

STUDENTS' CIVIL RIGHTS ENFORCEMENT INITIATIVE

The Students' Civil Rights Act

ADVOCATE'S TOOLKIT

**PART 1:
STUDENTS' CIVIL RIGHTS ACT
(CORE BILL)**

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Students' Civil Rights Act (Core Bill)

What is the “Core” Bill?

The first template is the “core” of this model legislation because it creates a baseline infrastructure that states need to enforce students’ civil rights through an independent state agency. It is a template that advocates can use to encourage their state lawmakers to adopt a law that clearly gives the power to an agency in the state to receive individual complaints about discrimination that has happened in the education context. This means that students, teachers, and other members of a school community would be able to file a complaint directly to that agency, and that agency would be able to investigate the facts that were provided in the complaint and to require the school to take action to address the discrimination.

Some states already have agencies that can receive education discrimination complaints. They may be called a “civil rights commission” or “human rights commission.” They may be departments within other state agencies, like the state’s department of education. If your state already has an agency that receives education discrimination complaints, the model legislation also provides language that can help states strengthen that agency’s power to do more to protect students.

Section 3: Definitions

Section 3 of the core bill provides definitions of key words that the template currently uses. When drafting your state’s bill, if you decide to include some of the other bill sections of this model, you may need to define some additional terms. Each bill section includes the additional definitions that will be relevant to that section. You can also find all of the definitions in one place (and a few that are not included in the model) in the “Definitions Index” of the toolkit.

DEFINING SCHOOLS’ LIABILITY FOR HARASSMENT

Subsection (f) in the definitions section of the core bill defines **harassment** using language from the state model of the *Students’ Access to Freedom and Educational Rights (SAFER) Act*, which was developed by the National Women’s Law Center.

Paragraph (2)(A) explains that schools are subject to legal consequences (or “strictly liable”) for harassment if the harasser was better able to commit the harassment because of their authority within the school or if the school was aware of the harassment (or “had notice”), unless there is an affirmative defense that applies (see below).

Paragraph (2)(B) explains what counts as a school’s having notice of harassment, including situations where the school should have known about the harassment.

Paragraph (2)(C) provides reasons a school can use to show that it should not be legally responsible for its actions (or inactions) relating to the harassment based on the harasser’s authority within the school (or “affirmative defenses”).

The SAFER Act further strengthens protections for student survivors of sexual assault and sex-based harassment and lowers barriers for student survivors to get support. Learn more about the SAFER Act [here](#) and consider whether it would be worth including the SAFER Act in your state legislative advocacy for stronger civil rights protections in schools.

STAY UP TO DATE!

Civil rights law is always changing and adapting to what real people need. Advocates working on the SAFER Act are actively working to update the model, including its definitions of harassment and sex, to make it stronger for students. The National Center for Youth Law will update the Students' Civil Rights Act model and this toolkit once those changes to the SAFER Act model are finalized.

THINKING THROUGH "PROTECTED CLASS"

When a particular group of people is a "protected class," it means they are specifically protected under civil rights law and can usually follow a specific process to get relief from the harm they have experienced or are experiencing. You may decide that adopting this education civil rights law may be a great opportunity for your state to expand the classes that are protected under your state's civil rights laws.

The definition of "protected class" in subsection (i) of the core bill includes a list of characteristics that are currently protected in federal law and some that are only covered by certain states. Some terms that we did not include but could be worth considering with your community are:

- Creed
- Marital status
- Personal appearance
- Source of income
- To add after "pregnancy or related conditions" in the parenthetical for "sex": "including termination of pregnancy, prevention of pregnancy, and pregnancy outcomes, and reproductive health decisions"

Make sure to check your state's laws to see if they do not already have a definition for protected class. If the list of protected classes looks right to you and your community, you can just refer to your state's definition in your bill draft. If you'd like to make changes to the list, you may need to draft language that would lead to an amendment of the current law that addresses what classes are protected.

