

“The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” - *Shelton v. Tucker*, [364 U.S. 479](#), 487 (1960).

“Rightly called the ‘cradle of our democracy,’ our schools bear the awesome responsibility of instilling and fostering early in our nation's youth the basic values which will guide them throughout their lives.” - *James v. Board of Ed.*, *461 F.2d 566*, 566 (2d Cir. 1972)

WHO WE ARE

By using the law to sow fear and confusion instead of compassion and protection, a small minority is attempting to erase decades of progress made by people of color, disabled, and queer folks in achieving civil liberties, public leadership roles, legal equality, and proud visibility. It is because of public schools’ power to instill “basic values that will guide our nations’ youth throughout their lives,” that the right wing has targeted our schools. As individuals who celebrate our nation's progress towards the promises of our constitution, we are committed to creating schools and communities where all people are safe, welcomed, and accepted. This guide offers strategies to support queer students, educators and allies that take advantage of the vagueness and exemptions in state laws attempting to legalize discrimination, circumvent the protections of federal law, and nullify the support of the broader community. Our goals are to maintain inclusivity in public schools, foster supportive classrooms, uphold affirming campuses, and guarantee diverse representation in books and curriculum.

WHY

This is a confusing and scary time for queer students, educators, and allies, as they attempt to navigate confusing and discriminatory state and local so-called Parents’ Bill of Rights laws. These laws are actively enabling bans on diversity and inclusion policies, critical race theory education, queer literature, gender affirming bathrooms, and transgender sports participation in public schools across the country. We hope these guides will empower educators to follow Federal Title IX law, while adhering to their ethical obligations to protect students, as well as their moral commitment to inclusive communities.

HOW TO USE

Under each overview of restrictions that have been passed or proposed, we offer strategies for resistance. None of the current restrictions impose individual civil or criminal liability on educators. Instead, they are rooted in fear and have little to no enforcement mechanisms. Most, in fact, conflict with federal law and teachers' ethics guidelines to protect their students. Schools and districts can be subject to civil liability for noncompliance, but teachers will, at worst, face disciplinary action from their administrators. The QR code links to an overview of the restrictions and resources and strategies for resistance. Later in the fall we will update this link to provide a detailed ‘Know Your Risk Manual’ explaining the current landscape and legal basis for protecting teacher action. In the manual we included personal stories from educators living in states with some of the worst restrictions to provide guidance and inspiration for all educators as they perform their duties in this precarious time.

This guide is not legal advice. If you need legal advice, please contact a lawyer. Email queercaucus@nlg.org to be connected with a nationwide network of queer, progressive lawyers.

In love and solidarity,

Erasure Resistance Project of the NLG Queer Caucus

A project supported in part by a grant from the National Lawyers Guild Foundation at www.nlg.org/nlgf

RESTRICTION: Restricting access to books that include LGBTQ+ people, themes or topics

Resistance Strategies:

- 1) Maintain an age-appropriate classroom library with diverse characters and families; books that include gay and trans-identifying characters do not violate any laws. *Characters* are not *instruction*.
- 2) Encourage students to do book reports on topics that you can't teach - student speech is not censored and should be encouraged.
- 3) Support free lending libraries built near schools just off campus and encourage student led clubs and community groups to keep them active.
- 4) Share other avenues for obtaining access to books that include banned books. Many libraries are now offering teens from states with book bans free digital library accounts:
<https://www.bklynlibrary.org/books-unbanned> - email booksunbanned@bklynlibrary.org to get an account; <https://www.bpl.org/books-unbanned/>; <https://lacountylibrary.org/books-unbanned/>;
<https://www.sandiego.gov/public-library/booksunbanned>;
<https://www.spl.org/programs-and-services/teens/books-unbanned>.

