

Creating Safe and Affirming Schools for LGBTQI+ Maine Youth

Under Maine law, schools have an obligation to “prevent discrimination in education on account of sex, sexual orientation or physical or mental disability.” [5 Me. Rev. Stat. §4552](#). This obligation is part of a larger commitment to safeguard “the basic human right to a life with dignity” and to “review all practices infringing on [that] basic human right.” [5 Me. Rev. Stat. §4552](#).

Under both federal and Maine law, and under the U.S. and Maine Constitutions, students have a right to an education without regard to their sex, sexual orientation, gender identity or transgender status.

All students have the right to access the opportunities provided by a robust education.

Cultivating inclusive public school learning environments make the benefits and opportunities of education available to more students.

Ensuring that all students feel welcome at school is essential to student mental and physical health, and can make students better able to contribute productively to our communities.

Creating and maintaining an inclusive learning environment is not only the right thing to do—it is the law in Maine and across the United States.

Summary

Maine has a significant and growing population of LGBTQI+ students. A 2019 survey of all high school students shows that 12.4% of students are lesbian, gay, or bisexual, and 4.4% are unsure of their sexual orientation. 1.6% of students are transgender, and 1.6% are unsure of their gender identity. See [Maine Department of Education and Department of Health and Human Services, Maine Integrated Youth Health Survey \(MIYHS\) High School Report \(2019\)](#), 4. The LGBTQI+ student population is as diverse as the state of Maine, coming from all areas of the state, all types of families, and all racial and ethnic backgrounds.

According to the Report, students perceived as LGBTQI+ or gender non-conforming are disproportionately targeted for harassment at school. LGBTQI+ high schoolers are more likely than straight and cisgender students to:

- Be threatened or injured with a weapon on school property (*id.* at 86)
- Be in a physical fight on school property (*id.* at 95)
- Be physically bullied and bullied online (*id.* at 98, 102)
- Receive offensive comments about their race or ethnicity and perceived sexual orientation or gender nonconformity on their way to or from school (*id.* at 135, 137-38, 141, 144).

Bullying and harassment take a toll. Compared to their straight and cisgender peers, LGBTQI+ students are more likely to have feelings of sadness and hopelessness that affect their ability

to function (*id.* at 150). More LGBTQI+ students have also seriously contemplated or planned to take their own lives (*id.* at 162, 166). *See also* [Maine Department of Education & Department of Health and Human Services, LGBT Student Health \(2019\)](#).

It doesn't have to be this way. LGBTQI+ students have more positive, supportive experiences at school when school administrators, staff, and teachers get to know LGBTQI+ students and their parents or guardians. With a deeper understanding of LGBTQI+ students' experiences, needs, and gifts, school leaders are better able to ensure equal treatment and opportunities to all students. As a result, school environments and outcomes will improve for everyone.

This document outlines some of the laws that reinforce equal treatment for all students and require schools to respond to harassment and bullying. But remember: Laws must be supported by a culture of inclusion. Everyone has a responsibility to ensure all young people are valued and respected.

If you are experiencing harassment or discrimination, and you would like to speak with someone about your situation, please contact GLAD's free, confidential legal infoline at 1-800-455-GLAD or visit www.gladanswers.org.

WATCH: Back-to-school message for trans students from the U.S. Departments of Justice, Education, and Health and Human Services



<https://youtu.be/lGHtoBJMcgU>

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Maine Law Overview

How does the Maine anti-discrimination law apply to education?

Under Maine law, students can't be treated differently, disadvantaged, or excluded from educational opportunities and programs at "educational institutions" because of who they are.

This means students may "participate in all educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs because of sex, sexual orientation, a physical or mental disability, national origin or race." [5 Me. Rev. Stat. §4601](#).

Discrimination because of "sex" includes discrimination based on gender identity and expression.

Education is so fundamental to success in life that Maine has also declared educational opportunity to be a "civil right" for every individual.

Individuals are multidimensional. For example, they may be LGBTQI+ *and* Black, Latinx, Asian, Indigenous, or otherwise a student of color, or an LGBTQI+ person with a disability. An individual may experience discrimination — different and disadvantageous treatment compared to others — on the basis of LGBTQI+ status alone or in combination with other personal characteristics.

Maine law says LGBTQI+ students may not be:

- Moved out of the educational mainstream because of perceptions about their abilities;
- Disciplined more harshly than other students for the same acts;
- Forbidden from holding hands, engaging in public displays of affection (PDA), or

sharing their identity if other students may do so; or

- Targeted for demeaning treatment — including slurs, insults, ridicule, threats, or assault — that interferes with their ability to engage meaningfully in the academic and other offerings of the school.



Photo by The Gender Spectrum Collection

Which Maine schools are covered by the state nondiscrimination law?

The law applies to:

- All public schools;
- Any co-ed private schools that are approved for tuition purposes. (For requirements related to the approval of public funds for tuition purposes by private schools, see [20-A Me. Rev. Stat. sec. 2951](#)); and
- All public post-secondary institutions in Maine, like community colleges and the University of Maine schools. See [5 Me. Rev. Stat. sec. 4553\(2-A\)](#) (*definition of educational institution*).

Any religious school that is an "education facility owned, controlled or operated by a bona fide religious corporation, association or society" is exempt from the nondiscrimination law as it applies to sexual orientation and gender identity and expression. See [5 Me. Rev. Stat. sec. 4602](#).

