

Know Your Rights

ACLU
Delaware

A Guide to the First
Amendment for LGBTQ+
Youth in Delaware

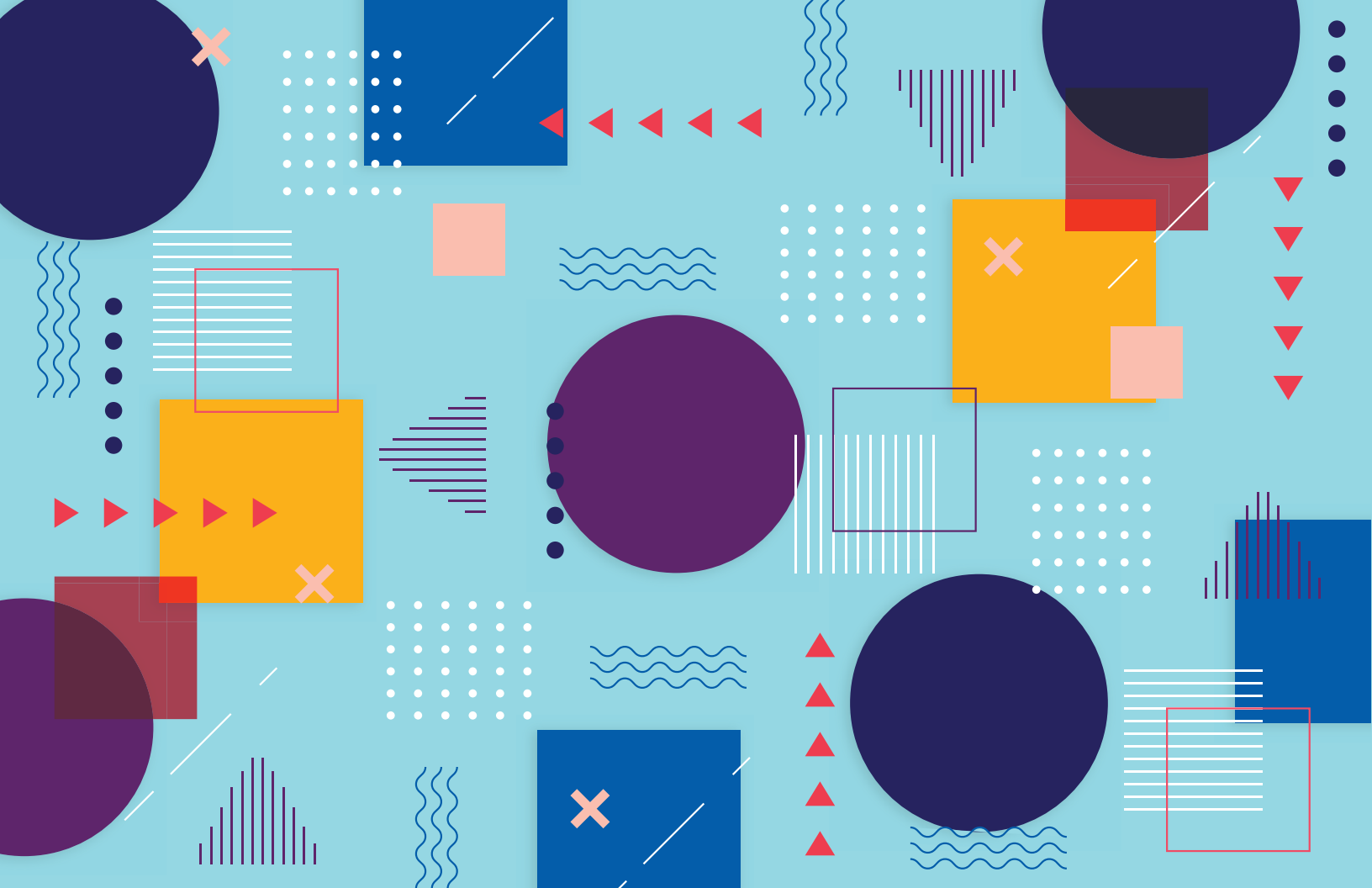


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DID YOU KNOW...

...that expressing your identity and ideas is like, super American? In fact, it's one of the most important aspects of life in America. It's so important that it's protected by our Constitution in the Bill of Rights. In fact, it's the very first thing mentioned in the Bill of Rights! That's how important the Founders felt freedom of expression was to this nation, that they included protections in the very first amendment to the Constitution.

