

## Overview

The Maine Human Rights Act makes it illegal to discriminate on the basis of sexual orientation in schools and colleges.

## Who is Protected?

The Act defines “sexual orientation” to mean “a person’s actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression.” A person’s “gender identity” may be different from that traditionally associated with that individual’s assigned sex at birth. Gender “expression” means the manner in which an individual’s gender identity is expressed. All of this means that students cannot be discriminated against because they are, or are perceived to be, gay, straight, lesbian, bisexual, transgender, or androgynous.

## Who is Covered?

All public and private schools are covered, except religious corporations, associations, or organizations that do not receive public funds. Examples of schools that are covered include:

- Preschools and Nursery Schools
- Elementary and Secondary Schools
- Post-secondary Colleges and Universities
- Graduate Schools

## Unlawful Discrimination

It is unlawful, because of sexual orientation, to directly or indirectly discriminate against any person in, or deny any person the full and equal enjoyment of, any or all aspects of the school or college experience, including:

- Academics
- Facilities and Housing
- Athletics/Extracurricular Activities
- Admission and Recruitment
- Financial Assistance
- Transportation
- Guidance/Occupational Services

It is also illegal to retaliate against someone for pursuing rights under the Maine Human Rights Act.

## Harassment

Harassment on the basis of sexual orientation is illegal. Harassment can take many forms and can be committed by anyone, including students, teachers, staff, and visitors. If severe or pervasive, the following are examples of unlawful harassment:

- Teasing or Ostracizing
- Derogatory Language, e.g., “that’s so gay”
- Threatening
- Cyberbullying

Schools have a duty to protect students from harassment by establishing and enforcing

anti-harassment policies, educating students and staff in the prevention of harassment, modeling appropriate behavior, monitoring student conduct, and responding quickly to harassment when it occurs.

## Students Who Are Transgender

The term “transgender” means having a gender identity or expression that is different from that traditionally associated with an assigned sex at birth. To be transgender, it is not necessary to have a medical diagnosis or have had medical intervention such as surgery or hormone replacement therapy. Although personal feelings about one’s gender are usually set early and are not considered susceptible to change, establishing one’s gender identity or expression can be a dynamic process for transgender children and young adults.

In general, students who are transgender must be allowed access to gender-segregated programs, activities, and facilities in accordance with their gender identity or expression, and they must be addressed by their chosen names and pronouns.

## Bathrooms and Locker Rooms

Transgender students must be allowed access to the bathrooms that correspond with their gender identity or expression or, if they prefer, to existing single-stall bathrooms. With respect to locker rooms and shower facilities that involve undressing in front of others, transgender students must be

provided with accommodations that meet their needs and that take into account the legitimate privacy concerns of all students involved. Under no circumstances is it permissible to force transgender students to use bathrooms or locker rooms corresponding with their assigned sex at birth.

### **Sports Teams**

Transgender students must be permitted to participate in gender-segregated sports in accordance with their gender identity or expression.

### **Student Attire**

Students must be permitted to dress in accordance with their gender identity or expression.

### **Permissible Questions**

In response to a request for accommodation in rules, policies, practices, or services, if a school has an objective basis to question whether a student's gender identity or expression is bona fide, it may ask for information to show that the gender identity or expression is sincerely held. No particular type of information (such as medical) may be required. Otherwise, students may not be asked questions about their sexual orientation, including gender identity or expression.

## **THE MAINE HUMAN RIGHTS ACT**

### Definition

"Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression. 5 M.R.S.A. § 4553(9-C).

### Unlawful Education Discrimination

It is unlawful education discrimination in violation of this Act, on the basis of sexual orientation, to:

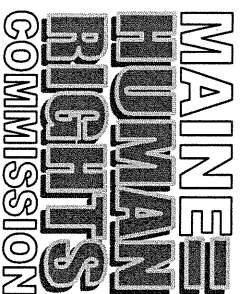
- A. Exclude a person from participation in, deny a person the benefits of or subject a person to discrimination in any academic, extracurricular, research, occupational training or other program or activity;
  - B. Deny a person equal opportunity in athletic programs;
  - C. Apply any rule concerning the actual or potential family or marital status of a person or to exclude any person from any program or activity because of their sexual orientation;
  - D. Deny admission to the institution or program or to fail to provide equal access to any information about an institution or program through recruitment; or
  - E. Deny financial assistance availability and opportunity.
- The provisions in this subsection relating to sexual orientation do not apply to any education facility owned, controlled or operated by a bona fide religious corporation, association or society. 5 M.R.S.A. § 4602(4).

### Denial of Public Accommodations

For any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to directly or indirectly refuse, discriminate against or in any manner withhold from or deny the full and equal enjoyment to any person, on account of . . . sexual orientation . . . any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to accommodation, advantages, facilities, goods, services and privileges may depend. 5 M.R.S.A. § 4592(1).

## **SEXUAL ORIENTATION IN SCHOOLS AND COLLEGES**

**KNOW YOUR  
RIGHTS  
AND RESPONSIBILITIES**



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