to wear T-shirt supporting the National Rifle Association with an image of guns). See also *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969) (right to wear black armbands as antiwar protest).

¹⁹ See e.g., *Arnold v. Barbers Hill Independent Sch. Dist.*, No. 4:20-CV-1802 (S.D.Tex. Aug. 17, 2020) (granting injunction to prevent enforcement of school policy requiring a Black student to cut his locs or be prohibited from participating in regular classes and school activities and finding likely violations of First Amendment and laws prohibiting racial discrimination, available at <https://www.naacpldf.org/wp-content/uploads/PI-Opinion.pdf>).

²⁰ See e.g. *Straights & Gays for Equality v. Osseo Area Sch. Dist. No. 279*, 540 F.3d 911 (8th Cir. 2008)(finding Equal Access Act prohibited school from denying meeting of non-curricular gay equality group when other noncurricular groups were permitted to meet); *Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211 (3d Cir. 2003) (school could not deny a Bible Club permission to meet during non-instructional time when other non-curricular related clubs met).

²¹ *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 the student is violating the law or school rules and the search is no more intrusive than necessary).

²² 20 U.S. Code § 1703 (a)-(e).

²³ Diversity and Inclusion in the School District of Haverford Township, 2018 available at

<https://static1.squarespace.com/static/5a858efeace8645cabb72cde/t/5adc5d012b6a2829b4c3e7db/1524391803879/H-CAN-Diversity-Inclusion-Report-SDHT-4-19-18.pdf>