How does Maine law define sexual orientation and gender identity or expression?

The Maine law prohibiting educational discrimination defines “**sexual orientation**” as a person’s “actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression.” See [5 Me. Rev. Stat. sec. 4553\(9-C\)](#).

The law defines the term “**gender identity**” to mean “the gender-related identity, appearance, mannerisms or other gender-related characteristics of an individual, regardless of the individual’s assigned sex at birth.” See [5 Me. Rev. Stat. sec. 4553\(5-C\)](#).

The Maine Human Rights Commission has elaborated on this definition, explaining that “gender identity” means “an individual’s sincerely held core belief regarding their gender, whether that individual identifies as male, female, a blend of both, neither, or in some other way” and whether they choose to use terms “such as, for example . . . ‘queer’, ‘genderqueer’, ‘bi-gender’, ‘intersex’ or ‘gender fluid’).” See [Maine Human Rights Commission, Memo on Interpretation of the Education Provisions of the MHRA \(Jan. 13, 2016\)](#). Terminology changes quickly, and many people now use the term “non-binary.”

The Maine Human Rights Commission defines “**gender expression**” as “an individual’s external expression of their gender identity, through such means as clothing, hair styling, jewelry, voice, and behavior.” See [Maine Human Rights Commission, Memo on Interpretation of the Education Provisions of the MHRA \(Jan. 13, 2016\)](#) (generally referred to as the *MHRC 2016 Interpretive Memo*). Students whose gender expression is considered by some to be “gender non-conforming” are sometimes referred to as “gender expansive.”

The Maine Human Rights Commission has clarified that the statute covers all orientations, including, for example, those who identify as asexual. See [MHRC 2016 Interpretive Memo](#).

What does it mean to say that a school may not discriminate against a student based on their sexual orientation, gender identity, or gender expression?

In short, it means that you cannot be “segregated or separated from other students, or forced into certain schools or classes, or harassed if it’s because” of your sexual orientation, gender identity, or gender expression. See [Maine Human Rights Commission, Student Rights Under the Maine Human Rights Act](#).

The Maine Human Rights Act protects the right of students, including LGBTQI+ students, to participate in academic, extracurricular, athletic, research, occupational training, and all other educational programs free from discrimination on the basis of their sexual orientation, gender identity, or gender expression. The law also protects a student’s right to be free from discrimination based on their sexual orientation, gender identity, or gender expression during the admissions process and in obtaining financial aid.

It is unlawful in Maine — on the basis of sex, sexual orientation, gender identity, or gender expression — for an educational institution to:

- “A. Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity;
- B. Deny a person equal opportunity in athletic programs;
- C. Apply any rule concerning the actual or potential family or marital status of a person

or to exclude any person from any program or activity...;

- D. Deny admission to the institution or program or to fail to provide equal access to and information about an institution or program through recruitment; or
- E. Deny financial assistance availability and opportunity.” See [5 Me. Rev. Stat. sec. 4602](#).

In 2019, Maine also enacted a law that protects LGBTQI+ youth from the practice of “conversion therapy,” by which school-based social workers, school counselors, and all licensed mental health providers are barred from attempting to change a minor’s sexual orientation or gender identity. See [32 Me. Rev. Stat. sec. 3300-G](#).

Does Maine law specifically protect the right of transgender and gender-expansive students to equal access to and ability to participate on equal terms in all school programs?

Yes. A school may not discriminate against transgender and gender expansive students or fail to treat them in accordance with their gender identity. The Maine Human Rights Commission has issued official guidance on how schools should apply Maine’s Human Rights Act to respect students’ gender identity. See [Maine Human Rights Commission, Memo on Interpretation of the Education Provisions of the MHRA \(Jan. 13, 2016\)](#). Under the official guidance:

Athletics. “Students should be allowed to compete on single-sex/gender teams based upon their gender identity.” This guideline is subject to other laws and rules for interscholastic sports. For example, the Maine Principals’ Association regulates high school athletics and presumes students will participate in accord with their gender identity. It also requires transgender

students to have a confidential assessment of any possible issues of athletic advantage or safety. See [Maine Principals’ Association Handbook \(2020-2021\), 19-20](#). To date, all students have been allowed to participate.

The NCAA, which regulates college sports, protects the rights of transgender student-athletes to have equal opportunity to participate in collegiate sports. For those NCAA athletes, transgender women may compete after one year of testosterone suppression. See [NCAA Inclusion of Transgender Student-Athletes \(Aug. 2011\)](#).



Photo by Alyssa Ledesma

School facilities. “Students must be permitted to use the toilet, locker room, and shower facilities corresponding to their gender identity.” Students “shall not be required to use facilities corresponding to their assigned birth sex/gender, where their assigned birth sex/gender and their gender identity are different.” This is also consistent with the Maine Law Court ruling in [Doe v. Reg’l Sch. Unit 26, 86 A.3d 600 \(Me. 2014\)](#) as well as case law in federal courts of appeals. See [Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586 \(4th Cir. 2020\), cert. denied, 2021 U.S. LEXIS 3441 \(June 28, 2021\)](#); [Adams ex rel. Kasper v. Sch. Bd. St. Johns Cnty., 2021 U.S. App. LEXIS 20777 \(11th Cir. July 14, 2021\)](#).

