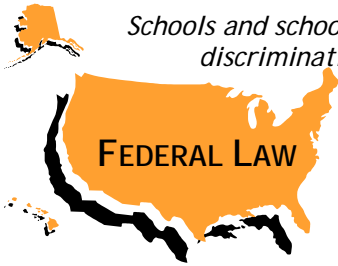


LGBTQ LEGAL ISSUES IN SCHOOLS: AN OVERVIEW

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



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

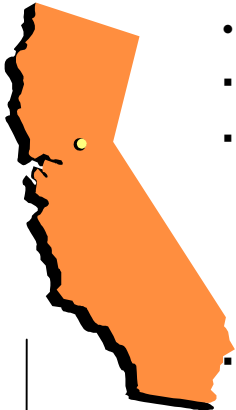
Sources of Federal protections for LGBTQ students, families, and staff:

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

Basic standards:

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

CALIFORNIA LAW



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

CITY / COUNTY LAW

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

DISTRICT POLICIES

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