



Transgender Students Deserve Affirmation and Support Not Exclusion and Marginalization

IDRA Testimony against Senate Bill 435, submitted by Terrence Wilson, J.D., to the Georgia Senate Education and Youth Committee, February 9, 2022

Dear Chairman Payne and Members of the Committee:

My name is Terrence Wilson, J.D., and I am the Regional Policy and Community Engagement Director at IDRA, a national non-partisan, education non-profit committed to achieving equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college. We oppose Senate Bill 435 because it discriminates against one of the most vulnerable student populations in our country. This bill prohibits transgender and gender nonconforming students from participating in school sports teams, which creates unsafe school climates, harms students' academic achievement, and arguably violates federal protections against gender-based discrimination.

SB 435 Makes Schools Unsafe for Students

Students in the LGBTQ community experience exclusion, harassment, and bullying in schools at higher rates than their peers due to their gender identity and sexual orientation. In 2019, more than two in three LGBTQ students in Georgia reported experiencing at least one form of anti-LGBTQ discrimination at school during the past year (GLSEN, 2019). These policies have real life or death consequences for students as tragically 42% of LGBTQ youth consider attempting suicide, including more than half of transgender and nonbinary youth (Trevor Project, 2021).

Discriminatory legislation like SB 435 discourages teachers and school staff from creating safe and welcoming places for their trans students and from incorporating best practices, such as using a students' desired pronouns to acknowledge them (NEA, 2016). Discriminatory policies and practices in schools hurt students' ability to learn, thrive and grow in their education, and they compromise their educational opportunities.

SB 435 Harms Students' Academic Achievement

Students who experience discrimination based on gender identity or sexual orientation are more likely to miss school days, have lower GPAs and drop out of school (GLSEN, 2020). In Georgia, gender-based harassment led 25% of transgender and gender nonconforming students to drop out of their school or university (National Transgender Discrimination Survey, 2010). As legislators, you should be concerned for the wellbeing and academic success of all students. But this bill would undoubtedly harm these students' prospects of performing well and graduating from high school.

SB 435 Violates Federal Protections Against Discrimination on the Basis of Sex

In addition to creating unwelcoming, unsafe and unfair barriers for transgender students, SB 435 goes against the spirit of and is likely preempted by federal Title IX protections against school-based discrimination on the basis of sex. As you all are aware, Title IX prohibits discrimination on the basis of sex in any education programs that receive federal funding. In *Bostock v. Clayton County, Georgia*, (140.S. Ct. 1731, 2020), the U.S. Supreme Court made clear that discrimination based on sex includes protections based on gender identity or sexual orientation.

Just last year, the U.S. Department of Education's Office for Civil Rights issued a Notice of Interpretation explaining that it will enforce Title IX's prohibition on discrimination on the basis of sex consistent with *Bostok* to include: (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity (U.S. Department of Education, 2021). An Idaho law just like SB 435 was challenged in court before it could take effect in 2020 (*Hecox v. Little*). The passage of this bill will likely lead to costly litigation, invite scrutiny by the U.S. Department of Education's Office for Civil Rights and an ultimate determination that it violates federal law.

Students' success depends on their ability to access equitable educational opportunities – whether in their classrooms, locker rooms or on the athletic field. Like every young person in Georgia, transgender and gender nonconforming students are valuable members of their schools and communities. We want them to feel included as they pursue their passions and develop their talents. These students deserve affirmation and support, not exclusion and ostracization. This Legislature is responsible for protecting all of Georgia's students, including transgender and gender nonconforming youth. Therefore, it should reject SB 435 and instead ensure that all students have access to safe and welcoming school environments.

Recommendations

- Support safe and welcoming schools by rejecting SB 435;
- Support policies that promote comprehensive school policies regarding bullying and sexual harassment that specifically speak to nonconforming gender youth.
- Provide resources so schools can adopt research-based school climate strategies that make all students feel safe and welcome.

IDRA is available for any questions or further resources that we can provide. Thank you for your consideration. For more information, please contact Terrence Wilson, J.D., IDRA Regional Policy and Community Engagement Director, at terrence.wilson@idra.org.

