

**EDUCATION
LAW CENTER**

**CENSORSHIP IN SCHOOLS: WHAT CAN YOU DO?
*OVERVIEW OF SCHOOL BOARD AUTHORITY AND ACTION
OPTIONS FOR CITIZENS***

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LEAGUE OF WOMEN VOTERS-PA WEBINAR PRESENTATION

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LIMITATIONS AND AUTHORITIES OF SCHOOL BOARDS

SO...WHAT ARE SCHOOL BOARDS?

- A school board is the local legislative body that governs a school district. (School board directors)
- The board adopts and revises districtwide policies and oversees resources for the schools in the district.
- Each school board consists of nine members, and one superintendent appointed by the board. Boards employ a lawyer (solicitor) to advise and administer school law.
- School board members are elected by residents of the district, except in Philadelphia, where board members are appointed by the mayor.
- School board members serve terms of four years, with roughly half the board up for reelection every two years.

WHAT POWERS DOES A SCHOOL BOARD HAVE?

School boards have the duty to “establish, equip, furnish, and maintain” the schools in their district. As such, they have numerous powers that include the power to levy taxes, adopt curriculum and courses of study, establish disciplinary policies and other districtwide policies, and hire school personnel, among others.

SCHOOL BOARDS AND POLICY

School boards are policy-making bodies, responsible for developing and revising policies that govern the actions of board and school district employees. These policies provide the framework or guardrails for district activities and ensure school district actions comply with state and federal law.

Policy revisions must go through a public review process, which generally includes review by a committee and consideration at two separate board meetings. The public must have the opportunity to provide input on proposed policy changes. School boards can limit, but not totally restrict or revoke, public comments.



SCHOOL BOARDS, GENERALLY

Boards must follow state and federal laws, including laws that protect students and staff from discrimination on the basis of race, national origin, disability, sex, gender identity, and sexual orientation.

Policies cannot be vague or overbroad

Board actions may not be arbitrary and capricious (unreasonable)

CURRICULUM & CLASSROOM DISCUSSION

CURRICULUM AUTHORITY

School boards have the power to “adopt and arrange courses of study” for their schools.

E.g. whether to fund a new robotics program or whether to approve a new African American History class

SCHOOL BOARDS CANNOT

- Contradict the state’s learning standards (see State Board of Ed)
- Violate the First Amendment by imposing what U.S. Supreme Court called a “pall of orthodoxy” in the classroom (*Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967))

SCHOOL BOARD AUTHORITY & LIMITS

BOOKS ASSIGNED AS PART OF THE CURRICULUM

- PA law gives school boards broad discretion over curricular decisions: responsible to adopt a “course of study” adapted to the “age, development and needs of the pupils”
 - Typically delegated to superintendent who works with teachers & curriculum experts
 - Authority to select textbooks & curricular materials
- Earlier federal courts have largely affirmed discretion of school boards to control curriculum decisions under First Amendment
 - U.S. Supreme Court recognized school board “duty to inculcate community values” via curricular decisions ([Pico, 1982](#))
 - Discretion is broad but NOT limitless - may not impose “an identifiable religious creed” or “otherwise impair permanently the student’s ability to investigate matters that arise in the natural course of intellectual inquiry”
 - Can remove curricular materials if decision is “reasonably related” to “legitimate pedagogical concern” of denying students access to “potentially sensitive topics”

SCHOOL BOARD AUTHORITY & LIMITS

LIBRARY BOOKS NOT PART OF THE CURRICULUM

- PA school boards have LESS discretion in restricting noncurricular materials, such as library books
- U.S. Supreme Court: libraries have a unique role different from mandatory curriculum - a place to test or expand upon ideas presented in the classroom (Pico, 1982)
 - A school board “may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge” by proscribing a narrow view of “community values” that limit the books available in a school library where the “opportunity at self-education and individual enrichment ... is wholly optional.” The First Amendment requires that “students must always remain free to inquire” and “the school library is the principal locus of such freedom.”
- Cannot remove books “simply because they dislike the ideas contained” within or in an effort “to prescribe what must be orthodox in politics, nationalism, religion, or other matters of opinion.”
 - Courts have already rejected book removals specifically on the basis: “too concerned with racial matters and too controversial”; simply because depicts gay relationships; concern might promote disobedience or disrespect for authority

ACTIVITIES TO CREATE WELCOMING AND INCLUSIVE ENVIRONMENTS

In order to determine whether a school activity or program results in a prohibited activity under Title VI, a review of the totality of the circumstances is warranted.

