

113TH CONGRESS
1ST SESSION

S. 1088

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

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2013

Mr. FRANKEN (for himself, Mrs. MURRAY, Mrs. GILLIBRAND, Mr. CASEY, Mr. LEAHY, Mrs. BOXER, Mr. BEGICH, Ms. STABENOW, Mr. UDALL of New Mexico, Mr. BLUMENTHAL, Mr. WHITEHOUSE, Mr. BENNET, Mr. SANDERS, Mr. HARKIN, Ms. MIKULSKI, Mr. BROWN, Mr. COWAN, Ms. WARREN, Mrs. HAGAN, Mrs. SHAHEEN, Mr. COONS, Mr. MURPHY, Ms. KLOBUCHAR, Ms. CANTWELL, Mr. SCHATZ, Mr. HEINRICH, Ms. BALDWIN, Mr. DURBIN, Mr. WYDEN, Mr. REED, Mr. UDALL of Colorado, Mr. SCHUMER, Mr. CARDIN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 2013”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) Public school students who are lesbian, gay,
5 bisexual, or transgender (referred to in this Act as
6 “LGBT”), or are perceived to be LGBT, or who as-
7 sociate with LGBT people, have been and are sub-
8 jected to pervasive discrimination, including harass-
9 ment, bullying, intimidation, and violence, and have
10 been deprived of equal educational opportunities, in
11 schools in every part of the Nation.

12 (2) While discrimination of any kind is harmful
13 to students and to the education system, actions
14 that target students based on sexual orientation or
15 gender identity represent a distinct and severe prob-
16 lem that remains inadequately addressed by current
17 Federal law.

18 (3) Numerous social science studies dem-
19 onstrate that discrimination at school has contrib-
20 uted to high rates of absenteeism, academic under-
21 achievement, dropping out, and adverse physical and
22 mental health consequences among LGBT youth.

23 (4) When left unchecked, discrimination in
24 schools based on sexual orientation or gender iden-
25 tity can lead, and has led, to life-threatening violence
26 and to suicide.

1 (5) Public school students enjoy a variety of
2 constitutional rights, including rights to equal pro-
3 tection, privacy, and free expression, which are in-
4 fringed when school officials engage in or fail to take
5 prompt and effective action to stop discrimination on
6 the basis of sexual orientation or gender identity.

7 (6) Provisions of Federal statutory law ex-
8 pressly prohibit discrimination on the basis of race,
9 color, sex, religion, disability, and national origin.
10 The Department of Education and the Department
11 of Justice, as well as numerous courts, have cor-
12 rectly interpreted the prohibitions on sex discrimina-
13 tion to include discrimination based on sex stereot-
14 types and gender identity, even when that sex-based
15 discrimination coincides or overlaps with discrimina-
16 tion based on sexual orientation. However, the ab-
17 sence of express Federal law prohibitions on dis-
18 crimination on the basis of sexual orientation and
19 gender identity has created unnecessary uncertainty
20 that risks limiting access to legal remedies under
21 Federal law for LGBT students and their parents.

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

23 (1) to ensure that all students have access to
24 public education in a safe environment free from dis-
25 crimination, including harassment, bullying, intimi-

1 dation, and violence, on the basis of sexual orienta-
2 tion or gender identity;

3 (2) to provide a comprehensive Federal prohibi-
4 tion of discrimination in public schools based on ac-
5 tual or perceived sexual orientation or gender iden-
6 tity;

7 (3) to provide meaningful and effective rem-
8 edies for discrimination in public schools based on
9 actual or perceived sexual orientation or gender
10 identity;

11 (4) to invoke congressional powers, including
12 the power to enforce the 14th Amendment to the
13 Constitution and to provide for the general welfare
14 pursuant to section 8 of article I of the Constitution
15 and the power to make all laws necessary and proper
16 for the execution of the foregoing powers pursuant
17 to section 8 of article I of the Constitution, in order
18 to prohibit discrimination in public schools on the
19 basis of sexual orientation or gender identity; and

