

AMENDMENT NO. _____ Calendar No. _____

Purpose: To end discrimination based on actual or perceived sexual orientation or gender identity in public schools.

IN THE SENATE OF THE UNITED STATES—114th Cong., 1st Sess.

(no.) _____

To reauthorize the Elementary and Secondary Education Act of 1965 to ensure that every child achieves.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FRANKEN

Viz: *(For himself and Ms. Baldwin and Mr. Casey)*

1 At the appropriate place, insert the following:

2 **SEC. ____ . STUDENT NON-DISCRIMINATION.**

3 (a) **SHORT TITLE.**—This section may be cited as the
4 “Student Non-Discrimination Act of 2015”.

5 (b) **FINDINGS AND PURPOSES.**—

6 (1) **FINDINGS.**—Congress makes the following
7 findings:

8 (A) Public school students who are lesbian,
9 gay, bisexual, or transgender (referred to in
10 this section as “LGBT”), or are perceived to be
11 LGBT, or who associate with LGBT people,
12 have been and are subjected to pervasive dis-

1 crimination, including harassment, bullying, in-
2 timidation, and violence, and have been de-
3 prived of equal educational opportunities, in
4 schools in every part of the Nation.

5 (B) While discrimination of any kind is
6 harmful to students and to the education sys-
7 tem, actions that target students based on sex-
8 ual orientation or gender identity represent a
9 distinct and severe problem that remains inad-
10 equately addressed by current Federal law.

11 (C) Numerous social science studies dem-
12 onstrate that discrimination at school has con-
13 tributed to high rates of absenteeism, academic
14 underachievement, dropping out, and adverse
15 physical and mental health consequences among
16 LGBT youth.

17 (D) When left unchecked, discrimination in
18 schools based on sexual orientation or gender
19 identity can lead, and has led, to life-threat-
20 ening violence and to suicide.

21 (E) Public school students enjoy a variety
22 of constitutional rights, including rights to
23 equal protection, privacy, and free expression,
24 which are infringed when school officials engage
25 in or fail to take prompt and effective action to

1 stop discrimination on the basis of sexual ori-
2 entation or gender identity.

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

20 (2) PURPOSES.—The purposes of this section
21 are—

22 (A) to ensure that all students have access
23 to public education in a safe environment free
24 from discrimination, including harassment, bul-

1 lying, intimidation, and violence, on the basis of
2 sexual orientation or gender identity;

3 (B) to provide a comprehensive Federal
4 prohibition of discrimination in public schools
5 based on actual or perceived sexual orientation
6 or gender identity;

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

11 (D) to invoke congressional powers, includ-
12 ing the power to enforce the 14th Amendment
13 to the Constitution of the United States and to
14 provide for the general welfare pursuant to sec-
15 tion 8 of article I of the Constitution and the
16 power to make all laws necessary and proper
17 for the execution of the foregoing powers pursu-
18 ant to section 8 of article I of the Constitution,
19 in order to prohibit discrimination in public
20 schools on the basis of sexual orientation or
21 gender identity; and

22 (E) to allow the Department of Education
23 and the Department of Justice to effectively
24 combat discrimination based on sexual orienta-
25 tion and gender identity in public schools,

1 through regulation and enforcement, as the De-
2 partments have issued regulations under and
3 enforced title IX of the Education Amendments
4 of 1972 (20 U.S.C. 1681 et seq.) and other
5 nondiscrimination laws in a manner that effec-
6 tively addresses discrimination.

7 (c) DEFINITIONS AND RULE.—

8 (1) DEFINITIONS.—For purposes of this sec-
9 tion:

10 (A) EDUCATIONAL AGENCY.—The term
11 “educational agency” means a local educational
12 agency, an educational service agency, or a
13 State educational agency, as those terms are
14 defined in section 9101 of the Elementary and
15 Secondary Education Act of 1965 (20 U.S.C.
16 7801).

