

112TH CONGRESS
1ST SESSION

S. _____

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

Mr. FRANKEN (for himself, Mr. HARKIN, Mr. KERRY, Mrs. MURRAY, Ms. KLOBUCHAR, Mr. MERKLEY, Mr. DURBIN, Mr. LAUTENBERG, Mr. BENNET, Mr. BLUMENTHAL, Mr. UDALL of Colorado, Ms. MIKULSKI, Mr. LEAHY, Mr. SANDERS, Mr. BINGAMAN, Mr. WHITEHOUSE, Mr. CARDIN, Mrs. BOXER, Mrs. GILLIBRAND, Mr. MENENDEZ, Mr. AKAKA, Mr. SCHUMER, Mr. WYDEN, Mr. BEGICH, Mr. CASEY, _____) introduced the following bill; which was read twice and referred to the Committee on _____

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 2011”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds the following:

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

9 (2) While discrimination, including harassment,
10 bullying, intimidation, and violence, of any kind is
11 harmful to students and to the education system, ac-
12 tions that target students based on sexual orienta-
13 tion or gender identity represent a distinct and espe-
14 cially severe problem.

15 (3) Numerous social science studies dem-
16 onstrate that discrimination, including harassment,
17 bullying, intimidation, and violence, at school has
18 contributed to high rates of absenteeism, dropping
19 out, adverse health consequences, and academic
20 underachievement, among LGBT youth.

21 (4) When left unchecked, discrimination, includ-
22 ing harassment, bullying, intimidation, and violence,
23 in schools based on sexual orientation or gender
24 identity can lead, and has led, to life-threatening vio-
25 lence 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 are indif-
5 ferent to discrimination, including harassment, bul-
6 lying, intimidation, and violence, on the basis of sex-
7 ual orientation or gender identity.

8 (6) While Federal statutory provisions expressly
9 address discrimination on the basis of race, color,
10 sex, religion, disability, and national origin, Federal
11 civil rights statutes do not expressly address dis-
12 crimination on the basis of sexual orientation or gen-
13 der identity. As a result, students and parents have
14 often had limited recourse to law for remedies for
15 discrimination on the basis of sexual orientation or
16 gender identity.

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

18 (1) to ensure that all students have access to
19 public education in a safe environment free from dis-
20 crimination, including harassment, bullying, intimi-
21 dation, and violence, on the basis of sexual orienta-
22 tion or gender identity;

23 (2) to provide a comprehensive Federal prohibi-
24 tion of discrimination in public schools based on ac-

1 tual or perceived sexual orientation or gender iden-
2 tity;

3 (3) to provide meaningful and effective rem-
4 edies for discrimination in public schools based on
5 actual or perceived sexual orientation or gender
6 identity;

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

16 (5) to allow the Department of Education to ef-
17 fectively combat discrimination based on sexual ori-
18 entation or gender identity in public schools, through
19 regulation and enforcement, as the Department has
20 issued regulations under and enforced title IX of the
21 Education Amendments of 1972 and other non-
22 discrimination laws in a manner that effectively ad-
23 dresses discrimination.

24 **SEC. 3. DEFINITIONS AND RULE.**

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

1 (1) EDUCATIONAL AGENCY.—The term “edu-
2 cational agency” means a local educational agency,
3 an educational service agency, and a State edu-
4 cational agency, as those terms are defined in sec-
5 tion 9101 of the Elementary and Secondary Edu-
6 cation Act of 1965 (20 U.S.C. 7801).

7 (2) GENDER IDENTITY.—The term “gender
8 identity” means the gender-related identity, appear-
9 ance, or mannerisms or other gender-related charac-
10 teristics of an individual, with or without regard to
11 the individual’s designated sex at birth.

12 (3) HARASSMENT.—The term “harassment”
13 means conduct that is sufficiently severe, persistent,
14 or pervasive to limit a student’s ability to participate
15 in or benefit from a program or activity of a public
16 school or educational agency, or to create a hostile
17 or abusive educational environment at a program or
18 activity of a public school or educational agency, in-
19 cluding acts of verbal, nonverbal, or physical aggres-
20 sion, intimidation, or hostility, if such conduct is
21 based on—

22 (A) a student’s actual or perceived sexual
23 orientation or gender identity; or

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

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

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

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

19 (7) STUDENT.—The term “student” means an
20 individual who is enrolled in a public school or who,
21 regardless of official enrollment status, attends
22 classes or participates in the programs or activities
23 of a public school or educational agency.

