



## Existing Protections for LGBTQ Students in Maine Schools and How to Make Better Policies – Know Your Rights!

*Here is information about the many legal protections Maine law provides to LGBTQ students in public and private schools. It also provides good models of what makes a strong local policy for Transgender and Gender Expansive students based on existing policies in place in several Maine school districts.*

### **EXISTING PROTECTIONS – KNOW YOUR RIGHTS!**

#### **SEXUAL ORIENTATION DISCRIMINATION**

Title 5, Section 4602 of the Maine Revised Statutes bans discrimination based on sexual orientation in private and public schools.

The ban makes it unlawful, because of sexual orientation, to:

- Exclude a person from, deny a person the benefits of, or subject a person to discrimination in any academic, extracurricular, research, occupational training or other program or activity;
- Deny a person equal opportunity in athletic programs;
- Exclude any person from any program or activity;
- Deny admission to an institution or program or to fail to provide equal access to any information about an institution or program through recruitment; or
- Deny financial assistance availability and opportunity.

Note: There are some exemptions for educational facilities owned or operated by religious corporations, associations, or societies.

Students age 18 or over or their parent/guardian may file complaints of discrimination with the Maine Human Rights Commission within 300 days of the last discriminatory act. See <https://www.maine.gov/mhrc/index.shtml>

#### **TRANSGENDER & GENDER EXPANSIVE NONDISCRIMINATION IN ME SCHOOLS**

Title 5, Section 4602 of the Maine Revised Statutes also bans discrimination based on gender identity and gender expression. The ban covers the same issues as above. In addition, the Maine Human Rights Commission's official "guidance" on how schools should apply Maine's anti-discrimination law states that transgender and gender expansive students are entitled to:

- Equal access to and ability to participate on equal terms in all school programs, including extracurricular activities;
- Respect for the gender identity of transgender students, including using appropriate names and pronouns, and allowing transgender students to wear clothing consistent with their gender identity;
- The right to acknowledge their sexual orientation and gender identity and expression;
- The right to express themselves on issues relating to sexual orientation or gender identity and expression within constitutional limits;
- The right to learn about LGBTQ issues and have access to pedagogically and age-appropriate information and resources about LGBT issues and people

The full text of the Maine Human Rights Act, which also prohibits discrimination in housing, employment, and public accommodations,

This guidance is available at:

<https://www.maine.gov/mhrc/guidance/CCmemo.education.so.pdf>

## **ANTI-DISCRIMINATION PROTECTION UNDER TITLE IX OF FEDERAL LAW**

Title IX is a federal law that bans sex discrimination in schools that receive federal funding (nearly all public schools). Many courts have interpreted “sex discrimination” as applying to discrimination experienced by transgender students, and those who don’t meet gender stereotypes or expectations.

Title IX is enforced by the United States Department of Education. If you have been discriminated against based on your transgender identity, you have 180 days after the discrimination or harassment occurred to file a complaint with the United States Department of Education.

Title IX still protects transgender students despite rollbacks of Obama era guidance and other possible actions by the Trump administration.

More information about Title IX and filing a complaint can be found at <https://transequality.org/know-your-rights/schools>

## **MAINE LAW PROHIBITING BULLYING**

In 2012, Maine passed a law, “An Act to Prohibit Bullying and Cyberbullying in Schools” (which can be found at <http://www.mainelegislature.org/legis/statutes/20-a/title20-Asec6554.html>). Among other categories, the law protects LGBTQ students and identifies sexual orientation, gender, gender identity, and gender expression as factors that may cause students to be targeted by bullying.

Maine’s LGBTQ-inclusive anti-bullying law requires schools to:

- Protect all students, regardless of sexual orientation, gender identity or gender expression, from bullying, cyberbullying, harassment and sexual harassment.
- Develop and enforce specific policies that define and forbid bullying and cyberbullying, and identify reporting and investigation procedures, including a duty for staff to report.

- Administer discipline policies that require consideration of alternative forms of discipline designed to correct and address the root causes of a student's misbehavior and restorative school practices to repair the harm done to relationships and persons from the student's misbehavior. (For information on police encounters, the ACLU of Maine has a resource available here [www.aclumaine.org/en/know-your-rights/know-your-rights-police-encounters](http://www.aclumaine.org/en/know-your-rights/know-your-rights-police-encounters))
- Provide harm-reduction services and referrals, including therapy referrals, to students involved in these incidents.
- Train staff, publicize the policy to the community, and report on incidents annually to the state Department of Education.