17 (B) GENDER IDENTITY.—The term “gen-
18 der identity” means the gender-related identity,
19 appearance, or mannerisms or other gender-re-
20 lated characteristics of an individual, with or
21 without regard to the individual’s designated
22 sex at birth.

23 (C) HARASSMENT.—The term “harass-
24 ment” means conduct that is sufficiently severe,
25 persistent, or pervasive to limit a student’s abil-

1 ity to participate in or benefit from a program
2 or activity of a public school or educational
3 agency, including acts of verbal, nonverbal, or
4 physical aggression, intimidation, or hostility, if
5 such conduct is based on—

6 (i) a student's actual or perceived sex-
7 ual orientation or gender identity; or

8 (ii) the actual or perceived sexual ori-
9 entation or gender identity of a person
10 with whom a student associates or has as-
11 sociated.

12 (D) PROGRAM OR ACTIVITY.—The terms
13 “program or activity” and “program” have the
14 same meanings given such terms as applied
15 under section 606 of the Civil Rights Act of
16 1964 (42 U.S.C. 2000d-4a) to the operations
17 of public entities under paragraph (2)(B) of
18 such section.

19 (E) PUBLIC SCHOOL.—The term “public
20 school” means an elementary school (as the
21 term is defined in section 9101 of the Elemen-
22 tary and Secondary Education Act of 1965 (20
23 U.S.C. 7801)) that is a public institution, and
24 a secondary school (as so defined) that is a
25 public institution.

1 (F) SEXUAL ORIENTATION.—The term
2 “sexual orientation” means homosexuality, het-
3 erosexuality, or bisexuality.

4 (G) STUDENT.—The term “student”
5 means an individual within the age limits for
6 which the State provides free public education
7 who is enrolled in a public school or who, re-
8 gardless of official enrollment status, attends
9 classes or participates in the programs or ac-
10 tivities of a public school or local educational
11 agency.

12 (2) RULE.—Consistent with Federal law, in this
13 section the term “includes” means “includes but is
14 not limited to”.

15 (d) PROHIBITION AGAINST DISCRIMINATION.—

16 (1) IN GENERAL.—No student shall, on the
17 basis of actual or perceived sexual orientation or
18 gender identity of such individual or of a person
19 with whom the student associates or has associated,
20 be excluded from participation in, be denied the ben-
21 efits of, or be subjected to discrimination under any
22 program or activity receiving Federal financial as-
23 sistance.

24 (2) HARASSMENT.—For purposes of this sec-
25 tion, discrimination includes harassment of a stu-

1 dent on the basis of actual or perceived sexual ori-
2 entation or gender identity of such student or of a
3 person with whom the student associates or has as-
4 sociated.

5 (3) RETALIATION PROHIBITED.—

6 (A) PROHIBITION.—No person shall be ex-
7 cluded from participation in, be denied the ben-
8 efits of, or be subjected to discrimination, retal-
9 iation, or reprisal under any program or activity
10 receiving Federal financial assistance based on
11 the person's opposition to conduct made unlaw-
12 ful by this section.

13 (B) DEFINITION.—For purposes of this
14 paragraph, "opposition to conduct made unlaw-
15 ful by this section" includes—

16 (i) opposition to conduct believed to
17 be made unlawful by this section or con-
18 duct that could be believed to become un-
19 lawful under this section if allowed to con-
20 tinue;

21 (ii) any formal or informal report,
22 whether oral or written, to any govern-
23 mental entity, including public schools and
24 educational agencies and employees of the
25 public schools or educational agencies, re-

1 regarding conduct made unlawful by this sec-
2 tion, conduct believed to be made unlawful
3 by this section, or conduct that could be
4 believed to become unlawful under this sec-
5 tion if allowed to continue;

6 (iii) participation in any investigation,
7 proceeding, or hearing related to conduct
8 made unlawful by this section, conduct be-
9 lieved to be made unlawful by this section,
10 or conduct that could be believed to be-
11 come unlawful under this section if allowed
12 to continue; and

13 (iv) assistance or encouragement pro-
14 vided to any other person in the exercise or
15 enjoyment of any right granted or pro-
16 tected by this section,

17 if in the course of that expression, the person
18 involved does not purposefully provide informa-
19 tion known to be false to any public school or
20 educational agency or other governmental entity
21 regarding conduct made unlawful by this sec-
22 tion, or conduct believed to be made unlawful
23 by this section, or conduct that could be be-
24 lieved to become unlawful under this section if
25 allowed to continue.

