

## WHAT EDUCATORS SHOULD KNOW ABOUT THE GENDER IDENTITY EXECUTIVE ORDER & LGBTQI+ RIGHTS

You may have seen news about an executive order issued by President Trump on his first day in office, which seeks to regulate people's gender and strip away protections against discrimination based on gender identity and expression. You should know that the President does not have the authority to rewrite federal civil rights laws through an executive order. Accordingly, the President's order **does not – and cannot – repeal existing laws that make it illegal to discriminate against transgender, intersex or nonbinary people.**

Title VII of the Civil Right Act, which prohibits employment discrimination based on sex, and the Supreme Court's decision in *Bostock v. Clayton County*, which affirmed that "based on sex" includes sexual orientation and gender identity, are still the law of the land. Title IX, a federal statute which prohibits sex-based discrimination in education, also remains the law of the land. Many courts have affirmed that the Supreme Court's *Bostock* ruling applies to Title IX. The executive order does not change these laws.

Instead, the executive order directs the actions of various government agencies, including the Department of Education, to do certain things through policy documents and regulations.

The Title IX regulations that are now in effect make clear that LGBTQI+ students are protected. Although the Biden Administration's Title IX regulations are currently vacated by a court order, the 2020 Trump Administration rules that are now in effect state:

These final regulations focus on prohibited conduct, irrespective of a person's sexual orientation or gender identity. . . . These final regulations include sexual harassment as unwelcome conduct on the basis of sex that a reasonable person would determine is so severe, pervasive, and objectively offensive that it denies a person equal educational access; this includes but is not limited to unwelcome conduct of a sexual nature and may consist of unwelcome conduct based on sex or sex stereotyping. The Department will not tolerate sexual harassment as defined in [the regulation] against any student, including LGBTQ students. 85 FR 30026, 30179 (2020).

If agencies act to roll back rights or propose new rules that are not consistent with existing law, these actions will be challenged in court.

In addition to federal laws, many states and localities have strong laws protecting LGBTQI+ people at work and in school. Many school districts have policies that prohibit bullying and harassment of LGBTQI+ students, and that affirmatively create welcoming, inclusive and safe environments for all students.

Below are know-your-rights checklists. For more information, please visit [NEA's LGBTQI+ guidance](#).

## Know Your Rights as an Employee

### **If you have been discriminated against or harassed based on your sexual orientation or gender identity:**

- ❑ Consider filing a complaint with the EEOC or your state enforcement agency, under Title VII and the Supreme Court's decision in *Bostock*. This must be done within 180 days (or 300 days, depending on the state) of the discrimination.
- ❑ Check your school district or higher education institution's Title IX policies, and consider filing a complaint through this process.
- ❑ Consider whether your state or local law provides better protections than federal law, such as longer time periods to file complaints or better enforcement prospects. This may be particularly important if the federal government is not acting to protect against SO/GI discrimination and where cases are not being vigorously pursued through the federal agency (EEOC).
  - State by state information on state and local laws can be found [here](#).
- ❑ Look at your collective bargaining agreement and/or school district/institution policies, especially any policies about reporting harassment. It may be faster and easier to get relief under your internal policies, and in some cases, it may be important to show that you complained to your employer.
- ❑ In all cases, keep detailed notes documenting the time, place and circumstances of any incidents of harassment and discrimination, including any witnesses. If you raise complaints with your administration, keep records (such as copies of emails) of these complaints.
- ❑ Contact your union representative or legal counsel with any questions about your rights.

## Know Your Students' Rights

### If you are concerned about discrimination or harassment of LGBTQI+ students:

- Look at your school/higher education institution's Title IX policy and any other policies about discrimination or harassment of students.
- Don't forget that there may be other constitutional or federal law protections in addition to Title IX. For example, student expressions of their gender identity or support for LGBTQ+ inclusivity may be protected speech under the First Amendment.
- Find out if your state or local municipality have laws or regulations prohibiting SO/GI discrimination or bullying in schools.
  - Find more information about state safe schools laws [here](#).
- Find out whether there are school district anti-bullying or nondiscrimination policies that may apply.
- If a student is being harassed or mistreated by other students, report it to your principal and the school's Title IX coordinator. Students and parents/guardians can also be advised of their rights to file a Title IX complaint for discrimination or harassment at school or school-related activities.
- Be alert to school policies or actions that may violate students' privacy and threaten students who do not conform to sex-based stereotypes. Policies and rhetoric that stoke fear about transgender people often also endanger cisgender individuals, especially women and girls, who may be subject to invasive scrutiny for not appearing feminine (or masculine) enough based on stereotypes.
- In all cases, keep detailed notes documenting the time, place and circumstances of any incidents of harassment and discrimination, including any witnesses. If your school/institution has anti-LGBTQI+ policies, note and keep records of the negative impact of these policies on students, for example, any observations of students missing more school, being excluded from activities, or having challenges academically. If you raise complaints with your administration, keep records (such as copies of emails) of these complaints.
- Contact your union representative or legal counsel with any questions about the law in your state and specific policies that may apply.

## Know Your Rights as an Advocate

### If you want to show your support for LGBTQI+ students:

- Know your rights and the limits on them. You have the strongest protections when you are speaking off school time as a private citizen on a matter of public concern, such as at a protest or a school board meeting. This is because while students have broad free speech rights at school, as a school employee, your speech rights are more limited. When you are performing your duties, school districts have the right to set policies around what is taught, what curriculum is used, and what is displayed.
- If you are unsure about whether something complies with school policy, it is best to seek clarification from an administrator. Union representatives may also be able to advise you about past interpretations of school policies.
- Consider advocating for school board policies that express support for LGBTQI+ students' rights and inclusion, and that seek to ensure a safe, affirming and welcoming environment for all students. Acting together with other educators or through your union can greatly strengthen your advocacy for inclusive classrooms, school practices and curriculum.
- Consider posting LGBTQI+ Pride, Safe Space stickers, or other markers of inclusion. If you have not seen others posting similar items in their classroom, make sure to tell your principal in advance so that you can address any concerns they may have. If your principal or another school administrator prohibits you from posting such inclusive posters, consult your union representative about how best to proceed.
- If you are instructed to remove materials from classrooms or libraries, you should comply with this directive and immediately notify your union and local or state legal counsel to discuss options.
- Be aware that Title VII, Title IX and the First Amendment prohibit retaliation for expressing support of students; complaining about discriminatory or harassing conduct toward students, yourself or other employees; or for filing a complaint with a civil rights agency. If you believe you have been retaliated against for speaking out about your rights or those of your students, contact your union or legal counsel and consider filing a complaint with a local, state or federal civil rights agency.