

Harassment, Bullying, & Discrimination of Lesbian, Gay, Bisexual, & Transgender Students:

Legal Issues for North Carolina Schools



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Safe Schools NC is a statewide partnership of organizations and individuals dedicated to eliminating bullying, harassment, and discrimination on the basis of actual or perceived sexual orientation and gender identity in North Carolina schools. Safe Schools NC works to accomplish this mission through advocacy, student organizing, research, and training.

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Introduction

Students who are or who are perceived to be lesbian, gay, bisexual, or transgender (LGBT) often experience harassment, bullying, and discrimination in school. Despite the mission of the educational system to provide each and every child a safe and encouraging learning environment, the issues facing LGBT students often remain unnoticed or are actively ignored. Sexual minority youth often come out in high school, and researchers have found that the average age that adolescents self-identify as gay or lesbian is 16 years (Herdt & Boxer, 1996). Additionally, studies have found that 5 to 12% of students are not exclusively heterosexual (Hillier, Warr, & Haste, 1996; Lindsay & Rosenthal, 1997; Remafedi, Resnick, Blum & Harris, 1992; Russell, Seif, & Truong, 2001). Thus, LGBT youth, those presumed to be LGBT, and youth who are questioning their sexual orientation or gender identity represent a significant proportion of the student population and must be protected.

This report addresses the challenges faced by LGBT youth in schools and the adverse consequences of harassment, bullying, and discrimination. Also included is an overview of current laws and policies protecting students as well as court decisions concerning harassment, bullying, and discrimination based on sexual orientation and gender identity/expression of students. Furthermore, this report contains recommendations for schools to ensure their legal responsibilities and to provide safe and supportive learning environments. This document was produced by Safe Schools NC to serve as an informative resource for students, parents, teachers, administrators, boards of education, policymakers, and government officials.

“I don’t feel safe from abuse at my high school. I am relentlessly persecuted for being gay. By the time I was in ninth grade, listening without responding to others bashing homosexuals was more painful than the harassment I deal with now. Up to now, a person has masturbated in front of me while I was in the school lavatory. I have had cigarettes thrown at me, students have driven their car within a foot of me to drive me off the road while I was walking, and people call me vulgar names almost daily. What I am describing now is not simple child’s play and name calling. It is very specific harassment that threatens my safety at school.”

- Joe Godino, student (Rhode Island Task Force on Gay, Lesbian, Bisexual, and Transgendered Youth, 1996)

Current Climate

HARASSMENT, BULLYING, & DISCRIMINATION OF LGBT STUDENTS

Students are often targeted for bullying and harassment in school because they are presumed to be lesbian, gay, bisexual, or transgender. A study found that 84% of LGBT youth experienced some form of harassment at school (Kosciw, 2004). Research also shows that for every LGBT youth who reported being harassed at school, four heterosexual youth reported harassment for being perceived as gay or lesbian (Reis, 1996). A recent study of homophobic language and verbal harassment in North Carolina schools indicated that 72% of respondents reported hearing homophobic remarks from other students in school. Pejorative terms based on sexual orientation such as “faggot” and “dyke” were heard frequently or often by almost two-thirds (64%) of students. The expression “that’s so gay” or “you’re so gay” used in a derogatory manner was heard frequently or often by 69% of students (Phoenix, Hall, Weiss, Kemp, Wells, & Chan, 2006).

Verbal harassment can escalate into physical intimidation, pushing, hitting, and shoving (Faulkner & Cranston, 1998; Human Rights Watch, 2001). A study found that lesbian, gay, and bisexual (LGB) students were four times as likely to have been threatened with a weapon at school compared to their heterosexual peers (Garofalo, Wolf, Kessel, Palfrey, & DuRant, 1998). Studies have shown that over half of LGBT students reported having property such as cars, clothing, or books stolen or deliberately damaged (Garofalo et al., 1998; Kosciw, 2004). Furthermore, 39% of LGBT students reported experiencing physical harassment (i.e., being pushed or shoved), and 17% reported experiencing physical assaults (i.e., being punched, kicked, or injured with a weapon) at school (Kosciw, 2004). Also, over half of LGBT youth reported experiencing sexual harassment at school (Kosciw, 2004).

“People kept coming up to me and making fun of me, they would call me horrible names and I would cry all the time. Letters were put in my locker saying things about AIDS and how my parents shouldn’t have had me and how I should just die. Kids would threaten me after school and follow me after school and follow me home yelling things at me. No one should have to go through what I went through in school.”

- Anonymous gay student (Rhode Island Task Force on Gay, Lesbian, Bisexual, and Transgendered Youth, 1996)

Discrimination of LGBT students often involves harassment and bullying. For example, if a gay male student is sexually harassed by a heterosexual male student, administrators should respond to this complaint in a similar fashion to sexual harassment between two heterosexual students. However, some school personnel might respond to this situation by saying the gay student was “asking for it” for being too open about his homosexuality and that he should handle the situation himself like a “real man” (Buckel, 2000a). Another example of discrimination would include preventing an openly lesbian student from going on a school field trip because she is too open and proud about being a lesbian and too masculine, which would cause disruptive behavior from other students on the bus (Buckel, 2000b). In addition, school members refusing to allow a same-sex couple to attend a school dance discriminates on the basis of sex and sexual orientation of the couple. Concerning extracurricular clubs, some school members have tried to prevent students from forming Gay-Straight Alliances (GSAs) because these groups address LGBT issues (National School Boards Association, 2004).

