

KNOW YOUR RIGHTS



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A Guide for Trans and Gender Nonconforming Students



GLSEN[®]

KNOW YOUR RIGHTS: A GUIDE FOR TRANS AND GENDER NONCONFORMING STUDENTS

Whether you're a girl who "doesn't act like one," a boy who gets called a "sissy," or you just feel like you don't "match" your gender, you have the right to be safe and to be yourself at school. The American Civil Liberties Union (ACLU) and the Gay, Lesbian & Straight Education Network (GLSEN) have put together this simple guide to inform gender nonconforming and transgender students (and their families and friends) about their rights.



Your Right to Be Safe in School

Public schools are legally required to protect *all* students from harassment. Under the U.S. Constitution, these schools must address any harassment against you the same way they would address harassment against any other student. A federal law called Title IX bars public schools from ignoring harassment based on gender stereotyping. Many states also have laws that prohibit schools from discriminating based on gender identity and/or expression.

What this all means is that public schools can't ignore harassment or bullying based on appearance or behavior that doesn't "match" your gender: boys who wear makeup, girls who dress "like a boy," or students who are transgender. Nor can school officials tell you that you have to change who you are or that you brought the harassment on yourself by dressing or behaving "inappropriately."

If you're being harassed or bullied or see it happening to someone else, you should report it immediately to an administrator, counselor, or other school official. They have a legal responsibility to respond.

SETH'S STORY

Seth Walsh was a California student whose school ignored years of harassment based on his gender expression and sexual orientation—he came out as gay when he was in the 6th grade, and he wore girls' clothes and nail polish. The U.S. Department of Education and the U.S. Department of Justice investigated and found that his school had violated Title IX by failing to protect Seth from harassment. These federal agencies required the school to train staff and students about gender identity and sexual orientation harassment so that students like Seth would be protected in the future. Sadly, Seth died by suicide at 13. Schools can and should be held accountable before such tragedies happen.

Your Right to Be Yourself in School

Everyone has the right to be themselves in school—including you! Public schools are required to respect your gender identity and expression.

- **What you say:** Your speech is protected by the First Amendment to the U.S. Constitution, which gives all public school students the right to free speech and free expression. What this means is that you can talk and write about who you are if you choose to, and about issues relating to gender identity and expression. Of course, your right to free speech doesn't mean that you can say whatever you want at any time; your speech isn't protected if it disrupts class time, if it's intended to encourage other students to break school rules, if it's obscene, or if it's something untrue about someone that could damage their reputation. Your school can also put some limits on where and when certain kinds of speech are allowed, but generally, the limits must be reasonable and apply to everyone equally. And be aware that schools often use "disruption" as an excuse to illegally censor students, so if your school uses disruption as a reason for censoring you, don't just take their word for it—ask the ACLU!
- **What you wear:** Your gender expression is protected by the U.S. Constitution, Title IX, and any state or local law that prohibits discrimination based on gender identity. This right to free expression includes your choice of clothes. As long as the clothing you want to wear would be appropriate if worn by other students—a skirt, for example, or a tuxedo—then you should be able to wear that clothing even if it isn't stereotypically associated with your gender. School dress codes also have to treat all students equally.
- **Prom:** If you're a girl, can you go to prom with another girl? If you're a boy, can you run for Prom Queen? Yes! The First Amendment and your right to equal protection guarantee you the right to express yourself by bringing a same-sex date to the prom or homecoming. You are also protected in your choice

of prom date by any state or local law that prohibits discrimination based on sexual orientation and/or gender identity. Similar protections should apply if you are a boy and want to run for Prom Queen or if you're a girl and want to run for Prom King.

CONSTANCE'S STORY

In 2009, Constance McMillen's high school in Mississippi told her that she couldn't wear a tuxedo to her senior prom or bring her girlfriend as her date. With the help of the ACLU, Constance sued her school, and the court ruled that the school had violated Constance's constitutional rights.

Being Transgender or Transitioning Your Gender in School

Your right to be yourself in school includes the right to be transgender or to transition your gender in school. Unfortunately, there aren't yet clear rules in most places about how schools should accommodate students when they transition. There are often many obstacles to deal with, including restroom and locker room accessibility, your name and what pronouns to use when talking about you, and how official records classify you. We strongly suggest calling the ACLU or GLSEN to help you chart this course, and check out GLSEN's model school policy for trans and gender nonconforming students at glsen.org/modeltranspolicy.