Dozens of school administrators from around the country, including Maine, have argued that implementation of inclusive school policies allowing trans students access to school facilities

and programs consistent with their gender identity has yielded “improvement in the educational experience of all students.” See [Brief of Amici Curiae School Administrators in Support of Appellee at 5, *Adams ex rel. Kasper v. Sch. Bd. St. Johns Cnty.*, 968 F.3d 1286 \(11th Cir. 2020\) \(No. 18-13592\); opinion revised, 2021 U.S. App. LEXIS 20777 \(11th Cir. July 14, 2021\).](#)

Guidance from the National School Boards Association also encourages schools to expect federal regulations and guidance “that expressly require schools to allow students to use bathrooms and locker rooms that are consistent with their gender identity.” See [National School Boards Association, Executive Order on Preventing and Combatting Discrimination Based on Gender Identity or Sexual Orientation \(Jan. 20, 2021\), 2.](#)

Names and pronouns. The Maine Human Rights Commission suggests that a student give clear notice to their school, in writing, that they are requesting school personnel to use the student’s chosen name and pronouns. Then, going forward, the school and its staff “shall use the student’s preferred name and pronouns consistent with their gender identity” on all documents and in all communications. The only exception to this rule is the student’s official record, which must bear the student’s legal name unless changed by a court order.

This guidance also suggests employees are “required to address the student by the student’s chosen name and use pronouns consistent with the student’s gender identity.”

At the students’ request, the school should also “instruct its students to address the student by the student’s chosen name and use pronouns consistent with the student’s gender identity.” A school’s “pattern of refusal to acknowledge a student’s gender identity” as evidenced by a

failure to use “their chosen name and pronouns” may constitute a violation of the Maine Human Rights Act.

Extending this respect to young people affects their educational environment and their opportunity to learn.

“Kids need to be respected at school in order to be able participate and learn at school. It’s not about what the grown-ups think about the journey these kids are on; what matters is what the student needs.”

– B., parent of a transgender high school student in York County

Student appearance. All students have a right to express themselves within the bounds authorized by the school. As the official guidance explains, students “should be permitted to dress in a manner consistent with [their] gender identity.” If the school has a dress code, the “dress code should be applied to the student consistent with [the student’s] gender identity.”

Conflict with parents. “In the event that the student and their parent/legal guardian do not agree with regard to the student’s sexual orientation, gender identity, or gender expression, the educational institution should, whenever possible, abide by the wishes of the student with regard [to] their gender identity and expression *while at school.*” (emphasis added). School staff already do not need parental permission to use a child’s nickname at school. This guidance reflects the school’s obligation to protect a student’s right to attend a school with an “inclusive learning environment.” See [20-A Me. Rev. Stat. sec. 6554\(1\).](#)

Federal Law Overview

Are there any federal laws which forbid discrimination based on sexual orientation or gender identity or expression?

Yes. Title IX of the Education Amendments Act of 1972 is a federal law that bans discrimination “on the basis of sex” in schools that receive federal funding. See [20 U.S.C. § 1681](#).

Schools may not treat a person differently on the basis of their sex or otherwise limit access to opportunities on the basis of sex. See [34 C.F.R. § 106.31](#). Sex discrimination can include discriminatory discipline, harassment and sexual violence, and unequal access to educational resources or athletic opportunities on the basis of sex. See *next section for definition of sex*.

Title IX also prohibits discrimination based on a student’s pregnancy or familial status.

Title IX’s protections extend beyond students, also protecting school employees and parents/guardians from discrimination on the basis of sex. See [Office of Civil Rights, U.S. Department of Education, Sex Discrimination: Frequently Asked Questions \(June 15, 2021\)](#).

Two federal courts of appeal have upheld the rights of transgender students — under the U.S. Constitution and, in one case, under Title IX — to participate in school activities and access school facilities according to their gender identity. In *Grimm*, a trans student sued his school board after they refused to allow him to use the men’s bathroom. The Fourth Circuit found that the school board’s refusal violated the Equal Protection Clause of the Fourteenth Amendment and Title IX. The Supreme Court chose not to take up the case, leaving the Fourth Circuit’s decision in place. See [Grimm v.](#)

[Gloucester Cnty. Sch. Bd., 972 F.3d 586, 593–94 \(4th Cir. 2020\), cert. denied, 2021 U.S. LEXIS 3441 \(June 28, 2021\)](#).

In *Adams*, a trans student also sued his school board for denying him access to the men’s bathroom. The Eleventh Circuit ruled that the school board’s policy violated his constitutional equal protection rights. See [Adams ex rel. Kasper v. Sch. Bd. St. Johns Cnty., 2021 U.S. App. LEXIS 20777, at *50-51 \(11th Cir. July 14, 2021\)](#).

Another federal court ruled that Idaho’s first-in-the-nation ban on transgender girls and women participating in sports, consistent with their gender identity, violated Title IX. [Hecox v. Little, 479 F. Supp. 3d 930 \(D. ID 2020\); 2021 U.S. App. LEXIS 18903](#) (remanded to District Court to address standing in light of changed circumstances). See also WV Case of 7.21.