School personnel may exhibit negative attitudes toward LGBT students or tacitly condone harassment and bullying by failing to intervene. Recent North Carolina studies found that 10 to 17% of students heard teachers or school staff make homophobic remarks in their presence (GLSEN, 2005; Phoenix et al., 2006). Additionally, when homophobic remarks were made by students in the presence of teachers or staff, students reported that school personnel intervened frequently or often only one-quarter (26%) of the time and rarely or never almost half (47%) of the time (Phoenix et al., 2006). Another study found that 26% of school counselors strongly agreed that teachers display significant prejudice toward gay and lesbian students (Price & Telljohann, 1991). In another study, 80% of prospective teachers held negative feelings toward gays and lesbians, and one-third of these prospective teachers demonstrated highly homophobic attitudes. Moreover, almost two-thirds of school counselors surveyed expressed negative attitudes and feelings about homosexuality and gays or lesbians (Sears, 1991). These findings suggest that not only are some school personnel unwilling to interrupt harassment of LGBT students, but some promote homophobia in schools, which can negatively affect students’ education and development.

“Before I came out, I was respected by my teachers. But soon after I came out, some of my teachers started to give me dirty looks, not calling on me in class, avoiding me at any cost and refusing to give me help after school. I actually had a teacher, as I walked by his desk, whisper under his breath ‘God forgive her,’ as if I were sinning just being alive.”

- Mary Ellen Scott, student (Rhode Island Task Force on Gay, Lesbian, Bisexual, and Transgendered Youth, 1996)

NEGATIVE EFFECTS OF HARASSMENT, BULLYING, & DISCRIMINATION

Homophobic language as well as verbal and physical harassment create a hostile school climate that LGBT students perceive as unsafe. In a recent study, LGBT students were asked how bothered they were from hearing terms based on sexual orientation used in a derogatory way, and 40% of youth stated they were extremely distressed (Kosciw, 2004). In addition to being distressing for youth, verbal harassment and physical violence create an environment where students feel unsafe. According to Kosciw, “almost two-thirds (64%) of youth reported they felt unsafe in their schools because of their sexual orientation and over one-third (39%) reported that they felt unsafe because of their gender expression” (2004, p. 12).

Harassment can affect students academically as some LGBT youth have difficulty concentrating in class and focusing on schoolwork, and students may emotionally or physically distance themselves from school (Hunter & Schaecher, 1987). Research documents that as a consequence of being harassed and feeling unsafe at school, LGBT students often skip school (Faulkner & Cranston, 1998; Garofalo, Cameron, Kessel, Palfrey, & DuRant, 1998; Hunter & Schaecher, 1990; Kosciw, 2004; Remafedi, 1987;), perform poorly (Garofalo et al., 1998; Hunter & Schaecher, 1990; Kosciw, 2004; Remafedi, 1987; Rotheram-Borus, Rosario, & Koopman, 1991; Russell et al., 2001), or drop out (Gardner, 2002; Garofalo et al., 1998; Hunter & Schaecher, 1990; Remafedi, 1987). One study found that 29% of LGBT students missed at least one day of school in the past month due to feeling unsafe. Also, LGBT students who frequently experienced harassment had GPAs that were about 10% lower than those who did not (Kosciw, 2004). Finally, another study found that 28% of gay and bisexual male youths experiencing harassment dropped out of school (Remafedi, 1987). This rate of drop out is three times the national average (U.S. Department of Health and Human Services, 1989).

Bullying and harassment often leads to youth feeling rejected, isolated, and hopeless, which can negatively affect students beyond their

“I dropped out of school at 17, after being at different schools in Providence. I am gay, and was made fun of so much that I got sick of being in school. I couldn't stand worrying about what was going to happen to me each day when I got there, so I stopped going. I was beaten up all during my time in school, and the fights and threats started when I was pretty young.”

- Anonymous student (Rhode Island Task Force on Gay, Lesbian, Bisexual, and Transgendered Youth, 1996)

education. Harassment by peers is one of the main propelling factors of suicidal behavior for some LGB youth (van Wormer, Wells, & Boes, 2000). Rejection by peers and teachers can manifest into self-destructive behavior (van Wormer & McKiney, 2003). Studies have found that LGB youth are two to seven times more likely to have attempted suicide compared to their heterosexual peers (Faulkner & Cranston, 1998; Garofalo, Wolf, Wissow, Woods, & Goodman, 1999; Remafedi, French, Story, Resnick, & Blum, 1998; Russell, Franz, & Driscoll, 2001).

STATEWIDE LAWS & POLICIES AGAINST HARASSMENT, BULLYING, & DISCRIMINATION

Currently, no provision of North Carolina law prohibits harassment and violence in schools based on a student's sexual orientation or gender identity/expression. A statute does provide for equal access to a basic education program and encourages local school boards to "create a harmonious school atmosphere that is free from threats, weapons, and violent or disruptive behavior" and a learning environment where students feel "safe and secure" (N.C. Gen. Stat. § 115C-81, 2003; see Appendix A). Also, this statute calls for schools to develop character education with input from the community and to teach values like "showing high regard for...other people...and understanding that all people have value as human beings" (N.C. Gen. Stat. § 115C-81, 2003). Additionally, North Carolina does not have a law prohibiting discrimination based on sexual orientation or gender identity/expression. North Carolina hate crimes legislation does not prohibit hate crimes based on sexual orientation or gender identity/expression (N.C. Gen. Stat. § 14-3, 1996; N.C. Gen. Stat. § 14-401.14, 1995; N.C. Gen. Stat. § 99D-1, 1991).

