

APPEAL NO. 18-13592-EE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DREW ADAMS,
Plaintiff-Appellee,

v.

THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA
Defendant-Appellant.

On Appeal from the United States District Court
for the Middle District of Florida, Jacksonville Division
District Court No. 3:17-cv-00739-TJC-JBT

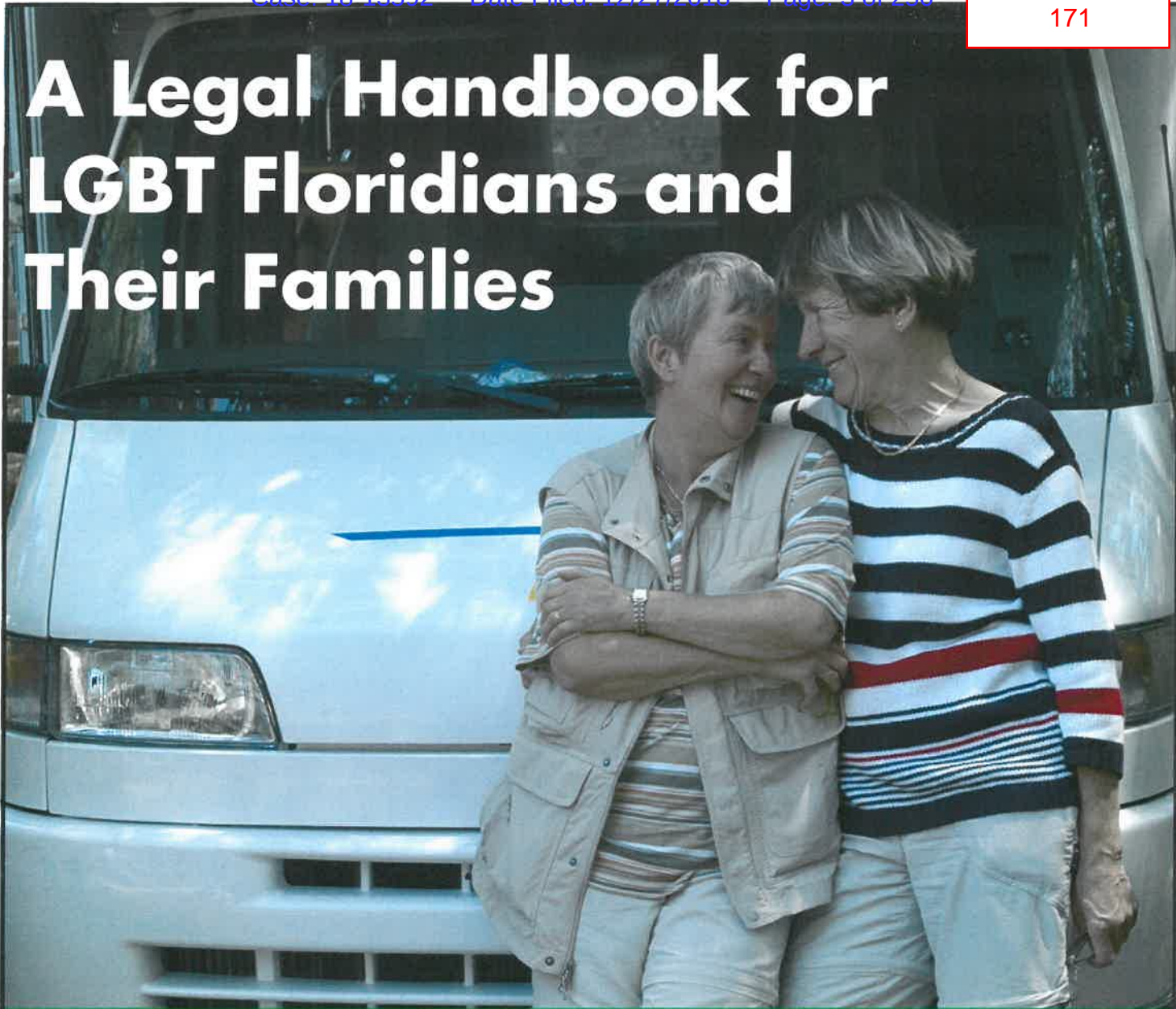
**APPELLANT'S APPENDIX IN SUPPORT OF INITIAL BRIEF
VOLUME IX**

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A Legal Handbook for LGBT Floridians and Their Families



A Resource for Lesbian, Gay, Bisexual and Transgender Families

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Florida**
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PREFACE

This first edition of **A Legal Handbook for LGBT Floridians and Their Families** was a *pro bono* project of the law firm of Carlton Fields. Portions of the Handbook were derived from the 5th Edition of the *Older Floridians Handbook: Laws and Programs Affecting Older Floridians (2007)*, which was a joint project of Carlton Fields and the Florida Justice Institute. Copyright in the *Older Floridians Handbook*, and all unchanged portions of the *Older Floridian Handbook* included in this Handbook, are owned by the Florida Justice Institute and are included with the permission of the Florida Justice Institute. Carlton Fields and Equality Florida Institute thank the Florida Justice Institute for its cooperation in the use of certain materials of general interest that are included.

Primary funding for this Handbook was provided by Carlton Fields. In order to facilitate access to this publication, the Handbook also will be available on the Internet through the websites for Equality Florida Institute and Carlton Fields.

Equality Florida Institute and Carlton Fields welcome comments and suggestions for future editions.

First Edition.....December 1, 2010

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**Welcome Letter from
Nadine Smith, Equality Florida Executive Director**

Friends,

Even as we continue the work of securing full equality for the lesbian, gay, bisexual and transgender community, we know it is important that our members understand how to protect themselves and their loved ones under the laws that *currently exist*.

This Handbook is intended to be an easy reference source for same-sex couples in Florida – particularly with respect to long-term planning related to health, family and financial considerations. It contains useful legal and practical information on topics of special interest to our community, but its use is by no means limited to LGBT couples. **Single Floridians, including unmarried couples, should find this booklet informative and helpful.**



The material provided is based on the laws and practices of the State of Florida and its agencies, and in some cases, the laws and practices of the federal government. This Handbook cannot answer every question, nor can it replace the advice and counsel of an attorney when needed. Rather, it provides information of a general nature and answers to some of the more common questions that LGBT Floridians often have.

This Handbook deals with laws and policies that may change often, particularly in the area of LGBT rights. Consequently, when the Handbook directs you to a particular statute, rule or agency, please check to make sure that the information is current.

Equality Florida Institute, Inc. is a tax-exempt, nonprofit organization that relies on the support of our member through annual memberships and legacy gifts. Please consider our organization in your giving plan.

We'd like to thank our partner, Carlton Fields, for their generous support in producing this valuable guide. We hope you find this to be a useful tool in navigating the challenges that gay couples face. Thank you for supporting Equality Florida Institute as we work toward the day when this handbook is no longer necessary.

Sincerely,

A handwritten signature in black ink that reads "Nadine Smith".

**Nadine Smith
Executive Director**

NOTICE: Equality Florida and Carlton Fields make no express or implied warranties or guarantees concerning the contents of this publication. Laws and regulations frequently change. Coverage is as of the date of publication. You are strongly encouraged to seek the services, if needed, of a lawyer. A list of places to contact when you need the services of a lawyer but do not know how to find one or cannot afford one is provided in the **Reference and Referral Information** section toward the end of the Handbook.



A LEGAL HANDBOOK FOR LGBT FLORIDIANS AND THEIR FAMILIES

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“When I moved to the Tampa Bay area and researched non-profits, Equality Florida stood out as a organization making a real impact for everyone. As a longtime member, I'm proud to be a part of what Equality Florida has accomplished.”

- Eunice Fisher, St. Petersburg

I. WHAT ARE YOUR LEGAL RIGHTS IN FLORIDA?

Miscellaneous Civil and Criminal Laws Affecting LGBT Rights

A. DISCRIMINATION LAWS

1. Federal and State Laws

Civil rights laws have been passed by the U.S. Congress and by the Florida Legislature that provide legal protections against discrimination in areas such as employment, education, housing, and public accommodations, on the basis of certain specified categories, including race, national origin, sex, age, disability, and others. There are a number of different federal laws that provide these protections, including the Civil Rights Acts of 1964 and 1991. The Florida Civil Rights Act is found at Chapter 760, Florida Statutes. The federal anti-discrimination laws are administered and enforced by the Equal Employment Opportunity Commission (www.eeoc.gov). The Florida anti-discrimination laws are administered and enforced by the Florida Commission on Human Relations (<http://fchr.state.fl.us>).

Currently, the federal and Florida anti-discrimination laws provide very little legal protection to LGBT citizens subjected to discrimination. Neither the federal nor Florida anti-discrimination laws include “sexual orientation” or “gender identity” in the list of classifications protected from discrimination. There is pending legislation, the Employment Non-Discrimination Act, which would add these classifications to the federal laws if passed by Congress and signed into law.

In some jurisdictions, courts have interpreted the laws prohibiting “sex” discrimination to include same-sex sexual harassment and “gender stereotyping,” which may provide a potential basis for relief to LGBT citizens under some circumstances. Same-sex sexual harassment occurs when one or more co-workers of the same-sex as you target you because of your sex and create a hostile work environment or demand that you perform sex acts as a condition of your employment. Gender stereotyping occurs when you are discriminated against in the terms of your employment because you are perceived as not conforming to the generally accepted “norms” of your gender, e.g., a man who is perceived as effeminate or a woman who is perceived as masculine. If you believe you may have been subjected to either of these forms of discrimination, you should promptly contact a qualified attorney to advise you of your rights.

There are a few Florida laws that provide protection on the basis of sexual orientation in specific limited circumstances. With regard to applications to purchase insurance coverage and to subscribe to an HMO, Section 627.429 and Section 641.3007 of the Florida Statutes provide that sexual orientation shall not be used in the underwriting process or in the determination of which subscribers or applicants for enrollment shall be tested for exposure to the HIV infection, and that information disclosed during the underwriting process shall not be used to establish an applicant’s sexual orientation. Section 400.6095 of the Florida Statutes provides that hospice facilities shall make their services available to all terminally ill

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"I think Equality Florida does great work fighting for LGBT civil rights and, as someone who came out later in life, I'm glad to do what I can to support this important work."

- Stephen Gundlach, Lantana

persons and their families without regard to sexual orientation, and Section 397.501 similarly provides that service providers may not deny an individual access to substance abuse services on the basis of sexual preference.

2. Municipal Laws

Although the federal and Florida anti-discrimination laws do not specifically prohibit discrimination against LGBT citizens, some cities and counties in Florida have passed their own anti-discrimination ordinances that do prohibit such discrimination within their geographic boundaries. Some of these municipalities include Broward County, Miami-Dade County, Leon County, Monroe County, Palm Beach County, Orlando, Tampa, Gainesville, Jacksonville, Miami Beach, Sarasota, West Palm Beach, St. Petersburg, and others. Additional information on ordinances existing as of the date of this publication are included in Section III, below. If you believe that you have been subjected to discrimination because of your sexual orientation or gender identity, you should check your local municipal codes to see if they include anti-discrimination ordinances covering those categories. If so, the ordinance will describe how to go about asserting a claim for discrimination to the appropriate investigative authority. You can contact an attorney, or contact Equality Florida at www.eqfl.org, for assistance in determining whether your municipality has a relevant ordinance.

3. Hate Crimes/Bullying Laws

There is a federal hate crimes law, the Matthew Shepard Act, which makes it a federal crime to commit a physical assault or property damage based on bias against someone because of their sexual orientation or gender identity, among other classifications. Florida has a hate crimes law that includes sexual orientation (but not gender identity). Section 775.085, Florida Statutes. Florida's hate crimes law does not create a separate chargeable offense, as does the federal version, but is merely a penalty enhancement that can result in the reclassification of a charged offense to a more serious offense. Florida's hate crimes law further provides that a person or organization that establishes that it has been coerced, intimidated or threatened in violation of the hate crimes law has a civil cause of action for treble damages, an injunction or any other appropriate relief. As part of the Criminal Gang Prevention Act, criminal gangs include "hate groups." Section 874.03 of the Florida Statutes defines a "hate group" to include organizations whose primary purpose is to promote animosity, hostility, and malice against a person or persons or against the property of a person or persons because of sexual orientation. Similar to the hate crimes law discussed above, the criminal gang statute provides penalty enhancements for offenses under this statute and establishes civil remedies for victims. Florida law requires the state to collect and disseminate data on hate crimes based on sexual orientation.

"My thanks to everyone would not be complete without a special shout out to Equality Florida donors and volunteers. Your tremendous support has allowed me to stand up to an opponent who sought to divide our community, to weaken our bullying policy and play politics with students' safety."

- April Griffin, Hillsborough School Board Member

As a direct result of Equality Florida's efforts, Florida protects 1.7 million students from bullying and harassment based on sexual orientation and 1.1 million of those are also protected from bullying and harassment based on gender identity and expression.

Florida also has an "anti-bullying" law that requires school districts to adopt and enforce strict policies against bullying. Section 1006.147, Florida Statutes. This law does not separately list out classifications of protected groups, but the legislative history provides a strong case that anti-gay bullying is covered by the law. A number of counties and school districts have also adopted anti-bullying policies (for example, Hillsborough County). Ironically, Florida law requires that school districts, if they provide instruction or course material on human sexuality,

teach "the benefits of monogamous heterosexual marriage." Section 1003.46, Florida Statutes.

B. PUBLIC/PRIVATE EMPLOYERS

Even if your municipality does not have an anti-discrimination ordinance that covers sexual orientation and gender identity, some public and private employers have internal policies that prohibit such discrimination. Public employers with such policies include many of the same cities and counties identified above that have enacted anti-discrimination ordinances for their general population, as well as a majority of Florida's public universities. Many private employers have also enacted such policies, including such prominent Florida companies as Walt Disney Co. and Blue Cross Blue Shield of Florida. Review your employer's policies or check with your employer's Human Resources Department to see if your employer has such a policy. Such internal policies do not have the force of law, and therefore cannot be enforced in formal legal proceedings, but they may provide an internal complaint procedure that potentially could afford you some relief.

In addition, many professions have governing bodies that regulate the conduct of their members which include protections from discrimination on the basis of sexual orientation. For example, Section 4-8.4 of the Rules Regulating The Florida Bar (which governs the conduct of all lawyers licensed to practice law in the state of Florida) prohibits lawyers from disparaging or discriminating against litigants, jurors, witnesses, court personnel, or other lawyers on the basis of sexual orientation. If you believe that you have suffered discrimination or unfair treatment by someone acting in a professional capacity, check to see if that person's profession is governed by a code of conduct that might afford you a course of action to make a complaint.

C. MARRIAGE/RELATIONSHIP RECOGNITION LAWS

Florida's Constitution (Article I) and Section 741.212 of the Florida Statutes effectively ban "gay marriage" by defining marriage as the legal union of only one man and one woman, and Florida's Constitution further mandates that "no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized." (Fla.

Florida law provides increased penalties for hate crimes based on sexual orientation and has been interpreted to include hate crimes targeted at the transgender community. Adding specific protections for gender identity to our hate crimes law continues to be a priority.



Const. Article I, Section 27) These same laws prohibit Florida from recognizing valid same-sex marriages performed in other jurisdictions. Currently, Florida does not have any form of statewide recognition of same-sex relationships. However, similar to municipal ordinances banning discrimination on the basis of sexual orientation and gender identity, some Florida municipalities as well as public and private employers offer domestic partner benefits to their employees, and some municipalities provide domestic partner registries that allow same-sex couples within their jurisdiction to register and receive certain benefits.

Among many other considerations, the inability to enter into a legally recognized marriage means that same-sex partners do not automatically have authority to make healthcare, childcare, and related life decisions with respect to each other, nor will they automatically inherit each other's property upon death. Nonetheless, various legal documents are available in order to insure that a partner's wishes are followed in these matters and the various mechanisms and related considerations are discussed in greater detail in later sections of this Handbook.

If you are a gay couple, legally married in a state or country that performs such marriages, one significant issue that arises is the ability to file your federal income tax return as married even though the federal government refuses to acknowledge your marriage. Many tax advisers have warned same-sex married couples not to file as married (either jointly or separately) because of the possible imposition of penalties for doing so. Yet the federal return requires you to swear under penalties of perjury that all statements in the return are true. If you object to signing this statement on a return in which you have been forced by the federal government to lie about your marital status, there are some things you can do.

- You could file separately, but include an asterisk by the single box and a statement at the bottom of the form or on an attachment to the form indicating that you are only single as defined in the Defense of Marriage Act.
- You could file two single returns (including the attachment affirming the marriage) and then file an amended return, filing jointly. This option would avoid penalties because your original return would be filed according to the statute.
- You could submit two returns to the IRS, one filed jointly, showing the tax due on a joint return, and one filed as a single taxpayer, showing the tax due on a single return. Explain your constitutional and moral theory entitling you to file a joint return. Pay whatever amount is due on the single return and ask the IRS to choose which return to accept.

If you are concerned about your federal income tax filing status, you should seek legal advice. If you cannot afford legal assistance, contact your nearest legal services, legal aid, or bar association low fee or pro bono referral panel. (See References and Referral Information.) Equality Florida also has a more detailed memorandum regarding this issue available upon request.

D. ADOPTION

On September 22nd, the Florida Third District Court of Appeal held as unconstitutional, a state law, that for more than 33 years had expressly forbid gay men and lesbians from becoming adoptive parents.

Both the Florida Department of Children and Families ("DCF") and the Florida Attorney General declined to appeal the Third District's decision in *Gill* to the Florida Supreme Court. As a result, the Third District decision is binding on every trial court in the State of Florida and though the statute (Florida Statutes Section 63.042(3)) remains on the books DCF announced that it had changed its forms and procedures to comply with the Third District decision, removing all references to sexual orientation.

The lawsuit centered around Martin Gill's effort to adopt his foster sons and has paved the way for individuals to adopt regardless of sexual orientation. Because second parent adoptions raise different legal questions, couples interested in pursuing a second parent adoption should seek advice from a lawyer who is knowledgeable about this issue.

For those who have adopted out-of-state, it is important to note that a valid adoption by a gay parent in another state must be recognized and given effect in Florida. *Embry v. Ryan*, 11 So. 3d 408 (Fla. 2d DCA 2009).

1. [Fla. Dep't of Children & Families v. *In re: Matter of Adoption of: X.X.G & N.R.G.*, Case No. 3D08-3044 (Fla. 3d DCA Sept. 22, 2010)(referred to as the "*Gill*" case)].

E. ISSUES FACED BY TRANSGENDER INDIVIDUALS

Transgender individuals may encounter difficulties when their records and documents do not reflect their current name and gender. Transgender individuals may have their privacy violated and transgender identity revealed without their permission in the workplace through the customary practices of their employers or the Social Security Administration (SSA). For example, the SSA compares its records with employee-provided information. If the employee-reported gender and the gender in the SSA records do not match, then the SSA will notify employers of the discrepancy. These notifications often reveal an employee's transgender identity to an employer without the employee's consent. In some circumstances, employers will fire employees whose employee-provided information is not the same as the SSA information if the discrepancy is not resolved within a short period of time. Another situation transgender individuals often face is an inability to travel, especially if using commercial airlines. The Transportation Flight Administration (TSA) instituted a secure flight program that went into effect for both domestic and international flights on October 31, 2009. Under this program, the TSA mandates that all passengers present their name, gender, and date of birth when making an airline reservation.



Transgender individuals may encounter delays, embarrassment, or discrimination if the gender listed on their passport or driver's license is not the same as the gender indicated when the reservation was made.

Transgender individuals, therefore, have a growing need to ensure that their documents and records are uniform and mirror their current name and gender. Changes in federal and state laws have made it increasingly hard for transgender individuals to maintain privacy and to change their driver's licenses, birth certificates, passports, and Social Security records. This guide, however, should help to explain the current status of federal and Florida laws and their effect on the requirements for name and gender designation change on documents and records.

1. Passports: 2010 State Department Policy Should Loosen Requirements

In June 2010, the State Department implemented a new policy for applicants seeking a gender change on their passports. The State Department no longer requires that an applicant has undergone sexual reassignment surgery. Instead, an applicant can submit a certification from a physician confirming that the applicant has undergone treatment for gender transition. The certification must include:

- Physician's full name;
- Physician's medical license or certificate number;
- Issuing state of medical license/certificate;
- DEA registration number;
- Name of the patient;
- Indication that the physician is either an internist, endocrinologist, gynecologist, urologist, or psychiatrist;
- Indication that the patient had appropriate clinical treatment for gender transition to the new gender;
- And a written oath signed by the physician stating: I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

The State Department does not require any specific treatment or details about the type of treatment undergone. If an applicant is just beginning gender transition and needs to travel abroad, the State Department will issue a two-year provisional passport. The temporary passport has the same force as a regular passport. After the applicant has completed the appropriate clinical treatment the applicant can obtain a full, regular passport.

The applicant procedures for passport name change are unaffected by this new legislation. An applicant must still submit a completed DS-19 form along with a certified copy of the applicant's Final Judgment of Name and his or her current valid passport.

Government officials hoped that this new policy should alleviate the danger and anxiety transgender individuals face when traveling with a passport that does not state the individual's correct gender. Despite this new policy, however, many transgender individuals



have yet to secure name and gender changes on their passport. As a result, these individuals may be unable to travel outside of the United States.

2. Florida Driver's License, Identification Card, and Birth Certificates: Proof of Sex Reassignment Surgery Necessary for Change in Gender Designation

Florida allows for a change in sex designation on birth certificates, driver's licenses, or identification cards only if the applicant has undergone sex reassignment surgery. Section 382.016, Florida Statutes; Fla. Admin. Code Ann. R. 64V-1.003.

The applicant must provide:

- A sworn affidavit from the physician who performed sex reassignment surgery;
- The medical license number of the physician;
- A statement that the applicant has completed sex reassignment surgery in accordance with appropriate medical procedures;
- A statement that the applicant is now considered a member of the reassigned gender;
- And the required fee.

A transgender individual may circumvent this law by establishing residency in one of the twenty-six states without the sex reassignment surgery requirement and having his or her gender designation changed there. When the individual moves back into the state of Florida, the changed records are transferred without any additional paperwork or requirements. Most individuals, however, are unable or do not wish to move to another state for this purpose.

3. The Federal "Real ID Act"

The Real ID Act was signed into law under President Bush in 2005, but has yet to go into effect. Pursuant to the Real ID Act, the state Departments of Motor Vehicles must maintain digital copies of the documents each person presents when establishing their identity to attain a driver's license or identification card. The Real ID Act also provides that these records, including gender designation, are linked into one shared database. Law enforcement officers and others will have complete access to this database. The new regulations established by the Real ID Act will make personal information more freely available and may disrupt the privacy of transgender individuals. The Real ID Act has yet to affect the procedures of state DMV's, but it is important to be aware of its likely future impact on privacy.

4. More Information

There are many other legal challenges facing transgendered persons that are beyond the scope of this handbook – particularly relating to immigrants, refugees and arising from differences between states on appropriate "standards" for determining "gender." For more information about new and existing laws or the procedures for changing name or gender designation on a passport, driver's license, identity card, social security card, or birth certificate, consult the following websites:

I added Equality Florida to my will years ago because I want to make a lasting, permanent contribution to ending discrimination. I am thrilled at the launching of the Legacy of Equality Society and hope it inspires many others to include Equality in your will or estate plans as well.

-Thom Leffler

- National Center for Transgender Equality - this website contains information regarding federal requirement for changing information on Social Security cards and passports: http://www.transequality.org/Issues/federal_documents.html#ss_gender
- Equality Florida – step by step guide to changing name and gender on birth certificates, driver’s licenses, social security cards, passports, and identity cards: <http://eqfl.org/issues/namechange.doc>
- Travel Tips for Transgender Individuals: <http://transequality.org/Issues/travel.html>

II. PLANNING FOR THE FUTURE

A. WILLS, TRUSTS, GIFTS AND ESTATE PLANNING

Because Florida law does not allow same-sex partners to marry and does not recognize any legal rights of life partners, it is especially important to do all that you can through written, binding documents to protect yourself during your lifetime and to be sure that to the extent you wish, your partner and other loved ones have access to you and your property upon your death or incapacity. “Estate planning” is the process of planning for and documenting wishes for the disposition of assets and the care of a partner and children upon your death in a manner that will be honored under applicable law. In the following sections of the Handbook, we look at each of the major areas of “estate planning,” and explain the issues facing same-sex partners under current Florida law, then provide some options, tools, forms and considerations for insuring your wishes are met.

From a legal standpoint, there are several classes of property: real property (for example, land, interests in land such as easements and buildings), tangible personal property (for example, cars, or other personal belongings) and intangible personal property (for example, cash, bank accounts, leases and other contract rights). Even in the absence of a right to same-sex marriage, there are a wide variety of legal documents available and recognized under Florida law that can be used to facilitate the orderly transfer of various types of property upon death, in the event of incapacity, or to otherwise avoid the “default” disposition of those assets upon death under existing law.

1. Wills

Why do I need a Will? – The law of Intestate Succession in Florida

It is sometimes said that if you die without a Will, “the State will get it all.” That is not necessarily true, but if you die owning anything in just your name alone and for which you have named no beneficiary, and if you have no Will, then Florida law designates who inherits from you - and under Florida law, that list does not include a same-sex life partner.



Dying without a Will is legally known as “dying intestate” (ie, without a “testament”). If you die without a Will, all of your property will be distributed by the Probate Court among your surviving relatives, as set forth in the law. The “probate process” has a terrible reputation among many. It is important, however, to understand what “probate” is. First, it has nothing to do with whether estate taxes will be owed. It is simply the process by which a court determines the disposition of property which the decedent owned in his or her own name alone and for which there were no beneficiaries named. While there has been substantial reform over the years in Florida in regard to the probate process, nevertheless many people wish to avoid it in any event.

According to Florida law, the property of a person who dies without a Will passes as follows:

IF DECEASED IS SURVIVED BY

Spouse & No Lineal Descendants:	spouse receives entire estate
Spouse & Lineal Descendants: (who are also descendants of spouse):	spouse gets the first \$60,000 of the intestate estate plus ½ the balance of the estate. The rest, if any, to the descendants
(who are not descendants of spouse):	½ of the intestate estate to spouse and remainder to the descendants
Lineal Descendants But No Spouse:	estate distributed among descendants as follows: to decedent's lineal descendants in equal shares; if none, to decedent's father and mother equally, or to the survivor of them; if none, to decedent's brothers and sisters and descendants of deceased brothers and sisters

In Florida, any intestate property distributed among lineal descendants (children, grandchildren, etc.) is distributed *per stirpes* or by representation. *Per stirpes* means that the children of a deceased beneficiary receive equal shares. If a child of a deceased has died before his parent, the children of that child will receive the share to which their parent would have been entitled. An adopted child is considered a lineal descendant of the adopting parent and a natural kin of all members of the adopting parent's family; the child is not considered a lineal descendant of his or her natural parents nor an heir of any member of his or her

natural parent's family. An exception to this is when a child is adopted by a natural parent's partner. This adoption has no effect on the relationship between the child and the natural parent or the natural parent's family.

A person born out of wedlock is a lineal descendant of his or her mother and a natural kin of all members of his mother's family. This child is also a lineal descendant of the father. A child born out of wedlock also may inherit from his or her father if the paternity of the father is established by adjudication in court before or after the father's death or if the father acknowledges paternity of the child in writing.

Beyond those persons, other more remote family members are named (see Section 732.103, Florida Statutes, for the entire list), but, needless to say, the list never gets beyond the "family" as the law has traditionally defined it. Only if there is no "family" will the decedent's property pass to the State of Florida.

Thus, having a legally executed and binding Will in place is of the greatest importance. In your Will you can provide for bequests to your partner, as well as family members, and anyone else (persons or charities) you wish; and only a legally recognized spouse or minor children have rights that can trump your bequests.

If you have minor children, you can and should designate in your Will the person (or persons) to serve as guardian for your minor children (whether "naturally" born or adoptive). Also, you should designate the Personal Representative (the term Florida gives to the person responsible to administer the Will upon your death – sometimes called an "executor" in other states). As with guardians, personal representatives must be Florida residents, or financial institutions having trust powers in Florida, or, as to non-residents, the same limitations are as set forth for pre-need guardians discussed below. **Note that you can name your partner as your Personal Representative, so long as your partner is a Florida resident, even if your partner is a named beneficiary of your Will.**

If you are concerned about the distribution of your estate, you should seek legal advice. If you cannot afford legal assistance, contact your nearest legal services, legal aid, or bar association low fee or pro bono referral panel. (See References and Referral Information.)

Legal Requirements

To be valid, a will must meet certain requirements. The requirements vary from state to state. These are the requirements in Florida:

1. the maker (called the testator for a man, or testatrix for a woman) must be at least 18 years or an emancipated minor;
2. the testator must be of sound mind at the time the will is prepared;



3. the will must be **in writing (either typed or hand-written)**. It cannot be oral;
4. the will must be signed by the testator at the **end** of the will, and **in the presence of two witnesses**;
5. the witnesses do not need to know the contents of the document, but they must acknowledge that the testator knows he is signing his will, and the competent witnesses must sign the will in the presence of each other and of the testator; and
6. it is also advisable to have your will notarized in Florida. This makes the probate process simpler. A form for self proving signatures on a Will is provided by Section 723.503, Florida Statutes, a copy of which is attached (**Form C**).

If you move out of Florida, your will may still be valid, but you should check the requirements of your new state.

Use of Form Wills

While there are various form books available in print and online for wills, you will benefit from the counsel of a lawyer who is experienced in estate planning who can help you decide what documents are appropriate given your personal circumstances. The idea that there is a magical "simple will" form is often shown to be misguided. Probate matters can be very complicated and it is always best to consult an attorney when drafting a will. Each individual's personal and real property assets, tax considerations, circumstances, and testamentary wishes are unique. Therefore, it is appropriate to consult an attorney to draft a will and other estate planning documents that are customized to your needs and wishes.

How Long Does a Will Remain Valid?

A validly executed will remains valid until you change or revoke it. If you are of sound mind, you have the right to revoke or change your will at **any time** prior to your death, but you must follow specific legal procedures. In Florida, if you change or revoke your will through the use of another will or written instrument, the new will must be executed with the same formalities required for the original will.

It is important to regularly reexamine your will and update it if necessary to account for any changes in the tax laws, the death or change in status of a beneficiary, changes in your property holdings, or the value of those holdings, or other important matters.

You may revoke your **entire** will by **burning, tearing, canceling, defacing, obliterating, or otherwise destroying** it if, at the time of your act, you have a **present intent** to revoke it. However, it is best **not** to revoke your will by these methods. Burning, tearing or scratching through a will often leaves your intentions somewhat unclear. The best way to cancel a will and the only valid way to alter your will is the execution of another will or separate written instrument, signed and witnessed. **Note: The same formalities required for the execution of a will are required for an instrument which revokes or alters a**



will. You should consult an attorney to obtain details about the most effective ways to revoke or alter your will.

Restrictions on Distributing Property by Will

Generally, in Florida you may distribute your property by will as you wish. However, there are certain types of property which cannot be freely transferred by will. For example, there are certain restrictions on, or conditions to, the devise of homestead, jointly held property, property held in trust, many retirement accounts, and life insurance.

Homestead laws are designed to preserve the home. Homestead property is the place of residence owned by any natural person. **A homestead may not be conveyed by will (devised) by the owner if he or she is survived by a legally recognized spouse or any minor children.** If you do not make a will, any legal spouse will have the right to reside in your home for his or her life and then your children will own it.

Property that is owned jointly -- with the right of survivorship -- also cannot be distributed by will. The law provides that the last surviving joint owner automatically becomes the sole owner of all jointly owned property (such as real estate, bank accounts, motor vehicles, and household goods) when the joint tenant dies. **You can change the devise of jointly owned property by removing or changing the co-owner with their consent by court action; but not through your will.**

Making a Bequest to Equality Florida

Equality Florida relies on the generosity of its constituents to support its work. If you are interested in making a bequest to Equality Florida, please contact us and we will be happy to assist you. Suggested language for wills follows:

Specific Bequest

I devise and bequeath to Equality Florida, Inc., a Florida not-for-profit corporation, having its principal office at 2549 37th Avenue North, St. Petersburg, Florida 33713, the sum of \$_____ to be used for its general purposes.

Residual Bequest (Percentage/General Purposes)

I devise and bequeath to Equality Florida, Inc., a Florida not-for-profit corporation, having its principal office at 2549 37th Avenue North, St. Petersburg, Florida 33713, an amount which is _____% (_____ percent) of my residuary estate, to be used for its general purposes.

"My wife and I know Equality Florida will never stop fighting for justice and fairness, and we want to be sure our support never stops either. We recently amended our wills and life insurance policies to include Equality Florida. It was easy to do and now our dedication to Equality will live on forever."

- Matt Solan, St. Petersburg

Residual Bequest (Percentage/Endowment)

I devise and bequeath to Equality Florida, Inc., a Florida not-for-profit corporation, having its principal office at 2549 37th Avenue North, St. Petersburg, Florida 33713, an amount which is _____% (_____ percent) of my residuary estate, to establish an endowment fund, from which a unitrust amount of 5% is to be allocated annually by

its board of directors for the most appropriate needs at the time.

2. Joint Ownership and Beneficiary Designations

Joint Ownership

Property held in joint ownership with rights of survivorship remains with the surviving joint owner and does not pass through probate. Therefore, it is possible to use joint ownership of various forms of property, instead of a will, to distribute assets to a partner upon death, and thus spare the partner probate court proceedings or other issues posed by death without a will (but not necessarily estate taxes). Assets which are titled in your name along with your partner, so long as it is clearly specified that you hold the asset as joint tenants with right of survivorship (and not as tenants in common), will at the death of one of the owners pass by "operation of law" to the surviving owner and not be subject to probate.

Depending on your circumstances, joint ownership may or may not be advisable. If you are considering joint ownership as a way to bypass probate, be aware that it gives your partner **equal control during your lifetime over the joint property**. For example, a joint owner of a bank account can withdraw all of the money from the account **while you are living**, without permission, even if you only intended that person to have the money in the account after your death, or if you had an "understanding" about limitations or access to the account.

While joint ownership can be very helpful, **be very wary**. Other owners may "infect" your property with their creditor problems. Also, if you have a difference of opinion as to the disposition of the asset (say, you wish to sell it and your partner does not) you will be stymied or may need to seek a court order to govern the outcome. Further, unless disposition of proceeds upon sale is otherwise governed by a binding contract between the parties, the joint owner will be legally entitled to an equal share of the proceeds.

Remember, using joint ownership as a means of helping your partner to avoid probate proceedings after your death may cause considerable problems during your lifetime and is difficult to "un-wind" if necessary. Additional issues related to real estate are discussed below. If used wisely in conjunction with a will, however, joint ownership can be a useful legal device in helping distribute your estate after you die. **It is wise to consult an attorney.**



Beneficiary Designation

It has been common practice for life insurance policies to have beneficiaries listed, and it is important that you keep the beneficiary designations on your life insurance policies current and up to date. Upon death of the insured, the proceeds will pass to the named beneficiaries in the shares and as specified in the beneficiary designation. You may name your partner, or anyone else, as a beneficiary. If you name no beneficiary, or if the beneficiaries you named have predeceased you, then by default the beneficiary is your estate – your probate estate – and the proceeds of the policy will pass through the law of intestate succession described above – perhaps defeating your intentions.

In addition to life insurance policies, other investments, including retirement accounts (both IRAs and employer sponsored accounts) and annuities which allow beneficiary designations, increasingly bank accounts and brokerage accounts often also allow beneficiary designations, with such options as P.O.D. (“payable on death”) or T.O.D. (“transfer on death”) designation.

By all means, take advantage of these simple, inexpensive means of estate planning, but just be sure they are consistent with your overall estate plan and that you periodically review your designations to insure consistency with your plan. For example, if you wish to make provision for your partner and other family members through your estate plan, you may make provisions for your partner and/or family members through your Will and various beneficiary designations in life insurance, bank accounts and retirement plans based upon the relative value of those assets at the time the estate plan was established. As we have seen in recent years – there can be significant fluctuations in both the real estate and stock markets. As a result, it is recommended that you establish regular evaluation of any estate plan and related document to insure that they capture your current estate planning goals given the relative value of your assets and current situation.

Special Considerations Regarding Real Estate

As noted above generally, you can hold title to real estate (a house, condominium, unimproved land, etc.) with your partner as *Joint Tenants with Rights of Survivorship*, so that both you and your partner own the property while alive, and upon the death of one partner, the surviving partner will have sole title without the need to go through the probate process.

Advantages:

1. Upon your death title passes automatically and immediately to the surviving owner and does not pass through probate. Note, however, this may be of lesser benefit if the property is subject to an existing mortgage and the joint owner is not a signatory to the mortgage.
2. If the joint owner dies before you, you become the sole owner again since you are the surviving joint owner.
3. If the joint owner is living at the time of your death, he or she will be certain to get the property. For example, if a home is left by will to a non-relative there is always the danger that it may have to be sold in order to cover debts or

expenses of the estate. It should be noted that any mortgage or lien on the property remains.

Disadvantages:

1. You lose sole control of your property. If you should wish to sell the property or give it to someone else, you need the joint owner's permission.
2. If the joint owner should become incompetent, difficulties may arise because you may need to establish a guardianship to obtain their permission to transfer or mortgage the property.
3. A co-owner can demand a partition or sale of the property, and half of the property would be subject to claims of creditors of the co-owner.

One frequently hears that adding a partner on the title to real property can be done simply by the owning partner signing and recording a quit-claim deed conveying his or her interest into the names of both partners "as joint tenants with a right of survivorship." **Beyond the general warnings discussed above regarding jointly held property, there are other considerations particular to the conveyance of real estate that should be carefully considered before proceeding:**

- **Documentary Stamp Tax.** A documentary stamp tax is payable to the State upon the conveyance of an interest in real property in the amount of \$0.70 for each \$100 of the fair market value of the interest being conveyed. Valuation of the interest in the absence of a current appraisal is beyond the scope of this Handbook.
- **Gift Tax.** The conveyance of the interest in real estate (or any other property) constitutes a "gift" which has federal tax consequences – both for the grantor and for the person receiving the interest. As of 2010, you can give up to \$1,000,000 during your lifetime, plus another unrestricted \$13,000 per year per person to anyone you want, without negative tax consequences. In other words, if the value of the interest in real estate exceeds \$13,000, or if you place restrictions on the \$13,000 gift, you should consult a tax adviser to fully consider the tax implications of the transfer. Beyond that, federal tax issues, generally, are beyond the scope of this Handbook.
- **Violation of Existing Mortgage.** Unless property is owned "free and clear" (i.e. without a mortgage) in most cases it is likely that the conveying partner will have purchased the home or property using conventional bank financing. Most conventional bank mortgages and loan documents prohibit the conveyance of any interest in the property by the owner while the mortgage remains outstanding. Further, such an act constitutes an "event of default" entitling the bank to all remedies specified under the mortgage, which generally include acceleration of the loan and foreclosure. While it may be unlikely that a bank would take such a step if the loan is otherwise in good standing, it is possible and should be taken into consideration.
- **Repayment Obligation and Refinancing.** Despite a conveyance to a partner "as joint tenants with a right of survivorship," the conveying partner remains liable on any existing note and mortgage. The bank is under no obligation to accommodate a request to add the life partner to the existing note and mortgage obligation, and any request to do so will



likely require complete refinancing of the property under current loan underwriting and market conditions (for example, taking into consideration the salaries and debts of both partners, the current property value, current interest rates, etc.).

- **Homestead Exemption.** To alleviate the property tax burden, Florida grants its homeowners relief under a homestead exemption provision. This exemption is available to any person who holds legal title to real property in Florida and uses the property as his or her **permanent** residence. Currently, the homestead exemption allows the homeowner to subtract \$25,000 from the assessed value of the home. For example, if the home is assessed at \$75,000, the owner pays taxes only on \$50,000 once the homestead deduction has been claimed. The homestead tax exemption also caps the rate at which the assessed value of the real property may be increased each year to the lesser of 3% or the rate of inflation. (This is commonly known as Amendment 10 or the "Save Our Homes" amendment). **Note that the addition of a partner onto title after the initial purchase of a residence can cause a partial loss of the cap on increases in taxable assessed value (assuming value of the property has otherwise increased since original acquisition).** Other exemptions are available for disabled persons, veterans, and widows or widowers as long as they remain unmarried, for senior citizens and certain persons with physical disabilities.

Application for homestead exemptions for next year's taxes must be made at the Property Appraiser's Office of your county **prior to the March 1 deadline**. The applicant must have resided in the home before January 1 of that year. If a new deed has been filed with respect to your property -- for example in the event that a partner is added to the title -- you will lose your homestead exemption unless you reapply in person. Each taxpayer wishing to apply for an exemption should contact the county property appraiser's office. The property appraiser's offices have detailed information concerning eligibility and the necessary documents and forms required to apply for each exemption.

Note that unmarried couples (including LGBT couples) that jointly own and reside at the same permanent Florida residence, but who jointly own other Florida real property, cannot claim the homestead exemption on both properties. The homestead exemption may be claimed only once for the permanent residence.

If you have any questions on how to obtain these exemptions, you should call your Property Appraiser's office listed in the white pages of your telephone directory under your county's name. A list of the property appraiser's offices can be found at <http://dor.myflorida.com/dor/property/appraisers.html>.

For these reasons as well as those discussed above, regarding general considerations regarding joint ownership of property as a means of avoiding probate, it is advisable to consult an attorney and tax professional, as applicable, to advise on the best approach to take, given your particular circumstances.

Life Insurance

A life insurance policy is a contract between the insured and the insurance company to pay the amount specified in the policy upon the death of the insured. As the insured, you must tell the insurance company who should receive the money (the insurance proceeds) when you die, i.e., who you want to be the "beneficiary." There is no legal restriction limiting who can be designated as beneficiary (or beneficiaries). **Generally, the insurer requires the insured to complete a form or write a letter naming the specified persons, and the nature of the interest to be granted to each (for example, what percentage each is to receive).** You can also name *alternate or contingent* beneficiaries, in case your first named beneficiary dies before you do. If a named beneficiary predeceases you, and you have not named an alternative or contingent beneficiary, then the interest intended to pass to that person will pass to your probate estate. Of course, you must remember to change the named beneficiaries on the policy in the event you change your mind or in the event of the death of any named beneficiary.

Bank and Brokerage Accounts, Pension Plans, IRAs and Retirement Plans

There are a variety of options available for jointly managing your banking affairs, and for making provision for orderly transfer of your bank account or right to manage your accounts to your partner upon death, including: (a) joint account, (b) joint account with right of survivorship, or (c) an account payable on death ("POD") or transfer on death ("TOD"). **Most bank or brokerage firms will have their own specific forms to be filled out in order to accommodate the desired arrangement.**

Motor Vehicles

When you acquire a motor vehicle, you complete an application for certificate of title. On that form, you can provide the owner's and the co-owner's names, so that the vehicle will be co-owned by both persons. You can also check a box indicating "with rights of survivorship," so that the surviving co-owner will be entitled to the vehicle upon the other co-owner's death. Note, however, that if the vehicle is not owned "free and clear" the lender will hold the certificate of title. Also, it should be noted that joint ownership exposes both owners to possible significant liability in the event of an accident, or, given the times in which we live, a "staged" accident.

3. Trusts

Basic Information About Trusts

A trust enables an individual to transfer his or her property to others via a legal document that is different from a will. Wills are only in effect after the death of the maker, but a trust may be in effect prior to one's death. In Florida, in order to be valid, a trust must be written and signed by the creator in the presence of two attesting witnesses.



A trust is established by a settlor (sometimes also called the "grantor" or "trustor"), the one who transfers property to the trust via the written document. These assets become the "corpus" (body) of the trust. Ownership of the corpus is then given to a trustee for beneficiaries selected by the settlor in the trust agreement. Although title to the corpus rests with the trustee, the trustee's ownership is merely a fiduciary function. The settlor may select a life-partner, trusted friend, relative, or a financial institution, to serve as trustee over the trust. Note, however, that financial institutions charge an annual fee to administer the trust.

The settlor can direct the trustee to distribute the trust income and corpus in a variety of ways. The structure of the trust can be tailored to meet your specific needs and circumstances. The amount of control you retain over the trust property will vary depending upon what type of trust you choose and how you design the trust. There are different tax consequences depending on the form of trust you select. The creator of a trust may limit the investment vehicles in which the assets of the trust may be invested.

Revocable Trusts (Living Trusts)

It has become very popular to encourage everyone to have a so-called "Living Trust" in addition to a will. There are many different kinds of trusts for many different purposes and with many different terms and outcomes, but the popularity of the "Living Trust" is that it is revocable as long as you are living; so you can revoke it, amend it, add property to it and take property from it if your wishes or your circumstances change.

Some, in their exuberance about Living Trusts, promote them inaccurately. They do not offer creditor protection, and while they can be written to save estate taxes, typically wills (without Revocable Trusts) can be written to save estate taxes as well. However, there are two elements to a Living Trust that are in fact helpful to many people:

- assets effectively transferred into a trust existing at your death are not subject to the court probate process.
- a Living Trust properly prepared (which would normally name you as the initial trustee) can name successors -- such as your life-partner -- who can seamlessly step into the office of trustee in the event of your incapacity. (See also the discussion regarding Durable Powers of Attorney, sometimes called "the poor man's trust" utilized by many persons perfectly capable of having trusts if they wished).

As noted above, there are a number of ways to avoid the probate process if you wish to do so. A good way to do that is to execute a Living Trust and then, very importantly, follow through and be certain that you transfer all of your assets into the trust.

It is disheartening how often people go to the expense of establishing revocable trusts but then fail to "fund" them (fail to transfer assets effectively to the trustee), and as a consequence their estates are subject to probate anyway. Accountants, financial planners, trust officers and others may advise you to execute a revocable

trust agreement; you will want also to consult with a lawyer to be certain that the document you sign is effective and carries out your wishes.

Other Trusts – for Minor Children, Disabled Persons, or Charitable Purposes

It is beyond the scope of this discussion to cover all of the various trusts that may be appropriate for you. Certainly for minor children or other minor beneficiaries, or for beneficiaries who may not handle property and money well, trusts [whether testamentary trusts established through your Will or your Living Trust, or trusts that you may fund during your lifetime (“inter vivos” trusts)], may be an important part of your estate plan. Beneficiaries suffering from disabilities, particularly if they are entitled to government benefits, ought to be remembered through “special needs” trusts. You may wish to provide for charities while at the same time provide for an income stream to individual beneficiaries through “Charitable Remainder Trusts” or provide an income stream to a charity with the remainder to individuals (“Charitable Lead Trusts”). There are discount opportunities (thus a potential savings of estate taxes) through Qualified Personal Residence Trusts and through some limited partnerships and other like entities. These are just examples but offer important opportunities for you. A lawyer experienced in estate planning can guide you.