Resources

Freedom for All Americans. (2021). Legislative Tracker: Anti-Transgender School Athletics, webpage.
<https://freedomforallamericans.org/legislative-tracker/student-athletics/>

GLSEN. (2019). *School Climate for LGBTQ Students in Georgia*. GLSEN.
<https://www.glsen.org/sites/default/files/2021-01/Georgia-Snapshot-2019.pdf>

Hecox v. Little, 479 F. Supp.3d 930 (2020) (U.S. District Court, D. Idaho).

IDRA. (October 2019). Gender Justice. *IDRA Newsletter*. <https://idra.news/nlOct19p>

IDRA. (2019). School Climate Affects LGBTQ Student Well-being, infographic. Intercultural Development Research Association. <https://idra.news/iGlbqtq19>

Kosciw, J.G., Clark, C.M., Truong, N.L., & Zongrone, A.D. (2020). *The 2019 National School Climate Survey – The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools*. GLSEN.
<https://www.glsen.org/research/2019-national-school-climate-survey>

- National Center for Transgender Equality and National Gay and Lesbian Taskforce. (2010). *Findings of the National Transgender Discrimination Survey*. https://transequality.org/sites/default/files/docs/resources/ntds_state_tx.pdf
- NEA. (2016). *Legal Guidance on Transgender Students' Rights*. National Education Association.
https://www.nea.org/sites/default/files/2020-07/2018_Legal%20Guidance_Transgender%20Student%20Rights.pdf
- Shaffer, S., & Lerner, P. (October 2017). Supporting LGBTQ Students Faced with Sexual & Gender Harassment. *IDRA Newsletter*. <https://budurl.me/IDRANlOct17c>
- Trevor Project. (2021). *National Survey on LGBTQ Youth Mental Health*. <https://www.thetrevorproject.org/survey-2021/?section=Introduction>
- Title IX, Education Amendments Act of 1972, 20 U.S.C. §§1681 - 1688.
- U.S. Department of Education. (2021, June 16). U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity. <https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity>

IDRA is an independent, non-profit organization led by Celina Moreno, J.D. Our mission is to achieve equal educational opportunity for every child through strong public schools that prepare all students to access and succeed in college. IDRA strengthens and transforms public education by providing dynamic training; useful research, evaluation, and frameworks for action; timely policy analyses; and innovative materials and programs.



School Climate Affects LGBTQ Student Well-being

60 % of LGBTQ students feel unsafe at school.

35%
of LGBTQ students missed at least one entire day of school in the past month because they felt unsafe or uncomfortable.

92%
of LGBTQ students felt distressed by hearing anti-LGBTQ remarks at school.

57%
of students reported hearing homophobic remarks from their teachers or other school staff.

Lesbian, gay, and bisexual youth are 3-5 times more likely to attempt suicide.

40% of transgender people will attempt suicide in their lifetime.

62%

of LGBTQ students report experiencing LGBTQ-related discriminatory policies or practices at school.

Some schools have policies prohibiting students from...

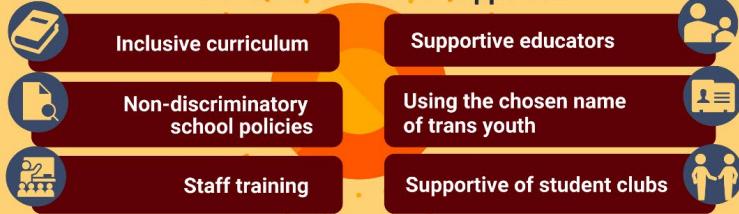
- ✖ discussing or writing about LGBTQ topics in school assignments;
- ✖ attending a dance or function with someone of the same gender;
- ✖ wearing clothing or items supporting LGBTQ issues; and
- ✖ using the preferred name or pronoun of transgender and gender nonconforming students.

LGBTQ students who experienced higher levels of victimization because of their sexual orientation or gender expression...

- ▶ Were nearly **three times as likely** to have missed school in the past month than those who experienced lower levels;
- ▶ Had **lower grade point averages** than students who were less often harassed;
- ▶ Were **twice as likely** to report that they did not plan to pursue college than those who experienced lower levels; and
- ▶ Were **more likely** to have been disciplined at school.

Students who feel safe and supported at school naturally do better in school

Effective School-based Supports...



Data Sources: The 2017 National School Climate Survey, GLSEN; Side by Side, 2019; The Williams Institute, UCLA School of Law, 2019