WHAT IS THE FIRST AMENDMENT?

The First Amendment says exactly this:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

If that sounds like a bunch of legal mumbo jumbo, don't worry, the First Amendment's been around a long time, and we've had a lot of time to figure out what that means.

THE FIRST AMENDMENT SIMPLIFIED:

- 1 FREEDOM OF RELIGION:** You can believe and practice any religion you want, or none at all.
- 2 FREEDOM OF SPEECH/EXPRESSION:** You can express your ideas and opinions (and self) however you like without the government punishing you.
- 3 FREEDOM OF PRESS:** You can also publish those ideas and opinions without the government telling you not to.
- 4 FREEDOM OF ASSEMBLY:** You can gather in any (peaceful) groups you want, including to protest or rally for changes you'd like to see.
- 5 FREEDOM OF PETITION:** You can tell the government that you don't like what it's doing.

It's important for us to know that the First Amendment applies to everybody — including students! Because these rules are true for everybody and people can be so different from one another, there have been all sorts of challenges over the years where lawyers and judges and everyday people have tried to figure out how these rules apply. Many of these challenges have included LGBTQ+ people and their allies, and those challenges have led to legal protections. We'll talk about what those rights and protections look like in the next section, but first, how about we go over a few definitions?

LANGUAGE

AND DEFINITIONS

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When it comes to how we choose to identify ourselves or how we identify other people, the language we use is very important. Sometimes we may come across people who aren't familiar with certain words, phrases, or ideas. It's easy to assume that somebody who doesn't use the right language doesn't care about LGBTQ+ people or issues, but that person might actually care very much or even consider themselves an ally and just doesn't have much experience or knowledge.

Think About It This Way

If you've used an iPhone your whole life, you are probably familiar with how to download apps, use photo filters, and how to text. Imagine an older relative who has never had an iPhone comes to you asking you to help them out because they've been having trouble using the iPhone, and you explain to them how to use it, you might find yourself a little frustrated when they don't know what you're talking about — after all, you're just trying to help them out — but that doesn't mean they don't care about their iPhone!

In fact, they probably value their iPhone very much, but just don't have the same knowledge that you have. They might even do things with their iPhone that aren't really very good for it, like dropping it in water or scratching up the screen, but they would still be very sad if their iPhone wasn't in their life anymore. If you gave them a little information on how to treat their iPhone better, chances are that they would appreciate the information and be a better iPhone owner in the future. You'd be surprised how much people can change their minds and their actions once they gain a little knowledge.