Defining new protected classes in your state may be tricky. Some lawmakers may not want to expand the list of protected classes or may be worried about going too far beyond what classes are protected under federal law. Be sure to work with your community to determine which additional protected classes are "non-negotiable," meaning you are not willing to have the law get passed without them. You may decide that some protected classes would be helpful to include but that it would also be all right if they are not included in this bill and are introduced in future legislation. These determinations can be used to help bargain with state lawmakers about what text should be in the final bill that is introduced and later passed.

A NOTE ON “PROTECTED CLASS”:

When an agency or a court reviews an allegedly discriminatory action that impacts a member or members of a protected class, it will need to have a standard by which the court can review these claims fairly and consistently. This is called a “standard of review.” For the sake of this model legislation, we recommend adding language to the model that follows, at minimum, the federal standards of review for race, sex, disability, and religion, if your state does not already require a specific standard for these protected classes.

If you decide to include additional protected classes, such as those listed in the core bill’s definition and this toolkit, weigh the importance of using state law to identify additional categories on which people in your state may experience discrimination with the potential for unintended consequences and legal implications. For example, including additional categories may signal a recognition of the kinds of discrimination that people in your community have experienced. However, some may misuse the additional protected categories to bring lawsuits that actually undermine protections for communities that are confronting harmful discrimination. Work with legal professionals and nonprofit organizations in your state to map out the potential outcomes with additional protected classes and to better understand the differences among the standards of review for discrimination claims.

Section 4: Nondiscrimination Provision

The core bill model provides draft text for states to adopt a “nondiscrimination provision,” or a statement that makes clear a state’s commitment to ensuring people are not denied opportunities based on any protected characteristic of theirs.

The current text in the model’s Section 4, subsection (a) refers to the list of protected classes that is defined in Section 3. However, some states already have a list of protected classes in other state laws. If you would prefer to use your state’s already-existing list of protected classes, you can simply cite your state’s law that includes that list in subsection (a). The substitute to what is in the model is below:

No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination within any program or activity of an educational institution on the basis of a person’s actual or perceived protected class or a person’s association with another person’s actual or perceived protected class, as enumerated in [EXISTING STATE CODE CITATION].

IF YOU’RE ONLY USING THE CORE BILL

Subsection (b)(8) through (b)(11) in Section 4 are provisions that are helpful to describe discrimination against students with disabilities, students who need accommodations for religion or pregnancy and parenting, and English Learners. These are optional provisions that you may want to include in your draft if you don’t plan to use any of the other bill sections besides the core bill, so it is clear that those students listed above are protected under the Students’ Civil Rights Act.

Section 5: Conferral of Education Civil Rights Enforcement Jurisdiction on State Agency

Section 5 of the core bill gives advocates several options:

Create a new state civil rights agency that can receive education discrimination complaints	Or	Give an existing state agency more authority than it had before to now receive education discrimination complaints
Create a state civil rights agency that is independent	Or	Create a state civil rights agency that is one office within another state agency
Give the state civil rights agency sole authority to receive education discrimination complaints	Or	Require the state civil rights agency to share authority over education discrimination claims with another state agency

When editing the language of your draft, you'll need to determine which options fit the needs of your state best. While making those considerations, here are some recommendations:

- If you decide to create a new state civil rights agency, choose the language that allows the agency to be **independent**.
 - This means that it is not an office that is housed within another state agency, like the state department of education.
 - An independent state agency has its own authority and doesn't rely on the authority of another agency to make its enforcement decisions.
 - An independent state civil rights agency will not have a sort of "bias" to protect another state agency that it is housed within if discrimination claims are filed against it. This means that the state civil rights agency will be more likely to enforce students' civil rights thoroughly and fairly.
- If you decide to give more than one state agency the power to receive and investigate education discrimination complaints (also called "**concurrent jurisdiction**"), it would be smart to add language to the bill that says one agency is not allowed to have veto power over the state civil rights agency's enforcement decisions or to be able to hold up any part of the investigative process if the state civil rights agency is ready and able to move forward on a complaint.
 - This may look like language that says the multiple agencies may but are not required to work together on complaints or are not required to all sign off on specific investigative or enforcement actions before those actions are taken.

SUBSECTION (D)

Subsection (d) in Section 5 gives advocates the option to require that the director of the state civil rights agency be selected from a list of three candidates recommended by an **Education Civil Rights Community Advisory Board**.