In addition, a federal district court in West Virginia recently issued a preliminary injunction preventing that state’s sports ban from going into effect against a transgender student. The judge found that the student was likely to succeed on two grounds. First, the ban, as applied to the student, “is not substantially related to protecting girls’ opportunities in athletics or their physical safety when participating in athletics.” As such the student is likely to succeed in showing that the ban violates the Equal Protection Clause of the Fourteenth Amendment. Second, the ban excludes the student from school athletics on the basis of sex, and the student is therefore likely to succeed on her Title IX claim. See [B.P.J. et al. v. West Virginia State Bd. of Educ., No. 2:21-cv-00316 \(S.D. W. Va. July 21, 2021\)](#) (order granting preliminary injunction). This is a fast-changing area; contact GLAD for more information.

Which schools are covered by Title IX requirements?

Since the federal government provides funding for many schools, Title IX applies to all public schools and many private schools. Title IX also applies to all public colleges and universities and virtually all private colleges and universities. *See* [Office of Civil Rights, U.S. Department of Education, Sex Discrimination: Frequently Asked Questions \(June 15, 2021\)](#).

Note that religious schools may opt out of Title IX's protections. *See* [34 C.F.R. § 106.12\(b\)](#). This note is important since official notice of opting out is not required, so students and families may not know that a school has exempted itself from the prohibitions on sex discrimination.



Photo by Michael Poley of Poley Creative for AllGo

How does sex discrimination relate to sexual orientation and gender identity?

Since Title IX forbids schools from treating a person differently because of their “sex,” it also forbids treating a person differently because of their sexual orientation and gender identity and expression.

In 2020, the U.S. Supreme Court interpreted a different provision of the Civil Rights Act, Title VII, addressing workplace discrimination because of the person’s “sex.” *See* [Bostock v. Clayton County, 140 S. Ct. 1731 \(2020\)](#). The Supreme Court ruled that Title VII’s protection

against “sex” discrimination necessarily includes a protection against discrimination on the basis of sexual orientation or gender identity. *Id.* at 1741. Terms like “sex” are interpreted consistently across the civil rights laws.

What does the U.S. Department of Education say about discrimination against LGBTQI+ young people?

In June 2021, the U.S. Department of Education issued a **Notice of Interpretation** announcing that, consistent with *Bostock*, the Department will interpret Title IX’s prohibition of discrimination “on the basis of sex” to include discrimination on the basis of sexual orientation and gender identity. *See* [U.S. Department of Education, Notice of Interpretation: Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County \(June 16, 2021\)](#). More specific guidance about sexual harassment in K-12 education is forthcoming.

The Notice explains that the Office of Civil Rights in the Department “will fully enforce” this interpretation of Title IX in part because “differential treatment of students based on gender identity or sexual orientation may cause harm.” By interpreting Title IX to protect students from discrimination, the Department will fulfill the statute’s purpose “to ensure equal opportunity.”

Discrimination on the basis of sexual orientation and gender identity may include instances of “individuals being harassed, disciplined in a discriminatory manner, excluded from, denied equal access to, or subjected to sex stereotyping in academic or extracurricular opportunities and other education programs or activities, denied the benefits of such programs or activities, or otherwise treated differently because of their sexual orientation or gender identity.”

Constitutional Law Overview

Are there any protections against discrimination because of sexual orientation or gender identity or expression under the U.S. Constitution?

Yes. The Fourteenth Amendment of the U.S. Constitution guarantees the right of all people to “equal protection” under the law. This guarantee has long been applied to LGBTQI+ people, e.g. *Romer v. Evans*, 517 U.S. 620 (1996) and to discrimination on the basis of sex. *See, e.g.*, *Craig v. Boren*, 429 U.S. 190 (1976).

When an LGBTQI+ student is treated differently from other students by their school on the basis of their sex, sexual orientation or gender identity, this discrimination also may violate the U.S. Constitution.

Several federal courts have concluded that school policies requiring students to use the bathroom corresponding with their “biological gender” is sex-based discrimination in violation of the Fourteenth Amendment to the U.S. Constitution. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 613–15 (4th Cir. 2020); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1050–54 (7th Cir. 2017).

For example, the Court of Appeals for the Eleventh Circuit concluded that a school district’s policy requiring students to use the restroom that matched their enrollment documents rather than their gender identity violated the Fourteenth Amendment. *Adams ex rel. Kasper v. Sch. Bd. St. Johns Cnty.*, 2021 U.S. App. LEXIS 20777, at *24-25 (11th Cir. July 14, 2021).

When a school fails to protect LGBTQI+ students from harassment, but would have protected other students from the same harassment, this failure also may violate the

LGBTQI+ student’s constitutional right to equal protection. *See* *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996); *see also* *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1135 (9th Cir. 2003) (concluding that the school district’s failure to enforce anti-harassment policies to protect LGBTQI+ students could constitute constitutional violation).

There are many ways the Constitution addresses the rights of students at schools – from locker searches to free speech to censorship. Contact GLAD Answers about these or other questions:

1-800-455-GLAD

www.gladanswers.org

Laws About School Safety

How does the Maine Department of Education address school safety?

The Maine DOE strives to have every child succeed. This is a commitment of the State's educational leaders and staff, and also effectuates legal requirements to provide for equal and equitable opportunities for students.

Three of the relevant Maine DOE centers are the [Maine School and Student Support site](#), the [Maine School Safety Center site](#), and the [LGBTQ+ and Gender Resources site](#).

