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GLSEN

State of the States 2004

A Policy Analysis of Lesbian, Gay, Bisexual and Transgender (LGBT) Safer Schools Issues

A Report from the Gay, Lesbian and Straight Education Network

www.glsen.org

State of the States 2004

A Policy Analysis of Lesbian, Gay, Bisexual and Transgender (LGBT) Safer Schools Issues

Acknowledgments
A special thank you goes out to the vast number of organizations and individuals who aided in the collection and documentation of the data in this report. Most importantly a tremendous thank you goes out to Jacob Wilcock and Rachel Metz, Summer Policy Interns in the Washington, DC Policy Office. Without their time, efforts, and dedication this publication would not have been possible.

Disclaimer
The information contained in this report represents the best efforts of the Gay, Lesbian and Straight Education Network (GLSEN) to track and present the most updated information available on each state and the District of Columbia related to schools, and sexual orientation and gender identity. Given the rapidly changing nature of state legislatures and state governments, we can make no guarantees about the accuracy of all the information in the document. In addition, laws may change quite rapidly, and interpretations of statutes may vary from court to court. Legislation may have been introduced or acted upon, or cases decided, after the publication of this material.

GLSEN's MISSION
The Gay, Lesbian and Straight Education Network strives to assure that each member of every school community is valued and respected regardless of sexual orientation or gender identity/expression. We believe that such an atmosphere engenders a positive sense of self, which is the basis of educational achievement and personal growth. Since homophobia and heterosexism undermine a healthy school climate, we work to educate teachers, students and the public at large about the damaging effects these forces have on youth and adults alike. We recognize that forces such as racism and sexism have similarly adverse impacts on communities and we support schools in seeking to redress all such inequities. GLSEN seeks to develop school climates where difference is valued for the positive contribution it makes in creating a more vibrant and diverse community. We welcome as members any and all individuals, regardless of sexual orientation, gender identity/expression or occupation, who are committed to seeing this philosophy realized in K–12 schools.

National Headquarters
121 West 27th Street, Suite 804
New York, NY 10001
Ph: 212-727-0135 Fax: 212-727-0254

DC Policy Office
1012 14th Street, NW, Suite 1105
Washington, DC 20005
Ph: 202-347-7780 Fax: 202-347-7781

Western Office
870 Market Street, Suite 547
San Francisco, CA 94102
Ph: 415-551-9788 Fax: 415-551-9789

glsen@glsen.org

www.glsen.org

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INTRODUCTION

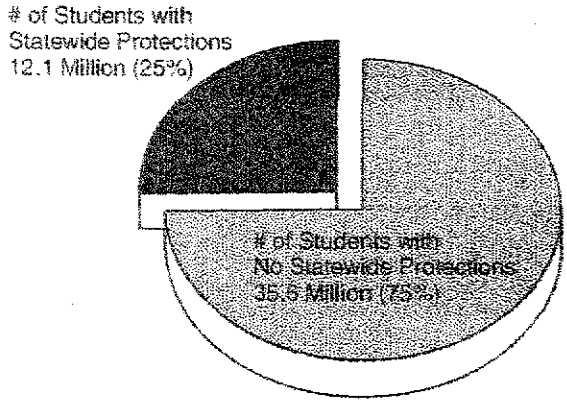
The State of the States 2004 report summarizes the laws affecting students, particularly, lesbian, gay, bisexual and transgender (LGBT) students in the 50 states and the District of Columbia. The Gay, Lesbian and Straight Education Network (GLSEN) prepared this State of the States 2004 report to continue the comprehensive collection of data and information related to education issues affecting lesbian, gay, bisexual, and transgender students, teachers, and staff.

Results from the 2003 GLSEN National School Climate Survey indicate a great need to enact and fully implement statewide laws in order to effectively confront harassment and discrimination in schools. More than 84% of lesbian, gay, bisexual and transgender (LGBT) students report being verbally harassed because of their sexual orientation and nearly 40% report being physically harassed. Additionally, more than 90% of LGBT students regularly hear anti-LGBT comments at school. Transgender youth are disproportionately likely to face harassment. In the survey, 55% of transgender students reported being physically harassed because of their gender, gender expression, or sexual orientation. And while all of this is occurring nearly 85% of LGBT students report that faculty or staff never intervened or intervened only some of the time when present and homophobic remarks were made.

For the purposes of this report safe schools laws are statewide anti-harassment and/or non-discrimination laws that are inclusive of the categories of sexual orientation and/or gender identity/expression and safe schools policies are those passed by a local educational agency (LEA) governing authority, generally a school board.

