



Rights of LGBT Public School Students in Massachusetts



This document is intended to provide general information only and is not intended to provide guidance or legal advice as to anyone's specific situation. Moreover, the law is constantly changing and evolving and this publication is based upon the information that is known to us as of this printing. For guidance on your particular situation, you must consult a lawyer. You should not act independently on this information. The provision of this information is not meant to create an attorney-client relationship. Check our website, www.glad.org, for the latest information.

If you have questions about this publication, other legal issues or need lawyer referrals, call GLAD's Legal InfoLine weekdays between 1:30 and 4:30 p.m. at:

(800) 455-GLAD (4523) or (617) 426-1350

Table of Contents

INTRODUCTION.....	1
YOU HAVE THE RIGHT TO ATTEND SCHOOL IN SAFETY.....	3
WHAT DO I DO IF I'M BEING HARASSED OR DISCRIMINATED AGAINST?.....	6
WHAT REMEDIES EXIST IF I'M BEING HARASSED AT SCHOOL?.....	8
YOU HAVE THE RIGHT TO FORM LGBT GROUPS.....	10
YOU HAVE THE RIGHT TO LEARN ABOUT LGBT ISSUES....	12
YOU HAVE THE RIGHT TO EXPRESS OPINIONS ABOUT LGBT ISSUES.....	13
TRANSGENDER STUDENTS—YOU HAVE THE RIGHT TO EXPRESS YOUR GENDER IDENTITY.....	14

INTRODUCTION

LGBT students are often the victims of discrimination and harassment that can lead to feelings of fear, anger, anxiety, depression, and even suicide. For public school students in Massachusetts, there are both state and federal laws, as well as policies established by the Massachusetts Department of Education, designed to protect LGBT students and to allow them to participate in both curricular and extra-curricular activities free from discrimination and harassment. In particular, as a public school student in Massachusetts, you have the right to:

- Attend school in safety. This means no sexual harassment or harassment based on your sexual orientation or gender identity or expression by other students or staff.
- Express your point of view, even on controversial issues, and to feel safe in doing so!
- Form a Gay/Straight Alliance (GSA) on the same terms as all other extra-curricular student groups and to have your GSA receive the same treatment and privileges, including equal funding and equal access to school facilities.
- To wear clothing and otherwise present yourself in a way that fits your gender identity

GLAD hopes that this publication will help students, parents, teachers and administrators to better understand the rights and protections that exist in Massachusetts for LGBT students. **If you find that your rights are not being respected, please contact GLAD's Legal InfoLine, Monday-Friday, 1:30-4:30 pm, at (800) 455-GLAD (4523).** GLAD can provide you with additional information and referrals to agencies and attorneys who can help you to fight for your rights. GLAD has listings for over 150 agencies in Massachusetts that provide services to LGBT youth. A partial list of agencies is found in the *Appendix*, but contact GLAD for additional agencies in your area.

A note to students who attend private schools:

Some of the rights and protections described in this publication only apply to students in public schools. However, there are some provisions of the law that apply to all schools. For example:

- Federal non-discrimination statutes, such as Title IX, typically apply to any school that receives federal financial assistance.
- The Massachusetts non-discrimination law (Massachusetts General Laws Chapter 151C) covers any institution that accepts students from the general public. This statute applied to schools does not pertain to sexual orientation discrimination directly, but rather to sexual harassment. Also, any religious school would be exempt from coverage.
- Criminal statutes apply to extreme harassment and violence against youth anywhere the violence occurs.

Private school students who are experiencing harassment or discrimination are encouraged to call GLAD to obtain information and referrals for their particular situation.

YOU HAVE THE RIGHT TO ATTEND SCHOOL IN SAFETY

Are LGBT students at risk of experiencing harassment and discrimination in schools?

Yes. Public health and educational research has documented that gay and lesbian students and students dealing with sexual expression and identity issues face an increased risk of violence, harassment and discrimination.

What affect does this have on LGBT students?

