

115TH CONGRESS
2D SESSION

H. R. 5374

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 2018

Mr. POLIS (for himself, Ms. ROS-LEHTINEN, Mr. SCOTT of Virginia, Mr. TAKANO, Ms. PELOSI, Mr. HOYER, Mr. CICILLINE, Mr. SEAN PATRICK MALONEY of New York, Ms. SINEMA, Mr. POCAN, Mr. DEFAZIO, Mr. GRIJALVA, Ms. JACKSON LEE, Mr. ESPAILLAT, Mr. SWALWELL of California, Mr. LOWENTHAL, Mr. SERRANO, Ms. BARRAGÁN, Mr. CROWLEY, Ms. JAYAPAL, Ms. BROWNLEY of California, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. EVANS, Miss RICE of New York, Mr. PERLMUTTER, Mr. CRIST, Ms. SHEA-PORTER, Mr. CARTWRIGHT, Mr. MOULTON, Mr. SHERMAN, Mr. CARSON of Indiana, Mr. PETERS, Ms. BONAMICI, Mr. KILDEE, Ms. NORTON, Mr. PRICE of North Carolina, Mr. PALLONE, Mrs. WATSON COLEMAN, Mr. FOSTER, Mr. HIMES, Mr. KIHUEN, Ms. TITUS, Ms. BLUNT ROCHESTER, Ms. CLARK of Massachusetts, Ms. DELBENE, Mr. LANGEVIN, Ms. DEGETTE, Ms. TSONGAS, Ms. FRANKEL of Florida, Ms. MCCOLLUM, Mr. BLUMENAUER, Mr. HASTINGS, Ms. BASS, Ms. BORDALLO, Mr. SMITH of Washington, Mr. VELA, Mr. YARMUTH, Mrs. DINGELL, Mrs. CAROLYN B. MALONEY of New York, Ms. SCHAKOWSKY, Ms. SPEIER, Mr. PAYNE, Ms. MOORE, Ms. MATSUI, Mrs. BUSTOS, Ms. FUDGE, Mr. CÁRDENAS, Ms. VELÁZQUEZ, Mr. PANETTA, Mr. GALLEGRO, Mrs. DAVIS of California, Mr. DANNY K. DAVIS of Illinois, Mr. COHEN, Mr. KILMER, Mrs. LOWEY, Mr. GUTIÉRREZ, Ms. ROSEN, Ms. LEE, Mr. ELLISON, Mr. GARAMENDI, Mr. MCNERNEY, Mr. TED LIEU of California, Mr. NADLER, Ms. SÁNCHEZ, Mr. LARSON of Connecticut, Mr. COURTNEY, Mr. NOLAN, Ms. HANABUSA, Mr. LEWIS of Georgia, Mr. COSTA, Ms. PINGREE, Mr. TONKO, Mr. CAPUANO, Mr. NORCROSS, Mr. COOPER, Ms. ROYBAL-ALLARD, Mr. BRADY of Pennsylvania, Mr. QUIGLEY, Mr. HUFFMAN, Mr. BERA, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. DELANEY, Mr. RYAN of Ohio, Ms. DELAURO, Mr. WELCH, Mr. RUIZ, Mrs. NAPOLITANO, Ms. WASSERMAN SCHULTZ, Mr. KENNEDY, Mr. VARGAS, Mr. LARSEN of Washington, Mr. O'ROURKE, Ms. LOFGREN, Ms. CASTOR of Florida, Mr. KRISHNAMOORTHY, Mr. CARBAJAL, Mr. MCEACHIN, Mr. DESAULNIER, Ms. ESTY of Connecticut, and Mrs. TORRES) introduced the following

bill; which was referred to the Committee on Education and the Workforce

A BILL

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Non-Discrimi-
5 nation Act of 2018”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds the following:

8 (1) Public school students who are lesbian, gay,
9 bisexual or transgender (LGBT), or are perceived to
10 be LGBT, or who associate with LGBT people, have
11 been and are subjected to pervasive discrimination,
12 including harassment, bullying, intimidation and vio-
13 lence, and have been deprived of equal educational
14 opportunities, in schools in every part of our Nation.

15 (2) While discrimination, including harassment,
16 bullying, intimidation and violence, of any kind is
17 harmful to students and to our education system,
18 actions that target students based on sexual orienta-

1 tion or gender identity represent a distinct and espe-
2 cially severe problem.