Examples explicitly deemed appropriate by the [Office of Civil Rights in their January 2023 factsheet](#):

- efforts to assess or improve school climate, including through creation of student, staff, and/or parent teams, use of community focus groups or use of climate surveys;
- student assemblies or programs focused on antiharassment or antibullying

OCR further states that diversity, equity and inclusion activities, such as the examples cited above, may actually assist schools in resolving OCR investigations in order to remedy harassing behaviors or differential treatment of students by fostering “a more positive and inclusive school climate.”

In other words, OCR’s position on Title VI in educational programs and activities has been clearly stated. Still, OCR’s stance stands in concerning contrast to recent efforts in some states and localities to dismantle diversity, equity, and inclusion programming.

RESOLVING DISPUTES

FEDERAL, STATE & LOCAL ANTI-DISCRIMINATION LAWS

US Constitution,
Equal Protection

PA Constitution

Municipal Non-
Discrimination
Policies

Title IX (sex)
Title VI (race)

PHRA &
Regulation;
22 Pa Code 12.11

School District
Policies

KEY COMPLAINT TERMS

Complainant: person or group filing the complaint and reporting alleged discrimination

Respondent: entity accused of unlawfully discriminating (public school/school district/APS placement through an IEP)

Investigation: process where the complaint of discrimination is looked into to determine whether discrimination occurred

Mediation: facilitated conversation where both sides try to reach a resolution (agreement)

Remedy: outcome to addresses discrimination

- Individual: specific to the student/group
- Systemic: broader changes e.g. policy changes and training

Hearing: a formal process

- attorneys can be present
- there are specific rules that must be followed
- neutral decision-maker
- an outcome is decided

ENFORCING AGENCIES

ED OFFICE OF CIVIL RIGHTS (FEDERAL)

The mission of the Office for Civil Rights (OCR) is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.

- From:
 - Agency-initiated & Individual/Organizational complaints; Filed by anyone - need not be victim of alleged discrimination, may complain on behalf of other person/group (need to secure written consent)
- Issues Covered:
 - Race, color, national origin, sex, disability, age; retaliation
- Against:
 - State education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive U.S. Department of Education funds
- When;
 - Within 180 calendar days of the last act of discrimination; waiver for good cause
- Attorney not required but permitted
- Format: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

OCR - PROCESSING COMPLAINTS

- ✓ **Initial Contact from OCR**
 - *No required timeline for determining whether to investigate
 - Regarding Signed Consent Form (respond within 20 days)
 - As they are reviewing the complaint
- ✓ **Evaluation of complaint re whether will open an investigation**
 - Dismissed: not within OCR legal authority; fails to state violation; not timely filed; resolved; signed consent required
 - Opening investigation
- ✓ **Opening Investigation - Letter of Notification to complainant and recipient**
- ✓ **Investigation**
 - Review documents from both parties; interviews, site visits
 - May be resolved/settled at any time if recipient/school expresses interest
- ✓ **Determination of noncompliance**
 - Voluntary resolution agreement with remedial actions & monitoring
 - If not voluntary agreement, OCR may: admin enforcement proceedings, refer to DOJ judicial
- ❖ **Alternatives - Voluntary Mediation for negotiated resolution**
 - Early Mediation
 - During Investigation
 - *Not signed or monitored by OCR but can refile if breached
- ❖ **Remedies - usually policy changes, compensatory; school can agree to other**

ENFORCING AGENCIES

PA HUMAN RELATIONS COMMISSION (STATE)

The PHRC promotes equal opportunity for all and enforces Pennsylvania's civil rights laws that protect people from unlawful discrimination. As Pennsylvania's civil rights leader, it is our vision that all people in Pennsylvania will live, work, and learn free from unlawful discrimination.

