

FAQ FOR BEHAVIORAL HEALTH PROVIDERS

Supporting LGBTQ+ Youth in School, Health, and Child Welfare Settings¹

FEBRUARY 2024

INTRODUCTION

This document is meant to provide guidance for providers in clinical behavioral health, child welfare, and school settings supporting LGBTQI+² youth. Given the unprecedented legal challenges to meeting the behavioral health needs of LGBTQI+ youth across the country, providers should use this document as a reference to federal laws and protections for youth they support and their families. This document is intended to be a high-level FAQ that serves as an initial source of support for behavioral health providers who are supporting LGBTQI+ youth in school, health, and child welfare settings; it is not a substitute for legal advice. Individuals should contact the [National Center for Lesbian Rights' hotline](#), [LAMBDA Legal](#), the [American Civil Liberties Union](#), or the [Transgender Law Center](#) for further legal guidance.

IMPORTANT FEDERAL RESOURCES

There are clearly stated federal protections for LGBTQI+ persons. The Equal Protection Clause of the U.S. Constitution ensures that all LGBTQI+ youth have the right to be treated equally under the law as compared to their non-LGBTQI+ peers. Importantly, states may not afford any fewer rights to individuals than required by federal civil rights laws, such as federal anti-discrimination laws. [Each federal agency](#) has an Office for Civil Rights that is charged with responding to complaints and violations of federal law. As state laws change, providers can reach out to national legal experts (listed above) for guidance based on the specific state laws or local measures.

In addition to federal legislation, many federal agencies provide guidance and other resources to promote affirming, inclusive practice with LGBTQI+ youth. The U.S. Departments of [Education](#) (ED) and [Health and Human Services](#) (HHS) have issued guidance prohibiting discrimination against LGBTQI+ persons in their programs and by entities receiving federal funds, which covers all child welfare programs, and many clinical and school programs and settings. The White House has also issued an [Executive Order Advancing Equality for LGBTQI+ Individuals](#), regarding efforts to address discriminatory legislative attacks against LGBTQI+ children and families. This Executive Order calls on administrative agencies to further their work to promote the health and well-being of LGBTQI+ people.

At the state level, LGBTQI+ youth and their families who are involved in child welfare and experiencing mistreatment or discrimination [can contact their state's respective ombudsman](#) if one exists. Please note that the landscape for LGBTQI+ youth and their families is rapidly changing across the country, and possible conflict between federal and state law may exist. When there is conflict between federal and state law, it may not be clear whose protections are prioritized (for example, those of LGBTQI+ or those discriminating against LGBTQI+ people under the guise of religious freedom). In these situations, it is best to contact the above legal advocates for specific guidance.

To stay updated on federal guidance, professional association guidance, guidance from the medical field on providing appropriate care to LGBTQ+ people, and association-specific websites and resources, please visit [Federal Guidance on Gender-Affirming Care—The National SOGIE Center](#).

As the legal landscape changes rapidly, these guidelines might warrant updates. Please contact the [Center for the Study of Social Policy](#) or the [National SOGIE Center](#) if you have updates or corrections for this document.

FREQUENTLY ASKED QUESTIONS

- 1. I am a provider in a clinical behavioral health or school setting, and I can't talk to young people about sexual orientation, gender identity and expression unless I get written permission from their families. What can I do?** Parents and families can be important allies in the healthy development of their children. Even so, getting written permission provides an additional burden to providing adequate care, and in some cases, engaging families is not clinically safe or appropriate. Recent legislation in some states has created confusion about whether parents must be notified about the content of discussions between their child and a provider. If you are in a school setting, some school districts have issued guidance to clarify what is allowed, and it is worth checking with your individual school district. Each public school is required to have a contact person (often called the "Title IX Coordinator") to make sure the school district is in compliance with Title IX, which includes investigating bullying and harassment. Information on how to file a complaint should be prominently displayed on the school district's website. Reporting the issue to the school's Title IX Coordinator is typically the first step needed to initiate an investigation by the school.³ In addition, if you believe that the school officials have contributed to an unsafe learning environment or have discriminated against LGBTQI+ individuals, the Department of Education (ED) [has explained](#) that it will enforce Title IX's prohibition on discrimination on the basis of sex to include discrimination on the basis of sexual orientation and gender identity in educational activities and programs that receive federal financial assistance. You can [file a complaint](#) with the ED Office for Civil Rights online, by mail or fax, or by email.⁴