KEY FINDINGS

Students with Statewide Legal Protections in School Based on Sexual Orientation



Number of Students Protected

There are approximately 47.7 million elementary and secondary students in the United States. Of those only 12.1 million have statewide legal protections from harassment and/or discrimination in school based on their sexual orientation and only 8.4 million students have *statewide legal protections based on their gender* identity/expression. A staggering 75% of students in the United States have no state laws to protect them from harassment and discrimination in school based on their sexual orientation and 82% of students have no state laws protecting them form harassment and discrimination based on their gender identity/expression.

There are at least 5.1 million students who have local policy protections in states that do not have a statewide law. When added to the 12.1 million students that have statewide protections based on sexual orientation, there are a least 17.1 million students in the United States that have some form of explicit protection. However, this still leaves two-thirds of all elementary and secondary students with no explicit protections from harassment and discrimination in school based on their sexual orientation and gender identity/expression.

GLSEN believes that these statistics are illustrative of the lack of a national commitment to creating a safe learning environment for all students. Moreover, they reveal that transgender students, who are often the most likely targets of harassment, are ironically the least likely to be protected. They demonstrate that, even in the wake of unprecedented levels of school violence, there is not a *corresponding sense of urgency to remedy one of the key factors that contributes to this violence.*

Safe Schools Laws in the States

Only eight states and the District of Columbia currently have statewide legal protections for students—three with protections for the categories of sexual orientation and gender identity and five with protections exclusively for sexual orientation. States that have protections for sexual orientation and gender identity are California, Minnesota and New Jersey. States that have protections for only sexual orientation are Connecticut, Massachusetts, Vermont, Washington and Wisconsin. Meanwhile, only 10 states considered safe schools legislation during the 2003 legislative session.

Nine states currently have statewide "anti-bullying" laws. In most cases, these laws do not explicitly define "bullying" or list categories of students who should be protected from specific and prevalent forms of bullying. Because of their vague nature, these laws are ineffective in protecting students from harassment and discrimination in schools as they do not provide teachers and administrators with clear legal guidance. States that currently have these laws in place are Arkansas, Colorado, Georgia, Louisiana, Oklahoma, Oregon, Illinois, New Hampshire and West Virginia.

This information is critical to understanding the lack of commitment among the majority of states to schools that are discrimination and harassment free for lesbian, gay, bisexual and transgender

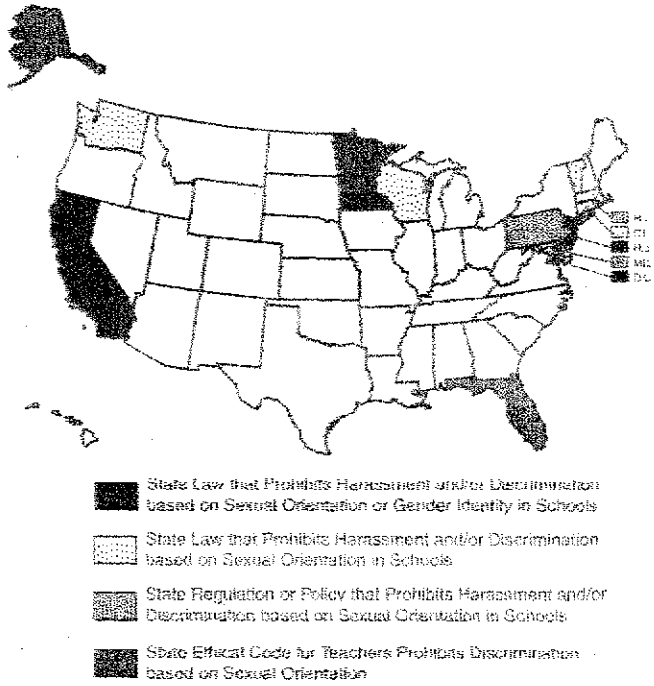
students. The number of laws that provide statewide protections illustrates that while some progress has been made, there is a great need for a stronger commitment to effective solutions to the problem of harassment and discrimination in our schools. Additionally, the number of generic "anti-bullying" laws demonstrates that there is either a lack of knowledge or a lack of will around explicitly outlawing harassment and discrimination against LGBT students by explicitly listing the categories of sexual orientation and gender identity/expression for such protections.