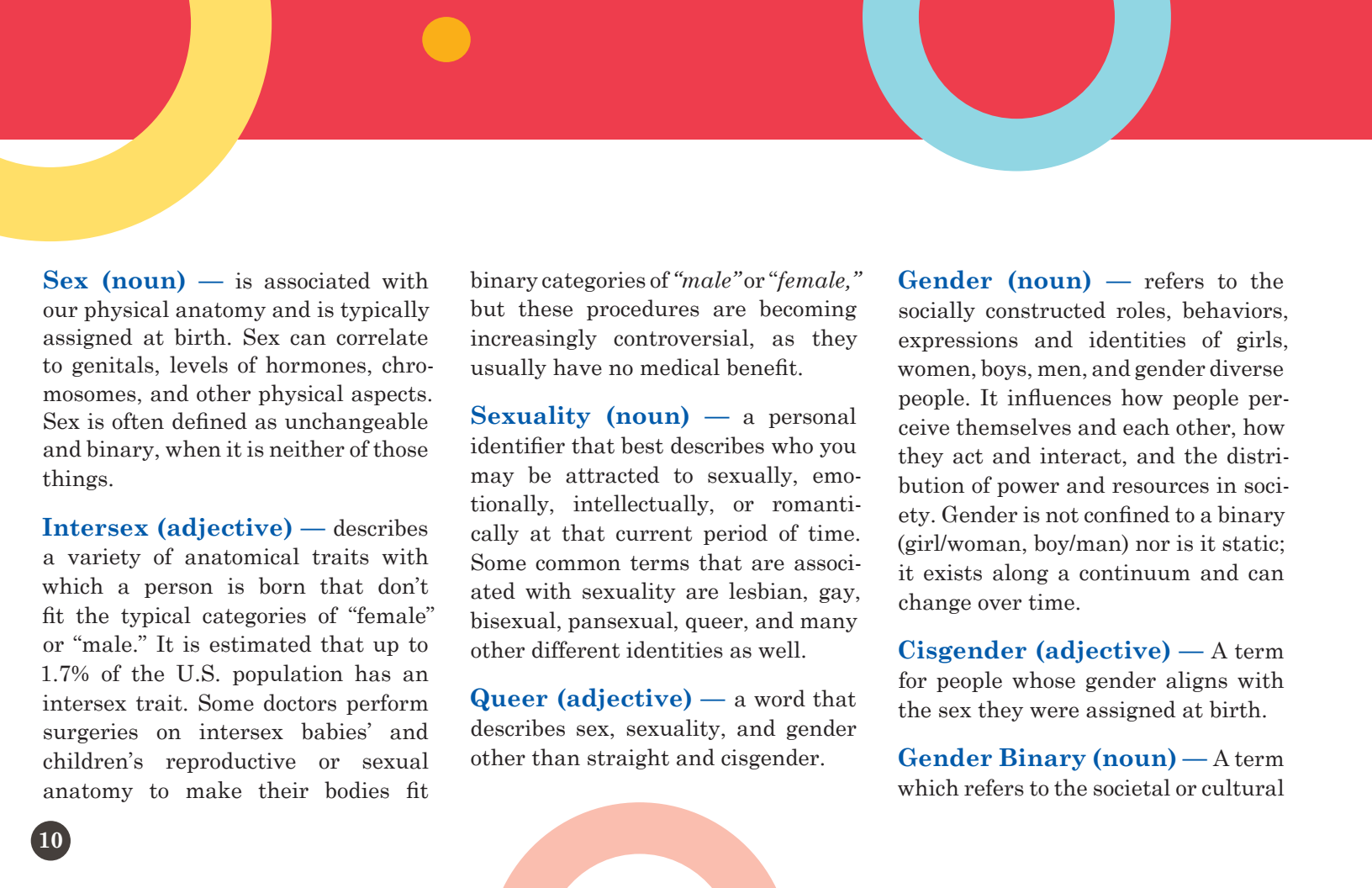


“I did then what I
knew how to do.
Now that I know
better, I do better.”

— *Maya Angelou*



Don't be afraid to speak up if you think that somebody is doing or saying things based on incorrect information or assumptions. You always have the right to explain, educate, and inform others about the things you understand, or about the things that are very important to you. If you are LGBTQ+ yourself or simply consider yourself an ally, people may consider you the “*expert*” on these issues, so it's nice to have a good understanding of what certain terms mean. Here are a few that come up very often and will be used in this document...



Sex (noun) — is associated with our physical anatomy and is typically assigned at birth. Sex can correlate to genitals, levels of hormones, chromosomes, and other physical aspects. Sex is often defined as unchangeable and binary, when it is neither of those things.

Intersex (adjective) — describes a variety of anatomical traits with which a person is born that don't fit the typical categories of "female" or "male." It is estimated that up to 1.7% of the U.S. population has an intersex trait. Some doctors perform surgeries on intersex babies' and children's reproductive or sexual anatomy to make their bodies fit

binary categories of "*male*" or "*female*," but these procedures are becoming increasingly controversial, as they usually have no medical benefit.


Sexuality (noun) — a personal identifier that best describes who you may be attracted to sexually, emotionally, intellectually, or romantically at that current period of time. Some common terms that are associated with sexuality are lesbian, gay, bisexual, pansexual, queer, and many other different identities as well.

Queer (adjective) — a word that describes sex, sexuality, and gender other than straight and cisgender.

Gender (noun) — refers to the socially constructed roles, behaviors, expressions and identities of girls, women, boys, men, and gender diverse people. It influences how people perceive themselves and each other, how they act and interact, and the distribution of power and resources in society. Gender is not confined to a binary (girl/woman, boy/man) nor is it static; it exists along a continuum and can change over time.

Cisgender (adjective) — A term for people whose gender aligns with the sex they were assigned at birth.

Gender Binary (noun) — A term which refers to the societal or cultural



belief that there are only two categories of gender: men and women.

