



GETTING YOUR SCHOOL BOARD ON BOARD: PRO TALKING POINTS

Why is it important to add sexual orientation and gender identity to the District's non-discrimination/anti-harassment policy?

According to the 2001 National School Climate Survey released by the Gay, Lesbian, Straight Education Network ("GLSEN"):¹

- Over 80% of LGBT students reported being verbally harassed because of their sexual orientation; and
- Nearly 70% of LGBT students reported feeling unsafe in school because of their sexual orientation

Furthermore, LGBT students often receive little support from school faculty and staff. Another study² revealed that:

- 80% of prospective teachers reported negative attitudes toward lesbian and gay people;
- 52% of prospective teachers reported that they would feel uncomfortable working with an openly gay or lesbian colleague;
- 66% of guidance counselors harbor negative feelings toward gay and lesbian people; and
- Fewer than 20% of guidance counselors have received any training on serving gay and lesbian students.

These conditions put LGBT youth at greater risk than their non-LGBT peers of dropping out of school, abusing alcohol and drugs, and attempting suicide. A 1999 Massachusetts Department of Education study³ revealed that:

- 20% of gay and lesbian students skipped school each month because they feared for their safety at school;
- 32.8% of gay and lesbian youth had attempted suicide in the last year.

Is it necessary to add gender identity in particular?

Yes. Transgender youth are disproportionately likely to face harassment, and the harassment tends to be particularly violent. A recent survey analyzing reported instances of bias-motivated violence against LGBT people from 1995 through 1998 found that although anti-transgender violence accounted for only a relatively small percentage of all reported cases, those incidents

¹ The 2001 GLSEN National School Climate Survey is available at www.glsen.org.

² James Sears, "Educators, Homosexuality, and Homosexual Students: Are Personal Feelings Related to Professional Beliefs," in *Coming Out of the Classroom Closet* (Karen Harbeck ed., 1992).

³ Massachusetts Youth Risk Behavior Study, Mass. Dept. of Educ. (1999).

accounted for 20% of all reported murders, and approximately 40% of all police-initiated violence.⁴ These conditions put transgender youth at great risk of suicidal feelings and behavior.⁵ One study found that 53% of transsexuals surveyed had attempted suicide. Moreover, harassment on the basis of gender non-conformity perpetuates and reinforces gender-based stereotypes that hurt everyone.

Is a school district required to add sexual orientation and gender identity to its non-discrimination/anti-harassment policy?

Although school districts in states that do not have explicit protections for LGBT students are not required to add sexual orientation and gender identity to their policies, school districts have the authority to do so. Furthermore, whether or not a school district has an LGBT-inclusive policy, the school district is already legally required to protect students from anti-LGBT harassment and can be held liable for failing to protect students from such harassment and discrimination.

Title IX, a federal law that applies to all schools that receive federal money, already requires such schools to ensure that students are not sexually harassed. And while Title IX does not explicitly prohibit discrimination on the basis of sexual orientation, it does prohibit harassment directed at an LGBT student that is sexual in nature. Title IX also prohibits harassment that is based on perceptions that the student does not conform to stereotyped notions of masculinity or femininity.⁶

A school district and its employees may also be held liable under the Equal Protection Clause of the Constitution for failing to protect students from anti-LGBT harassment. If the school officials failed to take action against anti-LGBT harassment because they think an LGBT student should expect to be harassed, or because they think an LGBT student brings it on themselves simply by being openly LGBT, then the school has failed to provide equal protection to the student.⁷ Likewise, school officials violate the Equal Protection Clause if they fail to provide the same level of protection against harassment to boys and girls, and to LGBT students and to non-LGBT students.

In Nabozny v. Podlesny, 92 F.3d 446 (7th Cir. 1996), a gay male student sued his school district under the Equal Protection Clause, as well as other state and federal provisions, for failing to protect him from anti-LGBT harassment. On the eve of trial, the school district agreed to pay the student almost \$1 million in damages.

Therefore, an effective way to protect both the students and the school is to adopt and enforce a policy that clearly prohibits discrimination and harassment on the basis of real and perceived sexual orientation and gender identity.

Have other school districts adopted such policies?

⁴ Anti-Lesbian, Gay, Bisexual and Transgender Violence in 1998, A Report of the National Coalition of Anti-Violence Programs (1999).

⁵ Paul Gibson, "Gay Male and Lesbian Youth Suicide," in Death by Denial: Studies of Suicide in Gay and Lesbian Teenagers 38 (Gary Remafedi, ed. 1994).

⁶ See, e.g., Montgomery v. Independent Sch. Dist. No. 709, 2000 WL 1233063 (D. Minn. 2000). See also Office of Civil Rights, Revised Sexual Harassment Guidance, § III (Jan. 2001), available at: <http://www.ed.gov/offices/OCR/shguide/>.

⁷ See, e.g., Nabozny v. Podlesny, 92 F.3d 446 (7th Cir. 1996) (holding school violated Equal Protection Clause by not protecting gay student from anti-gay harassment and violence).

Currently eight states have laws that specifically protect students from harassment on the basis of sexual orientation in public schools.⁸ Three of these states, California, Minnesota, and New Jersey also prohibit discrimination on the basis of gender identity. Several other states also provide protection through means other than state laws. For example, on November 2, 2000, the Hawaii Board of Education added sexual orientation as a protected category. Similarly, Rhode Island's Board of Regents policy prohibits discrimination on the basis of sexual orientation.

In addition, many local school districts in other states have amended their own policies to explicitly prohibit harassment and discrimination on the basis of sexual orientation and/or gender identity. These districts span the country, and include school districts in Pinellas County Florida, Olympia, Washington, Saratoga Springs, New York, and Chicago, Illinois.

Why is it important for non-discrimination/anti-harassment policies to list specific forms of prohibited discrimination and harassment?

Harassment of any kind is unacceptable and should be dealt with quickly and firmly and with appropriate consequences and remedies. Historically, however, certain groups of people have suffered systematic institutional prejudice, discrimination, and have been at disproportionate risk of harassment and violence. As demonstrated by the statistics above and the facts of cases like Nabozny, schools have often been complicit in the perpetuation of discrimination on the basis of sexual orientation and gender identity.

Furthermore, without specific protections and without extensions of those protections to teachers, even well-meaning teachers (both gay and straight) are often reluctant to intervene in anti-LGBT harassment for fear of becoming targets of harassment themselves. The specific inclusions of sexual orientation and gender identity is necessary in order to give teachers and staff the backing they need in order to feel safe in responding to these forms of harassment.

What should a student do to get his or her school to respond to harassment?

Students should keep notes of the harassment, including the date, time, and place of the harassing incidents, the names of the individuals involved, and a description of the incident and circumstances. Students should also notify administrative personnel about the incidents. Under Title IX, each school district is required to have a "compliance officer" who oversees the complaint process. Students should be sure to file the appropriate complaints and notify high-level school officials. Telling a teacher is important, but a school district will not be held liable under Title IX unless an individual or body with authority to address the problem actually knew about the harassment.⁹

If a school takes no action, or if a student disagrees with the actions taken by the school administration, the student or his or her parent(s) or guardian(s) have the right to file a complaint with the U.S. Department of Education, Office of Civil Rights, or to file a lawsuit in a state or federal court.

⁸ The eight states are California, Connecticut, New Jersey, Massachusetts, Minnesota, Vermont, Washington, and Wisconsin.

⁹ See Davis v. Monroe County Sch. Dist., 119 S. Ct. 1661, 1670 (1999); see also Gebser v. Lago Vista Indep. Sch. Dist., 524 U.S. 274, 290 (1998).