

**EDUCATION
LAW CENTER**

RACE & SEX BASED DISCRIMINATION IN K-12 PUBLIC SCHOOLS INCLUDING HOW TO FILE COMPLAINTS TO OCR & PHRC

EDUCATION LAW CENTER PA

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AGENDA

1. About ELC-Pa

- [Inclusive Schools, Honest Education Project](#)
- [Black Girls Education Justice Initiatives](#)

2. Legal Sources of Protection Against Sex and Race Based Discrimination

3. Examples and Common Issues in Schools

4. Enforcing Agencies ED OCR and PHRC; and How to File Complaints

5. Questions

WHO WE ARE

Education Law Center-PA (“ELC”) is a legal services nonprofit. Our mission is to ensure access to a quality public education for all children in Pennsylvania. We have offices in Philadelphia and Pittsburgh.

We pursue this mission by focusing on the most underserved students: children living in poverty, children of color, children with disabilities, children in the foster care and juvenile justice systems, children experiencing homelessness, English learners, LGBTQ and gender-nonconforming students - and many who are at the intersection of these identities.

Our priority areas include:

Equal Access to
Quality Schools

Adequate &
Equitable School
Funding

Dismantling the
School-to-Prison
Pipeline

PA'S UNCONSTITUTIONAL FUNDING SYSTEM CAUSES RACIALIZED EDUCATIONAL DEPRIVATIONS

- [William Penn v. PDE](#) : 4 month trial challenging state funding system that overly relies on local property taxes
- Districts receiving the most revenue are disproportionately white, while Districts receiving the least revenue are disproportionately Black and Latinx
 - 50% of PA's Black students attend schools in the [most underfunded school districts](#)
- February 2023 Court found the funding system disproportionately negatively impacts students in low-wealth districts
 - Gaps even wider for students who are Black, Latino, economically disadvantaged, English learners



ELC'S INCLUSIVE SCHOOLS & HONEST EDUCATION PROJECT

Schools should be welcoming & inclusive for all students.

Every child deserves an education that prepares them for success, provides a safe place for learning, and honors their history and experiences.

Welcoming and inclusive schools that provide accurate information to our children give them the freedom to pursue their dreams and prepare them to fully participate in our democracy and society.

See ELC's resources on Inclusive Schools [here](#)



ELC'S BLACK GIRLS EDUCATION JUSTICE INITIATIVES

- ELC is only Pennsylvania education law firm to have a specific focus on Black girls
- **Our Black Girls Education Justice Initiatives call for**
 - **Specific investments in time and resources** to address the educational barriers that arise because of the intersections of anti-Black racism, sexism, and other forces of oppression
 - **Developing and implementing unique legal strategies** to address these barriers
 - **The belief that Black girls must be fully and holistically supported, affirmed, celebrated and provided with every opportunity to thrive at school**

Our definition of this work was created by Staff Attorney, Paige Joki and former ELC intern and Meltzer Social Justice Fellow, Brandon Miller



[Sign up](#) to receiving our forthcoming groundbreaking report on Supportive Spaces, which centers the voices of experts-girls who currently attend Pennsylvania public schools- to call for needed change

FEDERAL, STATE & LOCAL LAWS PROTECT AGAINST SEX & RACIAL DISCRIMINATION

US Constitution,
Equal Protection

PA Constitution

Municipal Non-
Discrimination
Policies

Title IX (sex)
Title VI (race)

PHRA &
Regulation;
22 Pa Code 12.11

School District
Policies

TITLE IX OFFERS STRONG PROTECTION AGAINST SEX DISCRIMINATION IN SCHOOLS

Title IX of the Education Amendments of 1972 protects people from discrimination based on sex in education programs or activities that receive federal financial assistance.

