



Commonwealth of Massachusetts

Executive Office of Health and Human Services

Department of Youth Services

Official Policy

Policy Name: Prohibition of Harassment and Discrimination Against Youth

Policy #: 03.04.09(a) **Effective:** 3/2/23

Repeals: 03.04.09

References: Americans with Disabilities Act (ADA)
Section 504 of the Rehabilitation Act of 1973
USDA FNS 113-1: Civil Rights Compliance and Enforcement
M. G.L. c. 151B
DYS Guidelines for Practices with LGBTQI -GNC Youth;
Child Nutrition Program Civil Rights Complaints; and
Serving Youth with Disabilities Under Section 504; and
DYS Policies on Grievance Process, Individual Support Plan, and
Wellness

Signature:

Cecely A. Reardon, Acting Commissioner

3/2/2023

Applicability: This policy shall apply to DYS employees, contracted providers, volunteers, and interns. Contracted providers shall comply with this DYS policy.

Policy

It is the policy of the Department of Youth Services (DYS) that all youth have the opportunity to participate in any services, education or activity offered by DYS in accordance with health, safety, and security measures and that DYS shall provide a safe and discrimination-free environment for youth in all of its locations. All DYS state and contract provider employees, interns, and volunteers are prohibited from engaging in any form of discrimination against or harassment of youth on the basis of actual or perceived membership or association with a member of a protected class. In addition, no act of discrimination against or harassment of youth by other youth will be tolerated.

Pursuant to the Americans with Disabilities Act (ADA) and M. G.L. c. 151B, protected classes include race, color, religion, national origin, ethnicity, ancestry, age, disability, sexual orientation, gender identity, gender expression, intersex condition, military status, and criminal record (for employment applications only). DYS is committed to providing

a healthy and accepting setting for all youth in its care and custody by ensuring training for its employees and educating youth to respect the individuality of their peers.

DYS shall notify youth and parent(s)/guardian(s) how to report discrimination and/or harassment against youth based on membership in a protective class utilizing written and posted materials. DYS shall maintain data and records regarding any allegations of discrimination and/or harassment pursuant to the DYS Serious Incident Policy and Youth Grievance Process. The following paragraphs detail additional policy requirements for specific protected classes.

It is the DYS policy that all youth be treated equitably no matter their **race, color, national origin, ethnicity, or ancestry**. As part of its strategic planning, DYS shall convene a committee to adopt goals for every employee and for its contracted providers to learn about implicit bias, forms of racism and how such may impact decisions regarding DYS youth including but not limited to placement, length of stay, and treatment. Such committee shall review existing race and ethnicity data, develop and implement a tool to guide decision making, and recommend changes to policies and practices where race, color, national origin, ethnicity, or ancestry appear to cause disparate treatment of youth.

It is the DYS policy, as further described in the Guidelines for Practices with Lesbian, Gay, Bisexual, Transgender, Questioning, Queer, Intersex and Gender Non-Conforming Youth that all youth who identify as **lesbian, gay, bisexual, transgender, nonbinary, questioning, queer, intersex, or gender non-conforming** shall be provided services in a fair, respectful and culturally competent and humble manner that recognizes and addresses their individual needs.

It is the DYS policy, as further described in the DYS Guidelines for Non-Discrimination Based on a Disability that no youth shall be subjected to discrimination based on a **disability**. Youth who identify as having a disability will be provided an accommodation where required, including a Section 504 plan, to make services, education, and activities accessible consistent with the health, safety, and security of the DYS location, as further detailed in the Guidelines.

It is the DYS policy, that all DYS residential programs offer healthy, diverse, and nutritious meals and snacks; that all youth have equitable access to meals and nutrition programs while at DYS; and no youth shall be subjected to discrimination or harassment in their access to such meals and snacks while at DYS. The DYS Dietitian or designee shall ensure DYS state operated locations comply with **Child Nutrition Programs**, including National School Lunch Program and School Breakfast Program, as detailed in the Guidelines for Child Nutrition Programs.

Procedure

A. Definitions

1. The following definitions shall have the meanings assigned to them in this policy for purposes of interpreting this policy.

Section 504: Section 504 of the Federal Rehabilitation Act of 1973 (the precursor of the Americans with Disabilities Act) protects the rights of individuals with disabilities in programs and activities, including schools, that receive federal funds. Section 504 provides that: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . .".

Child Nutrition Programs: National School Lunch and School Breakfast Programs, that comply with USDA FNS Instruction 113-1 and 2016 Memorandum of Understanding between USDA FNS Civil Rights Division and Massachusetts Department of Elementary and Secondary Education (DESE), Office for Food and Nutrition Programs.

Disability: A physical or mental impairment that substantially limits one or more life activities.

Discrimination: Any act, policy, or practice that regardless of intent has the effect of subjecting an individual to differential treatment based on actual or perceived membership in or association with a protected category.

Employee: Individual employed by DYS, including as a volunteer or intern and for the purposes of this policy includes contracted provider employees unless otherwise specified in the policy.

Harassment: Any unwelcome, offensive, or intimidating verbal, visual, physical, or sexual conduct or behavior based on actual or perceived membership in or association with a protected category that is directed at or made in the presence of an individual or group.

IDEA: The Individuals with Disabilities Act. Included herein as it pertains to a youth's individual education plan (IEP) managed by the Massachusetts Department of Elementary and Secondary Education (DESE)'s Special Education in Institutional Settings (SEIS) initiative pursuant to G.L. c. 71B.

