

KNOW YOUR RIGHTS

LGBTQ+ STUDENTS IN UPSTATE NEW YORK

Updated: January 14, 2020

This is a brief update on the rights of lesbian, gay, bisexual, transgender / non-binary / gender-expansive and queer (LGBTQ+) students in Upstate New York (outside NYC) today, and how you can help them exercise those rights to ensure they have safe and welcoming learning environments.

Note: New York City has its own set of comprehensive protections for students within the five boroughs – learn more at: <https://www.schools.nyc.gov/school-life/school-environment/LGBTsupport> (last accessed 1/14/20)

FEDERAL PROTECTIONS

Title IX Education Amendments of 1972

Protects against sex discrimination in **any** education program or activity **receiving federal financial assistance** (which comes in all shapes and sizes). Many lower federal courts have ruled that Title IX covers students based on gender identity/expression but *not necessarily* based on sexual orientation.

Students with Disabilities

Americans with Disabilities Act (ADA), Individuals with Disabilities Education Act (IDEA), and Section 504 of Rehabilitation Act of 1973 (often called “504”)

- Students who have or need IEPs or 504 plans can seek accommodations for diagnosed gender dysphoria and/or conditions related to or springing from their sexual orientation or gender identity/expression (stress, anxiety, depression, suicidal ideation, etc.). Parents and guardians can advocate for these directly with the school at any time, with or without an attorney.

How to File Federal Complaints

- **Anyone** may file a complaint (student, parent, teacher, community member) with the US Dept. of Education’s Office for Civil Rights (OCR) within **180 days** of last discrimination
- The process is free, user-friendly, and does *not* require an attorney’s help!
- OCR has discretion over what to investigate, and has been non-responsive to most complaints filed by LGBTQ+ students under the Trump Administration
- Alternatively, you can file directly in federal court within **3 years** (attorney’s help recommended)

(turn over for state protections)

STATE PROTECTIONS

New York State Human Rights Law (HRL)

Protects LGBTQ+ students against discrimination and harassment!

Where?

- **Private, non-religious, tax-exempt schools**
- **Public schools** (including any school district, board or cooperative educational service, public college or public university)

What's Protected?

- Their **actual or perceived** race, national origin, religion, **sex** (including trans status), **sexual orientation, gender identity and expression**, and **disability** (including gender dysphoria)

How to Complain

- File with the NYS Division of Human Rights (DHR) within **1 year** of last instance of discrimination. This process is free, user-friendly, and does **not** require an attorney's help!
- **OR** file a lawsuit in state supreme court within **3 years** of the last instance of discrimination → much more expensive and complicated, highly recommended you seek attorney representation

NYS Dignity for All Students Act (DASA)

DASA tries to make the State's **public** elementary and secondary school environments safe and supportive, free from discrimination, intimidation, taunting, harassment, and bullying on school property, a school bus, and/or at a school function, on the basis of actual or perceived race, national origin, ethnicity, religion, **mental or physical abilities** (incl. gender dysphoria), weight, **sexual orientation, gender identity, and sex**. You **cannot** sue a school or school district for violating DASA, but you **can** file a DASA report for **every single** instance, and the school **cannot** retaliate against you.

Under DASA, the school **must**:

- Have a DASA Coordinator
- Make DASA report forms available to fill out
- Investigate **every** DASA report it receives – learn more about NYSED's guidance on DASA reports regarding trans and gender-nonconforming students here: <http://www.regents.nysed.gov/common/regents/files/918p12a4.pdf> (last accessed 1/14/20)
- Make annual report to NYSED of all DASA complaints

SUGGESTED ADVOCACY ESCALATION PLAN

1. **Informal advocacy** – try to work with admin and/or DASA Coordinator to address the issue. Take lots of notes on everything said, and keep copies of all written communication (emails, letters, etc.)
2. **File DASA reports** for **every single** violation at public schools – they have to investigate them all
3. **If the LGBTQ+ student has or needs an IEP/504 Plan**, request a meeting to assess accommodations
4. **Organize** parents and community members to complain at a board meeting (consider inviting media)
5. If no progress, **consider contacting an attorney**
6. **With or without an attorney's help, file a complaint** with the NYS Division of Human Rights (DHR) or US Dept. of Education (if school receives federal funds)