



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Delaware

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VIA EMAIL ONLY

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To all Delaware Public School Administrators and Educators,

Open Letter to Delaware Public School Administrators and Educators Concerning the Trump Administration's Settlement Revocation

We write to you in response to the recent decision by the United States Department of Justice (DOJ) to rescind several civil rights settlements regarding education-related discrimination against LGBTQ+ people across the country, including a settlement at Cape Henlopen here in Delaware. Although this is a major failure by the federal government to uphold its responsibility to protect civil liberties, it does not negate the various rights afforded to LGBTQ+ students in Delaware.

While our rights in Delaware remain unchanged, this recent move by DOJ has caused a great deal of confusion and concern among Delaware residents. We would like to be clear in stating: **It is a violation of the law to impose any unique regulation, punishment, or burden upon LGBTQ+ students regarding their expression, presentation, or interpersonal conduct with peers.**

The Delaware Constitution and the U.S. Constitution clearly delineate students' rights regarding public schools, including the following:

1. All students have a right to an adequate education [Del. *Const.* art. 10, § 1.; *Delawareans for Educ. Opportunity v. Carney*, 199 A.3d 109 (Del. Ch. 2018)]
2. All students have a right not to be discriminated against by public schools for their sexuality or gender identity. [6 *Del. C.* § 4504 (a)(1)a]
3. Public schools cannot signal a preference for certain sexuality or gender identity. [6 *Del. C.* § 4504 (b)(1)]
4. All students have a right to express their gender identity at school. [U.S. const., amend. 1.]
5. All students have a right to date whomever they wish, without fear of retaliation or discrimination. [U.S. const., amend. 1.]

6. All students have a right not to have their private information disclosed to anyone outside their immediate family or to other students without their consent. [“FERPA” or 20 U.S.C. § 1232g]
7. All students have a right to express themselves on social media about non-school matters without fear of retaliation or discrimination. [U.S. const., amend. 1.]
8. All students have a right to speak out and protest about matters of public concern, including promotion of LGBTQ+ interests. [U.S. const., amend. 1.]
9. All students have a right to establish clubs and affinity groups in accordance with general school rules, including queer affinity groups. [U.S. const., amend. 1; 20 U.S.C. § 4071]
10. All students have a right to be protected by the school from homophobia, transphobia, or any other form of discrimination from other students or personnel at schools. [6 *Del. C.* § 4504 (a)(1) a.; 6 *Del. C.* § 4504 (b)(1)]
11. All students have a right against retaliation for assertion of any of the aforementioned rights. [6 *Del. C.* § 4504 (f) (1-2)]
12. None of the anti-discrimination policies enacted by respective public education institutions have been altered by termination of any past federal settlement agreements.

Everyone, regardless of how they identify, should feel welcome in school and confident in asserting their rights while they receive an education in the State of Delaware.

While the federal administration continues its disgraceful attempts to further reduce protections for LGBTQ+ people, it is important for Delaware institutions to stand firm in defending the rights of all who live and learn here. As administrators and educational leaders, you are charged with carrying out the obligation of state schools to foster a safe and equitable learning environment for gay, lesbian, transgender, and queer students—regardless of any conflicting personal views of faculty, staff, or parents.

We hope that all school districts and charter schools in Delaware will recognize and respect the rights of their students to feel comfortable attending school and engaging with their educational environment fully as themselves.

As always, the ACLU of Delaware is here to help any parents or students who are seeking guidance on how best to protect these vital constitutional rights. District and school personnel are encouraged to consult their counsel and the relevant law when regulating LGBTQ+ students.

Sincerely,

Oluwatobi O. Omotoso
Attorney, Education Equity Fellow

