



NATIONAL CENTER FOR LESBIAN RIGHTS

A Parent's Guide to Advocating for their Transgender Child in North Carolina

What is House Bill 2

House Bill 2 (H.B. 2), also known as the “Public Facilities Privacy & Security Act,” is a new North Carolina law enacted after Charlotte enacted anti-discrimination protections for LGBT people. The law was motivated by bias toward LGBT people—particularly transgender people. The new statute changes North Carolina’s law in a number of ways:

- (1) The law overturns local protections for LGBT people, including the one enacted in Charlotte, and prohibits any North Carolina localities from enacting any future protections for LGBT people. The law does this by saying that localities cannot enact local anti-discrimination laws that protect groups who are not already protected under North Carolina’s state anti-discrimination law, which prohibits discrimination based on: race, religion, color, national origin, age, sex, and disability.
- (2) The law requires access to all public restrooms and changing facilities in public schools, government workplaces, and government agencies to be based on “biological sex.” The new law also defines the term “biological sex” as “the gender marker on a person’s birth certificate.”
- (3) The law says that private employers and private businesses *may* adopt policies limiting bathroom and locker room access based on “biological sex,” but it does not require them to do so.
- (4) The law overturns any local minimum wage laws and says that only the state can set or raise the minimum wage.
- (5) The law takes away the right for individuals to bring a lawsuit in state court under the state anti-discrimination law (which does not include sexual orientation or gender identity). Under the new law, the only way to enforce North Carolina’s anti-discrimination law is through a state human rights commission.

When does it go into effect?

The law became effective on March 23, 2016.

Does H.B. 2 change the legal protections for my child and family?

H.B. 2 takes away some protections under state law, but it does not change federal law. Under the new law, your family and community can no longer be protected against sexual orientation or gender identity discrimination by the local governments where you live. The new law also takes away the ability to sue an employer in state court under North Carolina's state law if you were discriminated against at work or by a business based on race, religion, color, national origin, age, sex, and disability. (You can still bring a lawsuit under federal law).

Despite its breadth, there is a lot the law did not change. Most importantly, state government entities (*i.e.* schools, state agencies, courts, parks) must still comply with federal law. Some of the protections still in place include Title IX (which prohibits sex discrimination including discrimination against transgender students in schools), Title VII (which prohibits sex discrimination including discrimination against transgender people in employment), and provisions of the United States Constitution such as the right to privacy, the First Amendment, and the Equal Protection Clause of the Fourteenth Amendment. Those protections have always been there and cannot be changed by any state law.

Title IX, as well as the constitutional requirement of equal protection, require that public schools treat transgender students equally—including giving them equal access to bathrooms and other facilities based on their gender identity. H.B. 2 did not change that.

I'm hearing many people say that H.B. 2 is illegal, unconstitutional, or unenforceable, what do they mean by that?

H.B. 2 directly conflicts with several federal laws. When there is a conflict between state and federal law, federal law takes precedence over state law. H.B.2 also violates the constitutional requirement of equal protection because it was enacted with a discriminatory purpose—to permit discrimination against LGBT people. Equality North Carolina and several other groups, as well as two transgender individuals, have filed a lawsuit asking a federal court to strike down H.B. 2 because it conflicts with federal statutes and the federal Constitution. There has not yet been any ruling in that case, and getting a final ruling may take many months, and with appeals, could take years to finally resolve.

None of this, however, affects your ability to advocate for your child's right to have their gender respected in school and any other context. You can still advocate for your child, and North Carolina's public schools still have a binding legal obligation under federal law to provide your child with equal access to the

correct bathroom and locker room. For an explanation of the law that you can provide to your child's school, if necessary, please **download NCLR's H.B.2 Legal Letter** at www.NCLRights.org/HB2LegalLetter.

Does H.B. 2 mean that my child's school will stop affirming my child's gender and exclude them from the correct restroom and locker room?

Not necessarily. There are many reasons—including federal law—why a school would continue to affirm your child's gender and ensure them access to the correct restroom and locker room.

We are hopeful that most schools will continue to follow federal law, which requires equal treatment of transgender students—including equal access to bathrooms and other facilities based on the student's gender identity. If any public schools attempt to enforce the bathroom-related provisions of H.B. 2 and deny equal access to a transgender student, the school would be violating federal law. That means that the school could be sued or investigated by the federal government for that violation, which would cost money in terms of attorney's fees, a damages award, or, possibly, loss of federal funds. That alone may be enough for schools to decide that they cannot enforce H.B. 2 and instead comply with federal law.

Many schools are also likely to avoid enforcing H.B. 2 because of the harm this law will cause to young people. We know that the sentiments that motivated the North Carolina legislature to pass this bill do not reflect the beliefs of many people throughout the state. That combination of concern for students and wanting to avoid violating federal law is likely to lead many schools to ignore H.B. 2 and continue to affirm transgender students.