Regardless of the jurisdiction where you practice, and even if you are in a jurisdiction where saying the term "gay" could put you or the youth at risk, it is important to a young person's healthy development during adolescence to discuss and support identity development and healthy relationships, even broadly without reference to specific sexual orientations or gender identities. The American Academy of Pediatrics (AAP), Committee on Adolescence has [stated](#) that: **"Healthy cognitive, physical, sexual, and psychosocial development is both a right and a responsibility that must be guaranteed for all adolescents to successfully enter adulthood. There is consensus among national and international organizations that the unique needs of adolescents must be addressed and promoted to ensure the health of all adolescents."** Providers should take under consideration that sensitive personal information documented in school records can be viewed by parents and certain other school staff.

- 2. I work in a school setting and I have witnessed inappropriate language and behaviors from teachers I work with regarding LGBTQI+ identities. What can I do since our state just passed anti-LGBTQI+ laws and/or implemented anti-LGBTQI+ policy for schools?** Each public school is required to have a contact person (often called the "Title IX Coordinator") to make sure the school district is in compliance with Title IX, which includes investigating bullying and harassment by teachers. Information on how to file a complaint should be prominently displayed on the school district's website. Reporting the teacher misconduct to the school's Title IX Coordinator is typically the first step needed to initiate an investigation by the school.⁵ In addition, however, if you believe that the school has not adequately investigated or school officials continue to contribute to an unsafe learning environment or failed to adequately address harassment, the Department of Education (DE) [has explained](#) that it will enforce Title IX's prohibition on discrimination on the basis of sex to include discrimination on the basis of sexual orientation and gender identity. You can [file a complaint](#) with the ED Office of Civil Rights online, by mail or fax, or by email.⁶ In addition to federal protections, [some states](#) have explicit anti-bullying laws to protect LGBTQI+ students.

It is important to note that the complaint should be focused on the teacher misconduct that affects all LGBTQI+ children, rather than the individual students who were targets, as this can help protect against investigations that "out" the students or put them in harm's way if the perpetrators choose to retaliate against them.

- 3. I am a provider in a school setting and one of the youth that is seeking my help is being bullied for what I suspect is their gender expression. I want to ask them about their experiences, but our state/locality just passed a law saying we could lose our job if we mention the word gay or hand out any resources with LGBTQI+ people mentioned. What can I do?** If you are in a jurisdiction where explicitly addressing sexual orientation, gender identity and expression or saying particular terms, such as 'gay,' puts you or the young person at risk, it is still appropriate, necessary, and aligned with many professional standards and duties of care, [to discuss](#) healthy adolescent development, including identity development, healthy relationships, and bullying (see Q1 for statement from AAP). While no federal law directly addresses bullying, bullying [may overlap with discriminatory harassment](#) when it is based on sex (including sexual orientation and gender identity). The U.S. Department of Justice [outlines](#) steps to follow, including filing a complaint with the Civil Rights Division.

Each public school is required to have a contact person (often called the "Title IX Coordinator") to make sure the school district is in compliance with Title IX, which includes investigating bullying and harassment. Information on how to file a complaint should be prominently displayed on the school district's website. Reporting the issue to the school's Title IX Coordinator is typically the first step for the school to initiate an investigation. In addition, however, if you believe that the school has not adequately investigated or school officials have contributed to an unsafe learning environment or failed to adequately address harassment, the ED [has explained](#) that it will enforce Title IX's prohibition on discrimination on the basis of sex to include discrimination on the basis of sexual orientation and gender identity. You can [file a complaint](#) with the ED Office of Civil Rights online, by mail or fax, or by email.⁷ Additionally, at the state level, [some states](#) have explicit anti-bullying laws to protect LGBTQI+ students.