MDOE asks schools, their staff, and their students to support the “social/emotional well-being of students,” to affirm each person’s “responsibility to help create and sustain a healthy school environment,” and to encourage an individual commitment to each child’s welfare. See [Maine School Safety Center Statement of Beliefs ¶ 1-2](#). The MDOE locates a shared commitment to young people at the core of what will create a “welcom[ing], safe and secure” environment so that students and staff, and parents and visitors, can make schools places of growth, thriving, and success. [Maine School Safety Center, Vision](#). In addition to prevention, a wide range of interventions are addressed at the School and Student Supports site and address topics such as social and emotional learning, trauma-informed practices, mental and physical health, bullying, school nursing, and equity. [The National Association of Secondary School Principals](#) is among the many organizations of educators that supports equity for LGBTQ+ students and staff.

To these ends, the MDOE seeks to make schools “as safe and secure as possible” with a “level of physical and emotional safety that all parents desire for their children.” School culture and the

school’s perspective on discipline are intimately connected.

According to the MDOE:

“The school environment, culture, approaches to discipline, and interface with the community is crucial to the well-being of all students, and particularly to those students who are alienated from the school program and those with behavioral and/or mental health issues.”

“Schools and communities are responsible for determining how they will collaborate to create a systematic approach to school safety.”

“To create a healthy school environment and reduce threatening behaviors, schools and communities should:

- Strive to adopt comprehensive, evidence-based and promising practices that reduce violence by successfully addressing conflict and resolving problems; identifying youth at-risk early; providing behavioral health and wrap-around services; and building on the strengths of families and young people seeking the education and skills to lead safe and fulfilling lives.
- Prioritize training for those working in schools and with students, including law enforcement personnel and school resource officers, in developmentally sensitive, collaborative, proactive, restorative, positive, relationship-oriented, and communication-enhancing approaches that help students with behavioral challenges.
- Reject policies and practices that have the unintended consequence of increasing the number of youth who unnecessarily come in

contact with law enforcement, the courts, and the justice system.

- Adopt policies and practices that are structured to continually evolve based on new data and community needs.
- Adopt policies and practices that offer students behavioral, social, and emotional supports and learning programs.
- Adopt policies and practices that include substance abuse prevention.
- Utilize the most up-to-date practices to assure the safety and security of schools to include ongoing site assessments, target hardening, procedures, protocols, and policies. Continued learning is necessary to maintain the most current practices in all venues — mental health as well as tactical.”



Photo by The Gender Spectrum Collection

Which Maine laws are relevant to bullying, harassment, and discrimination?

There are three laws in particular that are relevant to bullying, harassment, and discrimination in Maine schools.

1. Maine passed a comprehensive anti-bullying law in 2012, which is discussed in detail in the section below. *See* [20-A Me. Rev. Stat. sec. 6554](#).

2. The Maine Human Rights Act, discussed above in the overview of Maine law, protects students’ right to freedom from discrimination in education. *See* [5 Me. Rev. Stat. sec. 4601](#).
3. Under the Maine Human Rights Act, discrimination on the basis of sex can also include sexual harassment or sexual violence. *See* [5 Me. Rev. Stat. sec. 4602](#).

What protection does Maine's anti-bullying law provide to public school students?

In 2012, Maine passed a comprehensive anti-bullying law, which prohibits bullying on school grounds and sometimes off of school grounds when the behavior is tied to the rights of the student at school. *See* [20-A Me. Rev. Stat. sec. 6554\(3\)](#).

The anti-bullying law states: “All students have the right to attend public schools that are safe, secure and peaceful environments.”

The U.S. Supreme Court recently reaffirmed that “[s]chools have a responsibility to respond to harmful behavior that targets a student.” *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038 (2021). While that case involved questions about a school’s ability to regulate speech that occurs on school premises versus speech that occurs off of school premises, the Court agreed that schools may regulate “serious or severe bullying or harassment targeting specific individuals.” *Id.* at *12.

Maine’s anti-bullying law is also highlighted on the DOE [website](#). This site includes information about the law and policies, as well as data reported to the State about bullying incidents and tools for prevention. Similarly, the Safety Center also provides services to schools, including training, site and school climate assessments, and mental health and threat assessments.

What types of bullying does the law forbid?

Bullying often overlaps with harassment and discrimination, and the Legislature thought it important to clarify that whatever it is called, it is not acceptable to single out people because of their “personal characteristics.” The anti-bullying law forbids bullying based on:

“A student’s actual or perceived race; color; religion; national origin; ancestry or ethnicity; sexual orientation; socioeconomic status; age; physical, mental, emotional or learning disability; gender; gender identity and expression; physical appearance; weight; family status; or other distinguishing personal characteristics.” See [20-A Me. Rev. Stat. sec. 6554\(1\)](#).

The law prohibits bullying based on a student’s actual or perceived sexual orientation or gender identity and expression, or association with another person with one or more of these actual or perceived characteristics. See [20-A Me. Rev. Stat. sec. 6554\(2\)\(B\)\(3\)](#).

Bullying includes, but is not limited, to any communication (written, oral, or electronic) or physical act or gesture that:

- a. Harms you or your property, or places you in a reasonable fear of harm;
- b. Creates an intimidating or hostile school environment; or
- c. Interferes with your academic performance or ability to participate in school activities. See [20-A Me. Rev. Stat. sec. 6554\(2\)\(B\)](#).

Where are students protected by the law?