LGBT students are more likely to have problems performing in school and may be at greater risk for alcohol and other drug abuse, suicidal behavior, infection with HIV and other sexually transmitted diseases and homelessness. The 2005 Massachusetts Youth Risk Behavior Survey showed that LGBT youth are:

- Over four times more likely to have attempted suicide in the past year.
- Over four times more likely to miss school in the past month because of feeling unsafe.
- Over three times more likely to have been in a physical fight.
- Almost two times more likely to have been injured or threatened with a weapon at school.

Do schools have a legal obligation to protect LGBT students from harassment and discrimination?

Yes. Federal and state laws, constitutional provisions and state education policies should ensure the right of all students, including LGBT students, to attend school in safety. Unlawful harassment compromises a student's ability to take advantage of

educational opportunities. When harassment is based on the student's sexual orientation, sex or gender identity or expression, failure to redress it properly and promptly violates the law.

What federal protections exist to protect LGBT students?

Under federal law, sex discrimination is prohibited by both Title IX and constitutional provisions of equal protection under the law. Sexual harassment can be a form of sex discrimination. The United States Supreme Court has established that a student may file a complaint of discrimination with the United States Department of Education's Office of Civil Rights (OCR), and, in cases where the school has reacted with deliberate indifference, may proceed in court to seek monetary damages. The administrative remedies available through OCR also provide strong incentives for schools to form and enforce anti-harassment policies. Federal regulations require federal fund recipients to adopt and publish sexual harassment grievance procedures. The OCR has an informative document entitled Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties, which provides guidelines on a wide variety of harassment-related issues. It can be found at <http://www.ed.gov/about/offices/list/ocr/docs/shguide.html>.

What Massachusetts laws exist to protect LGBT students?

Chapter 76, Section 5 of the Massachusetts General Laws prohibits both sex and sexual orientation discrimination in its schools, whether committed by school employees or fellow students.

The Code of Massachusetts Regulations (603 CMR 26.00) establishes certain actions that schools must take to prohibit the harassment or discrimination of LGBT students (<http://www.doe.mass.edu/lawsregs/603cmr26.html?section=01>). In particular, the Code requires that all schools educate staff and students about Chapter 76, Section 5 and have policies in place to ensure that complaints of discrimination and harassment are

investigated and appropriate action is taken against those who violate the provisions of the law.

Also Massachusetts General Laws Chapter 151C defines fair educational practices and specifically prohibits sexual harassment by either teachers, staff or other students. Violations of this law can be brought to the Massachusetts Commission Against Discrimination, a state agency that does not require the parties to have a lawyer.

Massachusetts' law also protects students who are perceived to be LGBT, regardless of their actual sexual orientation. So, for example, if the vice-principal for discipline acts to resolve the harassment complaints of girls generally, but not when the harassment is directed at a female student because she is thought to be a lesbian, the school is engaging in sexual orientation discrimination.

What other steps have been taken to make the schools safer for LGBT students?

In response to concerns about the vulnerability and increased risk of violence against LGBT students, in May 1993 the Massachusetts Department of Education adopted a set of recommendations, based on work done by the Governor's Commission on Gay and Lesbian Youth, to improve the safety of schools and school-based support services for these students:

1. Schools are encouraged to develop policies protecting gay and lesbian students from harassment, violence and discrimination.
2. Schools are encouraged to offer training to school personnel in violence prevention and suicide prevention.
3. Schools are encouraged to offer school-based support groups for gay, lesbian and heterosexual students.
4. Schools are encouraged to provide school-based counseling for family members of gay and lesbian students.

WHAT DO I DO IF I'M BEING HARASSED OR DISCRIMINATED AGAINST?

The first step to take is to make sure that you are safe and that you have support. In some cases, reporting harassment or discrimination can lead to retribution and increased harassment. If your parents are supportive let them know what is happening and enlist their aid. In addition, teachers and counselors that you trust can be helpful in providing assistance and advising you about the best way to report the abuse. If your school has a GSA, the advisor and other students in the GSA can be an important source of support. There are also organizations outside your school that can provide information and support. A partial list of these organizations can be found in the *Appendix*. In addition, GLAD has a list of over 150 organizations in Massachusetts that provide services and support to LGBT youth. **Contact us at (800) 455-GLAD (4523) if you need a referral to an agency in your area.**

GLAD has a publication on the steps you should take if you are being harassed at school: *I'm Being Harassed at School. . . What Can I Do?* It can be found at:

<http://www.glad.org/rights/schoolharassmenttips.shtml>.

