

## THE RIGHT TO BE FREE FROM RACISM AT SCHOOL

August 2022

Students deserve affirming and safe school environments that celebrate them for who they are and provide robust opportunities to learn. Schools have a legal obligation to ensure that students are not denied opportunities, treated differently, discriminated against, or harassed because of their race, color, or national origin. Schools must have policies and procedures to prevent and address bullying and harassment based on race and must ensure equal opportunities for students of color.

It is well-documented that the incidence of school-based acts of racist hatred has been on the rise across the country and across Pennsylvania.<sup>1</sup> In fact, racism is the leading motivation behind reported acts of hatred at school.<sup>2</sup> We know that the vast majority of incidents of hate at school are never reported at all,<sup>3</sup> and reports do not begin to reflect the range of abuses that Black and Brown students and students of color experience daily.

As the COVID-19 pandemic continues, it is also well documented that Black and Brown students have been disproportionately impacted.<sup>4</sup> In addition, we know that many students have been and continue to be subject to increased trauma caused by heightened anti-Black racism, anti-Asian racism, and police brutality following the murders of Breonna Taylor, George Floyd, Walter Wallace Jr., Duante Wright, Patrick Lyoya, and many others. This hate often follows students into school and undercuts their ability to access their education.

Responding to school-based incidents of hate is not enough. Rather, schools must proactively acknowledge and confront the fact that the education system in this country was built on a foundation of systemic anti-Black racism that continues today. School communities must focus on developing an affirming and equitable school climate for students of color and commit themselves to teaching accurate historical information to ensure that students understand how racism functions so they can develop the skills needed to support antiracist behaviors and attitudes.

### IS RACIAL DISCRIMINATION ILLEGAL?

Yes. Discrimination based on race is illegal under federal and state laws as well as the U.S. Constitution and Pennsylvania's Constitution. Racism has no place in our schools. As part of public schools' duty to ensure equal treatment, schools (as recipients of federal funding) must provide programs, services, aids, and benefits in a nondiscriminatory manner and in an environment that is free from discriminatory harassment that limits educational opportunities.

### WHAT ARE THE LAWS THAT PROTECT STUDENTS FROM RACIAL DISCRIMINATION?

- As the Supreme Court explained in *Brown v. Board of Education* in 1954, racial discrimination in schools violates the Equal Protection Clause of the Fourteenth Amendment

of the United States Constitution.<sup>5</sup> It also violates similar provisions of Pennsylvania's state Constitution<sup>6</sup> as well as the Pennsylvania Human Relations Act.<sup>7</sup>

- Racial discrimination also violates Title IV of the Civil Rights Act of 1964, which prohibits discrimination in schools on the basis of race, color, religion, sex, or national origin.<sup>8</sup> Racial discrimination is also prohibited by Title VI of the Civil Rights Act of 1964, which forbids schools that receive federal financial assistance — virtually all public schools — from discriminating against students based on race, color, or national origin.<sup>9</sup> Title VI allows students and parents or guardians to assert private lawsuits based on evidence of intentional discrimination, but only federal agencies can bring a complaint alleging that a policy or action has a disparate negative impact.<sup>10</sup> The Equal Educational Opportunities Act of 1974 also prohibits, among other conduct, deliberate segregation on the basis of race, color, and national origin.
- Racial discrimination may also take place at the intersection of other identities a student may hold, including sex, gender identity, or sexual orientation. For example, Black girls are often illegally denied educational opportunities both because they are Black AND because they are girls. A student could bring claims under Title VI and Title IX to address both types of discrimination (race and sex).<sup>11</sup>

## WHAT RIGHTS AND PROTECTIONS DO STUDENTS HAVE TO BE FREE OF RACISM AT SCHOOL?

- All students have the right to be free from discrimination or mistreatment at school and at school events because of their race, skin color, national origin, or immigration status.
- Students have the right to enroll and fully participate in school, regardless of their race, ethnicity, religion, immigration status, or English language skills.<sup>12</sup>
- Students have the right to attend school without having to present a green card, visa, Social Security number, or any proof of immigration status.<sup>13</sup>
- Students have an equal right to keep their education records private, including from police, federal agents, and immigration officials.<sup>14</sup>
- Students have the right to be free from harassment based on their race, religion, or national origin, and other protected identities they may hold.
- Students have the right to learn in an environment free from racist hate, such as slurs and hate symbols, and school officials have a legal duty to prevent and stop that type of toxic school environment.