Other Relevant State Laws

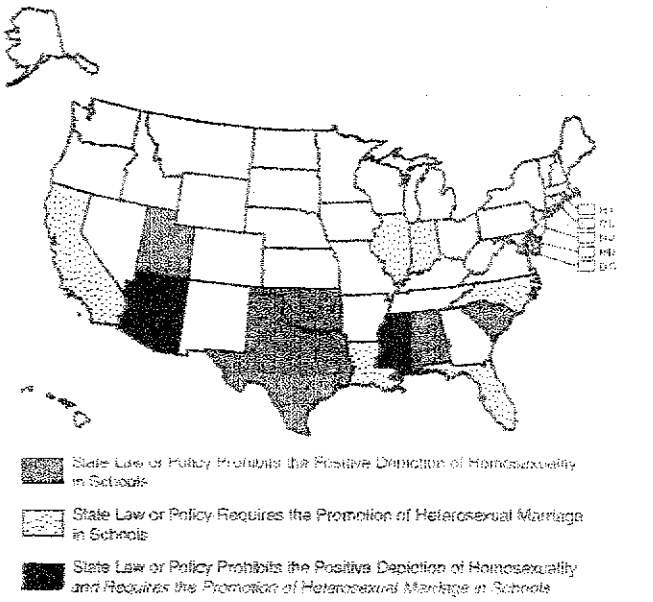
At least seven states have prohibitions on the positive portrayal of homosexuality in schools. These states are Alabama, Arizona, Mississippi, Oklahoma, South Carolina, Texas and Utah. In one of the more egregious and hostile examples of these types of laws, Oklahoma law requires that AIDS prevention education must specifically teach students that, among other things, engaging in homosexual activity is primarily responsible for contact with the AIDS virus.[1] Additionally, at least eight states require the promotion of monogamous heterosexual marriage, often exclusive of any other relationship. Such stigmatizing laws and policies create a hostile and dangerous climate for all students, but specifically gay, lesbian, bisexual and transgender students.

Fourteen states have workplace protections for teachers, administrators, faculty and staff of schools —four with protections for the categories of sexual orientation and gender identity and ten with protections exclusively for sexual orientation. States with protections for sexual orientation and gender identity are California, Minnesota, New Mexico and Rhode Island. States with protection only for sexual orientation are Connecticut, Hawaii, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Vermont and Wisconsin.

Statewide Education Laws and Policies



Statewide Schools that Stigmatize LGBT People



1 OK School Code Sec.11-103.3(D)(1)

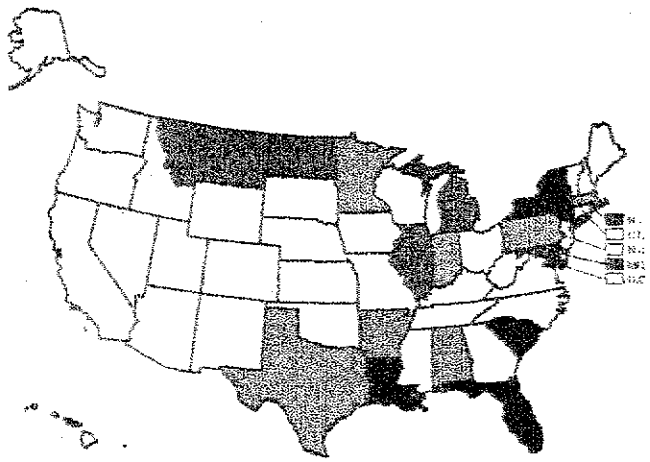
CONCLUSION

GLSEN believes that schools should have no tolerance for harassment or discrimination of any type, including harassment and discrimination based on sexual orientation and gender identity. A school without harassment and discrimination creates a safer learning environment and boosts all student achievement.

A growing number of states and school districts are making efforts to curtail harassment and discrimination in schools through legislative and policy change. However, statewide laws and local policies have not yet been passed in the numbers necessary to match the level of harassment and discrimination that students and faculty are constantly facing in schools. There is an endemic problem of harassment and discrimination in education across the nation, and the hallways, classrooms, locker rooms, buses and bathrooms of our schools are still a sanctuary for this type of behavior. There is a great need for policymakers to meet this problem with the will and knowledge associated with strong leadership in order to close the chasm that exists between this widespread problem and the necessary solutions engendered in statewide safe schools laws.

This information is meant to demonstrate the type of climate in which many students, teachers, administrators and staff are working. These laws have a critical impact on a school climate because they play a significant role in the creation of an educational environment that is either welcoming or often hostile to students and faculty.

Statewide Education Legislation: 2003 Session



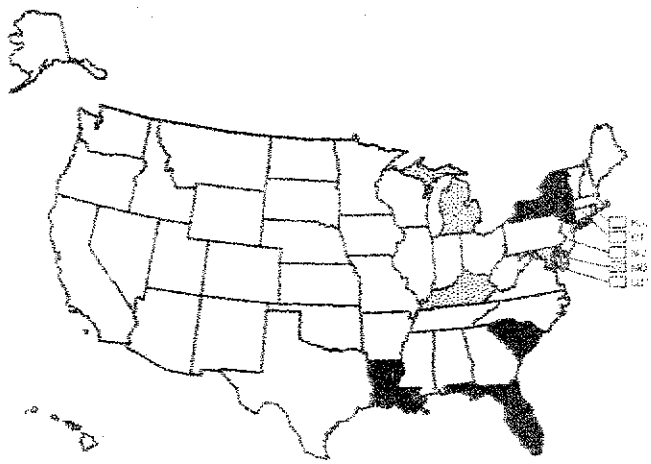
Considered Legislation that Prohibits Harassment and/or Discrimination based on Sexual Orientation or Gender Identity in Schools