The basic steps to take are:

- Keep notes about what is going on.
- Try to get a copy of your school's policies on student conduct, harassment and discipline.
- Try to talk with someone about the problem.
- Notify the Title IX coordinator, the principal and the superintendent about the situation and ask them to stop the harassment.

Once notified of possible sexual harassment of students, the school administration is legally required to take immediate and appropriate steps to investigate the situation and take action to end any harassment, eliminate a hostile environment, if one has been created, and prevent harassment from happening again. A court may find the administration liable if administrators knew of the misconduct and did nothing to investigate and stop it.

If your school does not investigate the harassment and take steps to stop it, it may not be taking your complaint seriously, and you may need outside help. Contact GLAD, the Problem Resolution System at the Massachusetts Department of Education or the federal OCR. The contact information for these agencies is listed in the *Appendix*.

WHAT REMEDIES EXIST IF I'M BEING HARASSED AT SCHOOL?

When a school has determined that harassment or objectionable conduct has occurred, it must remedy the situation and take steps to prevent it from recurring. Schools are generally allowed to impose gradually increasing discipline as needed on the students who have been found to be responsible for harassing. For a severe incident, however, more serious and immediate steps may be required. Responsive measures, such as separating the students, should be designed to minimize the burden on the student who was harassed. In some cases, the school may remedy the effects of the harassment through student and staff training, class changes, developing new policies or counseling.

What should I do if the school takes no action or I disagree with the actions the administration takes?

You or your parents may have the right to file a complaint with:

- United States Department of Education OCR
- Massachusetts Department of Education Problem Resolution System
- Massachusetts Commission Against Discrimination

You may also be able to go to criminal court and take out complaints for the commission of hate crimes, assault, sexual assault and other crimes. For example, if a student believes that his or her safety is imperiled, he or she may be able to obtain a “civil rights injunction” from the Attorney General’s office ordering the harasser to stop abusing him or her and to refrain from any contact. Students can also obtain “restraining orders” when a present or former boyfriend or girlfriend or household member is the harasser.

Students may be able to bring civil suits against their schools and receive monetary damages based on any number of legal theories. These lawsuits may be premised on violations of state and federal non-discrimination laws and the school's common duty to protect students from harm. Finally, constitutional claims based on equal protection and due process may be available.

Through its Lawyer Referral Service, GLAD can refer you or your parents to LGBT-friendly attorneys who can provide advice about the best legal action for your situation.

YOU HAVE THE RIGHT TO FORM LGBT GROUPS

Does a public school have to allow a Gay-Straight Alliance (GSA) to form at a high school?

Generally, yes. Under the Equal Access Act (EAA), a federal law enacted in 1984, all public high schools which receive federal funding and allow at least one student-initiated non-curriculum related group to meet, **MUST ALLOW** all other non-curriculum student groups, including GSAs, access to the school.

Can the school refuse to let the GSA meet if students, staff, parents, or community members are opposed?

No. Courts have ruled that the negative reaction of others cannot be used as a reason to refuse to allow the group to meet. If the school allows at least one other non-curricular group to meet, it can only deny access to another non-curricular student club if the club members' own disruptive activities have interfered with the school's ability to maintain order and discipline.

Does the school have to give the GSA the same privileges as other clubs?

Yes. Under the EAA, if a public school allows at least one non-curricular student group certain privileges, such as the use of space, copy machines, postage, etc., then it must grant those same benefits to all other non-curricular student clubs.

Failure to grant a GSA the same privileges may also violate the Equal Protection Clause of the federal and Massachusetts state constitutions, the First Amendment and the Massachusetts anti-discrimination statute.

Can the school create different tiers of non-curricular student clubs?