Applies to public schools (including charters), local and state educational agencies, and other institutions that receive federal financial assistance from ED

- Sexual harassment
- Failure to provide equal athletic opportunity
- Sex based discrimination in courses, programs
- Treatment of pregnant or parenting students
- Treatment of LGBTQI students
- Discriminatory discipline
- Hostile environment

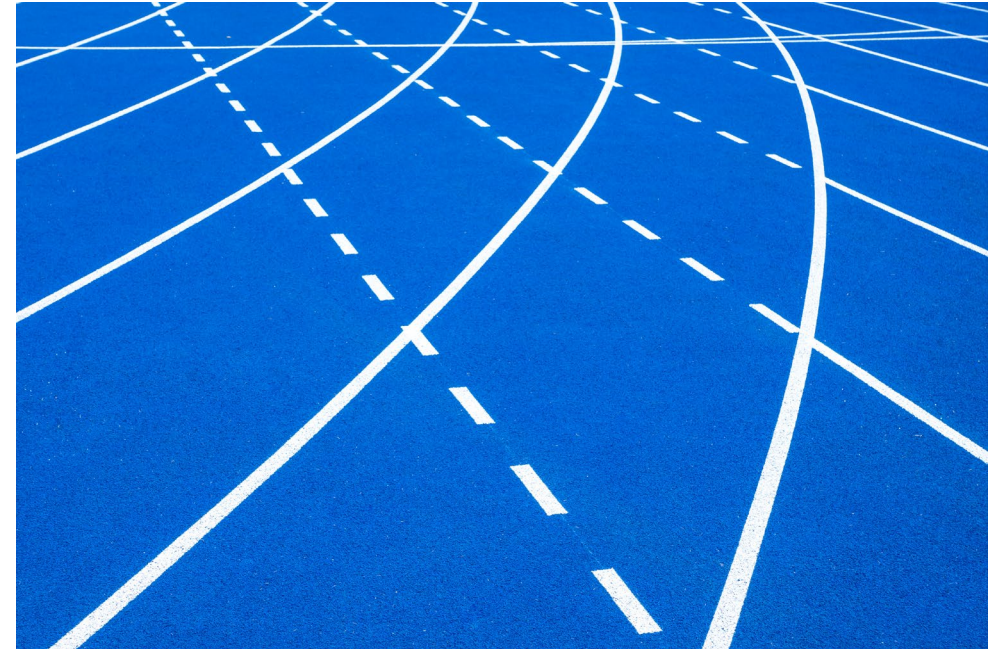


TITLE IX 2022 PROPOSED RULE-MAKING

2022 Proposed Rulemaking

- Sex based discrimination includes all forms of sex discrimination, including discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity
- Public comment period closed September 2022
- Waiting for ED to review all comments, prepare & publish final regulations

**ED forecasted separate proposed rulemaking re athletics*



PA HUMAN RELATIONS ACT: STATE ANTI-DISCRIMINATION LAW

PHRA prohibits discrimination in public K-12 schools (public accommodations) on the basis of:

- **Race** - includes hair texture and protective hairstyle e.g. braids, twists, and locs
- **Color**
- **Sex** - includes gender identity/expression and sexual orientation
- **Religion**
- **Ancestry**
- **National origin**
- **Handicap or disability**
 - record of a handicap or disability
 - relationship or association with an individual with a handicap or disability
 - use of a guide or support animal
 - and/or handling or training of support or guide animals.



PHRA has been expanded over the years to specifically name and capture more types of unlawful discriminatory conduct.

This law works to make sure “all people in Pennsylvania will live, work, and learn free from unlawful discrimination”

NEW PHRA REGULATION CLARIFIES EXPANSIVE PROTECTIONS

Updated Regulations

Dec 2022 IRRC adopted final regs:

- ✓ Discrimination based on sex includes sexual orientation and gender identity
- ✓ Discrimination based on race includes traits historically associated with race, including hair texture and protective hairstyles

Effective 60 days after publication of final form in Pennsylvania Bulletin, but these rules codify PHRC's prior interpretations and investigations will be consistent with these rules.



EXCLUSION OR DISCRIMINATION OF TRANSGENDER & NONBINARY STUDENTS VIOLATES TITLE IX & PHRA

BATHROOM /LOCKER ROOM

- Cannot discriminate against trans & NB students by requiring to use bathroom/locker room that does not match their gender identity
- May provide gender-neutral bathroom but cannot require
- 3d Cir: rejected arguments that a school policy protecting transgender students violated other students' rights (Boyertown)
- EDPa, MDPa, WDPa cases supporting trans students' access

SPORTS TEAM

- Multiple courts addressed this issue & held excluding trans students from sports violates the law
- US Dept of Educ reportedly working on sports- specific Title IX proposed regs