20 (5) to allow the Department of Education and
21 the Department of Justice to effectively combat dis-
22 crimination based on sexual orientation and gender
23 identity in public schools, through regulation and en-
24 forcement, as the Departments have issued regula-
25 tions under and enforced title IX of the Education

1 Amendments of 1972 and other nondiscrimination
2 laws in a manner that effectively addresses discrimi-
3 nation.

4 **SEC. 3. DEFINITIONS AND RULE.**

5 (a) DEFINITIONS.—For purposes of this Act:

6 (1) EDUCATIONAL AGENCY.—The term “edu-
7 cational agency” means a local educational agency,
8 an educational service agency, or a State educational
9 agency, as those terms are defined in section 9101
10 of the Elementary and Secondary Education Act of
11 1965 (20 U.S.C. 7801).

12 (2) GENDER IDENTITY.—The term “gender
13 identity” means the gender-related identity, appear-
14 ance, or mannerisms or other gender-related charac-
15 teristics of an individual, with or without regard to
16 the individual’s designated sex at birth.

17 (3) HARASSMENT.—The term “harassment”
18 means conduct that is sufficiently severe, persistent,
19 or pervasive to limit or interfere with a student’s
20 ability to participate in or benefit from a program
21 or activity of a public school or educational agency,
22 including acts of verbal, nonverbal, or physical ag-
23 gression, intimidation, or hostility, if such conduct is
24 based on—

1 (A) a student's actual or perceived sexual
2 orientation or gender identity; or

3 (B) the actual or perceived sexual orienta-
4 tion or gender identity of a person with whom
5 a student associates or has associated.

6 (4) PROGRAM OR ACTIVITY.—The terms “pro-
7 gram or activity” and “program” have the same
8 meanings given such terms as applied under section
9 606 of the Civil Rights Act of 1964 (42 U.S.C.
10 2000d–4a) to the operations of public entities under
11 paragraph (2)(B) of such section.

12 (5) PUBLIC SCHOOL.—The term “public
13 school” means an elementary school (as the term is
14 defined in section 9101 of the Elementary and Sec-
15 ondary Education Act of 1965) that is a public insti-
16 tution, and a secondary school (as so defined) that
17 is a public institution.

18 (6) SEXUAL ORIENTATION.—The term “sexual
19 orientation” means homosexuality, heterosexuality,
20 or bisexuality.

21 (7) STUDENT.—The term “student” means an
22 individual within the age limits for which the State
23 provides free public education who is enrolled in a
24 public school or who, regardless of official enroll-
25 ment status, attends classes or participates in the

1 programs or activities of a public school or local edu-
2 cational agency.

3 (b) RULE.—Consistent with Federal law, in this Act
4 the term “includes” means “includes but is not limited
5 to”.

6 **SEC. 4. PROHIBITION AGAINST DISCRIMINATION.**

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

14 (b) HARASSMENT.—For purposes of this Act, dis-
15 crimination includes harassment of a student on the basis
16 of actual or perceived sexual orientation or gender identity
17 of such student or of a person with whom the student as-
18 sociates or has associated.

19 (c) RETALIATION PROHIBITED.—

20 (1) PROHIBITION.—No person shall be excluded
21 from participation in, be denied the benefits of, or
22 be subjected to discrimination, retaliation, or re-
23 prisal under any program or activity receiving Fed-
24 eral financial assistance based on the person’s oppo-
25 sition to conduct made unlawful by this Act.