No. As discussed above, the school must treat all non-curricular student clubs equally.

Can the school require the club to change its name to something less controversial?

No. The group has first amendment speech and associational rights in its name and mission. Moreover, a school cannot discriminate against a club based on the content of the students' proposed discussions.

Where can I get more information about GSAs?

The Massachusetts Department of Education has a document entitled Gay/Straight Alliances: A Student Guide, that can be found at: <http://www.doe.mass.edu/enp/GSA>. There are many suggestions in it for forming and maintaining a strong GSA at your school.

YOU HAVE THE RIGHT TO LEARN ABOUT LGBT ISSUES

The right of students to receive information and ideas has long been protected by the First Amendment. There have been court cases that involve the removal of books from middle and high school libraries, and the Supreme Court has ruled that students must always remain free to inquire and have struck down attempts at library censorship. Censorship in the classroom is also likely to be frowned upon by the courts. Thus, even though exposure to certain ideas or material may conflict with a school board's own views, the freedom to learn means that students have a right to be exposed to all sides of controversial issues.

There is one wrinkle to these general principles in Massachusetts. Under Massachusetts General Law Chapter 71, Section 32A, parents must be notified and may elect to remove their children from those curricula which primarily involve human sexual education or human sexuality issues. According to the Department of Education, the law is not intended to be an excuse for parents to remove their children from any class discussion referencing sexuality, or to prevent children from reading works by LGBT authors, or studying the historical and cultural movement to obtain civil rights for LGBT people. Instead the notice and opt-out provisions only apply to courses (or parts of courses), assemblies, etc. that focus on sex education or on human reproduction or sexual development. No law requires consent from parents—just notification. Applying this law too broadly into areas of curriculum, beyond sex education, could trigger complaints of unlawful censorship.

YOU HAVE THE RIGHT TO EXPRESS OPINIONS ABOUT LGBT ISSUES

The rights to speak, write and otherwise communicate ideas outside of the classroom are also often protected by law. When a school creates a forum generally open for use by student groups, whether it is a bulletin board or publication, it cannot deny a student group access to that forum based on the content of its message. These rights are guaranteed by both the First Amendment and by Massachusetts General Laws Chapter 71, Section 82.

One sticking point concerns student newspapers. School administrators have wide discretion to regulate activities that are considered part of the school's curriculum. Although this is a broad generalization, the law appears to be that anything the school is required to sponsor is considered curricular. The Supreme Court has upheld a school's decision to delete articles on controversial topics from a student newspaper published by the school journalism class because the class was considered part of the curriculum and under the control of school authorities. A school's ability to censor even school-sponsored publications is not unfettered: it may not engage in viewpoint discrimination, and its actions must be motivated by legitimate pedagogical interest. For any type of publication, there is no legal protection for "low value" speech such as matters considered obscene, defamatory, fighting words or incitement.

Student's rights in Massachusetts are greater than those in most states. A specific state law prohibits schools from censoring all student newspapers, whether or not they are part of the curriculum, based on viewpoint. If there is an editorial board for the paper, it must apply the same standards to editing submissions by a LGBT student or about LGBT issues as to all other submissions. The only limitations on student expression are that it may not cause disorder or disruption in the school, and it must not be "low value" as defined above.

TRANSGENDER STUDENTS—YOU HAVE THE RIGHT TO EXPRESS YOUR GENDER IDENTITY

Do transgender students have the right to wear clothing and otherwise present themselves in a way that fits their gender identity?

Yes. In *Doe v. Yunits*, GLAD filed suit against a public school in Massachusetts for refusing to allow an 8th grade student, Pat Doe, to attend school in clothing it considered to be inappropriate for a student the school believed to be a boy. Pat was assigned the sex of male at birth but has a female gender identity. Consistent with her gender identity, she had been wearing girls' clothing for nearly 2 years. Rejecting the school's argument that Pat's wearing girls' clothing was disruptive and made other students uncomfortable, the judge who heard the case ruled in Pat's favor, issuing a temporary injunction against the school. As a result, it could not prevent Pat Doe "from wearing any clothing or accessories that any other male or female student could wear without being disciplined.