Similarly, the North Carolina State Board of Education (NC SBE) does not maintain a policy against harassment, bullying, and discrimination based on sexual orientation or gender identity/expression. A policy does assert the need to create a "safe, orderly, and caring learning environment that is free from harassment, bullying, and discrimination;" however, an enumerated list of protected groups is not included (NC SBE, 2005, Policy SS-A-007; see Appendix B).

"General laws and policies without enumerated groups such as sexual minorities demonstrate a lack of knowledge or a lack of will around outlawing specific forms of harassment, bullying, and discrimination that studies have shown are highly prevalent in schools for LGBT students."

(Gay, Lesbian and Straight Education Network, 2004)

Legal Issues

LEGAL OBLIGATIONS OF SCHOOLS TO PROTECT STUDENTS FROM HARASSMENT, BULLYING, & DISCRIMINATION

Schools are legally required to protect LGBT students from harassment, bullying, and discrimination under the Equal Protection Clause, Title IX, and First Amendment. In addition, the Equal Access Act ensures that LGBT student organizations receive fair and equitable treatment by schools. Court cases addressing these legal issues have sent a clear message concerning harassment, bullying, and discrimination of LGBT students.

Equal Protection Clause. Lesbian, gay, bisexual, and transgender students have a federal constitutional right to equal protection under the law due to the Equal Protection Clause of the Fourteenth Amendment. Public schools have an obligation to protect LGBT students from harassment on an equal basis with all other students; thus, schools cannot pick and choose which students will be protected from harassment. If schools do not take action against harassment of LGBT students because a school official believes that the “student brought the harassment upon him or herself simply by being openly LGBT, or because the school was uneducated about LGBT issues and was uncomfortable addressing the situation, then the school has failed to provide equal protection to the students” (National Center for Lesbian Rights, 2004, p. 1). The Equal Protection Clause has been used successfully against school districts and school personnel that failed to protect LGBT students from harassment (see *Flores v. Morgan Hill Unified School District*, 2003; *Montgomery v. Independent School District*, 2000; *Nabozny v. Podlesny*, 1996).

Title IX. Another federal statute related to harassment and discrimination of LGBT students is Title IX of the Education Amendments of 1972 (2003), which applies to all schools that receive federal financial assistance. Title IX prohibits sexual harassment directed at an LGBT student and harassment based on a student’s failure to conform to sex stereotypes. Additionally, Title IX requires school administrators to intervene and rectify any harassment “of a sexual nature” directed at an LGBT student that is severe enough to prevent the student’s access to, or

enjoyment of, a school program, which includes “all of the academic, education, extracurricular, athletic, and other programs of the school” (U.S. Department of Education’s Office of Civil Rights, 2001, p. 2). Title IX holds schools accountable for failing to correct sex-based harassment of LGBT students by other students or teachers once school administrators have been informed of the harassment (*Davis v. Monroe County School District*, 1999). Title IX also prohibits sex discrimination. Sexual orientation discrimination is a form of sex discrimination because sexual orientation is inherently based on sex (*Baehr v. Lewin*, 1993; Lovell, 1998). A person’s sexual orientation is based on his/her sex plus the sex of the person he/she is attracted to (Valdes, 1995). For example, a lesbian is targeted for sexual orientation harassment because she is a woman attracted to women, while a heterosexual woman attracted to men would not be targeted for harassment (Lovell, 1998). Moreover, sexual orientation discrimination may involve sex stereotypes. Perpetuating a sex stereotype, like men and women should only be attracted to individuals of the opposite sex, may constitute sex discrimination (Koppelman, 1994; *Price Waterhouse v. Hopkins*, 1989; *United States v. Virginia*, 1996).

First Amendment. The First Amendment provides LGBT students rights of free expression. Thus, LGBT youth have the right to express their sexual orientation or gender identity. If school personnel encourage students to hide their sexual orientation or gender identity in order to avoid bullying or harassment, take negative action against students because of their expressed sexual orientation or gender identity, or regulate students’ pro-LGBT speech or attire, they may be held liable for infringing on the students’ First Amendment rights to free expression (Gopal & Mesibov, 2003). Suits have been brought against school officials for these reasons (see *Doe v. Yunits*, 2000; *Fricke v. Lynch*, 1980; *Henkle v. Gregory*, 2001).

Equal Access Act. The Equal Access Act of 1984 requires schools to provide equal treatment and access to LGBT student clubs, like GSAs, as other student clubs. This law applies to any public secondary school that receives federal funding and allows extracurricular student clubs. Access for student groups relates to meeting facilities, publicity of club events,

“Harassing conduct of a sexual nature directed at gay or lesbian students may create a sexually hostile environment and, therefore may be prohibited by Title IX.”

(U.S. Department of Education’s Office of Civil Rights, 1997)

“Sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program constitutes sexual harassment prohibited by Title XI.”

(U.S. Department of Education’s Office of Civil Rights, 2001, p. 12)

use of bulletin boards, funding, and other school resources (*Prince v. Jacoby*, 2002). Some schools have tried to prevent LGBT student groups from forming, but courts have typically ruled against these schools (see *Boyd County High School Gay Straight Alliance v. Board of Education of Boyd County*, 2003; *Colin v. Orange Unified School District*, 2000; *East High Gay/Straight Alliance v. Board of Education Salt Lake City School District*, 1999; *East High PRISM Club v. Seidel*, 2000).

