

# KNOW YOUR RIGHTS: STUDENTS & YOUTH

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MY TEACHER TOLD ME I WASN'T ALLOWED TO TALK ABOUT BEING LGBTQ AT SCHOOL. IS THAT TRUE?

No. You have a First Amendment right to be open about your sexual orientation and gender identity at school, provided you are not causing a significant disruption in the classroom.<sup>1</sup> Thus, while interrupting an unrelated classroom lesson to talk about being gay is unacceptable, you are entitled to talk about being LGBTQ at appropriate times.

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MY TEACHER TOLD ME I HAD TO CHANGE A SHIRT THAT EXPRESSED SUPPORT FOR LGBTQ RIGHTS.

If your school's dress code allows other students to wear clothes expressing beliefs or ideas, then it is illegal for them to prohibit you from wearing your shirt, provided it is not obscene.<sup>2</sup>

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I'M A TRANSGENDER BOY, AND WANT TO BE ABLE TO USE THE BOY'S BATHROOM. CAN MY SCHOOL FORCE ME TO USE THE GIRL'S BATHROOM?

There is no statewide policy on this issue, and so different schools have different rules on bathroom use. Some states have court decisions or legislation requiring schools to allow students to use the restroom that corresponds with their gender identity.<sup>3</sup> We do not have similar legislation or court decisions in New Mexico.

While it is not the law in New Mexico, we believe that policies similar to the GLSEN model policy<sup>4</sup> are the best practice when it comes to gender-segregated spaces at school. These policies allow students to access gender-segregated spaces that correspond with their gender identity, and allow for private alternatives if students do not feel comfortable using shared facilities. You can read more about GLSEN's model policy here: [http://www.transequality.org/PDFs/Trans\\_ModelPolicy\\_2013.pdf](http://www.transequality.org/PDFs/Trans_ModelPolicy_2013.pdf)

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CAN MY SCHOOL STOP ME FROM STARTING A QUEER-STRAIGHT ALLIANCE (QSA) OR GAY-STRAIGHT ALLIANCE (GSA)?

The federal Equal Access Act, passed in 1984, says that if a public school permits any non-curricular clubs, then it must allow students to form a GSA if they want to, and that the school has to treat it the same as it does other non-curricular clubs. That means if your school allows other non-curricular clubs—like Chess Club, Community Service Clubs, or Fellowship of Christian Athletes—they must allow students to form a

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<sup>1</sup> Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)

<sup>2</sup> Ibid.

<sup>3</sup> See Doe v. Clenchy, 2014 ME 11, Pen-12-582 (Maine 2014) or "School Success & Opportunity Act", California Education Code §221.5

<sup>4</sup> "MODEL DISTRICT POLICY ON TRANSGENDER AND GENDER NONCONFORMING STUDENTS", Gay Lesbian & Straight Education Network and National Center for Transgender Equality, 2013

QSA.5 (A math club or Spanish club would not be considered non-curricular activities, since they relate to classes in school.)

If you're interested in starting a GSA or QSA at your school, find out the school's rules for forming an official student organization and make sure you follow those instructions. Document everything you do in case you encounter trouble down the line: make copies of any forms you submit, save emails that you sent and received on starting the GSA, and keep track of the dates that you submitted.

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#### CAN I MAKE AN LGBT-ONLY CLUB THAT DOESN'T ALLOW STRAIGHT KIDS?

Your club must follow the same rules regarding participation as any other student group at your school. If your school has rules that any interested student must be allowed to participate in any school-sponsored club, that rule applies to your club as well.

In *Christian Legal Society of U.C. Hastings v. Martinez*, the U.S. Supreme Court held that CLS could not prohibit non-Christian or LGBT members of the U.C. Hastings student body from becoming members of the club because the school had a non-discrimination policy that required all school clubs to be open to all members of the student body.<sup>6</sup>

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#### I GO TO A PUBLIC SCHOOL IN NEW MEXICO AND I WANT TO TAKE MY SAME-SEX PARTNER TO PROM. CAN I DO THAT?

We believe that you have a right to go to prom with a same-sex date, but this issue has not been explicitly addressed by the courts or legislature in New Mexico. In 1980, a federal court ruled in the case *Aaron Fricke v. Richard B Lynch* that a high school student had a First Amendment right to take his same-sex date to prom.<sup>7</sup> New Mexico courts, however, have not heard this issue.

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#### I'M A TRANSGENDER STUDENT. CAN THE SCHOOL REFUSE TO LET ME PLAY ON THE APPROPRIATE SPORTS TEAM FOR MY GENDER IDENTITY?