4. Social Security Payments – the Representative Payee

You can designate a person to receive your Social Security checks if you are not able to manage your own affairs. That person is known as a **representative payee**. The representative payee must use the Social Security money only for your basic or personal needs including food, shelter and uncovered medical needs.

The representative payee is usually a spouse or parent (in the case of children receiving benefits) but may be a life partner, friend or legal guardian. An institutional administrator can also be designated the representative payee.

This process begins when a friend or relative notifies the Social Security office that an individual is incapable of handling his or her own affairs. A doctor's statement to that effect also must be filed. The Social Security Administration then determines whether or not the individual is capable of receiving their checks. **NOTE that a power of attorney is not effective for Social Security purposes.** Any appointment can be challenged. For more details, call or visit your local Social Security.

5. Organizing Your Personal Records

Getting your financial and personal records in order will save time and energy in your daily affairs. Basic personal information is necessary for almost any application for benefits and legal transactions. Financial records can be useful for budgeting your income, for making investments, or for retirement and estate planning.



People are at a high risk of failing to meet their legal claims and responsibilities when their personal documents are not adequately maintained. Organizing your records can also alleviate your loved ones from bureaucratic burdens. During an emergency situation, your partner, a friend or relative caring for your health or legal affairs, will spend less time digging for papers if he or she knows the location of the necessary documents.

A simple way to organize your records is to write down an inventory of important papers. Describe the document and include its location, whether it is in a safe deposit box at the bank or a file box in your closet. Location is particularly important when referring to your will (remember you do not have to reveal the contents of wills or trusts), birth certificates, and certificates of marriage and citizenship.

Depending on your personal situation, there will be additional items you should include in your document inventory. The following is a list of basic items that your personal and financial records file should contain:

Personal Records:

- Full legal name
- Social Security number
- Legal residence
- Date and place of birth
- Names and addresses of spouse and children (or location of death certificates if any are deceased)
- Names of parents
- Location of will and trust
- Location of birth certificate and certificates of marriage, divorce, and citizenship, including passports and visas
- Combinations to safes or lock boxes or location of keys
- Names and addresses of other relatives, close friends, doctors, and lawyers or financial advisors
- List of employers and dates of employment
- Education and military record
- Religious affiliation, name of church or synagogue, and name of clergy (if desired)
- Living will, anatomical gifts
- Preferences or prearrangement for burial

Financial Records:

- Social Security and Medicare information
- Investment income (stocks, bonds, property)
- Sources of income and assets (pension funds, interest income, etc.)
- Insurance information (life, health, and property), with policy numbers
- Bank accounts (checking, savings, and credit union), including information about any automatic payments
- Utilities and manner of payment (particularly if payments are made automatically)
- Credit cards

- Location of safe deposit boxes and keys
- Copy of most recent income tax return
- Power of attorney
- Liabilities - what is owed to whom and when payments are due
- Mortgages and other debts - how and when paid
- Property taxes
- Location of personal items such as jewelry or family treasures

Today, 5.7 million Floridians have access to Domestic Partner benefits and protections either through DP registries or public employee benefits programs. Equality Florida will keep working to secure protections for all LGBT families in Florida.

6. DOMESTIC PARTNERSHIP AGREEMENTS

A domestic partnership agreement is a contract between unmarried persons (not limited to same-sex couples) living together. A domestic partnership agreement expresses in a contract how parties wish to define their property and support rights during the course of their relationship or upon the end of their relationship during their lifetime or upon death. With a domestic partnership agreement, parties can set forth in an enforceable, binding contract, procedures for handling their support, expenses and finances while they are together and support if they separate, can provide for the division of their assets and liabilities when they separate and can define their rights in each other's estate upon death or disability. Such agreements work much the way premarital (prenuptial) agreements or postnuptial agreements do for parties who are marrying or have married. In a domestic partnership agreement, parties can set forth their rights, obligations, emotional commitment, financial interdependence and, if applicable, co-parenting responsibilities.

The benefits of having domestic partnership agreements include:

- Certainty as to the disposition of property of each partner during the partnership, as well as upon separation, disability or death;
- Reduced chance of litigation upon separation, disability or death;
- Clear understanding of the duties and rights of each partner both during and after the relationship;
- Documenting the parties' desire to be in a committed and equal partnership.

Enforceability of Domestic Partnership Agreements in Florida

Florida courts have recognized and upheld domestic partnership agreements as valid and enforceable, so long as there is sufficient consideration for the agreements. If the primary consideration for the agreement is not sexual intercourse, then the mere fact the parties are not married does not preclude them from contracting according to law for permanent sharing of and participating in one another's lives. For example, cohabiting parties may enter into a valid contract to purchase property with their joint or separate funds.

In *Posik v. Layton*, 695 So. 2d 759, 761 (Fla. 5th DCA 1997), the Florida Fifth District Court of Appeal held that a "support agreement" entered into by a lesbian couple was binding



and enforceable. The court described the agreement as, “a nuptial agreement entered into by two parties that the state prohibits from marrying” and held that, even though Florida has prohibited same-sex marriages and same-sex adoptions, “it has not prohibited this type of agreement.”

The agreement provided that, in consideration for on woman giving up her job, selling her home, moving with the other woman and maintaining and caring for her home, the other woman would provide all the support for both women, would make a will leaving her estate to the woman who gave up her job and would, maintain bank accounts and other investments in the moving woman’s name. The agreement further provided for payment of a monthly sum upon termination of the parties’ relationship for various triggering events.

Prior to entering into a domestic partnership agreement, each party should fully disclose to the other their assets, debts and income. Domestic partnership agreements must be in writing and should be signed by both parties before two witnesses and a notary with the same formalities of a will. Each party to a domestic partnership agreement should be represented by independent counsel.

Contents of the Agreement

A partnership agreement should address obligations during the partnership as well as upon separation, disability or death. The agreement should identify each party’s separate property and how they plan to own property they may acquire together. The agreement should address how joint expenses will be handled during the relationship (e.g., mortgage, household expenses), support and division of assets and debts upon conclusion of the relationship and should provide for vacating, selling or otherwise disposing of the home in which the parties may have been residing together upon the termination of the parties’ relationship.

Obligations during the partnership

A domestic partnership agreement should include the date the relationship began and the names of the parties. The agreement should describe the financial arrangements during the partnership. For instance, how will living expenses be divided? The parties should also define how assets acquired during the partnership will be treated. If the parties have children or intend to have children (for example, through a legal out-of-state adoption that Florida would be required to recognize), then the parties should consider entering into a separate “Parenting Plan” that can address various aspects of time-sharing, decision-making and support of the child. The components of a parenting plan are beyond the scope of this Handbook, but, for guidance, parenting plan forms approved by the Florida Supreme Court for use in family law cases can be found at www.flcourts.org (see Family Law Form 12.995(a) and 12.995(b)).

Obligations upon separation, disability or death

The agreement should state what types of property (bank accounts, life insurance policies, retirement benefits, real property, tangible personal property, intangible personal

property, property acquired by gift or inheritance, or an interest in a trust or family business) should be treated as separate property or jointly owned property. If property is to be shared, the parties should describe how such property will be divided upon separation or death. For example, upon separation each party may share all bank accounts equally regardless of the amount of contribution during the relationship. Another choice is to share according to how jointly owned property will be titled. Additionally, the agreement should state whether property acquired in the future should be divided or remain separate when the relationship ends. Responsibility for each party's debts and jointly acquired debts during the relationship (e.g., mortgage, loans, credit cards, taxes) should also be discussed in the agreement as well as who will be responsible for payment.

The agreement should state whether either partner will be entitled to financial support similar to alimony upon separation, disability or death. The parties should also decide which partner will own or continue to reside in the primary residence or disposition of the residence upon separation or death. The parties may wish to include provisions in the domestic partnership agreement for obtaining and maintaining life insurance or disability insurance under certain conditions.

The parties may wish to consider including confidentiality provisions in their agreement to protect their privacy.

Finally, like all contracts, the domestic partnership agreement should include an enforcement provision. This provision should indicate what law will apply in the event of a lawsuit, whether the prevailing party will be entitled to attorneys' fees and costs and whether the parties will mediate the dispute prior to filing a lawsuit.

Execution and Consideration

In order to be enforceable under Florida law, a partnership agreement must be in writing. In addition, it is crucial that domestic partnership agreements be supported by "consideration" in order to be valid. In this context, "consideration" means some right, interest or benefit to one party or some detriment, loss, forbearance or obligation undertaken or given by the other party. The consideration may not consist solely of a promise for sexual services and may not be a promise to commit an illegal act. One form of consideration is cash contributions, i.e. one partner agrees to pay \$500 a month in exchange for utilities and rent.

If the partnership agreement includes provisions to take effect post-death of one or more of the partners, it is essential that the agreement be signed with the same formality as one would sign a will - it must be signed by the partners and by two witnesses, as to each signature, who were in the presence of the persons executing the agreement, and those witnesses must sign and print their names. Even if the partnership agreement does not include post-death provisions, the better practice would be to have it witnessed in any event.



B. HEALTHCARE ADVANCED DIRECTIVES

Under current Florida law, a same-sex partner has no right to participate in decision making in the area of health, life, and death decisions and has no right to obtain or provide healthcare information in the event of an emergency or life-threatening condition. In the absence of written directives to the contrary, only your biological family is entitled to make life and death decisions for you if you are unable to do so.

An advance directive is a witnessed written document or oral statement by a person expressing their instructions about health care, through documents including, but not limited to, the:

- designation of the health care surrogate;
- a living will; or
- a do-not-resuscitate order.

A competent adult has the fundamental right of self-determination regarding decisions pertaining to his own health, including the right to choose or refuse medical treatment. This right is subject to certain interests of society, such as the protection of human life and the preservation of ethical standards in the medical profession. If one is unable to provide or withhold consent to a medical procedure, one can delegate these decisions to another person (a "surrogate") to direct the course of his or her medical treatment, or by making a living will.

The execution of an advance directive does not affect the sale, purchase, or issue of the terms of any policy of life insurance, or modify the terms of an existing policy (in spite of provisions to the contrary). A person cannot be required to make or waive an advance directive as a condition for obtaining or receiving health care services or insurance.

Should you decide to write an advance directive, be sure to advise your family, friends and physician that such a directive has been made. You can write your own advance care directive by using the forms that follow. To be certain you are complying with Florida law, you may want to seek the advice of an attorney.

An advanced directive may be revoked by a competent principal at any time by a signed, dated writing; physical cancellation or destruction of the document; an oral expression of intent to revoke; or by a materially different subsequently executed declaration.

1. End of Life Decisions – the "Living Will"

A "living will" or "advance directive" is a written document that provides guidance as to your wishes at the end of your life, when the addition or enhancement or withdrawal of a treatment would simply prolong your dying rather than your living. A "life prolonging procedure" means any medical procedure, treatment, or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous bodily



function (including the provision of nutrition and hydration. The living will instructs the principal's physician to provide, withhold or withdraw life-prolonging procedures, or to designate another to make the treatment decision for him, in the event that such person should be found to be incompetent and diagnosed as suffering from a terminal condition.

By directing that life prolonging procedures be withdrawn or withheld, the writer of a living will is **not** instructing that medical procedures which provide comfort or alleviate pain be withheld. There are many forms of living wills (not to be confused with so-called "living trusts" discussed above). Section 765.303, Florida Statutes, suggests, but does not require, the following format:

LIVING WILL

Declaration made this _____ day of _____, 20__, I, _____, willfully and voluntarily make known my desire that my dying not be artificially prolonged under the circumstances set forth below, and I do hereby declare that, if at any time I am incapacitated and

____(initial) I have a terminal condition

or ____ (initial) I have an end-stage condition

or ____ (initial) I am in a persistent vegetative state

and if my attending or treating physician and another consulting physician have determined that there is no reasonable medical probability of my recovery from such condition, I direct that life-prolonging procedures be withheld or withdrawn when the application of such procedures would serve only to prolong artificially the process of dying, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

It is my intention that this declaration be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and to accept the consequences for such refusal.

In the event that I have been determined to be unable to provide express and informed consent regarding the withholding, withdrawal, or continuation of life-prolonging procedures, I wish to designate, as my surrogate to carry out the provisions of this declaration:

Name: _____



Address: _____

_____ Zip Code: _____

Phone: _____

I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.

Additional Instructions (optional):

IN WITNESS WHEREOF, I have signed this Declaration on the day and year first above written.

_____ (signature)
Print Name: _____

The declarant is known to me and I believe [him/her] to be of sound mind. I am neither the spouse nor a relative of the declarant.

The declarant is known to me and I believe [him/her] to be of sound mind. I am neither the spouse nor a relative of the declarant.

_____ (signature)
Print Name: _____
Witness
Address: _____

Telephone: _____

_____ (signature)
Print Name: _____
Witness
Address: _____

Telephone: _____

You may wish to add the following language as to whether you wish nutrition and hydration be continued or withheld (the Florida Legislature several years ago came within a vote or two of providing that if you did not specifically authorize the withholding of nutrition and hydration, they could not be withheld – the bill did not pass – but be forewarned if this is important to you):

I desire that nutrition and hydration (food and water) be withheld or withdrawn when the application of such procedures would serve only to prolong artificially the process of dying.

Some prefer a more detailed advance directive, with many specific directions in various circumstances. A popular one is called "Five Wishes". Information about that form

may be obtained online from www.agingwithdignity.org. A copy of the statutory form including the above language is attached (**Form A**).

Note that the statutory form allows you to name another person who can be the advocate for your directions. That person is called a “surrogate” and may be a life partner or other friend.

An original signed copy of your living will should be provided to your physician and health care facility (if you are currently in the care of such a facility). You may also wish to provide several original, signed copies of your living will to your partner, or whomever you choose to name as your surrogate, so that in the event you are incapacitated, the Living Will can be provided to your physician and health care facility.

2. Designation of a Health Care Surrogate

Under current Florida law, a same-sex partner has no inherent right to participate in decision making in the area of health, life, and death decisions and has no right to obtain or provide healthcare information in the event of an emergency or life-threatening condition, or in the event of temporary or permanent incapacity.

A Health Care Surrogate can be designated to act for you if you are unable to act for yourself in matters relating to your health. Sometimes this is confused with a “living will”, but a living will is designed to be used only at the end of life. A Health Care Surrogate may need to make health care decisions for you having nothing to do with impending death.

You can name anyone, including your partner, as your “health care surrogate.” Also, you can name *alternate* surrogates, in case your first choice is unable or unwilling to perform his or her duties.

Rights and Responsibilities of the Surrogate

A Health Care Surrogate, unless your document expressly limits his or her authority, will have the authority:

- to make all health care decisions for you while you are incapacitated, including consulting with health care providers to provide informed consent for treatment or the withholding of treatment, the authority to provide consent to a physician’s order not to resuscitate
- to be provided access to your medical records
- to apply on your behalf for public benefits, including Medicare and Medicaid





- to have access to information regarding your income and assets and your financial and banking records sufficient to make such application and may authorize the release of information and medical records to insure the continuity of your health care, and
- to authorize your admission, transfer or discharge from health care facilities.

It is the duty of the health care surrogate to make the health care decisions the surrogate believes the principal would make under the circumstances if he or she were capable of making the decision.

What Events Trigger the Authority of the Surrogate

An attending physician can enter an evaluation in your medical records that it is believed that you do not have the capacity to provide informed consent in regard to health care questions. If an attending physician has a question as to whether you lack capacity, another physician will evaluate you, and if the second physician agrees that you lack the capacity to make health care decisions or provide informed consent, the health care facility enters both physicians' evaluations into your medical records and is required then to notify your Health Care Surrogate, if one has been designated and that is made known to the facility, that his or her authority under the Designation instrument has commenced. A surrogate steps in and makes decisions **only** after the principal is incapacitated and unable to make health care decisions. Once the principal regains capacity, the surrogate's decision-making authority ceases.

Requirements of a Health Care Surrogate Designation

Section 765.203, Florida Statutes, sets out a form for a Designation of Health Care Surrogate which reads as follows:

DESIGNATION OF HEALTH CARE SURROGATE

Name: _____ (Last) _____ (First) _____ (Middle Initial)

In the event that I, have been determined to be incapacitated to provide informed consent for medical treatment and surgical and diagnostic procedures, I wish to designate as my surrogate for health care decisions:

Name: _____
 Address: _____ Zip Code: _____
 Phone: _____

If my surrogate is unwilling or unable to perform his duties, I wish to designate as my alternate surrogate:

Name: _____
 Address: _____ Zip Code: _____
 Phone: _____



I fully understand that this designation will permit my designee to make health care decisions and to provide, withhold, or withdraw consent on my behalf; to apply for public benefits to defray the cost of health care; and to authorize my admission to or transfer from a health care facility.

Additional instructions (optional):

I further affirm that this designation is not being made as a condition of treatment or admission to a health care facility. I will notify and send a copy of this document to the following persons other than my surrogate, so they may know who my surrogate is.

(signature)
Print Name: _____
Designator

The foregoing Designation of Health Care Surrogate was acknowledged before us by the Designator, whose signature appears above, on the ____ day of _____, 20__.

(signature)
Print Name: _____
Witness
Address: _____

Telephone: _____

(signature)
Print Name: _____
Witness
Address: _____

Telephone: _____

Florida law does not require that the Section 765.203 form be followed, saying that it "may, but need not be" in that form. The advantage of executing a Designation in the statutory form, or something very close to it, is that health care providers in Florida will be accustomed to it. In any event, to be effective your Designation of Health Care Surrogate must be in writing and must be signed by you and also two subscribing adult witnesses who were in your presence when you signed it. (Notarization is not required.) An exact copy of the Designation must be provided to your surrogate (and to any alternate surrogate whom you name). The surrogate may not be one of the witnesses, and at least one witness must not be a blood relative of yours.

There is anecdotal evidence that some providers have refused to give surrogates access to medical records, citing privacy laws. Accordingly, you may wish to add the following language to your Designation:



HIPAA Release Authority

I intend for my surrogate (and alternate surrogate) to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (a/k/a HIPAA), 42 U.S.C. 1320d and 45 C.F.R. 160-164. I authorize:

any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health-care provider, any insurance company and the Medical Information Bureau, Inc., or other health-care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services,

to give, disclose and release to my surrogate, without restriction,

all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse.

The authority given my surrogate shall supersede any prior agreement that I may have made with my health-care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my surrogate has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health-care provider.

You may also wish to include a specific statement in your Designation of Health Care Surrogate that your surrogate (and anyone else your surrogate names) shall have the right to visitation while you are confined in any health care facility – hospital, rehabilitation facility, assisted living facility and nursing home. Hopefully, this will become less of an issue once President Obama's April 15, 2010, Memorandum and the resulting rules from Health and Human Services take effect.

A form of Health Care Surrogate Designation, including the express right of visitation and HIPAA Release Authority, is attached (**Form B**).

At least one original executed copy of your Designation of Health Care Surrogate should be provided to each named surrogate. If you designate someone other than your partner as your Health Care Surrogate, you may also wish to provide your Designation of Health Care Surrogate to your partner or other trusted person, so that in the event you are incapacitated, your partner can contact the surrogate and provide a copy to your physician and/or health care facility.



3. Do Not Resuscitate Order

In addition to designating a surrogate and executing a living will, a person may choose to issue a "do not resuscitate order." Emergency medical service personnel will honor a "do not resuscitate order" if the appropriate Department of Health Do Not Resuscitate Order, or "yellow form," is signed by the individual or the individual's health care representative and by a physician and is presented to the emergency medical services personnel when responding to a call for assistance. Unless it is revoked, it is legally valid and does not need to be periodically renewed. Every person is presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless there is consent to the issuance of a do-not-resuscitate order as provided by Florida law.

4. Durable Power of Attorney

The importance of a "durable" power of attorney, which is established by statute, as contrasted with a common law power of attorney is that the durable power is in force (if not revoked by the person who gave it) unless and until a court of competent jurisdiction declares the person to be legally incapacitated. The common law power of attorney, on the other hand, could be questioned at any time, forcing the person who gave it to prove that he or she still had mental capacity. Florida law has recognized durable powers of attorney since 1974 (Florida Statutes, Section 709.08). Initially, they were referenced as durable family powers of attorney, limiting those who could serve as attorneys-in-fact. There is not that limitation today. Any "natural" person who is 18 years of age or older and is of sound mind can serve as an attorney-in-fact under a durable power of attorney, as can any financial institution having a place of business in Florida and authorized to conduct trust business in the State.

Legal Requirements

Durable powers of attorney must be witnessed by two persons and also notarized and can be recorded in the public records of any county in Florida (but there is no requirement for recording). You should seek assistance from a lawyer licensed to practice law in Florida to prepare a durable power of attorney for you. Discuss with the lawyer the powers that you wish to give your attorney-in-fact. It is usually wise to give very broad powers so that your attorney-in-fact can act under whatever circumstances may occur. Examples of powers are listed in Section 709.08 Florida Statutes, and include the authority to execute stock powers or similar documents in the name of the principal and the authority to convey real property in the name of the principal.

As noted, a number of powers are presumed, but the better practice is to spell out in detail the powers you wish your attorney-in-fact to have. It is permissible to include specifically among the powers given to your attorney-in-fact in a durable power of attorney the power to make all health care decisions on your behalf, but the better practice is to execute a separate Designation of Health Care Surrogate which is discussed above.



Unless you expressly authorize your attorney-in-fact to create, amend, modify or revoke any document or other disposition that would be effective at your death and to have the right to transfer assets to a trust you created, the durable power of attorney will not include those rights. See Section 709.08(7)(b), Florida Statutes, for other limitations on the attorney-in fact's powers.

In terms of planning ahead, it is helpful to execute a power of attorney so that if you are not able to conduct your business on your own, whether through travel or illness, someone else whom you designate would be able to do so for you.

Durable powers of attorney are very powerful documents. Accordingly, do not name an attorney-in-fact in whom you do not have great confidence! Because of the wide and financial power granted to an attorney-in-fact, and because an attorney-in-fact can act on your behalf from the grant of authority specified in the document, extreme caution should be used before you grant someone else the power of attorney. You only should grant a power of attorney if you fully trust that your attorney-in-fact will not misuse the power over your property, now or ever.

Revocation

You may revoke any durable power of attorney you make, but for the revocation to be effective, it must be in writing and must be served (by any form of mail that requires a signed receipt or by personal delivery in the same manner as service of process for a law suit) upon the attorney-in-fact and any third persons relying upon the durable power of attorney. Particularly if you have previously recorded your power of attorney in the public records, be certain that you also record the revocation (in which case it should be witnessed and notarized as was the power of attorney).

Even though you execute a Durable Power of Attorney in accordance with Florida law, still you may find that some banks, brokerage houses, real estate title insurance companies, or other entities will not honor it. Frequently this is because they have their own forms that have been approved by their management or general counsel, and the "line" person you are dealing with is uncomfortable with anything other than the form in the corporate manual. Thus, it is highly recommended that in addition to executing a Durable Power of Attorney in accordance with Florida law you should take a copy of it to your banks or brokers, show it to them and ask if they will honor it. If they say "no" because it is not on their form, then sign their form as well – just be sure that it is consistent with the statutory form you signed (i.e., you do not want to name one attorney-in-fact on the statutory form and someone else on the bank form).

5. Declaration of a Pre-Need Guardian

If you have in place an effective Durable Power of Attorney and an effective Health Care Surrogate Designation, hopefully it will never be necessary that a court appoint a guardian for you. However, any Florida resident, believing that you lack capacity, mental or



physical or both, to handle yourself and your affairs, can petition a court to have you declared "incapacitated" (a term that replaced "incompetent" in Florida law some years ago). While you will have a right to a lawyer, this petition will trigger the appointment of a three-person examining committee (made up of health professionals and appointed by the court) to advise the court as to whether you are in fact incapacitated, and if the court finds that you are, the court will appoint a guardian for you. In that case, it may be very important that you, while competent, have previously signed (in the presence of at least two attesting witnesses present at the same time) a written declaration naming a pre-need guardian. You may name a guardian for your "person" (to make personal decisions for you) and/or for your "property" (to handle your "business" affairs), and it need not be the same person. You may (but are not required) to file the Pre-Need Guardian Declaration with the Clerk of the Court (in most counties, with the Probate Division, sometimes with a "Mental Health Division"), but in any event it should be produced to the court if someone files a petition alleging your incapacity. Production of such a declaration in a proceeding for incapacity "shall constitute a rebuttable presumption that the preneed guardian is entitled to serve as guardian" (Section 744.3045, Florida Statutes). The court is not bound to appoint that person but only if the preneed guardian is found to be unqualified to serve as a guardian.

Qualifications of the Pre-Need Guardian

A very important limitation in Florida regarding guardians is that while any resident of Florida who has not had his/her own rights removed and is 18 years of age or older may serve as a guardian, a non-resident may only be appointed a guardian of a Florida resident if related by lineal consanguinity to that person, a legally adopted child or adoptive parent of the person, a spouse, brother, sister, uncle, aunt, niece or nephew of the person, or someone related by lineal consanguinity to any such person or the spouse of a person otherwise so qualified. In other words, an out-of-state friend or partner may not serve as your guardian if you are a Florida resident. If your choice for guardian is out of state and not a "relative" as defined above, you have a heightened need for an effective Durable Power of Attorney and an effective Designation of Health Care Surrogate as discussed above (for neither of which is there a residency requirement) so that hopefully there will never be a need for a guardian to be appointed for you even though you become, in fact, incapacitated.

Designating Pre-Need Guardians for Minor Children

You should consult with a lawyer if you wish to designate a pre-need guardian. If you have minor children, you can, and probably should, sign pre-need guardian designations for them as well. If their other parent is living, the court will almost always prefer that other parent to anyone else you name, but still you should consider making a designation because at your death the other parent may not be qualified to serve, may decline to serve or may not be living.

6. Planning Your Own Funeral

There are good reasons for same-sex partners to make and pay for your own burial arrangements. Most importantly, it increases the likelihood that your wishes will be honored in death, particularly if they are at odds with those of your biological family. Also, you relieve



your partner and family of a financial burden at a time when they are most vulnerable, as all too often bereaved partners and family members feel guilty about economizing on a funeral of a relative.

Although most funeral directors and cemetery representatives operate ethically, some do not. Some funeral directors may try to insist that you purchase services you do not need to increase their profits. Even the wisest person is vulnerable to exploitation at a time of loss. It is always wise to consult someone who is not grieving when making decisions concerning funeral arrangements. Do not allow yourself to be rushed into making decisions. You have the **right** to take all contracts and informational brochures home with you for close examination. **Never** sign anything you have not examined closely or do not **fully** understand.

Funeral Expenses

The ceremony you choose can be based upon religious and practical considerations. For many, the simplest and least expensive way is by cremation with your ashes either returned to your next of kin or scattered.

If you choose a traditional burial, you may need to make two contracts - one with the funeral home and one with the cemetery. Many cemeteries operate their own funeral homes enabling you to take care of funeral requirements with only one contract, eliminating secondary and hidden costs. Funeral home expenses are usually divided into two portions; charges for professional services (such as preparation of the body) and the cost of a casket. Embalming is not required by law. Because professional service fees vary you should shop around for a funeral home. Ask to see the least expensive casket if you wish, as it may not be on display. How expensive the funeral is will be largely determined by the price of the casket you choose. In addition to the casket, the funeral home will charge you for removal of the body, embalming, any private viewing, transportation to and from funeral services outside the funeral home, transportation to the cemetery and for attendants. Funeral directors are required by State law to give you an itemized cost breakdown of **all** funeral expenses. Be sure to ask for it before you contract for services.

Cemetery Expenses

Many people choose below-ground burial. This type of interment is costly because it includes expenses for opening and closing the grave, grave vault or liner, marker for the grave, and endowment care (future grave-site maintenance fees).

The grave site is priced according to its location in the cemetery. The gravestone can be purchased at a private monument firm, but make sure that it meets cemetery specifications. The cemetery will charge a setting fee.



Different Ways of Paying

As you can see, traditional below-ground burial is costly (approximately \$5,000) and can require complex decision making by your family at a time of great emotional stress. Accordingly, you may want to consider cremation to protect your survivors from both financial and emotional distress. As with every other contract you enter into, a burial contract needs to be negotiated very carefully to make sure that the final payment is not more than anticipated. Take a friend with you for support when you go to the funeral home so that you are not intimidated into spending more than planned.

Preneed contract: Florida law requires that all money paid for preplanned funerals be placed in trust. The money from the trust fund will be paid to the funeral director upon receipt of proof that services were carried out in conformance with your wishes. By law you must be able to get your money back from the trust if you decide to cancel the contract within 30 days. Thereafter the refund may be subject to liquidated damages in certain percentage amounts allowable by state law and stated in the contract. Likewise, if the funeral services are not performed, the entire amount shall be reimbursed within 30 days.

Membership in a Burial Society: There are both for-profit and not-for-profit burial societies that provide simple ceremonies (usually cremation) for a membership fee. The balance of the purchase price can be negotiated either as a pre-paid or post-paid contract, with the bulk of the money to be paid out of your estate after death.

7. Organ and Body Donation

You can perform a public service and avoid costs by donating your body to a medical school and your organs to someone that needs them. Organ donation means that you can live on in a special way by saving the life of someone in need of an organ transplant. You may be able to donate a heart, kidneys, or some other organ if you so request. Organ transplants are done at no cost to the donor; the recipient hospital will cover the cost of donation. Following organ donation, the family of the deceased may hold funeral and memorial services. To become part of the donor program, you may sign the State of Florida Organ Donor Registry form in the presence of two subscribing witnesses. It must then be returned to the Department of Motor Vehicle Office or returned to the Tallahassee address on the Florida Organ Registry brochure. That brochure is available online at www.fdhc.state.fl.us/MCHQ/Health_Facility_Regulation/Organ_Donors/Regform.html, or by calling the Agency for Healthcare Administration at (888) 419-3456. A donor card can be found online at www.myflorida.gov. You may also indicate such intent on your driver's license at time of renewal. In addition, you may register for organ donation on-line Donate Life Florida - a non-profit 501(c)3 organization contracted by the State of Florida, Agency for Health Care Administration to create the state's organ, tissue and eye donor registry (<https://www.donatelifeflorida.org>). Where you register on-line or via license renewal or otherwise, you may change your mind or the terms of your donation at any time.

C. CHILDREN

1. Declaration of a Pre-Need Guardian for Minor

Just as you can make a declaration of who you wish the Court to appoint as your Guardian in the event of your incapacity, you can also declare who your minor child's guardian should be upon your death or incapacity. This declaration must provide the minor's name, date of birth, and social security number, and must be filed with the Clerk of Circuit Court. A guardian can be designated for the minor's person, the minor's property, or both. Residency restrictions apply to anyone who is not a Florida resident. A guardian must be a Florida resident or a legally recognized "family" member as discussed in the qualifications of pre-need guardians above.

2. Medical Power of Attorney for Minor

A medical power of attorney allows a parent to designate other persons who are authorized to consent to medical care or treatment of his or her minor child. This document, authorized by Florida Statutes Section 743.0645, is used only if the treatment provider, after a reasonable attempt, is unable to reach the parent with legal power to consent to medical care. A medical power of attorney gives the designee power to consent to medically necessary surgical and general anesthesia services for the minor child, unless such services are specifically excluded by the individual executing the power of attorney.

3. Children and Financial Resources

Even if you declare a guardian for your minor child before your death, there remains a concern as to how to ensure that your financial resources go to your minor child's care. If you have a minor child and have financial resources or insurance that you want to be sure benefit your child in the event of your death, it is strongly advised that you consult an attorney to carry out your wishes.

4. Non-Biological Children

Florida's limitations on a gay parent adopting a child are discussed at the beginning of this Handbook. Obviously, however, a same-sex couple's family unit may include the individual partners' biological children. Granting the non-biological parent authority over and access to the children will vary depending upon the family's circumstances, including whether the children have another biological parent whose parental rights have not been terminated.

The partner's concerns with the children likely encompass the practicalities of day-to-day life. The biological parent may want to contact the children's schools, day-cares, health care providers, religious centers, after-school lesson providers, activity directors, and even friends' parents and carpoolers, and give the biological parent's permission to release the child and





the child's records to the biological parent's partner. Many of these entities will have their own forms that they will ask to be completed, by either or both of the children's biological parents. Ask for the forms, and be sure to keep copies of the completed forms for your records.

5. Other Practical Considerations

Because of the inability to adopt and marry, gay parents should consider obtaining life insurance – or increasing the limits of existing coverage -- if they can afford it. Keep in mind that in the event of the death of a partner with children, the surviving partner will not get survivor benefits from Social Security – which could be quite substantial – particularly when taken over a long period of time. There's also the consideration that a surviving partner and non-biological children are not "survivors" under Florida law, so if a parent is killed, for example in an accident of some kind where another party is at fault, the surviving partner and children will not be able to sue and recover for their own damages (the estate of the deceased partner could -- but damages would be much less than providing for partner and minor children). Thus, a complete financial analysis may suggest that adoption in another state overall could be cost effective when you consider all the attendant factors, costs and risks.

III. REFERENCE AND REFERRAL INFORMATION

Guardianship

Guardianship, often confused with the Guardian Ad Litem program, is the process designed to protect and exercise the legal rights of individuals whose functional limitations prevent them from being able to make their own decisions, and they have not made plans for this time in their life. People who need guardianship may have dementia, Alzheimer's disease, a developmental disability, chronic mental illness or other such conditions that generally cause functional limitations. Before a guardianship is established, it must first be determined that the alleged incapacitated person lacks capacity. Generally, there are three types of guardians in Florida. If a court determines a person needs a guardian and that person has family or friends that can serve, then the court may appoint that family or friend. Note, however, the restrictions on non-residents; the same limitations apply to non-residents who may serve as guardians as set forth in the qualifications for pre-need guardians above. These people are considered non-professional guardians. If the incapacitated person does not have a loved one that can and will serve but they have assets, the court may appoint a professional guardian. If the incapacitated person does not have family or friends and is of limited financial means, then the court may appoint a public guardian, if available. In Florida, the Statewide Public Guardianship Office designates Offices of Public Guardian.

A current list of local offices may be found on the Statewide Public Guardianship Office web page at: <http://elderaffairs.state.fl.us>



If you have further questions about public guardianship or would like information on how to become a professional guardian, you may contact the Statewide Public Guardianship Office at (850) 414-2000 or write to:

Statewide Public Guardianship Office
4040 Esplanade Way Suite 360-I
Tallahassee, Fl. 32399-7000
<http://elderaffairs.state.fl.us>

Legal Problems

Every citizen in Florida should seek representation by an attorney in a civil lawsuit, whether the citizen is suing to uphold a right they claim, or whether the citizen is being sued. Civil lawsuits are cases other than those in which a citizen is charged with criminal activity by the state or local government. If you have a civil legal problem, but cannot afford to hire a private attorney to represent you, you may be able to obtain an attorney through your local legal aid or legal services organization, which provides free legal services to those in need. In criminal cases, the court will appoint a lawyer if you qualify.

Remember, legal problems have time limits, after the expiration of which your rights may be lost. Therefore, immediately contact a lawyer for assistance. The following are places you may wish to contact.

Legal Services and Legal Aid

Legal Aid and Legal Services offices can advise you in most areas of civil law, for example: consumer cases; employment cases; landlord/tenant cases; food stamp cases; health cases; social security; public welfare benefits; and family law matters such as dissolutions of marriage.

Legal Aid and Legal Services are meant for persons of low income who cannot afford an attorney. Most Legal Aid and Legal Services offices base their eligibility criteria on both the income of the applicant and the size of the family of the person seeking assistance, and sometimes on other additional criteria, such as being **60 years old or older**. In order to determine whether or not you would qualify for Legal Aid or Legal Services, it is necessary for you to contact the local Legal Aid or Legal Services office. The best information on Legal Aid or Legal Services offices and whether it handles your particular legal need, addresses of all offices, hours of operation, financial qualifications, and other valuable information is found at www.FloridaLawHelp.org.



MUNICIPALITY ORDINANCE	PROTECTED CATEGORIES																				
	Sexual Orientation	Gender Identity	Sex / Gender	Age	Race	Racial Profiling	Physical Characteristics	Color	Mat. Origin / Ancestry / Ethnic Origin / Birth Place	Citizen	Marital Status	Familial Status	Domestic Relation Status	Parental Status	Pregnancy	Disability / Handicap	Source of Income	Political Affiliation	Religion / Creed	Veteran Status	Relation with Person Affected
Broward Chapter 16-1.2	X	X	S	X	X		X	N		X	X				D		X	R			
City of Miami City Charter "Citizen's Bill of Rights"	X	X	S		X	X	X	N			X	X	X				X	R	C		
Dunedin Chapter 42	X	X	S		X		X	NA											R		
Gainesville Chapter 8	X	X	G	X	X		X	N		X					D				R		
Gulfport Chapter 26	X	X	G	X	X	X	X	NA		X	X				D				R		
Juno Beach Res. 2007-02, Art. I, Sect. 8	X	X	S	X	X		X	N	X	X	X				D		X	R			
Key West Chapter 38	X	X	S		X		X	NAB		X	X		X		H	X			R		
Lake Worth Chapter 20	X	X	S	X	X		X	N		X					H				R		
Largo Chapter 14	X	X	S	X	X		X	NAB		X	X			X	X				R	X	
Leon Co. Chapter 9	X	X	S	X	X		X	NA		X	X				H				R		
Miami Beach Chapter 62	X	X	G S	X	X		X	N		X	X				D				R		
Miami-Dade Co. Chapter 11A	X		S	X	X		X	NA		X	X			X	D	X			R		
Monroe Co. Chapter 14	X	X	S	X	X		X	NA			X				D				R		
Oakland Park Chapter 2	X		S	X	X		X	AN									X	R	C		
Orange Co. Chapter 22	X	X	S	X	X		X	N			X				D				R	X	
Orlando Chapter 57	X		S	X	X		X	N		X	X		X		H				R		
Palm Beach Co. Chapter 15	X	X	S	X	X		X	N		X	X				D				R		
Pinellas Co. Chapter 70	X		S	X	X		X	N		X					D				R		
Sarasota Chapter 18	X		G	X	X		X	N		X	X				D				R	X	
St. Petersburg Chapter 15	X		S	X	X		X	NBA		X	X				H				R		
Tallahassee	X	X	S	X	X		X	NE		X	X				H				R		
Tampa Chapter 12	X	X	S	X	X		X	N		X	X				H				R		
Tequesta *	X	X	G	X	X		X	NA		X	X			X	D		X	R	X		
West Palm Beach Chapter 42	X	X	S	X	X		X	N		X	X				D				R		
Wilton Manors Chapter 2 Sec. 269-272	X	X	G	X	X		X	NA		X	X			X	D		X	R	C	X	X

* City or Village Employment Discrimination Policy includes sexual orientation and gender identity
FOR THE MOST UP-TO-DATE INFORMATION ON LOCAL POLICIES
PLEASE VISIT: [HTTP://EQFL.ORG/ISSUES/HRO.HTML](http://EQFL.ORG/ISSUES/HRO.HTML)



MUNICIPALITY ORDINANCE	WHAT'S COVERED									Public/ Private Empl	LINK TO ORDINANCE	
	Employment	Public Accommodations	RE Transactions	Housing	Credit / Financing	Education	Financial Assistance	City Contracts	All City Actions			Family Leave
Broward Chapter 16-1/2 City of Miami City Charter "Citizen's Bill of Rights"	X	X	X		X						Public/ Private	http://library.municode.com/HTML/10288/level2/PTIICOOR_CH16.5HURI.html
Dunedin Chapter 42		X									Public/Private	http://library8.municode.com/default-test/home.htm?infobase=10668&doc_action=whatsnew
Gainesville Chapter 8	X	X	X	X	X						Private	http://library.municode.com/HTML/10819/level2/PTIICOOR_CH8DI.html
Gulfport Chapter 26	X	X	X	X		X					Public/ Private	http://library8.municode.com/default-now/home.htm?infobase=10976&doc_action=whatsnew
Juno Beach Res. 2007-02, Art. I, Sect. 8	X										Public	http://www.juno-beach.fl.us/vertical/Sites/%7B88BB90E0-AD94-4F43-B7CD-B77E19081932%7D/uploads/%7BB998-A0F9-4E2D-8828-2993B96C1C20%7D.PDF
Key West Chapter 38	X	X		X	X						Public/ Private	http://library.municode.com/HTML/10053/level2/SA_C38.html
Lake Worth Chapter 20	X	X	X	X	X						Public/Private	http://library.municode.com/HTML/10091/level2/PII_C20.html
Largo Chapter 14	X			X							Public/Private	http://search.municode.com/html/13786/level1/PII.html
Leon Co. Chapter 9	X	X	X	X	X						Public/Private	http://library8.municode.com/default-now/home.htm?infobase=10008&doc_action=whatsnew
Miami Beach Chapter 62	X	X		X	X						Public/ Private	http://library.municode.com/HTML/13097/level2/SA_C62.html
Miami-Dade Co. Chapter 11A	X	X		X	X					X	Public (Dade Co. Empl. only) Public/ Private	http://library.municode.com/HTML/10620/level2/PTIICOOR_CH11ADI.html
Monroe Co. Chapter 14	X	X	X	X	X						Public/ Private	http://library.municode.com/HTML/14298/level2/PTIIGFOR_CH14HURE.html
Oakland Park Chapter 2	X										Public	http://library.municode.com/index.aspx?clientId=10938&stateId=9&stateName=Florida
Orange Co. Chapter 22				X	X						Public/ Private	http://library.municode.com/HTML/10182/level2/PTIIORCOCO_CH22HURI.html
Orlando Chapter 57	X	X	X	X	X						Public/ Private	http://library.municode.com/HTML/13349/level2/PTIICICO_CH57DI.html
Palm Beach Co. Chapter 15		X	X	X	X						Public/ Private	http://library8.municode.com/default-test/home.htm?infobase=10323&doc_action=whatsnew
Pinellas Co. Chapter 70	X	X	X	X							Public/Private	http://library.municode.com/HTML/10274/level2/PII_C70.html
Sarasota Chapter 18	X	X	X	X	X						Public/ Private	http://library8.municode.com/default-test/home.htm?infobase=11553&doc_action=whatsnew
St. Petersburg Chapter 15	X	X	X	X							Public/ Private	http://library.municode.com/HTML/11602/level2/PTIISTPECO_CH15HURI.html
Tallahassee	X	X	X	X							Public/Private	http://library.municode.com/HTML/19980/level2/PTIICOGFOR_CH11HURI.html
Tampa Chapter 12	X	X	X	X							Public/ Private	http://library.municode.com/HTML/10132/level2/CODE_C12.html
Tequesta	X										Public	http://library8.municode.com/default-test/home.htm?infobase=13868&doc_action=whatsnew
West Palm Beach Chapter 42	X	X		X	X						Public/ Private	http://library.municode.com/HTML/10017/level2/PTIICOOR_CH42HURE.html
Wilton Manors Chapter 2 Sec. 269-272	X					X	X				Public	http://library8.municode.com/default-test/home.htm?infobase=11820&doc_action=whatsnew

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IV. FORMS

A. LIVING WILL: Florida Statute § 765.303 Form (Modified as Discussed in above Text)

LIVING WILL

Declaration made this ____ day of _____, 20__, I, _____, willfully and voluntarily make known my desire that my dying not be artificially prolonged under the circumstances set forth below, and I do hereby declare that, if at any time I am incapacitated and

____(initial) I have a terminal condition

or ____ (initial) I have an end-stage condition

or ____ (initial) I am in a persistent vegetative state

and if my attending or treating physician and another consulting physician have determined that there is no reasonable medical probability of my recovery from such condition, I direct that life-prolonging procedures be withheld or withdrawn when the application of such procedures would serve only to prolong artificially the process of dying, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

It is my intention that this declaration be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and to accept the consequences for such refusal.

In the event that I have been determined to be unable to provide express and informed consent regarding the withholding, withdrawal, or continuation of life-prolonging procedures, I wish to designate, as my surrogate to carry out the provisions of this declaration:

Name: _____

Address: _____

_____ Zip Code: _____

Phone: _____



I understand the full import of this declaration, and I am emotionally and mentally competent to make this declaration.

Additional Instructions (optional):

I desire that nutrition and hydration (food and water) be withheld or withdrawn when the application of such procedures would serve only to prolong artificially the process of dying.

IN WITNESS WHEREOF, I have signed this Declaration on the day and year first above written.

_____ (signature)
Print Name: _____

The declarant is known to me and I believe [him/her] to be of sound mind. I am neither the spouse nor a relative of the declarant.

The declarant is known to me and I believe [him/her] to be of sound mind. I am neither the spouse nor a relative of the declarant.

_____ (signature)
Print Name: _____
Witness _____
Address: _____

Telephone: _____

_____ (signature)
Print Name: _____
Witness _____
Address: _____

Telephone: _____



B. DESIGNATION OF HEALTH CARE SURROGATE: Florida Statute Form § 765.203 (INCLUDING OPTIONAL SECTIONS DISCUSSED ABOVE)

DESIGNATION OF HEALTH CARE SURROGATE

Name: _____ (Last) _____ (First) _____ (Middle Initial)

In the event that I, have been determined to be incapacitated to provide informed consent for medical treatment and surgical and diagnostic procedures, I wish to designate as my surrogate for health care decisions:

Name: _____
Address: _____ Zip Code: _____
Phone: _____

If my surrogate is unwilling or unable to perform his duties, I wish to designate as my alternate surrogate:

Name: _____
Address: _____ Zip Code: _____
Phone: _____

I fully understand that this designation will permit my designee to make health care decisions and to provide, withhold, or withdraw consent on my behalf; to apply for public benefits to defray the cost of health care; and to authorize my admission to or transfer from a health care facility.

Additional instructions (optional):

HIPAA Release Authority. I intend for my surrogate (and alternate surrogate) to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (a/k/a HIPAA), 42 U.S.C. 1320d and 45 C.F.R. 160-164. I authorize:

any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health-care provider, any insurance company and the Medical Information Bureau, Inc., or other health-care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to my surrogate, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or



mental health condition, including all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse.