1 (2) DEFINITION.—For purposes of this sub-
2 section, “opposition to conduct made unlawful by
3 this Act” includes—

4 (A) opposition to conduct believed to be
5 made unlawful by this Act or conduct that
6 could be believed to become unlawful under this
7 Act if allowed to continue;

8 (B) any formal or informal report, whether
9 oral or written, to any governmental entity, in-
10 cluding public schools and educational agencies
11 and employees of the public schools or edu-
12 cational agencies, regarding conduct made un-
13 lawful by this Act, conduct believed to be made
14 unlawful by this Act, or conduct that could be
15 believed to become unlawful under this Act if
16 allowed to continue;

17 (C) participation in any investigation, pro-
18 ceeding, or hearing related to conduct made un-
19 lawful by this Act, conduct believed to be made
20 unlawful by this Act, or conduct that could be
21 believed to become unlawful under this Act if
22 allowed to continue; and

23 (D) assistance or encouragement provided
24 to any other person in the exercise or enjoy-

1 ment of any right granted or protected by this
2 Act,
3 if in the course of that expression, the person in-
4 volved does not purposefully provide information
5 known to be false to any public school or educational
6 agency or other governmental entity regarding con-
7 duct made unlawful by this Act, or conduct believed
8 to be made unlawful by this Act, or conduct that
9 could be believed to become unlawful under this Act
10 if allowed to continue.

11 **SEC. 5. FEDERAL ADMINISTRATIVE ENFORCEMENT; RE-**
12 **PORT TO CONGRESSIONAL COMMITTEES.**

13 (a) REQUIREMENTS.—Each Federal department and
14 agency which is empowered to extend Federal financial as-
15 sistance to any education program or activity, by way of
16 grant, loan, or contract other than a contract of insurance
17 or guaranty, is authorized and directed to effectuate the
18 provisions of section 4 with respect to such program or
19 activity by issuing rules, regulations, or orders of general
20 applicability which shall be consistent with achievement of
21 the objectives of the statute authorizing the financial as-
22 sistance in connection with which the action is taken. No
23 such rule, regulation, or order shall become effective un-
24 less and until approved by the President.

1 (b) ENFORCEMENT.—Compliance with any require-
2 ment adopted pursuant to this section may be effected—

3 (1) by the termination of or refusal to grant or
4 to continue assistance under such program or activ-
5 ity to any recipient as to whom there has been an
6 express finding on the record, after opportunity for
7 hearing, of a failure to comply with such require-
8 ment, but such termination or refusal shall be lim-
9 ited to the particular political entity, or part thereof,
10 or other recipient as to whom such a finding has
11 been made, and shall be limited in its effect to the
12 particular program, or part thereof, in which such
13 noncompliance has been so found; or

14 (2) by any other means authorized by law,
15 except that no such action shall be taken until the depart-
16 ment or agency concerned has advised the appropriate per-
17 son or persons of the failure to comply with the require-
18 ment and has determined that compliance cannot be se-
19 cured by voluntary means.

20 (c) REPORTS.—In the case of any action terminating,
21 or refusing to grant or continue, assistance because of fail-
22 ure to comply with a requirement imposed pursuant to this
23 section, the head of the Federal department or agency
24 shall file with the committees of the House of Representa-
25 tives and Senate having legislative jurisdiction over the

1 program or activity involved a full written report of the
2 circumstances and the grounds for such action. No such
3 action shall become effective until 30 days have elapsed
4 after the filing of such report.

5 **SEC. 6. PRIVATE CAUSE OF ACTION.**

6 (a) PRIVATE CAUSE OF ACTION.—Subject to sub-
7 section (c), and consistent with the cause of action recog-
8 nized under title VI of the Civil Rights Act of 1964 (42
9 U.S.C. 2000d et seq.) and title IX of the Education
10 Amendments of 1972 (20 U.S.C. 1681 et seq.), an ag-
11 grieved individual may bring an action in a court of com-
12 petent jurisdiction, asserting a violation of this Act. Ag-
13 grieved individuals may be awarded all appropriate relief,
14 including equitable relief, compensatory damages, and
15 costs of the action.

16 (b) RULE OF CONSTRUCTION.—This section shall not
17 be construed to preclude an aggrieved individual from ob-
18 taining remedies under any other provision of law or to
19 require such individual to exhaust any administrative com-
20 plaint process or notice of claim requirement before seek-
21 ing redress under this section.