Non-Binary (adjective) — Non-binary is an identity embraced by some people who do not identify exclusively as a boy/man or a girl/woman. Non-binary people may identify as being both a man and a woman, somewhere in between or as falling completely outside of these categories. While many also identify as transgender, not all non-binary people do.

Transgender (adjective) — Describes a person whose gender is different from what is generally considered typical for their sex assigned at birth. Note: This term

is an adjective. Using this term as a verb (i.e., transgendered) or noun (i.e., transgenders) is offensive and should be avoided.

Gender Diverse (adjective) — Gender Diversity refers to the extent to which a person's gender, role, or expression differs from the cultural norms prescribed for people of a particular sex. Includes non-binary people.

Gender Transition (verb, noun) The process through which transgender people begin to live as the gender with which they identify, rather than the one typically associated with their sex assigned at birth. Social transition may include things such as

changing names, pronouns, hairstyle and clothing. Medical transition may include hormone therapy and gender affirming surgeries. Not all transgender individuals seek medical care as part of their transition or have access to it.

GSA (Genders & Sexualities Alliance) (noun) — A GSA is a non-curricular student-led club for students with a shared interest in LGBTQ+ issues. These organizations provide a safe, supportive environment for lesbian, gay, bisexual, transgender, queer, and questioning youth and their allies. If your public school permits other student clubs, then it should allow you to form and publicize a GSA.



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LGBTQ+ STUDENTS:

KNOW

YOUR

RIGHTS!

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YOU HAVE THE RIGHT TO EXPRESS YOURSELF

Don't let anybody try and silence you regarding your opinions about LGBTQ+ issues or stop you from expressing who you are! If you go to a public school or a charter school in Delaware (private schools may have stricter or more specific rules), you have a constitutional right to express your views and identity. We often refer to this as "*Freedom of Speech*," but this isn't just about what you say, it also has to do with how you present yourself to the world, such as what you wear and how you act. For example, as long as you're following your school's dress code, nobody can tell you that you can't wear a pride flag t-shirt. Nobody has the right to tell you to act

or speak more "*masculine*" or "*feminine*."

Expression isn't just about ideas. You also have the right to express your gender, and it is not okay for your peers or teachers to treat you differently because of your identity. No matter what sex you were assigned at birth, you have the right to:

- Wear clothes that match your gender;
- Be called by the name and pronouns that you specify;
- Use the restroom and locker room that match your gender; and,
- Play on the sports team that matches your gender.

YOU HAVE THE RIGHT TO START A GROUP OR CLUB

Remember that your *“Freedom of Assembly”* applies at school. Federal law requires public high schools that allow any kind of non-curricular clubs, to allow clubs that are focused on LGBTQ+ issues and ideas, and to treat them no differently from other clubs.

Remember! You have to follow all the rules that your school sets up for clubs as long as the rules apply equally to all groups.

You have the right to form a GSA or any other type of LGBTQ+ student-focused club and have it recognized the same as any other groups recognized by your school.

“It shall be unlawful for any public secondary school which receives federal financial assistance...to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting...on the basis of religious, political, philosophical, or other content of the speech at such meetings.”
— 20 U.S. Code § 4071

Want to learn more about GSAs?

Check out our online guide »



YOU HAVE THE RIGHT TO GO TO SCHOOL DANCES WITH WHOM YOU WANT

Public schools can't stop you from bringing a date of any gender or sex to prom or homecoming who otherwise is allowed to attend, nor can they tell you that you can't dress a certain way or run for prom king/queen because it doesn't fit traditional gender roles.



YOU HAVE THE RIGHT TO DATE WHO YOU WANT

Public schools can't stop you from dating a same-sex or gender diverse partner, nor can they tell you that you can't associate in public (i.e., public displays of affection) a certain way if other opposite-sex couples are allowed to express their relationship publicly in the same manner.



YOU HAVE THE RIGHT TO REPORT HARASSMENT

If you're being harassed or threatened, go to the principal or another official right away. Keep detailed notes with dates of all incidents. Put the school on notice that it has to protect you. You have the right to be called by the name and pronouns that match who you are in every aspect of the school day. Your school is responsible for stopping harassment, including if someone intentionally misgenders you. Bullying is never okay — not from your peers, not from your teachers, not from anybody.

