

Know Your Rights: Sexual Harassment & Digital Privacy in Schools

ACLU
California

Who We Are



ACLU
California

- Community engagement
- Public education
- Legislation
- Litigation

Laws Against Harassment and Bullying



Bullying, Harassment, and Safety

Students are protected from bullying, harassment and discrimination on the basis of:

- Sexual orientation
- Gender
- Gender identity
- Gender expression
- Actual or perceived identity
- Association with any of these categories

Bullying, Harassment, and Safety

What counts as “harassment”?

- Conduct or words (e.g. name-calling, written statements, or physically-threatening conduct) that is:
 - Severe OR pervasive OR targeted at particular individuals OR intimidates students because of their identity; AND
 - Hinders student’s ability to get an education OR significantly harms their well-being OR substantially interferes with their rights.
- It doesn’t have to include intent to harm or occur more than once.

Bullying, Harassment, and Safety

California

Seth's Law (ED. CODE 201, 234, 234.1-.3, 235)

Sex Equity in Education Act

(ED. CODE 221.5-231.5)

Federal

Title IX

- Linked to federal \$\$\$; school agrees not to discriminate on the basis of sex

Bullying, Harassment, and Safety

What are schools required to do?

- Create a safe and nondiscriminatory environment;
- Adopt policies prohibiting discrimination, harassment, and bullying based on gender, gender identity, and gender expression;
- Intervene whenever staff witness such harassment or bullying, whether perpetrated by students, staff, or teachers; and
- Create suicide prevention plan.

Bullying, Harassment, and Safety

School districts cannot show deliberate indifference to what's happening, and they must take active steps to address it.

In response to harassment, schools must conduct a prompt, thorough, and impartial investigation.



Bullying, Harassment, and Safety

California Healthy Youth Act (ED. CODE 51930-51939)

- Went into effect January 1, 2016.
- Mandated comprehensive sexual health education at least once in middle school and once in high school.
- Applies to charter schools starting 2019-2020 school year.



Bullying, Harassment, and Safety

California Healthy Youth Act (ED. CODE 51934)

- Instruction must include information about:
 - Sexual harassment
 - Sexual assault
 - Sexual abuse
 - Human trafficking
 - Local resources and student rights to access sexual and reproductive health care and assistance with sexual assault and intimate partner violence

Bullying, Harassment, and Safety

California Healthy Youth Act (ED. CODE 51934)

- Information on human trafficking shall include the following:
 - Prevalence, nature, and strategies to reduce the risk of human trafficking, techniques to set healthy boundaries, and how to safely seek assistance; and
 - How social media and mobile device applications can be used for human trafficking.
- Optional instruction: Potential risks and consequences of creating and sharing sexually suggestive or sexually explicit materials through cell phones, social media, and other digital devices.

How to Report

Title IX Coordinator

Every school district must have at least one person designated as the Title IX Coordinator to ensure active compliance with the law.

COORDINATOR RESPONSIBILITIES

Ensuring Compliance

- Have knowledge of district policies and procedures on sex discrimination
- Involved in drafting and revision of same

Complaints

- Coordinate implementation and administration of procedures for resolving Title IX complaints
- Educate school community about how to file them

Training & Technical Assistance

- Ensure all staff and students are aware of their rights and obligations under Title IX

Title IX Coordinator (ED. CODE 221.61)

Every school and school district must post on their website:

- Title IX coordinator name and contact information, including phone number and email address;
- Rights of students and responsibilities of schools under Title IX; and
- How to file a complaint under Title IX, including:
 - An explanation of the statute of limitations;
 - An explanation of how the complaint will be investigated and how the complainant may further pursue the complaint; and
 - An link to the U.S. Department of Education Office for Civil Rights complaints form, and the contact information for the office.

Uniform Complaint Procedure

A Uniform Complaint Procedures (UCP) complaint is a written statement alleging discrimination, harassment, intimidation and/or bullying or a violation of a federal or state law or regulation.

Tips for filing a complaint:

- Anyone can file a complaint.
- Get someone from the school or district to sign and date the form.
- Investigates harassment/discrimination.
- Must protect complainant from retaliation.
- Opportunity for restorative justice/practices.

Additional Resources

- California Department of Education, Gender Equity/Title IX: <https://www.cde.ca.gov/re/di/eo/genequitytitleix.asp>
- California Department of Education, Uniform Complaint Procedure: <https://www.cde.ca.gov/re/cp/uc/>
- U.S. Department of Education, Sexual Harassment Resources: <https://www2.ed.gov/about/offices/list/ocr/sexharassresources.html>
- U.S. Department of Education, Complaint Form: <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

Laws Protecting Digital Privacy

Cell Phone Privacy



Do students have the right to keep the contents of their phone private?

- YES!
- The privacy of a student's device, as well as their accounts with services like Facebook or Snapchat, is protected both by the US and California Constitutions and by the California Electronic Communications Privacy Act (CalECPA, in effect Jan 1, 2016).

Cell Phone Privacy

Can a school look through a student's phone without their permission?

Only in an emergency

- “Emergency” is defined as “involving danger of death or serious physical injury to any person [that] requires access to the electronic device information.”

(CALECPA, PENAL CODE § 1546.1(C)(6))

OR

With a search warrant

- Issued by a judge
- Based on “probable cause” that their phone contains evidence of a crime (meaning that a reasonable person would believe there is evidence on your phone).

Search Warrants



- Only duly-sworn law enforcement officers can execute a search warrant.
- Search can only be for evidence of the specific crime that you're suspected of committing.
- Search warrant must describe the type of information and parts of the phone that may be searched.

In other words, a search doesn't include everything in a student's phone other than what is stated in the warrant!

Cell Phone Privacy

Students have the right to keep their cell phone, laptop, or tablet private, even if:

- They use the phone when they are not supposed to;
- They break any other school rule;
- They cause a disruption by using their phone; or
- The search is done in the context of investigating a different student's misconduct.

Remember!

- Students are allowed to say NO to requests to search their phones and other digital devices.
- Schools cannot ask or require students to waive their rights to privacy in order to attend school.
- Confiscating a student's phone for violating the school cell phone policy does not give the school authority to search through it.



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For more information:

MySchoolMyRights.com

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ALL California students have rights when it comes to:

HARASSMENT & BULLYING	IMMIGRATION & STUDENTS	SCHOOL DRESS CODES & UNIFORMS	STUDENT EXPRESSION	SEARCHES OF STUDENTS
SCHOOL DISCIPLINE	CELL PHONE PRIVACY	LGBTQ STUDENT RIGHTS	PREGNANT & PARENTING STUDENTS	SOCIAL MEDIA RIGHTS
FOSTER YOUTH STUDENT RIGHTS	FILE A COMPLAINT WITH YOUR SCHOOL	FILE A COMPLAINT WITH OFFICE FOR CIVIL RIGHTS	SEX ED	STUDENT PROTESTS AND POLITICAL SPEECH
		STUDENTS EXPERIENCING HOMELESSNESS		

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