

Frequently Asked Questions about Day of Silence



What is the Day of Silence?

The Day of Silence (DoS) is a student-led day of action on which those who support making anti-LGBT bullying and harassment unacceptable in schools participate in events to recognize and protest the discrimination and harassment – in effect, the silencing – experienced by lesbian, gay, bisexual and transgender (LGBT) students and their allies. Students who participate in DoS often take a vow of silence during the school day, handing out “speaking cards”, which explain the reason for their silence:

“Please understand my reasons for not speaking today. I am participating in the Day of Silence, a national youth movement protesting the silence faced by lesbian, gay, bisexual and transgender (LGBT) people and their allies in schools. My deliberate silence echoes that silence, which is caused by harassment, discrimination, and prejudice. I believe that ending the silence is the first step towards fighting these injustices. Think about the voices you are not hearing today. What are you doing to end the silence?”

Who started the Day of Silence, and who sponsors it today?

The Day of Silence was first organized in 1996 by a group of students at the University of Virginia. Created for a class project on nonviolent protest, over 150 students participated that first year. In 1997, organizers took their efforts to the national level and students on nearly 100 campuses and colleges participated. In 2001, the Gay, Lesbian and Straight Education Network (GLSEN) became the official organizational sponsor with new funding, staff and volunteers. Although GLSEN supports students’ efforts to organize Day of Silence activities in their schools, DoS is still very much a student-led event.

Why is there a need for Day of Silence, and how is it helpful?

A national school climate survey conducted by GLSEN in 2005 found that four out of five LGBT students reported verbal, sexual or physical harassment at school and a third reported missing at least one day of school in the past month out of fear for their personal safety. Day of Silence gives hundreds of thousands of students in over 4,000 schools across the country an opportunity to stand together and “speak out” against the endemic name-calling, bullying and harassment faced by LGBT students and their allies.¹

Can a school legally stop students from participating in Day of Silence?

While a school does not have to officially “sponsor” Day of Silence activities, or even support them, it is every student’s First Amendment right to participate in a silent protest. Students who voluntarily participate in Day of Silence should be aware that there may be academic or disciplinary consequences for refusing to speak during the school day. Most students who choose to participate in DoS make advance arrangements with their teachers to make up any schoolwork or participation points they miss out on during DoS. Day of Silence is not just an excuse to skip out on participating in class.

Doesn’t Day of Silence disrupt the school day, thus interfering with other students’ learning?

The First Amendment allows schools to restrict speech that is lewd, vulgar, indecent, clearly offensive, or that substantially interferes with the work of the school or the rights of other students. However, the unpopularity of a particular viewpoint has been rejected by the courts as justification for preventing student speech (or silence). When other students or community members try to disrupt the individual rights of students or Day of Silence activities, the appropriate response would be to address the disruptive behavior of those opponents. While a school may address student activities that are truly disruptive, courts have not allowed districts to prohibit students (and Gay-Straight Alliances) from organizing events because of negative community sentiment or other potentially disruptive responses.²

¹ Adapted from the official Day of Silence® website at <http://www.dayofsilence.org>

² Adapted from “Dealing with Legal Matters Surrounding Students’ Sexual Orientation and Gender Identity” at https://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/424-2.pdf

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What about students whose moral, political, or philosophical views tell them that being LGBT is a sin? Aren't they "silenced" on Day of Silence?

While it is every student's First Amendment right to voice his/her personal beliefs about being LGBT, school districts have a responsibility to protect every student equally from genuinely threatening, demeaning, and harassing speech and behavior. Day of Silence is not intended to "glamorize homosexuality" or encourage other students to be gay. Rather, the intent of Day of Silence is to call attention to the fact that many LGBT people and students face harassment and discrimination on a daily basis. If a group of students want to organize a "Day of Truth" in response to "Day of Silence" and share their personal views on being LGBT, they have every right to do that, provided they are not using their words or actions to create unsafe or hostile learning environments for another group.

What are my school's legal responsibilities to protect LGBT students?

In addition to the First Amendment, which grants every student the right to free expression (being "out" at school, taking a same-sex date to prom, wearing a "gay pride" t-shirt), Wisconsin public school students are also protected by state statute 118.13.

118.13 states that "no person may be denied the benefits of or be discriminated against in any curricular, extracurricular, pupil services, recreational or other program or activity because the person's sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation or physical, mental, emotional or learning disability." Therefore, a student may not be excluded from a public school, or from any school activities or programs, or be treated in a different manner for any of the reasons listed above. Each public school in Wisconsin is required by law to have written policies that prohibit discrimination (defined as harassment, stereotyping or bias) against pupils for any of the reasons listed above, and they must have a way for students to file complaints of discrimination.³

Additionally, LGBT students are protected by the Equal Protection Clause of the 14th Amendment, which says that "no state shall...deny to any person within its jurisdiction the equal protection of the laws." This guarantees that all students have a federal, constitutional right to equal protection under the law, which means that schools have a duty to protect LGBT students from harassment on an equal basis with all other students. Right here in Wisconsin, a gay student sued his school under the Equal Protection Clause in 1996 for failing to protect him from severe physical harassment from his classmates.⁴ The courts ruled in favor of the student and awarded him approximately \$900,000 in damages, which the administrators themselves were responsible for paying, not the school district.

What about Gay-Straight Alliances? Many people feel that they have no place in public schools.

There are many misconceptions about Gay-Straight Alliances, or GSAs. Some people believe that they are formed by an outside organization to "recruit" and "push the homosexual agenda", while other people believe that GSAs are a place for students to talk about sexual activity. Just like any other non-curricular club, GSAs are usually student-initiated, and are made up of a diverse population. It is not uncommon to see a GSA with all straight-identified members. The mission of each GSA will vary from club to club, but the vast majority form to: 1) provide a "safe" social space for students to talk about issues of identity; 2) work to educate one another and the larger school community about LGBT issues and LGBT equality; and 3) advocate for safer and more inclusive learning environments for LGBT students and their allies.

Regardless of how an individual feels about being LGBT or GSAs, the law is clear: If a school district allows for the formation of any non-curricular club, it must (within reason) allow for the formation of all non-curricular clubs. The Equal Access Act has ruled time and time again that a school cannot ban a GSA based on issues of morality, philosophy, or politics if the GSA doesn't interfere with the orderly conduct of educational activities in the school. It is unlawful to treat a GSA differently than any other club.

³ Adapted from "Wisconsin's Pupil Nondiscrimination Law" brochure on the Department of Public Instruction website at <http://dpi.state.wi.us/sped/pdf/pndbrochure.pdf>

⁴ *Nabozny v. Podlesny* (Seventh Circuit Federal Appeals Court, 1996)