- 4. I am a clinical provider in a behavioral health, child welfare, or school setting, and I am being told by my director that I have to report a youth's SOGIE to their parents as a mandated reporter. What are my options?** Parents and families can be important allies in the healthy development of their children. Even so, in some cases, engaging families is not clinically safe or appropriate. The Child Abuse Treatment and Prevention Act (CAPTA) that covers mandated reporting does not require the disclosure of SOGIE information to a parent. Additionally, neither the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or the Family Educational Rights and Privacy Act (FERPA) require disclosure to parents. Specifically, HIPAA limits the circumstances under which health care providers may disclose protected health information. HHS [has issued guidance](#) for providers concerned about their legal obligations to disclose information concerning gender affirming care. This guidance reiterates that the HIPAA Privacy Rule permits, but does not require, disclosure of personal health information without authorization only when disclosure is required by another law. If clinical notes are included in a student's FERPA file that parents may have access should they request the records, but again, there is no affirmative obligation according to FERPA to inform a parent of a child's SOGIE. Providers are encouraged to seek additional legal guidance regarding their legal responsibilities and laws requiring protected health information to be disclosed if they have any questions.
- 5. I am a clinical provider in a behavioral health, child welfare, or school setting, and I don't know if I can write a letter of support for gender affirming "treatment" (e.g., hormone replacement therapy) in our state/locality because the state is debating whether affirming care is abuse.⁸ What should I do?** You can still write the letter regarding your diagnosis of gender dysphoria. HHS [has issued guidance](#) for providers concerned about being limited in providing gender affirming care and clearly states that: "HHS stands with transgender and gender nonconforming youth and their families—and the significant majority of expert medical associations—in unequivocally stating that gender affirming care for minors, when medically appropriate and necessary, improves their physical and mental health. Attempts to restrict, challenge, or falsely characterize this potentially lifesaving care as abuse is dangerous." If providers feel like they are being limited in providing affirming care—by being stopped from writing such a letter or retaliated against for doing so—they should [report the incidents](#) to the HHS Office of Civil Rights.

- 6. I am providing clinical services to a parent and she is saying that teachers in the school are refusing to use her child's preferred name and pronouns because they say that they have a religious right not to use it. How can I help her support her child?** Title IX of the Education Amendments of 1972 protects students from harassment and discrimination based on sexual orientation or gender identity. The ED [has explained](#) that it will enforce Title IX's prohibition on discrimination on the basis of sex to include discrimination on the basis of sexual orientation and gender identity. Under Title IX, schools [may not](#) harass or permit others to harass LGBTQI+ students, which might include refusing to use a child's affirmed/chosen name and pronouns. As the provider, you can inform the family of their right to file a complaint with the Title IX Coordinator for the school or district, or you, the parent, or the student [can file a complaint](#) with the ED Office for Civil Rights online, by mail or fax, or by email.⁹ Additionally, any entities, including faith-based groups, receiving federal grant money from HHS [may not discriminate](#) on the basis of sexual orientation and gender identity in its provision of services. For additional guidance on legally changing a person's name or gender, please see [this resource](#) from the National Center for Lesbian Rights and Harvard Law School LGBTQ+ Advocacy Clinic.
- 7. I work in a behavioral health or child welfare agency that is telling me I cannot provide services to a young person anymore because of their sexual orientation and gender identity (for example: our organization serves young women and they will not let me provide services to a young person who is a transgender woman). What can I do?** In most cases, entities receiving any federal grant money from HHS [cannot discriminate](#) on the basis of sexual orientation and gender identity in its provision of services. You, the young person, or the young person's parent(s) can [report the incidents](#) to the HHS Office of Civil Rights.
- 8. I am a provider in a behavioral health, child welfare, or school setting who has been instructed to report a young person's legal name and/or gender on various documentation, instead of their affirmed/chosen name. Can I use their affirmed/chosen names?** It's complicated, and may depend on what type of provider you are (e.g. state or county employee, private provider, licensed clinical provider, etc.). Mental health providers should use a young person's affirmed/chosen name and pronouns at all possible times to promote positive identity development and so that they do not harm their client's mental health by misgendering them. There are very few documents that require exclusive use of the legal name and there is a lot of variation at the state level. For the purposes of verification and record continuity, e.g., for Medicaid billing, there may be other options that exist at the state level such as a social security number, a unique case file number, or date of birth that can be used. Providers should confirm with their state Medicaid agency to confirm. Whenever possible, agencies should note the discrepancy between the legal and affirmed/chosen name in the record so that staff know to use the person's affirmed/chosen name whenever possible. When it is strictly mandated to use a young person's legal and not affirming name, it is important to involve the young person by explaining the why a legal name is used in a form and so that the young person can retain agency in making informed decisions on how they want to proceed and access the care they are receiving.

