

Back to School: Know Your Rights for LGBTQ+ Families

The purpose of this document is to provide you with everything you need to know to ensure your LGBTQ+ child has an affirming back-to-school experience and a positive start to the 2023-2024 school year! Learn how to advocate for the consistent use of your child's affirmed name and pronouns; how to advocate for your child to have access to bathrooms that feel safe and affirming; how to ensure your child has access to clubs, activities, and support systems; and more!

The Rights of LGBTQ+ Students

- The **right** to a safe & affirming learning environment
- The **right** to use, and be consistently addressed with, affirmed name and pronouns
- The **right** to freedom of speech & expression
- The **right** to access sex-segregated spaces, including bathrooms and locker rooms, that feel safe and affirming for the student
- The **right** to privacy, including informational privacy and bodily autonomy
- The **right** to a school environment free from discrimination, harassment, & bullying

(A) HOW TO PREPARE FOR THE FIRST DAY OF SCHOOL

STEP 1: Prior to August 1st, set up a meeting with your child's school principal and/or other leadership to discuss a plan to ensure a successful (and affirming) start to the 2023-24 school year. If the meeting request is made over the phone, make sure to also confirm it in writing.

STEP 2: Prepare ahead of time for what to request that the school do in order to create a safe and affirming environment for your child, including knowing what legal rights and protections support your requests. Ensure that any necessary information is conveyed to the individuals who will be in contact with your child.

STEP 3: After the meeting, follow up with the school/district in writing, providing a summary of what was discussed and agreed to (or not agreed to). Put *everything in writing* in case issues arise in the future.

STEP 4: If the school refuses to comply with the reasonable requests made (i.e. refuses to ensure consistent use of affirmed name/pronouns, denies access to a bathroom that feels safe for your child, fails to treat your child in accordance with their gender identity at school), reach out to Southern Legal Counsel for assistance and/or potential legal representation, if needed.

(B) KNOW YOUR RIGHTS IN THE CURRENT LEGAL LANDSCAPE

Ensuring Your Child Has Access to a Non-Discriminatory, Safe & Affirming School Environment

- **Legal Protections:** **Title IX** prohibits discrimination "on the basis of sex" in "any education program or activity" that receives federal funding (20 U.S.C Section 1681(a)), which includes discrimination against LGBTQ+ students, who must be provided "equal access to educational programs and activities." **The Equal Protection Clause** of the U.S. Constitution laws imposes a duty on schools to treat LGBTQ+ students equally, and school policies that classify students on the basis of sex are presumptively unconstitutional. **The First Amendment of the U.S. Constitution** protects students' fundamental rights to engage in constitutionally protected speech related to LGBTQ+ issues, and their right to receive information and ideas related to sexual orientation and gender identity. It also guarantees freedom of expression, including expressing their sexual orientation or gender identity. **Under Florida's "Parents' Bill of Rights"** (Fla. Stat. Chapter 1014), parents of LGBTQ+ students have the fundamental right to "direct the upbringing, education, and care of their minor children," and to do so free from "obstruction or interference" from the state, school district, or school. **The Equal Access Act** requires schools/districts to allow GSAs/LGBTQ+ student groups if the school permits any other noncurricular student group.
- **Obstacles:** **HB 1557 and HB 1069**, known as the "**Don't Say LGBTQ**" laws, along with the related rules promulgated by FDOE, were designed to remove LGBTQ+ discussions, curriculum, books, teachers, and more from Florida schools, but these state laws use ambiguous, vague, and undefined terms and they violate federal law. Further, the State itself has made clear in legal pleadings defending against our challenges to the "Don't Say LGBTQ" law that there is no impact on anything other than direct classroom "instruction," so these laws cannot be weaponized to prohibit LGBTQ+ discussions, safe-space stickers, inclusive books, participation in GSAs/student LGBTQ clubs, nor intervention in anti-LGBTQ+ bullying.