Considered Legislation that Prohibits Harassment and/or Discrimination based on Sexual Orientation in Schools

Considered Legislation that Prohibits Bullying in Schools, but Lists no Protection

Considered a State Regulation or Policy that Prohibits Harassment and/or Discrimination based on Sexual Orientation in Schools

Statewide Education Legislation: 2004 Session



Considering Legislation that Prohibits Harassment and/or Discrimination based on Sexual Orientation or Gender Identity in Schools

Considering Legislation that Prohibits Harassment and/or Discrimination based on Sexual Orientation in Schools

Considering a State Regulation or Policy that Prohibits Harassment and/or Discrimination based on Sexual Orientation in Schools

STATE INFORMATION
METHODOLOGY AND PURPOSE

STATE INFORMATION

Methodology
Senate and House/Assembly statistics are those of each state legislature and give the break down of Democrats (D) and Republicans (R) in each chamber.

The population numbers shown are the Census Bureau's 2002 estimates.

Education revenue is based on the United States National Center for Education Statistics' (NCES) estimates for public elementary and secondary school budgets for grades pre-kindergarten through 12 for the 2001–02 school year (fiscal year 2002). The NCES is and agency of the United States Department of Education (ED).

Purpose
These statistics were included to give the reader an overview of each state's demographics and political climate in order to better contextualize the specific education and safe schools information.

STATE PUBLIC SCHOOL INFORMATION

Methodology
"Students of color" includes Black or African American persons, American Indian and Alaska Native persons, Asian persons, Native Hawaiian persons and other Pacific Islanders, and persons of Hispanic or Latino origin. The percentages given are based on NCES estimates for the 2001–2002 school year.

The number of districts, number of schools, number of teachers, teacher salary and student enrollment for pre-kindergarten through twelfth grades are all based on NCES data for the 2001–2002 school year.

Purpose
This information is included to allow the reader to understand the size, scope and demographics of each state's education system. Additionally, this information is meant to give the reader a general understanding of each state's overall education climate as well as its financial commitment to education. GLSEN *believes that a quality K–12 education is the right of every student and that* federal, state and local governments should adequately fund K–12 schools.

SAFE SCHOOLS LAW

Methodology

For the purposes of this report safe schools laws are statewide anti-harassment and/or non-discrimination laws that are inclusive of the categories of sexual orientation and/or gender identity/expression.

Only the categories relevant to our inquiry (sexual orientation and gender identity/expression) are specifically mentioned, even though the laws contain numerous other enumerated categories.

While only three state education non-discrimination laws explicitly cover transgender students specifically, the Federal courts and guidance from the Office of Civil Rights of the U.S. Department of Education have made clear that, for purposes of Title IX, sex discrimination includes discrimination based on the failure to conform to gender stereotypes. A number of state courts and state human rights commissions have followed this interpretation when applying their respective state education non-discrimination laws which may, in some cases, afford transgender students a degree of legal protection.

Purpose

This information is key to understanding each state's commitment to schools that are free from discrimination and harassment for lesbian, gay, bisexual and transgender students. This information allows the reader to understand whether a state has explicitly outlawed anti-LGBT discrimination and harassment and if so, the varying components of each law. GLSEN believes that students in all schools have the right to an education free of discrimination and harassment and believes that this can best be achieved by the adoption and enforcement of non-discrimination and anti-harassment laws and policies that include sexual orientation and gender identity/expression.

OTHER RELEVANT STATEWIDE LAWS

Methodology

Nondiscrimination laws refer to those that prohibit discrimination in employment. Many of the laws referenced also prohibit discrimination in other areas. As with the school laws, while most state laws prohibiting employment discrimination do not explicitly include gender identity and expression, state courts and state human rights commissions in a number of states have held that transgender people are covered under the sex and/or disability protections.

Minimum age in which a minor can access STD services outlines whether such an age requirement is in place, whether the STD services include HIV testing and treatment and whether a physician is allowed to inform the parents that the minor is seeking services or treatment.

Purpose

This information is meant to give the reader a greater understanding of the climate in which students, teachers, administrators and staff are working. These laws have a critical impact on a school climate because they play a pivotal role in the creation of an educational environment that is

either welcoming or often hostile to students and faculty. For instance, without guaranteed job protections, many teachers may decline to sponsor a controversial Gay/Straight Alliance for fear of retribution. GLSEN believes that school employees best serve students when they have workplaces that are free from discrimination and harassment and that the best way to achieve that goal is through the adoption and enforcement of non-discrimination and anti-harassment policies that are inclusive of sexual orientation and gender identity/expression. Additionally, GLSEN believes that all *students have the right to accurate information relating to LGBT people, history, culture and ideas.*

SEXUALITY AND HIV/STD EDUCATION

Methodology

"Local determination" means there is no state mandate to teach.