1 (e) FEDERAL ADMINISTRATIVE ENFORCEMENT; RE-
2 PORT TO CONGRESSIONAL COMMITTEES.—

3 (1) REQUIREMENTS.—Each Federal depart-
4 ment and agency which is empowered to extend Fed-
5 eral financial assistance to any education program
6 or activity, by way of grant, loan, or contract other
7 than a contract of insurance or guaranty, is author-
8 ized and directed to effectuate the provisions of sub-
9 section (d) with respect to such program or activity
10 by issuing rules, regulations, or orders of general ap-
11 plicability which shall be consistent with achievement
12 of the objectives of the statute authorizing the finan-
13 cial assistance in connection with which the action is
14 taken. No such rule, regulation, or order shall be-
15 come effective unless and until approved by the
16 President.

17 (2) ENFORCEMENT.—Compliance with any re-
18 quirement adopted pursuant to this subsection may
19 be effected—

20 (A) by the termination of or refusal to
21 grant or to continue assistance under such pro-
22 gram or activity to any recipient as to whom
23 there has been an express finding on the record,
24 after opportunity for hearing, of a failure to
25 comply with such requirement, but such termi-

1 nation or refusal shall be limited to the par-
2 ticular political entity, or part thereof, or other
3 recipient as to whom such a finding has been
4 made, and shall be limited in its effect to the
5 particular program, or part thereof, in which
6 such noncompliance has been so found; or

7 (B) by any other means authorized by law,
8 except that no such action shall be taken until the
9 department or agency concerned has advised the ap-
10 propriate person or persons of the failure to comply
11 with the requirement and has determined that com-
12 pliance cannot be secured by voluntary means.

13 (3) REPORTS.—In the case of any action termi-
14 nating, or refusing to grant or continue, assistance
15 because of failure to comply with a requirement im-
16 posed pursuant to this subsection, the head of the
17 Federal department or agency shall file with the
18 committees of the House of Representatives and
19 Senate having legislative jurisdiction over the pro-
20 gram or activity involved a full written report of the
21 circumstances and the grounds for such action. No
22 such action shall become effective until 30 days have
23 elapsed after the filing of such report.

24 (f) PRIVATE CAUSE OF ACTION.—

1 (1) PRIVATE CAUSE OF ACTION.—Subject to
2 paragraph (3), and consistent with the cause of ac-
3 tion recognized under title VI of the Civil Rights Act
4 of 1964 (42 U.S.C. 2000d et seq.) and title IX of
5 the Education Amendments of 1972 (20 U.S.C.
6 1681 et seq.), an aggrieved individual may bring an
7 action in a court of competent jurisdiction, asserting
8 a violation of this section. Aggrieved individuals may
9 be awarded all appropriate relief, including equitable
10 relief, compensatory damages, and costs of the ac-
11 tion.

12 (2) RULE OF CONSTRUCTION.—This subsection
13 shall not be construed to preclude an aggrieved indi-
14 vidual from obtaining remedies under any other pro-
15 vision of law or to require such individual to exhaust
16 any administrative complaint process or notice of
17 claim requirement before seeking redress under this
18 subsection.