PRONOUN, NAME

- Intentionally & persistently misgendering constitutes sex-based harassment & creates hostile environment
- Public K12 teacher does not have 1st A right to discriminate in classroom
- Right to privacy; No requirement to notify parent under FERPA
- Cannot selectively deny trans students preferred name while agreeing to cisgender student requests

HOSTILE ENVIRONMENT

- Severe, pervasive, persistent -> interfere or limit ability to participate & benefit from school
- Discriminatory policies
- Unchecked harassment
- Prohibiting pride flags

SCHOOL EFFORTS TO AFFIRM AND SUPPORT STUDENTS ARE LIFE-SAVING

In a recent case, the Third Circuit expressly recognized 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.”



School-based supports save lives

- LGBTQ young people reported having access to at least 1 space that was affirming reduced their odds of attempting to die by suicide by 35%
- Using students' correct name and pronoun decreased thoughts of dying by suicide by 29% and attempts to die by suicide by 56%

TITLE VI PROTECTS AGAINST RACIAL DISCRIMINATION

Title VI of the Civil Rights Act of 1964 protects people from discrimination based on **race, color, national origin** in education programs or activities that receive federal financial assistance.

Applies to public schools (including charters/cyber charters), local and state educational agencies, and other institutions that receive federal financial assistance from ED

- Racial harassment
- School segregation
- Racial disparities in programs, courses, technology/materials, facilities etc.
- Discriminatory discipline
- Hostile environment



DIVERSITY & INCLUSION DOES NOT VIOLATE TITLE VI

Diversity, Equity and Inclusion trainings and activities are generally consistent with Title VI

Title VI does not, for example, categorically prohibit activities including:

- instruction or training on the impact of systemic racism;
- cultural competency or other nondiscrimination trainings;
- investigations of, and issuance of reports concerning the causes of, racial disparities within a school;
- use of specific words in school policies or activities, such as equity, discrimination, inclusion, diversity, systemic racism, or similar terms.



UNITED STATES DEPARTMENT OF EDUCATION
Office for Civil Rights

Fact Sheet: Diversity & Inclusion Activities Under Title VI

The Department of Education's (Department's) Office for Civil Rights (OCR) provides this fact sheet to assist school communities, including students, parents, families, educators, and elementary, secondary, and postsecondary educational institutions, in understanding that diversity, equity, and inclusion training and similar activities in most factual circumstances *are* consistent with Title VI of the Civil Rights Act of 1964 (Title VI).¹ Title VI prohibits discrimination based on race, color, or national origin in the programs or activities of all recipients of Federal financial assistance.² OCR enforces Title VI with respect to recipients of Federal financial assistance from the Department, including States, school districts, public schools, and public and private colleges.

A school or college violates Title VI if it intentionally treats persons differently or otherwise causes them harm *because of* their race, or if a school or college creates or is responsible for a racially hostile environment.³ A hostile environment exists where there is conduct (e.g., physical, verbal, graphic, or written) that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a school or college.⁴ Racial harassment of students is one form of conduct that could result in an unlawful hostile environment, which the school or college is obligated to address.

Activities intended, in whole or in part, to further objectives such as diversity, equity, accessibility, and inclusion are not generally or categorically prohibited under Title VI. Congress has found that it is in the best interest of the United States to support public schools "that are voluntarily seeking to foster meaningful interaction among students of different racial and ethnic backgrounds, beginning at the earliest stage of such students' education."⁵ Recently, President Biden has stated that "diversity, equity, inclusion, and accessibility benefit the Nation" and that "our diversity is one of our country's greatest strengths."⁶

SCHOOL RULES CAN PERPETUATE DISCRIMINATION ON THE BASIS OF RACE AND SEX

Black Students

Black children are the most overdisciplined group of students across all forms of exclusionary school discipline, according to CDRC data

There is no evidence that Black and Brown children break school rules at rates higher than their white peers, but they are **more likely to be punished *and* punished more harshly** for the identical behavior, beginning in pre-school

LGBTQI+ Students

LGBTQ are punished more often and more harshly than their peers for identical behaviors, despite following school rules at the same rates

Nationally, we know that students who identify as LGBTQ are suspended at twice the rate of peers who don't identify as LGBTQ