"Local control" means that the substantive decisions about what to include are made by the local district.

As means of background, states that receive Federal funds through either Welfare reform (TANF), SPRANS-CBAE, or AFLA programs must follow specific abstinence-only guidelines with respect to the content of their sexuality education programs. An explanation of these Federal guidelines is not included in this report. Rather, this section deals exclusively with the *HIV/STD* and sexuality education policies prescribed by the states themselves. However, all states except California accept some Federal abstinence-only funding through Welfare reform.SPRANS-CBAE (Special Projects of Regional and National Significance Community Based Abstinence Education) and AFLA (American Family Life Act) funding goes directly to local groups, who often use this funding to teach abstinence only education in their local schools.

Currently, education on HIV/AIDS or other STDs is mandated in 38 states and DC. Only 22 states and DC require broader sexuality education. If mandated, this is indicated.

Purpose

This information is meant to give the reader a greater understanding of the subject matter that LGBT students are learning. Certain forms of sexuality education (e.g., Abstinence only) often do not provide *LGBT students with information regarding their current or future health needs. GLSEN* believes that students have the right to have accurate information relating to LGBT health services and other resources.

LOCAL SAFE SCHOOLS POLICY

Methodology

For the purposes of this report safe schools policies are those passed by a local educational agency (LEA) governing authority, generally a school board. They are anti-harassment and/or non-discrimination policies that are inclusive of the categories of sexual orientation and/or gender identity.

Information was gathered from the largest two to five school districts from each state according to student population. School district population data was collected from the U.S. Department of Education.

Only the categories relevant to our inquiry (sexual orientation and gender identity/expression) are specifically mentioned, even though the policies contain numerous other enumerated categories.

Purpose

This section is meant to give the reader a more accurate picture of the number of students protected by anti-LGBT harassment or discrimination law or policy. While many states have yet to pass safe schools laws, some of their largest school districts already have policies that prohibit anti-LGBT harassment and discrimination in schools. Therefore, some form of protection is in place for students. GLSEN believes that students in all schools have the right to an education free of discrimination and harassment and believes that this can best be achieved by the adoption and enforcement of non-discrimination and anti-harassment laws and policies that include sexual orientation and gender identity/expression.

STUDENT ACTIVITY

Methodology

The number of groups refers to gay-straight alliances (GSAs) or similar such groups. It is important to note that the groups included are only those that have opted to register with GLSEN. While estimates vary, we believe there are 25–75% more groups in any state.

Likewise, the "number of schools with participants in the Day of Silence" numbers are based exclusively on self-report to GLSEN. It is estimated that Day of Silence activities occurred at many more schools than are indicated in this report.

Purpose

This information is meant to allow the reader to understand the amount of direct support LGBT students and their allies are receiving from their peers in any given state. GLSEN affirms the right of students to organize and lead school supported Gay-Straight Alliances and other appropriate groups that address LGBT issues in schools.

STATE GRADING METHODOLOGY

General Education +20 points

A state with high performing general education provisions can receive a maximum of 20 points, with student/teacher ratio, teacher salary, per pupil funding and graduation rate each receiving a maximum of five points. Such indicators were chosen as they reflect a state's commitment to providing adequate resources to its schools as well as its success in matriculating students. The maximum number of points are given for being 25 percent or more above the median in the areas of student/teacher ratio, teacher salary and per pupil funding and 10 percent or more above the median in the area graduation rates. Declining points are given for being in the remaining ranges: four for being less than 25 percent above the median, three for being at the median, two for being up to 25 percent below the median and one for being less than 25 percent below the median.

State Safe Schools Law +30 points

A state with a safe schools law that is sexual orientation and gender identity inclusive can receive a maximum of 30. If the law excludes gender identity, then the state will only receive 24 points.

State Non-Discrimination Law +20 points

A state with a non-discrimination law that is sexual orientation and gender identity inclusive can receive a maximum of 20 points. If the law excludes gender identity, then the state will receive 16 points.

Sexuality Education +15 points

A state with requirements to teach sexuality education and HIV/STD education can receive a maximum of 15 points. Each state will receive 10 points if there is a statewide requirement to teach sexuality education and an additional five points if there is a statewide requirement to provide HIV/STD education.

Local Safe Schools Policy +15 points

A state with safe schools policies in their two largest school districts can receive a maximum of 15 points, but only a maximum of 7.5 points if only one of the school districts has a safe schools policy. Percentages were weighted to take gender identity policies into account. Districts received a score of 80 percent (6 points) for a sexual orientation inclusive policy and 100 percent (7.5 points) for a sexual orientation and gender identity inclusive policy.