- **Power to adopt, promulgate and rescind rules and regulations to effectuate the PHRA**
- Agency-initiated public forums, reports; Individual complaints
- Race, color, religious creed, ancestry, age, sex, national origin, disability, retaliation
- “Public accommodations” includes public schools

PHRC - FILING A COMPLAINT

THE BASICS

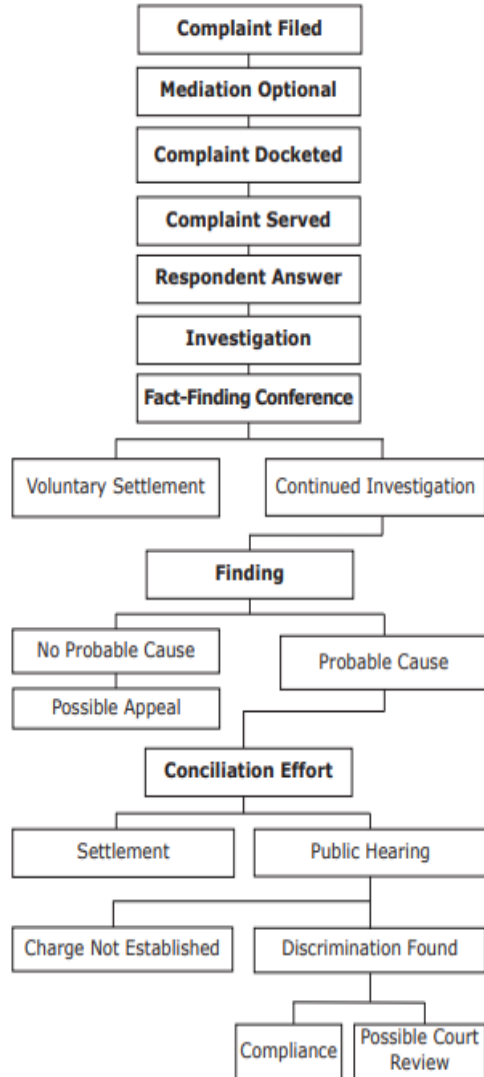
Discrimination on the basis of:

- ✓ race,
- ✓ color,
- ✓ sex (including SOGIE),
- ✓ religion,
- ✓ national origin,
- ✓ ancestry
- ✓ disability,
- ✓ retaliation for filing a complaint

- PHRA covers public accommodation including public schools (and also housing, employment)
- Within 180 calendar days of the last act of discrimination; unless legally justifiable reason
- Filed by one who is the victim of alleged discrimination
- Attorney not required but permitted
- Complaint Format:
https://www.phrc.pa.gov/AboutUs/Documents/ComplaintProcess_7-2017_Final.pdf

PHRC - PROCESSING COMPLAINTS

The Complaint Process



- Initial Contact from PHRC
 - Assigned to intake representative, assigned docket number
 - Mediation by PHRC may be offered (both parties must agree)
- Complaint is served on Respondent within 30 days of docketing
- Respondent has 30-60 days to answer after served; Investigation
 - Provide information, witness info, any relevant documents
 - Investigator will interview complainant, respondent, witnesses; review docs
 - Fact Finding Conference may be offered
- Results of Investigation
 - No probable cause - did not find sufficient evidence of discrimination. Notified by mail, informed of appeal rights.
 - Probable cause - sufficient evidence of discrimination.
- Conciliation/Settlement efforts - PHRC will ask respondent to stop illegal conduct; provide appropriate remedies (payment damages, policy changes)
- Public hearing
- Timeline - **If your complaint has not been dismissed or resolved in one year after it was filed, you have the right to file in court.**

SUNSHINE ACT (OPEN MEETINGS LAW)

The Pennsylvania Sunshine Act, 65 Pa.C.S. §§ 701-716, requires agencies to deliberate and take official action on agency business in an open and public meeting. It requires that:

- meetings have prior notice,
- that the public can attend, participate, and
- comment before an agency takes that official action.

It is a crime to violate the Sunshine Act, punishable by up to a \$1,000 fine for a first offense, and up to \$2,000 for subsequent offenses. Criminal sanctions may be imposed against individual board members if a court finds an intentional violation occurred. Anyone can file a private criminal complaint with the county district attorney, who will then determine if criminal charges are appropriate.

LODGING SUNSHINE ACT VIOLATIONS

- The Sunshine Act allows you to object to a perceived violation of the law at any time during a public meeting. Whenever raised the objection must be noted in the minutes. The Sunshine Act also allows a court to impose civil penalties against the agency and criminal sanctions against individual board members for violations.
- To pursue an action against the agency, a civil lawsuit is necessary. For local agencies, the county Court of Common Pleas would have jurisdiction
- You have only 30 days from the date of a suspected violation to file a lawsuit. And if you manage to make it into court on time, the courts have ruled that the public has the burden of proof to show a violation took place, a significant hurdle since the public has virtually no information upon which to meet that burden.

