



M
ALBEIT MASTERS LLC

Morgan M. Masters

EDUCATION LAW OVERVIEW FOR LGBTQ+ STUDENTS & ALLIES

Summary of Topics

- **Discrimination & Harassment:** Title IX and Ohio's codified protections
- **Student Education Records:** student confidentiality and Ohio's recent exception
- **Disability/Special Education:** disability protections and accommodations
- **Bullying:** required policies and procedures
- **Criminal laws:** codified crimes potentially relevant to victimization of the LGBTQ+ community.
- **Suspension/Expulsion:** rights and procedures
- **Freedom of Speech:** in-school and out-of-school censorship
- **Educator Ethics & Duties:** mandatory reporting and code of conduct compliance

Discrimination & Harassment

Federal Law: Title IX

- Prohibits sex-based discrimination in education programs or activities at federally funded institutions, including K-12 and post-secondary institutions.
- Sex discrimination includes sexual harassment and denial of equal access to education or activities.
- Title VII prohibits *workplace* discrimination based on race, color, religion, sex, or national origin.
- *Bostock v. Clayton County* (2020): extended 'sex' under Title VII to include sexual orientation and gender identity.
- *Bostock* has influenced Title IX interpretations and protections for LGBTQ+ students in education, and is the foundation for arguing protections against misgendering, outing, restroom choice denial, and harassment under Title IX.

Discrimination & Harassment

Federal Law: Title IX Sexual Harassment

- Includes quid (i) pro quo sexual harassment, (ii) sexual assault, and (iii) unwelcome conduct that is so severe, pervasive, and objectively offensive that it denies a person equal access to educational activities or programs.
- Although 2024 Title IX Rule explicitly included sexual orientation and gender identity in the application of “sex” under Title IX, a federal court blocked this expansion in January of 2025, reinstating 2020 Title IX Rule that does not explicitly protect these classifications.
- Institutions have duty not to be deliberately indifferent to sexual harassment.
- Complainants and respondents have a right to an advisor, to provide, review and respond to evidence, and to appeal an outcome; there is also often a hearing right in post-secondary institutions. Complainants may also file a complaint with the Office of Civil Rights (“OCR”) within 180 days.

Discrimination & Harassment

Federal Law: Title IX Denial of Equal Access

- Pertains to equal access to educational opportunities such as athletics, facilities, curriculum, extracurriculars, single-sex programs, etc.
- Standard: has complainant been excluded from participation in, denied the benefits of, or been subjected to discrimination on the basis of sex?
- Factors: differential treatment based on sex, adverse impact on complainant's access to program or activity, and notice and opportunity to correct.
- Can file formal complaint with school or with OCR.
- OCR has interpreted denial of restroom use consistent with gender identity as sex discrimination under Title IX.

Discrimination & Harassment

Federal Law: Recent and/or Possible Changes

- Trump's executive orders redefine 'sex' in the context of federal law as strictly biological, which has caused the Department of Education to shift back to the 2020 Title IX Rule which interprets 'sex' narrowly, and does not extend to protect sexual orientation and gender identity.
- OCR is now enforcing Title IX against schools who permit students to use restrooms based on their gender identity, and to participate in sports based on their gender identity.
- Executive order also requires all federally funded schools to scrub policies of references to LGBTQ+ protections or risk losing funding.
- *Texas & Heritage Foundation v. EEOC* attempts to limit *Bostock* to workplace terminations only.
- Federal bills are pending to protect and restrict recognition of gender identity (e.g. The Equality Act stalled in committee stage; PROTECT Kids Act, merged into the Parent Bill of Rights).

Discrimination & Harassment

Ohio Law

- Ohio law has no explicit protection for gender identity or sexual orientation, even prior to the current presidential administration.
- Effective November 27, 2024, Senate Bill 104 banned restroom/locker use according to gender identity in public schools, chartered non-public schools, and both public and private post-secondary institutions.
- House Bill 8 (“Parents’ Bill of Rights”), effective April 9, 2025, requires parent notification if a student identifies differently than their biological sex, and of other substantial changes to student’s health, mental well-being or identity-related requests.
- Local districts may adopt protective language but cannot override state mandate that prohibits restroom/locker room use based on gender identity.