Under the New Mexico Activities Association guidelines, students may participate in activities of the gender that matches their original or amended birth certificates.<sup>8</sup> Currently, the state requires medical proof of gender confirmation surgery to amend a birth certificate.<sup>9</sup>

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<sup>5</sup> U.S. Department of Education, "Legal Guidelines Regarding the Equal Access Act and Recognition of Student-Led Noncurricular Groups," Charles Rose, June 2011. Also see *Gay-Straight Alliance of Okeechobee High Sch. v. Sch. Bd.*, 483 F. Supp. 2d 1224, 1229 (S.D. Fl. 2007)

<sup>6</sup> *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 130 S. Ct. 2971, 2996 (2010).

<sup>7</sup> *Fricke v. Lynch*, 491 F.Supp. 381 (D. RI 1980).

<sup>8</sup> 6.1 "Eligibility", New Mexico Activities Association Handbook. "Participating students are required to compete in the gender listed on their original or amended birth certificate."

<sup>9</sup> N.M. Stat. Ann. § 24-14-25(D) (2006). "Upon receipt of a duly notarized statement from the person in charge of an institution or from the attending physician indicating that the sex of an individual born in this state has been changed by surgical procedure, together with a certified copy of an order changing the name of the person, the certificate of birth of the individual shall be amended as prescribed by regulation."

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OTHER STUDENTS AT MY SCHOOL ARE CONSTANTLY THREATENING AND TEASING ME BECAUSE I'M LGBT. I DON'T KNOW WHAT I SHOULD DO.

As of 2007, every school district in New Mexico is required to have an anti-bullying policy in place.<sup>10</sup> These policies will vary between different school districts, but they require that the school have procedures in place to investigate the incident and report the bullying in a way that ensures your confidentiality. These policies generally require the school to notify your parent or guardian about the bullying.

Your first step, if you are being bullied or harassed, could be talking with a teacher or administrator at your school about the situation. If your school does not take action after you tell them about the bullying, consider contacting your superintendent, other helpful adults, or an attorney. Keep a written record of the bullying behavior with as much detail as possible, and include the dates that you reported the incident and any emails related to the bullying.

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I AM BEING BULLIED AND INTIMIDATED CONSTANTLY BECAUSE I'M LGBT. IT HAS GOTTEN SO BAD THAT I OFTEN STAY HOME FROM SCHOOL, AND I QUIT PLAYING SOCCER. I REPORTED IT TO THE SCHOOL, BUT THEY HAVEN'T DONE MUCH, AND THE BULLYING HAS CONTINUED. IS THERE ANYTHING ELSE I CAN DO?

Under state law, your school has the obligation to investigate and address any report of bullying. Additionally, the U.S. Department of Education Office for Civil Rights has indicated that certain types of bullying against LGBT students, particularly when it is because they do not conform to “traditional” gender roles, may constitute sex discrimination, which is prohibited under Title IX.<sup>11</sup> This means that your school may have an obligation under federal antidiscrimination laws to take immediate and effective action to eliminate the hostile environment.<sup>12</sup> It is insufficient for your school to simply deal with these issues as they come up—they must develop a strategy for eliminating this sort of activity from occurring in the future.

*(Note: Under OCR's standard, the conduct must also be considered sufficiently serious to deny or limit a student's ability to participate in or benefit from the educational program.)*

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CAN MY TEACHER OUT ME TO MY PARENTS OR OTHER STUDENTS?

This issue has not been directly addressed in New Mexico, but we believe that your sexual orientation and gender identity are protected by your constitutional right to privacy.<sup>13</sup> If your teacher or school official threatens to tell someone that you are LGBT against your will, make it clear that you do not want them to do

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<sup>10</sup> [New Mexico Administrative Code §6.12.7.8 – Requirements](#) 

<sup>11</sup> Dear Colleague Letter: Harassment and Bullying, UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS, Russlynn Ali, Assistant Secretary for Civil Rights October 26 2010  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

<sup>12</sup> Dear Colleague Letter, UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS, October 26, 2010

<sup>13</sup> Eastwood v. Dept. of Corrections of State of Okl., 846 F. 2d 627 (10th Cir.1988) (concluding that the right to privacy is violated when an individual is forced to disclose information about their personal sexual business); *see also*, Sterling v. Borough of Minersville, 232 F.3d 190 (3d Cir. 2000) (concluding that sexual orientation was entitled to constitutional protection of private matters for arrested individuals); Bloch v. Ribar, 156 F. 3d 673- Court of Appeals, 6th Circuit 1998.

this. If they continue to threaten to out you, or if they follow through with their threats, contact one of the organizations listed on this pamphlet.

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MY SCHOOL WON'T LET ME HOLD HANDS WITH MY LGBT PARTNER, BUT WILL LET STRAIGHT COUPLES HOLD HANDS. IS THIS ALLOWED?

No—your school may not hold LGBT students to different standards than straight students. See the question above about prom.

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I GOT KICKED OUT OF MY HOUSE AFTER I CAME OUT TO MY PARENTS. WHAT SHOULD I DO?

**You can try to contact these homes for youth:**

- **Casa Q:** P.O. Box 36168, Albuquerque, NM 87176-6168
- **New Day's Safe Home:** 505-938-1060