COURT CASES INVOLVING HARASSMENT, BULLYING, & DISCRIMINATION OF LGBT STUDENTS

Nabozny v. Podlesny (1996) was the first case where a court ruled against a school for failing to protect a gay student from harassment and abuse. Jamie Nabozny realized he was gay at the age of 13, as did his classmates. Nabozny experienced verbal and physical harassment daily and was called names like “faggot.” He was hit, kicked, and spat on at school for being gay. Nabozny reported the harassment to the school counselor who referred him to the principal, Mary Podlesny. Podlesny promised to protect Nabozny from the harassment, but no action was taken and the abuse continued. One of the most severe incidents Nabozny experienced was when two students pushed him to the classroom floor and performed a mock rape on him while saying that he would enjoy it. Twenty students in the class watched and laughed. When Nabozny reported this incident to Podlesny, she said that “boys will be boys” and that if Nabozny was “going to be so openly gay, that he had to expect this kind of stuff to happen.” Administrators made no attempt to punish the harassers. Nabozny continued to face harassment at school and was called names, punched, kicked, and his books were pushed out of his hands. When Nabozny’s parents met with Podlesny, they were told that “if Jamie was going to be openly gay that he had to expect that kind of stuff.” After subsequent meetings with Podlesny, she promised to protect Nabozny, but no action was taken. At the end of eighth grade, Nabozny attempted suicide (*Nabozny v. Podlesny*, 1996).

In high school, Nabozny was assaulted in the bathroom. While he was using the urinal, a student hit Nabozny in the knees, causing him to fall

“Every day I had stomach aches. I lived in fear every day I got on that bus. I started walking to school because after a while, I wouldn’t even take the bus anymore, it was just like my stomach was in knots. I had to live every day trying to avoid being harassed.”

- Jamie Nabozny (Walsh, 1996)

into the urinal and then another student urinated on him. Although Nabozny reported the incident to the school principal, William Davis, the harassing students were not reprimanded. During another incident, students pushed things off Nabozny's desk in a class and then the teacher became upset and called Nabozny a "fag" and sent him out of the class. Harassment of Nabozny continued into tenth grade where "students grabbed him in the crotch" and "bit him in the rear end." On the school bus, students called him names and threw nuts and bolts at him so the school moved him to the front of the bus. In the most severe incident of abuse, a group of students attacked Nabozny outside the school library and kicked him in the stomach for several minutes. Although Nabozny reported this incident to school staff, the harassing students were not suspended. Weeks later, Nabozny collapsed in class due to stomach pain, required surgery, and suffered from internal bleeding and bruising. Even though Nabozny spoke to school administrators about the harassment several times while in high school, he was never protected. The assistant principal, Thomas Blauert, even said that "Nabozny was kind of deserving what he was getting because of the fact that he was gay." This same year, Nabozny attempted suicide for the second time. Finally, Nabozny filed a lawsuit against the school district and officials for denial of his Fourteenth Amendment right to equal protection because of his gender and sexual orientation. The court agreed that gays and lesbians are an identifiable minority, and the jury determined that Nabozny was denied equal protection from harm while at school. School officials settled the suit for \$962,000 (*Nabozny v. Podlesny*, 1996). The jury did not find the school district liable, perhaps because the district had a policy prohibiting discrimination based on sexual orientation (McFarland, 2001).

In *Montgomery v. Independent School District* (2000), a student sued his school district for failing to stop harassment by his classmates because of his gender and presumed sexual orientation, and the court found that he had a claim under Title IX. Jesse Montgomery experienced daily verbal harassment from his peers for most of his time in school and was called names such as "fag," "fairy," "homo," "princess," and "queen." Montgomery also experienced physical harassment and assaults including being pushed down in the hallways, tripped and knocked down, kicked on the bus, and punched on the playground. In addition, Montgomery experienced sexual harassment as students grabbed his thighs, crotch, and buttocks. Although Montgomery reported the incidents to school personnel including principals, teachers, bus drivers, school counselors, and the superintendent's office, they failed to protect him from further harassment. In order to avoid the bullying and harassment,

Montgomery missed school; avoided school athletics programs; and stayed away from the school cafeteria, bathrooms, and bus. At the end of tenth grade Montgomery transferred to another school district to escape the harassment. In the end, Montgomery filed suit against the school district because the persistent harassment he was subjected to at school encroached on his access to school programs. The court found that Montgomery had a Title IX claim, and the school district settled for an undisclosed amount (*Montgomery v. Independent School District*, 2000).

In *Henkle v. Gregory* (2001), a gay student sued his school district for violating his First Amendment rights of free expression. When Derek Henkle was in ninth grade, he discussed his experiences as a gay high school student on a local television program. After this appearance, he experienced regular harassment from fellow students at school. He was verbally harassed and called names such as “fag,” “fairy,” and “homo.” His classmates showed him sexually explicit pictures and threatened to drag him behind a truck. When Henkle reported one of these incidents to the assistant principal, he laughed and made no attempt to reprimand the harassing students. Additionally, when Henkle reported an incident to a teacher, she told him to keep his sexuality to himself and no action was taken to correct the harassment. In one incident, a student threw a metal object at Henkle in front of an administrator, but the administrator took no action. When Henkle asked to be transferred to another school, he was told that the transfer would be granted under one condition—that Henkle would keep his sexual orientation to himself. Consequently, he removed his pro-gay buttons from his backpack.