## HOW IS RACIAL DISCRIMINATION DEFINED?

Racial discrimination is any conduct that treats a student differently and unfavorably because of the student's race, color, ancestry, national origin, personal characteristics associated with race (such as hair texture or wearing one's hair in natural or protective styles), or association with a person of a certain race or color. Racial discrimination includes any denial of equal educational opportunities based on race.

Racial discrimination in school can take many forms. It can involve racist comments, racist behavior, or entire school policies and practices that perpetuate racism or allow it to continue

uninterrupted. Racism does not happen in isolation. It impacts and harms school communities as a whole, even when it happens between students. Some examples include:

- Qualified students are denied admission or “counseled out” of a school or class for racially discriminatory reasons – e.g., school officials underestimate a student’s academic abilities because of their race, color, national origin, English language skills, or immigration status.
- Students are denied opportunities in school, in extracurriculars, or for scholarships because of their race, color, national origin, or immigration status.
- Classmates harass a peer based on race, ancestry, or national origin.
- School officials create a climate where students are treated with disrespect or hostility because of their race, ancestry, national origin, or immigration status.
- Black students and other students of color are disciplined more often and more harshly in school, when compared with white peers who engage in the same behavior just as frequently.
- School personnel treat and discipline a young Black girl more harshly than a young white girl for the same behavior.

### Adultification Bias

Adultification bias is a well-documented form of racial discrimination that results in adults viewing Black girls as being more mature, less innocent, and in need of less nurturing than their white female counterparts, beginning at a very young age. As a result of those racially biased assumptions, staff treat normal, age-appropriate behaviors of Black girls as intentional acts of defiance and over-punish them in harsh and unwarranted ways, including by engaging law enforcement. Adultification bias undercuts Black girls’ education and has lifelong negative consequences. To learn more about how adultification bias affects Black girls, see [Epstein, Blake, & González, \*Girlhood Interrupted: The Erasure of Black Girls’ Childhood\*, \(2017\)](#).

## WHAT IS ILLEGAL RACIAL HARASSMENT? HOW DOES IT DIFFER FROM BULLYING?

Racial harassment is racially discriminatory conduct that can include speech or other behavior. Some examples of harassment include racial slurs, offensive or derogatory remarks made about a student’s actual or perceived race or color, racially discriminatory dress codes or grooming policies that often target Black students, or the display of racially offensive symbols. Harassment is illegal when it occurs so frequently that it creates a hostile or offensive environment, OR when it is so severe that it causes harm to the student.<sup>15</sup> Even if a behavior happens one time, it can still be considered harassment, and the school may still be required to take action after it has been reported. For example, in some severe cases, the single use of a racial slur or display of a hate symbol can make an environment hostile and require a school to intervene.<sup>16</sup>

Sometimes, this behavior is incorrectly classified as bullying by school officials or in school policies. Under state law, every local educational agency must adopt an anti-bullying policy as part of its code of student conduct that delineates disciplinary consequences for bullying, identifies appropriate school staff to receive and investigate reports of alleged bullying, and may provide for prevention, intervention, and education programs.<sup>17</sup> However, harassment is a legally distinct category of behavior and requires a higher level of response because it involves an aspect of a student's identity that is protected by law, including the right to be free from race-based discrimination. It is important to consider whether bullying behavior is actually harassment. Behavior qualifies as harassment if the offensive conduct relates to race, color, national origin/ethnicity, and/or immigration status. Harassers can be students, school staff, or even someone visiting the school, such as a student or employee from another school.

## WHAT IS THE RIGHT TO BE FREE FROM RACIAL HARASSMENT AT SCHOOL?

Students have the right to be free from harassment based on race. Your school has a duty to protect you from racial discrimination.

If you are being harassed based on race, color, national origin, or immigration status, you should:

- Keep notes for yourself of when and how you are harassed and by whom;
- Tell an adult at the school about it – like a teacher, a principal, or counselor;
- Report the harassment in writing to your principal or superintendent, using any process your school may have, such as an online complaint form;
- For options to complain to external agencies, see our guide [What Can I Do If My Child is Bullied or Harassed? A Parent's Guide to Advocacy in Pennsylvania Public Schools](#); and
- Follow up with your school in writing if it fails to take action.