Student Education Records

Federal Law

- FERPA is the Federal Education Right to Privacy Act which makes education records confidential.
- An “education record” is defined as a record that is directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.”
- Records include names, pronouns, and gender identity information, but name and gender information may not be private or confidential on official records (e.g. transcripts).
- Parents control records access until a student turns 18 or enters college, and written consent of the parent is required for their release.
- This means schools cannot disclose personally identifiable information about a student without written permission, including gender identity.

Student Education Records

Ohio Law

- The Ohio School Boards Association guidance is that schools must use a student's legal name and legal sex on official records such as transcripts and report cards.
- R.C. 3313.473 now requires schools to include any student request to identify as a gender different than their biological sex, or any development regarding a student's sexuality, in parent involvement policies (e.g. make parental notification. It does not, however prohibit schools from honoring such requests.

Disability/Special Education

Federal Law: IDEA

- Identification of disabilities in education is crucial not only for individualized education needs, but also to protect disabled students in the disciplinary process.
- IDEA is the Individuals with Disabilities Education Act, which ensures that students with disabilities receive a free appropriate education tailored to their individual needs through special education and related services and covers students ages three (3) to 21.
- Under IDEA, 13 specific disabilities qualify, including mental health conditions such as depression, anxiety, ADHD and other mood disorders can qualify a student for special services if their disability adversely affects their educational performance (e.g. need special instruction to access general curriculum, make meaningful progress, learn in a unique way, etc.).
- Special services can include behavior supports, small group instruction, individual accommodations and specialized counseling or mental health support; special instruction is adaptation of content, delivery, or method of instruction.

Disability/Special Education

Federal Law: Section 504 of Rehabilitation Act of 1973

- Civil rights law that prohibits discrimination against individuals with disabilities in programs receiving federal funding, so it ensures equal access by required schools to provide accommodations and supports to level the playing field.
- Any disability that limits a major life activity qualifies.
- Only provides accommodations such as extra time on tests and assignments, quiet settings for tests, etc.
- Accommodations do not include adaptation of content, delivery or method of instruction, only access to the same content, delivery or method of instruction differently.
- Useful when a student is doing well in school grade-wise, but still struggling mentally and/or emotionally. (e.g. accommodations for LGBTQ student suffering anxiety from bullying could be private or safe restroom to use, cool down breaks when overwhelmed, flexible attendance, assignment of a support person, etc.)

Disability/Special Education

Recent and/or Possible Changes

- *Texas v. Becerra (Texas v. Kennedy)*: Texas and 16 other states sued to block key provisions of the May 2024 rule under Section 504 that recognizes gender dysphoria as a disability, and strengthens the “integration mandate,” requiring services in the most integrated setting. The case also challenges Section 504 as unconstitutional under the Spending clause for being vague and coercive.
- In Ohio, the “Parents’ Bill of Rights” has prohibited restroom choice aligned with gender identity as an accommodation, but a replacement accommodation can be a private and/or gender neutral restroom (e.g. access to the teacher’s restroom).

Bullying

Ohio Law

- Ohio law requires public schools to have anti- harassment, intimidation, and bullying policies.
- Bullying covers repeated verbal, written, electronic or physical abuse.
- Schools are legally required to train staff, investigate, and respond appropriately.
- Anti-bullying policies are not predicated upon a protected class like harassment policies.
- Bullying complaints should always be made in written form to create an irrefutable record, and should specifically identify the culprit(s), the offending conduct and its effect on the complaining student.

Criminal Laws

Ohio Law

- Telecommunications Harassment (ORC 2917.21): use of electronic means with purpose to harass, intimidate, abuse, threaten or alarm.
- Menacing by Stalking (ORC 2903.211): pattern (two or more) of knowingly engaging in conduct that would cause a reasonable person to feel mental distress or fear physical harm to self, family or others.
- Menacing (ORC 2903.22): knowingly cursing another to believe the offender will cause physical harm to them, their family or household member, their unborn or to their property.
- Unauthorized Use of Property (ORC 2917.21): knowingly gaining access to or using a computer or telecommunication device without the owner's consent or beyond the scope of their consent.
- Extortion (ORC 2905.11): threatening to expose a secret or utter accusations that subject someone to hatred or ridicule to induce action or inaction.
- Assault (ORC 2903.13): knowingly causing or attempting to cause physical harm to another.