At his new alternative school, Henkle was told by the principal to not reveal that he was gay and to “stop acting like a fag.” Henkle requested another transfer but was told that a traditional school was not appropriate because he was gay. Nevertheless, Henkle was transferred to another school as long as he kept his sexuality to himself. At the new school, Henkle was regularly harassed after students found out that he was gay. When Henkle requested a transfer back to the alternative school, the principal rejected the request even though space was available.

“Gay and lesbian students face hostility from other students, and even from school staff, every day in school across the country. I was deprived of my education because of this, but I’m pleased that this settlement will show other students that they can fight for their rights to be open and honest about who they are, to be protected from harassment and abuse, and as a result to have basic access to an education.”

- Derek Henkle (Lambda Legal Defense and Education Fund, 2002)

Subsequently, administrators placed Henkle in a program at a local community college to earn a GED. Finally, Henkle sued school officials and the district claiming that school officials prohibited him from engaging in protected free speech and penalized him for engaging in constitutionally protected speech. The court agreed that Henkle’s expression of his homosexuality was constitutionally protected and some school officials’ actions were retaliatory. The case was settled for \$451,000; the district amended its policy to state that students have the “right to discuss their sexual orientation or issues related to sexual orientation at school;” and the district trained school personnel and students on harassment prevention (*Henkle v. Gregory*, 2001).

In *Doe v. Yunits* (2000), a transgender students’ attire at school became an issue of freedom of expression under the First Amendment. Pat Doe was born male but had a female gender identity. Doe’s psychologist asserted that it was “medically and clinically necessary” for her to wear girl’s clothing to school. When Doe wore girl’s clothing and accessories to school, administrators often sent her home to change. Sometimes Doe did not return to school after being sent home, and she eventually accumulated enough absences to require that she repeat a grade. Doe stopped attending school and said that administrators created a “hostile environment” for her at school. The school district claimed that Doe’s clothing created a disruption at school. When Doe tried to enroll to repeat eighth grade, she was told that she could not come to school wearing girl’s clothing. Finally, Doe filed a suit against the school district. Doe’s desire to wear girl’s clothing was an expression of her desire to identify as a female. The court found that prohibiting Doe from wearing girl’s clothing, which was important to her well-being, suppressed her freedom of expression and constituted sex discrimination (*Doe v. Yunits*, 2000).

In *Doe v. Yunits* “the judge rejected the school’s justification that Ms. Doe’s wearing female clothing was disruptive and made other students uncomfortable, holding that this excuse was not sufficient to overcome Ms. Doe’s freedom to dress consistently with her gender identity.”

(Gay and Lesbian Advocates and Defenders, 2002, p. 2)

In the tenth grade, Anthony Colin wanted to start a Gay-Straight Alliance Club (GSAC) at his school. The school had dozens of extracurricular student clubs, but when Colin submitted the necessary paperwork to start the GSAC, the application was treated atypically and subjected to discriminatory procedures. The principal sent the application to the school board and told Colin the proposed name was inappropriate. The principal suggested that Colin remove the words “gay” and “straight”

from the name. A member of the school board said that “The Bible says that we’re all sinners, but this, in my opinion is asking us to legitimize a sin” (People for the American Way, 2000). The board held a public forum allowing community members to express their views about the GSAC. Colin and other members were subjected to derogatory remarks about gays and lesbians. Subsequently, the board voted to deny the GSAC permission to meet, and told the students that they would need to change the club name and promise not to discuss issues related to sexual orientation and homophobia. As a result, Colin and another GSAC member filed a suit against the school district and school officials for violating the students’ rights under the Equal Access Act (1984). A judge ordered the school district to allow the GSAC to meet. Consequently, the school board settled the lawsuit and gave the GSAC equal access and treatment with other extracurricular groups, the group retained their name, and discussed issues related to sexual orientation (*Colin v. Orange Unified School District*, 2000).

“The settlement recognizes that the Gay-Straight Alliance may continue meeting on the same basis as other clubs and that the GSA may not be subjected to special rules that do not govern other student groups. Students will continue to have a forum for discussing issues such as anti-gay discrimination that are important to them. Both the GSA members and the school as a whole will benefit from the ongoing presence of the GSA and from having this lawsuit resolved before the start of the new school year.”

- Laura Brill, attorney in *Colin v. Orange Unified School District* (Lambda Legal Defense and Education Fund, 2000)

Recommendations

IMPROVING SCHOOL SAFETY & PREVENTING LITIGATION

Based on research suggesting that the current school climate is not safe for LGBT youth and that existing statewide laws and policies are insufficient to protect youth from harassment, bullying, and discrimination based on sexual orientation or gender identity/expression, we recommend that state government and school board officials take necessary steps to improve the school climate. Taking action to protect LGBT students will not only improve the educational atmosphere, it may also protect schools from costly and painful litigation when schools or school personnel do not fulfill their legal obligations. Safe Schools NC recommends three primary steps to improve the school climate: (1) pass comprehensive policies and legislation, (2) train school personnel, and (3) assess the school climate.