YOU HAVE THE RIGHT TO PRIVACY

Schools should not “out” you (share information about your sexual orientation or gender) to anyone without your permission, even if you're out to some people at school. In fact, nobody should do that. You have the right to be out and proud, when and how you choose, but you also have the right to keep your gender and sexual orientation private. Your school can't out you — even to your parents — without a strong justification.

Did you know...

...that your personally identifying information is federally protected?

The Family Educational Rights and Privacy Act of 1974 (FERPA) keeps your school and school staff from being able to share information about you that could be used to identify you. This includes things like your grades and your class schedule, but also things like your gender or sexuality!



YOU HAVE THE RIGHT TO NOT BE DISCRIMINATED AGAINST

Delaware's Equal Accommodations law prevents discrimination against people because of their race, age, marital status, creed, color, sex, disability, sexual orientation, gender or national origin. Places of "*public accommodation*" can include state agencies, local government agencies, and state-funded agencies performing public functions, and can include government buildings, courthouses and jails, transportation systems like buses and trains, or recreational areas like libraries, beaches and parks.

Places of "public accommodation" can also include privately owned or operated businesses and buildings

that offer goods and services to the public, like stores and shops, restaurants, hospitals, gas stations, hotels, motels, or sports and entertainment venues. Any public school or charter school that accepts public funding has to follow these rules.

The Delaware Department of Education had this to say:

"No person in the State of Delaware shall on the basis of race, color, religion, national origin, sex, sexual orientation, genetic information, marital status, disability, age or Vietnam Era veteran's status be unlawfully excluded

from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving approval or financial assistance from or through the Delaware Department of Education."

Transgender and gender nonconforming students often face discrimination over dress codes, access to restrooms and locker rooms, and their chosen names and pronouns. Contact ACLU-DE at aclu-de.org/get-help if you want help making sure your school treats you with respect and keeps you safe.



**YOU
HAVE
THE RIGHT
TO BE
YOURSELF!**





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HOW CAN YOU **MAKE** A **DIFFERENCE?**



Not all schools and school districts are created equal, and sometimes it can seem like the rules and policies at certain schools are not very friendly to the LGBTQ+ community. Public school districts are run by school boards, which are people elected by the community to represent the school district, to decide what to do with funds, and to come up with policies for the schools in the district. Sometimes

when we have just a few people making decisions for an entire community, the things they decide might not always align with the values and opinions of people they represent.

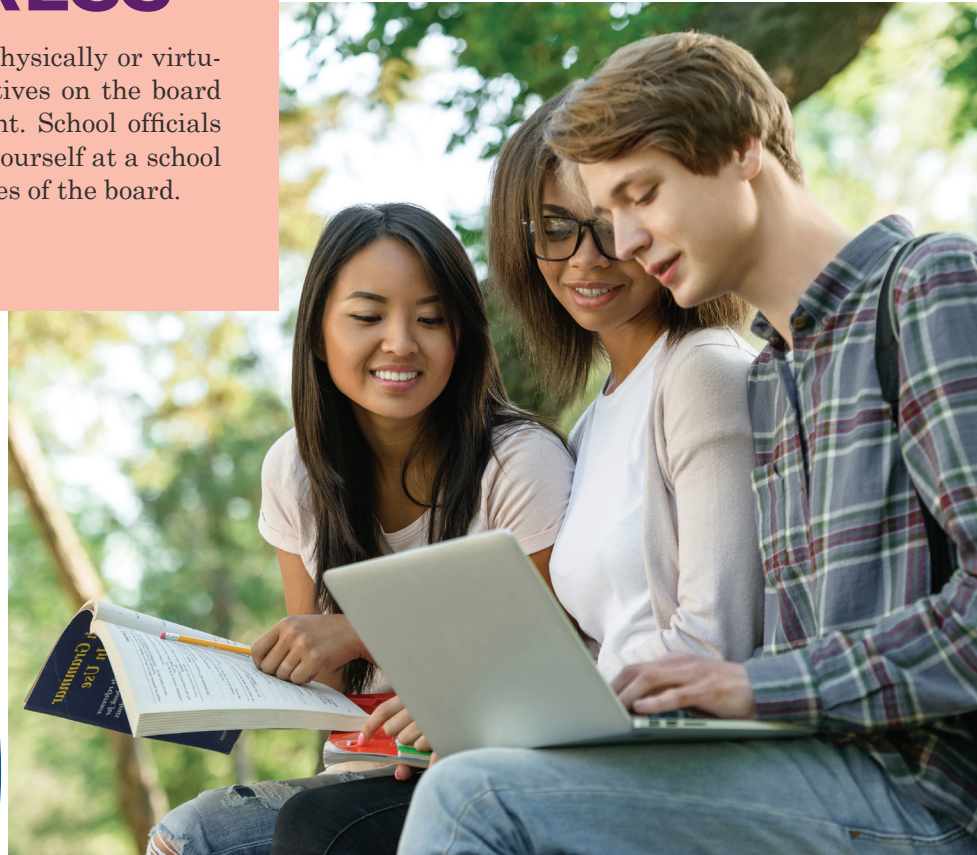
That's one reason why it's important to educate yourself about who is running for elected office in your community, because those people will have power over you and the people you