Requiring the creation of an Education Civil Rights Community Advisory Board can be an effective way to ensure community members in the state have a say in who leads civil rights enforcement in education. A board like this can also make sure that the director of the state civil rights agency isn't just being selected by a governor to carry out the governor's political agenda, without regard to protecting all students' rights.

For advocates interested in requiring an Education Civil Rights Community Advisory Board, you'll want to consider adding language to the bill on the following:

- Who or what office in the state will be in charge of creating and assembling the Education Civil Rights Community Advisory Board.
- Who should be on the board.
 - At minimum, you may want to ensure that students, teachers, parents, researchers, and civil rights advocates make up some members of the board.
- What are the minimum qualifications for being on the board.

Once an Education Civil Rights Community Advisory Board is created, you should consider how else the board can be involved in other parts of your state's education civil rights enforcement. You might want to add language in other parts of your draft that requires the Board's involvement in data collection and reporting, training, and other oversight of the state civil rights agency's actions.

SUBSECTION (E)(7)

This line is a placeholder for advocates who choose to incorporate other bill sections from the model. The impact of any of the other bill sections on the agency's authority can be described here.

Section 6: Complaint & Enforcement Procedures

Section 6 of the core bill outlines the process that anyone can take if they need to file a complaint against their educational institution for discrimination or failing to address discrimination they experienced in the context of education.

STRATEGY TIP:

Each part of the timeline requires the agency (or the educational institution, in some cases) to take certain actions within a specified number of days. The model proposes timelines that are more protective of students, to ensure students are able to get back to the classroom as quickly as possible while also receiving effective relief from the harms they experienced. Discuss with your community if there are any timelines that you're comfortable being more flexible about. That way, you can write your model with an ideal timeline while also having alternative timelines that you're comfortable with ready. Your alternative timelines may be helpful for when negotiating with lawmakers or opponents who may be more likely to accept the legislation if the timeline is slightly relaxed.

For example, in subsection (c) of Section 6, the model proposes that complainants have two years to file a complaint. Getting two years would be a great win, but you may be able to afford less time if you need to use this as a bargaining chip to gain a different win somewhere else in the text. The U.S. Department of Education's Office for Civil Rights gives only 180 days to file a complaint. If you were to negotiate down from two years, it would be best not to provide any less than the 180 days complainants get with the federal complaint process.

DRAFTING CONSIDERATIONS

Subsection (g)(1) of Section 6 allows the state civil rights agency to create its own complaint about discrimination in a school that it became aware of after having "received reliable information." This provision effectively allows the state civil rights agency to investigate schools on its own initiative. This power can be extremely helpful for the state civil rights agency to be able to proactively address discrimination in schools. However, this power can be a double-edged sword if the agency has a skewed policy agenda or nefarious reasons for targeting a particular school. If you are concerned that this might be a risk in your state, consider adding language to your draft that requires the state civil rights agency to publish regulations on what information it can receive and a fair process for how it can initiate its own investigations. You might also want to specify that those regulations must be subject to review by the public and to receive public comments on them, to take an extra step to ensure the agency's process is fair.

Another point you may want to consider is whether to make it mandatory for the state civil rights agency to address all complaints it receives. This directive can carry a lot of weight because it means the agency has to ensure it is taking steps to protect all students, rather than cherry-picking issues it decides are most worthy to investigate.

STRATEGY TIP:

The last line in Section 6 is meant to be a sort of "peace offering" to the state's department of education or other education agencies within the state. It may not have the greatest effect on students or others if included or excluded, but it shows that there will be good will among state agencies. Including or later adding this line may be useful if advocates find their state education agency is pushing back on this bill, to show that the enforcing state civil rights agency will respect the state education agency's existing authority.

Section 8: Anti-SLAPP Protection

SLAPP is an acronym that stands for "Strategic Lawsuit Against Public Participation." A SLAPP lawsuit is usually a civil lawsuit or a counterclaim someone files in a civil lawsuit against people or organizations who speak out on issues of public concern. SLAPP lawsuits are often used as a way for one party to silence another, and they can prevent someone from exercising their First Amendment rights. To learn more about SLAPP suits, check out [this resource](#) from the ACLU of Ohio.