The law prohibits bullying on school grounds — which include, in addition to the school and its surrounding property:

1. School-related transportation vehicles;
2. Other properties where school-sponsored activities, functions, programs, instruction, or training take place; and
3. Anywhere else or “through the use of technology” if that bullying interferes with a student’s participation or performance at school or creates a hostile environment at school for the student. [20-A Me. Rev. Stat. §§6554\(3\); \(2\)\(E\); \(2\)\(B\)\(2\); and \(4\)\(B\)](#).

What steps must a school take to comply with the anti-bullying law?

The law also requires schools to take affirmative steps to address the problem of bullying. Schools must develop policies and procedures to prevent bullying and cyberbullying and to address it when it does occur. See [20-A Me. Rev. Stat. §§6554\(5\) – \(9\)](#).

A school’s approach to bullying prevention and redress also should include the recommendations of the MDOE School Safety Center. We can expect the MDOE to provide further clarification of how safety and bullying can both be addressed.

Under the anti-bullying law, schools must:

- Protect all students, regardless of sexual orientation or gender identity or expression from bullying, cyberbullying, harassment, and sexual harassment.
- Issue a clear a policy banning bullying, harassment, sexual harassment, and retaliation for reporting incidents of such

behavior. The policy must provide disciplinary consequences for bullying.

- The Maine Department of Education publishes a Model Policy for bullying and cyberbullying prevention in schools. It can be downloaded from the Department of Education's [Bullying Prevention website](#).
- Set out procedures for promptly investigating and responding to incidents of bullying, including written documentation of incidents and the outcome of investigations.
- Develop and administer ways to remedy incidents of bullying to counter the negative impact of the bullying and reduce the risk of future bullying. This process may include alternative forms of discipline and restorative school practices to repair the harm caused by the student's misbehavior.
 - The school also must provide harm-reduction services and referrals for all students involved in incidents of bullying.
 - The school also must set out a process for communicating to the parent(s) of a student who has been bullied the steps taken by the school to ensure the safety of the student and to prevent further acts of bullying. The school also must provide harm-reduction services and referrals for all students involved in incidents of bullying.
- The school also must set out a process for communicating to the parent(s) of a student who has been bullied the steps taken by the school to ensure the safety of the student and to prevent further acts of bullying.
- Require that all school staff members, coaches, and advisors report bullying incidents to the principal or other school personnel.



Photo by Andrew Ebrahim

- Provide training to staff members as to bullying policies and obligations under the law.
- Provide the anti-bullying policy annually to all students, parents, and staff.
- Submit a yearly report to the state Department of Education that describes the nature of bullying incidents and the consequences and actions taken by the school to address the incident. *See [20-A Me. Rev. Stat. sec. 254\(11-A\)\(A\)](#).*

Preventing and Intervening in Discrimination and Bullying: Recommended Steps for All Students, Including LGBTQI+ Students

PREVENTION

How can I prevent bullying, harassment, and discrimination at school?

There are a number of laws that forbid bullying, harassment, and discrimination in school, many of which are described in greater detail in the previous section. The Educational Opportunities Section of the Civil Rights Division at the U.S. Department of Justice and the Office for Civil Rights at the U.S. Department of Education has also affirmed that they will enforce the law when schools do not meet their obligations by failing to ensure a safe school environment for all students, including LGBTQI+ students, in all aspects of education. See U.S. Department of Justice & Department of Education, [*Confronting Anti-LGBTQI+ Harassment in Schools*](#). See also [*U.S. Department of Education, Title IX and Sex Discrimination*](#) (June 2021).

Schools that fail to protect students from anti-LGBTQI+ bullying, harassment, and discrimination expose themselves to legal liability. Among these are:

- [*Wadington v. Holmdel Twp. Bd. of Educ.*](#) (N.J., settled in 2008) (arguing for a student's right to be protected from antigay harassment under New Jersey's Law Against Discrimination);
- [*Henkle v. Gregory*](#) (Nev., settled in 2002) (seeking to enforce a student's First Amendment right to be out at school);
- [*Flores v. Morgan Hill Unified Sch. Dist.*](#), 324 F.3d 1130 (9th Cir. 2003) (finding that a school is obligated to take meaningful steps

to end anti-gay harassment if the school knows such harassment is taking place);

- [*Nabozny v. Podlesny*](#), 92 F.3d 446 (7th Cir. 1996) (ruling that schools have a responsibility to protect students from antigay verbal and physical abuse); (settled after ruling)

Schools can take steps toward complying with their obligations under law by enacting policies that promote inclusion and prevent bullying, harassment, and discrimination. Students can advocate for such policies if they do not yet exist.

In addition to improved policies, schools can prevent bullying, harassment, and discrimination by taking the following steps:

- Encourage openness and transparency about a school's policies and procedures for addressing the needs of all students, including LGBTQI+ students. Schools build trust with students, parents, and the wider community when they explain their policies and why they are important and can hear and respond to student, parent/guardian, and community concerns.
- Establish a Gender & Sexuality Alliance (GSA, also referred to as a Gay-Straight Alliance). Research shows that such organizations can foster a school culture in which students are less likely to hear homophobic slurs. See [*A. Orr, J. Baum et al., Schools in Transition: Supporting Transgender Students in K-12 Schools*](#), 11. Students in schools with GSA report

perceptions of greater school safety and less homophobic bullying. See [Salvatore Ioverno et al., *The Protective Role of Gay-Straight Alliances for Lesbian, Gay, Bisexual, and Questioning Students: A Prospect Analysis*, 3 *Psychology of Sexual Orientation & Gender Diversity* 397, 397 \(2016\)](#). Researchers have also found an association between the presence of a high school GSA and better young adult well-being, more college-level educational attainment, and fewer problems related to substance abuse. See [Russell B. Toomey et al., *High School Gay-Straight Alliances \(GSAs\) and Young Adult Well-Being: An Examination of GSA Presence, Participation, and Perceived Effectiveness*, 15 *Applied Developmental Science* 175, 182-83 \(2011\)](#). For more information, see [GLAD’s overview on GSAs in schools](#).

