

STUDENTS HAVE THE RIGHT TO A SAFE SCHOOL

Numerous laws provide that students have the right to be free from discrimination or harassment based on their actual or perceived race, national origin, gender (including gender identity and sexual orientation), religion, or disability.

The U.S. Constitution, as well as Title IV and Title VI of the Civil Rights Act of 1964 prohibit discrimination on the basis of race, color, sex, national origin, and religion; Title IX of the Education Amendments of 1972 prohibits sex discrimination; the Rehabilitation Act of 1973 and the Americans with Disabilities Act prohibit discrimination on the basis of disability. And numerous state and local laws provide similar protections.

The law requires schools to take steps to ensure that students have a safe school environment. Schools fail to meet this legal obligation when students are subject to chants, graffiti, taunts, threats, assaults, intimidation, and epithets based on their actual or perceived race, national origin, gender, gender identity, sexual orientation, religion, or disability. Anyone, including educators, can and should report harassing conduct to a school or other governmental officials.

When a school receives a complaint they must investigate and resolve the situation by:

- ★ Immediately initiating a thorough and impartial investigation.
- ★ Interviewing targeted students, offending individuals, and witnesses, and maintaining written documentation of investigation.
- ★ Communicating with targeted students regarding steps taken to end harassment and following up with those students to ensure that the harassment has ceased.

When an investigation reveals that harassment has occurred, a school must take steps reasonably calculated to:

- ★ End the harassment,
- ★ Eliminate any hostile environment,
- ★ Prevent harassment from recurring, and
- ★ Prevent retaliation against the targeted student or anyone who complained.

The appropriate remedy for harassment will depend on the situation. Resolutions often include:

- ★ Training on identifying and addressing harassment.
- ★ Providing additional supervision in areas where harassment occurs.
- ★ Determining consequences and particular training needed for harassers, including whether discipline is appropriate.
- ★ Limiting interactions between harassers and targets.
- ★ Providing harassed student with an additional opportunity to obtain a benefit that was denied (e.g., retaking a test/class).
- ★ Providing services to a student who was denied a benefit (e.g., academic support services).
- ★ Developing, revising, and publicizing:
 - ✓ Policy prohibiting harassment and discrimination.
 - ✓ Grievance procedures for students to file harassment complaints.
 - ✓ Contact information for Title IX/Section 504/Title VI coordinators.

Resources to assist with resolving harassment issues are currently available through the U.S. Department of Education's Office of Civil Rights Equity Assistance Centers (www2.ed.gov/programs/equitycenters/contacts.html) and the U.S. Department of Justice's Community Relations Service.

If harassment persists, anyone, including educators, can file a complaint with the school district and with the U.S. Department of Education's Office of Civil Rights and/or the U.S. Department of Justice's Civil Rights Division. The person filing the complaint need not be a victim of the harassment but may complain on behalf of another person or group. Public schools are barred from retaliating against any person who has made a complaint, testified, assisted or participated in an investigation. Harassed individuals may also file a lawsuit themselves to counter such discrimination and harassment.

U.S. Department of Justice

Civil Rights Division
Educational Opportunities Section
877.292.3804
Email: education@usdoj.gov
www.justice.gov/crt/edo

U.S. Department of Education

Office for Civil Rights
Educational Opportunities Section
800.421.3481
Email: ocr@ed.gov
www.ed.gov/ocr

www.ed.gov/about/offices/list/ocr/complaintintro.html (Online complaint)

School intimidation, harassment, and violence may also be punishable as a crime. Federal and state hate crime laws prohibit intimidating, harassing, or assaulting individuals on the basis of race, color, religion or national origin at school, and prohibit violent acts motivated by someone's actual or perceived race, color, national origin, gender, sexual orientation, or gender identity everywhere. Online or social media threats to inflict physical injury that are motivated by a person's race, color, religion, national origin, sex, sexual orientation, or gender identity may also be prosecutable under generally applicable federal laws preventing interstate communication of threats. Federal hate crimes should be reported to the FBI.

www.fbi.gov/contact-us; <https://www.fbi.gov/investigate/civil-rights/hate-crimes>.

¹See 18 U.S.C. § 245(b)(2); 18 U.S.C. § 249; see also 28 U.S.C. § 994 note Sec. 280003 (hate motivated crimes subject to heightened penalties). Forty-five states and the District of Columbia criminalize various types of bias-motivated violence or intimidation (except Arkansas, Georgia, Indiana, South Carolina, and Wyoming). Thirty-two states make violence or intimidation on the basis of disability a crime; thirty-one make violence or intimidation on the basis of sexual orientation a crime; twenty-eight cover gender; and seventeen cover transgender/gender-identity. See, e.g., Anti-Defamation League State Hate Crime Statutory Provisions (2011), www.adl.org/assets/pdf/combating-hate/state_hate_crime_laws.pdf.