The authority given my surrogate shall supersede any prior agreement that I may have made with my health-care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my surrogate has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health-care provider.

Visitation Rights of Surrogate. The above designated health care surrogate (and anyone else the named surrogate names) shall have the right to visit me while I am confined in any health care facility - hospital, rehabilitation facility, assisted living facility or nursing home.

I further affirm that this designation is not being made as a condition of treatment or admission to a health care facility. I will notify and send a copy of this document to the following persons other than my surrogate, so they may know who my surrogate is.

_____ (signature)
Print Name: _____
Designator

The foregoing Designation of Health Care Surrogate was acknowledged before us by the Designator, whose signature appears above, on the ___ day of _____, 20__.

(signature)
Print Name: _____
Witness
Address: _____

Telephone: _____

(signature)
Print Name: _____
Witness
Address: _____

Telephone: _____



**C. SELF-PROVING WILL SIGNATURES:
Florida Statute § 732.503**

Florida Statute Section 732.503 provides that a will may be made self-proved by notarized signatures "in substantially the following form":

I, _____, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

Testator

We, _____ and _____, have been sworn by the officer signing below, and declare to that officer on our oaths that the testator declared the instrument to be the testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the testator and of each other.

Witness

Witness

Acknowledged and subscribed before me by the testator, _____ (type or print testator's name), who is personally known to me or who has produced _____ (state type of identification - see § 117.05(5)(b)2.) as identification, and sworn to and subscribed before me by the witnesses, _____ (type or print name of first witness) who is personally known to me or who has produced _____ (state type of identification - see § 117.05(5)(b)2.) as identification and _____ (type or print name of second witness) who is personally known to me or who has produced _____ (state type of identification - see § 117.05(5)(b)2.) as identification, and subscribed by me in the presence of the testator and the subscribing witnesses, all on _____ (date).

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*Special thanks to all those at Carlton Fields, P.A.
and at Equality Florida, including its volunteer advisors,
who contributed to the drafting and editing of this handbook.*

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Equality Florida is the largest civil rights organization dedicated to securing full equality for Florida's statewide lesbian, gay, bisexual, and transgender community. We work to change Florida law so that no one suffers harassment or discrimination on the basis of sexual orientation or gender identity and expression.

Please consider Equality Florida when planning your estate. If you would like more information regarding planned giving, please contact Nadine Smith at 813-870-EQFL (3735).

www.eqfl.org

SJCSB-DA PRR 001678

DE 152-42



About Stonewall National Education Project

Stonewall National Education Project, a project of **Stonewall National Museum & Archives**, shares and implements LGBTQ inclusive policies and practices through a national network of educators. The 40-year-old **Stonewall Museum** is a resource that integrates historically-relevant, accurate information about LGBTQ history and culture into the fabric of American history. As part of the larger movement for equality of all people, **Stonewall National Education Project** is an advocate for the safety, inclusion and value of LGBTQ students, with the focus of improving student image, attendance and graduation rates.



FOR IMMEDIATE RELEASE

January, 2014

Emery Grant

Director of Community Engagement

P: 954-763-8565 E: emery@stonewall-museum.org

The Stonewall National Education Project hosts 2014 National Education Symposium on LGBT Youth

Second Annual Symposium Expands to 30 School Districts

FOR IMMEDIATE RELEASE - Fort Lauderdale, FL — The Stonewall National Education Project (SNEP), a project of the Stonewall National Museum & Archives will host its **2014 National Symposium on Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth on March 3-5, 2014 in Los Angeles, California**. The symposium is endorsed by the L.A. Gay & Lesbian Center, GSA Network, and HRC Welcoming Schools. Administrators and teachers representing grades are invited to attend. The symposium costs \$350 per person and includes sessions and meals. A limited number of scholarships are available to subsidize travel and lodging expenses. To register, visit <http://www.stonewallnationalmuseum.org/education/programs>.

Following up on the success of its inaugural 2013 National Symposium on LGBTQ Youth in Fort Lauderdale, Florida, SNEP will travel to Los Angeles in 2014 **or its second annual symposium. Doubling its attendance, more than 30 school districts will attend, showing great diversity in participation from across the US**. For three days, the second annual symposium widens its scope with a two-tiered menu of workshops, speakers and breakout sessions tailored for school districts that are at the forefront of the LGBT-inclusive education movement, in addition to those school districts that are just getting started in their consciousness-raising efforts. Returning participants including Broward County, FL; Los Angeles, CA; Washington, DC; Miami, FL; Minneapolis, MN; New York, NY. In addition to the ongoing theme of sharing best practices, district-to-district through a national network of educators, symposium workshops will focus on three pillars: LGBT safety, policy, and curriculum. The range of district attending includes Tulsa, OK; Ann Arbor, MI; San Francisco, CA; Chicago, IL; Charlotte, NC; Madison, WI; Clark County, NV; Cleveland, OH, and more.

"Our second national Symposium is remarkable because of the incredible diversity of participants and guests--classroom teachers to state department of education reps; novices to experts in the field; college professors, medical doctors, popular authors," says Jessica Herthel, Director, Stonewall National Education Project. "Yet what we all have in common is the belief that we have something to learn from one other's experiences, and that the work of keeping our LGBTQ students, staff, and families safe is best undertaken en masse. With so many smart and passionate individuals from across the country networking in the same room, successful collaborations are inevitable."

Stonewall National Education Project, a project of **Stonewall National Museum & Archives**, shares and implements LGBTQ inclusive policies and practices through a national network of educators, using a district-to-district model. The 40-year-old **Stonewall Museum** is a resource that integrates historically-relevant, accurate information about LGBTQ history and culture into the fabric of American history. As part of the larger movement for equality of all people, **Stonewall National Education Project** is an advocate for the safety, inclusion and value of LGBTQ students, with the focus of improving student image, attendance and graduation rates.

Now in its 40th Anniversary year, **Stonewall National Museum and Archives** (SNMA) is a nonprofit, tax-exempt 501(c) (3) that promotes understanding through preserving and sharing the proud culture of lesbian, gay, bisexual and transgender people and their significant role in society. For a full calendar of events and to learn more about SNMA's programs, including the Stonewall Education Project and SNMA Historic LGBT Landmark Program, visit stonewall-museum.org or facebook.com/stonewallmuseum.

###



A Project of Stonewall National Museum & Archives

What is the education project?

- A **national network of educators** facilitating the sharing and implementation of LGBTQ inclusive policies and practices in the public school system
- A **museum resource center** for school districts to help integrate LGBTQ history and culture into the fabric of American history
- An **advocacy movement** helping LGBTQ students feel safe, included and valued while improving student image, attendance and graduation rates

What does it do?

- **conducts** national symposia and regional forums on LGBTQ educational issues
- **shares** best practices through an electronic exchange for educators
- **identifies and documents** strategies and obstacles in making schools safer and more inclusive of LGBTQ youth
- **infuses knowledge and information** on LGBTQ history during LGBT History Month, raising awareness around the nation
- **develops and distributes** supplementary educational materials

What is unique about SNEP?

- National District2District model rather than intra district
- Electronic exchange to share best practices among districts
- 40 years Archive-LGBTQ museum serving as educational resource
- 6th largest school district in the nation serving as incubator of new programs
- Private museum / public schools partnership





About Stonewall National Museum & Archives

Stonewall National Museum and Archives (SNMA) is a nonprofit, tax-exempt 501(c) (3) that promotes understanding through preserving and sharing the proud culture of lesbian, gay, bisexual and transgender people and their significant role in society.
stonewall-museum.org

Now celebrating its 40th Anniversary, **Stonewall National Museum** is one of the only museums in the country dedicated solely to LGBT history, civil rights, art and culture. The museum features three gallery spaces with changing monthly and bi-monthly exhibits, and includes a permanent timeline of American LGBT history.



Stonewall National Archives currently contains more than 5,000 items that document a century of LGBT cultural and social history. The professionally-catalogued collection is maintained according to strict conservation and archival standards. It is used by community leaders, writers, scholars, researchers, historians, and members of the general public.



Stonewall National Library is the largest LGBT lending library in the United States. With new titles added every week, library holdings now number over 25,000 books, 1,000 DVDs, and offer more than 60 national and regional periodicals in the John Graves Reading Room. The Stonewall Library presents lively and topically relevant book club, author lectures, and film screenings year-round.



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DE 152-43



THE CHILDREN ALREADY KNOW

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When my daughter, Tori, was in high school several years ago, she and a close circle of friends did everything together. The group consisted of five girls and one boy. I once asked Tori whether he felt awkward being the only boy in the group or whether he did things with them because he was dating one of the girls.

"He's gay," she told me.
 "I don't think that's right," I responded.
 "Why not?" she asked, "Do you think there's something wrong with being gay?"
 "Of course, not," I said. "I don't care if he's homosexual or heterosexual. I just think at 16 he shouldn't be any sexual. He's too young to have sex."

"I didn't say he was having sex," she corrected. "I said he's gay."
 "I think 16 is too young to know you're gay," I answered.

"When did you know you're not gay?" she asked.

"I don't know, I guess I never thought about it. I just always knew."

"So even when you were a little kid, you knew when you started dating you would date girls?"

"Yes," I said.

"So he's always known when he starts dating, he'll date boys. What's the difference?"

I hadn't thought about that conversation until I recently read an article about a woman who allegedly tried to destroy an \$80 million painting by Paul Gauguin at the National Gallery of Art, in Washington, D.C. The painting, which was not damaged, is titled "Two Tahitian Women" and depicts two women, one with her breasts exposed holding a tray of food and the

other with one breast exposed holding a flower.

As she was attacking the painting, the woman screamed, "This is evil." She later told authorities, "I feel that Gauguin is evil. He has nudity and is bad for the children. He has two women in the painting, and it's very homosexual. I was trying to remove it."

Although the woman was later found to have a criminal record and a history of mental illness, this type of behavior and the underlying beliefs plagued Gauguin almost from the time he first traveled to the South Pacific.

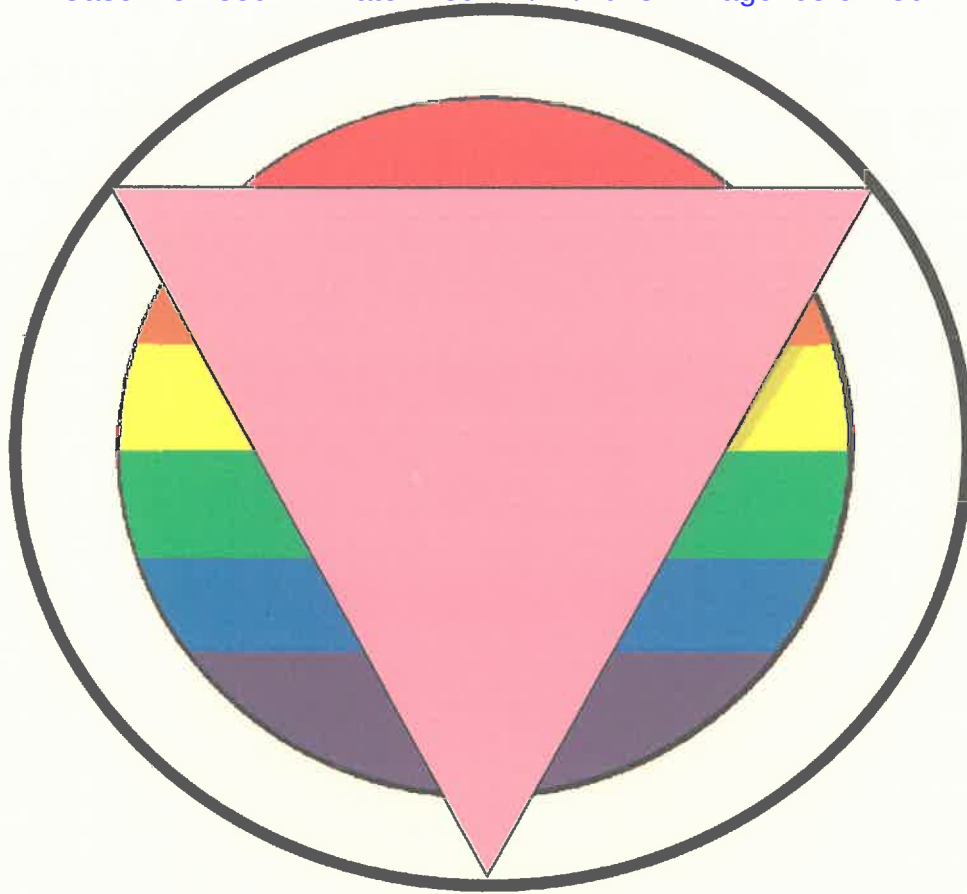
The general public of the late 19th century thought his paintings of partially clothed natives were vulgar. Unfortunately, more than 100 years later, those attitudes still persist.

Even with the pervasive influence of sex on art and popular culture, and an enlightened awareness of sexuality, many members of the general public and, unfortunately, some lawmakers, still think anything that involves sexuality is obscene. Worse, they believe anything sexual that involves people of the same sex must be homosexual, and our children must be protected from it.

They believe sex will corrupt the young minds of our children; therefore, children should not know anything about sexuality or same-sex relationships. As Tori would tell them, the children already know.

Kwok-Sze Richard Wong, Ed.D.
 ASCA Executive Director

DE 152-44



SAFE ZONE

The Safe Zone symbol is a message to lesbian, gay, bisexual, transgender and questioning youth and their allies. A person displaying this symbol is one who will be understanding, supportive, and trustworthy if gay, lesbian, bisexual, or transgender youth need help, advice or just someone with whom they can talk.



www.safeschoolssouthflorida.org
safe@safeschoolssouthflorida.org
PO Box 24444 ~ Fort Lauderdale, FL 33307
305-576-2126 ~ 954-771-4799



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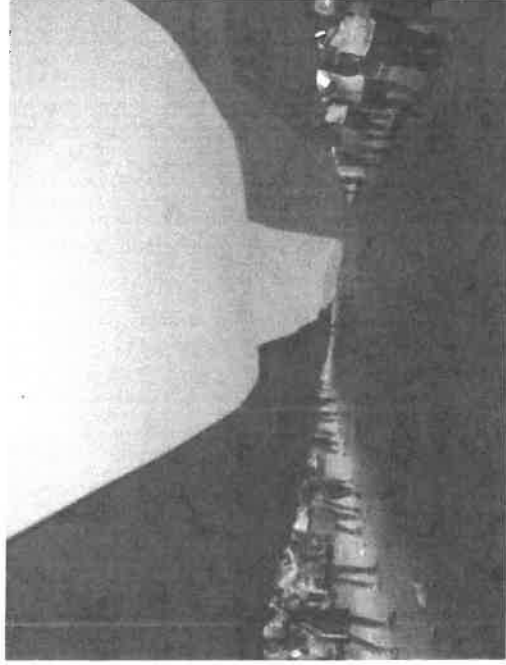
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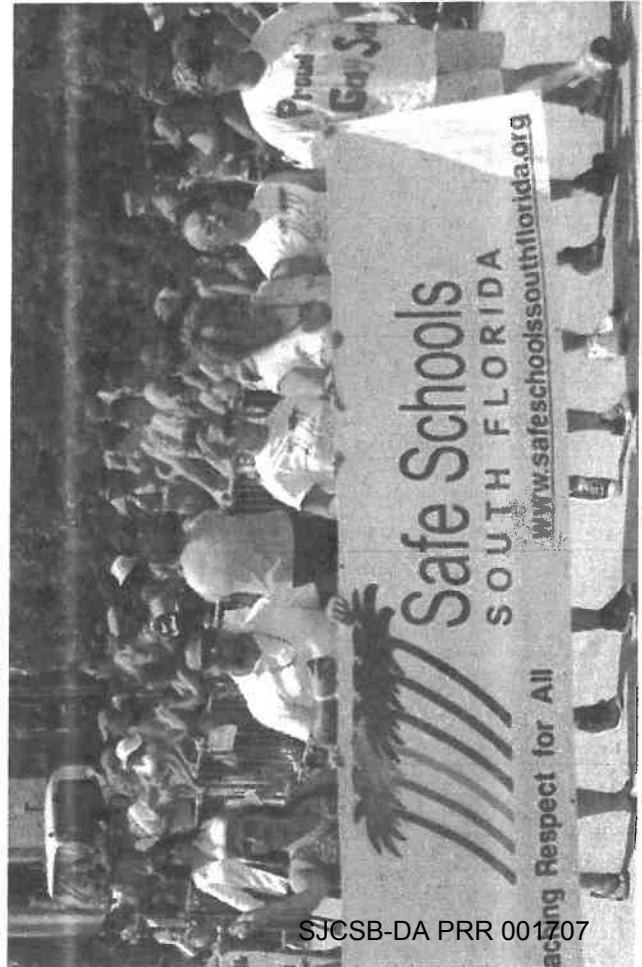
OUR MISSION:

Teaching respect for all in schools, regardless of sexual orientation or gender identity, real or perceived

- We train educators to intervene and prevent bullying
- We empower GLBT youth by hosting leadership and gay-straight alliance conferences.
- We train LGBT adults and allies to speak to students through our SpeakOUT Speakers Bureau.
- We review our work to ensure and improve its effectiveness.

How Gay and Lesbian Students Help Train Educators

The most powerful tools we use in our workshops are panels of youth speakers who tell their stories about what it's like to be a GLBT student or child of a GLBT family



www.safeschoolssouthflorida.org

Did You Know...
GLBT students are four times more likely to attempt suicide than straight youth.

.....
Over 90% of GLBT students regularly hear anti-GLBT comments at school - over a third from school staff.

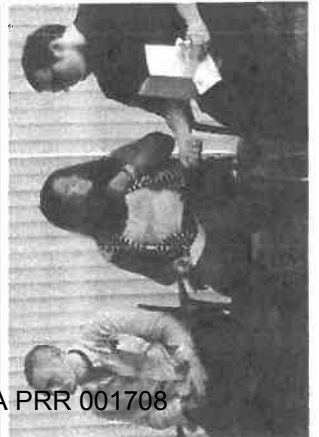
.....
25% of GLBT youth are thrown out of their homes when parents learn they are GLBT.

.....
Over 40% of homeless teens identify as GLBT.

.....
GLBT students are twice as likely to skip school because of fear.

.....
In one recent study, 30% of GLBT students interviewed said they had dropped out of school because of bullying.

Yet, despite these statistics, 75% of educators have not been trained to recognize and intervene in sexual minority harassment.

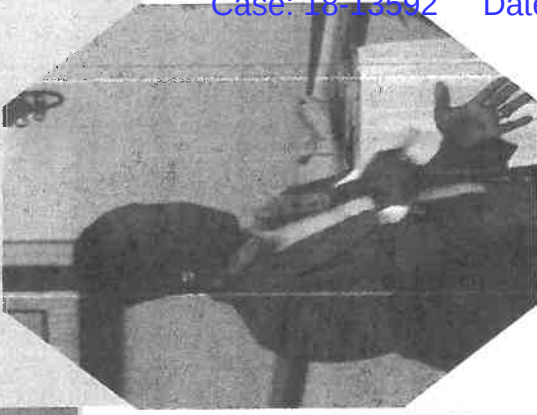


Trainers

Safe Schools South Florida is proud of the professionals who work with us to provide our workshops. All of our trainers are experienced classroom teachers and/or counselors, and all have extensive experience in professional education development.

Our Trainers

Priscilla Dames, MS
Lisa La Monica, MS
Dione Schneider, NEA Trainer



Workshop Offerings

- School Safety & Sexual Minority Issues 101
- School Safety & Sexual Minority Issues 102
- Understanding & Honoring Gender Diversity Issues, Strategies and Resources
- School Safety & Sexual Minority Issues for Administrators
- Issues for Parents of Gay & Lesbian Youth

The Alliance

Safe Schools South Florida is a founding member of The Children's Trust-funded Alliance for Gay, Lesbian, Bisexual, Transgender and Questioning (GLBTQ) Youth, (The "Alliance"). The Alliance provides a comprehensive suite of services to Miami-Dade's GLBTQ youth. Safe Schools South Florida is designated by the Alliance to provide training in GLBTQ issues in Miami-Dade County Public Schools.

Youth Panelists

"On my 18th birthday, I got home and found all my stuff on the sidewalk and the locks had been changed. I thought I would have to drop out of school. Thankfully, Safe Schools South Florida was there to help me, and my family. They helped me get back on track in school, counseled me and my family members and helped us reunite."

.....
"The worst is when somebody calls you a faggot in the classroom and the teacher doesn't say anything. My teacher took the SSSF training and afterword made sure no one calls me or anybody else in the class names."

GSA Support

Safe Schools South Florida is committed to supporting Gay-Straight Alliances (GSAs) in schools throughout South Florida. We maintain a list of GSAs on our website and support annual programs and conferences to empower GLBT students and their straight allies. We are designated partners with GSA Network (gsanetwork.org)

The Empty Chair

The youth speakers always include an empty chair in honor of those students who are unable to speak to our workshops because of fear and shame about society's perception of them. The tradition began at a high school in Miami-Dade when a young African-American man, who had spoken at workshops in the past, was unable to bring himself to speak before his own alma mater for fear of what his former teachers and counselors would think and/or say. Counselor Lisa La Monica introduced the idea and the students immediately embraced the concept. While the youth speakers share their stories about being GLBT or being victimized for having GLBT parents or family members, an empty chair represents their fellows who have been silenced by society's hostility towards them for who they are.

DE 152-45

February 4, 2014

Welcome to the Inaugural Florida State Conference "District Responses to the Needs of LGBTQ Students: Legal Rights and Ethical Responsibilities".

We are grateful that you can join us for two days of dialogue and information that will provide your districts and communities with ideas and direction of LGBTQ students, staff and families.

The idea for this state conference came to us after our participation on February 20-22, 2013 at "The Kids Are NOT All Right" conference co-sponsored by Broward County Public Schools and Stonewall National Education Project (SNEP). The conference was held in Ft. Lauderdale. Attendees represented 14 school districts from around the country: Anoka-Hennepin (MN), Boston, Broward, Denver, Los Angeles, Madison (WI), Miami-Dade, Minneapolis, New York City, Palm Beach, San Diego, San Francisco, Seattle, and Washington, DC. SNEP will sponsor the second conference on March 3-5 of this year in Los Angeles. There are currently 25 districts planning to attend.

From the information that was shared at that conference and encouragement from colleagues in Madison and Minneapolis, we knew it was in the best interest of Florida districts to convene a time for discussion based more specifically on the educational policies and practices of our own educators and communities.

We look forward to our collective participation during these two days of our conference and continued dialogue in the months and years to come as our district collaborative reaches into all 67 Florida School Districts.

Sincerely,

Statewide LGBTQ District Collaborative

Statewide District Collaborative

Planning Committee

Broward Schools

Dr. Kevin O'Connor

Community Representative
Educational Program Consultant: LGBTQ Advocacy

De Palazzo

Staff Developer and Prevention Specialist
Department of Diversity, Cultural Outreach & Prevention

Teri Triguba-Williams, Ph.D.

(YMSM) Program Manager/Prevention Specialist
Diversity, Cultural Outreach & Prevention

Miami - Dade Schools

Delphine Gervais, MSW, RCSWI
TRUST Program Chairperson

Isabel Rodriguez-Duncan, LCSW
District Chairperson & District Sexual Minority Network Coordinator
School Social Work Programs and TRUST Program
Division of Student Services

Palm Beach Schools

Kim Cotton Williams
Assistant Director
Single School Culture © Initiatives

Rick Lewis
Specialist, School Climate Initiatives
Single School Culture © Initiatives
Safe Schools Institute

Kim Mazauskas
Bullying Prevention and Intervention Coordinator
District Policy Contact for SB - 5.002 Prohibiting Bullying and Harassment
Single School Culture © Initiatives

STATEWIDE LGBTQ DISTRICT COLLABORATIVE PRESENTS...
**"District Responses to the Legal and Ethical Rights and
Needs of LGBTQ Students" Conference**

February 4, 2014, 7:30 AM - 4:30 PM

February 5, 2014, 7:45 AM - 3:45 PM

SAFE SCHOOLS INSTITUTE, BOCA RATON, FL

**Registration deadline Friday, [January 17, 2014](#). Please click on the
following hyperlink for registration purposes:**

[District Responses to the Needs of LGBTQ Students](#)

DAY 1 – AWARENESS & CHALLENGES

<u>Time</u>	<u>Description</u>
7:30 AM – 8:30 AM	Networking/Registration
8:30 AM – 8:45 AM	Welcome and Introductions
8:45 AM – 9:15 AM	Why Are We Here?
9:15 AM – 10:15 AM	School Districts: What is Your Starting Point?
10:15 AM- 10:30 AM	Break
10:30 AM – 11:15 AM	Key Note Speaker
11:15 AM – 12:15 PM	Weight of Words (WOW)/Talkback
12:15 PM – 1:00 PM	NETWORKING LUNCH
1:00 PM – 2:45 PM	Ensuring LGBTQ Health & Safety – Broward County Public Schools
2:45 PM – 3:00 PM	Break
3:00 PM – 4:00 PM	Youth Panel from Miami-Dade County Public Schools
4:00 PM – 4:30 PM	Closing

DAY 2 – SOLUTIONS & ACTION PLANS

<u>Time</u>	<u>Description</u>
7:45 AM – 8:30 AM	Networking
8:30 AM – 9:15 AM	Welcome and Reflection on Day 1
9:15 AM – 9:30 AM	Resource Video Clips
9:30 AM – 10:30 AM	Keynote Panel of School District Leaders
10:30 AM – 10:45 AM	Break
10:45 AM – 11:45 AM	Miami-Dade County Public Schools - Sexual Minority Network & Suicide Prevention
11:45 AM- 12:30 PM	NETWORKING LUNCH
12:30 PM – 1:30 PM	Gay Straight Alliance Clubs and Sponsors
1:30 PM – 2:30 PM	Gallery Walk
2:30 PM – 2:45 PM	Break
2:45 PM – 3:15 PM	Final Questions
3:15 PM – 3:45 PM	SWOT – (Action Plan)
3:00 PM – 3:45 PM	Wrap Up and Evaluations



District Responses to the Needs of LGBTQ Students “Legal Rights and Ethical Responsibilities”

Florida Educators,

School districts across the country are in the process of examining and modifying their existing policies and practices to effectively address the legal and ethical issues concerning their sexual minority populations. Sadly, many districts undertake this important work only after the District has received unfavorable media attention due to its failure to adequately protect lesbian, gay, bisexual, transgender or questioning (LGBTQ) youth or staff members, or the district has been sued by organizations such as the Southern Poverty Law Center, the Anti-Defamation League, or the American Civil Liberties Union.

In an effort to assist Florida school districts as they consider this sensitive and timely topic, the *Statewide LGBTQ District Collaborative*, composed of educators from the Miami-Dade, Broward, and Palm Beach County School Districts, is conducting a two-day conference on **February 4 and 5, 2014**, entitled ***District Responses to the Needs of LGBTQ Students***. In order to maximize participation and minimize costs, this conference is being offered without a registration fee. Districts will only be responsible for travel costs for their participants.

Who should attend this conference?

We believe the most effective approach would be to send a team of people, perhaps including an administrator, a representative from the risk-management or legal departments, and/or a district-level school counseling administrator. While school-level personnel are certainly welcome, the goal of this conference is to guide district-level response, policy, and practices.

What are the desired outcomes of this conference?

- Participants will gain knowledge about the legal imperatives regarding LGBTQ students.
- Participants will gain insight into the challenges facing LGBTQ youth.
- Participants will find out how other districts have structured policies and practices to support the legal, ethical, and safety needs of sexual minority youth
- Participants will gain access to a wide variety of resources and will be invited to join a statewide support network for addressing emerging LGBTQ issues.

How do we register for this conference?

To register click here: [evite link](#)

Where will this conference be conducted?

District Responses to the Needs of LGBTQ Students will be conducted at the *Safe Schools Institute*, located on the campus of Don Estridge High Tech Middle School, at 1790 NW Spanish River Blvd, Boca Raton, FL, 33431. This location is roughly equidistant between the Fort Lauderdale International Airport (FLL) and Palm Beach International Airport (PBI), in case participants choose to fly. This location is close to the ocean and a plethora of restaurants, shopping and entertainment venues.

Statewide LGBTQ District Collaborative
Broward, Miami-Dade and Palm Beach County School Districts

DE 152-46



SAFE SCHOOLS RESEARCH BRIEF 9

UNDERSTANDING DIFFERENCES BETWEEN SCHOOLS IN OVERALL LGBT SCHOOL SAFETY

Research has shown that school safety is associated with student well-being and academic achievement. Most of the focus of prior research has been on individual students and factors that predict individual student safety. Less is known about whether some schools are safer than others, and why. In this research brief, we draw from several data sources to examine differences across schools in safety for lesbian, gay, bisexual, and transgender (LGBT) students.

Background

The school environment is one of the most important contexts for children – it influences the academic and social skills of children during the early years of life. Youth spend a great proportion of their time in schools, and attendance is not voluntary – it is required. When victimization happens at school, students may not only experience physical harm, but also emotional harm.

Previous research from the California Safe Schools Coalition (CSSC) identified steps schools can take to make LGBT students – and all students – safer: be sure students know about the school's non-discrimination policy that includes sexual orientation and gender identity and expression, be sure students know where to go for information or support; support Gay-Straight Alliance (GSA) clubs and other school clubs; support teachers to intervene when harassment happens; include attention to LGBT people and issues in the curriculum (see CSSC Research Brief #4, "LGBT Issues in the Curriculum Promotes School Safety"). Yet we know that not all schools use all of these safe school strategies (see CSSC Research Brief #1, "District Policies and Trainings").

Most of the focus on school safety has actually focused on student safety, namely individual students and their experiences at school. However, there may be differences across schools; some schools may be safer than others. In this research brief we illustrate factors that are associated with differences between schools in safety for LGBT students. We want to know: why are some schools safer than others?

Finding 1: There are important differences between schools in the amount of school safety students report; some schools are safer than others.

We used data from the CSSC School Climate Surveys, which were collected by students in seventeen (17) public schools between 2003 and 2006, yielding over 6,000 surveys. By averaging all of the students' responses within each school, we were able to develop school-level measures of school safety. We found variation across schools in their use of school safety strategies, as well as in overall school safety.

In terms of overall school safety, in some schools only 13% of students reported hearing derogatory comments like "that's so gay" at least once a week, compared to other schools where two-thirds (67%) of students reported hearing "that's so gay" or other remarks at least weekly. Safety for LGBT students, teachers, and staff ranged from a low of 15% in one school to a high of 85% in another.

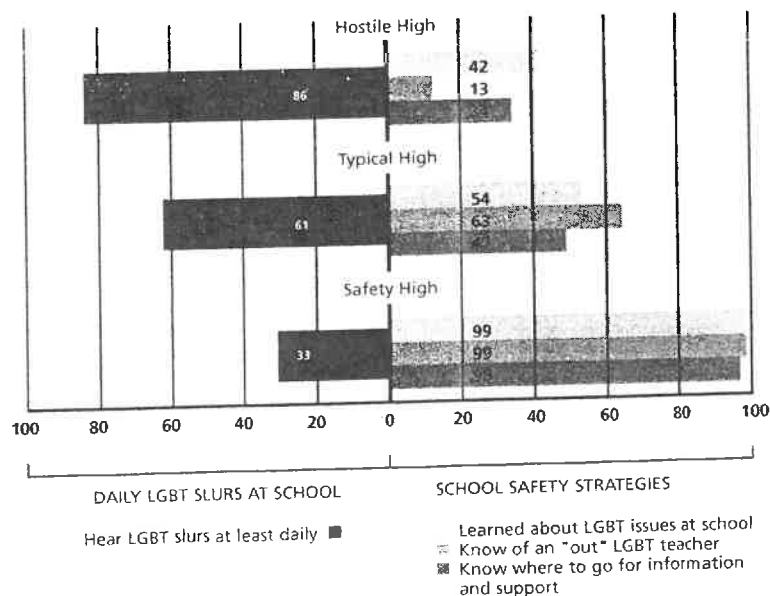
Teachers usually step in when harassment happens. The lowest percentage of students at a school who reported teacher intervention was 42%; in one school every student reported that their teachers step in. Learning about LGBT issues at school ranged from a low of 24% in one school to a high of 85% in another.

The results show wide variation in school safety strategies, and in overall school safety levels across these California schools. Figure 1 illustrates these differences by profiling three of the schools in our study (using fictitious names). At Hostile High, 86% of the students reported that they hear LGBT slurs such as "that's so gay" at least once a day. In terms of school safety strategies, only one-third (34%) of the students at Hostile High knew where to go for information and support about LGBT issues; only 13% knew of an "out" LGBT teacher or staff member; and less than half (42%) had learned about LGBT issues at school. On the positive side, nearly three-quarters (74%) said that teachers intervene when harassment takes place.

Contrast Hostile High to Typical High, where about half of all the students reported hearing LGBT slurs every day, and similarly about half said that they knew where to go for information, knew an "out" LGBT teacher, or had learned about LGBT issues at school.

At the other extreme, nearly all students at Safety High reported these school safety strategies, and many fewer (one-third: 33%) reported hearing slurs on a daily basis.

Figure 1
AN ILLUSTRATION OF THE LINK BETWEEN DAILY LGBT SLURS AT SCHOOL AND SCHOOL SAFETY STRATEGIES



Finding 2: Overall LGBT school safety is linked to school safety strategies.

In prior studies we have shown that school safety strategies are linked to individual student reports of personal safety, perceptions of safety for LGBT students, reduced levels of anti-LGBT harassment, and youth resilience (or indicators of youth development). For this study we examined this finding at the level of the school. We compared the percentage of students who reported LGBT school safety strategies and the percentage who reported overall school safety for LGBT students.

We also found lower percentages of students say that they hear derogatory comments like “that’s so gay” in schools where higher percentages of students said that they knew where to go for information and support about sexual orientation, gender identity, or LGBT issues. In schools where 75% or more of the students reported daily derogatory comments, only one third of students (34%) knew where to go for information and support. Compare that to schools in which less than 75% of students reported derogatory comments, more than half (57%) said that they knew where to go for information and support.

These results show that strategies such as teacher intervention and having information and support about LGBT issues are important not only for individual students, but also these strategies influence the overall school safety climate and are linked to differences between schools in overall LGBT school safety.

Finding 3: Overall LGBT school safety is strongly linked to school-level academic performance.

Next we considered the characteristics of schools that were linked to overall LGBT school safety. We combined the data from the student responses to the School Climate Surveys with publicly-available data about school characteristics from the California Department of Education. We examined a range of factors to determine which, if any, might be associated with overall LGBT school safety:

- Size of school (total enrollment)
- Class size
- Ethnic make-up (percentage of students of color)
- Socio-economic status (percentage of students on free or reduced meals; percentage of students on CALWorks)
- Teacher characteristics (percentage of credentialed teachers; percentage of teachers of color)
- Academic achievement (Academic Performance Index; average SAT scores)

The results indicated that the factors that are most strongly linked to differences in overall LGBT school safety and frequency of anti-LGBT slurs are academic achievement of schools, as indicated by the state’s Academic Performance Index (API) and the average SAT score.

This is a notable finding: some people may think that the economic status of a school or the ethnic make-up of a school would predict overall school safety. However, it is not true that schools with predominantly lower-income students and/or predominantly students of color are less safe. The most important factor is the overall academic performance of schools.

This finding is important, but does not necessarily mean that school safety causes a school to have higher academic performance. We cannot know the direction of influence: does high achievement promote safe school climates, or are schools that are safer better learning environments for achievement? Nevertheless, the results suggest that the strategies that make schools safer for LGBT students – and all students – may be an important way for schools and school districts to support overall school achievement.

Recommendations for teachers and administrators

- Be sure that your school and school district are implementing the well-documented school safety strategies:
 1. publicize and enforce anti-harassment policies,
 2. provide resources, information, and support to students,
 3. train teachers and other staff about bullying and how to intervene in harassment,
 4. measure and monitor bias-related harassment in the school and school district, and
 5. Include LGBT people and information about sexual orientation and gender identity in the curriculum.
- Discuss the link between school safety, student academic achievement, and overall school academic performance with students, parents, and colleagues.
- Request training on preventing harassment and discrimination, and ask to help publicize school policies on harassment.
- Set the climate in your classrooms early and as often as necessary, letting students know that bias-related harassment and slurs are not acceptable.
- Treat all forms of bias-related harassment and slurs as serious and preventable.
- ~~Provide information about community resources and information related to sexual orientation and gender identity and expression.~~

ABOUT THE RESEARCH

Data are from the California Safe Schools Coalition School Climate Surveys, which were collected by students in seventeen public schools between 2003 and 2006, yielding over 6,000 surveys. The students who collected the data were typically GSA student leaders or members. The surveys were designed to study the experiences of lesbian, gay, bisexual, transgender, queer, and questioning high school students and their straight allies, and the steps schools can take to make schools safer. The surveys were developed and administered by the Gay-Straight Alliance Network.

This research brief is based on the following publication:

Russell, S. T., & McGuire, J. K. (2008). School Climate for Lesbian, Gay, Bisexual, and Transgender (LGBT) Students. In M. Shinn & H. Yoshikawa (Eds.), *Toward Positive Youth Development: Transforming Schools and Community Programs*. (pp.133-158). Oxford: Oxford University Press.

Suggested citation:

Russell, S. T., McGuire, J. K., & Laub, C. (2009). Understanding Differences Between Schools in Overall LGBT School Safety. (California Safe Schools Coalition Research Brief No. 9). San Francisco, CA: California Safe Schools Coalition.

DE 152-47



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Flagler schools expand policies on bullying and harassment

By [Annie Martin](#)

Published: Wednesday, June 8, 2011 at 5:30 a.m.

BUNNELL -- The Flagler County School Board on Tuesday expanded its policies against bullying, harassment and discrimination against certain groups of people.

The School Board unanimously approved changes to the policies to state the district "prohibits bullying of any student or school district employee."

"More and more we're hearing about bullying and harassment, so the more clarification we can have on it, the better," Superintendent Janet Valentine said.

The School Board was required to consider, but not necessarily approve, the changes as part of an agreement with the American Civil Liberties Union. The ACLU of Florida represented Luke Herbert, a former Flagler Palm Coast High School student who said he was beat up at school and insulted by a teacher earlier in the school year. Herbert said he was targeted because he's gay.

The district's policies against bullying, cyber-bullying, harassment and discrimination now explicitly include harm to students and employees based on their "sex, race, color, religion, national origin, age, disability (physical, mental and educational), marital status, socioeconomic background, ancestry, ethnicity, gender, gender identity or expression, linguistic preference, political beliefs, sexual orientation, or social/family background or being viewed as different in its education programs or admissions to education programs."

Other changes to the policy include defining and prohibiting cyber-bullying, which could include emails, personal websites and text messages that are intended to threaten or harm others.

The district has a link on its website where students can report bullying, Valentine said.

The School Board also voted on Tuesday to renew its iFlagler franchise agreement for the 2011-2012 school year. iFlagler is a franchise of Florida Virtual School, the state's online school, said Diane Dyer, the district's director of high school and virtual instruction. The Flagler County program served grades seven through 12 this school year, and will add grade six for the 2011-2012 school year.

The state requires districts to offer virtual instruction programs, she said.

iFlagler uses the same curriculum as Florida Virtual School but classes are taught by local teachers. The district pays \$50 to Florida Virtual School for each half-credit enrollment. Teachers receive \$500 in base pay and an additional \$100 for each student who successfully completes the course.

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CHAPTER 5 – STUDENTS

BULLYING AND HARASSMENT

511.2

- I. Statement Prohibiting Bullying and Harassment
 - A. It is the policy of the Flagler County School District that all of its students and school employees have an educational setting that is safe, secure and free from harassment and bullying of any kind. The District will not tolerate bullying and harassment of any type. Conduct that constitutes bullying and harassment, as defined herein, is prohibited.
 - B. The district upholds that bullying or harassment of any student or school employee is prohibited.
 1. During any education program or activity conducted by a public K-12 education institution;
 2. During any school-related or school-sponsored program or activity;
 3. On a school bus of a public K-12 educational institution; or
 4. Through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 education institution.
- II. Definitions
 - A. Bullying means systematically and chronically inflicting physical hurt or psychological distress on one or more students or employees. It is further defined as unwanted and repeated written, verbal, or physical behavior including any threatening, insulting, or dehumanizing gesture, by a student or adult, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school performance or participation; and may involved but is not limited to:
 1. Teasing;
 2. Social Exclusion;
 3. Threat;
 4. Intimidation;
 5. Stalking;

CHAPTER 5 – STUDENTS

6. Physical Violence;
 7. Theft;
 8. Sexual, religious, or racial harassment;
 9. Public humiliation; or
 10. Destruction of property.
- B. Harassment means any threatening, insulting or dehumanizing gesture, use of data or computer software, or written, verbal or physical conduct directed against a student or school employee that
1. Places a student or school employee in reasonable fear of harm to his/her person or damage to his/her property.
 2. Has the effect of substantially interfering with a student's educational performance, opportunities, or benefits; or
 3. Has the effect of substantially disrupting the order of a school.
- C. Bullying and harassment also encompass
1. Retaliation against a student or school employee by another student or school employee for asserting or alleging an act of bullying or harassment. Reporting an act of bullying or harassment that is not made in good faith is considered retaliation.
 2. Perpetuation of conduct listed in the definition of bullying or harassment by an individual or group with intent to demean, dehumanize, embarrass, or cause emotional or physical harm to a student or school employee.
 - a. Incitement
 - b. Accessing or knowingly and willingly causing or providing access to data or computer software through a computer, computer system, or computer network within the scope of the District school system;
 - c. Acting in a manner that has an effect substantially similar to the effect of bullying or harassment.

CHAPTER 5 – STUDENTS

- D. Cyber stalking as defined in s. 784.048(1)(d), F. S., means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.
- E. Cyberbullying is defined as the act of using information and communication technologies such as, but not limited to, e-mail, cell phone, pager, text messaging, instant messaging (IM), defamatory personal web sites and defamatory personal pooling web sites to support deliberate, repeated, and hostile behavior by an individual or group that is intended to threaten or harm others or which substantially disrupts or interferes with the operation of a school or an individual's academic performance.
- F. "Bullying", "Cyberbullying", "Harassment", and "Discrimination" (hereinafter referred to as bullying for the purpose of this policy) also encompass, but are not limited to, unwanted harm towards a student or employee in regard to their real or perceived: sex, race, color, religion, national origin, age, disability (physical, mental or educational), marital status, socio-economic background, ancestry, ethnicity, gender, gender identity or expression, linguistic preference, political beliefs, sexual orientation, or social/family background or being viewed as different in its education programs or admissions to education programs and therefore prohibits bullying of any student or school district employee by any board member, district employee, consultant, contractor, agent, visitor, volunteer, student, or other person in the school or outside the school at school-sponsored events, on school buses, and at training facilities or training programs sponsored by the district.

III. Behavior Standards

- A. The Flagler County School District expects students to conduct themselves as appropriate for their levels of development, maturity, and demonstrated capabilities with a proper regard for the rights and welfare of other students and school staff, the educational purpose underlying all school activities, and the care of school facilities and equipment.
- B. The District believes that standards for student behavior must be set cooperatively through interaction among the students, parent/legal guardians, staff, and community members producing an atmosphere that encourages students to grow in self-discipline. The development of this atmosphere requires respect for self and others, as well as for District and community property on the part of students, staff, and community members. Because students learn by example, school administrators, faculty, staff, and volunteers will demonstrate appropriate behavior; treat others with civility and respect, and refuse to tolerate bullying or harassment.

DE 152-49



Welcome Bienvenue Byenvens 환영합니다 Добро пожаловать Bienvenid

Select Language

search:

Parents and Families Students Employees Community and Partners

DOE Home Page > Rules & Policies > Transgender Student Guidelines

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Student Records
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No Child Left Behind
Discipline Code
Parent Bill of Rights
Respect for All
Student Bill of Rights
Internet Acceptable Use
Social Media
Transgender Student Guidelines

Schools in the Community

Student Support, Safety & Activities

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Parent Link

Get personalized academic information about your child.

Advance

New York City's new system of teacher evaluation and development.

Panel for Educational Policy

Common Core Library

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Transgender Student Guidelines

Many questions arise for students and school staff when considering the best supports for transgender students. These guidelines are designed to provide direction for schools to address issues that may arise concerning the needs of transgender students.

Schools should be proactive in creating a school culture that respects and values all students and fosters understanding of gender identity within the school community. These guidelines are intended to help schools ensure a safe learning environment free of discrimination and harassment, and to promote the educational and social integration of transgender students.

Definitions:

- 1. "Gender identity" is a person's inner sense of being male or female, regardless of their sex assigned at birth.
2. "Transgender" is a term which describes people whose gender identity or gender expression is different from their assigned sex at birth.
3. "Gender expression" refers to the way a person expresses gender to others in ways that are socially defined as either masculine or feminine, such as through behavior, clothing, hairstyles, activities, voice or mannerisms.
4. Gender non-conforming people are those whose gender-related identity and/or gender expression do not conform to the social expectations or norms for a person of that sex assigned at birth.

Discrimination/Harassment

It is the policy of the New York City Department of Education to maintain a safe and supportive learning and educational environment that is free from harassment, intimidation, and/or bullying and free from discrimination on account of actual or perceived race, color, creed, ethnicity, national origin, citizenship/immigration status, religion, gender, gender identity, gender expression, sexual orientation, disability, or weight.

Complaints alleging discrimination or harassment based on a person's actual or perceived transgender status or gender nonconformity must be handled in accordance with the procedures set forth in Chancellor's Regulation A-832 (for student-on-student allegations) and Chancellor's Regulation A-830 (for staff-on-student allegations).

Privacy

Except as set forth herein, school personnel should not disclose information that may reveal a student's transgender status. Under the Family Education Rights Privacy Act (FERPA), only those school employees with a legitimate educational need should have access to a student's records or the information contained within those records.

Schools should work closely with the student and family in devising an appropriate plan regarding the confidentiality of the student's transgender status that works for both the student and the school. Privacy considerations may also vary with the age of the student.

In some cases, transgender students may feel more supported and safe if other students are aware that they are transgender. In these cases, school staff should work closely with the student, families and other staff members on a plan to inform and educate the student's peers. It may also be appropriate to engage external resources to assist with educational efforts. A list of support organizations for transgender students is listed at the end of this document.