Ensuring Consistent Use of Your Child's Affirmed Name and Pronouns at School

- **Legal Protections:** □ **The Family Education Rights and Privacy Act (FERPA)** protects the personal information of students in their school records, prohibits the sharing of information without permission of the students or their parents, and gives parents the right to request that the school amend their child's legal name and/or sex assigned at birth on their education records in order to ensure that the records do not violate their child's privacy rights (i.e. "outing" the student without consent). (See 20 U.S.C. § 1232g; 34 C.F.R. §§ 99.00 et seq.). In addition to FERPA, both **Title IX** and **the Equal Protection Clause** provide legal protections as well.
- **Obstacles:** **HB 1069** (a.k.a. the "**Don't Say LGBTQ+ Expansion**" bill), was recently enacted, and allows teachers, staff, and students to disrespect a person's pronouns if the pronouns do not correspond to their sex assigned at birth. This just means that schools **cannot require** teachers and students to use and respect the pronouns that align with your child's gender identity, but it **does not prohibit them** from using your child's affirmed pronouns. Federal law requires them to do so, and you can file a Title IX or FERPA Complaint if necessary (see action steps below).
- **Potential Support from FDOE Rule:** The Florida Dep't of Education is promulgating a rule (**6A-1.0955, "Education Records"**) that *requires schools* to adopt provisions and forms to allow parents to specify "the use of any deviation from their child's legal name in school" – the purpose is to "protect parental rights," and this *includes* the rights of parents of transgender youth to ensure their child's affirmed name is used and respected consistently at school.

Ensuring Your Child Has Access to Bathrooms and Sex-Segregated Spaces that Feel Safe & Affirming

- **Legal Protections:** □ **Title IX** and the **Equal Protection Clause** prohibit discrimination on the basis of sex in schools, which includes discrimination based on sexual orientation or gender identity. Nearly every federal court to weigh in on the issue has concluded that excluding transgender youth from the bathroom that aligns with their gender identity violates Title IX and the Equal Protection Clause. The □ **U.S. Department of Education's Office of Civil Rights** is responsible for protecting the rights of all students, including through enforcement of Title IX against schools that are engaging in impermissible discrimination against LGBTQ+ students.
- **Obstacles:** Recently enacted **HB 1521 (the "Bathroom Ban")** *allows* for discriminatory measures related to use of bathrooms and changing rooms, but it **does not require that schools discriminate** when it comes to sex-segregated spaces. Rather, the law requires that a school have **either** (1) a restroom and changing room designated for exclusive use by people whose sex assigned at birth was female, and a restroom and changing room designed for exclusive use by people whose sex assigned at birth was male; **or** (2) a unisex bathroom and changing room (i.e. single-user space with walls and a door). School must also establish a disciplinary procedure within its code of conduct for if a transgender student refuses to leave a bathroom not aligned with their sex assigned at birth after being asked to do so, but they do not have to submit documentation regarding compliance until April 1, 2024, and the Attorney General cannot enforce these requirements against school districts until July 1, 2024.

(C) ACTION ITEMS/STEPS IF YOU RECEIVE PUSH BACK FROM THE SCHOOL/DISTRICT

- **ACTION ITEM 1:** Ask your child's school if they will ensure the consistent use of your child's affirmed name and pronouns,¹ access to a bathroom that feels safe and affirming, and anything else your child needs to be able to meaningfully access the school environment.
- **ACTION ITEM 2:** If they do not agree to requests made in Step 1, then submit a letter to your child's school officially requesting the consistent use of your child's affirmed name and pronouns in all aspects of their education, asserting your rights under FERPA and the Florida Parents' Bill of Rights (sample letter can be found [here](#)).
- **ACTION ITEM 3:** If they do not comply with the requests made in the official letter in Step 2, you can file a complaint with your school district's Title IX Coordinator. Every school/district must have: a Title IX Coordinator listed on their website (responsible for investigating complaints of sex discrimination); a grievance procedure for students to file complaints (and most have a formal complaint form accessible on their website).
- **ACTION ITEM 4:** If the district does not resolve the issue, you can file a Title IX Complaint with the United States Department of Education's Office of Civil Rights (accessible [here](#)) and/or a FERPA Complaint with the United States Department of Education's Student Privacy Policy Office (accessible [here](#)).

¹ Note: If your child has completed a legal name and gender marker change, the school has no discretion and **must** amend your child's official records. But even if your child has not legally changed their name and gender marker, you can follow these steps to ensure consistent use of your child's affirmed name and pronouns. If you need assistance with the legal name/gender marker change process, visit www.floridanamechange.org.