



Fact Sheet on Private Schools, Discrimination and the Law

Think private schools aren't allowed to discriminate?

When a student with a disability is not accepted at a private school or a teacher is not hired, or is fired, these events do not make newspaper headlines. The injured students or teachers have few, if any, legal courses of action so the examples never come to light. But we know they happen, because some do call the ACLU for assistance or make it into the press.

- In 2007, we were contacted by the family of a 15-year-old boy kicked out of a religious school in Baltimore County because he was gay. We told him we couldn't do anything to help him because no law prohibited the conduct.
- In 2008, we were contacted by the mother of an adopted Vietnamese daughter because other students at a religious school in Frederick County were taunting the girl for being Vietnamese, and the school could not or would not stop the harassment. The mother was forced to withdraw the girl from school and enroll her in a public school. We were unable to assist because the school is not subject to state anti-discrimination laws.
- In 2010, we were contacted by the family of a girl at a different religious school in Baltimore County, who was kicked out of the school after she acknowledged having "homosexual thoughts," in response to questioning from school officials. She was given a weekend to "reconsider her sexuality," and then expelled. Again, we were unable to assist because the conduct is not illegal.
- Also, in 2010, we were contacted by a legislator's office because the legislator had been contacted by a teacher at a religious school who had been fired when the school learned that she had married a woman (in a state where it was legal to do so at the time). We advised that there was nothing we could do because the conduct was not illegal.

What anti-discrimination laws are private schools required to follow?

Maryland Law

There is no Maryland law that directly applies to private schools prohibiting them from discriminating in the way many laws and regulations prohibit public schools from discriminating.

Per Maryland budget language, schools are eligible for state funding if they "comply with" Title VI of the Civil Rights Act. Title VI prohibits discrimination on the basis of race,

color, or national origin in schools that receive direct federal funding. However, because the state cannot make private schools that don't receive federal funding subject to Title VI's direct requirements, and because this is an eligibility requirement for state funds in a budget bill, and not a state statute, there is no way for any victim of discrimination to enforce Title VI's requirements against schools that violate its antidiscrimination provisions. Furthermore, there is no formal mechanism by which schools that receive textbook monies are audited to ensure they are, in fact, complying with Title VI.

Federal Law

1. If a private school receives direct federal funds (which not all do), they must follow Title VI (which prohibits discrimination on the basis of race, color, or national origin), Title IX (prohibiting discrimination based on sex in education programs and activities), and the Rehabilitation Act of 1973 (prohibiting the placement of a student in segregated classes or facilities "solely by reason of her or his disability."). If they do not receive direct federal funds, they are not required to follow these laws.

2. Private schools not run by or controlled by religious organizations are required to follow the Americans with Disabilities Act (ADA). Under Title III of the ADA, private schools are required to provide auxiliary aids and services to ensure that students with disabilities are not excluded, denied services, segregated or treated differently than other students. These accommodations are required only so long as they would not change the fundamental nature of the program or result in significant difficulty or expense. Private schools run by religious organizations may be exempt, because the ADA does not apply to religious organizations or entities controlled by religious organizations.

What anti-discrimination laws are public schools required to follow?

Maryland Law

1. Md. Education Code Ann. § 7-101, which provides "All individuals who are 5 years old or older and under 21 shall be admitted free of charge to the public schools of this State."

2. Maryland state regulations require that all public schools students, regardless of race, ethnicity, region, religion, gender, sexual orientation, language, socioeconomic status, age, or disability, have the right to educational environments that are safe, appropriate for academic achievement, and free from harassment. COMAR *13A.01.04.03*.

3. Md. Education Code Ann. §6-104(b), providing that public schools cannot discriminate against teachers on the basis of "race, religion, color, national origin, handicap, or sex."

4. State Gov. § 20-606, prohibiting employment discrimination on the basis of ace, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment.

Federal Law

1. Title VI of the Civil Rights Act, which prohibits discrimination in public schools on the basis of race, color, or national origin.
2. The Americans With Disabilities Act, requiring all public entities, including schools, to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”
3. The Rehabilitation Act of 1973, Section 504, requiring that public schools cannot place a student in segregated classes or facilities “solely by reason of her or his disability.” Students with disabilities must be given the same opportunities to participate in academic, nonacademic and extracurricular activities as their non-disabled peers.
4. Title IX of the Education Amendments of 1972 provides that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Prohibited from Discriminating on the basis of:	Maryland Public Schools	Maryland Private Schools
Race, color, national origin	Yes	Yes*
Sexual orientation	Yes	No
Ethnicity	Yes	No
Region	Yes	No
Religion	Yes	No
Gender	Yes	No
Language	Yes	No
Socioeconomic status	Yes	No
Age	Yes	No
Disability	Yes	Within limits
		*condition of eligibility for state funding, but not enforceable by victims of discrimination