Complaints can be filed with the U.S. Department of Justice (DOJ) to challenge a school district's failure to address racial harassment and discrimination in school. You may file a DOJ complaint on your own or with the help of a lawyer, [using this link](#). Alternatively, you may file a complaint with the U.S. Department of Education Office of Civil Rights (OCR) [here](#). In general, a complaint submitted to OCR must be filed within 180 days of the last act of discrimination or harassment. Both agencies have a duty to investigate complaints and issue corrective action to remedy violations as necessary. For example, in response to complaints that the Colorado Springs' Falcon School District 49 was not adequately responding to incidents of racial harassment and discrimination in its schools, DOJ required the district to train teachers and students to prevent and address racial harassment and discrimination, track and analyze data relating to harassment and discrimination, and implement restorative justice techniques and positive behavior interventions in addressing harassing and/or discriminatory behavior.<sup>18</sup>

## DO I HAVE A RIGHT TO SELF-EXPRESSION, SUCH AS WEARING MY HAIR AS AN EXPRESSION OF MY IDENTITY, CULTURE, AND HERITAGE?

Yes. Students have a right to self-expression. While courts have generally upheld the right of school officials to require school uniforms, schools cannot use such policies to prohibit freedom of expression or to treat certain students differently.<sup>19</sup> This includes the right to wear political

clothing such as a Black Lives Matter shirt. School policies that prohibit hair styles, such as natural hair, Afros, locs, braids, twists, knots, puffs, braided extensions, weaves, and wigs, have been determined racially and sexually discriminatory, and in violation of the right to expression.<sup>20</sup>

Affirming school dress codes are necessary to ensure students can thrive. However, it is important to know the law in this area is still developing and is less well settled in terms of particular rights that students have to cultural expression through hair and dress at school. Review your school's dress code and consider advocating for more affirming policies. ELC advocates against racist school grooming policies that target dress-based forms of cultural expression that go beyond one's hairstyle, such as wearing a bonnet or scarf.

The [CROWN Act](#) (Creating a Respectful and Open World for Natural Hair Act of 2022), federal legislation recently passed in the House of Representatives, seeks to extend statutory protections to hair styles and textures, such as locs, braids, twists, and knots, to protect against race-based discrimination in public schools and workplaces.<sup>21</sup> The law has not yet passed the Senate, but 17 states have adopted their own CROWN Act laws, and many others have legislation pending.<sup>22</sup>

## CAN I ORGANIZE OR PARTICIPATE IN A BLACK STUDENT UNION AT SCHOOL?

Yes. You have the right to meet ("assemble") with other students about non-school issues if your school allows other groups to meet about non-school issues. For example, if the school allows a chess club to meet, they must also allow a Gay Straight Alliance or Black student organization to meet.<sup>23</sup>

## DO SCHOOL POLICE HAVE A RIGHT TO SEARCH ME? WHAT CAN I DO ABOUT UNFAIR POLICING?

School police officers cannot search you or your bag or your body (including your hair) without a reasonable suspicion of wrongdoing.<sup>24</sup> They cannot search you just because of your race, color, ancestry, or national origin.

Many students, communities, and civil rights groups are currently organizing for the removal of school police because of bias and discrimination against Black and Brown students, which has resulted in disproportionate discipline and arrests. You can learn more about these efforts in Pennsylvania from groups such as the [Philadelphia Student Union](#), [Cops Out of Pittsburgh Schools](#), and the [ACLU of Pennsylvania](#).

## DO I HAVE A RIGHT TO BE FREE FROM SEGREGATION BASED ON RACE?

Students cannot be segregated based on race. Federal law prohibits deliberate segregation or assignment that results in a greater degree of segregation of students among schools based on race, color, sex, or national origin.<sup>25</sup> The Department of Justice continues to enforce many desegregation orders across the country. For example, in *Banks & United States v. St. James Parish School Board*, the District Court for the Eastern District of Louisiana approved a 2017 [consent order](#) that revised where students went to school and created specialized academic programs to desegregate schools, revamped the district's code of conduct to ensure fairness, and took steps to diversify school staff.