Official Records

Each school is required to maintain a permanent pupil record of each student, which includes the legal name of the student as well as the student's biological gender. In addition, schools are required to use a student's legal name and gender on standardized tests and reports to the State Education Department.

To the extent that the school is not legally required to use a student's legal name or gender on school records and other documents, the school should use the name and gender preferred by the student.

A student's permanent pupil record should be changed to reflect a change in legal name or gender only upon receipt of documentation that such legal name and/or gender have been changed pursuant to applicable law.

The documentation required for a legal change of name is a court order or birth certificate demonstrating the student's new name.

For a legal change of gender, the student must provide a birth certificate indicating the student's legal gender, or a valid passport indicating the student's legal gender.

The following procedures should be followed if a school receives a request to change a student's record to reflect a change in legal name and/or gender. For students who are currently enrolled in a New York City public school, the school in which the student is enrolled should make the legal name and/or gender change in ATS upon receipt of the required documentation. For students who have been discharged, the school should forward the request for the legal name and/or gender change to the Network data/applications specialist with the appropriate documentation. The Network will follow-up to make sure the appropriate change is made in ATS.

In all cases, in order to ensure that records accurately reflect circumstances in effect at the time each record was made, that records can be cross-referenced, and in order to maintain the confidentiality of the student's transgender status to the extent possible, the former name and/or gender will be maintained in archived data in the DOE'S central database.

Names/Pronouns

FERPA discloses all info to appropriate people to support student. info internally + pass gender & name.

administrators, executives, and more.
Join us today.

Students should be addressed by school staff by the name and pronoun corresponding to their gender identity that is consistently asserted at school. Students are not required to obtain a court ordered name and/or gender change or to change their pupil personnel records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity. To the extent possible and consistent with these guidelines, school personnel should make efforts to maintain the confidentiality of the student's transgender status.



Student IDs should be issued in the name that reflects a student's gender identity that is consistently asserted at school.

Sports and Physical Education

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A transgender student should not be required to use a locker room or restroom that conflicts with the student's gender identity.

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As a general rule, in any other circumstances where students are separated by gender in school activities (i.e. overnight field trips), students should be permitted to participate in accordance with their gender identity consistently asserted at school. Activities that may involve the need for accommodations to address student privacy concerns will be addressed on a case-by-case basis considering the factors set forth above.

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- 1) Make resources available to parents who have additional questions or concerns.
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Some transgender students do not want their parents to know about their transgender status. These situations must be addressed on a case-by-case basis and require schools to balance the goal of supporting the student with the requirement that parents be kept informed about their children. In these circumstances, you should confer with your Senior Field Counsel about how to proceed.

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Transgender Student Guidelines

Many questions arise for students and school staff when considering the best supports for transgender students. These guidelines are designed to provide direction for schools to address issues that may arise concerning the needs of transgender students.

Schools should be proactive in creating a school culture that respects and values all students and fosters understanding of gender identity within the school community. These guidelines are intended to help schools ensure a safe learning environment free of discrimination and harassment, and to promote the educational and social integration of transgender students.

Definitions:

- 1. "Gender identity" is a person's inner sense of being male or female, regardless of their sex assigned at birth.
2. "Transgender" is a term which describes people whose gender identity or gender expression is different from their assigned sex at birth.
3. "Gender expression" refers to the way a person expresses gender to others in ways that are socially defined as either masculine or feminine, such as through behavior, clothing, hairstyles, activities, voice or mannerisms.
4. Gender non-conforming people are those whose gender-related identity and/or gender expression do not conform to the social expectations or norms for a person of that sex assigned at birth.

Discrimination/Harassment

It is the policy of the New York City Department of Education to maintain a safe and supportive learning and educational environment that is free from harassment, intimidation, and/or bullying and free from discrimination on account of actual or perceived race, color, creed, ethnicity, national origin, citizenship/immigration status, religion, gender, gender identity, gender expression, sexual orientation, disability, or weight.

Complaints alleging discrimination or harassment based on a person's actual or perceived transgender status or gender nonconformity must be handled in accordance with the procedures set forth in Chancellor's Regulation A-832 (for student-on-student allegations) and Chancellor's Regulation A-830 (for staff-on-student allegations).

Privacy

Except as set forth herein, school personnel should not disclose information that may reveal a student's transgender status. Under the Family Education Rights Privacy Act (FERPA), only those school employees with a legitimate educational need should have access to a student's records or the information contained within those records.

Schools should work closely with the student and family in devising an appropriate plan regarding the confidentiality of the student's transgender status that works for both the student and the school. Privacy considerations may also vary with the age of the student.

In some cases, transgender students may feel more supported and safe if other students are aware that they are transgender. In these cases, school staff should work closely with the student, families and other staff members on a plan to inform and educate the student's peers. It may also be appropriate to engage external resources to assist with educational efforts.

Official Records

Each school is required to maintain a permanent pupil record of each student, which includes the legal name of the student as well as the student's biological gender. In addition, schools are required to use a student's legal name and gender on standardized tests and reports to the State Education Department.

To the extent that the school is not legally required to use a student's legal name or gender on school records and other documents, the school should use the name and gender preferred by the student.

A student's permanent pupil record should be changed to reflect a change in legal name or gender only upon receipt of documentation that such legal name and/or gender have been changed pursuant to applicable law.

* The documentation required for a legal change of name is a court order or birth certificate demonstrating the student's new name.

* For a legal change of gender, the student must provide a birth certificate indicating the student's legal gender, or a valid passport indicating the student's legal gender.

The following procedures should be followed if a school receives a request to change a student's record to reflect a change in legal name and/or gender. For students who are currently enrolled in a New York City public school, the school in which the student is enrolled should make the legal name and/or gender change in ATS upon receipt of the required documentation.

In all cases, in order to ensure that records accurately reflect circumstances in effect at the time each record was made, that records can be cross-referenced, and in order to maintain the confidentiality of the student's transgender status to the extent possible, the former name and/or gender will be maintained in archived data in the DOE'S central database.

Names/Pronouns

FERPA discloses all info to all appropriate staff. FERPA info is not to be informally recognized + pass gender & name.

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Students should be addressed by school staff by the name and pronoun corresponding to their gender identity that is consistently asserted at school. Students are not required to obtain a court ordered name and/or gender change or to change their pupil personnel records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity. To the extent possible and consistent with these guidelines, school personnel should make efforts to maintain the confidentiality of the student's transgender status.



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DE 152-50

DEFENDANT'S
EXHIBIT
190



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By Jennifer Memmolo

Bathroom-goers, rejoice: In cities like Seattle, Philadelphia, and West Hollywood, the lines for public bathrooms are about to get much shorter because all three cities decided to eradicate gender-specific signage for single-stall bathrooms.

It will no longer be a "brave" move to jump in line to use the solo men's room when the line for the women's stall is out the door — it'll be legal!

The Seattle City Council voted on the proposal submitted by Mayor Ed Murray. While the benefits of the signage will trickle down to everyone, its primary function was to ensure [a comfortable bathroom experience](#) for transgender people in government and Seattle business' public restrooms.

"The action taken today by the City Council will make Seattle a more welcoming place for everyone regardless of race, gender, or sexual orientation: No one should live in fear when they use basic accommodations most of us take for granted," Mayor Murray said in a statement [quoted by the Seattle Post-Intelligencer](#).

Gender-neutral bathrooms are already a major force on the University of Washington campus, where the Q Center, [an on-campus queer activist and justice center](#), advocated for their implementation in every building on campus.

Seattle is just one of several major cities that have similar laws in place. Philadelphia and Portland (the Oregon one) passed legislation in 2013 that called for the instatement of all-gender bathroom signage on single-occupancy stalls. West Hollywood and Washington, D.C., joined them over the past year with policies requiring gender-neutral language. In each of these cities, bathrooms with multiple stalls are still gender-specific, but the fact that this simple tweak can be made to make sure everyone

feels safe and comfortable is pretty wonderful. Fingers (and legs) crossed this trend doesn't stop in Seattle!

More From Glamour:

- [How Carly Fiorina and Hillary Rodham Clinton Are Taking a Page From the "Iron Lady," Margaret Thatcher](#)
- [More Than Good Luck, Chuck: Jessica Alba On Her Mentors](#)
- [Stephen Colbert Shares Why He Thinks Women Should Be in Charge of Everything](#)
- [2 of the Internet's Favorite Fashion PR Ladies Are Leaving Their Jobs](#)

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Our Services

TRAININGS AND SUPPORT

SCHOOLS

We work directly with schools and school districts nationwide to develop safe, gender inclusive environments for all young people. Our full service program includes conducting workshops for staff and students, providing curriculum and other resources, and consulting on policies and practices. Through our trainings, we are able to support administrators, staff, students, and parents/caregivers to expand their notions about gender and create a more nurturing school climate for all.

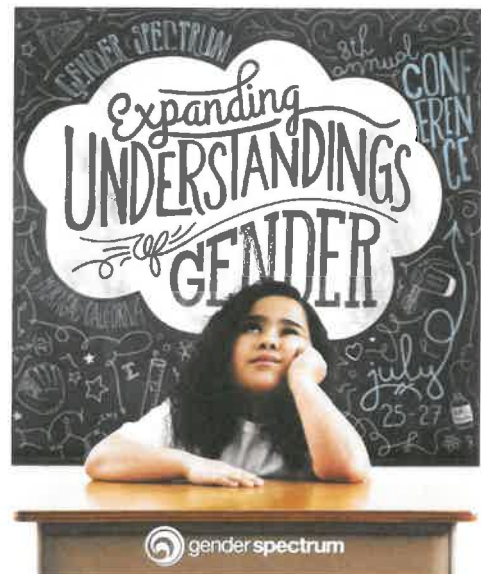
AGENCIES AND OTHER PROFESSIONAL ORGANIZATIONS

Gender Spectrum offers comprehensive support in helping social services, child welfare, and other agencies working with young people to recognize how gender intersects with services they provide, and how to respond accordingly. We offer best practices in creating and fostering more gender inclusive climates. We can support and build staff understanding about gender diversity issues and youth, examine policies and practices, and co-develop agency-specific resources for your staff and clients.

GENDER SPECTRUM ANNUAL CONFERENCE

Every summer, Gender Spectrum hosts a conference in the San Francisco Bay Area to support gender expansive young people and the caring adults who love and support them. We offer numerous workshops for parents/caregivers, provide opportunities for networking, and facilitate sessions focused on the needs of siblings.

Featuring a separate track of workshops for adults and young people, there is specific programming for teens and an engaging Kids' and Tween Camps. These camps are supportive spaces for all young people, and it is meant to be a space where 'kids can be kids' and meet kindred spirits.



PROFESSIONALS' SYMPOSIUM

Gender Spectrum provides a full-day symposium focused on supporting providers and their work with gender expansive young people for professionals. The day focuses on building the capacity of professionals to effectively collaborate across disciplines and is designed for those working with and interested in working with gender expansive young people and their families. CEU credits are available upon request.

GENDER SPECTRUM WEBSITE

You can find a wide variety of information on our website, including articles, tools and resources, information on upcoming events, and our Gender Spectrum blog. Visit us at www.genderspectrum.org.



ONLINE COMMUNITY

The “Lounge” is a space for teens, parents, and professionals to connect with one another. Members can form their own groups and participate in our broader online community. Our members stay engaged through various activities including topical discussions with guest speakers, a book club, and a movie club. Meet new people and connect with friends and colleagues online. Join us today!

PARENT/CAREGIVER SUPPORT GROUPS

This is a great resource for adults grappling with the ongoing gender identity development of their child. These groups are a sensitive space for parents/caregivers to explore their current state. Our groups take place in person and via conference call to accommodate everyone. The in-person group is held monthly in Emeryville. For more information on how to join, please contact us at info@genderspectrum.org.

THE TRANSGENDER CHILD—A HANDBOOK FOR PARENTS AND PROFESSIONALS

Gender Spectrum’s Founding Director and Board Chairperson, Stephanie Brill, wrote *The Transgender Child* to help parents and professionals navigate the often unexpected parenting challenges of having a gender expansive child. It also provides important information for extended family members, schools, and others who might interface with gender expansive young people. Despite the title, the book deals with the entire spectrum of children’s expressions of gender.

CONSULTATIONS

Gender Spectrum consults directly with families and caregivers, schools and organizations around a wide range of topics. As thought-partners, we can help identify and weigh the many trade-offs connected with a multitude of decisions that need to be made in order to support gender expansive young people.



Framework for Gender Inclusive Schools

When someone with the authority of a teacher describes the world and you're not in it, there is a moment of psychic disequilibrium, as if you looked into a mirror and saw nothing

--Adrienne Rich

Gender inclusive schools...

- Recognize that gender impacts all students
- Interrupt binary notions of gender
- Normalize gender diversity
- Question limited portrayals of gender
- Support students' self-reflection
- Teach empathy and respect

Entry Points

When focusing on the intentional development of gender inclusive school settings, it is helpful to think in terms of four discrete entry points: **Personal**, **Structural**, **Interpersonal**, and **Instructional**. Depending on the context, any one of these may prove the best starting point for this work.

Personal entry points focus on educators' own understandings of gender. It involves reflection about how each person's experiences and beliefs about gender impact the work they do with students. Using tools such as *My Gender Journey*, this entry point is really a foundation of learning upon which teachers build their gender inclusive practices, in the process applying a lens of gender awareness to all they do in their classrooms.

Structural entry points are institutional steps that create a foundation for gender inclusive practices to take hold. Structural entry points demonstrate to your community that the institution recognizes and honors gender diversity and actively works to reflect a more complex understanding about gender. Such approaches include:

- Policies/administrative regulations emphasizing gender as an area of diversity protected and supported by the school
- Systematic staff training that builds the capacity of teachers and other staff to honor the gender diversity of all students
- Student information systems allowing families to specify a child's gender marker, preferred name and pronouns
- Identified staff members functioning as leads around gender diversity work or issues
- Gender neutral restroom/facilities that provide options for privacy without stigmatizing any students
- Readily available written materials and information about gender diversity
- Signage/imagery celebrating gender diversity
- Procedures/forms that demonstrate a non-binary understanding of gender

Interpersonal entry points are the various ways in which individual interactions and communications are utilized to reinforce the school's commitment to gender inclusion. Supported by many of the structural components, these relational aspects nonetheless require intentional behaviors in the day-to-day interrelationships of a campus. They literally voice a school's commitment to honoring the gender diversity of all students. Frequently language-based, teachers operating from this entry point:

Use language that challenges binary notions of gender

- *There are lots of ways to be a boy or a girl or even something else; isn't that great?*
- *Toys are toys, hair is hair, colors are colors, and clothes are clothes*
- *Is there only one way to be a boy or girl? Can boys and girls like the same things?*
- Rather than "boys and girls," "ladies and gentlemen," etc., refer to pupils as "students," "children," or another non-gendered term for the group.



Help students understand the difference between patterns and rules

- *Who says only girls wear dresses? Do all-girls wear them? Do all boys wear dresses? Do some?*
- *What patterns have you observed about expectations for you about gender from peers? The media?*
- *Sure, boys might do certain activities more than girls or vice versa. But that doesn't mean all boys do those things or are supposed to wear that girls don't or shouldn't do that!*

Question limited portrayals of gender

- *Who decided what things are for boys and what things are for girls?*
- *Sometimes this stuff is confusing. We get messages that some things are for boys and some things are for girls. But these messages are just some people's ideas. They may not be right for you.*

Recognize that gender is more about our identity than anything else

- *No one gets to tell another person how to feel on the inside.*
- *How someone feels about their gender comes from their hearts and their minds (and not their pants!)*
- *Some bodies are thought of as "boy" and some thought of as "girl" but that's not true for everyone.*

Support processes of reflection

- *Who we are or who others think we are on the outside is not always who we are on the inside; think of all the wonderful things about yourself that no one else knows about by just looking at you!*
- *Being a boy or a girl or something else is not about what you like or what you wear or your body. It is something that each of us figures out for ourselves based on how we feel inside*

Teach empathy and respect

- *How do you think you would feel if people were always asking you about your own gender?*
- *No one likes to be pointed out by others. Does it feel good if you think others are talking about you?*
- *Have you ever been teased? How does it feel when you are teased or treated as an outsider?*

Normalize gender diversity

- *Ideas about gender are changing all of the time.*
- *History is full of examples of gender diversity! There have been gender diverse people in every culture and religion, from all over the world and throughout time.*

Instructional entry points are specific ways in which teaching and learning are used to instill greater awareness and understanding about gender. Whether standing alone or integrated into other aspects of instruction, these approaches are the most direct way to impact students. In some ways, instructional approaches are the most easily accomplished. Teachers in their classrooms can have a great deal of autonomy for what takes place there. Yet at the same time, in an era of increasingly scripted curricula or environments in which controversial subjects are highly scrutinized and regulated, instructional methods for creating gender inclusion can have the highest stakes for teachers or other educators. Instructional approaches include:

- Designing lesson plans to expand understandings of gender diversity
- Exploring curriculum areas or units for inserting gender diversity issues or topics
- Using literature that has themes raising gender diversity issues
- Utilizing the arts to explore gender
- Using the social-emotional curriculum to surface gender related themes
- Examining the media and popular culture for gender related messages
- Assigning open ended projects that include gender related topics, readings, or news
- Arranging for transgender or other gender expansive people to present in classrooms
- Analyzing data about various trends related to evolving understandings of gender
- Inviting guest speakers who work for greater gender equity in education, law or other fields
- Using video or other media that present specific ideas about gender
- Creating space for students to articulate their own understanding and beliefs about gender
- Integrating gender into curriculum areas through story problems, writing prompts, readings, art assignments, research projects and more



Gender Inclusive Classrooms: Concepts and Lessons

Below, you will find some suggestions for sequencing a program of learning about gender and gender diversity across grade-levels. These assume a proactive approach to the creation of a gender inclusive school setting. As with any curriculum development, the key is to match the needs of the specific context to the materials, activities and resources being used. In some cases, a particular student's or staff member's gender may require additional activities or approaches for supporting the school community to be fully accepting and inclusive of the individual.

Pre-K/Lower Elementary Grades (Pre-K – 2)

Overarching concepts:

There are lots of ways to be boys or girls or something else. Isn't it great?!?!

- Toys are toys, hair is hair, colors are colors, and clothes are clothes
- Sometimes this is confusing. We get messages about some things being for boys and some things being for girls.
- Kids can do or be or like or want anything because they are individuals with hopes and likes and desires. This is not **because** they are boys or girls.

Mid Elementary (2 – 4)

Overarching concepts:

Gender is very complex and not just about bodies. We all have a right to be ourselves.

- Gender includes a relationship between bodies, expression and identity
- Who you are is not about what others tell you, but something you determine for yourself (even when you get messages that say otherwise)
- People deserve to be treated with kindness and respect

Upper Elementary (4 – 6)

Overarching Concepts

Gender Diversity: Binary vs. Multi-dimensional Models of Gender

- Gender in Nature
- Gender in history and across cultures
- Certain types of bodies are thought of as boy and certain types as girl, but that's not true for everyone
- Kids can be boys, girls, both, or neither
- Gender depends on culture and history



Middle School

Overarching Concepts

Social expectations and limitations about gender. What happens to gender non-expansive kids?

Roles and responsibilities within a community; being an ally

- Young Adult Literature
- Portrayals of gender in books
- The biology of gender
- What are some of the pressures to conform to gender expectations, at the school and in general? What happens to kids when they don't?
- Have you ever felt like an outsider, either for your own reasons or because you were treated as such?
- What does being an ally look like?

High School

Overarching Concepts

Gender as a social construct

Gender and civil rights issue

- The complexity of gender is seen across virtually every aspect of society
- How have portrayals of gender in the media affected our understandings of gender?
- What are some of the ways gender is understood in different cultures?
- What is the relationship between gender and issues of power in our society?
- Young Adult Literature
- Portrayals of gender in books
- The biology of gender
- Why is it difficult to come up with solid statistics about transgender people?
- How have issues related to gender diversity shown up over the past 5 – 10 years?
- Gender and Sports
- Debates in Psychology: The DSM-5; Raising Gender-expansive Children



Annotated Bibliography of Children's Books about Gender Diversity

26 Fairmont Avenue (series). DePaola, Tomie G.P. Putnam. 1999 – 2009.

DePaola recounts his childhood exploits, including dressing up as Snow White for Halloween, using his mother's lipstick to dress up as his favorite actress, Mae West, and so forth. Ages 5 – 8

10,000 Dresses. Ewert, Marcus. Seven Stories Press. 2008.

Every night, Bailey dreams about magical dresses: dresses made of crystals and rainbows, dresses made of flowers, dresses made of windows. . . . Unfortunately, when Bailey's awake, no one wants to hear about these beautiful dreams. Then Bailey meets Laurel, an older girl who is touched and inspired by Bailey's imagination and courage, and Bailey's dreams come true! Ages 5+

The Adventures of Tulip, Birthday Wish Fairy. Bergman, S. Bear. Flamingo Rampant. 2012.

Follow Tulip as he deals with the birthday wishes of all the nine-year-olds in North America. Tulip receives a wish from a child known as David who wishes to live as Daniela. He doesn't understand how to help, so he seeks the wise counsel of the Wish Fairy Captain. Ages 3 – 8

All I Want To Be Is Me. Rothblatt, Phyliss. CreateSpace Independent Publishing. 2011.

"All I Want To Be Is Me" is a beautifully illustrated children's book reflecting the diverse ways that young children experience and express their gender. The book gives voice to the feelings of children who don't fit into narrow gender stereotypes, and who just want to be free to be themselves. This book is a celebration of all children being who they are, and is a positive reflection of children, wherever they experience themselves on the gender spectrum. "All I Want To Be Is Me" offers a wonderful way for all children to learn about gender diversity, embracing different ways to be, and being a true friend. Visit www.alliwanttobeisme.com to learn more about how this book can be used by parents and teachers, and to hear the original song, "All I Want To Be Is Me", that goes along with the book.

Amazing Grace. Hoffman, Mary. Dial. 1991.

Grace loves stories, whether they're from books, movies, or the kind her grandmother tells. So when she gets a chance to play a part in Peter Pan, she knows exactly who she wants to be. Ages 4+

Are You a Boy or a Girl? Jimenez, Karleen Pendelton. Distributed by Two Lives Publishing. 2006.

Black and white photo illustrations accompany the story of a girl who follows her own interests, despite the comments of others. Ages 4 – 8

Avocado Baby. Burningham, John. HarperCollins. 1982.

A genderless baby grows very strong eating avocados. Ages Preschool – K

Backwards Day. Bergman, S. Bear. Flamingo Rampant. 2012.

Tenalp is a world where there are seventeen seasons, including one where bubblegum falls from the sky for three days and a single day when everything - everything everywhere - is backwards. Andrea looks eagerly forward to Backwards Day every year, so she can turn into a boy for the day. But one year she doesn't turn along with everyone else. She's miserable. The very next day, however, she turns into a boy -



and stays that way! When they finally figure out what's happened, the miracles of Backwards Day are fully revealed to the reader.

Ballerino Nate. Brubaker Bradley, Kimberly. Dial. 2006.

Nate has the heart of a dancer, and he is determined to learn ballet. Even his older brother, Ben, can't change his mind with his claims that "boys don't dance." Or can he? When Ben tells Nate that he'll have to wear pink shoes and a dress, Nate becomes awfully worried. And when he's the only boy in his ballet class, he begins to think that Ben is right: Maybe boys don't dance. Ages 4+

Be Who You Are. Carr, Jennifer. AuthorHouse. 2010.

Be Who You Are is a picture book depicting the life of a transgendered girl. Nick was born in a boy's body, but has always felt like a girl inside. Supported by family, Nick requests to be no longer called a boy or dress like a boy; "Always remember to be who you are Nick. Remember that we love you, and we are so proud of you." This book is an excellent way to introduce or explain what it means to be transgender to young children, and also a great resource to remind transgendered children that they are accepted and loved. Ages 7+

The Boy Who Cried Fabulous. Newman, Lesléa. Tricycle Press. 2007.

The only thing Roger likes better than exploring the world around him is describing it. And Roger describes most things as fabulous! But his parents have a different view. They want Roger to see things the way they do, so they ban "fabulous" from his vocabulary. Ages 4+

The Boy with Pink Hair. Hilton, Perez. Celebra Children's Books. 2011.

He was born that way-The Boy with Pink Hair. He had a cotton candy colored mop that no one had ever seen before . . . Life is not easy being pink. Adults stare at you, little children giggle behind your back and some kids are just mean. But when you have a best friend who appreciates your uniqueness and parents who are loving and supportive, you can do just about anything. Ages 3+

Cinder Edna. Jackson, Ellen. Harper Collins. 1998.

The famous Cinderella and her neighbor Cinder Edna each worked sunup to sundown for their wicked stepmother and stepsisters. But while Cinderella had the good fortune to be rescued by her fairy godmother, Edna was strong, self-reliant, spunky--and she lived happier ever after! Ages 3+

The Courage of the Blue Boy. Neubecker, Robert. Tricycle Press. 2006.

Blue boy and Polly, his calf, live in a land where everything, including them, is blue. They dream of seeing other places of different colors. They soon arrive in a wondrous multi-colored city. It fills them with joy until they notice once more that only they are blue. Gathering his courage, Blue decides to add his own hues to the city so it will represent all colors but enable him to remain true to self.

Ages 5 - 8

Don't Kiss That Frog. Waters, Fiona (Compiled by). Kingfisher, First Edition. 2008.

Perfect for girls who love tiaras, ball gowns, and happy endings---but also sports, silly jokes, and being different. Featuring the work of seven writers and three illustrators, this anthology of "princess stories with attitude" will make kids laugh as they encounter a bevy of sleepy, sporty, clumsy, brave, resourceful,



and curious princesses. The exuberant typographic design is an excellent match for the story-telling style and colorful artwork. Ages 6 – 10

Elena's Serenade. Geeslin, Campbell. Atheneum Books for Young Readers. 2004.

Elena disguises herself as a boy and learns to be a glassblower like her father, finally earning his respect for her artistry. Ages 3 – 7

A Fire Engine for Ruthie. Newman, Lesléa. Clarion Books. 2004.

Nana has dolls and dress-up clothes for Ruthie to play with, but Ruthie would rather have a fire engine. Ages 2 – 5

Goblinheart. Axel, Brett and Bidlespacher, Terra. East Waterfront Press. 2012.

Using "fairy" and "goblin" in lieu of female and male, the author has created a timely allegorical fairy tale. A youngster named Julep, who lives in a forest tribe, insists on growing up to be a goblin rather than a fairy. The tribe learns to accept that Julep is a goblin at heart, eventually coming around to support the physical transition that must be made for Julep to live as a goblin. Ages 4 – 7

I am Jazz. Herthel, Jessica. Dial. 2014.

The story of a transgender child based on the real-life experience of Jazz Jennings, who has become a spokesperson for transkids everywhere. Ages 4 – 8

I Look Like a Girl. Hamanaka, Sheila. Harper Collins. 1999.

In this vibrantly illustrated picture book, exuberant girls seem to burst both the limits of the page and the confines of traditional expectations. Each child, while engaging in typical childhood activities, is imagining a life as free and wild as that of a tiger, dolphin, mustang, condor, or wolf. A celebration of "what is wild, in the heart-so I can be me," this book does for girls what the author's *All the Colors of the Earth* (Morrow, 1994) did for children of ethnic diversity. Ages 3 – 8

It's Okay to Be Different. Parr, Todd. Little, Brown Books for Young Readers. 2001.

While not specifically addressing gender issues, the book enumerates many ways in which it's okay to be different. Ages 3 – 7

Jacob's New Dress. Hoffman, Sarah, Hoffman, Ian, & Case, Chris. Albert Whitman & Company. 2014.

Jacob loves playing dress-up, when he can be anything he wants to be. Some kids at school say he can't wear "girl" clothes, but Jacob wants to wear a dress to school. Can he convince his parents to let him wear what he wants? This heartwarming story speaks to the unique challenges faced by boys who don't identify with traditional gender roles. Ages 4 – 7

Marisol McDonald Doesn't Match: Marisol McDonald no combina. Brown Ph.D. Monica, & Palacios, Sara. CBP 2013

Marisol McDonald has flaming red hair and nut-brown skin. Polka dots and stripes are her favorite combination. She prefers peanut butter and jelly burritos in her lunch box. To Marisol, these seemingly mismatched things make perfect sense together. Other people wrinkle their nose in confusion at Marisol—can't she just choose one or the other? Try as she might, in a world where everyone tries to put



this biracial, Peruvian-Scottish-American girl into a box, Marisol McDonald doesn't match. And that's just fine with her. Ages 4 – 8

Max. Isadora, Rachel. MacMillan. 1984.

Max warms up for his weekly baseball game by attending his sister's ballet class. Ages 4 – 8

Mighty Jackie: The Strikeout Queen. Moss, Marissa. Simon & Schuster. 2004.

Non-fiction account of teenaged Jackie Mitchell who pitched against baseball greats Lou Gehrig and Babe Ruth. Ages 4 – 8

Morris Micklewhite and the Tangerine Dress. Baldacchino, Christine. 2014.

Morris is a little boy who loves using his imagination. But most of all, Morris loves wearing the tangerine dress in his classroom's dress-up center. The children in Morris's class don't understand. Dresses, they say, are for girls. And Morris certainly isn't welcome in the spaceship some of his classmates are building. Astronauts, they say, don't wear dresses. One day when Morris feels all alone and sick from their taunts, his mother lets him stay home from school. Morris dreams of a fantastic space adventure with his cat, Moo. Inspired by his dream, Morris paints the incredible scene he saw and brings it with him to school. He builds his own spaceship, hangs his painting on the front of it and takes two of his classmates on an outer space adventure. With warm, dreamy illustrations, Isabelle Malenfant perfectly captures Morris's vulnerability and the vibrancy of his imagination. Ages Preschool - 2

My Princess Boy (A mom's story about a young boy who loves to dress up.) Kilodavis, Cheryl. KD Talent LLC. 2010.

My Princess Boy tells the tale of 4-year-old boy who happily expresses his authentic self by happily dressing up in dresses, and enjoying traditional girl things such as jewelry and anything pink or sparkly. My Princess Boy opens a dialogue about embracing uniqueness, and teaches you and others how to accept young boys who might cross-traditional gender. Ages 4+

Oliver Button is a Sissy. DePaola, Tomie. Harcourt Brace Jovanovich. 1979.

Oliver prefers to read, paint, and wants to take tap-dancing lessons, and is jeered at by classmates. His father reluctantly allows the dance classes because they are a form of exercise, and Oliver goes on to wow his classmates at the school talent show, even though he doesn't win. Ages 4 – 8

The Only Boy in Ballet Class. Gruska, Denise. Gibbs Smith. 2007.

People don't understand how wonderful dancing makes Tucker feel, and he is teased and taunted, until his dance skills lead to a stunning move on the football field. Ages 5 – 8

The Paper Bag Princess. Munsch, Robert. Annick Press. 1992.

The Princess Elizabeth is slated to marry Prince Ronald when a dragon attacks the castle and kidnaps Ronald. In resourceful and humorous fashion, Elizabeth finds the dragon, outsmarts him, and rescues Ronald --- who is less than pleased at her un-princess-like appearance. Ages 4+



Pink. Rickards, Lynne. The Chicken House. 2009.

What's a penguin to think when he wakes up pink? Poor Patrick hates the idea of being different from all his friends, and sets off to Africa in search of pink flamingos that might accept a pink penguin. He soon discovers that color isn't everything. Ages 4+

Pink is Just a Color and So is Blue. Bhatia, Niki. CreateSpace Independent Publishing. 2012.

You're a boy who likes pink? Great! You like to play with dolls? Fantastic! Your best friend is a girl—and she likes to crash cars, build things, and play pirates? Awesome! Playing is about having fun, exploring and learning about the bigger world! Forget about what toys are for girls and what toys are for boys. How else would a boy decide he wants to be a chef one day? How else might a girl get the idea that she too could be a fire fighter? We are all different and like different things. What matters is that we are happy and confident.

Pinky and Rex and the Bully. Howe, James. Atheneum Books. 1999.

Pinky is a boy who likes pink, and whose best friend is a girl. When the neighborhood bully challenges him about these things, Pinky begins to doubt himself, but is able to be true to himself and stand up to the bully with some advice from a friendly neighbor. Ages 4 – 8

Play Free. Mason, MaCall and Suarez, Max. Maxmestudio. 2012.

Girls can wear pants, boys can wear dresses. None of that should cause any messes. Take a stroll through the life of a gender variant boy who just wants to be accepted for who he is. Walk in his shoes for a minute as he shows you his playhouse and introduces you to his friends. Soon you'll see that we're all pretty similar and being different isn't really that big of a deal. Ages 4 – 7

The Princess Knight. Funke, Cornelia. New York: Chicken House/Scholastic. 2003.

Despite the taunting of her brothers, Princess Violetta becomes a talented knight, and when her father proposes to give her hand in marriage to the knight who wins a tournament, Violetta uses her brains as well as her brawn to outwit him. Ages 4 – 7

Princess Smartypants. Cole, Babette. G.P. Putnam. 2005.

Princess Smartypants prefers to stay a "Ms." and easily dispatches all but one of her annoying suitors. Ridding herself of the final one is a bit more of a challenge. Ages 4 – 7

Pugdog. U'ren, Andrea. Farrar, Straus & Giroux. 2001.

Pugdog's rather silly owner thinks she's a he, and when he finds out otherwise, he dolls Pugdog up in his idea of femininity. Pugdog hates this, preferring to roll in the mud and play rough. Then they meet a dolled-up poodle that turns out to be male. Ages 3 – 5

Roland Humphrey is Wearing a WHAT?. Kiernan-Johnson, Eileen. Huntley Rahara Press. 2012.

Roland Humphrey is Wearing a WHAT? is the story of a little boy's quest to be his authentic self, dressed in pink and festooned with sparkles, in a world that frowns upon boys who like "girly" things. Roland sees girls at his school dress in a rainbow of hues and is confused by the "rules" limiting what boys can choose; he doesn't understand why girls can like sports and ballet, but for boys there's just one way. Written in verse, Roland Humphrey is Wearing a WHAT? playfully raises important questions about gender norms, acceptance, and friendship. Ages 4-8



Rickshaw Girl. Perkins, Mitali Charlesbridge Publishing. 2008.

Ten-year-old Naima longs to earn money to help her poor Bangladeshi family, but her talent in painting traditional patterns, or alpanas, is no use. Disguised as a boy to drive her father's rickshaw, she wrecks the vehicle threatening the family's sole livelihood. Her solution is to steal away, disguised as a boy, to a repair shop and offer her services painting decorations on the rickshaws. She is surprised to find that the owner is a woman. Ages 7+

School Picture Day. Plourde, Lynn. Dutton Children's Books. 2002.

Josephina's talent in taking things apart to see how they work comes in handy on school picture day when the photographer's camera goes on the blink. Age 4 – 7

The Sissy Duckling. Fierstein, Harvey. Simon & Schuster Books for Young Readers. 2002.

Elmer the duckling faces the derision of his schoolmates and out and out rejection by his father, but he has a mother who sticks up for him no matter what. And when he saves his father's life, Papa declares, "If Elmer is a sissy, then I wish I were a sissy too!" in a resounding moment of triumph for sissies everywhere. Ages 4 – 8

The Story of Ferdinand. Leaf, Munro. Viking Press. 1936.

Our favorite young bull prefers to sit and smell the flowers, to the concern of his mother. Ages 4 – 8

Swamp Angel. Isaacs, Anne. Dutton. 1994.

Angelica Longrider, aka Swamp Angel, is as big a hero as Paul Bunyan, wrassling bears and tornados. Ages Preschool – K

The Ugly Duckling. Andersen, Hans Christian. Adapted and Illustrated by Sebastien Braun. Boxer Books. 2010.

Even the ugly duckling's mother knew there was something different about him. Ages 2 – 5

Tutus Aren't My Style. Skeers, Linda. Dial. 2010.

Emma loves lizards and pirates and cowboy boots, so when a package arrives from Uncle Leo, she doesn't know what to do with the ballerina costume inside. "I don't know how to be a ballerina," Emma says. She flops when she should float, she trips when she should twirl, and her music sounds like burping! But when she decides to make her own rules about how to be a ballerina, Emma's style prevails in her triumphant dance debut. Ages 5 – 8

Virgie Goes to School with Us Boys. Fitzgerald Howard, Elizabeth. Aladdin. 2005.

The youngest and the only girl in a family with five boys, Virgie works hard to convince everyone she is old enough, strong enough, and smart enough to attend the school set up by the Quakers for recently freed blacks in Jonesborough, TN. By the end of summer, she has convinced her family that she can make the seven-mile walk to board at school each week and willingly handle the job of "learning to be free." Ages 5+



Wandering Son, Volumes 1-6. Takako, Shimura, Fantagraphics. 2011-13.

The fifth grade. The threshold to puberty, and the beginning of the end of childhood innocence. Shuichi Nitori and his new friend Yoshino Takatsuki have happy homes, loving families, and are well liked by their classmates. But they share a secret that further complicates a time of life that is awkward for anyone: Shuichi is a boy who wants to be a girl, and Yoshino is a girl who wants to be a boy. Written and drawn by one of today's most critically acclaimed creators of manga, Shimura portrays Shuichi and Yoshino's very private journey with affection, sensitivity, gentle humor, and unmistakable flair and grace. Ages 10+

When Kathy is Keith. Wong, Wallace. Xlibris. 2011.

A sensitive portrayal of a young girl who identifies as a boy. Ages 3-6

When Kayla was Kyle. Frabikant, Amy. Avid Readers Publishing. 2013.

Kyle doesn't understand why the other kids at school call him names. He looks like other boys, but doesn't feel like them. Can Kyle find the words to share his feelings about his gender - and can his parents help him to transition into the girl he was born to be? *When Kayla Was Kyle* is a picture book children of all ages will want to read because it addresses the increasingly emerging ideas around Gender Diversity.

White Dynamite and Curly Kidd. Martin, Bill & Archambault, John. Henry Holt and Co. 1989.

As Curly prepares to ride the "meanest bull in the whole United States," he explains to his proud but worried child how he overcomes his fear: he thinks about places he'd like to see. Lucky Kidd calls encouragement to dad. The story, told in dialogue, begs to be read aloud, and challenges our assumptions about gender expressions with what may be a surprise ending. Ages 4+

William's Doll. Zolotow, Charlotte. Harper & Row. 1972.

To the dismay of his parents, and jeering of his brother, young William wants a doll. His grandmother convinces his father that it's an acceptable toy for a boy because it will help teach him how to be a father, thus resolving the issue in an acceptably heterosexual way. Ages 3 - 7

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SEARCH

WHAT IS BULLYING

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DEFENDANT'S EXHIBIT 203

WHO IS AT RISK

Bullying and LGBT Youth

Risk Factors

Lesbian, gay, bisexual, or transgender (LGBT) youth and those perceived as LGBT are at an increased risk of being bullied.

Warning Signs

There are important and unique considerations for strategies to prevent and address bullying of LGBT youth.

Effects

Considerations for Specific Groups

- ▶ Creating a Safe Environment for LGBT Youth
- ▶ Federal Civil Rights Laws and Sexual Orientation
- ▶ Additional Resources

LGBT Youth

Youth With Special Needs

Creating a Safe Environment for LGBT Youth

It is important to build a safe environment for all youth, whether they are straight or LGBT. All youth can thrive when they feel supported. Parents, schools, and communities can all play a role in helping LGBT youth feel physically and emotionally safe:

- ▶ Build strong connections and keep the lines of communication open. Some LGBT youth often feel rejected. It is important for them to know that their families, friends, schools, and communities support them.
- ▶ Establish a safe environment at school. Schools can send a message that no one should be treated differently because they are, or are perceived to be, LGBT. Sexual orientation and gender identity protection can be added to school policies.
- ▶ Create gay-straight alliances (GSAs). GSAs help create safer schools. Schools must allow these groups if they have other "non-curricular" clubs or groups. Learn more about the right to form a GSA under the Equal Access Act.
- ▶ Protect privacy. Be careful not to disclose or discuss issues around being LGBT with parents or anyone else.

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Federal Civil Rights Laws and Sexual Orientation

Federal civil rights laws do not cover harassment based on sexual orientation. Often, bullying towards LGBT youth targets

Create a Gay-Straight Alliance

Watch a video of Arne Duncan, Secretary of the U.S. Department of Education, in a speech supporting GSAs for Gay-Straight Alliance Day.



their non-conformity to gender norms. This may be sexual harassment covered under Title IX. Read more about federal civil rights laws.

Many states protect against bullying because of sexual orientation in their state laws.

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Additional Resources

- ▶ Bullying of LGBT Youth and Those Perceived to Have Different Sexual Orientations Tip Sheet (PDF - 339 KB)
- ▶ Learn more about preventing bullying.
- ▶ Visit the Centers for Disease Control and Prevention website to support LGBT youth.
- ▶ Read a paper on LGBT bullying from the White House Conference on Bullying.
- ▶ Read more about health-risk behaviors in LGBT youth.

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Bullying of LGBT Youth and Those Perceived to Have Different Sexual Orientations

What is Bullying?

Bullying is unwanted, aggressive behavior among school aged children. It involves a real or perceived power imbalance and the behavior is repeated, or has the potential to be repeated, over time.

Both kids who are bullied and kids who bully others may have serious, lasting problems.

Lesbian, gay, bisexual and transgender (LGBT) youth, or those perceived as LGBT, may be teased and bullied by their peers. Educators, health professionals, parents, and other concerned adults can make a difference in the lives of LGBT youth. Often, bullying towards LGBT youth targets their non-conformity to gender norms. This may be sexual harassment covered under Title IX of the Education Amendments of 1972.

Student and Teacher Attitudes

According to a 2005 Harris Interactive survey:

- A majority of youth know of LGBT classmates
- More than one-third of teachers know of an LGBT student
- Most teachers surveyed are committed to keeping LGBT students safe and creating school climates that are safe and supportive learning environments (Harris Interactive & GLSEN, 2005)

Effects of Anti-LGBT Bullying

Bullied LGBT youth, or youth perceived as lesbian, gay, bisexual, or transgender, are more likely to skip school, smoke, use alcohol and drugs, or engage in other risky behaviors (Bontempo & D'Augelli, 2002; Rivers & D'Augelli, 2001). Lesbian, gay or bisexual youth are more than twice as likely as their peers to be depressed and think about or attempt suicide (Russell & Joyner, 2001). The risks are the same whether youth are LGBT, are heterosexual but are wrongly perceived to be LGBT, or choose to hide their sexual orientations.

What Schools and Communities Can Do

Develop Clear Policies on Bullying

Schools can consider adding sexual orientation and gender identity to their bullying policies (Office of Civil Rights, OCR, 2010). Doing so tells students to treat everyone equally, regardless of their sexual orientation (Get Busy, Get Equal, 2006).

According to the Harris Interactive survey, students from schools with clear policies on LGBT-related bullying:

- Are less likely to report a serious harassment problem
- Report higher rates of feeling safe at school
- Are one-third less likely to skip a class

Schools with anti-bullying policies can consider making it clear that bullying based on sexual orientation is against school policy. (Harris Interactive & GLSEN, 2005)

Train Staff and Volunteers in Bullying Prevention and Intervention

Schools, clubs, camps, after school programs, summer programs, and other youth organizations can train staff and volunteers on bullying prevention and intervention.

Create Safe Environments for All Children

Schools and communities can create safe, non-biased, and supportive environments

for all children and youth, such as a gay-straight alliance (GSA). GSAs help create safer schools, and reduce the hazards and stresses for LGBT youth (Just the Facts Coalition, 1999). According to the Equal Access Act, schools must allow these groups if they have other “non-curricular” clubs or groups.

Discuss Bullying Openly

Adults can consider discussing concerns about LGBT-related bullying with youth. Parents and other adults may convey an attitude of indifference by avoiding the subject. Or worse, their silence may convey an unspoken acceptance of the bullying (Ponton, 2001).

These discussions should protect the youth’s privacy. Be careful not to disclose or discuss issues around being LGBT with the youth’s parents or anyone else.

Provide Additional Support

When youth reveal same-sex attractions and relationships, this is an opportunity for health, medical, and school professionals to better inform and support sexual minority youth by linking them with community resources and helping to overcome the tensions of parents, families, and peers.

Bullied LGBT youth may need additional support, such as access to qualified healthcare professionals with experience working with LGBT youth (AAP, 2004; NAPNAP position paper, 2006).



Raise Community Awareness

The American Academy of Pediatrics encourages pediatricians to discuss youth sexuality with community leaders. Specifically, pediatricians are encouraged to:

- Provide facts about sexual orientation in school and community libraries
- Develop support groups for LGBT youth, their friends, and their parents (AAP, 2004)

References and Resources

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Trends – Recent Case Law Regarding LGBTQ Students

By: Bruce A. Harris, Esq.

I. Equal Access Clubs

1) Equal Access Act --20 U.S.C. § 4071. Denial of equal access prohibited

It shall be **unlawful** for any **public secondary school** which receives Federal financial assistance and which has a limited open forum **to deny equal access** or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, **or other content of the speech at such meetings.**

A public secondary school has a **limited open forum** whenever such school grants an offering to or opportunity for one or more **noncurriculum related student groups to meet on school premises during noninstructional time.**

The meeting is **voluntary and student-initiated.**

There is **no sponsorship of the meeting by the school, the government, or its agents or employees.**

The meeting **does not materially and substantially interfere with the orderly conduct of educational activities** within the school.

Nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.

Nothing in this subchapter shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.

2) U.S. Department of Education

Elementary & Secondary Education
Key Policy Letters from the Education Secretary and Deputy Secretary
June 14, 2011

By Arne Duncan

Harassment and bullying are serious problems in our schools, and lesbian, gay, bisexual, and transgender (LGBT) students are the targets of disproportionate shares of these problems.

Safe Schools Improvement Act - proposed amendment to the Elementary & Secondary Act - bill is policy that enumerates sexual orientation + gender identity.

Gay-straight alliances (GSAs) and similar student-initiated groups addressing LGBT issues can play an important role in promoting safer schools and creating more welcoming learning environments. Nationwide, students are forming these groups in part to combat bullying and harassment of LGBT students and to promote understanding and respect in the school community.

These same barriers have sometimes been used to target religious and other student groups, leading Congress to pass the Equal Access Act.

In 1984, Congress passed and President Reagan signed into law the Equal Access Act, requiring public secondary schools to provide equal access for extracurricular clubs.