RESTRICTION: Censoring discussion and visual support of LGBTQ people/issues or Critical Race Theory from curricula, classroom discussions, school speakers or events, and more

Resistance Strategies:

- 1) Put pride stickers and other supportive stickers on your water bottle, coffee mug and desk pencil holder. Wear pride symbols and pronoun pins as jewelry or lapel pins. Schools can prohibit posting signs or symbols, including flags, on school property but not on your person or personal property.
- 2) Most states have exemptions from this censorship for privately sponsored events that don't use state funds. Inform supportive parents and community members so that they hold affirming and inclusive clubs, community events, and educational symposiums off campus at spaces that are easy for students to access. Parks, coffee shops, recreation centers and inclusive churches are ideal spaces for such gatherings. Keep the conversations going within the community and build broad networks of support to influence future School Board Elections, which can in turn change the law(s).
- 3) In lower schools and elementary classrooms, focus on broader themes that include LGBTQ+ members without explicitly discussing sexuality or gender- i.e. units on family can and should include all types of families that exist in your classroom or community. *Representation* of different types of families is not *instruction*. Encourage students to openly discuss their families and invite pictures of students with their families into the classroom. Student speech is not limited by any laws and students can and should discuss their families openly. Science lessons offer excellent opportunities to discuss gender diversity and show how common it is in the natural world. Snails, clownfish, bearded dragons, Chimera butterflies, fungi, pine trees, and squash plants all exhibit characteristics that can be understood as non-binary or transgender. Use these lessons to normalize and naturalize gender diversity.
- 4) "Lunch bunch" and support groups formed by Guidance Counselors allow students to have conversations on a wide range of topics with supportive adults outside of instructional classroom time. Ask your Guidance Counselor to authorize these groups to support queer and questioning students and assist in creating a space for them to discuss important topics outside of the classroom.

RESTRICTION: Banning Gay Straight Alliances (GSAs) and similar clubs that provide a supportive space for LGBTQ students, or require parental consent to join

Resistance Strategies:

- 1) Under the federal Equal Access Act, students in secondary schools have the right to form GSAs (Gay-Straight Alliances or Gender-Sexuality Alliances), so long as the school authorizes any other extracurricular student groups, and the group is student-initiated.
<https://www.nea.org/resource-library/what-educators-should-know-about-lgbtq-rights>.
- 2) Guidance Counselors can create support groups and “lunch bunch” for students who need support for various reasons, such as anxiety and support for learning differences. Use professional judgment in grouping kids who might be supportive of each other for these reasons and others, like being queer. Have the groups’ topics be safe ones like leadership development, anxiety support, and protection from bullying. Professional ethics can guide discussions and protect the privacy of the students’ voices in the group. In most states with so-called Parents’ Bill of Rights legislation, parents must be notified if students are invited to participate in these types of groups, but the conversations within groups with more than one child should be kept confidential. Support groups focusing on the holistic needs of queer students can open doors for safe discussions on topics that are censored in classrooms and provide invaluable skills for them to develop as thriving humans. Queer teachers who might otherwise be prohibited from discussing certain topics with students can serve as role models in these spaces where the focus is not on instruction or teaching, but on holistic social support.
- 3) In schools that permit campus volunteers, queer parents or community members (after going through required background checks and volunteer applications,) can be invited as volunteers to run clubs that are sponsored and funded by the parent or a community group rather than the school. While some states prohibit third parties from providing instruction on gender identity or sexual orientation to students in elementary school, inclusion is not instruction. Having access to out queer adults who are living thriving lives helps queer kids with limited access to role models. These clubs can be safe spaces with the focus being on things like playing games, doing crafts, healthy cooking and safe community.

RESTRICTIONS: Prohibiting or restricting the use of accurate pronouns and chosen names for students; Requiring teachers and school administrators to notify a parent if their child comes out as gay or transgender and/or if the child expresses thoughts, feelings, or signs related to their sexual orientation or gender identity

Resistance Strategies:

- 1) To our knowledge, all states that have the above restrictions in place have an exemption permitting teachers to not ‘force-out’ students to their parents if the safety of the student is in question. Never assume a student will be safe if they are outed to their parents; it is reasonable to always assume the opposite, especially in hostile states with the restrictions. Use the name and pronoun your student feels safest and most comfortable using and have a discussion with them about their parent’s knowledge of their use of a different name or pronouns. You could say something like, “The law requires me to encourage you to discuss these things with your parents; the law also requires me to keep you safe and protect you from neglect. If you feel you will be unsafe or neglected if your parents know you use a different name and pronouns at school (or that you are queer), I will believe you. I will not tell your parents in order to protect you from neglect.” Document this conversation with the school Guidance Counselor and in your own private student records.
- 2) Advocate for policies at your school that remove biological sex from student records and class rolls. Students can then self-identify their gender and there will be no conflicts with the records.
- 3) Teachers can object to these restrictions from a stance of following federal civil rights law, stating ethics guidelines to protect child safety, and adhering to their own moral sense of basic human dignity and kindness. **Federal Title IX law considers persistent misgendering as harmful sex discrimination;** use the pronouns your students request knowing Federal Law is on your side.