Statewide Law that Stigmatizes LGBT People -10 points

A state with a law that specifically prohibits the discussion of lesbian, gay, bisexual and transgender people and their families in schools will have 10 points removed from their overall score.

2004 STATE OF THE STATES

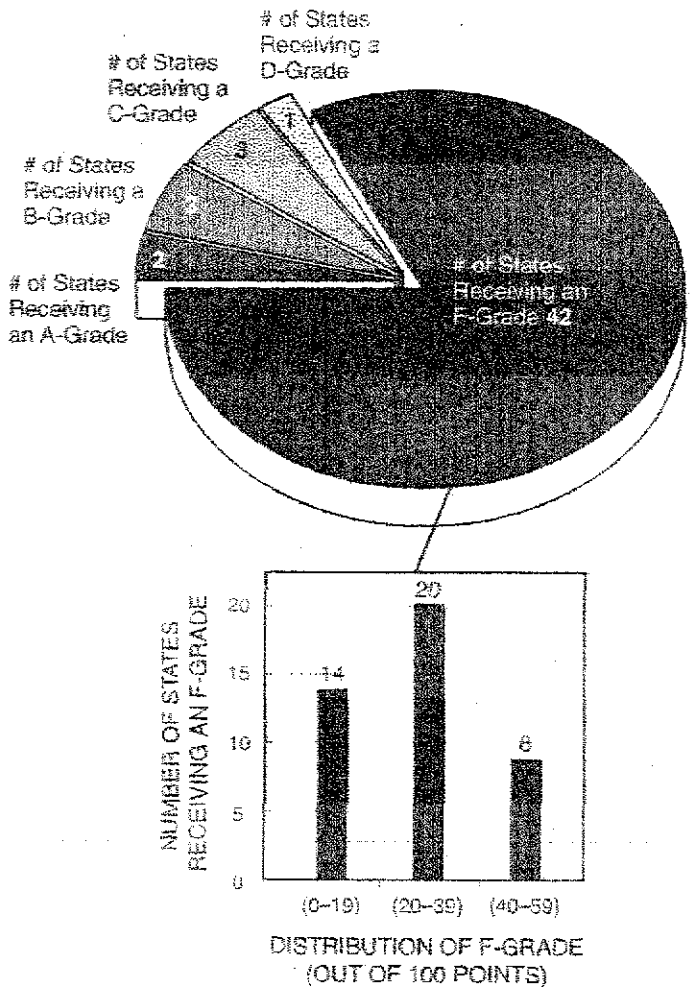
REPORT CARD

STATE	SCORE (out of 100)	GRADE
Alabama	3	F
Alaska	43	F
Arizona	2	F
Arkansas	10	F
California	80.5	B
Colorado	23.5	F
Connecticut	75	C
District of Columbia	89	B
Delaware	31	F
Florida	34	F
Georgia	25	F
Hawaii	43	F
Idaho	6	F
Illinois	34	F
Indiana	19	F
Iowa	39	F
Kansas	27	F
Kentucky	23	F
Louisiana	9	F
Maine	35	F
Maryland	56	F
Massachusetts	70	C
Michigan	20	F
Minnesota	91	A
Mississippi	-3	F
Missouri	29	F
Montana	11	F
Nebraska	26	F
Nevada	52.5	F
New Hampshire	45	F
New Jersey	95	A
New Mexico	40	F
New York	49	F
North Carolina	26	F
North Dakota	29	F
Ohio	19	F
Oklahoma	10	F
Oregon	28	F
Pennsylvania	33	F
Rhode Island	65	D
South Carolina	14	F
South Dakota	18	F
Tennessee	31	F
Texas	12	F
Utah	13	F
Vermont	82	B
Virginia	35	F
Washington	51.5	F
West Virginia	29	F
Wisconsin	73	C
Wyoming	27	F