3 (3) Numerous social science studies demon-
4 strate that discrimination, including harassment,
5 bullying, intimidation and violence, at school has
6 contributed to high rates of absenteeism, dropout,
7 adverse health consequences, and academic under-
8 achievement among LGBT youth.

9 (4) When left unchecked, discrimination, includ-
10 ing harassment, bullying, intimidation and violence,
11 in schools based on sexual orientation or gender
12 identity can lead, and has led to, life-threatening vio-
13 lence and to suicide.

14 (5) Public school students enjoy a variety of
15 constitutional rights, including rights to equal pro-
16 tection, privacy, and free expression, which are in-
17 fringed when school officials engage in discrimina-
18 tory treatment or are indifferent to discrimination,
19 including harassment, bullying, intimidation and vio-
20 lence, on the basis of sexual orientation or gender
21 identity.

22 (6) While Federal statutory protections ex-
23 pressly address discrimination on the basis of race,
24 color, sex, religion, disability, and national origin,
25 Federal civil rights statutes do not expressly include

1 “sexual orientation” or “gender identity”. As a re-
2 sult, students and parents have often had limited
3 legal recourse to redress for discrimination on the
4 basis of sexual orientation or gender identity.

5 (b) PURPOSES.—The purposes of this Act are—

6 (1) to ensure that all students have access to
7 public education in a safe environment free from dis-
8 crimination, including harassment, bullying, intimi-
9 dation and violence, on the basis of sexual orienta-
10 tion or gender identity;

11 (2) to provide a comprehensive Federal prohibi-
12 tion of discrimination in public schools based on ac-
13 tual or perceived sexual orientation or gender iden-
14 tity;

15 (3) to provide meaningful and effective rem-
16 edies for discrimination in public schools based on
17 actual or perceived sexual orientation or gender
18 identity;

19 (4) to invoke congressional powers, including
20 but not limited to the power to enforce the 14th
21 Amendment to the Constitution and to provide for
22 the general welfare pursuant to section 8 of article
23 I of the Constitution and the power to enact all laws
24 necessary and proper for the execution of the fore-
25 going powers pursuant to section 8 of article I of the

1 Constitution, in order to prohibit discrimination in
2 public schools on the basis of sexual orientation or
3 gender identity; and

4 (5) to allow the Department of Education to ef-
5 fectively combat discrimination based on sexual ori-
6 entation or gender identity in public schools through
7 regulation and enforcement, as the Department has
8 issued regulations under and enforced title IX of the
9 Education Amendments of 1972 (20 U.S.C. 1681 et
10 seq.) and other nondiscrimination laws in a manner
11 that effectively addresses discrimination.

12 **SEC. 3. DEFINITIONS.**

13 For purposes of this Act:

14 (1) PROGRAM OR ACTIVITY.—The terms “pro-
15 gram or activity” and “program” have same mean-
16 ings given such terms as applied under section 606
17 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-
18 4a) to the operations of public entities under para-
19 graph (2)(B) of such section.

20 (2) GENDER IDENTITY.—The term “gender
21 identity” means the gender-related identity, appear-
22 ance, or mannerisms or other gender-related charac-
23 teristics of an individual, with or without regard to
24 the individual’s designated sex at birth.

1 (3) HARASSMENT.—The term “harassment”
2 means conduct that is sufficiently severe, persistent,
3 or pervasive to limit a student’s ability to participate
4 in or benefit from a public school education program
5 or activity, or to create a hostile or abusive edu-
6 cational environment at a public school, including
7 acts of verbal, nonverbal, or physical aggression, in-
8 timidation, or hostility, if such conduct is based
9 on—

10 (A) a student’s actual or perceived sexual
11 orientation or gender identity; or

12 (B) the actual or perceived sexual orienta-
13 tion or gender identity of a person or persons
14 with whom a student associates or has associ-
15 ated.

16 (4) PUBLIC SCHOOLS.—The term “public
17 schools” means public elementary and secondary
18 schools, including local educational agencies, edu-
19 cational service agencies, and State educational
20 agencies, as defined in section 8101 of the Elemen-
21 tary and Secondary Education Act of 1965 (20
22 U.S.C. 7801).

23 (5) SEXUAL ORIENTATION.—The term “sexual
24 orientation” means homosexuality, heterosexuality,
25 or bisexuality.