What should schools consider as they design strong policies that promote inclusion and prevent bullying, harassment, and discrimination?

A good policy be explicit about including LGBTQI+ people, and that policy will be evident in school and district policies, on the website, and in school rules, handbooks, and other general circulation materials.

These points were originally written to promote trans inclusivity, but they can be adapted to apply more broadly:

- States its goals and provides leadership by recognizing the school’s obligation to create a safe and inclusive learning environment at school by supporting the student’s identity, including their gender identity, in ways that are age and developmentally appropriate. All students must be treated with dignity and respect.

- States clear definitions of key terms, since many people are hungering for information and vocabulary about sexual orientation, gender identity, and gender expression.
- Provides an opportunity to develop an individual support plan for the student and accepts the student’s assertion of gender identity when consistently asserted.
 - The policy should make clear that a school can ask for additional evidence if there is a “credible, objective reason” to believe that a student’s gender identity is being asserted for an improper purpose. See [Maine Human Rights Commission, *Memo on Interpretation of the Education Provisions of the MHRA* \(Jan. 13, 2016\)](#).
 - A school may not require medical records of students. A student can provide a written statement from a health care provider, a document that shows the correct gender marker, and/or a statement from family or from an adult close to them who knows about their core gender identity.
- Respects the student’s personal information, including about disclosure of their gender identity or sexual orientation at school. In the event the student has not disclosed their status to their parents or guardians, the school will support the student in making a plan to do so.



Photo by Samantha Sophia

- As a matter of equity, opportunity and student engagement, requires the school district to use the student’s expressed name and pronouns on all documents (e.g. school identification, classroom rosters, certificates, diplomas, yearbooks), excluding the student’s official record, which must bear their legal name unless changed by a court order.
- Ensures students are able to use restrooms, locker rooms, and changing facilities corresponding with their gender identity.
- Requires annual staff training concerning the policy. In addition, schools and districts should design and implement professional development programs that equip teachers and administrators with tools and knowledge to engage with and support LGBTQI+ students. See [National School Boards Association, Bridging the Gap: Professional Development and LGBTQ Youth \(Feb. 1, 2021\)](#).
- Requires the publication and dissemination of the policy on the internet, in handbooks, and to the community.
- Identifies staff who are obligated to respond to complaints of harassment, bullying, or discrimination and procedures for addressing such complaints. In the context of Title IX, the National Women’s Law Center encourages schools to remember the three P’s: a school district must have designated a *person* to respond to complaints, a *policy* against sex discrimination, and a *procedure* to address complaints. See [National Women’s Law Center, Let Her Learn: A Toolkit to Stop School Pushout for Girls Who Have Experienced Sexual Harassment \(Oct. 2018\)](#).
- Implements restorative justice programs and positive behavior interventions to improve school climate and address the root cause of bullying. “Zero tolerance” policies that

punish students for bullying with suspension and expulsion degrades the school climate and creates profound harms for students over the short and long term. Such punishments are also disproportionately used against LGBTQ students, students of color, and students with disabilities. See [Schools in Transition: Supporting Transgender Students in K-12 Schools](#), 30.

Are there examples of strong policies that promote inclusion and prevent bullying, harassment, and discrimination?

Yes. Maine School Administration District (MSAD) 30 in Penobscot County has strong ACAA policies related to harassment, including sexual harassment of students. See [MSAD 30, Harassment and Sexual Harassment of Students](#). MSAD 30 also has robust guidelines for fostering a safe, inclusive learning environment for transgender and gender non-conforming students. See [MSAD 30, Transgender and Gender Non-Conforming Student Guidelines](#).

For additional support when crafting inclusive policies, consider the following resources.

- [GLSEN, Respect for All: Policy Recommendations to Support LGBTQ Students](#)
- [National School Boards Association, To Live Out Loud: Support and Protection Help LGBTQ Students to Flourish \(June 1, 2021\)](#)
- [Schools in Transition: Supporting Transgender Students in K-12 Schools](#)

NON-LEGAL INTERVENTION

What can I do if I'm being discriminated against at school?

Reach out for support. It's hard for everyone who feels mistreated or marginalized at school. For students, it is important to reach out to friends, family, and school staff for support and problem solving. Find someone with whom you feel safe. If you don't know where to turn, consider the school nurse, social worker, counselor or others who know you and who are open and affirming of LGBTQI+ people.

Talk it through with allies. Schools are invested in ensuring their students thrive — all of them. If school staff know what is going on, they may be able to intervene informally and end the troubling behavior. They need to know what is happening and that the behavior is upsetting you so that you can talk it through, identify some coping strategies, and re-establish your sense of belonging and safety. If you believe that the behavior toward you stems from your identity (including your sexual orientation, gender identity, gender expression) or any other personal characteristic, it is imperative to reach out for support.