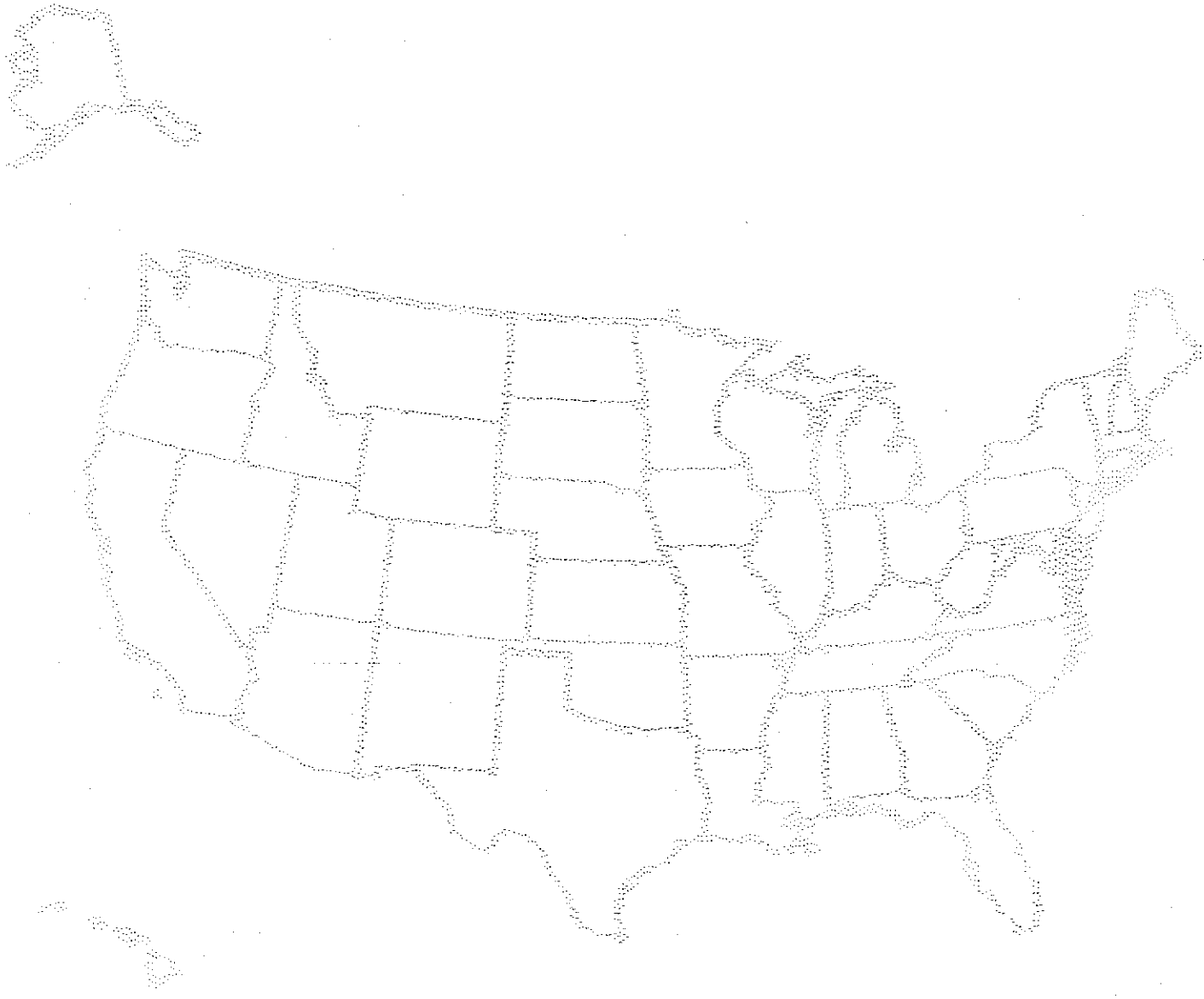
How to interpret these grades:

It is important to understand how to interpret the grades given. They measure whether or not state and local policymakers have put in place the laws and policies and committed the resources that schools need to create an environment where *every student can learn, regardless of sexual* orientation or gender identity/expression. Of course, having such laws, policies and resources is but a prerequisite for changing school climate, as this cannot be done without effective implementation by school boards, administrators, and teachers. Enacting a law or policy is the end of the beginning of the work that needs to be done to make schools safe, not the beginning of the end. Conversely, there may be individual schools, administrators, or teachers that are doing an excellent job in states with low scores: it is important to note, though, that their good work is being done in spite of, not because of, the education policymakers of their state. Thus, these grades offer us an important vantage point, but do not "tell all" about the climate of any particular school or system in the states we have surveyed.

Grade Distribution



STATE PROFILES



MONTANA (MT)

STATE INFORMATION:

Population:	909,453
Governor	Judy Martz (R)
Chief School Official	*Education Superintendent Linda McCulloch* (Elected by Partisan Ballot)
Senate:	29 R / 21 D
House:	53 R / 47 D
Education Revenue:	$1,100,000,000
Federal Funding:	$117,877,000
State Funding:	$470,763,000
Local Funding:	$413,387,000

STATE PUBLIC SCHOOL INFORMATION:

Number of Students:	151,947
Number of Teachers:	10,408
Number of Schools:	871
Number of School Districts:	*452*
Student/Teacher Ratio:	15:1
Average Teacher Salary:	$34,379
Per-Pupil Expenditure:	$6,726
High School Graduation Rate:	91.1%
Percentage of Students of Color:	14.1%
Teachers Unions	*Montana Education Association / Montana Federation of Teachers* (http://www.mea-mft.org)

STATE SAFE SCHOOLS LAW: No

OTHER RELEVANT STATE LAWS:

Non-Discrimination	Yes
■ Sexual Orientation Inclusive	No (public employees are protected through regulation)
■ Gender Identity Inclusive	No
DP Benefits	No
DP Registry	No
Anti-Marriage Law	Passed in 1997
Hate Crimes	Yes
■ Sexual Orientation Inclusive	No
■ Gender Identity Inclusive	No

Minimum Age at which a minor may receive STD testing and treatment	None
HIV is explicitly included in policy	Yes
Physician may inform parents (but is not required to do so)	Yes

SEXUALITY AND HIV/AIDS EDUCATION:

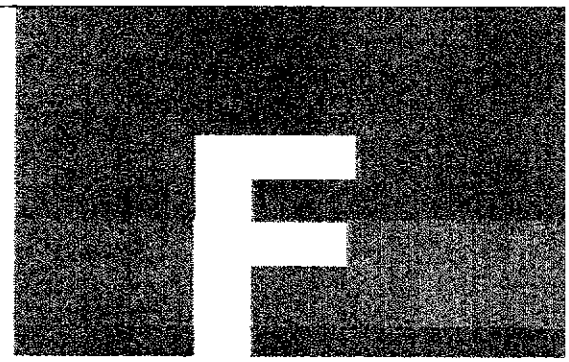
HIV/STD	Local determination
▪ Abstinence	Local Control
▪ Contraception	Local Control
Sexuality	Local determination
▪ Abstinence	Local Control
▪ Contraception	Local Control
Parent Opt-Out	Yes (HIV/STD education only)
Parent Consent	No

DISTRICT POLICY INFORMATION:

District Name	# of students	Safe School Policy	Sexual Orientation Inclusive	Gender Identity Inclusive
Billings Elementary	10,203	No		
Great Falls Elementary	7,835	No		
Billings High School	5,598	No		

STUDENT ACTIVITY:

Number of Groups:	6
Day of Silence	Yes
▪ Number of Schools with Participants:	7



GENERAL EDUCATION	**(20):**	**11**
Student/Teacher Ratio	(5):	3
Teacher Salary	(5):	2
Per-pupil Expenditure	(5):	2
Graduation Rate	(5):	4
STATE SAFE SCHOOLS LAW	**(30):**	**0**
Sexual Orientation Inclusive	(24):	0
Transgender Inclusive	(6):	0
STATE NON-DISCRIMINATION LAW	**(20):**	**0**
Sexual Orientation Inclusive	(16):	0
Transgender Inclusive	(4):	0
SEXUALITY EDUCATION	**(15):**	**0**
Statewide Requirement to Teach HIV/STD Education	(5):	0
Statewide Requirement to Teach Sexuality Education	(10):	0
LOCAL SAFE SCHOOLS POLICIES	**(15):**	**0**
Sexual Orientation Inclusive	(12):	0
Transgender Inclusive	(3):	0
SCHOOLS LAW THAT STIGMATIZES LGBT PEOPLE	**(-10):**	**0**
	TOTAL:	**11**

DATA SOURCES

Assorted State and Municipal Websites
Data: Laws and policies

Alan Guttmacher Institute
http://www.agi-usa.org
Data: Sexuality education laws and policies, age of consent for treatment

Education Week
National Education News and State Statistics
http://www.educationweek.org/context/states/
Data: Governor, chief state school officer, teachers union name and link

Human Rights Campaign
http://www.hrc.org
Data: Hate crimes laws, domestic partnership policies, non-discrimination laws and policies

Lambda Legal
http://www.lambdalegal.org/cgi-bin/iowa/states/domesticpart-map
Data: domestic partnership policies

National Association of State Boards of Education
http://www.nasbe.org/Educational_Issues/State_Stats.html
Data: Selection of chief state school officer

National Center for Education Statistics
Data File: Public, Student and Staff Graduate Counts by State: School Year 2001–02
http://nces.ed.gov/pubs2003/snf_report03/index.asp
Data: Number of teachers, number of students, and ethnicity of students

NCES Statistical Analysis Report: Overview of Public Elementary and Secondary Schools and Districts: School Year 2002-2002
http://nces.ed.gov/pubs2003/overview03/index.asp
Table 4. Data: Number of districts, Table 5. Data: Number of schools and Number of districts

Quick Tables and Figures: Estimated student membership, number of teachers, revenues, expenditures, *and pupil/teacher ratio, for public elementary and secondary schools, by state, for grades pre-kindergarten* through 12: School year 2000–01/Fiscal year 2001
http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2003362
Data: Revenue

SIECUS
http://www.siecus.org
Data: Sexuality education laws and policies

State Statutes and Codes
Located at Legal Information Institute at http://www.law.cornell.edu/statutes.html
U.S. Census Bureau

State and County QuickFacts
http://quickfacts.census.gov/qfd
Data: Population and ethnic demographics