## HOW CAN SCHOOL COMMUNITIES ADDRESS RACIAL DISCRIMINATION AND CREATE A MORE AFFIRMING ANTIRACIST CLIMATE?

Members of Black, Brown, Asian, and Indigenous communities have been leading efforts to build affirming school environments and culturally responsive and celebratory curriculum for decades. They have also been working to create community-based educational initiatives to expand learning opportunities. Across the state, many students, parents, educators, advocates, and community members are now focusing on making schools antiracist and free from prejudice. These efforts are critical to ensuring a safe, supportive, respectful, and affirming learning environment for children of color. For some examples and to learn about ways to create an antiracist school climate, read ELC's [Promising Practices to Build Antiracist and Affirming Schools](#).

### WHAT IS ELC DOING?

ELC is actively committed to pursuing a variety of legal and advocacy strategies to ensure that schools can become affirming, safe, and celebratory spaces for Black and Brown students and students of color. We want to reflect and honor the diversity and expertise of the communities we serve. We have specific Black Girls Education Justice initiatives in both offices, and we strive to ensure that our work centers racial justice and intersectionally serves students.

---

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

---

<sup>1</sup> SOUTHERN POVERTY LAW CENTER, HATE AT SCHOOL (2019), available at [https://www.splcenter.org/sites/default/files/tt\\_2019\\_hate\\_at\\_school\\_report\\_final\\_0.pdf](https://www.splcenter.org/sites/default/files/tt_2019_hate_at_school_report_final_0.pdf).

<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.*

<sup>4</sup> BLACK EDUCATION RESEARCH COLLECTIVE, TEACHERS COLLEGE, COLUMBIA UNIVERSITY, BLACK EDUCATION IN THE WAKE OF COVID-19 & SYSTEMIC RACISM (2021), <https://www.tc.columbia.edu/media/centers/berc/Final-BERC-COVID-Report-20July2021.pdf>; EMILY OSTER ET AL., CENTERS FOR DISEASE CONTROL AND PREVENTION, DISPARITIES IN LEARNING MODE ACCESS AMONG K-12 STUDENTS DURING THE COVID-19 PANDEMIC, BY RACE/ETHNICITY, GEOGRAPHY, AND GRADE LEVEL – UNITED STATES, SEPTEMBER 2020-APRIL 2021 (2021), [https://www.cdc.gov/mmwr/volumes/70/wr/mm7026e2.htm?s\\_cid=mm7026e2\\_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7026e2.htm?s_cid=mm7026e2_w); Maddie Hanna & Kristen A. Graham, *Pa. and N.J. Racial Gap in Access to In-Person Learning Last Year Was Among the Worst in the Nation, New Report Says*, THE PHILADELPHIA INQUIRER (July 2, 2021), <https://www.inquirer.com/news/cdc-report-racial-disparity-school-access-pennsylvania-new-jersey-20210702.html>.

<sup>5</sup> 347 U.S. 483 (1954).

<sup>6</sup> The Pennsylvania Constitution builds on the 14th Amendment through Article I, Sections 26 and 28; Article III, Section 32; and Article VIII, Section 1. These provisions have been interpreted to provide an equivalent or greater level of equality than the minimum guaranteed by the United States Constitution.

<sup>7</sup> The Pennsylvania Human Relations Act (PHRA) prohibits discrimination because of a current student's race, color, sex, religion, ancestry, national origin. See 43 P.S. §§ 951–963; Pennsylvania Fair Educational Opportunities Act, 24 P.S. §§ 5001–5010; 16 PA. CODE § 47.41 (delineating unlawful discriminatory practices).

<sup>8</sup> 42 U.S.C. § 2000c-6(a).

<sup>9</sup> 42 U.S.C. § 2000d.

<sup>10</sup> *Alexander v. Sandoval*, 532 U.S. 275 (2001).