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

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

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

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

17 (c) **RETALIATION PROHIBITED.**—

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

6 (B) any formal or informal report, whether
7 oral or written, to any governmental entity, in-
8 cluding public schools and educational agencies
9 and employees of the public schools or edu-
10 cational agencies, regarding conduct made un-
11 lawful by this Act or reasonably believed to be
12 made unlawful by this Act;

13 (C) participation in any investigation, pro-
14 ceeding, or hearing related to conduct made un-
15 lawful by this Act or reasonably believed to be
16 made unlawful by this Act; and

17 (D) assistance or encouragement provided
18 to any other person in the exercise or enjoy-
19 ment of any right granted or protected by this
20 Act,

21 if in the course of that expression, the person in-
22 volved does not purposefully provide information
23 known to be false to any public school or educational
24 agency or other governmental entity regarding con-

1 duct made unlawful, or reasonably believed to be
2 made unlawful, by this Act.

3 **SEC. 5. FEDERAL ADMINISTRATIVE ENFORCEMENT; RE-**
4 **PORT TO CONGRESSIONAL COMMITTEES.**

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

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

19 (1) by the termination of or refusal to grant or
20 to continue assistance under such program or activ-
21 ity to any recipient as to whom there has been an
22 express finding on the record, after opportunity for
23 hearing, of a failure to comply with such require-
24 ment, but such termination or refusal shall be lim-
25 ited to the particular political entity, or part thereof,

1 or other recipient as to whom such a finding has
2 been made, and shall be limited in its effect to the
3 particular program, or part thereof, in which such
4 noncompliance has been so found; or

5 (2) by any other means authorized by law,
6 except that no such action shall be taken until the depart-
7 ment or agency concerned has advised the appropriate per-
8 son or persons of the failure to comply with the require-
9 ment and has determined that compliance cannot be se-
10 cured by voluntary means.

11 (c) REPORTS.—In the case of any action terminating,
12 or refusing to grant or continue, assistance because of fail-
13 ure to comply with a requirement imposed pursuant to this
14 section, the head of the Federal department or agency
15 shall file with the committees of the House of Representa-
16 tives and Senate having legislative jurisdiction over the
17 program or activity involved a full written report of the
18 circumstances and the grounds for such action. No such
19 action shall become effective until 30 days have elapsed
20 after the filing of such report.

21 **SEC. 6. CAUSE OF ACTION.**

22 (a) CAUSE OF ACTION.—Subject to subsection (c), an
23 aggrieved individual may bring an action in a court of
24 competent jurisdiction, asserting a violation of this Act.
25 Aggrieved individuals may be awarded all appropriate re-

1 lief, including equitable relief, compensatory damages, and
2 costs of the action.

3 (b) **RULE OF CONSTRUCTION.**—This section shall not
4 be construed to preclude an aggrieved individual from ob-
5 taining remedies under any other provision of law or to
6 require such individual to exhaust any administrative com-
7 plaint process or notice of claim requirement before seek-
8 ing redress under this section.

9 (c) **STATUTE OF LIMITATIONS.**—For actions brought
10 pursuant to this section, the statute of limitations period
11 shall be determined in accordance with section 1658(a) of
12 title 28, United States Code. The tolling of any such limi-
13 tations period shall be determined in accordance with the
14 law governing actions under section 1979 of the Revised
15 Statutes (42 U.S.C. 1983) in the State in which the action
16 is brought.

17 **SEC. 7. STATE IMMUNITY.**

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

21 (b) **WAIVER.**—A State’s receipt or use of Federal fi-
22 nancial assistance for any program or activity of a State
23 shall constitute a waiver of sovereign immunity, under the
24 11th Amendment or otherwise, to a suit brought by an
25 aggrieved individual for a violation of section 4.

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

7 **SEC. 8. ATTORNEY'S FEES.**

8 Section 722(b) of the Revised Statutes (42 U.S.C.
9 1988(b)) is amended by inserting “the Student Non-Dis-
10 crimination Act of 2011,” after “Religious Land Use and
11 Institutionalized Persons Act of 2000,”.

12 **SEC. 9. EFFECT ON OTHER LAWS.**

13 (a) FEDERAL AND STATE NONDISCRIMINATION
14 LAWS.—Nothing in this Act shall be construed to pre-
15 empt, invalidate, or limit rights, remedies, procedures, or
16 legal standards available to victims of discrimination or
17 retaliation, under any other Federal law or law of a State
18 or political subdivision of a State, including title VI of the
19 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title
20 IX of the Education Amendments of 1972 (20 U.S.C.
21 1681 et seq.), section 504 of the Rehabilitation Act of
22 1973 (29 U.S.C. 794), the Americans with Disabilities Act
23 of 1990 (42 U.S.C. 12101 et seq.), or section 1979 of the
24 Revised Statutes (42 U.S.C. 1983). The obligations im-
25 posed by this Act are in addition to those imposed by title

1 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et
2 seq.), title IX of the Education Amendments of 1972 (20
3 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act
4 of 1973 (29 U.S.C. 794), the Americans with Disabilities
5 Act of 1990 (42 U.S.C. 12101 et seq.), and section 1979
6 of the Revised Statutes (42 U.S.C. 1983).

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

16 **SEC. 10. SEVERABILITY.**

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

22 **SEC. 11. EFFECTIVE DATE.**

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