Pass Comprehensive Policies and Legislation. Perhaps the most important step to creating a safe school climate for all students is the implementation of comprehensive policies and legislation against harassment, bullying, and discrimination. Such policies will explicitly list all forms of harassment and discrimination which are prohibited. Without laws or policies that clearly outline that harassment based on sexual orientation, gender identity, and gender expression is not tolerated, students and school personnel may feel that such behaviors are condoned within the school. With research showing that almost half of teachers and staff in North Carolina secondary schools did not intervene when students made homophobic remarks in their presence, the need for a comprehensive policy is clear (Phoenix et al., 2006). With homophobia being a common element of the school culture, many teachers and other school personnel may believe that harassment, bullying, and discrimination against LGBT students is typical of the school environment and requires no intervention on their part. Comprehensive legislation and policies that are communicated and implemented will help ensure that school districts fulfill their legal obligations. These statutes would not open up schools and staff to additional legal liability because schools are already legally required under federal laws to correct harassment, bullying, and discrimination. Maintaining inclusive policies will help protect school

“Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply.”

(Romer v. Evans, 1996)

districts from being held liable because maintaining such policies sends a clear message to school members about the legal obligations of schools to appropriately address harassment, bullying, and discrimination. Comprehensive laws and policies would give school personnel the backing they need to respond to violations of students' rights. A study found that schools with inclusive policies had lower levels of homophobic verbal harassment and school personnel were more likely to interrupt homophobic remarks compared to schools with non-inclusive policies (Phoenix et al., 2006). Moreover, it is in the best interest of school boards and state officials to clearly outline what behaviors are prohibited in schools, how to prevent negative behaviors, and the course of action for school members when these instances occur. While general laws and policies demonstrate the good intentions of officials, enumerated regulations more appropriately address historical trends where certain groups of people have suffered from frequent prejudice, violence, and discrimination.

Train School Personnel. Many school personnel allow harassment, bullying, and discrimination of LGBT students because they are ill-equipped to prevent and intervene in these situations. It is also likely that many school personnel are unaware of their legal obligations to protect LGBT students. Training school personnel on issues facing LGBT students will equip these professionals with the necessary skills, knowledge, and attitudes to improve the hostile school climate for LGBT students. Training workshops can inform school personnel of local, state, and federal laws and policies concerning harassment, bullying, and discrimination. Trainings can also instruct school personnel on how to interrupt and prevent these harmful behaviors as well as the steps to take when students are harassed, bullied, or discriminated against. Addressing the internal sequelae of students who are victimized should also be covered in trainings for school personnel, because youth who are victimized oftentimes develop various physical and mental health problems, which disrupt the educational experience and healthy development.

Assess the School Climate. An additional recommendation is for schools to conduct regular school climate assessments. These assessments should seek feedback from key stakeholders within the

“It is about safety, equal access and equal protection. It is about making sure every student feels that they can achieve their best in school in an environment free of hostility. And it is about taking proactive steps to prevent the antigay attitudes that may exist in a school from turning into harassment and escalating violence.”

- Description of the ACLU's training program for educators to make schools safe for gay and lesbian youth (ACLU, 2001)

school community such as students, school personnel, and parents. Surveys, focus groups, interviews, and observations are useful methods to investigate the school climate. Assessments should examine the following areas: (1) expectations of school members concerning the climate, (2) levels of prejudice against certain students, (3) preparation of school personnel to interrupt harassment and bullying, (4) dissemination and comprehension of school policies, (5) monitoring of students to prevent negative behaviors, (6) prevalence of harassment and discrimination of students, (7) effectiveness of receiving and documenting complaints of harassment and discrimination, and (8) follow-through of appropriate remedial responses for harassment and discrimination. School climate assessments can inform school officials of the effectiveness of school policies, procedures, and interventions; and assessments provide insight into how to improve the school climate.

CONCLUSION

Safe Schools NC hopes the evidence from this report will show those who believe that schools do not need to address the needs of LGBT students are lacking empirical information. Safe Schools NC believes that all schools have a responsibility to protect all students by intervening in and preventing all forms of harassment, bullying, and discrimination including those based on sexual orientation and gender identity/expression. Schools should also take appropriate action when these incidents occur. School districts and officials who have neglected these legal obligations have suffered costly litigation (see Appendix C). Safe Schools NC pledges to serve as a partner to North Carolina schools in this mission to create safe and supportive schools for all students. The aforementioned recommendations provide the necessary steps to begin to improve the current school climate. Concerted efforts by school personnel, local school boards, state government representatives, and the state board of education to improve school safety for LGBT youth will result in a safer and more respectful learning environment for all students. However, to neglect these issues may only lead to continued prejudice, hostile schools, victimized students, uninformed school personnel, and litigation against schools and school personnel.

“Regardless of a child’s...sexual orientation..., all children have a right to safety. When victimization through bullying, verbal abuse, and physical violence is prevalent in a school, the entire school community experiences the consequences.”

(Center for Disease Control and Prevention, 2000)

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Appendix A

NC BASIC EDUCATION PROGRAM LAW (NC GEN. STAT. § 115C-81, 2003)

“Responsibility for school safety. Helping to create a harmonious school atmosphere that is free from threats, weapons, and violent or disruptive behavior; cultivate an orderly learning environment in which students and school personnel feel safe and secure; and encourage the resolution of conflicts and disagreements through peaceful means including peer mediation. Instruction in this responsibility should include a consistent and age-appropriate antiviolence message and a conflict resolution component for students in kindergarten through twelfth grade. These messages should include media-awareness education to help children recognize stereotypes and messages portraying violence.”

Appendix B

NC POLICY AGAINST HARASSMENT, BULLYING & DISCRIMINATION (NC SBE, 2005, Policy SS-A-007)

“It is the priority of the State Board of Education to provide each and every student in North Carolina’s public schools and public charter schools with a safe, orderly, and caring learning environment that is free from harassment, bullying or discrimination.