Suspension/Expulsion

Ohio Law

- Suspension is up to ten (10) days; any discipline beyond ten days is considered an expulsion.
- Expulsion can be up to 80 days, which can carry over into the next school year, however, expulsion can be up to 180 days or longer for conduct that causes imminent and severe endangerment, and can be up to one year for conduct involving dangerous weapons or threats, or serious bodily harm.
- Permanent exclusion of students 16 years of age or older can occur if they are adjudicated delinquent by a court of law for committing any of the following offenses on school property or at a school activity: possessing a knife or firearm, carrying a concealed weapon, drug trafficking, aggravated murder, murder, felonious assault, kidnapping, rape, sexual battery or other serious crimes committed against a school employee.
- Students facing suspension, expulsion and/or permanent exclusion have numerous, albeit limited, due process rights, including but not limited to legal representation, written notice and appeal.
- Expulsion procedures and outcomes differ dependent upon whether or not a student has a documented disability who requires special education services under IDEA, or the student has qualified for accommodations for a disability under Section 504.

Freedom of Speech

Federal Law

- *Tinker v. Des Moines*: on-campus speech protected unless it causes disruption at school.
- *Bethel v. Fraser*: lewd/offensive speech not protected.
- *Hazelwood v. Kuhlmeier*: schools can regulate school-sponsored speech.
- *Mahoney v. BL*: off-campus speech protected unless disruptive to school day or activity.
- *LM v. Middleborough* (2025): viewpoint speech can be limited if it can be reasonably interpreted or forecasted to impair the learning environment or lead to disruption.

Freedom of Speech

Pending Litigation

- *Parents Defending Education v. Olentangy*: awaiting en banc review decision following vacation of Sixth Circuit ruling that upheld Olentangy policy prohibiting students from intentionally misgendering their transgender peers.
 - PDE Argument: overbreadth and compelled speech, as policy goes beyond prohibiting harassment by chilling protected speech without showing disruption in the school day/activity. Cite *Merriweather v. Hartop* which held that compelling pronoun use is a violation of the right to free speech.
 - Olentangy Argument: policy is viewpoint neutral and designed to only prevent harassment and disruption, and there are reasonable alternatives such as using a student's name to avoid compelling belief.

Mandatory Reporting Duty

Ohio Law

- ORC 2151.421 requires educators to immediately report suspected abuse, neglect, or mental injury to a minor.
- Covers peer abuse, staff abuse, and self-harm.
- Non-delegable duty, and good-faith reporters have legal immunity.

Licensure Code of Professional Conduct for Educators

Ohio Law

- Principle 1: treat all students with dignity and respect.
- Principle 2: maintain professional, non-abusive relationships.
- Principle 5: follow local, state, and federal laws (including anti-trans laws).
- Principle 7: maintain confidentiality unless disclosure is legally required.

Helpful Resources

- LGBTQ+ Bar Litigation Tracker:
<https://lgbtqbar.org/programs/trump-executive-order-tracker/>
- Ohio State Board of Education Educator Misconduct Reporting Form:
<https://dam.assets.ohio.gov/image/upload/sboe.ohio.gov/Professional-Conduct/Citizen-Reporting-Form.pdf>
- Ohio Petition for Civil Stalking Protection Order (CSPO):
https://www.supremecourt.ohio.gov/docs/JCS/domesticViolence/protection_forms/stalkingForms/10.03D.pdf
- Dayton Public Schools Board Policies:
<https://go.boarddocs.com/oh/dayton/Board.nsf/Public>

M ALBEIT MASTERS LLC



Morgan M. Masters

MM@ALBEITMASTERS.COM

WWW.ALBEITMASTERS.COM

4200 REGENT STREET, SUITE 210, COLUMBUS, OHIO 43219 O: (614) 454-1200 C: (614) 949-0777