## **SCHOOL CLUBS AND GSAS**

In general, students have a right to form LGBTQ-related school clubs. Whenever a public school allows a non-curricular group (i.e. any club like a Skating Club, Black Student Union, or Chess Club that is not directly related to an academic subject) to meet on school grounds outside of regular instructional time, the school may not discriminate against or deny equal access to student groups who wish to host a meeting, including GSAs, GSTAs and comparable groups. This is because of the Equal Access Act which can be read at <https://www.law.cornell.edu/uscode/text/20/4071>

## **MAKING YOUR SCHOOL'S POLICY INCLUSIVE OF TRANSGENDER AND GENDER EXPANSIVE STUDENTS!**

Schools can better protect all students and prevent problems when there are clear guidelines for students, parents, teachers, and administrators to ensure all students feel safe and supported so they can learn at school. Numerous school districts in Maine have Transgender and Gender Expansive policies, and we highlight here the policy for Portland, which is available at <https://www.portlandschools.org/common/pages/DisplayFile.aspx?itemId=12024088>.

A good policy, like Portland's:

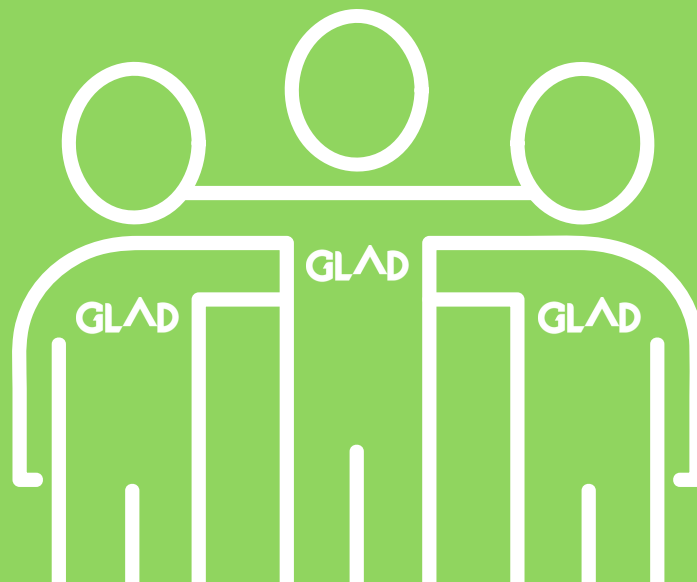
- States its goals and provides leadership (aka "Purpose and Scope") by recognizing the school's obligation to create a safe and inclusive learning environment by supporting the student's gender identity while at school;
- States clear definitions of key terms since many people are hungry for information and vocabulary;
- Provides an opportunity to develop an individual support plan for the student, as with all students, and accepts the student's assertion of gender identity when consistently asserted;
- Respects the student's wishes about disclosure of their gender identity in school, and abides by the wishes of the student while at school in the event that the student and their parent do not agree on the student's gender identity or expression to provide learning environment without discrimination;

- Requires the school district to use the student's expressed name and pronouns on all documents (i.e., 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 and transgender and gender expansive students, and publishes and disseminates policy on the internet, in handbooks and to the community.

## **CONSTITUTIONAL PROTECTIONS FOR SPEECH, EXPRESSION, DRESS, LEARNING**

The U.S. and Maine Constitutions both protect freedom of expression, academic freedom and your right to learn.

If you have a problem about your ability to express yourself or to write or learn about particular topics, call GLAD.



*PLEASE NOTE THAT THIS IS LEGAL INFORMATION AND NOT LEGAL ADVICE. FOR LEGAL ADVICE, CONTACT AN ATTORNEY DIRECTLY.*

*IF YOU HAVE QUESTIONS ABOUT THESE LAWS OR OTHER LEGAL ISSUES, PLEASE CALL GLAD ANSWERS: (800-455-GLAD) OR REACH US ONLINE ([HTTPS://WWW.GLAD.ORG/KNOW-YOUR-RIGHTS/GLAD-ANSWERS/](https://www.glad.org/know-your-rights/glad-answers/))*

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