- 4) Adopt a policy of not using pronouns in your classroom, or *only* using gender neutral pronouns.

RESTRICTIONS: Prohibiting transgender students from using bathrooms and locker rooms that match their gender identity and/or playing on sports teams that match their gender identity

Resistance Strategies:

- 1) Advocate to remove gender markers from class rosters and public student records.
- 2) No state imposes criminal or civil penalties for students, teachers or workers who use the bathroom that aligns with their gender identity. Florida does allow school discipline for people who refuse to leave a bathroom that does not align with their sex assigned at birth after being told to do so. **Federal Title IX law requires schools to allow students to use bathrooms that match their gender identity.** Advocate within your individual school to follow the federal guidelines, even if it conflicts with state law. The alternative opens the door to truly invasive and harmful possibilities, like genital checks and policing private spaces.
- 3) Support the conversion of at least one bathroom at the school with fully private stalls to a bathroom for everyone. This type of space can support transgender students, students with anxiety around toileting in public, and students with disabilities. This space should be open to all students and not just transgender students. Forcing transgender students to use separate gender-neutral bathrooms outs them to their peers, violates their right to privacy and discriminates against them on the basis of their sex.
- 4) Federal law does not explicitly protect the right of students to play on gender-affirming sports teams, but courts have long protected this access. Initiate co-ed sports teams to support transgender students. Provide them with a space to play sports and challenge the false narratives around the dangers of mixed-sex sporting. Advocate at the local level to your individual school and school board for the adoption of gender inclusive sports policies that comply with case law.

RESTRICTION: Prohibit Educators from using Pronouns and Titles that match their gender identity and/or from posting pictures of their own family

Resistance Strategies:

- 1) **Federal Civil Rights law protects teachers' rights to use the pronouns and titles that align with their gender identity.** Teachers can refer to themselves as Professor rather than Mr. and Mrs., Miss, or Ms., thus normalizing gender neutral terms in the classroom. If you are prevented from using the pronouns or titles of your choice, seek legal support through the NEA or the NLG Queer Caucus, whose contact information is above.
- 2) Wear pronoun pins regardless of your gender identity. Cisgender allies naming their pronouns makes it safer for all people to use the pronouns of their choice.
- 3) If family photos are allowed in your school, teachers may also post pictures of their families regardless of the gender makeup of their family.
- 4) Know that long-standing federal law is on your side if you are pressured to conform to gender stereotypes that do not fit your gender identity. You can and should refuse.

PUT IT IN WRITING

If an administrator asks you to stop using any of these strategies, or threatens you with disciplinary action, ask for them to make the request to you in writing. Specifically, ask them to document which policy (or policies) you are violating, and to put in writing what you have done wrong. If they refuse to do this, you are under no obligation to comply with their request. If they provide a written response, save it and consider making a Title IX complaint.

You can also protect yourself by documenting if you refuse to comply with a verbal request to engage in discriminatory action against a student, or to put a student at risk of harm by complying with forced outing procedures. Self-document that you have taken these actions to comply with Federal Title IX law, your code of ethics as an educator, and your personal and spiritual beliefs if they require such action.

NOTE:

In Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming and in any school where a child of a member of the Moms for Liberty attends, the Department of Education is currently blocked by lower federal courts from enforcing the Title IX Final Rule that includes gender identity and sexual orientation as sex discrimination. This litigation is ongoing based on the US Supreme Court decision in *Bostock v. Clayton County*, 590 U.S. 644 (2020) that included sexual orientation and gender identity in sex discrimination. This means that as of September 1, 2024 the Federal Department of Education cannot intervene to protect students or educators for these types of Title IX violations in these states. This will hopefully change when the cases are fully litigated. Even if you live in one of these states, you can still make Title IX complaints to your local Title IX coordinator for sex based discrimination, including discrimination for gender identity and sexual orientation. Documenting this type of discrimination is important and shows why these groups need protection. We will update the online version of this guide as these cases progress.