Use policies and law. Maine and federal laws, policies, and guidance can help you establish baseline expectations about your time in school. At a minimum, schools should welcome all young people and treat them with respect. However, students, their families, school staff, and the community must work proactively to create an inclusive school culture that meets—and even exceeds—the minimum expectations established by law.

Maine and federal laws, as well as MDOE and MHRC policy and guidance, set expectations for how young people are welcomed into and treated at school. At the same time, it takes students,

their families, the school staff, and the community to make those expectations a reality.

When means of redress fail, or when the behavior toward a student is severe or pervasive enough that it deprives them of the opportunity to learn and participate on the same ground as others, the law may provide a tool for redressing the issue.

Does the behavior rise to a level where you are feeling unsafe at school, unable to participate in or focus on your classes, or are avoiding school or activities at school?

If so, look at your school policies (such as your student handbook or school nondiscrimination policy) and be sure to follow the guidance about whom to notify and how. This person could be, for example, a vice principal or Title IX coordinator or others.

It is very important to inform school staff and administration — including as required by the Handbook — about the harassment, bullying or other discrimination you are experiencing. It is difficult to attempt to remedy a situation without knowing about it. It is best to do so in person or in writing (by hand, digitally) or both. Share the dates, location, participants, and circumstances of incidents of harassment or discrimination as best you can.

Note that it is always helpful to have a written record—including electronic communication of all sorts—so there is no confusion later.

Be sure to keep track, in writing, what you shared with school officials. For example, if you meet with a staff person who is looking into the situation, write yourself notes about when you met, what you shared with them, and what they said about options and about getting back to you with a response.

If the people who are supposed to help do not, or don't follow through, you may wish to write to the principal and superintendent and ask for action to end the troubling behaviors so that you can go back to participating fully at school.

ADMINISTRATIVE AND LEGAL INTERVENTION

Maine's anti-bullying law does not provide you with a legal mechanism to sue other students or teachers. However, you may file a complaint of discrimination against your school and its leaders if your school fails to respond to and rectify bullying, discrimination, and harassment. Before filing a complaint of discrimination, you need to notify the school administration and give them the opportunity to address the situation.

You may contact the Maine Department of Education for further information at (207) 624-6600 (ask for the Affirmative Action Officer). Complaints to the Department of Education must be filed within 180 days of when the discrimination or harassment occurred.

If you believe your rights have been violated under Maine's anti-discrimination law, you may file a complaint with the Maine Human Rights Commission. (Students under age 18 will need to have their parent/guardian file the complaint). Complaints should be sent to:

Maine Human Rights Commission

51 State House Station
Augusta, Maine 04333
www.main.gov/mhrc/file

The complaint must be filed with the MHRC within 300 days of the last discriminatory act. See [5 Me. Rev. Stat. sec. 4611](#).

If you believe your rights under Title IX have been violated, you can make a complaint to your school's Title IX coordinator. You can also file a complaint with the federal Department of Education:

Office for Civil Rights, Boston Office U.S. Department of Education

5 Post Office Square, 8th Floor
Boston, MA 02109-3921

www2.ed.gov/about/offices/list/ocr/complaintintro.html

If all of these actions fail, you may also wish to consider legal action. This area of the law is complicated as well as emotionally challenging. You may contact GLAD for further information and attorney referrals.

GLAD Answers

(800) 455-GLAD (4523)

www.glad.org

RESOURCES

PROTECT YOUR RIGHTS

Maine Human Rights Commission

(207) 624-6290

www.state.me.us/mhrc

Maine Department of Education

(207) 624-6600

www.maine.gov/doe

U.S. Dept. of Education Office for Civil Rights

(617) 289-0111

OCR.Boston@ed.gov

MORE ABOUT YOUR RIGHTS

[Full text of Maine's anti-bullying law](#)

[GLAD's Maine students' rights webpage](#)

[GLAD's webpage on student rights](#)

LGBTQI+ ADVOCACY GROUPS

GLBTQ Legal Advocates & Defenders (GLAD)

GLAD Answers: (800) 455-GLAD (4523)

www.gladanswers.org

General: (617) 426-1350

www.glad.org

Equality Maine

(207) 761-3732

www.equalitymaine.org

Maine Transgender Network

www.mainetransnet.net

www.mainetransnet.net/contact

PFLAG Portland

(207) 831-3015

portlandmainepflag@gmail.com

LOCAL LGBTQI+ YOUTH GROUPS

OUT Maine

(800) 530-6997

info@outmaine.org

www.outmaine.org

New Beginnings

(207) 795-4077

www.newbeginmaine.org

Portland Outright

(207) 558-2429

www.portlandoutright.org

Outright LA

(207) 795-8956

www.outrightla.org

OTHER RESOURCES

Frannie Peabody Center

HIV Testing: (207) 749-6818

prevention@peabodycenter.org

Maine Youth Action Network

www.myan.org

Maine Coalition to End Domestic Violence (MCEDV)

HelpLine: (866) 834-HELP (4357)

General: (207) 430-8334

info@mcedv.org

www.mcedv.org

Maine Coalition Against Sexual Assault (MECASA)

800-871-7741

www.mecasa.org



18 Tremont, Suite 950, Boston, MA 02108

www.glad.org | (617) 426-1350