1 (6) STUDENT.—The term “student” means an
2 individual who is enrolled in a public school or who,
3 regardless of official enrollment status, attends
4 classes or participates in a public school’s programs
5 or educational activities.

6 **SEC. 4. PROHIBITION AGAINST DISCRIMINATION; EXCEP-**
7 **TIONS.**

8 (a) IN GENERAL.—No student shall, on the basis of
9 actual or perceived sexual orientation or gender identity
10 of such individual or of a person with whom the student
11 associates or has associated, be excluded from participa-
12 tion in, or be denied the benefits of, or be subjected to
13 discrimination under any program or activity receiving
14 Federal financial assistance.

15 (b) HARASSMENT.—For purposes of this Act, dis-
16 crimination includes, but is not limited to, harassment of
17 a student on the basis of actual or perceived sexual ori-
18 entation or gender identity of such student or of a person
19 with whom the student associates or has associated.

20 (c) RETALIATION PROHIBITED.—

21 (1) PROHIBITION.—No person shall be excluded
22 from participation in, be denied the benefits of, or
23 be subjected to discrimination, retaliation, or re-
24 prisal under any program or activity receiving Fed-

1 eral financial assistance based on his or her opposi-
2 tion to conduct made unlawful by this Act.

3 (2) DEFINITION.—For purposes of this sub-
4 section, “opposition to conduct made unlawful by
5 this Act” includes, but is not limited to—

6 (A) opposition to conduct reasonably be-
7 lieved to be made unlawful by this Act;

8 (B) any formal or informal report, whether
9 oral or written, to any governmental entity, in-
10 cluding public schools and employees thereof,
11 regarding conduct made unlawful by this Act or
12 reasonably believed to be made unlawful by this
13 Act;

14 (C) participation in any investigation, pro-
15 ceeding, or hearing related to conduct made un-
16 lawful by this Act or reasonably believed to be
17 made unlawful by this Act; and

18 (D) assistance or encouragement provided
19 to any other person in the exercise or enjoy-
20 ment of any right granted or protected by this
21 Act,

22 if in the course of that expression, the person in-
23 volved does not purposefully provide information
24 known to be false to any public school or other gov-

1 ernmental entity regarding a violation, or alleged
2 violation, of this Act.

3 **SEC. 5. FEDERAL ADMINISTRATIVE ENFORCEMENT; RE-**
4 **PORT TO CONGRESSIONAL COMMITTEES.**

5 Each Federal department and agency which is em-
6 powered to extend Federal financial assistance to any edu-
7 cation program or activity, by way of grant, loan, or con-
8 tract other than a contract of insurance or guaranty, is
9 authorized and directed to effectuate the provisions of sec-
10 tion 4 of this Act with respect to such program or activity
11 by issuing rules, regulations, or orders of general applica-
12 bility which shall be consistent with achievement of the
13 objectives of the Act authorizing the financial assistance
14 in connection with which the action is taken. No such rule,
15 regulation, or order shall become effective unless and until
16 approved by the President. Compliance with any require-
17 ment adopted pursuant to this section may be effected—

18 (1) by the termination of or refusal to grant or
19 to continue assistance under such program or activ-
20 ity to any recipient as to whom there has been an
21 express finding on the record, after opportunity for
22 hearing, of a failure to comply with such require-
23 ment, but such termination or refusal shall be lim-
24 ited to the particular political entity, or part thereof,
25 or other recipient as to whom such a finding has

1 been made, and shall be limited in its effect to the
2 particular program, or part thereof, in which such
3 noncompliance has been so found; or

4 (2) by any other means authorized by law,
5 except that no such action shall be taken until the depart-
6 ment or agency concerned has advised the appropriate per-
7 son or persons of the failure to comply with the require-
8 ment and has determined that compliance cannot be se-
9 cured by voluntary means. In the case of any action termi-
10 nating, or refusing to grant or continue, assistance be-
11 cause of failure to comply with a requirement imposed
12 pursuant to this section, the head of the Federal depart-
13 ment or agency shall file with the committees of the House
14 and Senate having legislative jurisdiction over the pro-
15 gram or activity involved a full written report of the cir-
16 cumstances and the grounds for such action. No such ac-
17 tion shall become effective until 30 days have elapsed after
18 the filing of such report.