- **How to talk with your school about being transgender or transitioning:** The more support you have in talking to your school about being transgender, the better. If you can, you should involve your parents or guardians and your doctor, and reach out to supportive teachers and other staff. You should explain to the school that it is legally obligated to create a safe learning environment for all students, including you, and that you have a constitutional right to express who you are in school. If your state or city has a law prohibiting

discrimination in schools based on gender identity, you should make sure your school knows about the law.

- **What should you ask your school to do?** Your school should assess your needs on an individualized basis, and you and your school should come up with a plan that works for you. In all cases, your school's goals should be to ensure your safety and support your emotional well-being so that you can learn and achieve your full potential. They can do this by taking action to prevent harassment or bullying, making sensible accommodations with respect to restrooms and lockers, and protecting your privacy by not giving information that may reveal that you are transgender to others unless you have given them your permission to do so.

Important Terms:

You can talk about yourself however you want to, but some terms are used more than others in describing people who don't conform to gender stereotypes. When you talk to school officials, you may want to use these terms:

- **Gender identity** *is a person's deeply held sense or psychological knowledge of being a particular gender or being neither gender, regardless of the sex assigned to them at birth.*
- **Transgender** *describes people whose gender identity is different from the sex assigned to them at birth, but it can also be used to describe a broad range of identities and experiences that fall outside of traditional notions of gender.*
- **Gender expression** *refers to the way a person shows gender, such as through clothing, hairstyles, or mannerisms.*
- **Gender nonconforming** *describes people whose gender expression differs from stereotypical expectations, such as "feminine" boys, "masculine"*

girls, and those who are perceived as androgynous. Other terms for this are “gender variant” or “gender queer.”

- **Transition** describes the long, often complex process of changing one’s birth-assigned sex to match his or her gender identity.

Important Laws:

There are federal and state laws that protect you from discrimination and harassment based on your gender identity and expression. This isn’t a complete list—there might be other laws out there that also protect you—but it’s a good place to start.

- **U.S. and State Constitutions:** The U.S. Constitution and most state constitutions guarantee you equal protection under the law, the right to freedom of speech and expression, and the right to privacy.
- **Title IX of the Civil Rights Act of 1964:** Title IX is a federal law that applies to all schools that receive federal funding; that’s all public schools and some private schools. Title IX prohibits discrimination, harassment, and bullying based on sex, which includes gender stereotyping.
- **State Laws:** Your state might have a law that prohibits discrimination, harassment, and/or bullying in school based on gender identity and/or expression. States that have such laws include Arkansas, California, Colorado, Connecticut, District of Columbia, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, and Washington.
- **Local Laws or School Policies:** If your state doesn’t ban discrimination, harassment, and/or bullying in school based on gender identity and/or expression, then your city or school might.

What to Do if You Have Problems in Your School

If you think that your school is discriminating against you or is ignoring harassment or bullying against you, here are some things you can do:

- To protect yourself and be in the best position to change your school's policies, be respectful and follow school rules.

- **Document Everything**

- Who was involved,
- What happened,
- Where it happened,
- When it happened,
- Who you reported it to,
- Witnesses, if there were any.

- **Report Everything to School Officials**

We know this can be frustrating, but it's important to report every incident of discrimination or harassment to school officials, like your principal or your district superintendent. In many states schools have to be officially put "on notice" about harassment in order for them to be held legally responsible for addressing it. Keep copies of everything that you give the school. Take notes about any conversations you have with school administrators and be sure to write down when you talked to administrators.

- **File a Complaint**

Your school is required to have a clear process for filing complaints of discrimination or harassment. Ask school administrators what the process is and follow it. The school must keep your identity confidential and cannot retaliate against you.

The U.S. Department of Education Office for Civil Rights also has a complaint process for discrimination and harassment. For an explanation about how to file a complaint, check out GLSEN's "Claim Your Rights" guide at glsen.org/claimyourrights.

Who to Contact for Help

Are you getting in trouble because your school is insisting that you “dress like a boy” or “dress like a girl”? Are you being bullied because your gender expression is different from what people expect? Do you want to come out as transgender or start transitioning in school? Do you want to know more about your rights as a trans or gender nonconforming student? Call us and let us know. We want to help!

ACLU LGBT Project

aclu.org/safeschools; 212-549-2673

The Project is a special division of the ACLU that leads the organization’s nationwide advocacy to secure the rights of lesbian, gay, bisexual and transgender people.

GLSEN

glsen.org; 212-727-0135

GLSEN, the Gay, Lesbian & Straight Education Network, is the leading national education organization focused on ensuring safe schools for all students.



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