<sup>11</sup> Title IX of the Civil Rights Act of 1964 is identical to Title VI but applies to sex-based discrimination. "Sex" has been interpreted to include discrimination on the basis of sex, gender and gender identity, and sexual orientation. See, e.g., *Bostock v. Clayton County*, 590 U.S. \_\_\_, 140 S.Ct. 1731 (2020) (holding that dismissal of an employee for being gay or transgender is sex-based discrimination under Title VII); *Adams by and through Kasper v. School Board of St. Johns County*, 968 F.3d 1286 (11th Cir. 2020) (finding bathroom policy that prevented transgender male student from using boys' bathroom violated Title IX and Equal Protection Clause); Pennsylvania Human Relations Commission, Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act 3 (Aug. 2, 2018) (prohibitions contained in the PHRA against discrimination on the basis of sex prohibit discrimination on the basis of sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression).

<sup>12</sup> Equal Educational Opportunities Act, 20 U.S.C. § 1703(f).

<sup>13</sup> *Plyler v. Doe*, 457 U.S. 202 (1982).

<sup>14</sup> The Federal Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232(g); 34 C.F.R. § 99, prevents schools from releasing students' education records, including information about immigration status, except in exceptional circumstances. A school may only disclose information to ICE officials with the consent of a parent or student (if 18 or older) or if necessary to comply with a judicial order or a subpoena signed by a judge. If a school receives an administrative subpoena, school officials can still seek review by legal counsel and could potentially challenge the reasonableness of the subpoena.

<sup>15</sup> Office for Civil Rights, *Dear Colleague Letter from Assistant Secretary for Civil Rights, Russlynn Ali*, U.S. DEPARTMENT OF EDUCATION 2 n.7 (Oct. 26, 2010), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

<sup>16</sup> "In some cases, a racially hostile environment requiring appropriate responsive action may result from a single incident that is sufficiently severe. Such incidents may include, for example, injury to persons or property or conduct threatening injury to persons or property." Racial Incidents and Harassment Against Students at Educational Institutions, 59 Fed. Reg. (Mar. 10, 1994), <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>; see also [Content Warning: graphic examples] OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION, TITLE VI ENFORCEMENT HIGHLIGHTS (2012), <https://www2.ed.gov/documents/press-releases/title-vi-enforcement.pdf>.

<sup>17</sup> See 24 P.S. § 13-1303.1-A; 22 PA. CODE § 12.3(c) (relating to school rules).

<sup>18</sup> See Settlement Agreement Between the United States of America and the Falcon School District 49,

<https://www.justice.gov/sites/default/files/crt/legacy/2014/10/21/falcon49agree.pdf>.

<sup>19</sup> See, e.g., *Barber v. Dearborn Public Schools*, 286 F. Supp. 2d 847 (E.D. Mich. 2003) (upholding the right of student to wear a T-shirt with a picture of the U.S. president and the words "International Terrorist"); *Newsom v. Albemarle County School Board*, 354 F.3d 249 (4th Cir. 2003) (upholding the right of student to wear T-shirt supporting the National Rifle Association with an image of guns); see also *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) (protecting students' right to wear black armbands as antiwar protest).

<sup>20</sup> See *Arnold v. Barbers Hill Indep. Sch. Distr.*, 479 F.Supp.3d 511, 519-31 (S.D. Tx. 2020) (granting injunction to prevent enforcement of school policy requiring a Black male student to cut his locs or be prohibited from participating in regular classes and school activities). Read about the case here: <https://www.naacpldf.org/case-issue/arnold-family-v-barbers-hill-independent-school-district/>.

<sup>21</sup> For more on the CROWN Act, see <https://www.thecrownact.com/home>.

<sup>22</sup> A map of those states can be found here: <https://www.thecrownact.com/about>.

<sup>23</sup> See, e.g., *Straights & Gays for Equality v. Osseo Area Sch. Dist.* No. 279, 540 F.3d 911 (8th Cir. 2008) (finding that the Equal Access Act prohibited school from denying meeting of non-curricular gay equality group when other noncurricular groups were permitted to meet); *Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211 (3d Cir. 2003)(finding that school could not deny a Bible Club permission to meet during non-instructional time when other non-curricular related clubs met).

<sup>24</sup> *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (finding the search of a student generally permissible if there are reasonable grounds for suspecting the search will turn up evidence the student is violating the law or school rules and the search is no more intrusive than necessary).

<sup>25</sup> 20 U.S.C. § 1703(a)-(e).