care about. Unfortunately, if you're under 18, you don't have the right to vote — at least not yet. However, you do still have the right to express your thoughts to elected officials. The First Amendment gives YOU power. If there's something happening at your school that you don't like or that you'd simply like to make better, you can use those powers to try and make those changes happen.



FREEDOM of PRESS

You can often access school board meetings physically or virtually, and speak your mind to the representatives on the board and the community members that are present. School officials generally may not punish you for expressing yourself at a school board meeting, so long as you abide by the rules of the board.





FREEDOM of SPEECH

Outside of school, on your own device, you can publish and post your opinions about your school and school district, whether you're praising or criticizing something or someone (be careful mentioning people by name though, because if you end up misrepresenting the facts about somebody, that can cause problems). When it comes to using a computer at school, or your school's WiFi, the school's policies may limit what you can and can't say or do.

Words like "publishing," "posting," and "press" come from a time when most news was actually printed on paper from a printing press, thus "Freedom of Press" is how the First Amendment refers to publishing text, but now with the Internet, most of our "publishing" happens online. When we "post" online, like on Facebook, Instagram, Twitter, etc., that actually comes from when people would nail flyers to a wooden post somewhere in a public place to share

information — you're free to do that too, in fact you might find that printing out flyers or posting something on a cork board may reach somebody who has limited internet access or doesn't follow you online. Sometimes there's no school like the old-school! If you're looking to publish your ideas in something a little more formal, keep in mind that the school will have the ultimate say about what gets published in a school newspaper or yearbook.

FREEDOM of ASSEMBLY

You can protest your school or school board's policies publicly or privately. When we think of protesting, often-times we imagine huge marches with thousands of people carrying signs and loudly chanting. This might work for you, but there are lots of really creative ways that people can protest. In fact, to "protest" simply means to declare that you disapprove of something. You certainly can get a group of students together and make signs and slogans. Or maybe you're not much for crowds or don't feel like you have many allies, and would prefer to simply stand silently with a sign that you made all on your own. During the Civil Rights Movement of the 1950s and 60s, protesters organized "sit-ins" where they simply went into diners that Black people weren't

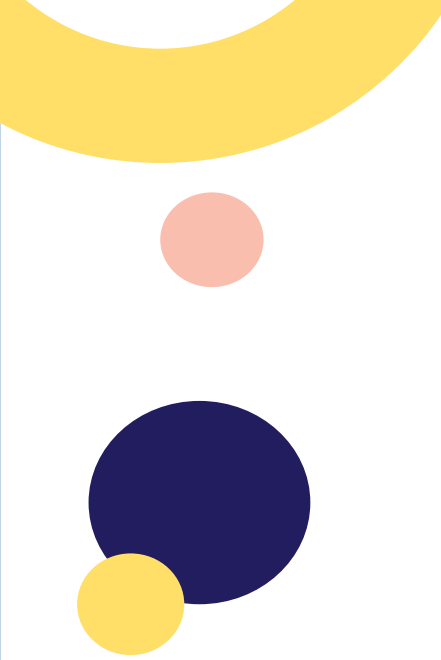
allowed into and sat down, refusing to move. Your protest could be as simple as coordinating with all your friends to wear a certain color shirt to school, or wear a black arm band to signify your protest.

CAUTION: If you do decide to gather somewhere, it must be a public, rather than private place, such as your school, your city hall, or a park. You can't just show up at a school board member's house and have a sit-in on their living room floor — that would be trespassing and you could get arrested for that.