It is also best practice to ask the LGBTQ+ person whether they want their name and pronoun documented in health records or on paperwork. You should inform the LGBTQ+ person of how their information will be used and who will have access to it. If they choose to have their identity information documented, and even if they choose not to, you should have a discussion with them about how their care could be impacted. For example, without documenting their proper pronouns in the system, they might be misgendered by others in the office less familiar with them. At the end of the day, who has access to their identity information should be up to them.

ENDNOTES

¹This document is intended to be a high-level FAQ that serves as an initial source of support for behavioral health providers who are supporting LGBTQI+ youth in school, health, and child welfare settings; it is not a substitute for legal advice. Individuals should contact the National Center for Lesbian Rights' hotline for further legal guidance.

²LGBTQI+ is used in this document to refer to lesbian, gay, bisexual, transgender, queer, and intersex individuals; the plus symbol is included to recognize those for whom these labels do not accurately describe their sexual orientation or gender identity such as two spirit, gender expansive, and gender nonbinary individuals. For additional information on how recent legislative actions are impacting intersex youth, please visit [Mapping the Intersex Exceptions | Human Rights Watch \(hrw.org\)](#).

³ Campaign for Southern Equality has developed a guide and template for requesting a "Determination of Title IX Compliance," which can be accessed here: <https://southernequality.org/titleixdetermination/>

⁴ Individuals can call, email, or write in complaints and the complaint can be submitted anonymously. However, the process is that if the office is expected to investigate an issue, they do want a signed consent form from the person who filed the complaint. They also follow-up with that person to notify them if an investigation is going to take place. For more information please see: "How the Office for Civil Rights Handles Complaints" <https://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

⁵ Campaign for Southern Equality has developed a guide and template for requesting a "Determination of Title IX Compliance," which can be accessed here: <https://southernequality.org/titleixdetermination/>

⁶ Individuals can call, email, or write in complaints and the complaint can be submitted anonymously. However, the process is that if the office is expected to investigate an issue, they do want a signed consent form from the person who filed the complaint. They also follow-up with that person to notify them if an investigation is going to take place. For more information please see: "How the Office for Civil Rights Handles Complaints" <https://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

⁷ Ibid.

⁸ At the time of this publication, gender-affirming care has not been defined as "abuse" in any state. In Texas, there is currently court action related to the Governor's directive to define gender-affirming care as abuse. Of note, The American Psychological Association said in a statement that a requirement such as the Texas directive is a violation of both patient confidentiality and professional ethics. Under such circumstances, providers may be forced to decide whether they will provide the highest standard of care for their patients and potentially face sanctions, or obey the state directive but withhold care and potentially violate patient confidentiality and professional ethics.

⁹ Ibid.

SUGGESTED CITATION

Center for the Study of Social Policy and National SOGIE Center. (2024, February). *FAQ for Behavioral Health Providers: Supporting LGBTQ+ Youth in School, Health, and Child Welfare Settings*. Center for the Study of Social Policy and National SOGIE Center. <https://cssp.org/resource/faq-for-behavioral-health-providers-supporting-lgbtq-youth>

This document was created by the Center for the Study of Social Policy and the National SOGIE Center with contributions and review from National Center for Youth Law.