The general rule, approved by the U.S. Supreme Court, is that a public high school that allows at least one noncurricular student group to meet on school grounds during noninstructional time (e.g., lunch, recess, or before or after school) may not deny similar access to other noncurricular student groups, regardless of the religious, political, philosophical, or other subject matters that the groups address.

3) Palm Beach County School Board Policy 2.121 Student Activities in the Schools 4/21/1999

This policy is intended to implement the Federal Equal Access Act, 20 U.S.C. §§ 4071, et. seq., and the First Amendment of the U.S. Constitution. If one non-curriculum club has access to the specific methods of communication within the policy (meeting space, listing in school handbooks, school newspapers, the yearbooks, and bulletin boards), then the same access must be offered to other non-curriculum clubs.

4) *Straights and Gays for Equality (SAGE) v. Osseo Area Schools—District No. 279*, 540 F.3d 911 (8th Circuit 2008)

Equal Access – Gay group had same equal access including for communication, meeting times and places. SAGE was not a curriculum club.

5) *Straights and Gays for Equality (SAGE) v. Osseo Area Schools—District No. 279*, 471 F.3d 908 (8th Circuit 2006)

Equal Access – GLBT group would have the same avenues of communication as other noncurriculum groups. The preliminary injunction was upheld. Curriculum vs. non-curriculum groups were distinguished.

6) *Boyd County High School Gay Straight Alliance v. Board of Education of Boyd County*, 258 F.Supp.2d 667 (E.D. Kentucky 2003)

Equal Access Act (EAA) – School board tried to claim this group was a curriculum group due to the school having a course in human sexuality but the court disagreed. Once one noncurriculum group is open, all have the same rights. The group was intended to promote tolerance, The

disruption by the community following the school's recognition of the group was caused by opponents not supporters of the group. The school board then banned all clubs but several still met. No material or substantial interference was caused by the group. Gay rights group was granted a preliminary injunction as substantial likelihood the group would prevail that the school violated the rights of the students under the EAA.

- 7) *Krestan v. Deer Valley Unified School District No. 97, of Maricopa*, 561 F.Supp.2d 1078, 1085 (D. Ariz. 2008)

Although the text of the statute refers to meetings, courts have made clear that the Act extends to all opportunities afforded non-curriculum student clubs.

- 8) *Board of Education of the Westside Cmty. School v. Mergens*, 496 U.S. 226, 247, 110 S.Ct. 2356, 110 L.Ed.2d 191 (1990)

The U.S. Supreme Court explained that by placing religious student clubs on equal footing with similar non-religious student organizations the Act "allows student clubs to be part of the student activities program and carries with it access to the school newspaper, bulletin boards, the public address system, and the annual Club Fair."

- 9) *Caudillo v. Lubbock Independent School District*, 311 F.Supp.2d 550 (N.D. Texas 2004)

First Amendment – Here the court upheld the school's denial of a gay straight association's recognition as a group and access to post signs and communicate. The group had a website with a link to a website which was sexually explicit and taught safe sex. The court found that under the Equal Access Act the school could avoid disruption, maintain order and discipline, and protect the well being of the students. An educational mission of the school was abstinence only.

- 10) *Gay-Straight Alliance of Okeechobee High School v. School Board of Okeechobee County*, 483 F.Supp.2d 1224 (S.D. Florida 2007)

Preliminary injunction was granted in favor of the group. The school board had denied access and one of its grounds was that this was a sex based club relying on the *Caudillo case*. The group denied being a sex based club and contended its purpose was to promote tolerance and equality. The court found that the club's purpose did not conflict with Florida's abstinence only policy and ordered that the school district officially recognize the club and grant it the rights of other clubs.

- 11) *Gonzalez v. School Board of Okeechobee County*, 571 F.Supp.2d 1257 (S.D. Florida 2008)

Equal Access Act –The court ordered the school district recognize the Gay Straight Alliance as a student club and was obligated to provide equal access. The group's tolerance message would not substantially interfere with discipline in the school's operation.

II. Anti-Discrimination Policies

1) Palm Beach County School Board Policy 5.001 Protecting Students from Harassment and Discrimination

General Provisions.-- The School Board of Palm Beach County, Florida, as governing body of the School District ("School District" or "District"), does not condone harassment or discrimination against any of its students or applicants for admission for any reason including, but not limited to, gender expression and/or gender identity, race, color, religion, national origin, age, disability, marital status, ancestry, ethnicity, gender, linguistic preference, political beliefs, sexual orientation, or social/family background in its education programs or admissions to education programs and therefore prohibits such discrimination against, or harassment of, any student by any Board member, District employee, consultant, contractor, agent, visitor, volunteer, student, or other person in the school or outside the school at school-sponsored events, on school buses, and at training facilities or training programs sponsored by the District.

2) School Board Policy 5.81 Protecting Students from Sexual Harassment and Discrimination

General Provisions.-- The School Board of Palm Beach County, as governing body for the District of Palm Beach County, Florida ("School District" or "District"), does not discriminate on the basis of sex or gender expression and/or identification in education programs and prohibits sexual harassment of, or sex/gender-based discrimination against, any student or applicant for admission by any Board member, District employee, consultant, contractor, agent, visitor, volunteer, student, or other person in the school or outside the school at school-sponsored events, on school buses, and at training facilities or training programs sponsored by the School District.

3) School Board Policy 5.60 Eligibility for Participation in K-12 Extracurricular Activities

Equitable Participation

No extracurricular activity shall be provided or conducted separately on the basis of any actual or perceived characteristics listed as a prohibited category of discrimination in state or federal law, nor shall any student's participation in an extracurricular activity be required or refused on those bases.

- a. Principals shall select faculty advisors, directors, coaches, sponsors, and staff who are diverse in racial, ethnic, and gender composition.
- b. Students shall not be excluded from, nor denied positions of leadership in any extracurricular activity due to race, color, religion, sex, ethnicity, national origin, age, sexual orientation, gender identity or expression, genetic information, marital status, parental status, disability, limited English proficiency, or any other characteristic protected by law.

4) U.S. Dept. of Education

Dear Colleague Letter
Office of the Assistant Secretary
October 26, 2010

By Russlynn Ali
Assistant Secretary for Civil Rights

In recent years, many state departments of education and local school districts have taken steps to reduce bullying in schools. The U.S. Department of Education (Department) fully supports these efforts. Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential. The movement to adopt anti-bullying policies reflects schools' appreciation of their important responsibility to maintain a safe learning environment for all students. I am writing to remind you, however, that **some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department's Office for Civil Rights (OCR)**. As discussed in more detail below, by limiting its response to a specific application of its anti-bullying disciplinary policy, a school may fail to properly consider whether the student misconduct also results in discriminatory harassment. ...

As noted in the example, the school failed to recognize the pattern of misconduct as a form of sex discrimination under Title IX. **Title IX prohibits harassment of both male and female students regardless of the sex of the harasser—i.e., even if the harasser and target are members of the same sex. It also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping.** ...

Although Title IX does not prohibit discrimination based solely on sexual orientation, **Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination.** When students are subjected to harassment on the basis of their LGBT status, they may also, as this example illustrates, be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment. In this example, the harassing conduct was based in part on the student's failure to act as some of his peers believed a boy should act. The harassment created a hostile environment that limited the student's ability to participate in the school's education program (e.g., access to the drama club). Finally, even though the student did not identify the harassment as sex discrimination, the school should have recognized that the student had been subjected to gender-based harassment covered by Title IX.

In this example, the school had an obligation to take immediate and effective action to eliminate the hostile environment....

III. Filtering of Websites

- 1) *Parents, Families, and Friends of Lesbians and Gays, Inc. v. Camdenton R-III School District*, 853 F.Supp.2d 888 (W.D. Missouri 2012)

The issue of this case involved Internet filtering by a school district. The court granted a preliminary injunction in favor of the website publishers who provided supportive resources for LGBT youth and a student. The court found that there was discrimination against those websites as the sexuality filter had blocked these sites. There was viewpoint discrimination.

- 2) Palm Beach County School Board Policy 8.125 District Review and Filtering of Web Sites

The blocking of gay/lesbian websites was reported in the newspaper. The ACLU contacted the District, which unblocked the sites and created this policy.

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DISCIPLINING STUDENTS FOR OFF-CAMPUS TEXT MESSAGING/SOCIAL NETWORKING/FACEBOOK STATEMENTS



Bruce A. Harris, Esq.

In 2013 the Legislature amended Florida Statute Section 1006.147 to include as prohibited bullying and harassment of a student or employee conducted "through the use of data or computer software that is accessed at a nonschool-related location, activity, function, or program or through the use of technology or an electronic device that is not owned, leased, or used by a school district or school, if the bullying substantially interferes with or limits the victim's ability to participate in or benefit from the services, activities, or opportunities offered by a school or substantially disrupts the education process or orderly operation of a school." (emphasis added)

The prohibition of cyberbullying of a student was also added to the statute and was defined as:

bullying through the use of technology or any electronic communication, which includes, but is not limited to, any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic system, photoelectronic system, or photooptical system, including, but not limited to, electronic mail, Internet communications, instant messages, or facsimile communications. Cyberbullying includes the creation of a webpage or weblog in which the creator assumes the identity of another person, or the knowing impersonation of another person as the author of posted content or messages, if the creation or impersonation creates any of the conditions enumerated in the definition of bullying. Cyberbullying also includes the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions enumerated in the definition of bullying. (emphasis added)

Thus, students may be disciplined for engaging in cyberbullying though off-campus computers and social network sites.

On August 26, 2011, the Superintendent issued BULLETIN #P- 3983-CAO/GC -- Guide for School Administrators when Viewing Social Networking Sites Relating to Students (including FACEBOOK): Elevated/Extended Internet Access (Access and Usage Do's and Don'ts). Has the law changed since the time of the bulletin or is there any greater guidance? Unfortunately, there appears to be no greater certainty to guide school administrators. The United States Supreme Court and the

Eleventh Circuit Court of Appeals (the court whose opinions govern Florida) have not yet ruled on this issue of the school's authority to regulate student online speech that does not occur on a school campus or at a school-sponsored event.[1]

Accordingly, it remains the General Counsel's office's recommendation for school administrators to continue to follow the advice within the August 26, 2011 Bulletin when determining whether the discipline a student for off-campus on-line statements and be cautious. There needs to be a material disruption to the campus or, as in the case of bullying, that substantially invades the rights of others.

Below are some facts patterns upon which court decisions have been based. Before reading the court's ruling, consider how you would decide the issue and if you believe discipline of the student was warranted under these circumstances.

- 1) **Facts:** A high school student "engaged in a string of increasingly violent and threatening instant messages [though the social networking site MySpace] sent from home to his friends bragging about his weapons, threatening to shoot specific classmates, intimating that he would "take out" other people at a school shooting on a specific date, and invoking the image of the Virginia Tech massacre. His friends were alarmed and notified school authorities, who temporarily expelled Landon based in large part on these instant messages."

Court decision: The court determined that "the messages presented a real risk of significant disruption to school activities and interfered with the rights of other students. Under the circumstances, the school district did not violate Landon's rights to freedom of expression or due process." *Wynar v. Douglas County School District*, 728 F. 3d 1062 (9th Cir. 2013).

- 2) **Facts:** A student had been removed as the student body president of his high school for a number of reasons, including some of his postings on the internet. On Facebook he had vilified the school's principal by stating to another student that "President's Council was shot down by Ms. Kersey" and that "[s]he refused to give him school time for the activity and restricted it in such a way that it would be impossible to make it anything more than a 20-minute discussion group." In addition, in a Facebook conversation he was accusing "specific Council members to protect self from disgruntled student body".

Court decision: The Northern District of Georgia court determined these comments were protected free speech.

(Disciplining Students, page 3)

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(*Disciplining Students*, page 2) The court could not determine what the second sentence meant and found that the Facebook conversation with another student was non-violent and did not cause a material or substantial disruption at the school. *Lack v. Kersey*, 2012 WL 1080620 (N.D. Ga. 2012).

3) **Facts:** A high school student created a parody profile making fun of the school principal on "MySpace.com." The student created the profile using his grandmother's computer at her home, during non-school hours. The student copied a photograph of the principal that he obtained from the school's website. The profile contained bogus questions and answers based on the theme "big" as the principal apparently was a big man. This profile referred to the principal in "big" terms including a "big steroid freak" and that he smoked a "big blunt". The student allowed access to the profile to other students in the district by adding --"friends" to the profile and eventually the existence of the profile soon reached many of the school's students. The student engaged in some limited conduct related to the profile while in school, accessed the profile from a computer in his Spanish classroom, and showed the profile to other classmates. In one computer lab a teacher observed students congregating around a computer. Note, the school district did not argue to the appellate court that a connection existed between the student's speech and a substantial disruption of the school.

The student admitted he created the profile and apologized to the principal. The school still suspended him for 10 days. The disciplinary codes used were for "disruption of the normal school process", disrespect, harassment of a school administrator via computer/ internet, and gross misbehavior. Other students posted even more vulgar comments on the profile but they were not disciplined. No criminal charges were filed.

Court decision: The court ruled that the discipline violated the student's First Amendment speech rights since no connection existed between creation of the parody of the principal and a substantial disruption of the school environment. Even though the speech was aimed at the school community and the principal, absent a substantial disruption of the school, the school could not regulate the conduct. The



court rejected the school's argument that this conduct constituted on-campus speech and further held that the discipline was not warranted by the student's taking the principal's photo from the school district's website. *Layschock v. Hermitage School District*, 650 F.3d 205 (3d Cir. 2011).

4) **Facts:** An eighth grade student had created, through a home computer during non-school hours, on the website MySpace.com an imposter personal profile of her school's principal with his picture. The principal's picture had been taken from the school district's website but the student's website did not name him, the school, or the location. The site contained adult language and sexually explicit content and included nonsense and juvenile humor as well as profanity and personal attacks. The profile was "so outrageous that no one took its content seriously."

The site at first could be viewed by anyone, but after one day, the profile became private and was limited to the student's friends, and included about 20 school district students. A paper copy of the website was brought into school at the request of the principal to view it, and the website was discussed in school. The student admitted her role in creating the website. Although a substantial disruption did not occur, there was in fact some disruption during school hours, including two teachers reporting that students were discussing the profile in class and were asked to stop. A counselor also interrupted her schedule about a half hour to sit in during the principal's meeting with the student. The school suspended the student.

Court decision: The court assumed, without deciding, that the *Tinker* standards applied to off-campus speech by the student. Although the school showed some disruption ("general rumblings, a few minutes of talking in class, and some officials rearranging their schedules"), the court found that the student's speech did not cause a substantial disruption. The school did argue that based on the facts the school could reasonably forecast substantial disruption. The court, however, disagreed and stated that the profile was so outrageous it could not be taken seriously, the principal was not identified by name or school, the school's filter blocked access to MySpace so no students could view the profile from school, and the student had taken steps to keep the profile private. The student did not intend for the speech to reach the school and took steps to keep it private, even though some of her friends were students at the school. Because her conduct "indisputably caused no substantial disruption in school" and "could not reasonably have led school officials to forecast substantial disruption", the court found a violation of the student's First Amendment free speech rights and that discipline of student was not warranted.

The court also rejected the school's argument that the speech could be prohibited because of its lewd and vulgar content. The court would not apply this exception to *Tinker* to off-campus speech that was not school-sponsored or at a school-sponsored event. *J.S. v. Blue Mountain School*

(*Disciplining Students*, page 6)

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Disciplining Students, page 3 District, 650 F.3d 915 (3d Cir. 2011).

5) **Facts:** A high school student created from her home computer a discussion group MySpace.com webpage that ridiculed, another student. The webpage was called "S .A.S.H.," which the student claimed stood for "Students Against Sluts Herpes", although another student contended it meant "Students Against Shay's Herpes." who was the "main subject of discussion on the webpage." The creator invited 100 of her MySpace friends to join the webpage and about two dozen students at the school did join. The first student who responded used a school computer after hours and ridiculed the victim student. Other comments were also posted and the creator responded and approved of many of the derogatory postings. One of the other students posted photos of the victim with red dots on her face to make it appear that she had herpes.

The student was suspended for five days and received a 90 day social suspension which precluded her from participating in extracurricular activities.

Court decision: The court held that the student "used the Internet to orchestrate a targeted attack on a classmate, and did so in a manner that was sufficiently connected to the school environment as to implicate the School District's recognized authority to discipline speech which "materially and substantially interfer[es] with the requirements of appropriate discipline in the operation of the school and collid[es] with the rights of others ." The creation of this group forced the student targeted by the site to miss school to avoid further abuse. Additionally, if the school had not intervened, the potential for more serious harassment was real. This speech eventually made its way to the school in a meaningful way. It was foreseeable that the student's conduct would reach the school through electronic devices as most of the group members were students at the school and the target of the group's harassment was a school student. In fact the webpage made its way into the school and was first accessed by a student at the school on a school computer. The court upheld the school district's discipline of the student. *Kowalski v. Berkeley County Schools*, 652 F.3d 565 (4th Cir. 2011).

6) **Facts:** A high school student sent instant messages from his home computer to a classmate in which he talked about getting a gun and shooting some other students at the school. The student receiving the message and an adult notified the principal. The school notified the police who placed the student in juvenile detention and the student was later suspended for the remainder of the year. After word had spread in the school community about the student's comments, the principal received numerous phone calls from concerned parents asking what the school was doing to address the threat: and whether their children were on a rumored

hit list. The school increased campus security in several respects, including assigning staff to monitor entrances and public areas, limiting access to the school, and communicating these changes to parents.

Court decision: The court referred to one of its earlier decisions. In that case the court "defined a true threat as a 'statement that a reasonable recipient would have interpreted as a serious expression or an intent to harm or cause injury to another.' The speaker must in addition have intended to communicate his statement to another. That element of a true threat is satisfied if the 'speaker communicates the statement to the object of the purported threat or to a third party.'"

Here, although the student did not communicate any threatening statements to the teenagers targeted in his messages, he intentionally communicated them to a third party, who was a classmate of the targeted students. Thus, the student "knew or at least should have known that the classmates he referenced could be told about his statements True threats are not protected under the First Amendment, and here the District was given enough information that it reasonably feared [the student] had access to a handgun and was thinking about shooting specific classmates at the high school. . . . [S]chool officials would have exposed the District to what reasonably appeared to them as a serious risk of harm to students and disruption of the school environment if no action had been taken in response to [the student] 's threatening instant messages which met our court's test for true threats" . Additionally, "[here], it was reasonably foreseeable that [the student's] threats about shooting specific students in school would be brought to the attention of school authorities and create a risk of substantial disruption within the school environment." *D.J.M. v. Hanibal Public School Dist. No. 60*, 647 F.3d 754 (8th Cir. 2011).

7) **Facts:** A school official disciplined R.S.—a Middle School student —"for two postings on her Facebook wall. One posting expressed her dislike of an adult school employee and another expressed salty curiosity about who had "told on her." Plaintiffs argued that the punishment of her out-of-school wall postings violated her First Amendment right to free speech. Plaintiffs further alleged that school officials forced R.S. to involuntarily surrender her Facebook and email passwords upon their learning that R.S. and one of her classmates had an out-of-school sex-related conversation. They argued that the officials' subsequent search of R.S.'s private Facebook account constituted an unlawful search under the Fourth Amendment."

Court decision: The district court concluded that the plaintiffs stated claims they could litigate and summarized the law on disciplining students for out-of-school statements: "Such statements are protected under the First Amendment and not punishable by school authorities unless they are true threats or are reasonably calculat-

(*Disciplining Students*, page 7)

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Disciplining Students, page 6 . ed to reach the school environment and are so egregious as to pose a serious safety risk or other substantial disruption in that environment. R.S.'s Facebook wall postings were not true threats or threats of any kind. While her statements may have been reasonably calculated to reach a school audience, that possible fact is not sufficient to justify her punishment. The school defendants must also show that the statements posed a substantial disruptive effect." *R.S. v. Minnewaska Area School District No. 2149*, 894 F.Supp.2d 1128 (D. Minn. 2012).

Please let us know if you have questions when situations arise concerning student discipline and technology related matters.

[1]The Eleventh Circuit has ruled on what constitutes material disruption for on campus activities, but this case did not involve off-campus activity by the student. In *Boim v. Fulton County School*

Transgender

Transgender is an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person's internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics. "Trans" is sometimes used as shorthand for "transgender." While transgender is generally a good term to use, not everyone whose appearance or behavior is gender-nonconforming will identify as a transgender person. The ways that transgender people are talked about in popular culture, academia and science are constantly changing, particularly as individuals' awareness, knowledge and openness about transgender people and their experiences grow.

Gender Identity vs Sexual Orientation

Gender identity and sexual orientation are not the same. Sexual orientation refers to an individual's enduring physical, romantic, and/or emotional attraction to another person, whereas gender identity refers to one's internal sense of being male, female, or something else. Transgender people may be straight, lesbian, gay, bisexual, or asexual, just as nontransgender people can be. Some recent research has shown that a change or a new exploration period in partner attraction may occur during the process of transition. However, transgender people usually remain as attached to loved ones after transition as they were before transition. Transgender people usually label their sexual orientation using their gender as a reference. For example, a transgender woman, or a person who is assigned male at birth and transitions to female, who is attracted to other women would be identified as a lesbian or gay woman. Likewise, a transgender man, or a person who is assigned female at birth and transitions to male, who is attracted to other men would be identified as a gay man.

<http://www.apa.org/topics/lgbt/transgender.aspx?item=1>



TRANSGENDER AND GENDER NON-CONFORMING STUDENTS: YOUR RIGHTS AT SCHOOL

April 2014

Bullying, harassment, or discrimination against transgender or gender nonconforming students is covered by Title IX, a federal law that prohibits sex discrimination in schools. This resource outlines the rights trans and gender nonconforming students have in schools and how to file formal complaints. While NCTE does not provide legal services, we encourage anyone who cannot resolve issues through the complaint processes discussed here to seek legal counsel.

WHAT LAWS PROTECT YOU AT SCHOOL?

The following laws offer protection for trans and gender non-conforming students:

- **Title IX** is a federal law prohibiting sex discrimination in schools. The U.S. Department of Education, as well as many courts, have concluded that discrimination or harassment because a person is transgender or gender non-conforming is illegal sex discrimination. Title IX applies to all schools (K-12 and post-secondary) that accept federal funds, including nearly all public schools. Complaints of discrimination or harassment can be filed with the U.S. Department of Education.
- **State laws and school district policies** in many jurisdictions also explicitly prohibit discrimination in schools based on gender identity or expression as well as sexual orientation. California, Colorado, Connecticut, the District of Columbia, Illinois, Iowa, Maine, Massachusetts, Minnesota, New Jersey, Oregon, Vermont and Washington State have such laws, which are enforced by state civil or human rights agencies. Many school districts also have policies prohibiting discrimination based on gender identity or expression or sexual orientation.
- **The Equal Access Act** requires all school-affiliated student organizations, such as a Gay-Straight Alliance or Pride Alliance, to be treated equally. This means that schools cannot ban certain types of groups or single them out for worse treatment.
- **The Family Educational Rights and Privacy Act** protects personal information about students in school records, and in most circumstances prohibits release of this information without consent.
- **The First Amendment** of the U.S. Constitution protects the right of students to free speech and freedom of expression, including expression of one's gender identity.

WHAT ARE YOUR RIGHTS AT SCHOOL

You have the right not to be targeted for bullying or harassment because you are transgender or gender non-conforming. If school administrators become aware of bullying or harassment they have an obligation to take action to stop it.

You have the right to equal educational opportunities regardless of your gender identity or expression. This includes not being disciplined or excluded from school, athletic or extracurricular activities, or other school events because you are transgender or gender non-conforming.

WHAT ARE YOUR RIGHTS AT SCHOOL? (CONTINUED)

You also have the right to be free from discrimination based on your race, color, national origin, or disability.

You have the right to wear clothing and otherwise present yourself in a way that is consistent with your gender identity, so long as you follow rules for appropriate dress that apply to all students. Disciplining you for doing so may constitute discrimination or violate your right to free expression.

You have the right to privacy concerning your transgender status and gender transition. Any such information that is recorded in school records must be treated as confidential and not disclosed to others without your consent. You have the right to form and participate in student groups, such as a Gay-Straight Alliance or Pride Alliance, and to have your group treated like other student groups.

WHAT CAN YOU DO ABOUT DISCRIMINATION AT SCHOOL?

If you or someone close to you has experienced bullying, harassment or intimidation, you can start by bringing your concerns to school and district officials. Contact your school district, find out about its nondiscrimination and anti-bullying policies, and to try to reach an appropriate resolution.

If you cannot resolve the issue at the district level or if you fear retaliation, filing a formal complaint of discrimination is one major action you can take. These complaints can lead to actions by schools to stop ongoing problems, change policies, train staff, and take other steps to protect students. They also help build a record of discrimination against trans and gender non-conforming students, which can be used to advocate for stronger protections at the local, state and national level.

The U.S. Department of Education, through its Office for Civil Rights (OCR), is charged with enforcing Title IX. Complaints of gender-based bullying, harassment, or discrimination at school, you can file a complaint directly with OCR. In cases where OCR declines to pursue a case, state and local laws may offer additional protections.

In addition to addressing individual complaints, OCR's field offices also engage in a variety of activities to help schools better address bullying, harassment, and discrimination. Parents, students and community organizations can contact OCR field offices to see how they can work with you to enhance your local schools' capability to prevent and respond to bullying, harassment and discrimination.

HOW DO I FILE A COMPLAINT?

You can file a complaint with OCR by filling out a complaint form online at: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>. You can also download a complaint form to submit by mail or email here: <http://www2.ed.gov/about/offices/list/ocr/complaintform.pdf>.

There are a few important things to know about filing a complaint:

- **File as soon as possible.** A complaint must be filed within 180 days of when the discrimination or bullying and harassment occurred. If the complaint is not filed on time, you should provide the reason for the delay and request a waiver of the deadline.
- **Report it as "sex discrimination."** In order to for the claim to be covered under Title IX, it is important to report "sex" as the basis of the discrimination.
- **Complete the entire form.** Incomplete complaints won't be investigated. If OCR needs more information in order to process the complaint, it may contact you for more information. You will then have 20 calendar days within which to respond to OCR's request for information.

HOW DO I FILE A COMPLAINT? (CONTINUED)

- **Provide details.** Include in your complaint as many details as you can regarding the people and events involved, and when and where events occurred.
- **Complaints are confidential.** Information about your complaint will not be shared without permission.
- **Family, friends, or other supporters can file a complaint.** Complaints do not need to be filed by the person(s) experiencing the bullying, harassment or discrimination. Anyone, including friends, family, and school staff, can file the complaint.
- **The school can't retaliate against you.** It is illegal for a school to retaliate in any way because a person made a complaint, or testified, assisted, or participated in any manner in a complaint under Title IX.

WHAT HAPPENS AFTER I FILE A COMPLAINT?

The Office for Civil Rights will investigate and attempt to resolve the complaint, provided it involves some form of harassment or discrimination based on sex, race, color, national origin or disability. If OCR finds that discrimination has occurred, it will work with the school to develop a voluntary agreement to resolve the problem. Such agreements can involve adopting anti-bullying policies, training for staff and students, and specific actions to address the specific incidents that occurred and help the student(s) affected. Most cases are resolved voluntarily. In the rare event that it cannot obtain a voluntary agreement, OCR has the power to cut off federal funding for the school, or to refer the case to the Department of Justice for legal action.

In some situations where OCR dismisses a complaint, state or local laws or policies may offer greater protection. For example, if your state explicitly prohibits gender identity and sexual orientation discrimination in schools, you can file a complaint with your state's human or civil rights enforcement agency on that ground. The U.S. Department of Justice keeps a list of contact information for state human rights agencies.

CAN I FILE A LAWSUIT?

You may choose to file a discrimination claim in federal or state court, regardless of OCR's findings. You do not have to first go through the OCR process in order to file a lawsuit. However, filing a lawsuit first means you cannot use the OCR complaint process. This type of lawsuit is complex and you will probably need to hire a lawyer to help you.

GET HELP

We strongly encourage you to contact the national offices of GLSEN (Gay, Lesbian and Straight Education Network) at <http://www.glsen.org> or PFLAG at <http://www.pflag.org> with any questions regarding the OCR complaint process or for help with crafting a complaint.

If you are considering filing a lawsuit, we strongly encourage you to seek legal counsel. While NCTE does not provide legal services or referrals, there are many other groups that may give you referrals or maintain lists of local lawyers. Local legal aid or legal services organizations may provide free help for certain types of legal problems if your income is below a certain threshold. There are many larger groups – such as Lambda Legal, the National Center for Lesbian Rights, the ACLU, the Transgender Law Center, and others listed on NCTE's website – that may help if they feel that your case is particularly strong and fits within their priorities and strategy; however, they usually hear about many more cases than they can pursue. If they cannot help you directly these organizations may give you referrals or maintain lists of local lawyers with expertise in LGBT issues.

SHARE YOUR STORY

If you are facing discrimination, consider sharing your story with NCTE so we can use it in advocacy efforts to change policies and improve school environments for trans and gender nonconforming people. If you successfully resolve issues in your school, and especially if any of the material here helped, we want to hear from you as well.

Additional Resources

U.S. Department of Education, Office for Civil Rights: <http://www.ed.gov/ocr>

OCR "Dear Colleague" Letter to School Administrators: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>

Claim Your Rights resources from PFLAG and GLSEN: <http://community.pflag.org/claimyourrights>

Model School District Policy on Transgender and Gender Nonconforming Students from NCTE and GLSEN: [http://transequality.org/Resources/Model District Trans and GNC Policy FINAL.pdf](http://transequality.org/Resources/Model%20District%20Trans%20and%20GNC%20Policy%20FINAL.pdf)

Gender Spectrum: <http://www.genderspectrum.org>

Trans Youth Family Allies: <http://www.imatyfa.org>

Links to State and Local Human Rights Agencies: <http://www.justice.gov/crt/legalinfo/stateandlocal.php>

Links to LGBT Legal Organizations: <http://transequality.org/Resources/links.html#legal>

Links to Legal Services Organizations: <http://www.lsc.gov/map/index.php>

Trends – Recent Case Law Regarding LGBTQ Students

By: **Bruce A. Harris, Esq.**

I. Equal Access Clubs

1) Equal Access Act --20 U.S.C. § 4071. Denial of equal access prohibited

It shall be **unlawful** for any **public secondary school** which receives Federal financial assistance and which has a limited open forum **to deny equal access** or a fair opportunity to, or **discriminate against**, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, **or other content of the speech at such meetings.**

A public secondary school has a **limited open forum** whenever such school grants an offering to or opportunity for one or more **noncurriculum related student groups** to **meet on school premises during noninstructional time.**

The meeting is **voluntary and student-initiated.**

There is **no sponsorship of the meeting by the school, the government, or its agents or employees.**

The **meeting does not materially and substantially interfere with the orderly conduct of educational activities** within the school.

Nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.

Nothing in this subchapter shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.

2) U.S. Department of Education

Elementary & Secondary Education
Key Policy Letters from the Education Secretary and Deputy Secretary
June 14, 2011

By Arne Duncan

Harassment and bullying are serious problems in our schools, and lesbian, gay, bisexual, and transgender (LGBT) students are the targets of disproportionate shares of these problems.

Gay-straight alliances (GSAs) and similar student-initiated groups addressing LGBT issues can play an important role in promoting safer schools and creating more welcoming learning environments. Nationwide, students are forming these groups in part to combat bullying and harassment of LGBT students and to promote understanding and respect in the school community.

These same barriers have sometimes been used to target religious and other student groups, leading Congress to pass the Equal Access Act.

In 1984, Congress passed and President Reagan signed into law the Equal Access Act, requiring public secondary schools to provide equal access for extracurricular clubs.

The general rule, approved by the U.S. Supreme Court, is that a public high school that allows at least one noncurricular student group to meet on school grounds during noninstructional time (e.g., lunch, recess, or before or after school) may not deny similar access to other noncurricular student groups, regardless of the religious, political, philosophical, or other subject matters that the groups address.

- 3) Palm Beach County School Board Policy 2.121 Student Activities in the Schools 4/21/1999

This policy is intended to implement the Federal Equal Access Act, 20 U.S.C. §§ 4071, et. seq., and the First Amendment of the U.S. Constitution. If one non-curriculum club has access to the specific methods of communication within the policy (meeting space, listing in school handbooks, school newspapers, the yearbooks, and bulletin boards), then the same access must be offered to other non-curriculum clubs.

- 4) *Straights and Gays for Equality (SAGE) v. Osseo Area Schools–District No. 279*, 540 F.3d 911 (8th Circuit 2008)

Equal Access – Gay group had same equal access including for communication, meeting times and places. SAGE was not a curriculum club.

- 5) *Straights and Gays for Equality (SAGE) v. Osseo Area Schools–District No. 279*, 471 F.3d 908 (8th Circuit 2006)

Equal Access – GLBT group would have the same avenues of communication as other noncurriculum groups. The preliminary injunction was upheld. Curriculum vs. non-curriculum groups were distinguished.

- 6) *Boyd County High School Gay Straight Alliance v. Board of Education of Boyd County*, 258 F.Supp.2d 667 (E.D. Kentucky 2003)

Equal Access Act (EAA) – School board tried to claim this group was a curriculum group due to the school having a course in human sexuality but the court disagreed. Once one noncurriculum group is open, all have the same rights. The group was intended to promote tolerance, The

disruption by the community following the school's recognition of the group was caused by opponents not supporters of the group. The school board then banned all clubs but several still met. No material or substantial interference was caused by the group. Gay rights group was granted a preliminary injunction as substantial likelihood the group would prevail that the school violated the rights of the students under the EAA.

- 7) *Krestan v. Deer Valley Unified School District No. 97, of Maricopa*, 561 F.Supp.2d 1078, 1085 (D. Ariz. 2008)

Although the text of the statute refers to meetings, courts have made clear that the Act extends to all opportunities afforded non-curriculum student clubs.

- 8) *Board of Education of the Westside Cmty. School v. Mergens*, 496 U.S. 226, 247, 110 S.Ct. 2356, 110 L.Ed.2d 191 (1990)

The U.S. Supreme Court explained that by placing religious student clubs on equal footing with similar non-religious student organizations the Act "allows student clubs to be part of the student activities program and carries with it access to the school newspaper, bulletin boards, the public address system, and the annual Club Fair."

- 9) *Caudillo v. Lubbock Independent School District*, 311 F.Supp.2d 550 (N.D. Texas 2004)

First Amendment – Here the court upheld the school's denial of a gay straight association's recognition as a group and access to post signs and communicate. The group had a website with a link to a website which was sexually explicit and taught safe sex. The court found that under the Equal Access Act the school could avoid disruption, maintain order and discipline, and protect the well being of the students. An educational mission of the school was abstinence only.

- 10) *Gay-Straight Alliance of Okeechobee High School v. School Board of Okeechobee County*, 483 F.Supp.2d 1224 (S.D. Florida 2007)

Preliminary injunction was granted in favor of the group. The school board had denied access and one of its grounds was that this was a sex based club relying on the *Caudillo case*. The group denied being a sex based club and contended its purpose was to promote tolerance and equality. The court found that the club's purpose did not conflict with Florida's abstinence only policy and ordered that the school district officially recognize the club and grant it the rights of other clubs.

- 11) *Gonzalez v. School Board of Okeechobee County*, 571 F.Supp.2d 1257 (S.D. Florida 2008)

Equal Access Act –The court ordered the school district recognize the Gay Straight Alliance as a student club and was obligated to provide equal access. The group's tolerance message would not substantially interfere with discipline in the school's operation.

II. Anti-Discrimination Policies

1) Palm Beach County School Board Policy 5.001 Protecting Students from Harassment and Discrimination

General Provisions.-- The School Board of Palm Beach County, Florida, as governing body of the School District ("School District" or "District"), does not condone harassment or discrimination against any of its students or applicants for admission for any reason including, but not limited to, gender expression and/or gender identity, race, color, religion, national origin, age, disability, marital status, ancestry, ethnicity, gender, linguistic preference, political beliefs, sexual orientation, or social/family background in its education programs or admissions to education programs and therefore prohibits such discrimination against, or harassment of, any student by any Board member, District employee, consultant, contractor, agent, visitor, volunteer, student, or other person in the school or outside the school at school-sponsored events, on school buses, and at training facilities or training programs sponsored by the District.

2) School Board Policy 5.81 Protecting Students from Sexual Harassment and Discrimination

General Provisions.-- The School Board of Palm Beach County, as governing body for the District of Palm Beach County, Florida ("School District" or "District"), does not discriminate on the basis of sex or gender expression and/or identification in education programs and prohibits sexual harassment of, or sex/gender-based discrimination against, any student or applicant for admission by any Board member, District employee, consultant, contractor, agent, visitor, volunteer, student, or other person in the school or outside the school at school-sponsored events, on school buses, and at training facilities or training programs sponsored by the School District.

3) School Board Policy 5.60 Eligibility for Participation in K-12 Extracurricular Activities

Equitable Participation

No extracurricular activity shall be provided or conducted separately on the basis of any actual or perceived characteristics listed as a prohibited category of discrimination in state or federal law, nor shall any student's participation in an extracurricular activity be required or refused on those bases.

- a. Principals shall select faculty advisors, directors, coaches, sponsors, and staff who are diverse in racial, ethnic, and gender composition.
- b. Students shall not be excluded from, nor denied positions of leadership in any extracurricular activity due to race, color, religion, sex, ethnicity, national origin, age, sexual orientation, gender identity or expression, genetic information, marital status, parental status, disability, limited English proficiency, or any other characteristic protected by law.

4) U.S. Dept. of Education

Dear Colleague Letter
Office of the Assistant Secretary
October 26, 2010

By Russlynn Ali
Assistant Secretary for Civil Rights

In recent years, many state departments of education and local school districts have taken steps to reduce bullying in schools. The U.S. Department of Education (Department) fully supports these efforts. Bullying fosters a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential. The movement to adopt anti-bullying policies reflects schools' appreciation of their important responsibility to maintain a safe learning environment for all students. I am writing to remind you, however, that **some student misconduct that falls under a school's anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws enforced by the Department's Office for Civil Rights (OCR)**. As discussed in more detail below, by limiting its response to a specific application of its anti-bullying disciplinary policy, a school may fail to properly consider whether the student misconduct also results in discriminatory harassment. ...

As noted in the example, the school failed to recognize the pattern of misconduct as a form of sex discrimination under Title IX. **Title IX prohibits harassment of both male and female students regardless of the sex of the harasser—i.e., even if the harasser and target are members of the same sex. It also prohibits gender-based harassment**, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping. ...

Although Title IX does not prohibit discrimination based solely on sexual orientation, **Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination**. When students are subjected to harassment on the basis of their LGBT status, they may also, as this example illustrates, be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment. In this example, the harassing conduct was based in part on the student's failure to act as some of his peers believed a boy should act. The harassment created a hostile environment that limited the student's ability to participate in the school's education program (e.g., access to the drama club). Finally, even though the student did not identify the harassment as sex discrimination, the school should have recognized that the student had been subjected to gender-based harassment covered by Title IX.

In this example, the school had an obligation to take immediate and effective action to eliminate the hostile environment....

III. Filtering of Websites

- 1) *Parents, Families, and Friends of Lesbians and Gays, Inc. v. Camdenton R-III School District*, 853 F.Supp.2d 888 (W.D. Missouri 2012)

The issue of this case involved Internet filtering by a school district. The court granted a preliminary injunction in favor of the website publishers who provided supportive resources for LGBT youth and a student. The court found that there was discrimination against those websites as the sexuality filter had blocked these sites. There was viewpoint discrimination.

- 2) Palm Beach County School Board Policy 8.125 District Review and Filtering of Web Sites

The blocking of gay/lesbian websites was reported in the newspaper. The ACLU contacted the District, which unblocked the sites and created this policy.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Questions and Answers on Title IX and Sexual Violence¹

Title IX of the Education Amendments of 1972 ("Title IX")² is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal financial assistance (hereinafter "schools", "recipients", or "recipient institutions") must comply with Title IX.³

On April 4, 2011, the Office for Civil Rights (OCR) in the U.S. Department of Education issued a Dear Colleague Letter on student-on-student sexual harassment and sexual violence ("DCL").⁴ The DCL explains a school's responsibility to respond promptly and effectively to sexual violence against students in accordance with the requirements of Title IX.⁵ Specifically, the DCL:

- Provides guidance on the unique concerns that arise in sexual violence cases, such as a school's independent responsibility under Title IX to investigate (apart from any separate criminal investigation by local police) and address sexual violence.

¹ The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf. The Office for Civil Rights (OCR) issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to OCR@ed.gov, or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

² 20 U.S.C. § 1681 *et seq.*

³ Throughout this document the term "schools" refers to recipients of federal financial assistance that operate educational programs or activities. For Title IX purposes, at the elementary and secondary school level, the recipient generally is the school district; and at the postsecondary level, the recipient is the individual institution of higher education. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that the law's requirements conflict with the organization's religious tenets. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office.

⁴ Available at <http://www.ed.gov/ocr/letters/colleague-201104.html>.

⁵ Although this document and the DCL focus on sexual violence, the legal principles generally also apply to other forms of sexual harassment.

- Provides guidance and examples about key Title IX requirements and how they relate to sexual violence, such as the requirements to publish a policy against sex discrimination, designate a Title IX coordinator, and adopt and publish grievance procedures.
- Discusses proactive efforts schools can take to prevent sexual violence.
- Discusses the interplay between Title IX, the Family Educational Rights and Privacy Act (“FERPA”),⁶ and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (“Clery Act”)⁷ as it relates to a complainant’s right to know the outcome of his or her complaint, including relevant sanctions imposed on the perpetrator.
- Provides examples of remedies and enforcement strategies that schools and OCR may use to respond to sexual violence.

The DCL supplements OCR’s *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, issued in 2001 (*2001 Guidance*).⁸ The *2001 Guidance* discusses in detail the Title IX requirements related to sexual harassment of students by school employees, other students, or third parties. The DCL and the *2001 Guidance* remain in full force and we recommend reading these Questions and Answers in conjunction with these documents.

In responding to requests for technical assistance, OCR has determined that elementary and secondary schools and postsecondary institutions would benefit from additional guidance concerning their obligations under Title IX to address sexual violence as a form of sexual harassment. The following questions and answers further clarify the legal requirements and guidance articulated in the DCL and the *2001 Guidance* and include examples of proactive efforts schools can take to prevent sexual violence and remedies schools may use to end such conduct, prevent its recurrence, and address its effects. In order to gain a complete understanding of these legal requirements and recommendations, this document should be read in full.

Authorized by

/s/

Catherine E. Lhamon
Assistant Secretary for Civil Rights

April 29, 2014

⁶ 20 U.S.C. §1232g; 34 C.F.R. Part 99.

⁷ 20 U.S.C. §1092(f).

⁸ Available at <http://www.ed.gov/ocr/docs/shguide.html>.

**Notice of Language Assistance
Questions and Answers on Title IX and Sexual Violence**

Notice of Language Assistance: If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: Ed.Language.Assistance@ed.gov.

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Уведомление для лиц с ограниченным знанием английского языка: Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: Ed.Language.Assistance@ed.gov.

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A. A School's Obligation to Respond to Sexual Violence

A-1. What is sexual violence?

Answer: Sexual violence, as that term is used in this document and prior OCR guidance, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

A-2. How does Title IX apply to student-on-student sexual violence?

Answer: Under Title IX, federally funded schools must ensure that students of all ages are not denied or limited in their ability to participate in or benefit from the school's educational programs or activities on the basis of sex. A school violates a student's rights under Title IX regarding student-on-student sexual violence when the following conditions are met: (1) the alleged conduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program, *i.e.* creates a hostile environment; and (2) the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.⁹

A-3. How does OCR determine if a hostile environment has been created?

Answer: As discussed more fully in OCR's *2001 Guidance*, OCR considers a variety of related factors to determine if a hostile environment has been created; and also considers the conduct in question from both a subjective and an objective perspective. Specifically, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.

⁹ This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. *See 2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. *See Davis v. Monroe Cnty Bd. of Educ.*, 526 U.S. 629, 643 (1999).

A-4. When does OCR consider a school to have notice of student-on-student sexual violence?

Answer: OCR deems a school to have notice of student-on-student sexual violence if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual violence. See question D-2 regarding who is a responsible employee.

A school can receive notice of sexual violence in many different ways. Some examples of notice include: a student may have filed a grievance with or otherwise informed the school's Title IX coordinator; a student, parent, friend, or other individual may have reported an incident to a teacher, principal, campus law enforcement, staff in the office of student affairs, or other responsible employee; or a teacher or dean may have witnessed the sexual violence.

The school may also receive notice about sexual violence in an indirect manner, from sources such as a member of the local community, social networking sites, or the media. In some situations, if the school knows of incidents of sexual violence, the exercise of reasonable care should trigger an investigation that would lead to the discovery of additional incidents. For example, if school officials receive a credible report that a student has perpetrated several acts of sexual violence against different students, that pattern of conduct should trigger an inquiry as to whether other students have been subjected to sexual violence by that student. In other cases, the pervasiveness of the sexual violence may be widespread, openly practiced, or well-known among students or employees. In those cases, OCR may conclude that the school should have known of the hostile environment. In other words, if the school would have found out about the sexual violence had it made a proper inquiry, knowledge of the sexual violence will be imputed to the school even if the school failed to make an inquiry. A school's failure to take prompt and effective corrective action in such cases (as described in questions G-1 to G-3 and H-1 to H-3) would violate Title IX even if the student did not use the school's grievance procedures or otherwise inform the school of the sexual violence.

A-5. What are a school's basic responsibilities to address student-on-student sexual violence?

Answer: When a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E). If an investigation reveals that sexual violence created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its

effects. But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

Title IX requires a school to protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation.¹⁰ The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. If the school determines that the sexual violence occurred, the school must continue to take these steps to protect the complainant and ensure his or her safety, as necessary. The school should also ensure that the complainant is aware of any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. For additional information on interim measures, see questions G-1 to G-3.

If a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately. For example, if a school's ignoring of a student's complaints of sexual assault by a fellow student results in the complaining student having to remain in classes with the other student for several weeks and the complaining student's grades suffer because he or she was unable to concentrate in these classes, the school may need to permit the complaining student to retake the classes without an academic or financial penalty (in addition to any other remedies) in order to address the effects of the sexual violence.

A-6. Does Title IX cover employee-on-student sexual violence, such as sexual abuse of children?