CAUTION: If you do decide to engage in some sort of protest, be aware that if you break a rule or a law, you can and probably will face the consequences of breaking that rule or law. Your protest may be very noble, but that does not

protect you from consequences. Some protesters decide beforehand that their cause is more important than the consequences, and those protesters are often aware that they will likely be punished or arrested and proceed anyway. That is a personal choice, in the same way that breaking a rule or law under other circumstances is a personal choice. The law requires you to go to school, so a school can discipline or punish students who participate in a walkout or who miss class. You cannot be punished further for the meaning or the message behind the walkout or protest. It's always good to be aware of your school's policies.

(Want to learn more? Check out: www.aclu.org/issues/free-speech/student-speech-and-privacy)



FREEDOM of PETITION

A petition is a document that requests a change from some authority figure (like a principal, or a school board). You can create a petition that addresses some issue you would like to see changed and gather signatures from all the people who support your idea. Petitions may seem super formal and complicated, but they're actually very simple.



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THE SCHOOL BOARD'S **ROLE** IN YOUR RIGHTS

School boards can be places where positive change is made. Boards are made of real people, and people are unique and complex. Many school board members may be LGBTQ+ themselves, or consider themselves allies. Some board members may support the LGBTQ+ community personally and privately, but end up making harmful policy decisions or staying silent on harmful issues because they don't want to cause a fuss. Some school boards even enact very positive and forward-thinking rules and policies, even against the loud and angry voices of some parents, because they want to support and protect young people of all backgrounds. Two school districts in Delaware, Red Clay Consolidated School District and Christina School District, recently adopted very positive policies regarding transgender and gender diverse students. Want to learn a little bit more? Why not take a look at the school board records at the websites below?

CHRISTINA SCHOOL DISTRICT, JANUARY 12, 2021

<https://go.boarddocs.com/de/christina/Board.nsf/Public>

RED CLAY CONSOLIDATED SCHOOL DISTRICT, DECEMBER 15, 2021

<https://go.boarddocs.com/de/christina/Board.nsf/Public>

These are just two examples of positive policy enacted by school boards. If you think your local school board should do something similar, use those First Amendment rights!



WHO CAN
YOU



GO TO





For nearly 100 years, the ACLU has worked in courts, legislatures and communities to protect the constitutional rights of all people. With a nationwide network of offices and millions of members and supporters, we take up the toughest civil liberties fights. Beyond one person, party or side — we the people dare to create a more perfect union.

The ACLU of Delaware has been the "underdog's watchdog" for over half a century. We are a first resort when the government threatens our rights in Delaware and a last hope when we are deprived of our liberties. Our ongoing efforts today to promote racial justice, legal systems reform, expanded voting rights, and more are only the next step in our organization's history. We continue our work to protect and expand civil liberties in Delaware through litigation, advocacy, and public education, because we know all too well that "the fight for civil liberties never stays won."

Learn more at www.aclu-de.org.

**Here are
some of our
non-profit
partners in
Delaware.
Check out
their websites
for more
information
on support
and services
they provide.**

CAMP Rehoboth

<https://www.camprehoboth.com>

Intersections of Pride

<https://www.intersectionsofpride.org>

Lewes Public Library

<https://lewes.lib.de.us>

**National Association
of Social Workers DE**

<https://naswde.socialworkers.org>

**Parents of Trans Kids
(PTK) Delaware**

<https://www.pflagwilmde.org>

Rehoboth PFLAG

<https://www.pflagrehobothbeach.org/>

Transitions Delaware

<https://transitionsde.com>

**Unitarian Universalists
of Southern Delaware**

<https://uusd.org>

If you have experienced school-based bullying, harassment, or discrimination, you can also file a complaint with your local school district, your state education agency, or the Office of Civil Rights in the U.S. Department of Education. You can file a complaint for bullying, harassment, or discrimination based on race, color, national origin, age, disability, sex, sexual orientation, gender, transgender status, or sex characteristics.