In the context of education, this often plays out with claims of sexual harassment or assault. For example, a survivor of sexual assault may report the incident to their school or file a lawsuit against the alleged harasser. As a way to silence and intimidate the survivor, the alleged harasser might file a lawsuit against the survivor, suing them for defamation. A claim of defamation effectively means that the alleged harasser is accusing the survivor of lying and ruining the alleged harasser's reputation. This defamation lawsuit would be a SLAPP and can have devastating effects on the ability of survivors to report the violence done against them.

One way states have begun fighting against SLAPP lawsuits is to pass "anti-SLAPP" laws, which create special protections for those targeted by SLAPP lawsuits. Anti-SLAPP laws provide a way to quickly terminate frivolous claims that threaten First Amendment rights and to discourage the filing of SLAPP lawsuits in the first place.

Forty-one jurisdictions (39 states, DC, and Guam) have anti-SLAPP laws. Therefore, the model legislation presents three options for states to amend their existing anti-SLAPP law so that those protections are extended to protect statements made about discrimination someone has faced. In using this model, you should identify your state's anti-SLAPP law to know which option in the model would work best in your state and fill in any necessary references to existing state law.

Section 9: Different Models for Funding

One major question that will be asked when trying to pass a new law is how much money will be needed to make this happen? When laws require the creation of new agencies, programs, or other work, it means that lawmakers have to account for what resources those new creations need.

To create or expand a state civil rights agency, money will be needed for key functions of the agency like hiring and maintaining employees at the agency, developing training and other assistive materials, collecting and analyzing data, and creating websites for published materials. This means the state civil rights legislation may need to expressly state whether and how much money, or "**funding**," will be given to help the state civil rights agency investigate and enforce education discrimination claims.

The model does not outline a specific way to fund this legislation because every state has a different budget for civil rights enforcement (if any) and a different way to fund new initiatives. Funding is likely to be a large topic of debate for this legislation and can often be the main reason why a law like the model does not get passed. To be prepared for this pushback, you and others in your community should research your state's current budget for civil rights enforcement or similar work. You should also try to learn how your state civil rights agency is staffed and how many more staff and other materials might be necessary to meet the goals of this legislation.

Once you get a sense of how much money is currently available and how much money would still be needed to run the activities that this legislation requires, you should review different models for funding laws and recommend one that might work best in your state.

Be sure to check out our forthcoming toolkit section that will include examples of how states can fund work like the civil rights enforcement accounted for in the model legislation.

Creative Solutions in Hostile States: Anti-Bullying Laws

You may live in a state that has historically been or currently is hostile to civil rights protections. That might mean it will be harder to get laws passed in that state if they explicitly strengthen civil rights protections. A creative way to get around this might be to include some of these protections in your state's anti-bullying law, if your state has one.

Some states require schools to prevent and address "identity-based bullying," which is when someone is bullied or harassed for something in their identity, such as their race, ethnicity, national origin, sex, gender, religion or disability status. Incorporating some of the parts of the Students' Civil Rights Act model into your state's anti-bullying law may be a good way to better protect students without engaging in a fight over civil rights, specifically.

If you decide to go this route, you can find a definition of bullying below to add to your draft, if your state doesn't already have one.

- (a) "Bullying" means verbal, visual, written, electronic, and/or physical conduct, including threats, intimidation, or abuse, regardless of where the conduct occurs, that (a) substantially interferes with a person's ability to participate in or receive any aid, benefit, service, or opportunity from an education program or activity, including by creating an intimidating, hostile, or offensive environment; (b) reasonably causes a person to fear for their own or another person's physical or emotional safety; or (c) reasonably causes a person to suffer a physical or emotional injury. Acts of bullying shall include, but not be limited to, those acts based on a person's actual or perceived protected class or a person's association with another person's actual or perceived protected class, as enumerated in [[insert state's list of protected classes or refer to Section 4](#)].

To learn more about identity-based bullying and laws that can address it in your state, check out [these resources and model policies](#) from the Intercultural Development Research Association (IDRA).