Answer: Yes. Although this document and the DCL focus on student-on-student sexual violence, Title IX also protects students from other forms of sexual harassment (including sexual violence and sexual abuse), such as sexual harassment carried out by school employees. Sexual harassment by school employees can include unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, including but not limited to sexual activity. Title IX's prohibition against

¹⁰ Throughout this document, unless otherwise noted, the term "complainant" refers to the student who allegedly experienced the sexual violence.

sexual harassment generally does not extend to legitimate nonsexual touching or other nonsexual conduct. But in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment. Early signs of inappropriate behavior with a child can be the key to identifying and preventing sexual abuse by school personnel.

A school's Title IX obligations regarding sexual harassment by employees can, in some instances, be greater than those described in this document and the DCL. Recipients should refer to OCR's *2001 Guidance* for further information about Title IX obligations regarding harassment of students by school employees. In addition, many state and local laws have mandatory reporting requirements for schools working with minors. Recipients should be careful to satisfy their state and local legal obligations in addition to their Title IX obligations, including training to ensure that school employees are aware of their obligations under such state and local laws and the consequences for failing to satisfy those obligations.

With respect to sexual activity in particular, OCR will always view as unwelcome and nonconsensual sexual activity between an adult school employee and an elementary school student or any student below the legal age of consent in his or her state. In cases involving a student who meets the legal age of consent in his or her state, there will still be a strong presumption that sexual activity between an adult school employee and a student is unwelcome and nonconsensual. When a school is on notice that a school employee has sexually harassed a student, it is responsible for taking prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects. Indeed, even if a school was not on notice, the school is nonetheless responsible for remedying any effects of the sexual harassment on the student, as well as for ending the sexual harassment and preventing its recurrence, when the employee engaged in the sexual activity in the context of the employee's provision of aid, benefits, or services to students (*e.g.*, teaching, counseling, supervising, advising, or transporting students).

A school should take steps to protect its students from sexual abuse by its employees. It is therefore imperative for a school to develop policies prohibiting inappropriate conduct by school personnel and procedures for identifying and responding to such conduct. For example, this could include implementing codes of conduct, which might address what is commonly known as grooming – a desensitization strategy common in adult educator sexual misconduct. Such policies and procedures can ensure that students, parents, and

school personnel have clear guidelines on what are appropriate and inappropriate interactions between adults and students in a school setting or in school-sponsored activities. Additionally, a school should provide training for administrators, teachers, staff, parents, and age-appropriate classroom information for students to ensure that everyone understands what types of conduct are prohibited and knows how to respond when problems arise.¹¹

B. Students Protected by Title IX

B-1. Does Title IX protect all students from sexual violence?

Answer: Yes. Title IX protects all students at recipient institutions from sex discrimination, including sexual violence. Any student can experience sexual violence: from elementary to professional school students; male and female students; straight, gay, lesbian, bisexual and transgender students; part-time and full-time students; students with and without disabilities; and students of different races and national origins.

B-2. How should a school handle sexual violence complaints in which the complainant and the alleged perpetrator are members of the same sex?

Answer: A school's obligation to respond appropriately to sexual violence complaints is the same irrespective of the sex or sexes of the parties involved. Title IX protects all students from sexual violence, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. A school must investigate and resolve allegations of sexual violence involving parties of the same sex using the same procedures and standards that it uses in all complaints involving sexual violence.

Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations. Indeed, lesbian, gay, bisexual, and transgender (LGBT) youth report high rates of sexual harassment and sexual violence. A school should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it

¹¹ For additional informational on training please see the Department of Education's Resource and Emergency Management for Schools Technical Assistance Center – Adult Sexual Misconduct in Schools: Prevention and Management Training, available at http://rems.ed.gov/Docs/ASM_Marketing_Flyer.pdf.

uses in all complaints involving sexual violence. The fact that incidents of sexual violence may be accompanied by anti-gay comments or be partly based on a student's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy those instances of sexual violence.

If a school's policies related to sexual violence include examples of particular types of conduct that violate the school's prohibition on sexual violence, the school should consider including examples of same-sex conduct. In addition, a school should ensure that staff are capable of providing culturally competent counseling to all complainants. Thus, a school should ensure that its counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, receive appropriate training about working with LGBT and gender-nonconforming students and same-sex sexual violence. See questions J-1 to J-4 for additional information regarding training.

Gay-straight alliances and similar student-initiated groups can also play an important role in creating safer school environments for LGBT students. On June 14, 2011, the Department issued guidance about the rights of student-initiated groups in public secondary schools under the Equal Access Act. That guidance is available at <http://www2.ed.gov/policy/elsec/guid/secletter/110607.html>.

B-3. What issues may arise with respect to students with disabilities who experience sexual violence?

Answer: When students with disabilities experience sexual violence, federal civil rights laws other than Title IX may also be relevant to a school's responsibility to investigate and address such incidents.¹² Certain students require additional assistance and support. For example, students with intellectual disabilities may need additional help in learning about sexual violence, including a school's sexual violence education and prevention programs, what constitutes sexual violence and how students can report incidents of sexual

¹² OCR enforces two civil rights laws that prohibit disability discrimination. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits disability discrimination by public or private entities that receive federal financial assistance, and Title II of the American with Disabilities Act of 1990 (Title II) prohibits disability discrimination by all state and local public entities, regardless of whether they receive federal funding. See 29 U.S.C. § 794 and 34 C.F.R. part 104; 42 U.S.C. § 12131 *et seq.* and 28 C.F.R. part 35. OCR and the U.S. Department of Justice (DOJ) share the responsibility of enforcing Title II in the educational context. The Department of Education's Office of Special Education Programs in the Office of Special Education and Rehabilitative Services administers Part B of the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. 1400 *et seq.* and 34 C.F.R. part 300. IDEA provides financial assistance to states, and through them to local educational agencies, to assist in providing special education and related services to eligible children with disabilities ages three through twenty-one, inclusive.

violence. In addition, students with disabilities who experience sexual violence may require additional services and supports, including psychological services and counseling services. Postsecondary students who need these additional services and supports can seek assistance from the institution's disability resource office.

A student who has not been previously determined to have a disability may, as a result of experiencing sexual violence, develop a mental health-related disability that could cause the student to need special education and related services. At the elementary and secondary education level, this may trigger a school's child find obligations under IDEA and the evaluation and placement requirements under Section 504, which together require a school to evaluate a student suspected of having a disability to determine if he or she has a disability that requires special education or related aids and services.¹³

A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner that is accessible to students and employees with disabilities, for example, by providing electronically-accessible versions of paper forms to individuals with print disabilities, or by providing a sign language interpreter to a deaf individual attending a training. See question J-4 for more detailed information on student training.

B-4. What issues arise with respect to international students and undocumented students who experience sexual violence?

Answer: Title IX protects all students at recipient institutions in the United States regardless of national origin, immigration status, or citizenship status.¹⁴ A school should ensure that all students regardless of their immigration status, including undocumented students and international students, are aware of their rights under Title IX. A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner accessible to students who are English language learners. OCR recommends that a school coordinate with its international office and its undocumented student program coordinator, if applicable, to help communicate information about Title IX in languages that are accessible to these groups of students. OCR also encourages schools to provide foreign national complainants with information about the U nonimmigrant status and the T nonimmigrant status. The U nonimmigrant status is set

¹³ See 34 C.F.R. §§ 300.8; 300.111; 300.201; 300.300-300.311 (IDEA); 34 C.F.R. §§ 104.3(j) and 104.35 (Section 504). Schools must comply with applicable consent requirements with respect to evaluations. See 34 C.F.R. § 300.300.

¹⁴ OCR enforces Title VI of the Civil Rights Act of 1964, which prohibits discrimination by recipients of federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d.

aside for victims of certain crimes who have suffered substantial mental or physical abuse as a result of the crime and are helpful to law enforcement agency in the investigation or prosecution of the qualifying criminal activity.¹⁵ The T nonimmigrant status is available for victims of severe forms of human trafficking who generally comply with a law enforcement agency in the investigation or prosecution of the human trafficking and who would suffer extreme hardship involving unusual and severe harm if they were removed from the United States.¹⁶

A school should be mindful that unique issues may arise when a foreign student on a student visa experiences sexual violence. For example, certain student visas require the student to maintain a full-time course load (generally at least 12 academic credit hours per term), but a student may need to take a reduced course load while recovering from the immediate effects of the sexual violence. OCR recommends that a school take steps to ensure that international students on student visas understand that they must typically seek prior approval of the designated school official (DSO) for student visas to drop below a full-time course load. A school may also want to encourage its employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence to approach the DSO on the student's behalf if the student wishes to drop below a full-time course load. OCR recommends that a school take steps to ensure that its employees who work with international students, including the school's DSO, are trained on the school's sexual violence policies and that employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence are aware of the special issues that international students may encounter. See questions J-1 to J-4 for additional information regarding training.

A school should also be aware that threatening students with deportation or invoking a student's immigration status in an attempt to intimidate or deter a student from filing a Title IX complaint would violate Title IX's protections against retaliation. For more information on retaliation see question K-1.

¹⁵ For more information on the U nonimmigrant status, see <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/questions-answers-victims-criminal-activity-u-nonimmigrant-status>.

¹⁶ For more information on the T nonimmigrant status, see <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

B-5. How should a school respond to sexual violence when the alleged perpetrator is not affiliated with the school?

Answer: The appropriate response will differ depending on the level of control the school has over the alleged perpetrator. For example, if an athlete or band member from a visiting school sexually assaults a student at the home school, the home school may not be able to discipline or take other direct action against the visiting athlete or band member. However (and subject to the confidentiality provisions discussed in Section E), it should conduct an inquiry into what occurred and should report the incident to the visiting school and encourage the visiting school to take appropriate action to prevent further sexual violence. The home school should also notify the student of any right to file a complaint with the alleged perpetrator's school or local law enforcement. The home school may also decide not to invite the visiting school back to its campus.

Even though a school's ability to take direct action against a particular perpetrator may be limited, the school must still take steps to provide appropriate remedies for the complainant and, where appropriate, the broader school population. This may include providing support services for the complainant, and issuing new policy statements making it clear that the school does not tolerate sexual violence and will respond to any reports about such incidents. For additional information on interim measures see questions G-1 to G-3.

C. Title IX Procedural Requirements

Overview

C-1. What procedures must a school have in place to prevent sexual violence and resolve complaints?

Answer: The Title IX regulations outline three key procedural requirements. Each school must:

(1) disseminate a notice of nondiscrimination (see question C-2);¹⁷

(2) designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (see questions C-3 to C-4);¹⁸ and

¹⁷ 34 C.F.R. § 106.9.

¹⁸ *Id.* § 106.8(a).

(3) adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee sex discrimination complaints (see questions C-5 to C-6).¹⁹

These requirements apply to all forms of sex discrimination and are particularly important for preventing and effectively responding to sexual violence.

Procedural requirements under other federal laws may also apply to complaints of sexual violence, including the requirements of the Clery Act.²⁰ For additional information about the procedural requirements in the Clery Act, please see <http://www2.ed.gov/admins/lead/safety/campus.html>.

Notice of Nondiscrimination

C-2. What information must be included in a school's notice of nondiscrimination?

Answer: The notice of nondiscrimination must state that the school does not discriminate on the basis of sex in its education programs and activities, and that it is required by Title IX not to discriminate in such a manner. The notice must state that questions regarding Title IX may be referred to the school's Title IX coordinator or to OCR. The school must notify all of its students and employees of the name or title, office address, telephone number, and email address of the school's designated Title IX coordinator.²¹

Title IX Coordinator

C-3. What are a Title IX coordinator's responsibilities?

Answer: A Title IX coordinator's core responsibilities include overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. To accomplish this, subject to the exemption for school counseling employees discussed in question E-3, the Title IX coordinator must be informed of all

¹⁹ *Id.* § 106.8(b).

²⁰ All postsecondary institutions participating in the Higher Education Act's Title IV student financial assistance programs must comply with the Clery Act.

²¹ For more information on notices of nondiscrimination, please see OCR's Notice of Nondiscrimination (August 2010), available at <http://www.ed.gov/ocr/docs/nondisc.pdf>.

reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. The school should ensure that the Title IX coordinator is given the training, authority, and visibility necessary to fulfill these responsibilities.

Because the Title IX coordinator must have knowledge of all Title IX reports and complaints at the school, this individual (when properly trained) is generally in the best position to evaluate a student's request for confidentiality in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students. A school may determine, however, that another individual should perform this role. For additional information on confidentiality requests, see questions E-1 to E-4. If a school relies in part on its disciplinary procedures to meet its Title IX obligations, the Title IX coordinator should review the disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX as discussed in question C-5.

In addition to these core responsibilities, a school may decide to give its Title IX coordinator additional responsibilities, such as: providing training to students, faculty, and staff on Title IX issues; conducting Title IX investigations, including investigating facts relevant to a complaint, and determining appropriate sanctions against the perpetrator and remedies for the complainant; determining appropriate interim measures for a complainant upon learning of a report or complaint of sexual violence; and ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers, including rape crisis centers. A school must ensure that its Title IX coordinator is appropriately trained in all areas over which he or she has responsibility. The Title IX coordinator or designee should also be available to meet with students as needed.

If a school designates more than one Title IX coordinator, the school's notice of nondiscrimination and Title IX grievance procedures should describe each coordinator's responsibilities, and one coordinator should be designated as having ultimate oversight responsibility.

C-4. Are there any employees who should not serve as the Title IX coordinator?

Answer: Title IX does not categorically preclude particular employees from serving as Title IX coordinators. However, Title IX coordinators should not have other job responsibilities that may create a conflict of interest. Because some complaints may raise issues as to whether or how well the school has met its Title IX obligations, designating

the same employee to serve both as the Title IX coordinator and the general counsel (which could include representing the school in legal claims alleging Title IX violations) poses a serious risk of a conflict of interest. Other employees whose job responsibilities may conflict with a Title IX coordinator's responsibilities include Directors of Athletics, Deans of Students, and any employee who serves on the judicial/hearing board or to whom an appeal might be made. Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest.

Grievance Procedures

C-5. Under Title IX, what elements should be included in a school's procedures for responding to complaints of sexual violence?

Answer: Title IX requires that a school adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints of sex discrimination, including sexual violence. In evaluating whether a school's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- (1) notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- (2) application of the grievance procedures to complaints filed by students or on their behalf alleging sexual violence carried out by employees, other students, or third parties;
- (3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
- (4) designated and reasonably prompt time frames for the major stages of the complaint process (see question F-8);
- (5) written notice to the complainant and alleged perpetrator of the outcome of the complaint (see question H-3); and
- (6) assurance that the school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX:

- (1) a statement of the school's jurisdiction over Title IX complaints;
- (2) adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- (3) reporting policies and protocols, including provisions for confidential reporting;
- (4) identification of the employee or employees responsible for evaluating requests for confidentiality;
- (5) notice that Title IX prohibits retaliation;
- (6) notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
- (7) notice of available interim measures that may be taken to protect the student in the educational setting;
- (8) the evidentiary standard that must be used (preponderance of the evidence) (*i.e.*, more likely than not that sexual violence occurred) in resolving a complaint;
- (9) notice of potential remedies for students;
- (10) notice of potential sanctions against perpetrators; and
- (11) sources of counseling, advocacy, and support.

For more information on interim measures, see questions G-1 to G-3.

The rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights. Procedures that ensure the Title IX rights of the complainant, while at the same time according any federally guaranteed due process to both parties involved, will lead to sound and supportable decisions. Of course, a school should ensure that steps to accord any due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.

A school's procedures and practices will vary in detail, specificity, and components, reflecting differences in the age of its students, school size and administrative structure, state or local legal requirements (*e.g.*, mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

C-6. Is a school required to use separate grievance procedures for sexual violence complaints?

Answer: No. Under Title IX, a school may use student disciplinary procedures, general Title IX grievance procedures, sexual harassment procedures, or separate procedures to resolve sexual violence complaints. However, any procedures used for sexual violence complaints, including disciplinary procedures, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution (as discussed in question C-5), including applying the preponderance of the evidence standard of review. As discussed in question C-3, the Title IX coordinator should review any process used to resolve complaints of sexual violence to ensure it complies with requirements for prompt and equitable resolution of these complaints. When using disciplinary procedures, which are often focused on the alleged perpetrator and can take considerable time, a school should be mindful of its obligation to provide interim measures to protect the complainant in the educational setting. For more information on timeframes and interim measures, see questions F-8 and G-1 to G-3.

D. Responsible Employees and Reporting²²

D-1. Which school employees are obligated to report incidents of possible sexual violence to school officials?

Answer: Under Title IX, whether an individual is obligated to report incidents of alleged sexual violence generally depends on whether the individual is a responsible employee of the school. A responsible employee must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee, subject to the exemption for school counseling employees discussed in question E-3. This is because, as discussed in question A-4, a school is obligated to address sexual violence about which a responsible employee knew or should have known. As explained in question C-3, the Title IX coordinator must be informed of all reports and complaints raising Title IX issues, even if the report or

²² This document addresses only Title IX's reporting requirements. It does not address requirements under the Clery Act or other federal, state, or local laws, or an individual school's code of conduct.

complaint was initially filed with another individual or office, subject to the exemption for school counseling employees discussed in question E-3.

D-2. Who is a “responsible employee”?

Answer: According to OCR’s *2001 Guidance*, a responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.²³

A school must make clear to all of its employees and students which staff members are responsible employees so that students can make informed decisions about whether to disclose information to those employees. A school must also inform all employees of their own reporting responsibilities and the importance of informing complainants of: the reporting obligations of responsible employees; complainants’ option to request confidentiality and available confidential advocacy, counseling, or other support services; and complainants’ right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement.

Whether an employee is a responsible employee will vary depending on factors such as the age and education level of the student, the type of position held by the employee, and consideration of both formal and informal school practices and procedures. For example, while it may be reasonable for an elementary school student to believe that a custodial staff member or cafeteria worker has the authority or responsibility to address student misconduct, it is less reasonable for a college student to believe that a custodial staff member or dining hall employee has this same authority.

As noted in response to question A-4, when a responsible employee knows or reasonably should know of possible sexual violence, OCR deems a school to have notice of the sexual violence. The school must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E), and, if the school determines that sexual violence created a hostile environment, the school must then take appropriate steps to address the situation. The

²³ The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. *Gebser v. Lago Vista Ind. Sch. Dist.*, 524 U.S. 274, 290 (1998), and *Davis*, 524 U.S. at 642. The concept of a “responsible employee” under OCR’s guidance for administrative enforcement of Title IX is broader.

school has this obligation regardless of whether the student, student's parent, or a third party files a formal complaint. For additional information on a school's responsibilities to address student-on-student sexual violence, see question A-5. For additional information on training for school employees, see questions J-1 to J-3.

D-3. What information is a responsible employee obligated to report about an incident of possible student-on-student sexual violence?

Answer: Subject to the exemption for school counseling employees discussed in question E-3, a responsible employee must report to the school's Title IX coordinator, or other appropriate school designee, all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location. A school must make clear to its responsible employees to whom they should report an incident of alleged sexual violence.

To ensure compliance with these reporting obligations, it is important for a school to train its responsible employees on Title IX and the school's sexual violence policies and procedures. For more information on appropriate training for school employees, see question J-1 to J-3.

D-4. What should a responsible employee tell a student who discloses an incident of sexual violence?

Answer: Before a student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the student understands: (i) the employee's obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator or other appropriate school officials, (ii) the student's option to request that the school maintain his or her confidentiality, which the school (*e.g.*, Title IX coordinator) will consider, and (iii) the student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (*e.g.*, sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers). As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request

and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

D-5. If a student informs a resident assistant/advisor (RA) that he or she was subjected to sexual violence by a fellow student, is the RA obligated under Title IX to report the incident to school officials?

Answer: As discussed in questions D-1 and D-2, for Title IX purposes, whether an individual is obligated under Title IX to report alleged sexual violence to the school's Title IX coordinator or other appropriate school designee generally depends on whether the individual is a responsible employee.

The duties and responsibilities of RAs vary among schools, and, therefore, a school should consider its own policies and procedures to determine whether its RAs are responsible employees who must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee.²⁴ When making this determination, a school should consider if its RAs have the general authority to take action to redress misconduct or the duty to report misconduct to appropriate school officials, as well as whether students could reasonably believe that RAs have this authority or duty. A school should also consider whether it has determined and clearly informed students that RAs are generally available for confidential discussions and do not have the authority or responsibility to take action to redress any misconduct or to report any misconduct to the Title IX coordinator or other appropriate school officials. A school should pay particular attention to its RAs' obligations to report other student violations of school policy (e.g., drug and alcohol violations or physical assault). If an RA is required to report other misconduct that violates school policy, then the RA would be considered a responsible employee obligated to report incidents of sexual violence that violate school policy.

If an RA is a responsible employee, the RA should make every effort to ensure that *before* the student reveals information that he or she may wish to keep confidential, the student understands the RA's reporting obligation and the student's option to request that the school maintain confidentiality. It is therefore important that schools widely disseminate policies and provide regular training clearly identifying the places where students can seek confidential support services so that students are aware of this information. The RA

²⁴ Postsecondary institutions should be aware that, regardless of whether an RA is a responsible employee under Title IX, RAs are considered "campus security authorities" under the Clery Act. A school's responsibilities in regard to crimes reported to campus security authorities are discussed in the Department's regulations on the Clery Act at 34 C.F.R. § 668.46.

should also explain to the student (again, before the student reveals information that he or she may wish to keep confidential) that, although the RA must report the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location to the Title IX coordinator or other appropriate school designee, the school will protect the student's confidentiality to the greatest extent possible. Prior to providing information about the incident to the Title IX coordinator or other appropriate school designee, the RA should consult with the student about how to protect his or her safety and the details of what will be shared with the Title IX coordinator. The RA should explain to the student that reporting this information to the Title IX coordinator or other appropriate school designee does not necessarily mean that a formal complaint or investigation under the school's Title IX grievance procedure must be initiated if the student requests confidentiality. As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

Regardless of whether a reporting obligation exists, all RAs should inform students of their right to file a Title IX complaint with the school and report a crime to campus or local law enforcement. If a student discloses sexual violence to an RA who is a responsible employee, the school will be deemed to have notice of the sexual violence even if the student does not file a Title IX complaint. Additionally, all RAs should provide students with information regarding on-campus resources, including victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. RAs should also be familiar with local rape crisis centers or other off-campus resources and provide this information to students.

E. Confidentiality and a School's Obligation to Respond to Sexual Violence

E-1. How should a school respond to a student's request that his or her name not be disclosed to the alleged perpetrator or that no investigation or disciplinary action be pursued to address the alleged sexual violence?

Answer: Students, or parents of minor students, reporting incidents of sexual violence sometimes ask that the students' names not be disclosed to the alleged perpetrators or that no investigation or disciplinary action be pursued to address the alleged sexual violence. OCR strongly supports a student's interest in confidentiality in cases involving sexual violence. There are situations in which a school must override a student's request

for confidentiality in order to meet its Title IX obligations; however, these instances will be limited and the information should only be shared with individuals who are responsible for handling the school's response to incidents of sexual violence. Given the sensitive nature of reports of sexual violence, a school should ensure that the information is maintained in a secure manner. A school should be aware that disregarding requests for confidentiality can have a chilling effect and discourage other students from reporting sexual violence. In the case of minors, state mandatory reporting laws may require disclosure, but can generally be followed without disclosing information to school personnel who are not responsible for handling the school's response to incidents of sexual violence.²⁵

Even if a student does not specifically ask for confidentiality, to the extent possible, a school should only disclose information regarding alleged incidents of sexual violence to individuals who are responsible for handling the school's response. To improve trust in the process for investigating sexual violence complaints, a school should notify students of the information that will be disclosed, to whom it will be disclosed, and why. Regardless of whether a student complainant requests confidentiality, a school must take steps to protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. For additional information on interim measures see questions G-1 to G-3.

For Title IX purposes, if a student requests that his or her name not be revealed to the alleged perpetrator or asks that the school not investigate or seek action against the alleged perpetrator, the school should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The school should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate

²⁵ The school should be aware of the alleged student perpetrator's right under the Family Educational Rights and Privacy Act ("FERPA") to request to inspect and review information about the allegations if the information directly relates to the alleged student perpetrator and the information is maintained by the school as an education record. In such a case, the school must either redact the complainant's name and all identifying information before allowing the alleged perpetrator to inspect and review the sections of the complaint that relate to him or her, or must inform the alleged perpetrator of the specific information in the complaint that are about the alleged perpetrator. See 34 C.F.R. § 99.12(a) The school should also make complainants aware of this right and explain how it might affect the school's ability to maintain complete confidentiality.

and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary. See question K-1 regarding retaliation.

If the student still requests that his or her name not be disclosed to the alleged perpetrator or that the school not investigate or seek action against the alleged perpetrator, the school will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. As discussed in question C-3, the Title IX coordinator is generally in the best position to evaluate confidentiality requests. Because schools vary widely in size and administrative structure, OCR recognizes that a school may reasonably determine that an employee other than the Title IX coordinator, such as a sexual assault response coordinator, dean, or other school official, is better suited to evaluate such requests. Addressing the needs of a student reporting sexual violence while determining an appropriate institutional response requires expertise and attention, and a school should ensure that it assigns these responsibilities to employees with the capability and training to fulfill them. For example, if a school has a sexual assault response coordinator, that person should be consulted in evaluating requests for confidentiality. The school should identify in its Title IX policies and procedures the employee or employees responsible for making such determinations.

If the school determines that it can respect the student's request not to disclose his or her identity to the alleged perpetrator, it should take all reasonable steps to respond to the complaint consistent with the request. Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual allegation of sexual violence, other means may be available to address the sexual violence. There are steps a school can take to limit the effects of the alleged sexual violence and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; changing and publicizing the school's policies on sexual violence; and conducting climate surveys regarding sexual violence. In instances affecting many students, an alleged perpetrator can be put on notice of allegations of harassing behavior and be counseled appropriately without revealing, even indirectly, the identity of the student complainant. A school must also take immediate action as necessary to protect the student while keeping the identity of the student confidential. These actions may include providing support services to the student and changing living arrangements or course schedules, assignments, or tests.

E-2. What factors should a school consider in weighing a student's request for confidentiality?

Answer: When weighing a student's request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, a school should consider a range of factors.

These factors include circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual violence or other violence (e.g., whether there have been other sexual violence complaints about the same alleged perpetrator, whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence, whether the alleged perpetrator threatened further sexual violence or other violence against the student or others, and whether the sexual violence was committed by multiple perpetrators). These factors also include circumstances that suggest there is an increased risk of future acts of sexual violence under similar circumstances (e.g., whether the student's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group). Other factors that should be considered in assessing a student's request for confidentiality include whether the sexual violence was perpetrated with a weapon; the age of the student subjected to the sexual violence; and whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

A school should take requests for confidentiality seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. For example, if the school has credible information that the alleged perpetrator has committed one or more prior rapes, the balance of factors would compel the school to investigate the allegation of sexual violence, and if appropriate, pursue disciplinary action in a manner that may require disclosure of the student's identity to the alleged perpetrator. If the school determines that it must disclose a student's identity to an alleged perpetrator, it should inform the student prior to making this disclosure. In these cases, it is also especially important for schools to take whatever interim measures are necessary to protect the student and ensure the safety of other students. If a school has a sexual assault response coordinator, that person should be consulted in identifying safety risks and interim measures that are necessary to protect the student. In the event the student requests that the school inform the perpetrator that the student asked the school not to investigate or seek discipline, the school should honor this request and inform the alleged perpetrator that the school made the decision to go forward. For additional information on interim measures see questions G-1 to G-3. Any school officials responsible for

discussing safety and confidentiality with students should be trained on the effects of trauma and the appropriate methods to communicate with students subjected to sexual violence. See questions J-1 to J-3.

On the other hand, if, for example, the school has no credible information about prior sexual violence committed by the alleged perpetrator and the alleged sexual violence was not perpetrated with a weapon or accompanied by threats to repeat the sexual violence against the complainant or others or part of a larger pattern at a given location or by a particular group, the balance of factors would likely compel the school to respect the student's request for confidentiality. In this case the school should still take all reasonable steps to respond to the complaint consistent with the student's confidentiality request and determine whether interim measures are appropriate or necessary. Schools should be mindful that traumatic events such as sexual violence can result in delayed decisionmaking by a student who has experienced sexual violence. Hence, a student who initially requests confidentiality might later request that a full investigation be conducted.

E-3. What are the reporting responsibilities of school employees who provide or support the provision of counseling, advocacy, health, mental health, or sexual assault-related services to students who have experienced sexual violence?

Answer: OCR does not require campus mental-health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, or who is supervised by such a person, to report, without the student's consent, incidents of sexual violence to the school in a way that identifies the student. Although these employees may have responsibilities that would otherwise make them responsible employees for Title IX purposes, OCR recognizes the importance of protecting the counselor-client relationship, which often requires confidentiality to ensure that students will seek the help they need.

Professional counselors and pastoral counselors whose official responsibilities include providing mental-health counseling to members of the school community are not required by Title IX to report *any* information regarding an incident of alleged sexual violence to the Title IX coordinator or other appropriate school designee.²⁶

²⁶ The exemption from reporting obligations for pastoral and professional counselors under Title IX is consistent with the Clery Act. For additional information on reporting obligations under the Clery Act, see Office of Postsecondary Education, *Handbook for Campus Safety and Security Reporting* (2011), available at <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. Similar to the Clery Act, for Title IX purposes, a pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious

OCR recognizes that some people who provide assistance to students who experience sexual violence are not professional or pastoral counselors. They include all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers ("non-professional counselors or advocates"), including front desk staff and students. OCR wants students to feel free to seek their assistance and therefore interprets Title IX to give schools the latitude not to require these individuals to report incidents of sexual violence in a way that identifies the student without the student's consent.²⁷ These non-professional counselors or advocates are valuable sources of support for students, and OCR strongly encourages schools to designate these individuals as confidential sources.

Pastoral and professional counselors and non-professional counselors or advocates should be instructed to inform students of their right to file a Title IX complaint with the school and a separate complaint with campus or local law enforcement. In addition to informing students about campus resources for counseling, medical, and academic support, these persons should also indicate that they are available to assist students in filing such complaints. They should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary.

In order to identify patterns or systemic problems related to sexual violence, a school should collect aggregate data about sexual violence incidents from non-professional counselors or advocates in their on-campus sexual assault centers, women's centers, or

order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. A professional counselor is a person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification. This definition applies even to professional counselors who are not employees of the school, but are under contract to provide counseling at the school. This includes individuals who are not yet licensed or certified as a counselor, but are acting in that role under the supervision of an individual who is licensed or certified. An example is a Ph.D. counselor-trainee acting under the supervision of a professional counselor at the school.

²⁷ Postsecondary institutions should be aware that an individual who is counseling students, but who does not meet the Clery Act definition of a pastoral or professional counselor, is not exempt from being a campus security authority if he or she otherwise has significant responsibility for student and campus activities. See fn. 24.

health centers. Such individuals should report only general information about incidents of sexual violence such as the nature, date, time, and general location of the incident and should take care to avoid reporting personally identifiable information about a student. Non-professional counselors and advocates should consult with students regarding what information needs to be withheld to protect their identity.

E-4. Is a school required to investigate information regarding sexual violence incidents shared by survivors during public awareness events, such as “Take Back the Night”?

Answer: No. OCR wants students to feel free to participate in preventive education programs and access resources for survivors. Therefore, public awareness events such as “Take Back the Night” or other forums at which students disclose experiences with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the survivor initiates a complaint. The school should instead respond to these disclosures by reviewing sexual assault policies, creating campus-wide educational programs, and conducting climate surveys to learn more about the prevalence of sexual violence at the school. Although Title IX does not require the school to investigate particular incidents discussed at such events, the school should ensure that survivors are aware of any available resources, including counseling, health, and mental health services. To ensure that the entire school community understands their Title IX rights related to sexual violence, the school should also provide information at these events on Title IX and how to file a Title IX complaint with the school, as well as options for reporting an incident of sexual violence to campus or local law enforcement.

F. Investigations and Hearings

Overview

F-1. What elements should a school’s Title IX investigation include?

Answer: The specific steps in a school’s Title IX investigation will vary depending on the nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements (including mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

For the purposes of this document the term “investigation” refers to the process the school uses to resolve sexual violence complaints. This includes the fact-finding investigation and any hearing and decision-making process the school uses to determine: (1) whether or not the conduct occurred; and, (2) if the conduct occurred, what actions

the school will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population.

In all cases, a school's Title IX investigation must be adequate, reliable, impartial, and prompt and include the opportunity for both parties to present witnesses and other evidence. The investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing.²⁸ Furthermore, neither Title IX nor the DCL specifies who should conduct the investigation. It could be the Title IX coordinator, provided there are no conflicts of interest, but it does not have to be. All persons involved in conducting a school's Title IX investigations must have training or experience in handling complaints of sexual violence and in the school's grievance procedures. For additional information on training, see question J-3.

When investigating an incident of alleged sexual violence for Title IX purposes, to the extent possible, a school should coordinate with any other ongoing school or criminal investigations of the incident and establish appropriate fact-finding roles for each investigator. A school should also consider whether information can be shared among the investigators so that complainants are not unnecessarily required to give multiple statements about a traumatic event. If the investigation includes forensic evidence, it may be helpful for a school to consult with local or campus law enforcement or a forensic expert to ensure that the evidence is correctly interpreted by school officials. For additional information on working with campus or local law enforcement see question F-3.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without additional remedies, likely will not be sufficient to eliminate the hostile environment and prevent recurrence as required by Title IX. If a school typically processes complaints of sexual violence through its disciplinary process and that process, including any investigation and hearing, meets the Title IX requirements discussed above and enables the school to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, then the school may use that process to satisfy its Title IX obligations and does not need to conduct a separate Title IX investigation. As discussed in question C-3, the Title IX coordinator should review the disciplinary process

²⁸ This answer addresses only Title IX's requirements for investigations. It does not address legal rights or requirements under the U.S. Constitution, the Clery Act, or other federal, state, or local laws.

to ensure that it: (1) complies with the prompt and equitable requirements of Title IX; (2) allows for appropriate interim measures to be taken to protect the complainant during the process; and (3) provides for remedies to the complainant and school community where appropriate. For more information about interim measures, see questions G-1 to G-3, and about remedies, see questions H-1 and H-2.

The investigation may include, but is not limited to, conducting interviews of the complainant, the alleged perpetrator, and any witnesses; reviewing law enforcement investigation documents, if applicable; reviewing student and personnel files; and gathering and examining other relevant documents or evidence. While a school has flexibility in how it structures the investigative process, for Title IX purposes, a school must give the complainant any rights that it gives to the alleged perpetrator. A balanced and fair process that provides the same opportunities to both parties will lead to sound and supportable decisions.²⁹ Specifically:

- Throughout the investigation, the parties must have an equal opportunity to present relevant witnesses and other evidence.
- The school must use a preponderance-of-the-evidence (*i.e.*, more likely than not) standard in any Title IX proceedings, including any fact-finding and hearings.
- If the school permits one party to have lawyers or other advisors at any stage of the proceedings, it must do so equally for both parties. Any school-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in the proceedings must also apply equally.
- If the school permits one party to submit third-party expert testimony, it must do so equally for both parties.
- If the school provides for an appeal, it must do so equally for both parties.
- Both parties must be notified, in writing, of the outcome of both the complaint and any appeal (see question H-3).

²⁹ As explained in question C-5, the parties may have certain due process rights under the U.S. Constitution.

Intersection with Criminal Investigations

F-2. What are the key differences between a school's Title IX investigation into allegations of sexual violence and a criminal investigation?

Answer: A criminal investigation is intended to determine whether an individual violated criminal law; and, if at the conclusion of the investigation, the individual is tried and found guilty, the individual may be imprisoned or subject to criminal penalties. The U.S. Constitution affords criminal defendants who face the risk of incarceration numerous protections, including, but not limited to, the right to counsel, the right to a speedy trial, the right to a jury trial, the right against self-incrimination, and the right to confrontation. In addition, government officials responsible for criminal investigations (including police and prosecutors) normally have discretion as to which complaints from the public they will investigate.

By contrast, a Title IX investigation will never result in incarceration of an individual and, therefore, the same procedural protections and legal standards are not required. Further, while a criminal investigation is initiated at the discretion of law enforcement authorities, a Title IX investigation is not discretionary; a school has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all students, free from sexual harassment and sexual violence. Because the standards for pursuing and completing criminal investigations are different from those used for Title IX investigations, the termination of a criminal investigation without an arrest or conviction does not affect the school's Title IX obligations.

Of course, criminal investigations conducted by local or campus law enforcement may be useful for fact gathering if the criminal investigation occurs within the recommended timeframe for Title IX investigations; but, even if a criminal investigation is ongoing, a school must still conduct its own Title IX investigation.

A school should notify complainants of the right to file a criminal complaint and should not dissuade a complainant from doing so either during or after the school's internal Title IX investigation. Title IX does not require a school to report alleged incidents of sexual violence to law enforcement, but a school may have reporting obligations under state, local, or other federal laws.

F-3. How should a school proceed when campus or local law enforcement agencies are conducting a criminal investigation while the school is conducting a parallel Title IX investigation?

Answer: A school should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, it is important for a school to understand that during this brief delay in the Title IX investigation, it must take interim measures to protect the complainant in the educational setting. The school should also continue to update the parties on the status of the investigation and inform the parties when the school resumes its Title IX investigation. For additional information on interim measures see questions G-1 to G-3.

If a school delays the fact-finding portion of a Title IX investigation, the school must promptly resume and complete its fact-finding for the Title IX investigation once it learns that the police department has completed its evidence gathering stage of the criminal investigation. The school should not delay its investigation until the ultimate outcome of the criminal investigation or the filing of any charges. OCR recommends that a school work with its campus police, local law enforcement, and local prosecutor's office to learn when the evidence gathering stage of the criminal investigation is complete. A school may also want to enter into a memorandum of understanding (MOU) or other agreement with these agencies regarding the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations. Any MOU or other agreement must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably, and must comply with the Family Educational Rights and Privacy Act ("FERPA") and other applicable privacy laws.

The DCL states that in one instance a prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances. OCR understands that this example may not be representative and that the law enforcement agency's process often takes more than ten days. OCR recognizes that the length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

Off-Campus Conduct

F-4. Is a school required to process complaints of alleged sexual violence that occurred off campus?

Answer: Yes. Under Title IX, a school must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

A school must determine whether the alleged off-campus sexual violence occurred in the context of an education program or activity of the school; if so, the school must treat the complaint in the same manner that it treats complaints regarding on-campus conduct. In other words, if a school determines that the alleged misconduct took place in the context of an education program or activity of the school, the fact that the alleged misconduct took place off campus does not relieve the school of its obligation to investigate the complaint as it would investigate a complaint of sexual violence that occurred on campus.

Whether the alleged misconduct occurred in this context may not always be apparent from the complaint, so a school may need to gather additional information in order to make such a determination. Off-campus education programs and activities are clearly covered and include, but are not limited to: activities that take place at houses of fraternities or sororities recognized by the school; school-sponsored field trips, including athletic team travel; and events for school clubs that occur off campus (*e.g.*, a debate team trip to another school or to a weekend competition).

Even if the misconduct did not occur in the context of an education program or activity, a school must consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual violence while at school or in an off-campus education program or activity. The school cannot address the continuing effects of the off-campus sexual violence at school or in an off-campus education program or activity unless it processes the complaint and gathers appropriate additional information in accordance with its established procedures.

Once a school is on notice of off-campus sexual violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment and, if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct. The mere presence on campus or in an

off-campus education program or activity of the alleged perpetrator of off-campus sexual violence can have continuing effects that create a hostile environment. A school should also take steps to protect a student who alleges off-campus sexual violence from further harassment by the alleged perpetrator or his or her friends, and a school may have to take steps to protect other students from possible assault by the alleged perpetrator. In other words, the school should protect the school community in the same way it would had the sexual violence occurred on campus. Even if there are no continuing effects of the off-campus sexual violence experienced by the student on campus or in an off-campus education program or activity, the school still should handle these incidents as it would handle other off-campus incidents of misconduct or violence and consistent with any other applicable laws. For example, if a school, under its code of conduct, exercises jurisdiction over physical altercations between students that occur off campus outside of an education program or activity, it should also exercise jurisdiction over incidents of student-on-student sexual violence that occur off campus outside of an education program or activity.

Hearings³⁰

F-5. Must a school allow or require the parties to be present during an entire hearing?

Answer: If a school uses a hearing process to determine responsibility for acts of sexual violence, OCR does not require that the school allow a complainant to be present for the entire hearing; it is up to each school to make this determination. But if the school allows one party to be present for the entirety of a hearing, it must do so equally for both parties. At the same time, when requested, a school should make arrangements so that the complainant and the alleged perpetrator do not have to be present in the same room at the same time. These two objectives may be achieved by using closed circuit television or other means. Because a school has a Title IX obligation to investigate possible sexual violence, if a hearing is part of the school's Title IX investigation process, the school must not require a complainant to be present at the hearing as a prerequisite to proceed with the hearing.

³⁰ As noted in question F-1, the investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing. Although Title IX does not dictate the membership of a hearing board, OCR discourages schools from allowing students to serve on hearing boards in cases involving allegations of sexual violence.

F-6. May every witness at the hearing, including the parties, be cross-examined?

Answer: OCR does not require that a school allow cross-examination of witnesses, including the parties, if they testify at the hearing. But if the school allows one party to cross-examine witnesses, it must do so equally for both parties.

OCR strongly discourages a school from allowing the parties to personally question or cross-examine each other during a hearing on alleged sexual violence. Allowing an alleged perpetrator to question a complainant directly may be traumatic or intimidating, and may perpetuate a hostile environment. A school may choose, instead, to allow the parties to submit questions to a trained third party (*e.g.*, the hearing panel) to ask the questions on their behalf. OCR recommends that the third party screen the questions submitted by the parties and only ask those it deems appropriate and relevant to the case.

F-7. May the complainant's sexual history be introduced at hearings?

Answer: Questioning about the complainant's sexual history with anyone other than the alleged perpetrator should not be permitted. Further, a school should recognize that the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence. The school should also ensure that hearings are conducted in a manner that does not inflict additional trauma on the complainant.

Timeframes

F-8. What stages of the investigation are included in the 60-day timeframe referenced in the DCL as the length for a typical investigation?

Answer: As noted in the DCL, the 60-calendar day timeframe for investigations is based on OCR's experience in typical cases. The 60-calendar day timeframe refers to the entire investigation process, which includes conducting the fact-finding investigation, holding a hearing or engaging in another decision-making process to determine whether the alleged sexual violence occurred and created a hostile environment, and determining what actions the school will take to eliminate the hostile environment and prevent its recurrence, including imposing sanctions against the perpetrator and providing remedies for the complainant and school community, as appropriate. Although this timeframe does not include appeals, a school should be aware that an unduly long appeals process may impact whether the school's response was prompt and equitable as required by Title IX.

OCR does not require a school to complete investigations within 60 days; rather OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to try to conduct an investigation during these breaks unless so doing would sacrifice witness availability or otherwise compromise the process.

Because timeframes for investigations vary and a school may need to depart from the timeframes designated in its grievance procedures, both parties should be given periodic status updates throughout the process.

G. Interim Measures

G-1. Is a school required to take any interim measures before the completion of its investigation?

Answer: Title IX requires a school to take steps to ensure equal access to its education programs and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate. The school should also ensure that the complainant is aware of his or her Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. If a school does not offer these services on campus, it should enter into an MOU with a local victim services provider if possible.

Even when a school has determined that it can respect a complainant's request for confidentiality and therefore may not be able to respond fully to an allegation of sexual violence and initiate formal action against an alleged perpetrator, the school must take immediate action to protect the complainant while keeping the identity of the complainant confidential. These actions may include: providing support services to the

complainant; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred.

G-2. How should a school determine what interim measures to take?

Answer: The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. A school should consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged perpetrator share the same residence hall, dining hall, class, transportation, or job location; and whether other judicial measures have been taken to protect the complainant (*e.g.*, civil protection orders).

In general, when taking interim measures, schools should minimize the burden on the complainant. For example, if the complainant and alleged perpetrator share the same class or residence hall, the school should not, as a matter of course, remove the complainant from the class or housing while allowing the alleged perpetrator to remain without carefully considering the facts of the case.

G-3. If a school provides all students with access to counseling on a fee basis, does that suffice for providing counseling as an interim measure?

Answer: No. Interim measures are determined by a school on a case-by-case basis. If a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service.

H. Remedies and Notice of Outcome³¹

H-1. What remedies should a school consider in a case of student-on-student sexual violence?

Answer: Effective remedial action may include disciplinary action against the perpetrator, providing counseling for the perpetrator, remedies for the complainant and others, as well as changes to the school's overall services or policies. All services needed to remedy the hostile environment should be offered to the complainant. These remedies are separate from, and in addition to, any interim measure that may have been provided prior to the conclusion of the school's investigation. In any instance in which the complainant did not take advantage of a specific service (*e.g.*, counseling) when offered as an interim measure, the complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the complainant declined as an interim measure. A refusal at the interim stage does not mean the refused service or set of services should not be offered as a remedy.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without more, likely will not be sufficient to satisfy its Title IX obligation to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. Additional remedies for the complainant and the school community may be necessary. If the school's student disciplinary procedure does not include a process for determining and implementing these remedies for the complainant and school community, the school will need to use another process for this purpose.

Depending on the specific nature of the problem, remedies for the complainant may include, but are not limited to:

- Providing an effective escort to ensure that the complainant can move safely between classes and activities;

³¹ As explained in question A-5, if a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to be subjected to a hostile environment. In this case, in addition to the remedies discussed in this section, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately.

- Ensuring the complainant and perpetrator do not share classes or extracurricular activities;
- Moving the perpetrator or complainant (if the complainant requests to be moved) to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;
- Arranging for the complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and
- Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the sexual violence and the misconduct that may have resulted in the complainant being disciplined.³²

Remedies for the broader student population may include, but are not limited to:

- Designating an individual from the school's counseling center who is specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist students whenever needed;
- Training or retraining school employees on the school's responsibilities to address allegations of sexual violence and how to conduct Title IX investigations;
- Developing materials on sexual violence, which should be distributed to all students;
- Conducting bystander intervention and sexual violence prevention programs with students;
- Issuing policy statements or taking other steps that clearly communicate that the school does not tolerate sexual violence and will respond to any incidents and to any student who reports such incidents;

³² For example, if the complainant was disciplined for skipping a class in which the perpetrator was enrolled, the school should review the incident to determine if the complainant skipped class to avoid contact with the perpetrator.