The Department of Public Instruction shall provide guidance and technical assistance to local boards of education to develop policies and procedures to prevent, intervene, investigate, document and report all forms of harassment, bullying, and discrimination. The State Board of Education shall require each LEA to designate an individual(s) to participate in the Department of Public Instruction training pertaining to anti-bullying, anti-harassment, and anti-discrimination. This individual(s) will provide leadership and training to the school district in developing policies and procedures.

Each local board of education shall develop and maintain policies and procedures to prevent, intervene, investigate, document, and report all acts of harassment, bullying, or discrimination no later than January 2005.

Each local board of education shall also establish a policy prohibiting acts of retaliation for reporting violations of the anti-harassment, anti-bullying and anti-discrimination policy as stated in the Federal Guidelines provided by the Office for Civil Rights <http://www.ed.gov/about/offices/list/ocr/checklist.html>.

Each local board of education shall notify all students, parents, and employees in writing of the policies and procedures.

The Local Board of Education shall report all verified cases of harassment, bullying, or discrimination to the State Board of Education on the Discipline Data Collection Report.”

Appendix C

LAWSUITS AGAINST SCHOOL DISTRICTS & SCHOOL PERSONNEL (from NCLR & GLSEN, 2004, p. 2-6)

CASE: Flores v. Morgan Hill Unified School District (N.D. Cal.)

FACTS: Suit brought on behalf of 6 former MHUSD districts who were subjected to daily harassment and threats of physical violence and actual physical violence on the basis of their real or perceived sexual orientation and gender

CLAIMS: Equal Protection Clause, Title IX, state law claims

RESOLUTION: Settlement

MONETARY: over \$1,100,000

INJUNCTIVE:

- Amendment of existing nondiscrimination policy to include sexual orientation and gender
- Training for all administrators, teachers, counselors, and other employees who monitor student behavior on harassment and discrimination on the basis of sexual orientation or gender identity
- Mandatory training for seventh and ninth graders on preventing anti-lgbt harassment and discrimination
- District policies and student handbooks will be revised so that they expressly state that harassment and discrimination based on actual or perceived sexual orientation and gender identity is expressly prohibited under district policies and state law
- The district must keep written records of any complaints made concerning anti-lgbt harassment or discrimination

CASE: Massey v. Banning Unified School District (C.D. Cal.)

FACTS: Eighth grade student alleged she was prohibited from attending physical education class on the basis of her sexual orientation

CLAIMS: Equal Protection Clause; state law claims (including AB 537 and Unruh Act)

RESOLUTION: Settlement

MONETARY: \$45,000

INJUNCTIVE:

- Amendment of existing nondiscrimination policy to include sexual orientation and gender
- Training for all district teachers and other school staff on issues of anti-discrimination and diversity
- Training for students at all grade levels – k-12 -- with respect to diversity

CASE: Henkle v. Gregory, 150 F. Supp.2d 1067 (D. Nev. 2001) (settled 2002)

FACTS: Constant harassment, discrimination, intimidation based on his sex and sexual orientation, name calling, assaults, punched in face, lassoed around the neck, threatened, transferred from school to school and told to keep silent about his sexual orientation, put into adult education program

CLAIMS: Title IX, Equal Protection Clause, First Amendment, state tort claims

RESOLUTION: Settlement

MONETARY: \$451,000

INJUNCTIVE:

- Adoption of new harassment policy including sexual orientation required
- Staff training required
- Student training required

CASE: Loomis v. Visalia Unified School District (E.D. Cal.) (settled 2002)

FACTS: Verbal harassment and name calling by teachers and students, spit on in hallway, put in independent study program (thereby losing ability to attend any U.C. school), subjected to sexually suggestive touching

CLAIMS: Equal Protection Clause, Due Process Clause, state law claims, including AB 537

RESOLUTION: Settlement

MONETARY: \$130,000

INJUNCTIVE:

- Required training for school staff, including a one-time 3 hour program, and 30 minute annual training
- Required training for students, including a mandatory 50 minute training
- Required to integrate peer-to-peer education and counseling into existing programs
- Required to revise anti-harassment policy to include real or perceived sexual orientation and gender
- Required to have two compliance coordinators at each school, one male and one female (although only one required for elementary schools)
- Required to submit an annual report
- Required to keep and submit incident records

CASE: Dahle v. Titusville (Pa.) (settled 2002)

FACTS: Severely tormented based on sexual orientation, daily verbal and physical assaults over 5-year period
Harassment was so traumatizing that student attempted suicide

RESOLUTION: Settlement

MONETARY: \$312,000

CASE: Snelling v. Fall Mountain Regional Sch. Dist., 2001 WL 276975 (D.N.H. 2001)

FACTS: Two brothers were harassed and subjected to verbal and physical abuse based on perpetrators' sex based stereotypes of masculinity, including one incident where another student bounced a basketball off P's head, which required hospital treatment, P also received death threat

CLAIMS: Title IX; state law

CASE: Putman v. Bd. of Educ. of Somerset Ind. Sch. (E.D. Ky.)