19 (3) STATUTE OF LIMITATIONS.—For actions
20 brought pursuant to this subsection, the statute of
21 limitations period shall be determined in accordance
22 with section 1658(a) of title 28, United States Code.
23 The tolling of any such limitations period shall be
24 determined in accordance with the law governing ac-
25 tions under section 1979 of the Revised Statutes (42

1 U.S.C. 1983) in the State in which the action is
2 brought.

3 (g) CAUSE OF ACTION BY THE ATTORNEY GEN-
4 ERAL.—The Attorney General is authorized to institute
5 for or in the name of the United States a civil action for
6 a violation of this section in any appropriate district court
7 of the United States against such parties and for such
8 relief as may be appropriate, including equitable relief and
9 compensatory damages. Whenever a civil action is insti-
10 tuted for a violation of this section, the Attorney General
11 may intervene in such action upon timely application and
12 shall be entitled to the same relief as if the Attorney Gen-
13 eral had instituted the action. Nothing in this section shall
14 adversely affect the right of any person to sue or obtain
15 relief in any court for any activity that violates this sec-
16 tion, including regulations promulgated pursuant to this
17 section.

18 (h) STATE IMMUNITY.—

19 (1) STATE IMMUNITY.—A State shall not be
20 immune under the 11th Amendment to the Constitu-
21 tion of the United States from suit in Federal court
22 for a violation of this section.

23 (2) WAIVER.—A State's receipt or use of Fed-
24 eral financial assistance for any program or activity
25 of a State shall constitute a waiver of sovereign im-

1 munity, under the 11th Amendment or otherwise, to
2 a suit brought by an aggrieved individual for a viola-
3 tion of subsection (d).

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

10 (i) ATTORNEY'S FEES.—Section 722(b) of the Re-
11 vised Statutes (42 U.S.C. 1988(b)) is amended by insert-
12 ing “the Student Non-Discrimination Act of 2015,” after
13 “Religious Land Use and Institutionalized Persons Act of
14 2000,”.

15 (j) EFFECT ON OTHER LAWS.—

16 (1) FEDERAL AND STATE NONDISCRIMINATION
17 LAWS.—Nothing in this section shall be construed to
18 preempt, invalidate, or limit rights, remedies, proce-
19 dures, or legal standards available to victims of dis-
20 crimination or retaliation, under any other Federal
21 law or law of a State or political subdivision of a
22 State, including titles IV and VI of the Civil Rights
23 Act of 1964 (42 U.S.C. 2000e et seq., 2000d et
24 seq.), title IX of the Education Amendments of 1972
25 (20 U.S.C. 1681 et seq.), section 504 of the Reha-

1 bilitation Act of 1973 (29 U.S.C. 794), the Ameri-
2 cans with Disabilities Act of 1990 (42 U.S.C. 12101
3 et seq.), or section 1979 of the Revised Statutes (42
4 U.S.C. 1983). The obligations imposed by this sec-
5 tion are in addition to those imposed by titles IV
6 and VI of the Civil Rights Act of 1964 (42 U.S.C.
7 2000c et seq., 2000d et seq.), title IX of the Edu-
8 cation Amendments of 1972 (20 U.S.C. 1681 et
9 seq.), section 504 of the Rehabilitation Act of 1973
10 (29 U.S.C. 794), the Americans with Disabilities Act
11 of 1990 (42 U.S.C. 12101 et seq.), and section 1979
12 of the Revised Statutes (42 U.S.C. 1983).

13 (2) FREE SPEECH AND EXPRESSION LAWS AND
14 RELIGIOUS STUDENT GROUPS.—Nothing in this sec-
15 tion shall be construed to alter legal standards re-
16 garding, or affect the rights available to individuals
17 or groups under, other Federal laws that establish
18 protections for freedom of speech and expression,
19 such as legal standards and rights available to reli-
20 gious and other student groups under the First
21 Amendment and the Equal Access Act (20 U.S.C.
22 4071 et seq.).

23 (k) SEVERABILITY.—If any provision of this section,
24 or any application of such provision to any person or cir-
25 cumstance, is held to be unconstitutional, the remainder

1 of this section, and the application of the provision to any
2 other person or circumstance shall not be impacted.

3 (1) EFFECTIVE DATE.—This section shall take effect
4 60 days after the date of enactment of this section and
5 shall not apply to conduct occurring before the effective
6 date of this section.