What can I do to protect my child now?

While we are hopeful that most schools will follow federal law and not enforce H.B. 2, it is important to be proactive. You should contact the school or district administrator that you have been working with, such as the school principal, to thank them for their continued support and offer to provide them with resources to help them navigate through the issues caused by H.B. 2. Even if they don't need any assistance, it never hurts to remind them that you remain interested in collaborating with them to make sure that all students can learn in a safe and welcoming environment.

If the school or district administrator would like more information about the law, you can provide them with a **copy of this letter found at** www.NCLRights.org/HB2LegalLetter explaining why H.B.2 does not change their obligations to treat transgender students equally.

What about prom/homecoming court or other sex-separated activities?

H.B. 2 applies only to bathrooms and locker rooms. It does not affect any other sex-separated activities or programs. Your child should be able to participate in all sex-separated activities or programs based on their affirmed gender. This can include things like: prom/homecoming court, sports, health education, physical education. Under Title IX, excluding your child from those activities or programs is discrimination on the basis of sex and violates federal law.

What should I do if my child is planning to transition in school but hasn't yet?

If your child's school is supportive and planning to affirm your child throughout their transition, you should contact the school or district administrator to discuss next steps. From a legal perspective, federal law requires your child's school to affirm their gender in all aspects of the school; H.B. 2 does not change that because it is a *state* law, and state law cannot override the requirements of federal law. You should be prepared with resources to help calm any uncertainties that H.B. 2 may have caused. Like with any transition, it is critical that the administration feels prepared and confident as they will set the tone for how the school community will respond to your child's transition. For an explanation of the law that you can provide to your child's school, if necessary, **download NCLR's H.B.2 Legal Letter at www.NCLRights.org/HB2LegalLetter.**

What can an IEP or 504 Plan do for my child?

An IEP ("Individualized Education Plan") and 504 Plan are additional tools you may be able to use in order to advocate for your child's access to the correct facilities at school. Federal law requires that schools create an IEP or 504 Plan for students with disabilities to ensure that they are able to learn to their potential. Whether your child qualifies for an IEP or 504 Plan will depend on how much your child's distress, anxiety, depression, or other learning needs are affecting their ability to learn. Assuming your child does qualify, access to the correct restroom can be one of the accommodations, services, and supports provided by the school, as that is critical to your child's ability to learn. If your child's school is concerned about complying with H.B. 2, implementing an IEP or 504 Plan is another way for the school to provide your child with access to the correct facilities.

What are my options if my child's school stops affirming, or refuses to affirm, my child's gender?

You generally have five options: (1) do nothing and make the best of a bad situation; (2) try to convince the school or district to affirm your child's gender in all aspects of the school; (3) move to another school or district that will affirm your child's gender; (4) file a complaint with the Office for Civil Rights (OCR) of

the United States Department of Education; and (5) file a lawsuit against the school district for discrimination. Each option comes with its own set of pros and cons so before proceeding with any option is critical to evaluate, which would be best for your family. For example, filing a lawsuit can have a broad impact and help other families raising transgender kids, but unlike some of the other options it can be emotionally demanding. Similarly, filing a complaint with OCR is a more confidential process than filing a lawsuit. If you would like to speak with someone in more detail about each of these options, please contact NCLR at (800) 528-6257.

For an explanation of the law that you can provide to your child's school, if necessary, **download NCLR's H.B.2 Legal Letter at www.NCLRrights.org/HB2LegalLetter.**

How do I decide which option is right for my family or circumstances?

This is a difficult and personal decision under any circumstance, but here are some things to consider as you figure out which option is best for your family. First, you should know that none of these options will result in change overnight; change will take time and it could be months or years before you see the fruits of your efforts. Second, you should take into account how private or confidential your family would like to be. Although there are steps lawyers can take to make a lawsuit more confidential, it will not be as confidential as filing a complaint with OCR or continuing to advocate that your child's school district change its position on this issue. Third, each option will have its emotional toll, on you and your family, but some options are more demanding in that regard. You should take stock of your family's and your child's level of resilience to help gauge what options may be appropriate. Lastly, you should make sure that you and your family are doing this for yourselves and not solely out of a sense of obligation to others or the community at large. Just because your child is transgender does not mean that you or your child have to be a martyr. Rest assured that this law will be struck down because there are other families and transgender kids who can do this without compromising their family's well-being.

What should I do if I have questions that were not answered here or want to talk to someone about my specific situation?

You should contact our Helpline at (800) 528-6257. We would be more than happy to answer any questions you may have or to discuss your specific situation in greater detail.