- Conducting, in conjunction with student leaders, a campus climate check to assess the effectiveness of efforts to ensure that the school is free from sexual violence, and using that information to inform future proactive steps that the school will take;
- Targeted training for a group of students if, for example, the sexual violence created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team; and
- Developing a protocol for working with local law enforcement as discussed in question F-3.

When a school is unable to conduct a full investigation into a particular incident (*i.e.*, when it received a general report of sexual violence without any personally identifying information), it should consider remedies for the broader student population in response.

H-2. If, after an investigation, a school finds the alleged perpetrator responsible and determines that, as part of the remedies for the complainant, it must separate the complainant and perpetrator, how should the school accomplish this if both students share the same major and there are limited course options?

Answer: If there are limited sections of required courses offered at a school and both the complainant and perpetrator are required to take those classes, the school may need to make alternate arrangements in a manner that minimizes the burden on the complainant. For example, the school may allow the complainant to take the regular sections of the courses while arranging for the perpetrator to take the same courses online or through independent study.

H-3. What information must be provided to the complainant in the notice of the outcome?

Answer: Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal. OCR recommends that a school provide written notice of the outcome to the complainant and the alleged perpetrator concurrently.

For Title IX purposes, a school must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence. The perpetrator should not be notified of the individual remedies offered or provided to the complainant.

Sanctions that directly relate to the complainant (but that may also relate to eliminating the hostile environment and preventing recurrence) include, but are not limited to, requiring that the perpetrator stay away from the complainant until both parties graduate, prohibiting the perpetrator from attending school for a period of time, or transferring the perpetrator to another residence hall, other classes, or another school. Additional steps the school has taken to eliminate the hostile environment may include counseling and academic support services for the complainant and other affected students. Additional steps the school has taken to prevent recurrence may include sexual violence training for faculty and staff, revisions to the school's policies on sexual violence, and campus climate surveys. Further discussion of appropriate remedies is included in question H-1.

In addition to the Title IX requirements described above, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the institution's final determination and any disciplinary sanctions imposed on the perpetrator in sexual violence cases (as opposed to all harassment and misconduct covered by Title IX) not just those sanctions that directly relate to the complainant.³³

I. Appeals

I-1. What are the requirements for an appeals process?

Answer: While Title IX does not require that a school provide an appeals process, OCR does recommend that the school do so where procedural error or previously unavailable relevant evidence could significantly impact the outcome of a case or where a sanction is substantially disproportionate to the findings. If a school chooses to provide for an appeal of the findings or remedy or both, it must do so equally for both parties. The specific design of the appeals process is up to the school, as long as the entire grievance process, including any appeals, provides prompt and equitable resolutions of sexual violence complaints, and the school takes steps to protect the complainant in the educational setting during the process. Any individual or body handling appeals should be trained in the dynamics of and trauma associated with sexual violence.

If a school chooses to offer an appeals process it has flexibility to determine the type of review it will apply to appeals, but the type of review the school applies must be the same regardless of which party files the appeal.

³³ 20 U.S.C. § 1092(f) and 20 U.S.C. § 1232g(b)(6)(A).

I-2. Must an appeal be available to a complainant who receives a favorable finding but does not believe a sanction that directly relates to him or her was sufficient?

Answer: The appeals process must be equal for both parties. For example, if a school allows a perpetrator to appeal a suspension on the grounds that it is too severe, the school must also allow a complainant to appeal a suspension on the grounds that it was not severe enough. See question H-3 for more information on what must be provided to the complainant in the notice of the outcome.

J. Title IX Training, Education and Prevention³⁴

J-1. What type of training on Title IX and sexual violence should a school provide to its employees?

Answer: A school needs to ensure that responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence, that other responsible employees know that they are obligated to report sexual violence to appropriate school officials, and that all other employees understand how to respond to reports of sexual violence. A school should ensure that professional counselors, pastoral counselors, and non-professional counselors or advocates also understand the extent to which they may keep a report confidential. A school should provide training to all employees likely to witness or receive reports of sexual violence, including teachers, professors, school law enforcement unit employees, school administrators, school counselors, general counsels, athletic coaches, health personnel, and resident advisors. Training for employees should include practical information about how to prevent and identify sexual violence, including same-sex sexual violence; the behaviors that may lead to and result in sexual violence; the attitudes of bystanders that may allow conduct to continue; the potential for revictimization by responders and its effect on students; appropriate methods for responding to a student who may have experienced sexual violence, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The training should also explain responsible employees' reporting obligation, including what should be included in a report and any consequences for the failure to report and the procedure for responding to students' requests for confidentiality, as well as provide the contact

³⁴ As explained earlier, although this document focuses on sexual violence, the legal principles apply to other forms of sexual harassment. Schools should ensure that any training they provide on Title IX and sexual violence also covers other forms of sexual harassment. Postsecondary institutions should also be aware of training requirements imposed under the Clery Act.

information for the school's Title IX coordinator. A school also should train responsible employees to inform students of: the reporting obligations of responsible employees; students' option to request confidentiality and available confidential advocacy, counseling, or other support services; and their right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement. For additional information on the reporting obligations of responsible employees and others see questions D-1 to D-5.

There is no minimum number of hours required for Title IX and sexual violence training at every school, but this training should be provided on a regular basis. Each school should determine based on its particular circumstances how such training should be conducted, who has the relevant expertise required to conduct the training, and who should receive the training to ensure that the training adequately prepares employees, particularly responsible employees, to fulfill their duties under Title IX. A school should also have methods for verifying that the training was effective.

J-2. How should a school train responsible employees to report incidents of possible sexual harassment or sexual violence?

Answer: Title IX requires a school to take prompt and effective steps reasonably calculated to end sexual harassment and sexual violence that creates a hostile environment (*i.e.*, conduct that is sufficiently serious as to limit or deny a student's ability to participate in or benefit from the school's educational program and activity). But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

OCR therefore recommends that a school train responsible employees to report to the Title IX coordinator or other appropriate school official any incidents of sexual harassment or sexual violence that may violate the school's code of conduct or may create or contribute to the creation of a hostile environment. The school can then take steps to investigate and prevent any harassment or violence from recurring or escalating, as appropriate. For example, the school may separate the complainant and alleged perpetrator or conduct sexual harassment and sexual violence training for the school's students and employees. Responsible employees should understand that they do not need to determine whether the alleged sexual harassment or sexual violence actually occurred or that a hostile environment has been created before reporting an incident to the school's Title IX coordinator. Because the Title IX coordinator should have in-depth knowledge of Title IX and Title IX complaints at the school, he or she is likely to be in a better position than are other employees to evaluate whether an incident of sexual

harassment or sexual violence creates a hostile environment and how the school should respond. There may also be situations in which individual incidents of sexual harassment do not, by themselves, create a hostile environment; however when considered together, those incidents may create a hostile environment.

J-3. What type of training should a school provide to employees who are involved in implementing the school's grievance procedures?

Answer: All persons involved in implementing a school's grievance procedures (*e.g.*, Title IX coordinators, others who receive complaints, investigators, and adjudicators) must have training or experience in handling sexual violence complaints, and in the operation of the school's grievance procedures. The training should include information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including same-sex sexual violence; the proper standard of review for sexual violence complaints (preponderance of the evidence); information on consent and the role drugs or alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; the need for remedial actions for the perpetrator, complainant, and school community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct investigations; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.

In rare circumstances, employees involved in implementing a school's grievance procedures may be able to demonstrate that prior training and experience has provided them with competency in the areas covered in the school's training. For example, the combination of effective prior training and experience investigating complaints of sexual violence, together with training on the school's current grievance procedures may be sufficient preparation for an employee to resolve Title IX complaints consistent with the school's grievance procedures. In-depth knowledge regarding Title IX and sexual violence is particularly helpful. Because laws and school policies and procedures may change, the only way to ensure that all employees involved in implementing the school's grievance procedures have the requisite training or experience is for the school to provide regular training to all individuals involved in implementing the school's Title IX grievance procedures even if such individuals also have prior relevant experience.

J-4. What type of training on sexual violence should a school provide to its students?

Answer: To ensure that students understand their rights under Title IX, a school should provide age-appropriate training to its students regarding Title IX and sexual violence. At the elementary and secondary school level, schools should consider whether sexual violence training should also be offered to parents, particularly training on the school's process for handling complaints of sexual violence. Training may be provided separately or as part of the school's broader training on sex discrimination and sexual harassment. However, sexual violence is a unique topic that should not be assumed to be covered adequately in other educational programming or training provided to students. The school may want to include this training in its orientation programs for new students; training for student athletes and members of student organizations; and back-to-school nights. A school should consider educational methods that are most likely to help students retain information when designing its training, including repeating the training at regular intervals. OCR recommends that, at a minimum, the following topics (as appropriate) be covered in this training:

- Title IX and what constitutes sexual violence, including same-sex sexual violence, under the school's policies;
- the school's definition of consent applicable to sexual conduct, including examples;
- how the school analyzes whether conduct was unwelcome under Title IX;
- how the school analyzes whether unwelcome sexual conduct creates a hostile environment;
- reporting options, including formal reporting and confidential disclosure options and any timeframes set by the school for reporting;
- the school's grievance procedures used to process sexual violence complaints;
- disciplinary code provisions relating to sexual violence and the consequences of violating those provisions;
- effects of trauma, including neurobiological changes;
- the role alcohol and drugs often play in sexual violence incidents, including the deliberate use of alcohol and/or other drugs to perpetrate sexual violence;
- strategies and skills for bystanders to intervene to prevent possible sexual violence;
- how to report sexual violence to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance; and
- Title IX's protections against retaliation.

The training should also encourage students to report incidents of sexual violence. The training should explain that students (and their parents or friends) do not need to determine whether incidents of sexual violence or other sexual harassment created a

hostile environment before reporting the incident. A school also should be aware that persons may be deterred from reporting incidents if, for example, violations of school or campus rules regarding alcohol or drugs were involved. As a result, a school should review its disciplinary policy to ensure it does not have a chilling effect on students' reporting of sexual violence offenses or participating as witnesses. OCR recommends that a school inform students that the school's primary concern is student safety, and that use of alcohol or drugs never makes the survivor at fault for sexual violence.

It is also important for a school to educate students about the persons on campus to whom they can confidentially report incidents of sexual violence. A school's sexual violence education and prevention program should clearly identify the offices or individuals with whom students can speak confidentially and the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. It should also identify the school's responsible employees and explain that if students report incidents to responsible employees (except as noted in question E-3) these employees are required to report the incident to the Title IX coordinator or other appropriate official. This reporting includes the names of the alleged perpetrator and student involved in the sexual violence, as well as relevant facts including the date, time, and location, although efforts should be made to comply with requests for confidentiality from the complainant. For more detailed information regarding reporting and responsible employees and confidentiality, see questions D-1 to D-5 and E-1 to E-4.

K. Retaliation

K-1. Does Title IX protect against retaliation?

Answer: Yes. The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual violence or filing a sexual violence complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an OCR or school's investigation or proceeding. Therefore, if a student, parent, teacher, coach, or other individual complains formally or informally about sexual violence or participates in an OCR or school's investigation or proceedings related to sexual violence, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way

discriminating against the individual) because of the individual's complaint or participation.

A school should take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses.

Schools should be aware that complaints of sexual violence may be followed by retaliation against the complainant or witnesses by the alleged perpetrator or his or her associates. When a school knows or reasonably should know of possible retaliation by other students or third parties, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and witnesses and ensure their safety as necessary. At a minimum, this includes making sure that the complainant and his or her parents, if the complainant is in elementary or secondary school, and witnesses know how to report retaliation by school officials, other students, or third parties by making follow-up inquiries to see if there have been any new incidents or acts of retaliation, and by responding promptly and appropriately to address continuing or new problems. A school should also tell complainants and witnesses that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation, but will also take strong responsive action if it occurs.

L. First Amendment

L-1. How should a school handle its obligation to respond to sexual harassment and sexual violence while still respecting free-speech rights guaranteed by the Constitution?

Answer: The DCL on sexual violence did not expressly address First Amendment issues because it focuses on unlawful physical sexual violence, which is not speech or expression protected by the First Amendment.

However, OCR's previous guidance on the First Amendment, including the 2001 Guidance, OCR's July 28, 2003, Dear Colleague Letter on the First Amendment,³⁵ and OCR's October 26, 2010, Dear Colleague Letter on harassment and bullying,³⁶ remain fully in effect. OCR has made it clear that the laws and regulations it enforces protect students from prohibited discrimination and do not restrict the exercise of any expressive activities or speech protected under the U.S. Constitution. Therefore, when a school works to prevent

³⁵ Available at <http://www.ed.gov/ocr/firstamend.html>.

³⁶ Available at <http://www.ed.gov/ocr/letters/colleague-201010.html>.

and redress discrimination, it must respect the free-speech rights of students, faculty, and other speakers.

Title IX protects students from sex discrimination; it does not regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a hostile environment under Title IX. Title IX also does not require, prohibit, or abridge the use of particular textbooks or curricular materials.³⁷

M. The Clery Act and the Violence Against Women Reauthorization Act of 2013

M-1. How does the Clery Act affect the Title IX obligations of institutions of higher education that participate in the federal student financial aid programs?

Answer: Institutions of higher education that participate in the federal student financial aid programs are subject to the requirements of the Clery Act as well as Title IX. The Clery Act requires institutions of higher education to provide current and prospective students and employees, the public, and the Department with crime statistics and information about campus crime prevention programs and policies. The Clery Act requirements apply to many crimes other than those addressed by Title IX. For those areas in which the Clery Act and Title IX both apply, the institution must comply with both laws. For additional information about the Clery Act and its regulations, please see <http://www2.ed.gov/admins/lead/safety/campus.html>.

M-2. Were a school's obligations under Title IX and the DCL altered in any way by the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, including Section 304 of that Act, which amends the Clery Act?

Answer: No. The Violence Against Women Reauthorization Act has no effect on a school's obligations under Title IX or the DCL. The Violence Against Women Reauthorization Act amended the Violence Against Women Act and the Clery Act, which are separate statutes. Nothing in Section 304 or any other part of the Violence Against Women Reauthorization Act relieves a school of its obligation to comply with the requirements of Title IX, including those set forth in these Questions and Answers, the 2011 DCL, and the *2001 Guidance*. For additional information about the Department's negotiated rulemaking related to the Violence Against Women Reauthorization Act please see <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa.html>.

³⁷ 34 C.F.R. § 106.42.

N. Further Federal Guidance

N-1. Whom should I contact if I have additional questions about the DCL or OCR's other Title IX guidance?

Answer: Anyone who has questions regarding this guidance, or Title IX should contact the OCR regional office that serves his or her state. Contact information for OCR regional offices can be found on OCR's webpage at

<https://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>. If you wish to file a complaint of discrimination with OCR, you may use the online complaint form available at <http://www.ed.gov/ocr/complaintintro.html> or send a letter to the OCR enforcement office responsible for the state in which the school is located. You may also email general questions to OCR at ocr@ed.gov.

N-2. Are there other resources available to assist a school in complying with Title IX and preventing and responding to sexual violence?

Answer: Yes. OCR's policy guidance on Title IX is available on OCR's webpage at <http://www.ed.gov/ocr/publications.html#TitleIX>. In addition to the April 4, 2011, Dear Colleague Letter, OCR has issued the following resources that further discuss a school's obligation to respond to allegations of sexual harassment and sexual violence:

- Dear Colleague Letter: Harassment and Bullying (October 26, 2010), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>
- *Sexual Harassment: It's Not Academic* (Revised September 2008), <http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>
- *Revised Sexual Harassment Guidance: Harassment of Students by Employees, Other Students, or Third Parties* (January 19, 2001), <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

In addition to guidance from OCR, a school may also find resources from the Departments of Education and Justice helpful in preventing and responding to sexual violence:

- Department of Education's Letter to Chief State School Officers on Teen Dating Violence Awareness and Prevention (February 28, 2013)
<https://www2.ed.gov/policy/gen/guid/secletter/130228.html>
- Department of Education's National Center on Safe Supportive Learning Environments
<http://safesupportivelearning.ed.gov/>
- Department of Justice, Office on Violence Against Women
<http://www.ovw.usdoj.gov/>

What You Can Do | Blog | Newsroom | Images | Videos | Resources | Policies & Laws | Español
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SEARCH

WHAT IS BULLYING

CYBER BULLYING

WHO IS AT RISK

PREVENT BULLYING

RESPOND TO BULLYING

GET HELP NOW

Home > Who is at Risk > Considerations for Specific Groups > LGBT Youth

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WHO IS AT RISK

Bullying and LGBT Youth

Risk Factors

Lesbian, gay, bisexual, or transgender (LGBT) youth and those perceived as LGBT are at an increased risk of being bullied.

Warning Signs

There are important and unique considerations for strategies to prevent and address bullying of LGBT youth.

Effects

- ▶ Creating a Safe Environment for LGBT Youth
- ▶ Federal Civil Rights Laws and Sexual Orientation
- ▶ Additional Resources

Considerations for Specific Groups

LGBT Youth

Creating a Safe Environment for LGBT Youth

Youth With Special Needs

It is important to build a safe environment for all youth, whether they are straight or LGBT. All youth can thrive when they feel supported. Parents, schools, and communities can all play a role in helping LGBT youth feel physically and emotionally safe:

- ▶ Build strong connections and keep the lines of communication open. Some LGBT youth often feel rejected. It is important for them to know that their families, friends, schools, and communities support them.
- ▶ Establish a safe environment at school. Schools can send a message that no one should be treated differently because they are, or are perceived to be, LGBT. Sexual orientation and gender identity protection can be added to school policies.
- ▶ Create gay-straight alliances (GSAs). GSAs help create safer schools. Schools must allow these groups if they have other "non-curricular" clubs or groups. Learn more about the right to form a GSA under the Equal Access Act.
- ▶ Protect privacy. Be careful not to disclose or discuss issues around being LGBT with parents or anyone else.

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Federal Civil Rights Laws and Sexual Orientation

Federal civil rights laws do not cover harassment based on sexual orientation. Often, bullying towards LGBT youth targets

Create a Gay-Straight Alliance

Watch a video of Arne Duncan, Secretary of the U.S. Department of Education, in a speech supporting GSAs for Gay-Straight Alliance Day.



their non-conformity to gender norms. This may be sexual harassment covered under Title IX. Read more about federal civil rights laws.

Many states protect against bullying because of sexual orientation in their state laws.

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Additional Resources

- ▶ [Bullying of LGBT Youth and Those Perceived to Have Different Sexual Orientations Tip Sheet \(PDF - 339 KB\)](#)
- ▶ [Learn more about preventing bullying.](#)
- ▶ [Visit the Centers for Disease Control and Prevention website to support LGBT youth.](#)
- ▶ [Read a paper on LGBT bullying from the White House Conference on Bullying.](#)
- ▶ [Read more about health-risk behaviors in LGBT youth.](#)

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U.S. Department of Education

LAWS & GUIDANCE (/POLICY/LANDING.JHTML? SRC=LN)/ ELEMENTARY & SECONDARY EDUCATION Key Policy Letters from the Education Secretary and Deputy Secretary

June 14, 2011

June 14, 2011

Dear Colleagues:

Harassment and bullying are serious problems in our schools, and lesbian, gay, bisexual, and transgender (LGBT) students are the targets of disproportionate shares of these problems. Thirty-two percent of students aged 12-18 experienced verbal or physical bullying during the 2007-2008 school year;¹ and, according to a recent survey, more than 90 percent of LGBT students in grades 6 through 12 reported being verbally harassed — and almost half reported being physically harassed — during the 2008-2009 school year.² High levels of harassment and bullying correlate with poorer educational outcomes, lower future aspirations, frequent school absenteeism, and lower grade-point averages.³ Recent tragedies involving LGBT students and students perceived to be LGBT only underscore the need for safer schools.

Gay-straight alliances (GSAs) and similar student-initiated groups addressing LGBT issues can play an important role in promoting safer schools and creating more welcoming learning environments. Nationwide, students are forming these groups in part to combat bullying and harassment of LGBT students and to promote understanding and respect in the school community. Although the efforts of these groups focus primarily on the needs of LGBT students, students who have LGBT family members and friends, and students who are perceived to be LGBT, messages of respect, tolerance, and inclusion benefit all our students. By encouraging dialogue and providing supportive resources, these groups can help make schools safe and affirming environments for everyone.

But in spite of the positive effect these groups can have in schools, some such groups have been unlawfully excluded from school grounds, prevented from forming, or denied access to school resources. These same barriers have sometimes been used to target religious and other student groups, leading Congress to pass the Equal Access Act.

In 1984, Congress passed and President Ronald Reagan signed into law the Equal Access Act, requiring public secondary schools to provide equal access for extracurricular clubs. Rooted in principles of equal treatment and freedom of expression, the Act protects student-initiated groups of all types. As one of my predecessors, Secretary Richard W. Riley, pointed out in guidance concerning the Equal Access Act and religious clubs more than a decade ago, we “protect our own freedoms by respecting the freedom of others who differ from us.”⁴ By allowing students to discuss difficult issues openly and honestly, in a civil manner, our schools become forums for combating ignorance, bigotry, hatred, and discrimination.

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- Student loans, forgiveness (</fund/grants-college.html?src=rn>)
- College accreditation (<http://ope.ed.gov/accreditation/>)
- No Child Left Behind (</nclb/landing.jhtml?src=rn>)
- FERPA (</policy/gen/guid/fpco/ferpa/index.html?src=rn>)
- FAFSA (<http://fafsa.ed.gov/>)
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More > (</about/top-tasks.html?src=rn>)

Information About...

- Transforming Teaching (<http://www.ed.gov/teaching>)
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- K-12 Reforms (<http://www.ed.gov/k-12reforms>)
More > (<http://www.ed.gov/priorities>)

The Act requires public secondary schools to treat all student-initiated groups equally, regardless of the religious, political, philosophical, or other subject matters discussed at their meetings. Its protections apply to groups that address issues relating to LGBT students and matters involving sexual orientation and gender identity, just as they apply to religious and other student groups.

Today, the U.S. Department of Education's General Counsel, Charles P. Rose, is issuing a set of legal guidelines affirming the principles that prevent unlawful discrimination against any student-initiated groups. We intend for these guidelines to provide schools with the information and resources they need to help ensure that all students, including LGBT and gender nonconforming students, have a safe place to learn, meet, share experiences, and discuss matters that are important to them.

Although specific implementation of the Equal Access Act depends upon contextual circumstances, these guidelines reflect basic obligations imposed on public school officials by the Act and the First Amendment to the U.S. Constitution. The general rule, approved by the U.S. Supreme Court, is that a public high school that allows at least one noncurricular student group to meet on school grounds during noninstructional time (e.g., lunch, recess, or before or after school) may not deny similar access to other noncurricular student groups, regardless of the religious, political, philosophical, or other subject matters that the groups address.

I encourage every school district to make sure that its administrators, faculty members, staff, students, and parents are familiar with these principles in order to protect the rights of all students — regardless of religion, political or philosophical views, sexual orientation, or gender identity. I also urge school districts to use the guidelines to develop or improve district policies. In doing so, school officials may find it helpful to explain to the school community that the Equal Access Act requires public schools to afford equal treatment to all noncurricular student organizations, including GSAs and other groups that focus on issues related to LGBT students, sexual orientation, or gender identity. Officials need not endorse any particular student organization, but federal law requires that they afford all student groups the same opportunities to form, to convene on school grounds, and to have access to the same resources available to other student groups.

The process of revising or developing an equal-access policy offers an opportunity for school officials to engage their community in an open dialogue on the equal treatment of all noncurricular student organizations. It is important to remember, therefore, that the Equal Access Act's requirements are a bare legal minimum. I invite and encourage you to go beyond what the law requires in order to increase students' sense of belonging in the school and to help students, teachers, and parents recognize the core values behind our principles of free speech. As noted in our October 2010 Dear Colleague Letter (<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>) and December 2010 guidance (<http://www2.ed.gov/policy/gen/guid/secletter/101215.html>) regarding anti-bullying policies, I applaud such policies as positive steps toward ensuring equal access to education for all students.

Thank you for your work on behalf of our nation's children.

Sincerely,

/s/

Arne Duncan

Enclosure  MS Word (43 K) (/policy/elsec/guid/secletter/groupsguide.doc)

¹Dinkes, R., Kemp, J., and Baum, K. (2010). Indicators of School Crime and Safety: 2010. (NCES 2010-012/NCJ 228478). 42 National Center for Education Statistics: Washington, DC.

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²Kosciw, J. G., Greytak, E. A., Diaz, E. M., and Bartkiewicz, M. J. (2010). The 2009 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools, 26, New York: GLSEN.

³GLSEN, at 46-8.

⁴U.S. Department of Education, "Secretary's Guidelines on Religious Expression in Public Schools," August 1995.



(/print/policy/elsec/guid/secletter/110607.html)

Printable view (/print/policy/elsec/guid/secletter/110607.html)



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Last Modified: 09/19/2012

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(http://studentaid.ed.gov/repay-loans/default?src=ft)

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(http://studentaid.ed.gov/repay-loans/forgiveness-cancellation?src=ft)

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Postsecondary Education Data

(http://nces.ed.gov/ipeds/?src=ft)

State Education Data

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CHAPTER 4.00 – CURRICULUM AND INSTRUCTION

STUDENT CLUBS AND ORGANIZATIONS

4.06

- 1) Extracurricular activities shall be considered an essential part of the total school program and shall be under the principal's direction and general control. Extracurricular activities shall be offered to students through various clubs and organizations.
- 2) All student clubs and organizations shall comply with the following:
 - a) The principal shall approve the rules of each student club or organization. The rules shall state the purposes, qualifications for members, and the rules of conduct; shall be maintained on file in the administration offices of the school; and, shall be available to all interested parties.
 - b) Eligibility for membership shall not include a vote of the current membership. Hazing is strictly forbidden. Hazing shall be defined as any action or situation for the purpose of initiation or admission into or affiliation with any club or organization which recklessly or intentionally endangers a student's mental or physical health or safety.
 - c) Any school club or organization which engages in an initiation ceremony for its members shall prepare and submit the program of initiation exercises to the faculty sponsor for review and approval by the principal.
 - d) Dues shall be reasonable and not prohibitive. Students shall not be excluded because of financial hardship.
 - e) Shall be self-supporting.
 - f) A faculty sponsor shall be present at all meetings.
 - g) All social events shall be adequately chaperoned.
 - h) All monies accruing to any school club or organization shall be accounted for through the school's internal accounting system pursuant to the District's accounting procedures.
 - i) A student club or organization shall not conduct any activity or act which violates law, School Board Rules, or procedures.

CHAPTER 4.00 – CURRICULUM AND INSTRUCTION

STUDENT CLUBS AND ORGANIZATIONS

4.06

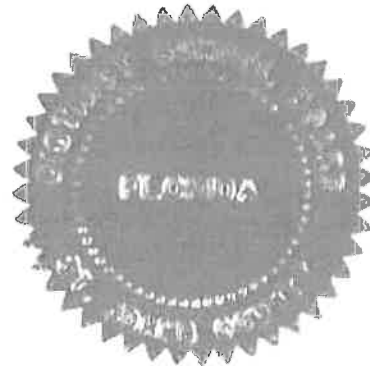
- 3) The club or organization’s faculty sponsor shall be a School Board employee who is:
 - a) assigned responsibility for the club or organization as a part of the employee’s job description;
 - b) paid a supplement for such duty; or,
 - c) volunteers to serve in the position.

- 4) A student’s participation in a club or organization is a privilege and not a right. A student’s opportunity to participate can be limited or denied for failure to follow the club or organization’s rules or for violation of the Student Conduct Code or School Board rules.

STATUTORY AUTHORITY: 1001.41, F.S.

LAWS IMPLEMENTED: 1001.42; 1006.09, F.S.

HISTORY: **ADOPTED:** 08/18/1998
REVISION DATE(S): 11/16/2004
FORMERLY: IGDA; JFCE



School board answers transgender student's complaint

Gloucester High to build unisex bathrooms for LGBT students

By Jason Marks Published: December 9, 2014, 11:47 pm Updated: December 10, 2014, 12:41

GLOUCESTER COUNTY, Va. (WAVY) — A transgender student at Gloucester High School will not be allowed to use the boys restroom. That decision came from the county's school board Tuesday night, in a 6-1 vote for a policy to have bathrooms used according to sex, not gender identity.

10th grader Gavin Grimm, who was born a girl, says he is a boy and is taking hormone medicine with plans to have a sex change. He doesn't feel comfortable using the girls bathroom at school, and wants to use the boys bathroom.

The issue was brought before school board members last month, but the vote was tabled until this week, to allow more time for members to study and consider the matter.

In the meantime, the American Civil Liberties Union warned Gloucester County Schools it will sue the school board, if Gavin's civil rights are violated.

Document: ACLU letter to Gloucester County School Board

Tuesday night, dozens of attendees voiced their opinion in front of the school board. Some Gloucester High male students said they don't feel comfortable being in the bathroom with a girl. Grimm's mom told the board he has used the boys bathroom since early October, and that there have been no problems.

One board member said the school system gets almost \$3 million a year in federal funding that could be lost, if the government finds Gavin is being discriminated against.

Board members said they wanted to respect the privacy of all students. They discussed putting dividers between urinals and creating more stalls, but eventually decided bathrooms will be used according to sex. However, the school system will build unisex bathrooms around the school, for students who want to use them.

But that's not what Grimm wanted to hear.

Photos: Gloucester school restroom vote

“While I’m disappointed, I’m very glad that the public has spoken,” Grimm said. “I’m glad the school board has spoken, and my fight is not over, because of the decision today. I am not the last transgender student who will ever be at Gloucester High School. I’m not the first who has ever been. This is a civil right issue, and I will stand up not only for my own rights, but the rights of every transgender student who will ever have to face this issue, both in Gloucester and the nation.”

School Board Chairman Randy Burak admitted there is concern about a federal lawsuit, but he feels the board did what was in the best interest for all the students.

“I think, right now, you’ve heard a lot of the sides of the issue,” Burak said. “Whenever there is litigation nobody wins, and I think this is the beginning of something that will be talked about much more in the future.”

After the vote, the ACLU of Virginia denounced the school board for what it called a “discriminatory policy.” The



Know Your Rights: Title IX Requires Your School to Address Sexual Violence*

Title IX of the Education Amendments of 1972 prohibits sex discrimination—which includes sexual violence—in educational programs and activities. All public and private schools, school districts, colleges and universities receiving federal funds must comply with Title IX. If you have experienced sexual violence, here are some things you should know about your Title IX rights:

Your School Must Respond Promptly and Effectively to Sexual Violence

- You have the right to report the incident to your school, have your school investigate what happened, and have your complaint resolved promptly and equitably.
- You have the right to choose to report an incident of sexual violence to campus or local law enforcement. But a criminal investigation does not relieve your school of its duty under Title IX to respond promptly and effectively.
- Your school must adopt and publish procedures for resolving complaints of sex discrimination, including sexual violence. Your school may use student disciplinary procedures, but any procedures for sexual violence complaints must afford you a prompt and equitable resolution.
- Your school should ensure that you are aware of your Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance.
- Your school must designate a Title IX coordinator and make sure all students and employees know how to contact him or her. The Title IX coordinator should also be available to meet with you.
- All students are protected by Title IX, regardless of whether they have a disability, are international or undocumented, and regardless of their sexual orientation and gender identity.

Your School Must Provide Interim Measures as Necessary

- Your school must protect you as necessary, even before it completes any investigation. Your school should start doing this promptly once the incident is reported.
- Once you tell your school about an incident of sexual violence, you have the right to receive some immediate help, such as changing classes, dorms, or transportation. When taking these measures, your school should minimize the burden on you.
- You have the right to report any retaliation by school employees, the alleged perpetrator, and other students, and your school should take strong responsive action if it occurs.

Your School Should Make Known Where You Can Find Confidential Support Services

- Your school should clearly identify where you can go to talk to someone confidentially and who can provide services like advocacy, counseling, or academic support. Some people, such as counselors or victim advocates, can talk to you in confidence without triggering a school's investigation.

* This document outlines your rights under Title IX. You may have additional rights under other federal and state laws.



Your School Should Make Known Where You Can Find Confidential Support Services (cont.)

- Because different employees have different reporting obligations when they find out about sexual violence involving students, your school should clearly explain the reporting obligations of all school employees.
- Even if you do not specifically ask for confidentiality, your school should only disclose information to individuals who are responsible for handling the school's response to sexual violence. Your school should consult with you about how to best protect your safety and privacy.

Your School Must Conduct an Adequate, Reliable, and Impartial Investigation

- You have the right to be notified of the timeframes for all major stages of the investigation.
- You have the right to present witnesses and evidence.
- If the alleged perpetrator is allowed to have a lawyer, you have the right to have one too.
- Your school must resolve your complaint based on what they think is more likely than not to have happened (this is called a preponderance-of-the-evidence standard of proof). Your school cannot use a higher standard of proof.
- You have the right to be notified in writing of the outcome of your complaint and any appeal, including any sanctions that directly relate to you.
- If your school provides for an appeal process, it must be equally available for both parties.
- You have the right to have any proceedings documented, which may include written findings of fact, transcripts, or audio recordings.
- You have the right not to "work it out" with the alleged perpetrator in mediation. Mediation is not appropriate in cases involving sexual assault.

Your School Must Provide Remedies as Necessary

- If an investigation reveals that sexual violence created a hostile environment, your school must take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.
- Appropriate remedies will generally include disciplinary action against the perpetrator, but may also include remedies to help you get your education back on track (like academic support, retaking a class without penalty, and counseling). These remedies are in addition to any interim measures you received.
- Your school may also have to provide remedies for the broader student population (such as training) or change its services or policies to prevent such incidents from repeating.

If you want to learn more about your rights, or if you believe that your school is violating federal law, you may contact the U.S. Department of Education, Office for Civil Rights, at (800) 421-3481 or ocr@ed.gov. If you wish to fill out a complaint form online, you may do so at <http://www.ed.gov/ocr/complaintintro.html>.

<http://www.msnbc.com/msnbc/transgender-students-protected-under-title-ix>

Transgender students protected under Title IX, DOE says

04/30/14 04:09 PM—Updated 04/30/14 04:15 PM

By Emma Margolin

Tucked away in a document on reducing sexual assault at school – part of an unprecedented effort by the Obama administration to address such abuse – the Department of Education included a historic guideline extending federal civil rights protections to transgender students on Tuesday.

Title IX – the civil rights law that prohibits sex discrimination in federally funded education programs and activities – also bars discrimination on the basis of gender identity, announced the Department of Education’s Office for Civil Rights, marking a major victory in the fight to codify LGBT protections into federal law.

“Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation,” reads the 46-page document. “Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school’s obligations. Indeed, lesbian, gay, bisexual, and transgender (LGBT) youth report high rates of sexual harassment and sexual violence. A school should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it uses in all complaints involving sexual violence.”

Though aimed at clarifying how Title IX relates to sexual violence, the guidance carries far broader implications. **LGBT advocates note that transgender students will not just be explicitly protected from physical or sexual abuse under Title IX, but from all forms of discrimination in education.**

“It certainly would be our view that transgender students should be given the ability to participate in sex segregated activities, like sports teams, consistent with their gender identity,” said Ian Thompson, legislative representative at the American Civil Liberties Union, to msnbc. “Failure on part of the school to allow that would be discrimination against that student.”

The Department of Education’s guidance builds off numerous court decisions and a 2012 opinion by the Equal Employment Opportunity Commission (EEOC) that gender identity discrimination falls under sex discrimination, which is barred by Title VII of the 1964 Civil Rights Act. Two other areas of federal law that explicitly protect individuals on the basis of gender identity and sexual orientation include hate crime legislation (the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act) and domestic violence legislation (the Violence Against Women ACT.)

However, in other areas areas of daily life – including housing and employment, for example – LGBT individuals remain vulnerable.

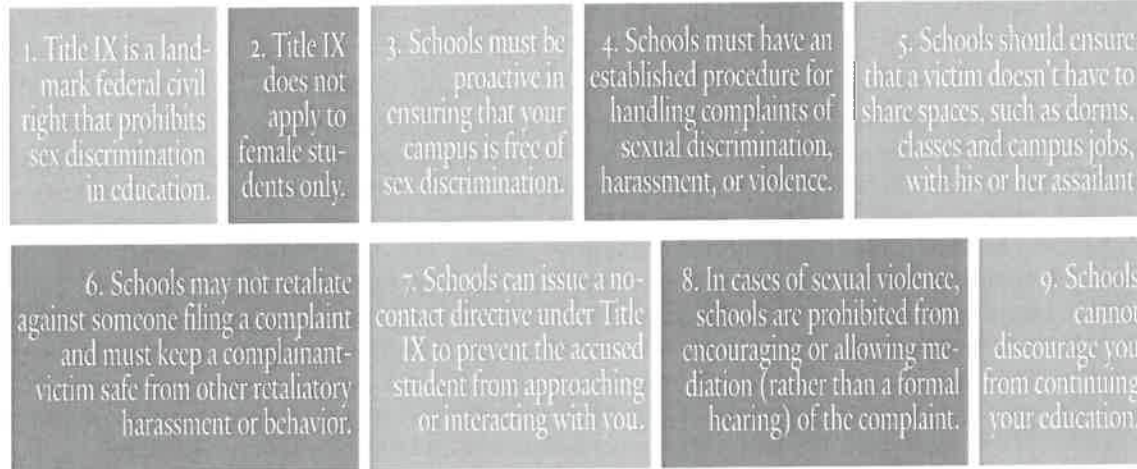
“There’s clearly a tremendous amount of work still to be done,” said Thompson. “The important point is in the absence of explicit protections in federal statutes.”

While the Department of Education’s document on sexual violence is a good start, the ACLU would now like to see OCR follow up with a comprehensive explanation on how Title IX protects transgender students from discrimination, and what steps schools should take to be in line with that law. Additionally, said Thompson, Congress should pass the Student Non-Discrimination Act to fully guarantee explicit nondiscrimination protections based on sexual orientation and gender identity in public K-12 schools.

“This guidance is very helpful, and having OCR take this position with respect to Title IX is very significant,” said Thompson. “But it should not be read as a substitution for explicit sexual orientation and gender identity nondiscrimination protections being put into place with a federal statute.”

Title IX: The Basics

9 THINGS TO KNOW ABOUT TITLE IX



www.knowyourIX.com 

1. Title IX a landmark federal civil right that prohibits sex discrimination in education. Title IX is not just about sports; it is a prohibition against sex-based discrimination in education. It addresses discrimination against pregnant and parenting students and women in STEM (science, technology, engineering, and math) programs. It also addresses sexual harassment, gender-based discrimination, and sexual violence. Sexual violence includes attempted or completed rape or sexual assault, as well as sexual harassment, stalking, voyeurism, exhibitionism, verbal or physical sexuality-based threats or abuse, and intimate partner violence.

2. Title IX does not apply to female students only. Title IX protects any person from sex-based discrimination, regardless of their real or perceived sex, gender identity, and/or gender expression. Female, male, and gender non-conforming students, faculty, and staff are protected from any sex-based discrimination, harassment or violence.

3. Schools must be proactive in ensuring that your campus is free of sex discrimination. You are protected under Title IX even if you do not experience sex discrimination directly. Schools must take immediate steps to address any sex discrimination, sexual harassment or sexual violence happening on campus to prevent it from affecting students further. If a school knows or reasonably should know about discrimination, harassment or violence that is creating a "hostile environment" for any student, it must act to eliminate it, remedy the harm caused and prevent its recurrence.

4. Schools must have an established procedure for handling complaints of sex discrimination, sexual harassment or sexual violence. Every school must have a Title IX Coordinator who manages complaints. The Coordinator's contact information should be publically accessible on the school's website. If you decide to file a complaint, your school must promptly investigate it regardless of whether you report to the police, though a police investigation may very briefly delay the school's investigation if they are gathering evidence. A school may not wait for the conclusion of a criminal proceeding and should conclude its own investigation within a semester's time (the 2011 Title IX Guidance proposes 60 days as an appropriate timeframe). The school should use a "preponderance of the evidence" standard to determine the outcome of a complaint, meaning discipline should result if it is more likely than not discrimination, harassment or violence occurred. The final decision should be provided to you and the accused in writing and both of you have the right to appeal the decision.

5. Schools must take immediate action to ensure a complainant-victim can continue their education free of ongoing sex discrimination, sexual harassment or sexual violence. Along with issuing a no contact directive to the accused, a schools must ensure any reasonable changes to your housing, class or sports schedule, campus job, or extracurricular activity and clubs are made to ensure you can continue your education free from any ongoing sex discrimination, sexual harassment or sexual violence. These arrangements can occur BEFORE a formal complaint, investigation, hearing, or final decision is made regarding your complaint. It also can CONTINUE after the entire process since you have a right to an education free of sex-based discrimination, harassment or violence. Additionally, these accommodations should not over-burden complainant-victims or limit your educational opportunities. Instead, schools can require the accused to likewise change some school activities or classes to ensure there is not ongoing hostile educational environment.

6. Schools may not retaliate against someone filing a complaint and must keep a complainant-victim safe from other retaliatory harassment or behavior. Schools must address complaints of sex discrimination, sexual harassment and sexual violence. As part of this obligation they can issue a no contact directive or make other accommodations to ensure the accused or a third party does not retaliate for any complaint. Additionally, the school may not take adverse action against the complainant-victim for their complaint. Any retaliation can and should be reported in a formal Title IX complaint to the U.S. Department of Education since it is your right to be free from a hostile educational environment.

7. Schools can issue a no contact directive under Title IX to prevent the accused student from approaching or interacting with you. When necessary for student safety, schools can issue a no contact directive preventing an accused student from directly or indirectly contacting or interacting with you. Campus security or police can and should enforce such directives. This is not a court-issued restraining order, but a school should provide you with information on how to obtain such an order and facilitate that process if you choose to pursue it.

8. In cases of sexual violence, schools are prohibited from encouraging or allowing mediation (rather than a formal hearing) of the complaint. The 2011 Title IX Guidance clearly prohibits schools from allowing mediation between an accused student and a complainant-victim in sexual violence cases. However, they may still offer such an alternative process for other types of complaints, such as sexual harassment. Realize it is your choice and you can and should seek a disciplinary hearing if you desire such a formal process. Schools are discouraged from allowing the accused to question you during a hearing. If your school allows that, consider getting a nonprofit attorney or other legal advocate to help you through the process and/or file a Title IX complaint with the U.S. Department of Education about that schools hearing process.

9. Schools cannot discourage you from continuing your education. Title IX is a positive right to be free of a hostile environment in order to protect your access to education. You have a right to remain on campus and have every educational program and opportunity available to you. Schools may not discourage you from continuing your education, such as telling you to “take time off” or force you to quit a team, club or class. You can always file a formal Title IX complaint with the U.S. Department of Education or seek legal counsel to enforce your right to education under Title IX. It is your choice how to handle sexual harassment or violence, but realize you have a right to your education and the school **MUST** adjust to ensure you can continue free from that hostile environment.

—Dana Bolger

Although these resources have been written with the guidance of legal experts, we are not lawyers, and the information on this website does not constitute legal advice. We encourage you to contact a lawyer to discuss your complaint or suit.



Facts: Gay and Lesbian youth *in schools*

- ▶ Five to six percent of American students are lesbian, gay, bisexual or transgendered (LGBT)¹ — a conservative estimate means there are 2.25 to 2.7 million school-age LGBT youth.²
- ▶ Recent studies show the average age for a gay or lesbian youth to come out is now 16-years-old — down from earlier studies showing the average age at 19 to 23 years old.³

FACING VERBAL AND PHYSICAL HARASSMENT:

A national survey of LGBT students conducted in 2003⁴ found that, within the past year:

- ▶ 77.9% heard remarks such as “faggot” or “dyke” frequently or often at school (similar studies have shown that the average high school student hears such epithets 25 times a day);
 - 18.8% heard similar remarks from faculty or school staff at least some of the time;
 - 82.9% reported that faculty or staff never or only sometimes intervened when they were present when such remarks were made.
- ▶ 84% personally had been verbally harassed at school (that is, called names or threatened) because of their sexual orientation;
- ▶ 65.3% had been sexually harassed (e.g., inappropriately touched or subjected to sexual comments);
- ▶ 39.1% had been physically harassed (by being shoved or pushed) and 17% had been assaulted (by

being punched, kicked or injured with a weapon) at school because of their sexual orientation;

- ▶ 27.1% had been physically harassed because of their gender expression; 11.5% had been assaulted on that basis;
- ▶ 64.3% felt unsafe in their school because of their sexual orientation;
- ▶ LGBT youth of color and female students face abuse often compounded by racism and sexism:
 - 44.7% of LGBT students of color reported being verbally harassed because of both their sexual orientation and their race or ethnicity;
 - 50% of lesbian and bisexual young women reported being verbally harassed.

Other state-focused studies found that:

- ▶ LGBT youth are 7 times more likely than other students to be threatened or injured with a weapon at school.⁵

(continued)

(Fact sheet continued)

EFFECTS OF HARASSMENT AND VIOLENCE:

- ▶ Gay youth are 4½ times more likely than non-gay peers to skip school because they feel unsafe;
 - 31% of gay students had missed at least an entire day of school in the past month because they felt unsafe based on their sexual orientation;
- ▶ Nearly one-third of LGBT students drop out of high school to escape the violence, harassment, and isolation they face there — a dropout rate nearly three times the national average;
- ▶ LGBT students are far more likely than their non-gay peers to run away from home, to experience academic problems, and to struggle with substance abuse, low self-esteem, and depression;
- ▶ Gay youth are 4 times as likely than their non-gay counterparts to have attempted suicide.

1. See National Longitudinal Study of Adolescent Health (2001), available at <<http://www.cpc.unc.edu/addhealth>>.

2. Human Rights Watch, Hatred in the Hallways, *supra* note 6 at 24-25.

3. Catlin Ryan and Donna Futterman, "Lesbian & Gay Youth: Care and Counseling" *Adolescent Medicine: State of the Art Reviews*, vol. 8, no. 2, 1997, p. 207-374

4. Office of Public Policy of the Gay, Lesbian and Straight Education Network ("GLSEN"), National School Climate Survey (2003), available at <http://www.glsen.org>. This study surveyed a sample of 887 LGBT students from 48 states and the District of Columbia.