United Way

<https://uwde.org>

The Village

[https://aidsdelaware.org/
the-village](https://aidsdelaware.org/the-village)

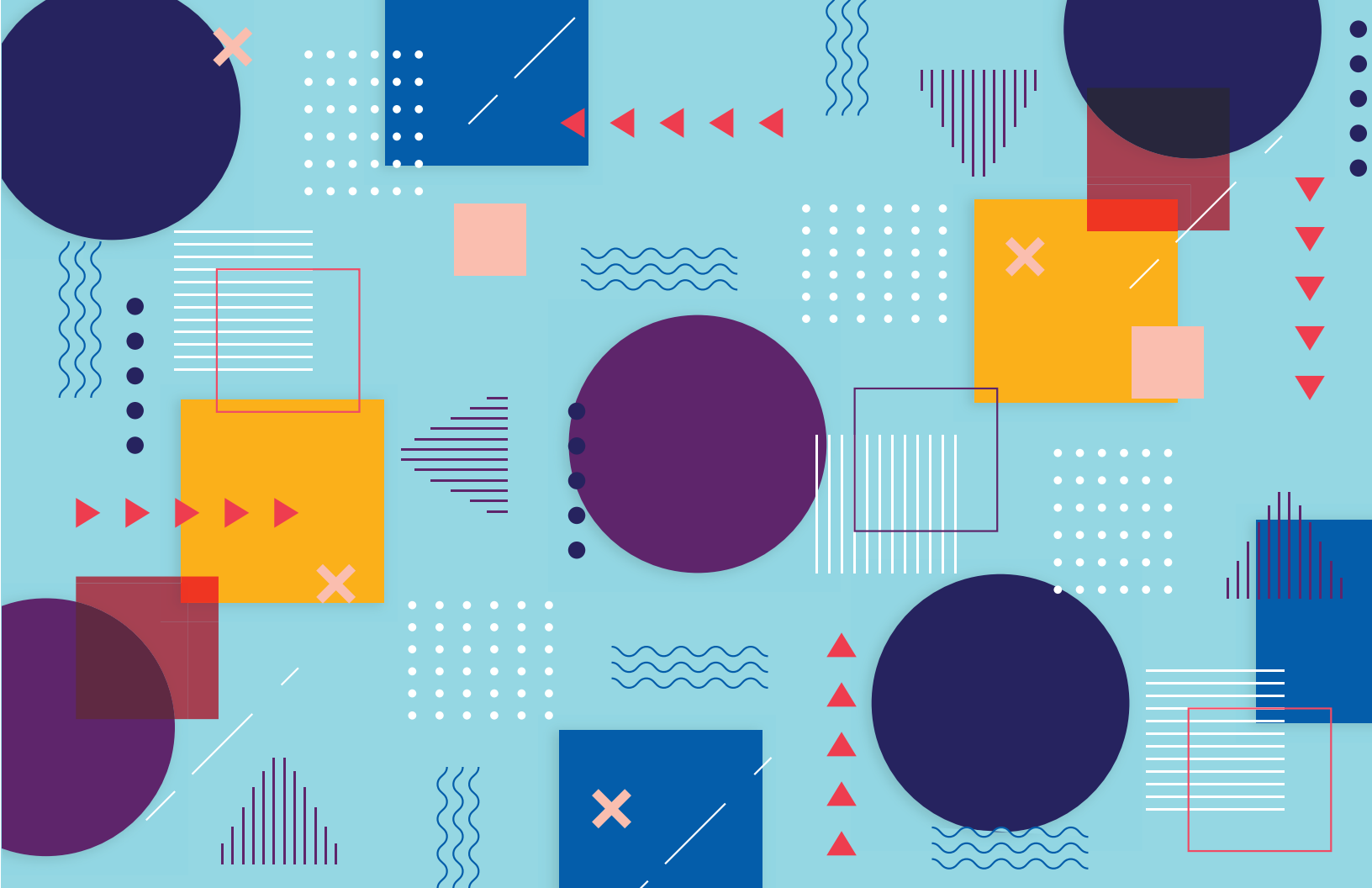


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YOUR

RIGHTS!





WWW.ACLU-DE.ORG
(302) 654-5326
100 W. 10TH STREET, SUITE 706
WILMINGTON, DE 19801



**Check out
and share this
online guide!**

Credits

Aaron Moseley-Saldivar
Researcher & Content Writer

BrandSwan
Handbook & Website Design

**Mike Brickner, Dwayne J. Bensing,
Morgan Kelly, Melissa Bryson, Rachael
Mead, and Priya Hay-Chatterjee**
Contributors