FACTS: Death threats, repeated unwanted sexual contact, offensive and hostile verbal abuse, sexual intimidation and humiliation including sexually explicit graffiti on school parking lot depicting 2 male figures engaged in sexual act with plaintiff's name above picture

CLAIMS: Title IX; Equal Protection Clause

RESOLUTION: Settlement

MONETARY: \$135,000

INJUNCTIVE:

- Amend anti-harassment policy to include actual or perceived sexual orientation

CASE: Montgomery v. Indep. School Dist., 109 F. Supp.2d 1081 (D. Minn. 2000)

FACTS: Name calling based on his perceived sexual orientation from K thru 10th grade, physical threats and assaults beginning in 6th grade, mock rapes, unwanted sexual contact from 9th grade

CLAIMS: Title IX; Equal Protection Clause, Due Process Clause, state law claims

RESOLUTION: Settlement

MONETARY: Undisclosed financial settlement

INJUNCTIVE:

- District required to enforce anti-harassment policy

CASE: Ray v. Antioch, 107 F. Supp. 2d 1165 (N.D. Cal. 2000)

FACTS: Plaintiff was harassed, threatened, insulted, taunted and abused based on perpetrators perception of his sexual orientation and because P's mother is transgender, beaten by another student causing concussion, hearing impairment, severe and permanent headache, psychological injury, urine soaked towels thrown on him

CLAIMS: Title IX

RESOLUTION: Undisclosed financial settlement

CASE: O.H. v. Oakland, 2000 WL 33376299 (N.D. Cal. 2000)

FACTS: Harassment, intimidation, physical abuse because of perceived sexual orientation, raped 3 times by another student who forced him to leave campus at knife point

CLAIMS: Title IX; Equal Protection Clause; Due Process Clause; state law claims

RESOLUTION: Settlement

MONETARY: Undisclosed, confidential monetary amount

INJUNCTIVE: No

CASE: Lovins v. Pleasant Hill (W.D. Mo.) (settled 2000)

FACTS: Plaintiff was harassed from 8th grade through 11th grade based on real or perceived sexual orientation. Plaintiff was assaulted, and was eventually forced to leave school because of harassment and discrimination

CLAIMS: Title IX, Equal Protection Clause

RESOLUTION: Settlement

MONETARY: \$72,000

INJUNCTIVE:

- Required training for school staff Required to include student training in the curriculum
- Required to revise harassment policy, and to hire expert to implement other appropriate policies

- Required to have two coordinators at each school, one male and one female
- Required to submit number of comprehensive reports

CASE: Vance v. Spencer, 2000 WL 1651376 (6th Cir. 2000)

FACTS: Harassed, teased, called "German gay girl," and "Lezzie," constantly shoved into walls and books and homework taken, unwanted sexual contact + and questioning in class, stabbed in hand with pen, students ripped her shirt off, another threatened to rape her and took his pants off before another intervened

CLAIMS: Title IX, and National Origin Discrim. Claim

RESOLUTION: Jury award (affirmed on appeal)

MONETARY: \$220,000

CASE: Iverson v. Kent (settled 1998)

FACTS: Plaintiff was pushed into lockers with broom sticks, called names, teacher told him "I already have 20 girls, I don't need another," beaten by 8 students in classroom while 30 students watched

CLAIMS:

RESOLUTION: Settlement

MONETARY: \$40,000

INJUNCTIVE:

- Required training for teachers and administrators
- Required to revise anti-harassment training procedures

CASE: Wagner v. Fayetteville (settled 1998)

FACTS: Plaintiff suffered physical and psychological harassment over a period of 2 years. He was beaten, and suffered a broken nose and kidney damage. Sexually explicit drawings of student were circulated in school

CLAIMS: Title IX

RESOLUTION: Settlement

MONETARY: No

INJUNCTIVE:

- Required one-time training for school staff, and additional training required for all staff with responsibility to implement the policy
- Required to formally notify students that sexual harassment is prohibited
- Required to provide training for students on sexual harassment and other student policy issues
- Agreed to review policy and revise if necessary, and to disseminate policy

CASE: Nabonzy v. Podlesny, 92 F.3d 446 (7th Cir. 1996)

FACTS: Harassment and physical abuse because of sexual orientation and sex, mock rape in front of 20 students, urinated on, put in special education, beaten by 8 students causing internal bleeding

CLAIMS: Equal Protection Clause; Due Process Clause

RESOLUTION: Settlement

MONETARY: \$962,000

Appendix D

NORTH CAROLINA RESOURCES

American Civil Liberties Union of North Carolina (ACLU-NC)
www.acluofnorthcarolina.org

Equality North Carolina
www.equalitync.org

North Carolina Gay and Lesbian Attorneys (NC GALA)
www.ncgala.org

North Carolina Transgender Unity
www.geocities.com/nctgunity/

Safe Schools NC
www.safeschoolsnc.com

NATIONAL RESOURCES

American Civil Liberties Union (ACLU)
www.aclu.org

American Psychological Association Healthy Lesbian, Gay, and Bisexual Students Project
www.apa.org/ed/hlgb/

Gay, Lesbian and Straight Education Network (GLSEN)
www.glsen.org

Gay-Straight Alliance Network
www.gsanetwork.org

Human Rights Campaign (HRC)
www.hrc.org

Lambda Legal Defense and Education Fund
www.lambdalegal.org

National Center for Lesbian Rights (NCLR)

www.nclrights.org

National Gay and Lesbian Task Force (NGLTF)

www.thetaskforce.org

National Transgender Advocacy Coalition (NTAC)

www.ntac.org

National Youth Advocacy Coalition (NYAC)

www.nyacyouth.org

OutProud

www.outproud.org

Parents, Families and Friends of Lesbians and Gays (PFLAG)

www.pflag.org

Project 10

www.project10.org

Safe Schools Coalition

www.safeschoolscoalition.org

Sexuality Information and Education Center of the United States (SIECUS)

www.siecus.org