Do transgender students have right to access bathrooms and locker rooms consistent with their gender identity?

GLAD's position is that transgender people should be able to use bathrooms and locker rooms consistent with their gender identity. This is, however, still an area of the law that is largely untested. GLAD encourages transgender students to work with school officials to try to find a bathroom and locker room solution that is acceptable to both the student and the school. If there are issues that cannot be resolved by mutual consent, please contact GLAD at (800) 455-GLAD (4523) for additional information and resources.

APPENDIX

RESOURCES FOR LGBT YOUTH

Gay & Lesbian Advocates & Defenders (GLAD)
30 Winter Street, Suite 800
Boston, MA 02108
(800) 455-GLAD (4523)
www.glad.org

GLAD's Legal InfoLine can provide you with free legal information about your rights and referrals to other agencies and attorneys if needed.

Massachusetts Department of Education
Program Quality Assurance Services
Problem Resolution System
(781) 338-3700
www.doe.mass.edu/pqa/prs
compliance@doe.mass.edu

If the administration at your school is not taking your harassment or discrimination complaints seriously, you can file a complaint with the Problem Resolution System of the Massachusetts Department of Education.

United States Department of Education
Office of Civil Rights (OCR)
(617) 289-0111
OCR.Boston@ed.gov

A second place to file a complaint about the failure of your school administration to take appropriate action is with the OCR.

Fenway Community Health Center Peer Listening Line
(800) 399-PEER (7337)

A listening line staffed by youth, who can provide information and referrals.

Boston Alliance of Gay & Lesbian Youth (BAGLY)
(617) 227-4313

Provides social activities and special events for LGBT youth.

Boston GLASS
(617) 266-3349

Drop-in center for LGBT youth.

Massachusetts Commission
on Gay & Lesbian Youth
(617) 624-5485

Works to eliminate
discrimination against and
harassment of LGBT youth.

Parents, Families & Friends of
Lesbians and Gays (PFLAG)
[www.pflag.org/Massachusetts
.214.0.html](http://www.pflag.org/Massachusetts.214.0.html) (lists all the
PFLAG Chapters in
Massachusetts)
www.gbpflag.org/safeschools

The Greater Boston PFLAG
Chapter has a program that
works with the schools to
create a safe space for all
students.

Gay, Lesbian and Straight
Education Network (GLSEN)
[www.glsen.org/cgi-bin/iowa/
student/student/index.html](http://www.glsen.org/cgi-bin/iowa/student/student/index.html)
(617) 536-9669

GLSEN has resources to
assist schools to establish
and maintain a GSA.

Project 10 East
(617) 864-GLBT

Serves as a resource to all
who are engaged in creating
safe spaces in schools.

Samariteens of Boston
(800) 252-TEEN (8336)

Peer support and
understanding to teens who
are struggling with feelings of
depression, loneliness and
stress.

AIDS Action Committee
Hotline
(800) 235-2331

Information, resources and
referrals related to HIV/AIDS.

Violence Recovery Program
(VRP) at Fenway Community
Health Center
(800) 834-3242

Provides counseling, support
groups, advocacy and referral
services to LGBT victims of
violence and sexual assault.

Gay & Lesbian Advocates & Defenders (GLAD) is the leading legal rights organization in New England dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression. Through impact litigation, education and public policy work, GLAD seeks to create a better world that respects and celebrates diversity—a world in which there is equal justice under law for all.

GLAD's Legal InfoLine and publications are provided *free of charge* to all who need them. For those who are able, we hope you will make a contribution to ensure that GLAD can continue the fight for equal justice under the law.

To make a tax-deductible contribution, log on to www.glad.org, or call us at (800) 455-GLAD (4523) with your credit card, or mail your check, payable to GLAD to 30 Winter Street, Suite 800, Boston, MA 02108. If your workplace has a matching gift program, please be sure to have your donation matched. Please contact us if you would like more information on becoming a GLAD partner.

Thank You!



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