ANYONE CAN FILE A RTK (RIGHT TO KNOW) REQUEST



Standard Right-to-Know Law Request Form

Good communication is vital in the RTKL process. Complete this form thoroughly and retain a copy; it may be required if an appeal is filed. You have 15 business days to appeal after a request is denied or deemed denied.

SUBMITTED TO AGENCY NAME: _____ (Attn: AORO)

Date of Request: _____ Submitted via: Email U.S. Mail Fax In Person

PERSON MAKING REQUEST:

Name: _____ Company (if applicable): _____

Mailing Address: _____

City: _____ State: _____ Zip: _____ Email: _____

Telephone: _____ Fax: _____

How do you prefer to be contacted if the agency has questions? Telephone Email U.S. Mail

RECORDS REQUESTED: *Be clear and concise. Provide as much specific detail as possible, ideally including subject matter, time frame, and type of record or party names. RTKL requests should seek records, not ask questions. Requesters are not required to explain why the records are sought or the intended use of the records unless otherwise required by law. Use additional pages if necessary.*

The Pennsylvania Right to Know Law (RTKL), Act 3 of 2008, is a law that is designed to guarantee that the public has access to public records of governmental bodies in Pennsylvania. It sets forth procedures for requesting documents, procedures for appeals of an agency's determination, imposes penalties, sets fee limitations and directs that an Open Records Officer be appointed.

EDUCATOR MISCONDUCT REPORTING TO PDE

The Pennsylvania Department of Education's Office of Chief Counsel is responsible for receiving, reviewing and investigating Educator Misconduct Complaints in accordance with the Educator Discipline Act (24 P.S. § 2070)

Any interested party may file an Educator Misconduct Complaint about an educator. It is recommended, however, that when appropriate, individuals consider addressing their concerns and issues with the local school entity.

The following information must be included in every Educator Misconduct Complaint:

- The complainant's name and contact information
- Information to identify the educator, such as the employing school entity, and position in the school entity if currently employed;
- Detailed description of educator's misconduct, including the date or dates on which the conduct occurred;
- Copies of documents that support the complaint

In completing the Educator Misconduct Complaint, it is very important to be specific and to include the following information when describing the professional misconduct: What happened? Who was involved? When did the conduct occur? Where did the conduct occur?

TITLE IX REPORTING

Each school district/entity must have a Title IX Coordinator to receive reports about incidents of discrimination or harassment based on sex, gender identity/expression, or sexual orientation.

RESPONSIBLE EMPLOYEE:

A responsible employee is defined in Title IX as an employee:

- a) who has the authority to act to redress sexual misconduct;
- b) who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or
- c) whom a student could reasonably believe has this authority or duty.

A responsible employee **MUST** report all relevant details of sexual misconduct to the Title IX Coordinator or other school designee within 24 hours of becoming aware. There is an obligation to address sexual misconduct about which a responsible employee knew or should have known.

ELC RESOURCES & CONTACT INFORMATION

Individual Requests For Assistance & Advice

Call: 215-238-6970 (Philadelphia) 412-258-2120 (Pittsburgh)

Email: intake@elc-pa.org

[ELC's webpage about Inclusive Schools & Honest Education](https://www.elc-pa.org/advocating-for-inclusive-schools-and-honest-education/)

<https://www.elc-pa.org/advocating-for-inclusive-schools-and-honest-education/>

- Factsheets about School Board Authority; Book Bans; LGBTQ Student Rights
 - ELC open letters to school boards about problem policies

[Back to School Guide for 2023](#)

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|--|---|--|
| <input type="checkbox"/> Affirming & Safe Schools | <input type="checkbox"/> Honest & Inclusive Schools | Homelessness |
| <input type="checkbox"/> Act 1: Accessing Supports | <input type="checkbox"/> Students with Disabilities | <input type="checkbox"/> English Learners & Immigrant Students |
| <input type="checkbox"/> Enrollment | <input type="checkbox"/> Early Childhood Education | <input type="checkbox"/> School Funding |
| <input type="checkbox"/> School Discipline | <input type="checkbox"/> KYR: Students in Care | <input type="checkbox"/> LGBTQ & Gender Nonconforming Students |
| <input type="checkbox"/> Attendance & Truancy | <input type="checkbox"/> Juvenile Justice Involvement | |
| <input type="checkbox"/> Bullying & Harassment | <input type="checkbox"/> Students Experiencing | |

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