SCHOOL DRESS CODES MAY BE DISCRIMINATORY

The ways dress codes are enforced often push students out of school and uniquely harm Black girls and LGBTQI+ students, as documented in a 2022 GAO report

- A 2022 GAO Report: [K-12 Education Department of Education Should Provide Information on Equity and Safety in Dress Codes](#) found that Black girls and LGBTQI+ students were uniquely harmed by the ways dress codes are enforced



PA EXAMPLES OF DISCRIMINATORY GROOMING CODES

Hair Discrimination

- Hair styles that are “innovative” or “flamboyant”
- Hairstyles that are not “well-groomed” or “neat”
- Hair that is “colored or highlighted in any flamboyant colors”
- No “curly high high-tops”/“high top curly fades”

Discriminatory Dress Codes

- “Earrings are permitted for females only”
- Requiring “female” students to wear skirts and not pants



These discriminatory rules send the unmistakable message that students are unwelcome and unwanted at school

IT IS IMPORTANT TO DOCUMENT DISCRIMINATION

Be Specific

Consider using this checklist as a guide when you file a report

Describe who acted, who witnessed, who knew, what they did in response to knowing, and where it happened

If slurs were used, report the specific words used

Report every time the behavior happens

Reference the dates of prior reports and to whom reports were made

Keep Your Receipts

Emails, texts, screenshots, social media posts physical material, documentation of medical treatment/therapy, police reports, and images of any injuries

Do not delete anything PHRC, OCR, and attorneys may want to see your documentation

Record *Everything*

Keep a log of any contact with the school and any actions the school takes (who, when and how)

If the school responds by phone, follow up by email (every time)

SUPPORTING STUDENTS THROUGH THE COMPLAINT PROCESS

Identify Harassment as Illegal and Wrong

- Young people are inundated with harmful messages that harassment is “normal” and “expected”

Identify Folks Involved

- If a name is unknown, you can still report
- You can describe the person, share their grade, provide what class it happened in, and share the name of their teacher

Preserve Evidence

- Seek immediate medical care for all injuries and have the cause of the injuries documented
- Consult with an attorney about how to preserve text messages, emails, voice messages etc., so the student does not have to keep these things on their own accounts
- Help them take screen shots or photos with another phone if images are single-view

Safety Plan

- Ask the school for interim supports
- Add adult supervision to harassment “hot spots”
- Create separation between the student reporting behavior and the person who is behaving in discriminatory ways

Seek Support

- Offer a young person to affirming mental health supports
- Complaints can take a time to resolve, discuss supports that can be used in the interim

ENFORCING AGENCIES

ED OFFICE OF CIVIL RIGHTS (FEDERAL)

The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.

- Agency-initiated & Individual/org complaints
- Race, color, national origin, sex, disability, age; retaliation
- State education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive U.S. Department of Education funds

PA HUMAN RELATIONS COMMISSION (STATE)

The PHRC promotes equal opportunity for all and enforces Pennsylvania's civil rights laws that protect people from unlawful discrimination. As Pennsylvania's civil rights leader, it is our vision that all people in Pennsylvania will live, work, and learn free from unlawful discrimination.

- **Power to adopt, promulgate and rescind rules and regulations to effectuate the PHRA**
- Agency-initiated public forums, reports; Individual complaints
- Race, color, religious creed, ancestry, age, sex, national origin, disability, retaliation
- “Public accommodations” includes public schools

OFFICE OF CIVIL RIGHTS - FILING A COMPLAINT

THE BASICS

Discrimination on the basis of:

- ✓ race,
- ✓ color,
- ✓ national origin,
- ✓ sex (including SOGIE),
- ✓ disability,
- ✓ age;
- ✓ retaliation for filing a complaint

- Within 180 calendar days of the last act of discrimination; waiver for good cause
- Filed by anyone - need not be victim of alleged discrimination, may complain on behalf of other person/group (need to secure written consent)
- Attorney not required but permitted
- Format:
 - <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>
 - Electronic [complaint form](#)
 - Email fillable [PDF](#) to ocr@ed.gov
 - Mail, see <https://www2.ed.gov/about/offices/list/ocr/addresses.html>

OCR COMPLAINT REQUIREMENTS

You will be asked to provide:

- Your name, address, and email address;
- The name and address of the person discriminated against
- The name, address of school you're alleging discriminated
- What kind of discrimination (e.g. based on race, sex)
- **Description of conduct you believe is discriminatory**
 - BE SPECIFIC, PROVIDE DETAILS OF IMPACT
 - Dates, names of people involved, why you believe discrimination was because of race/sex/etc, witnesses present or those who received complaints
 - Documents that illustrate, explain: medical, communications
- Whether you tried to resolve by grievance procedure or filing with another agency
- **Signed Consent Form** if identity of the complainant is necessary to resolve the complaint
 - Choose do/not give consent to disclose your name or child's name
 - May be required, will be notified by OCR and given 20 days
 - Legal guardian must sign for minor
- What remedy are you seeking

OCR - PROCESSING COMPLAINTS

- ✓ **Initial Contact from OCR**
 - *No required timeline for determining whether to investigate
 - Regarding Signed Consent Form (respond within 20 days)
 - As they are reviewing the complaint
- ✓ **Evaluation of complaint re whether will open an investigation**
 - Dismissed: not within OCR legal authority; fails to state violation; not timely filed; resolved; signed consent required
 - Opening investigation
- ✓ **Opening Investigation - Letter of Notification to complainant and recipient**
- ✓ **Investigation**
 - Review documents from both parties; interviews, site visits
 - May be resolved/settled at any time if recipient/school expresses interest
- ✓ **Determination of noncompliance**
 - Voluntary resolution agreement with remedial actions & monitoring
 - If not voluntary agreement, OCR may: admin enforcement proceedings, refer to DOJ judicial
- ❖ **Alternatives - Voluntary Mediation for negotiated resolution**
 - Early Mediation
 - During Investigation
 - *Not signed or monitored by OCR but can refile if breached
- ❖ **Remedies - usually policy changes, compensatory; school can agree to other**

PHRC - FILING A COMPLAINT

THE BASICS

Discrimination on the basis of:

- ✓ race,
- ✓ color,
- ✓ sex (including SOGIE),
- ✓ religion,
- ✓ national origin,
- ✓ ancestry
- ✓ disability,
- ✓ retaliation for filing a complaint

- PHRA covers public accommodation including public schools (and also housing, employment)
- Within 180 calendar days of the last act of discrimination; unless legally justifiable reason
- Filed by one who is the victim of alleged discrimination
- Attorney not required but permitted
- Complaint Format:
https://www.phrc.pa.gov/AboutUs/Documents/ComplaintProcess_7-2017_Final.pdf
 - Call 717-787-4410 or visit regional office (Harrisburg, Philadelphia, Pittsburgh)
 - Complete fillable Education Intake [PDF](#) & email to PHRC@pa.gov or mail to regional office

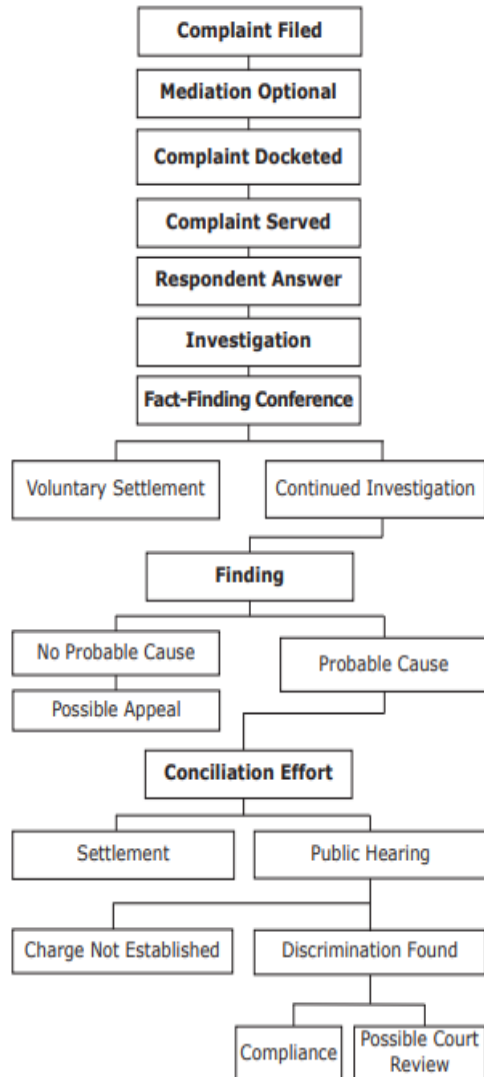
PHRC COMPLAINT REQUIREMENTS

You will be asked to provide:

- Your name and contact info
- The name and address of the person discriminated against
- The name, address of school you're alleging discriminated
- What kind of discrimination (e.g. based on race, sex)
- County where discrimination occurred
- Dates of discrimination, whether continuing
- Description of conduct you believe is discriminatory
 - BE SPECIFIC, PROVIDE DETAILS OF IMPACT
 - Dates, names of people involved, why you believe discrimination was because of race/sex/etc, witnesses present or those who received complaints
 - Documents that illustrate, explain: medical, communications
- [Remedy is not required on the complaint, but you could add]
- **Signed Verification** (false statements subject to penalties under law) if identity of the complainant is necessary to resolve the complaint

PHRC - PROCESSING COMPLAINTS

The Complaint Process



- Initial Contact from PHRC
 - Assigned to intake representative, assigned docket number
 - Mediation by PHRC may be offered (both parties must agree)
- Complaint is served on Respondent within 30 days of docketing
- Respondent has 30-60 days to answer after served; you are copied on response
- Investigation
 - Provide information, witness info, any relevant documents
 - Investigator will interview complainant, respondent, witnesses; review docs
 - Fact Finding Conference may be offered
- Results of Investigation
 - No probable cause - did not find sufficient evidence of discrimination. Notified by mail, informed of appeal rights.
 - Probable cause - sufficient evidence of discrimination.
- Conciliation/Settlement efforts - PHRC will ask respondent to stop illegal conduct; provide appropriate remedies (payment damages, policy changes)
- Public hearing
- Timeline - **If your complaint has not been dismissed or resolved in one year after it was filed, you have the right to file in court.**

KEY COMPLAINT TERMS

Complainant: person or group filing the complaint and reporting alleged discrimination

Respondent: entity accused of unlawfully discriminating (school/school district)

Investigation: process where the complaint of discrimination is looked into to determine whether discrimination occurred

Mediation: facilitated conversation where both sides try to reach a resolution (agreement)

Remedy: outcome to addresses discrimination

- Individual: specific to the student/group
- Systemic: broader changes e.g. policy changes and training

Hearing: a formal process

- attorneys can be present
- there are specific rules that must be followed
- neutral decision-maker
- an outcome is decided

ELC RESOURCES & CONTACT INFORMATION

Individual Requests For Assistance & Advice
Call: 215-238-6970 (Philadelphia) 412-258-2120 (Pittsburgh)
Email: intake@elc-pa.org

ELC's webpage about Inclusive Schools & Honest Education

<https://www.elc-pa.org/advocating-for-inclusive-schools-and-honest-education/>

- Factsheets about School Board Authority; Book Bans; LGBTQ Student Rights
 - ELC open letters to school boards about problem policies

Back to School Guide for 2022

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|--|---|--|
| <input type="checkbox"/> Affirming & Safe Schools | <input type="checkbox"/> Honest & Inclusive Schools | Homelessness |
| <input type="checkbox"/> Act 1: Accessing Supports | <input type="checkbox"/> Students with Disabilities | <input type="checkbox"/> English Learners & Immigrant Students |
| <input type="checkbox"/> Enrollment | <input type="checkbox"/> Early Childhood Education | <input type="checkbox"/> School Funding |
| <input type="checkbox"/> School Discipline | <input type="checkbox"/> KYR: Students in Care | <input type="checkbox"/> LGBTQ & Gender Nonconforming Students |
| <input type="checkbox"/> Attendance & Truancy | <input type="checkbox"/> Juvenile Justice Involvement | |
| <input type="checkbox"/> Bullying & Harassment | <input type="checkbox"/> Students Experiencing | |

PARTNERS

- ❖ Education Voters of Pennsylvania
- ❖ PA WINS (Pennsylvanians for Welcoming and Inclusive Schools)
 - Join the Facebook group here.
- ❖ Advocates for Inclusive Education (Central Bucks School District)
 - Search Facebook for other district-focused groups.
- ❖ Campaign for Our Shared Future