22 (c) STATUTE OF LIMITATIONS.—For actions brought
23 pursuant to this section, the statute of limitations period
24 shall be determined in accordance with section 1658(a) of
25 title 28, United States Code. The tolling of any such limi-

1 tations period shall be determined in accordance with the
2 law governing actions under section 1979 of the Revised
3 Statutes (42 U.S.C. 1983) in the State in which the action
4 is brought.

5 **SEC. 7. CAUSE OF ACTION BY THE ATTORNEY GENERAL.**

6 The Attorney General is authorized to institute for
7 or in the name of the United States a civil action for a
8 violation of this Act in any appropriate district court of
9 the United States against such parties and for such relief
10 as may be appropriate, including equitable relief and com-
11 pensatory damages. Whenever a civil action is instituted
12 for a violation of this Act, the Attorney General may inter-
13 vene in such action upon timely application and shall be
14 entitled to the same relief as if the Attorney General had
15 instituted the action. Nothing in this Act shall adversely
16 affect the right of any person to sue or obtain relief in
17 any court for any activity that violates this Act, including
18 regulations promulgated pursuant to this Act.

19 **SEC. 8. STATE IMMUNITY.**

20 (a) STATE IMMUNITY.—A State shall not be immune
21 under the 11th Amendment to the Constitution from suit
22 in Federal court for a violation of this Act.

23 (b) WAIVER.—A State's receipt or use of Federal fi-
24 nancial assistance for any program or activity of a State
25 shall constitute a waiver of sovereign immunity, under the

1 11th Amendment or otherwise, to a suit brought by an
2 aggrieved individual for a violation of section 4.

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

9 **SEC. 9. ATTORNEY'S FEES.**

10 Section 722(b) of the Revised Statutes (42 U.S.C.
11 1988(b)) is amended by inserting “the Student Non-Dis-
12 crimination Act of 2013,” after “Religious Land Use and
13 Institutionalized Persons Act of 2000,”.

14 **SEC. 10. EFFECT ON OTHER LAWS.**

15 (a) FEDERAL AND STATE NONDISCRIMINATION
16 LAWS.—Nothing in this Act shall be construed to pre-
17 empt, invalidate, or limit rights, remedies, procedures, or
18 legal standards available to victims of discrimination or
19 retaliation, under any other Federal law or law of a State
20 or political subdivision of a State, including titles IV and
21 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000c et
22 seq., 2000d et seq.), title IX of the Education Amend-
23 ments of 1972 (20 U.S.C. 1681 et seq.), section 504 of
24 the Rehabilitation Act of 1973 (29 U.S.C. 794), the Amer-
25 icans with Disabilities Act of 1990 (42 U.S.C. 12101 et

1 seq.), or section 1979 of the Revised Statutes (42 U.S.C.
2 1983). The obligations imposed by this Act are in addition
3 to those imposed by titles IV and VI of the Civil Rights
4 Act of 1964 (42 U.S.C. 2000c et seq., 2000d et seq.), title
5 IX of the Education Amendments of 1972 (20 U.S.C.
6 1681 et seq.), section 504 of the Rehabilitation Act of
7 1973 (29 U.S.C. 794), the Americans with Disabilities Act
8 of 1990 (42 U.S.C. 12101 et seq.), and section 1979 of
9 the Revised Statutes (42 U.S.C. 1983).

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

19 **SEC. 11. SEVERABILITY.**

20 If any provision of this Act, or any application of such
21 provision to any person or circumstance, is held to be un-
22 constitutional, the remainder of this Act, and the applica-
23 tion of the provision to any other person or circumstance
24 shall not be impacted.

1 **SEC. 12. EFFECTIVE DATE.**

2 This Act shall take effect 60 days after the date of
3 enactment of this Act and shall not apply to conduct oc-
4 ccurring before the effective date of this Act.

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