19 **SEC. 6. CAUSE OF ACTION.**

20 (a) CAUSE OF ACTION.—Subject to subsection (c) of
21 this section, an aggrieved individual may assert a violation
22 of this Act in a judicial proceeding. Aggrieved persons may
23 be awarded all appropriate relief, including but not limited
24 to equitable relief, compensatory damages, cost of the ac-
25 tion, and remedial action.

1 (b) **RULE OF CONSTRUCTION.**—This section shall not
2 be construed to preclude an aggrieved individual from ob-
3 taining other remedies under any other provision of law
4 or to require such individual to exhaust any administrative
5 complaint process or notice-of-claim requirement before
6 seeking redress under this section.

7 (c) **STATUTE OF LIMITATIONS.**—For actions brought
8 pursuant to this section, the statute of limitations period
9 shall be determined in accordance with section 1658(a) of
10 title 28 of the United States Code. The tolling of any such
11 limitations period shall be determined in accordance with
12 the law governing actions under section 1979 of the Re-
13 vised Statutes (42 U.S.C. 1983) in the forum State.

14 **SEC. 7. STATE IMMUNITY.**

15 (a) **STATE IMMUNITY.**—A State shall not be immune
16 under the 11th Amendment to the Constitution of the
17 United States from suit in Federal court for a violation
18 of this Act.

19 (b) **WAIVER.**—A State’s receipt or use of Federal fi-
20 nancial assistance for any program or activity of a State
21 shall constitute a waiver of sovereign immunity, under the
22 11th Amendment to the Constitution or otherwise, to a
23 suit brought by an aggrieved individual for a violation of
24 section 4 of this Act.

1 (c) REMEDIES.—In a suit against a State for a viola-
2 tion of this Act, remedies (including remedies both at law
3 and in equity) are available for such a violation to the
4 same extent as such remedies are available for such a vio-
5 lation in the suit against any public or private entity other
6 than a State.

7 **SEC. 8. ATTORNEY'S FEES.**

8 Section 722(b) of the Revised Statutes (42 U.S.C.
9 1988(b)) is amended by inserting “the Student Non-
10 discrimination Act of 2018,” after “Religious Land Use
11 and Institutionalized Persons Act of 2000,”.

12 **SEC. 9. EFFECT ON OTHER LAWS.**

13 (a) FEDERAL AND STATE NONDISCRIMINATION
14 LAWS.—Nothing in this Act shall be construed to pre-
15 empt, invalidate, or limit rights, remedies, procedures, or
16 legal standards available to victims of discrimination or
17 retaliation under any other Federal law or law of a State
18 or political subdivision of a State, including title VI of the
19 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title
20 IX of the Education Amendments of 1972 (20 U.S.C.
21 1681 et seq.), section 504 of the Rehabilitation Act of
22 1973 (29 U.S.C. 794), the Americans with Disabilities Act
23 of 1990 (42 U.S.C. 12101 et seq.), or section 1979 of the
24 Revised Statutes (42 U.S.C. 1983). The obligations im-
25 posed by this Act are in addition to those imposed by title

1 IX of the Education Amendments of 1972 (20 U.S.C.
2 1681 et seq.), title VI of the Civil Rights Act of 1964 (42
3 U.S.C. 2000d et seq.), and the Americans with Disabilities
4 Act of 1990 (42 U.S.C. 12101 et seq.).

5 (b) **FREE SPEECH AND EXPRESSION LAWS AND RE-**
6 **LIGIOUS STUDENT GROUPS.**—Nothing in this Act shall be
7 construed to alter legal standards regarding, or affect the
8 rights available to individuals or groups under, other Fed-
9 eral laws that establish protections for freedom of speech
10 and expression, such as legal standards and rights avail-
11 able to religious and other student groups under the 1st
12 Amendment to the Constitution and the Equal Access Act
13 (20 U.S.C. 4071 et seq.).

14 **SEC. 10. SEVERABILITY.**

15 If any provision of this Act, or any application of such
16 provision to any person or circumstance, is held to be un-
17 constitutional, the remainder of this Act, and the applica-
18 tion of the provision to any other person or circumstance
19 shall not be affected.

20 **SEC. 11. EFFECTIVE DATE.**

21 This Act shall take effect 60 days after the date of
22 the enactment of this Act and shall not apply to conduct
23 occurring before the effective date of this Act.

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