LGBTQI and GNC Youth: Youth who have self-identified or are known or perceived by others to be lesbian, gay, bisexual, transgender, nonbinary, intersex, questioning, queer, or gender non-conforming as to their sexual orientation, gender identity or intersex condition. The enumeration of certain identities here is not to be construed as an exclusion of protections for other identities not listed. For an explanation of additional terms, see the Glossary of Terms in the LGBTQI and GNC Youth Guidelines.

Sexual Harassment: Any repeated and unwelcomed sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a sexual nature that include demeaning references to gender, sexually suggestive or derogatory comments about body or clothing or obscene language or gestures. Reporting of

this type of behavior falls under the DYS Prevention of Sexual Abuse and Sexual Harassment of Youth Policy.

Third Parties: Individuals who can report a grievance on behalf of a youth or assist a youth in filing a grievance including other youth, employees, family members, attorneys, and outside advocates.

Youth Education Materials: Information presented to a youth that includes but is not limited to the DYS approved intake presentation; the DYS Policies on the Youth Grievance Process and Prohibition of Harassment and Discrimination Against LGBTQI and GNC Youth, and Guidelines; the toll-free number for the Department of Children and Families Child at Risk Hotline, the Office of the Child Advocate Complaint Line, and listing of contact information for the Massachusetts Rape Crisis Centers.

2. Terms that are defined in Policy #01.01.04, “Policy Definitions”, shall have the meanings assigned to them in that policy, unless a contrary meaning is intended.
 3. Terms not defined in Policy #01.01.04 or in this policy shall have the meanings assigned to them by reasonably accepted standard dictionary definitions of American English.
- B. Training for Employees: DYS shall provide training regarding this policy and the attached Guidelines, including regarding what behavior constitutes discrimination or harassment and the procedures for preventing and reporting such behavior.
- C. Resource and Policy Dissemination to Youth and Families
1. DYS shall provide written information to all youth in DYS residential locations regarding this policy. The Guidelines for LGBTQI-GNC Youth shall be included in the youth educational materials provided during a youth’s first scheduled clinical session, along with other youth educational materials that inform youth about their rights and responsibilities under this policy and the procedures for reporting discrimination detailed in the DYS Youth Grievance Policy.
 2. For youth in a DYS Overnight Arrest placement, information described in C.1 will be disseminated upon intake to the program.
 3. DYS state and provider locations shall post notices that DYS and its contracted providers are prohibited from discriminating against youth based on race, color, national origin, sex, age, religion, political beliefs, or consistent with this policy and other specific state and federal requirements. Such notices shall be posted where they are visible to youth, families, and visitors and shall detail the how to report allegations of discrimination.
 4. At all DYS locations youth shall have access to LGBTQI and GNC related resources, including a booklist, website list of community resource supports, and other appropriate materials.

5. DYS shall post notices and provide written materials to youth, their parent(s), or guardian(s) of the right to and the process for requesting a 504 Plan and accommodation for a youth's disability.
6. Notices and resources shall be translated in other languages, as needed.

D. Employee's Duty to Report Discriminatory or Harassing Behavior towards Youth

1. Conduct by Employees: DYS state and contracted provider employees shall immediately report alleged discriminatory and/or harassing behavior by an employee against a youth that may be in violation of this policy and attached Guidelines to a supervisor. Such allegations shall be reported further using the Serious Incident Reporting Policy.
2. Conduct by Youth: DYS state and contracted provider employees shall take immediate steps to intervene in any situation that involves discriminatory or harassing behavior by a youth against another youth. Employees shall document the behavior and the intervention in accordance with current policy and practice including but not limited to the Unit Log, incident reporting process, Individual Support Plan Policy, and/or progress notes within JJEMS. The location manager may also report to CIC circumstances that they believe constitute a serious incident requiring an investigation in accordance with the Serious Incident Reporting Policy. Such circumstances may include but are not limited to a youth who continues to engage in this behavior repeatedly or the statements by a youth that are coupled with assaultive type action. In addition, actions alleging sexual harassment shall comply with the DYS Policy Preventing and Responding to Sexual Abuse, Sexual Exploitation and Sexual Harassment of Youth.
3. The Location Manager shall evaluate whether to file a 51A report with the Department of Children and Families (DCF) consistent with the guidance in the DYS Legal Advisory and/or a report to the Disabled Persons Protection Commission (DPPC). A 51A report should be filed if there is reasonable cause to believe that a youth was abused or neglected by an employee or that an employee was complicit in the harassment or discrimination against a youth. A report to DPPC should be filed if there is reasonable cause to believe a youth over the age of 18 with a disability was abused or neglected.

E. Incident Reporting for Youth:

1. Youth may report concerns regarding their care and treatment including conduct by an employee or other youth prohibited under this policy by:
 - a. Reporting an incident through the Youth Grievance Process;
 - b. Reporting an incident to an employee verbally or in writing; or
 - c. Reporting an incident to a third party who may report directly to any employee or utilize the Youth Grievance Process.
 - d. Reporting may be completed by the youth or third party directly to the DCF 51A hotline and/or Office of the Child Advocate Complaint Line.

2. State and contracted provider employees shall report all complaints by youth that may rise to discrimination or harassment in accordance with the Serious Incident Reporting Policy and, if applicable, as required by the relevant Guidelines referenced by this policy.

F. Enforcement: In accordance with DYS policy and procedures and consistent with current collective bargaining agreements, supervisors and managers shall promptly address and investigate any reported incident of alleged discrimination and/or harassment against a youth by an employee or another youth. If the discrimination or harassment against a youth is determined to have occurred, such conduct will result in corrective action and may result in disciplinary action. Failure to report an allegation of harassment or discrimination against a youth by another youth or by a DYS state or contracted provider employee may also result in discipline up to and including termination.