“Beloved community is formed not by the eradication of difference but by its affirmation, by each of us claiming the identities and cultural legacies that shape who we are and how we live in the world.”

— bell hooks, *Killing Rage: Ending Racism*

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Additional support and informational resources:

Support for Students

GLSEN <https://www.glsen.org/>

National Women's Law Center <https://nwlc.org/resource/lgbtq-student-and-educator-rights-resources/>

Southern Poverty Law Center <https://www.splcenter.org/know-your-rights-students-lgbtq-rights-school>

Trevor Project <https://www.thetrevorproject.org/>

Resources for Educators

ASCD <https://ascd.org/blogs/supporting-lgbtq-students-in-the-dont-say-gay-era>

Campaign for Southern Equality <https://southernequality.org/sb49/>

GLSEN <https://www.glsen.org/activity/lgbtq-educator-rights>

Human Rights Campaign <https://www.hrc.org/resources/schools>

Lambda Legal <https://legacy.lambdalegal.org/know-your-rights/article/youth-for-educators>

National Center for Transgender Equality <https://transequality.org/issues/youth-families>

National Education Association:

- <https://www.nea.org/advocating-for-change/racial-social-justice/tools-justice/lgbtq-support-protection>
- <https://www.nea.org/professional-excellence/professional-learning/resources/supporting-transgender-non-binary-and-gender-non-conforming-students>
- <https://www.nea.org/resource-library/lgbtq-rights-partner-resources>
- <https://www.nea.org/resource-library/nea-lgbtq-resources>

National Women's Law Center <https://nwlc.org/resource/lgbtq-student-and-educator-rights-resources/>

Out & Equal <https://outandequal.org/>

PFLAG <https://pflag.org/all-together-now-toolkit/>

Pride at Work <https://www.prideatwork.org/>

Inclusive Classroom Resources

Abolitionist Teaching Network <https://abolitionistteachingnetwork.org/resources-for-agitators>

Del Sol Coaching & Consulting <https://www.delsolcoaching.com/digitaldownloads>

Gender Inclusive Schools <https://www.genderinclusiveschools.org/store>

Legal Landscape and Updates

American Civil Liberties Union <https://www.aclu.org/legislative-attacks-on-lgbtq-rights-2024>

Movement Advancement Project <https://www.lgbtmap.org/file/2022-spotlight-school-bills-report.pdf>

PEN America <https://pen.org/report/americas-censored-classrooms-2023/>

Williams Institute at UCLA <https://williamsinstitute.law.ucla.edu/>

State specific resources

Basic Rights Oregon <https://www.basicrights.org/>

California Teachers Association <https://www.cta.org/taking-action-for-the-lgbtq-community>

Equal Rights Washington <https://www.equalrightswashington.org/>

Equality Arizona <https://www.equalityarizona.org/education>

Equality California <https://www.eqca.org/>

Equality Connecticut <https://eqct.org/>

Equality Florida <https://www.eqfl.org/>

Equality Hawaii <https://www.equalityhi.org/>

Equality Illinois <https://www.equalityillinois.us/about-us/>

Equality Kansas <https://eqks.org/>

Equality Michigan <https://equalitymi.org/about/>

Equality North Carolina <https://equalitync.org/>

Equality Ohio <https://equalityohio.org/>

Equality Texas <https://www.equalitytexas.org/>

Equality Utah <https://www.equalityutah.org/>

Fair Wisconsin <https://fairwisconsin.com/>

Fairness West Virginia <https://fairnesswv.org/>

Garden State Equality <https://www.gardenstateequality.org/>

Iowa Safe Schools <https://iowasafeschools.org/>

Kentucky Equality Federation <https://kentuckyequality.org/>

MassEquality <https://massequality.org/>

One Iowa <https://oneiowa.org/>

OutFront Minnesota <https://www.outfront.org/>

OutNebraska <https://outnebraska.org/>

Tennessee Equality Project <https://www.tnep.org/>

Transgender Education Network of Texas <https://www.transtexas.org/>

Wyoming Equality <https://www.wyomingequality.org/>