5. Studies released between 1995-97 by the Massachusetts Department of Education and the Vermont Department of Health



Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgendered people, and people with HIV or AIDS through impact litigation, education, and public policy work.

Lambda Legal Defense & Education Fund

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fax 214 219-4455

www.hrc.org (human rights campaign)

HOW THIS STATE RATES ON THE ISSUES

HOUSING LAWS

This state does not support

State does not prohibit housing discrimination based on sexual orientation and gender identity.

SECOND PARENT ADOPTION

This state does support

Second-parent or step-parent adoption is an option for same-sex couples statewide.

JOINT ADOPTION

This state does support

Joint adoption is an option for same-sex couples statewide

EMPLOYMENT LAWS

This state does not support

State does not prohibit employment discrimination based on sexual orientation and gender identity.

MARRIAGE EQUALITY

This state does support

State issues marriage licenses to same-sex couples.

MARRIAGE PROHIBITIONS

This state does not support

State does not have a constitutional amendment restricting marriage to one man and one woman.

HATE CRIMES LAWS

State partially supports

State has a law that addresses hate or bias crimes based on sexual orientation only.

PUBLIC ACCOMMODATIONS LAWS

This state does not support

State does not prohibit discrimination in public accommodations based on sexual orientation and gender identity.

ANTI-BULLYING LAWS

This state does not support

State does not have a law that addresses harassment and/or bullying of students based on sexual orientation and gender identity.

SCHOOL LAWS

This state does not support

State does not have a law that addresses discrimination against students based on sexual orientation and gender identity.



Out, Safe & Respected
Your rights at school

Stand Up for **YOUR RIGHT TO BE SAFE**

IF YOU'VE BEEN A VICTIM OF VIOLENCE OR HARASSED AT SCHOOL, OR IF YOU FEAR FOR YOUR SAFETY, HERE ARE SOME THINGS YOU CAN DO TO PROTECT YOURSELF:

TALK TO SOMEONE YOU CAN TRUST

Ask for help.

HAVE A SAFETY PLAN

This might mean, for example, finding a different way to walk home from school, arranging for a ride home, or carrying a cell phone or money to make an emergency phone call.

KEEP A WRITTEN RECORD ABOUT THE PROBLEMS YOU ARE FACING AT SCHOOL

Be sure to include details about what happened, the people who were involved, where and when the incident took place and whether there were any witnesses.

REPORT ALL HARASSMENT AND ABUSE TO THE SCHOOL PRINCIPAL

Counselors and teachers can be helpful, too, but they are not always legally required to take action to the same extent as the principal. Reporting to the school principal is the key. Put your reports and complaints in writing, and keep a file with copies of all documents you send and receive.

FILE A COMPLAINT

Follow school complaint procedures. Schools that receive federal financial assistance are required by federal law to have complaint procedures. If you experience serious threats or physical assault, you may make reports to local police, as well.

REPORT "UP THE LADDER"

Give the school principal a reasonable amount of time to address your complaint, but if no helpful action is taken, then take your complaint to the superintendent or school board.



© Lisa Ross

Nancy Wadington Took Action

STAND UP FOR YOUR RIGHT TO BE SAFE

TAKING ACTION:

Nancy Wadington

Nancy Wadington endured antigay abuse at her high school in southern New Jersey until the middle of 11th grade, when she had to leave school to protect her safety. In a lawsuit Lambda Legal filed on her behalf against school officials, Nancy asserted that she suffered verbal and physical attacks from other students over a two and a half year period. And in an effort to avoid the attacks, she stayed out of the hallways, walked around the outside of the school building to get to her next class, and stopped using the school bathrooms, which led to abdominal pain during class. Under New Jersey's Law Against Discrimination, school officials that know or should know about discriminatory abuse must take effective remedial action. After a mediation, school officials agreed to mandatory training for administrators, faculty, and staff, and to pay Nancy an amount as long as she kept it confidential.

IF NECESSARY, CONSIDER ANONYMOUS REPORTS

Generally, it is important to identify yourself when you make a complaint, because you are more likely to receive protection and because the school is more likely to have a legal obligation to protect you if administrators know you have been mistreated. But if you feel strongly that you can't identify yourself, send an anonymous report of harassment to the principal. The report could identify particular harassers at your school or describe your school's harassment problem more generally. You might also ask a trusted adult, like a counselor, to tell the principal without using your name that harassment is a problem at the school. Many schools have procedures for anonymous reporting. Always keep copies of your reports or reports filed on your behalf.

REPORT HARASSMENT EVEN IF YOU DON'T KNOW WHO THE HARASSERS ARE

It is important to make the principal aware that harassment is taking place, even if you are unable to identify the harassers. As always, report incidents in writing, and keep a copy of the report for yourself.

SPEAK UP IF THE HELP ISN'T ACTUALLY HELPFUL

If your school attempts to stop the harassment but fails, don't give up. Talk to the principal and other adults at school about other ways the school could respond. At a minimum, report to the principal that the school's efforts are not working.

BE READY WITH SOLUTIONS, IF YOU CAN

Talk with Lambda Legal or other supportive organizations for resources and ideas. Then share these ideas each time you make a complaint.

CONTACT ORGANIZATIONS THAT TRAIN STAFF, FACULTY AND STUDENTS ABOUT HOMOPHOBIA, TRANSPHOBIA AND VIOLENCE IN SCHOOLS

These organizations may have information and materials that can help you make a complaint or advocate for training around these issues at your school.

KNOW YOUR RIGHTS

See our "Protections Against Discrimination and Harassment" insert for general information about students' rights. For more detailed information, visit Lambda Legal's website or call Lambda Legal's Help Desk. If your school does not respond in a helpful way to your reports of harassment, contact Lambda Legal's Help Desk at 1-866-542-8336 or email legalhelpdesk@lambdalegal.org.

So you wanna START A GSA

A GAY-STRAIGHT ALLIANCE, OR GSA, IS A CLUB FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUESTIONING STUDENTS AND STRAIGHT ALLIES.

There are lots of different kinds of GSAs. GSAs can be social clubs (some GSAs host dances and movie nights), support groups (some GSAs provide a safe place for LGBTQ students and their allies to talk about problems), educational outposts (some GSAs organize guest speakers or create displays for National Coming Out Day) or advocacy groups (some GSAs participate in GLSEN's National Day of Silence or push for sexual orientation and gender identity to be added to their school's nondiscrimination policy).

Talk with your friends, reach out to other students and decide what you'd like your GSA to focus on. There are more than 3,000 GSAs in schools nationwide, and there is lots of information available about forming a GSA. No matter what its focus is, your GSA can play an important role in addressing homophobia and anti-transgender discrimination and can help create a safe space for LGBTQ students. Read on to learn about the basics of forming a GSA.

YOUR LEGAL RIGHT TO FORM A GSA

In public secondary schools, GSAs can't be discriminated against or held to different standards than other student clubs -- it's the law. Under a federal law called the Equal Access Act, secondary schools that receive federal money and allow meetings of other noncurricular student clubs (which means clubs that don't directly relate to classes at your school) are prohibited from discriminating against any student group based on its viewpoint. The Constitution's free speech clause also provides protection to student organizations, including GSAs. Lambda Legal and other civil rights organizations have successfully



SO YOU WANNA START A GSA

gone to court on behalf of students against a number of school districts — in California, Florida, Georgia, Indiana, Kentucky, Minnesota and Utah — that have broken the law by refusing to allow GSAs to meet on the same terms as other groups. These successful lawsuits make it more likely that schools will live up to their legal obligations.

Public secondary schools are covered by the Equal Access Act if they allow even one noncurricular club to meet at the school. If your school is covered (most public secondary schools are), then you have a legal right to form a GSA and a legal right to have that GSA be treated just like other student clubs at your school. So, if other clubs at your school are allowed to post displays on the bulletin boards, make announcements and use classrooms for meetings, your GSA can too.

Some schools have tried to prevent GSAs from forming by requiring students to get their parents' permission to join a club. But even if these parental consent rules are supported by the local school board or by state law, the Equal Access Act requires that the rules be evenhandedly applied to all student groups. In other words, schools can't single out GSAs for stricter membership rules.

GETTING STARTED

FIND OUT HOW TO START A CLUB IN YOUR SCHOOL

Different schools have different rules for clubs. Always follow the rules — if you don't, it can be used as an excuse to discriminate against your group. Look in your student handbook, talk to a student government rep or ask a school administrator to guide you on your school's regulations and policies. Be sure to find out if you'll need written permission to start the club or whether you'll need to get a teacher or school advisor to come to the meetings. You may also need to register with the school administration or write a constitution or mission statement.

DO SOME RESEARCH

Find out if other schools in your area have GSAs, and call or email their advisors or leaders. (For an up-to-date list of GSAs across the country, visit the Gay, Lesbian and Straight Education Network at www.glsen.org.) Also try to determine how safe it is for students to be out at your school. This will help you arrange an appropriate meeting place and determine the safest ways to let people know about the group.

FIND A PLACE TO MEET

In general, you'll want to find a place that is private and relatively quiet. Some students might feel a little afraid or uncomfortable about attending a meeting. They may worry that others will harass them if they join the group. As you know, homophobia and transphobia are still a reality in many schools, and that should be taken into account when selecting a meeting space. Whether you decide to meet in a classroom or away from the school entirely, the meeting space must make GSA members feel safe.

SPREAD THE WORD

At first you may want to advertise the GSA by word of mouth only, so you won't be bothered by people who might not be supportive of the group. Tell LGBT-friendly teachers, guidance counselors, school social workers and the school nurse. They may know other students who are interested in attending the meeting and may be in a position to encourage them to go. They might also want to come to a meeting as a guest speaker or serve as the club's advisor. Tell anyone else you think will be helpful or who can let other students know about the GSA. Try to identify at least a couple of students who you know will attend the first meeting.

SO YOU WANNA START A GSA

TAKING ACTION:

Anthony Colín

When Anthony Colín founded the gay-straight alliance in his Southern California high school, he had no idea that he'd have to battle to keep it. First the school board denied the GSA's application to become a recognized student club. This meant that the GSA couldn't have meetings at the school like other student clubs could. Then the school board told the students involved in the GSA that it would only reconsider the group's application if the group changed its name. With Lambda Legal's help, Anthony and his friends sued the school district. The GSA won the right to meet while the lawsuit proceeded and ultimately won the right to meet at the school, use the school's public address system to make announcements and be featured in the school yearbook, just like other student clubs.

HOLD THE FIRST MEETING

Have snacks. Food can help break the ice and may encourage students who were "just stopping by" to stay. Once people have settled in, begin with introductions and a discussion of why you organized the meeting. Share any information you've learned about GSAs in your area. Before deciding on your goals, give everyone a chance to talk about why they came and what they would like the GSA to do. Many groups establish ground rules over their first few meetings. At a minimum, everyone at the meeting should agree to confidentiality and respect.

Don't be too discouraged if the first meeting is not well attended or if it doesn't go exactly as you planned. Getting even a few people in the room is a victory! It may take a few meetings for more people to feel comfortable attending and for the group to really get established. Anyone who does come can help spread the word for the next meeting.

STAY IN TOUCH

Find a way to keep in touch with everyone. Be sure to collect email addresses or phone numbers and to set the next meeting date.

ASK FOR VOLUNTEERS

Keeping a club going can be a lot of work. One way to address this challenge is to get others involved in sharing responsibilities right from the start. You may want to select co-chairs or form committees, so more people can be responsible for keeping the group going.

For help forming a GSA at your school, contact the Gay, Lesbian and Straight Education Network (GLSEN) at 212-727-0135 or studentorganizing@glsen.org.

If your school isn't allowing your GSA to meet, or if you have other questions about your legal rights, contact Lambda Legal's Help Desk at 1-866-542-8336 or email legalhelpdesk@lambdalegal.org.

Are you an ALLY?

AN ALLY IS SOMEONE WHO ACTIVELY SUPPORTS LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUESTIONING (LGBTQ) PEOPLE AND WORKS SIDE BY SIDE WITH THEM TO ACHIEVE EQUALITY.

Allies can be anyone: a straight student who sticks by a friend who is questioning his gender identity, a teacher who serves as an advisor for a gay-straight alliance (GSA), parents who find ways to promote respect for diversity in their child's school or a counselor who is committed to making sure that LGBTQ issues are heard. By taking steps to be visibly supportive of LGBTQ students and their rights, allies can play a critical role in stopping and even preventing harassment and discrimination against LGBTQ students in school, ensuring that schools are safe for everybody. The 2005 National School Climate survey, conducted by the Gay, Lesbian and Straight Education Network (GLSEN), found that students at schools with higher numbers of supportive faculty and staff members were less likely to report that they felt unsafe and were less likely to miss school because of their sexual orientation or gender expression. Students in schools with a GSA were also likelier to feel safe, to feel that they belonged, and thus had higher attendance rates than students in schools with no such clubs.



© Lisa Ross

Cheryl Bachmann Botsolas
Took Action

ARE YOU AN ALLY?

STUDENTS

Student allies are especially important because they often have an influence on the behavior of their peers. By befriending someone who is lesbian, bisexual, transgender or questioning, being active in an LGBTQ-friendly club, objecting to antigay jokes and slurs or advocating for fair policies in schools, straight student allies can set a positive tone of acceptance and may encourage other students to be allies. Some LGBTQ students might be hesitant to come out for fear of facing antigay harassment, or as a member of a minority, might want support in numbers when addressing administrators and teachers. As a straight ally, you can help your LGBTQ peers by adding your vocal and visible support, and sometimes by speaking up for those who may not yet be able to act on their own.

FACULTY AND STAFF

Adult allies who work in schools can be especially helpful, as they often have power to take action on behalf of students. Teachers and counselors can take the lead by posting or announcing rules on behavior in the classroom that include a no-tolerance policy for antigay language and harassment. In addition, when allies reference the work of LGBT people in lessons where appropriate, LGBTQ students are likelier to feel respected and understood, and all students gain the benefits of an inclusive curriculum.

Lambda Legal represented two teachers in Michigan — one in a middle school and the other in a high school — who insisted on including LGBT people in educational messages of diversity and respect, even though some school administrators objected. Both teachers had created displays for LGBT History Month that commemorated the historical role of lesbians and gay men and addressed antigay harassment. At first, the school's interim superintendent ordered them to take down the displays, but Lambda Legal helped these teachers fight the school district and won the right to make this important information available to students. The Michigan case supports all teachers who seek to create a safer learning environment by including LGBT people in educational messages.

LGBT-RELATED CLASS LESSONS

Schools can do great work to support students of all sexual orientations and gender identities through high-quality, accurate curricula and classroom teaching. In general, schools have the legal right to choose, create and teach accurate curricula. You can speak to officials at your school and school board about the importance of LGBT-inclusive curricula.

Sometimes, though, opponents target strong health curricula or lessons on tolerance that teach the facts about being LGBT.

If your school offers good lessons in the classroom that come under attack, you can contact Lambda Legal to find out more about promoting and protecting curricula that address LGBT issues.

ARE YOU AN ALLY?

PARENTS

Parents can make a huge difference by providing support to individual LGBTQ students and advocating for just policies and practices in schools. In a world where many, if not most, LGBTQ students experience harassment and discrimination, knowing they have their own or another parent on their side can make all the difference. Whether or not their own child is LGBTQ, parents can often be the strongest and most effective advocates for LGBTQ students. Often, school administrators hear from parents who want to limit the rights of LGBT students, so it's even more important for all parents who support LGBTQ youth to make sure their voices are also heard.

There are many things adults and young people can do as allies to help LGBTQ students feel safe, included and respected at schools across the country. Lambda Legal has been working with social workers around the country to make sure materials like this toolkit are made available to students. The first step is to commit to fighting discrimination against LGBTQ students and to making your school a safe place for everyone. The next step is to get involved.

While it is sometimes safer for straight allies to take a stand for LGBT rights, being an ally does not come without its own challenges. Allies too can experience harassment or discrimination because they stand up for LGBT rights or because they are perceived to be LGBTQ. As you make decisions about how you can best be effective as an ally, be aware that taking action against homophobia and discrimination may involve some level of risk, especially if you are addressing an ongoing problem at your school. If you have concerns about your safety or security, taking action along with others might provide you with more safety. If you encounter discrimination, please contact Lambda Legal's Help Desk at 1-866-542-8336 or email legalhelpdesk@lambdalegal.org for more information and assistance.

TAKING ACTION:

Cheryl Bachmann Botsolas

Cheryl Bachmann Botsolas is a high school teacher in New Jersey. She taught history for three years and received terrific reviews from her students and supervisors, and the school administration recommended her for tenure. Soon after the tenure recommendation, Botsolas disciplined two of her students for using antigay slurs in the classroom. One of the students lashed out at the teacher, threatening her life. As a responsible teacher and ally, Botsolas was promoting a "zero-tolerance" policy against harassment in her classroom. Nonetheless, Botsolas' tenure recommendation was revoked — with the effect that she was fired. But Botsolas didn't back down, and with representation from Lambda Legal, challenged the decision at a school board hearing, supported by fellow teachers and students who spoke on her behalf. At the conclusion of the hearing, the school board voted to overturn the superintendent's decision to fire her — and restored Botsolas' tenure. Botsolas' commitment to maintaining a respectful classroom environment is a model for other educators and allies in ensuring the safety and well-being of LGBTQ students.

ARE YOU AN ALLY?

CHECK ANY OF THE FOLLOWING WAYS YOU CAN BE AN ALLY THIS YEAR

EVERYONE

- I will not make assumptions about people's sexual orientation or gender identity.
- I will publicly take a stand against homophobia, transphobia and anti-LGBT harassment and discrimination.
- I will speak out against the use of antigay slurs.
- I will be supportive of anyone who chooses to come out.
- I will attend LGBTQ events.
- I will educate myself about LGBTQ issues and the rights of LGBTQ students.
- I will wear or display LGBTQ-friendly buttons, stickers or posters.

STUDENTS

- I will help form a GSA.
- I will support friends in their decision to bring a same-sex date to the prom or other social events.
- If I witness anti-LGBT harassment or discrimination, I will report it in writing to the school principal.
- I will help advocate for my school to adopt and enforce a nondiscrimination policy that includes sexual orientation and gender identity.
- I will request books by LGBT authors and about LGBT people and issues for the school library.

FACULTY AND STAFF

- I will request books by LGBT authors and about LGBT people and issues for the school library.
- I will help advocate for my school to adopt and enforce a nondiscrimination policy that includes sexual orientation and gender identity.
- I will consider being an advisor for a GSA.
- I will make sure school events include everyone.
- I will make my classroom a safe space where antigay language is not tolerated.
- I will create an inclusive curriculum that highlights the contributions of LGBT individuals.
- I will create displays and/or lesson plans about LGBT History Month.

PARENTS

- I will support my children and their friends who question their sexuality or identify as LGBT.
- I will be available to meet with school faculty and staff about these issues.
- I will help my children or their friends file complaints about discrimination or harassment.
- I will help organize events like celebrations for LGBT History Month.
- I will hold my child's school accountable for violating the school district's nondiscrimination policy or state laws.

If you've done any of these things, then you're already an ally — keep up the good work! If you haven't, now is a great time to start.

Take Action at YOUR SCHOOL

YOU CAN DO MANY THINGS TO INCREASE AWARENESS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUESTIONING (LGBTQ) STUDENTS AND ISSUES AT YOUR SCHOOL.

Don't feel overwhelmed if you don't have a gay-straight alliance or an organized LGBTQ group to work with. You can easily start small (for example, give your English teacher a list of LGBT-themed books, or put up a display for LGBT History Month). Be creative. And remember — you have legal rights, but you should use them and insist that they are respected. Here are some ideas on how you can take action:

COMMEMORATE DAYS IN LGBT HISTORY

Make wallet-sized calendars with holidays on one side and famous people or events in LGBT history on the other (for example, the Stonewall riots, Harvey Milk's election or assassination or major civil rights court rulings like Lambda Legal's victory in *Lawrence v. Texas*, a sweeping decision on gay people's equal rights to liberty that marked a new era of legal respect for the LGBT community).



TAKE ACTION AT YOUR SCHOOL

INVITE SPEAKERS

Invite local activists or representatives from LGBT organizations to speak at your school.

HAVE AN EVENT

Host a movie night with one or two of your favorite films about LGBT issues or featuring LGBT characters.

WRITE ABOUT LGBT ISSUES

Write an article or column for your school newspaper on LGBT issues at your school. Or make a zine collective and self-publish your own writing and drawings about being LGBTQ.

READ AND LEARN ABOUT LGBT ISSUES

Organize a book club and plan to meet once a month after school to discuss a book by a lesbian, gay, bisexual or transgender author. Or just share one of your favorites with friends.

If you encounter discrimination, or have questions about your legal rights, please contact Lambda Legal's Help Desk at 1-866-542-8336 or email legalhelpdesk@lambdalegal.org for more information and assistance.

TAKING ACTION:
Alison Shea

When she joined Time Out Youth, an LGBTQ youth organization in Charlotte, North Carolina, Alison Shea was looking for a place where she could be herself without being judged or rejected. She found that place and then made sure that other LGBTQ young people would also find it when she signed up for Time Out Youth's billboard project. The idea was to place five billboards around Charlotte with the slogan "We are your gay youth." Realizing that the message would be far more powerful if it included photos of real LGBTQ young people, Alison and three other Time Out Youth members boldly appeared on the larger-than-life signs. For five weeks, the billboards stopped traffic throughout the city, promoting the visibility of LGBTQ youth and connecting them with a safe haven where they would find help, information and a welcoming community.

SAVE THE DATE

BE SURE TO KEEP TRACK OF THESE DAYS IN YOUR CALENDAR — THEY'RE GREAT TIMES TO SHOWCASE SOME OF THE IDEAS LISTED ABOVE.

FEB
12

NATIONAL FREEDOM TO MARRY DAY

Falling on Abraham Lincoln's birthday and just before Valentine's Day, Freedom to Marry Day combines the themes of equality and love, and builds support for marriage for same-sex couples and for LGBT civil rights in general. Visit www.freedomtomarry.org for more information.

in
APRIL

NATIONAL DAY OF SILENCE

A student-led day of action where those who support making anti-LGBT bias unacceptable in schools take a daylong vow of silence to recognize and protest discrimination and harassment against LGBTQ students and their allies. Visit www.dayofsilence.org for more information.

in
JUNE

PRIDE

Events (usually in June but vary in some places) include parades, marches, rallies, festivals and other activities celebrating LGBT people and culture and often commemorating notable events in LGBT history.

OCT
11

NATIONAL COMING OUT DAY

The day commemorates the first march on Washington by LGBT people in 1987 and is dedicated to promoting honesty and openness about being lesbian, gay, bisexual or transgender.

in
OCT

LGBT HISTORY MONTH

Modeled after Black History Month and Women's History Month, LGBT History Month is designed to promote the teaching of LGBT history in schools, as well as in LGBT communities and mainstream society.

in
NOV

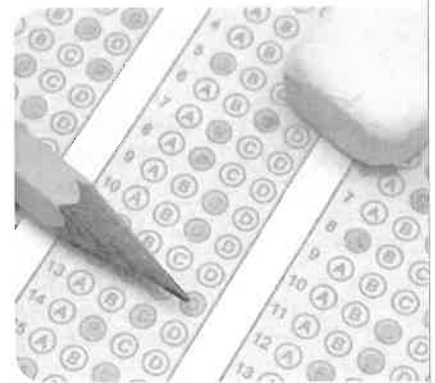
TRANSGENDER DAY OF REMEMBRANCE

The Transgender Day of Remembrance memorializes those who were killed due to anti-transgender hatred or prejudice.

How to NEGOTIATE WITH ADULTS

THERE ARE MANY REASONS TO MEET WITH TEACHERS, YOUR PRINCIPAL AND OTHER SCHOOL ADMINISTRATORS ABOUT LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUESTIONING (LGBTQ) STUDENTS AND RELATED ISSUES.

You may want to start a GSA, participate in the Day of Silence or organize a "lunch and learn" program for other students and teachers who want to learn more about LGBTQ youth. You are the best judge of the climate at your school. You may want to start by talking with supportive teachers and building from there. Whenever possible, try to get another student or an adult ally to go with you to the meeting. Many schools have procedures for hearing complaints, and some have designated hours set aside for students to voice their issues or concerns. Find out what the policies are at your school before you attempt to arrange a meeting.



HOW TO NEGOTIATE WITH ADULTS

Most schools also have guidelines for handling student requests to organize clubs, activities or events. If you are planning to host an event like the Day of Silence (a daylong vow of silence to recognize and protest discrimination against LGBTQ students) or a Diversity Day (a day devoted to educational activities around issues like race, class, sex, sexual orientation and gender identity), chances are you will have to get approval from your principal or other administrators. When considering a student's request, a school must accommodate students' constitutional rights. At the same time, the First Amendment allows schools to restrict speech that is lewd, vulgar, indecent, or that substantially disrupts the work of the school or the rights of others students. In advocating for a Day of Silence or Diversity Day, be sure to stress that these events are expressive activities, protected by the Constitution, and that they will not disrupt the learning process or interfere with other students' constitutional rights.

The same principles apply when you are advocating for most LGBT rights and issues. Here are some other topics that might require a meeting with teachers and administrators:

- Forming a gay-straight alliance at your school
- Including sexual orientation or gender identity in your school's nondiscrimination policy
- Having a training on homophobia or LGBT issues

If you encounter discrimination, or have questions about your legal rights, please contact Lambda Legal's Help Desk at 1-866-542-8336 or email legalhelpdesk@lambdalegal.org for more information and assistance.

TAKING ACTION:

Aaron Fricke

Aaron Fricke asked Paul Guilbert to the prom — and Paul said yes. But Aaron's principal said no. Aaron knew he should be able to go to the prom like everyone else, and he filed a lawsuit. Not only did Aaron win the right to take Paul to the prom, but his school also had to provide enough security so that he and Paul would be safe. Aaron helped show that unless a school has reason to believe someone's date will cause a "substantial disruption," students must be allowed to go to the prom with the date of their choice. That was Rhode Island in 1980. Today the law still has power, thanks to Aaron.

HOW TO STRUCTURE THE MEETING

INTRODUCE YOURSELF AND THOSE WHO HAVE COME WITH YOU

Begin by stating who you are or what group you represent (for example, a gay-straight alliance).

BRIEFLY STATE THE PURPOSE OF THE MEETING

It may help to keep each meeting focused on a specific event, activity or problem rather than putting a wide range of issues on the table.

PROVIDE THE NECESSARY BACKGROUND

Explain how the event, activity or problem has been handled at other schools and anything in your school's history that might support the event (for instance, if your school celebrates Women's History Month, that's a good precedent for celebrating LGBT History Month).

PRESENT A CLEAR AND CONCISE ARGUMENT

Remember that your comments will be taken more seriously if you keep your tone professional and respectful and show that you've done your homework.

LISTEN TO ANY FEEDBACK AND/OR INITIAL RESPONSES

It's important to understand your school's position, whether administrators and teachers are eager to help you or not.

SUGGEST NEXT STEPS

Try to schedule another meeting while you have everyone there, and try to create a timeline for the school to make a decision.

DON'T FORGET TO SAY THANK YOU

Behaving with courtesy and respect will leave teachers and administrators thinking well of you, and more likely to help you.

*Protections Against
Discrimination
and Harassment:*
THE LAW IS ON YOUR SIDE

**SHARE THIS FACT SHEET WITH PARENTS, EDUCATORS
AND OTHER STUDENTS TO INFORM THEM ABOUT THE
RIGHT TO BE FREE FROM ANTI-LGBTQ DISCRIMINATION
AND HARASSMENT AT SCHOOL.**

This toolkit provides important information about general legal principles, but it is not legal advice. If you need information about how the laws described here apply to your particular situation, contact Lambda Legal.

THE CONSTITUTION

The Constitution guarantees all people, including LGBTQ people, "equal protection of the laws." State constitutions contain similar protections. This means that public schools can't single out LGBTQ students for negative treatment just because school officials disapprove of being gay or feel uncomfortable around people whose gender expression falls outside the norm. When it comes to peer conflicts and abuse, courts have made clear that the federal Constitution prohibits public schools from taking bullying and harassment any less seriously just because the targets are LGBTQ.

You don't have to be out to be protected under the Constitution from anti-LGBTQ discrimination. You don't even have to be LGBTQ. Discrimination based on *perceived* sexual orientation or gender identity violates your constitutional rights, as may discrimination based on your friendship, family relationship or other association with LGBTQ people.



© Sven Wiederholt

Derek Henkle Took Action

PROTECTIONS AGAINST DISCRIMINATION AND HARASSMENT: THE LAW IS ON YOUR SIDE

TITLE IX

A federal law called Title IX, which bans discrimination based on sex, protects students at schools that receive federal funds. Courts have agreed that the sex discrimination prohibited by Title IX not only includes discrimination for being a girl or boy, but also includes sexual harassment and discrimination for failing to conform to gender stereotypes. LGBTQ targets of sex discrimination and harassment have successfully relied on Title IX's protections in several court cases involving schools.

STATE LAWS

A growing number of states are taking additional steps to protect LGBTQ youth by explicitly including sexual orientation, gender identity, and gender expression in laws that protect against discrimination and harassment in schools. States can vary widely in how they structure, apply and enforce these laws, and you should consult Lambda Legal or a local attorney if you are facing discrimination and need more specific information about laws in your area.

Some of the strongest and most detailed safeguards exist in **California, Iowa, Maryland, New Jersey, and Vermont**. Laws in all of these states require local school boards to enact antiharassment policies that specifically include sexual orientation and gender identity/expression. The policies must allow for complaints and investigations, impose consequences for violations and protect students who report harassment from retaliation. Schools must also make sure students learn about these policies.

While laws in other states may not take the same form or go into the same detail, they may still protect against abuse and discrimination at school. For example, in addition to the states listed above, **Colorado, the District of Columbia, Illinois, Maine, Minnesota, Oregon, Rhode Island and Washington State** have laws barring discrimination against students based on sexual orientation and gender identity/expression. In **Connecticut, Massachusetts, New York, and Wisconsin**, state laws prohibit discrimination against students based on sexual orientation. At press time, the student protections in these last four states did not yet specifically reference gender identity or gender expression, but some courts have interpreted laws addressing sex discrimination to prohibit discrimination based on gender identity/expression.

Many other states have enacted antibullying laws without specifically mentioning (that is, without "enumerating") sexual orientation or gender identity/expression. But this doesn't mean that schools can ignore anti-LGBTQ bullying. Remember, Title IX covers all schools that receive federal funds (nearly all schools in the country), and the federal Constitution requires states to apply antibullying protections equally to all public school students.

PROTECTIONS AGAINST DISCRIMINATION AND HARASSMENT: THE LAW IS ON YOUR SIDE

TAKING ACTION:

Derek Henkle

From the age of 14, when Derek Henkle came out on public-access television, his life in the Nevada school system was a nightmare. "I would be spit on, punched and kicked," he remembers. "I was humiliated every day." School administrators and teachers stood by while other students harassed, threatened and physically assaulted Derek. One assistant principal actually laughed after students tried to tie Derek to a truck and drag him down the street. Rather than addressing the antigay harassment and violence, school administrators transferred Derek to other schools — as if he were the problem. At 16, Derek, who had been in a program for gifted and talented students since the fourth grade, was forced to resort to adult-education classes, where it was impossible to obtain a high school diploma. Derek fought back. He contacted Lambda Legal and with our help secured a precedent-setting court ruling recognizing the rights of gay students. After the ruling, the school district agreed to sweeping policy changes to protect students from harassment, a \$450,000 settlement payment, and put a letter in his academic file explaining why his education was cut short.

LOCAL LAWS AND SCHOOL DISTRICT POLICIES

Even if your state legislature hasn't specifically banned anti-LGBTQ discrimination and harassment in school, city ordinances and local school districts within your state may have done so. More and more communities — from small rural towns to large urban areas like Dallas, Miami-Dade, Nashville and Philadelphia — have enacted rules protecting students from discrimination and harassment based on sexual orientation and/or gender identity. Consult with a friendly school official, a local attorney or Lambda Legal to learn more.

PROTECT YOURSELF EVEN IF THE LAW IS SUPPOSED TO PROTECT YOU

Remember that school officials and employees sometimes don't know about, don't understand or simply refuse to comply with their legal responsibilities to address anti-LGBTQ discrimination and harassment. Even authorities in an area with strong protections written into the law might not respond in a helpful way to anti-LGBTQ

mistreatment at school. Take steps to protect yourself and to document and report bad treatment, no matter where you live. For more information, check out our "Stand Up for Your Right to Be Safe" insert.

And if you live in a state or city without specific protections against anti-LGBTQ discrimination and harassment, consider joining efforts to get a law or policy approved. For organizing tips, check out resources on GLSEN's website, www.glsen.org.

PRIVATE SCHOOLS

Private schools are often governed by a very different set of legal rules from those described above. If you have questions about what sorts of protections exist for private school students in your state, contact Lambda Legal's Help Desk at 1-866-542-8336 or email legalhelpdesk@lambdalegal.org.

Your SPEECH RIGHTS

YOU HAVE THE RIGHT:

- to voice your support for LGBTQ equality at school
- to wear T-shirts or distribute leaflets expressing LGBTQ-positive statements without censorship based on your opinion or viewpoint
- to hang posters, make announcements and hold meetings for LGBTQ-related groups on the same terms as other student organizations
- to write a column or article in a personal or student-led publication addressing LGBTQ issues without discrimination based on your LGBTQ-supportive ideas

Knowing your speech rights is important for everyone, but especially so for minority communities. LGBTQ students and students with LGBTQ family and friends may fear repercussions for speaking out against discrimination, face roadblocks in forming support groups or clubs, or worry about censorship when distributing written information to other students or putting up posters at school.

Sometimes we rely on our speech rights when we choose *not* to speak. Each year, on the student-led National Day of Silence, a project of the Gay, Lesbian & Straight Education Network (GLSEN), thousands of students around the country remain silent for all or part of the school day to call attention to harassment and discrimination faced by lesbian, gay, bisexual, transgender and questioning youth. Here are some facts about your rights to free speech in school. While we've used the Day of Silence as an example, the ideas here apply to a range of student expression.



Lisa Brandt and Tommy Ward
Took Action

YOUR SPEECH RIGHTS

**GLSEN'S DAY OF SILENCE:
THE FREEDOM TO SPEAK (OR NOT)****DO STUDENTS HAVE THE RIGHT TO PARTICIPATE
IN AND ADVOCATE FOR THE DAY OF SILENCE?**

In most circumstances, yes. Under the Constitution, public schools must respect students' right to free speech. The right to speak normally includes the right not to speak, as well as the right to wear buttons or T-shirts expressing support for a cause. Public school officials may not censor a student just because they disapprove of the student's ideas, because the student's speech makes them uncomfortable or because they want to avoid controversy.

There are some limits on free speech rights at school. For example, schools have some control over students' speech in the classroom or during other supervised, school-sponsored activities. If a teacher tells a student to answer a question during class, the student generally doesn't have a constitutional right to refuse to answer. Students who want to remain silent during class on the Day of Silence are less likely to encounter problems if they seek permission from their teachers beforehand. Outside of the classroom, in areas like hallways and cafeterias, students have a much broader right to free speech. Schools can't censor students unless they use lewd or foul language, promote illegal drug use, harass other students or substantially disrupt the school environment.

**DO STUDENTS HAVE A RIGHT TO DISPLAY
POSTERS AND MAKE ANNOUNCEMENTS ABOUT
THE DAY OF SILENCE?**

In many circumstances, yes. If a public school opens up an opportunity for student speech — for example, by allowing students or student organizations to display posters or make announcements on the public address system — the school may not create restrictions based on the message or viewpoint that students want to express. So if students are generally allowed to announce events and put up posters on school property, Day of Silence participants must be allowed to announce events and put up posters, too.

**CAN A SCHOOL JUSTIFY BANNING SPEECH
BY CLAIMING IT WILL BE DISRUPTIVE?**

If a public school wants to restrict student expression because it fears disruption, school officials have to show facts that reasonably lead them to believe that the speech will cause a substantial disruption to the school. A school can't just assume that the Day of Silence or speech related to it will disrupt the school.

And schools can't censor students just because other students might respond in a disruptive way. If students who disagree with a speaker's ideas create a disruption, the school can punish the disruptive students but can't punish the speaker. So, for example, if a Day of Silence participant puts up a poster and another student responds with name-calling and harassment, the solution must be to discipline the harasser and to protect, not censor, the Day of Silence participant.

**WHAT IF A SCHOOL SAYS IT HAS TO RESTRICT DAY
OF SILENCE ACTIVITIES SO COMMUNITY MEMBERS
WON'T THINK THE SCHOOL IS ENDORSING THE
EVENT?**

Schools have more control over student speech if other students or community members would reasonably believe the speech represents the school's own speech or viewpoint. For example, if a student helps write an official school publication, like a school newsletter, the school has some control over what the student says, because people reading the publication may think the school endorsed the student's expression. But this doesn't give the school the right to control what students express on their own, or what they express through means generally open for independent student expression at school, like posters and announcements when student groups are allowed to speak. Schools cannot discriminate against students based on their ideas in those contexts, because nobody could reasonably think that the student speech represents the school's speech. In the words of Supreme Court Justice Sandra Day O'Connor, "The proposition that schools do not endorse everything they fail to censor is not complicated."

YOUR SPEECH RIGHTS

TAKING ACTION:

Amber King, Tommy Ward and Lisa Brandt

Amber King, a middle school student in Central Florida, stood up to LGBTQ oppression by wearing a sign with "Join thousands," "Talk to teachers only!" "Have love!" and similar messages printed on it to support the Day of Silence. Amber's principal removed her from school that day, claiming her sign was "disruptive." In Southern California, Tommy Ward and Lisa Brandt, student leaders of their gay-straight alliance, were prohibited from putting up posters or making announcements to support the Day of Silence at their high school. Lambda Legal wrote letters to both school districts, demanding respect for the students' freedom of expression. In response, Tommy and Lisa's school lifted the restrictions in time for them to participate fully in the Day of Silence. Amber's school, which had sent her home on the Day of Silence, confirmed that she would be allowed to support the event in the future, without censorship based on her LGBT-supportive expression.

CAN A SCHOOL RESTRICT STUDENT SPEECH BECAUSE IT OFFENDS OTHER STUDENTS OR PARENTS?

No. So long as student expression isn't lewd or profane, and doesn't harass others, schools can't restrict it just because some students or parents find it offensive. As Supreme Court Justice William J. Brennan, Jr. wrote, "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

MORE QUESTIONS?

Check out www.lambdalegal.org/out-safe-respected for updated FAQ sheets about your free speech rights. For questions about legal issues related to the Day of Silence, you can also write to Lambda Legal's Help Desk at legalhelpdesk@lambdalegal.org, or call 1-866-542-8336 and ask for the Day of Silence Help Desk. For more information about the Day of Silence, including tips on how to organize your own Day of Silence at your school, visit www.dayofsilence.org.

(This document gives information on general legal principles only and is not intended as legal advice. For legal assistance, contact Lambda Legal's Help Desk, using the toll-free line or our other telephone numbers at the end of this guide.)

Your PROM

DURING PROM SEASON, MILLIONS OF HIGH SCHOOL STUDENTS ALL AROUND THE COUNTRY ARE BUSY FINDING THE RIGHT TUX, THE RIGHT DRESS, THE RIGHT DATE. IT'S THE BIGGEST PARTY OF THE YEAR FOR MANY STUDENTS, AND IF YOU DECIDE YOU WANT TO BE A PART OF IT, YOUR SEXUAL ORIENTATION OR GENDER IDENTITY SHOULD NOT BE A BARRIER.

In the 21st century, society has become significantly more exposed to, and oftentimes more accepting of, LGBT people. Years of activism have led to more positive portrayals of LGBT people in TV, film and other media outlets, which can sometimes help LGBTQ students feel comfortable being themselves and coming out. All of those factors have contributed to this generation of students being the most accepting and understanding of LGBTQ concerns yet.

That being said, many students still experience discrimination and roadblocks around prom time. You may worry that bringing a same-sex date or wearing an outfit that expresses your gender identity but doesn't fit within gender norms will make you a target for harassment by students or will be unwelcomed by your school administrators. Administrators or teachers may misguidedly try to bar you from these forms of expression "for your own good," anticipating that you will not be accepted. But in most cases, you have rights.



© Timmy Samuel

K.K. Logan Took Action

IF YOU ARE IN PUBLIC SCHOOL AND CONSIDERING YOUR RIGHTS WHEN PLANNING FOR PROM, HERE ARE SOME ISSUES TO CONSIDER.

YOUR PROM

AM I ALLOWED TO TAKE A SAME-SEX DATE TO THE PROM?

Yes. You are allowed to bring your same-sex date to the prom.

You have the right to equal treatment from your school. Some state education laws prohibit discrimination on the basis of sex or sexual orientation; some state antidiscrimination laws apply to schools; and Title IX, a federal law, prohibits discrimination on the basis of sex in any education program or activity receiving federal financial assistance. Equal protection guarantees of the state and federal constitutions also prohibit irrational discrimination based on sex or sexual orientation.

Your attendance with your same-sex date is considered an “expressive activity” — you are expressing your identity and communicating that you and your date have the same right as any other couple to attend and enjoy the event. More than 20 years ago, a federal court recognized that the First Amendment protects this expression, when it ruled that high school senior Aaron Fricke had the right to bring his male date to the prom. The school’s concern that other students might react negatively to Aaron and his date did not justify banning Aaron. The school was required to take appropriate security measures to ensure the safety of all students at the event.

WHAT SHOULD I DO IF MY SCHOOL TELLS ME I CAN’T TAKE A SAME-SEX DATE TO THE PROM AND WON’T SELL ME TICKETS?

First, try to get the support of your parent(s) or legal guardian(s). Ask them to contact the school principal on your behalf and ask that the school provide the reasons for its denial to you in writing. If the school continues to object, call Lambda Legal’s Help Desk at 1-866-542-8336 or email legalhelpdesk@lambdalegal.org.

WHAT IF THE PRINCIPAL SAYS THE SCHOOL WILL LET ME BRING MY DATE BUT REQUIRES US TO GET OUR PARENTS’ PERMISSION?

Schools should not single out same-sex couples for different treatment. There is no legal justification for demanding permission for some couples because of their sex or sexual orientation. Unless a school requires parental permission for all couples, it should not demand that from you.

HOW CAN WE BE SURE THAT WE’LL BE SAFE AT THE PROM?

Schools cannot refuse to provide you with the same protection that they provide to all other couples. If you are concerned about your safety, you need to talk with your school principal or district superintendent before the prom. Provide them with as much detail as you can about what’s happened or who’s been threatened. In Aaron Fricke’s case, the court found that “meaningful security measures are possible, and the First Amendment requires that such steps be taken to protect rather than to stifle free expression.” You cannot be heckled or harassed out of attending your prom.

WHAT IF I WANT TO WEAR CLOTHING THAT ISN’T TRADITIONAL FOR MY GENDER OR BIOLOGICAL SEX? CAN THE SCHOOL SET ANY DRESS CODE BASED ON GENDER STEREOTYPES?

While schools can set general dress standards for prom — like requiring formal attire — they shouldn’t force you to wear clothes based on your gender. Barring a female student from wearing a tuxedo because only male students wear tuxes, or barring a male student from wearing a dress, is sex stereotyping and may subject the school to a sex-discrimination claim under state education laws, antidiscrimination laws, Title IX or the U.S. Constitution. The same goes for trans or “gender-queer” students who want to dress in a way that reflects their gender identity or expression. The right to express your gender identity through appropriate clothing should also be also protected by the First Amendment or a similar state law. But despite these arguments, courts sometimes have

YOUR PROM

found that a school's concern about safety or substantial disruption is valid and have upheld sex-specific dress codes. So you should advocate for the right to wear the clothes that you want — the clothes that make you feel most comfortable and express your identity — but you also should consider alternatives.

EVEN IF THE SCHOOL DOES TAKE MEASURES TO ENSURE OUR SAFETY, WHAT CAN WE DO IF WE'RE HARASSED BY OTHER STUDENTS (OR ANYONE) AT THE PROM?

You need to report any incidents to officials, security personnel or other monitors/chaperones at the dance. If you think there might be problems, enlist friends and allies who will get on the dance floor with you during the first dance to break the ice. This can set a fun, enjoyable, supportive and safe environment for the evening. After the event, report any incidents of harassment to the principal in writing.

IF WE GET TO THE PROM AND THE SCHOOL OFFICIALS OR MONITORS DON'T LET US IN, WHAT CAN WE DO?

Ask to speak with the person in charge of the event and advocate with them. Let them know that you have a right to attend, that you will not cause any disruption and will

abide by the same conduct rules (no fighting, no drinking) as all other couples. If you know before the actual night of prom that there might be problems, you can take steps that might prevent you from being turned away at the door. You could tell your school principal in advance that you're bringing a same-sex date. If the principal objects, then you can advocate for your right to be there and address any issues the school may have beforehand. Once the principal is on your side, ask for a short note stating that you are allowed to attend with your date. Bring it with you with the hope that you'll never need to use it.

ONCE INSIDE, WHAT IF SOMEONE TRIES TO STOP US FROM DANCING TOGETHER?

You have the right to participate in prom the same way that any other couple does. While the school can have rules of conduct that apply to everyone, it cannot create a special "no dancing" rule for you and your date. The same legal principles that allow you to attend with your date also allow you to participate fully and equally in the evening's activities and fun. If someone tries to stop you, ask to speak with the person in charge and inform them of your rights. If you can, take along a copy of this Q&A for backup.

TAKING ACTION:

K.K. Logan

Throughout K.K. Logan's high school career, he expressed a deeply rooted femininity in his appearance and demeanor. K.K. wore clothing typically associated with girls his age. K.K.'s classmates and teachers were supportive of his dress and gender expression. However, when K.K. wore a dress to his prom, K.K.'s principal physically blocked him from the entrance. Despite K.K.'s classmates and various community members rallying to his defense, he was never let inside for his prom. Administrators cited school policy against "advertising" one's sexual orientation through dress. Lambda Legal filed a lawsuit on K.K.'s behalf. Barring K.K. from his prom for wearing a dress is a violation of his First Amendment right to freedom of speech, symbolic action and expressive conduct. While it is important for schools to have policies that regulate student behavior, these policies must also respect students' rights. LGBTQ students have the right to express themselves in and out of the classroom, and silencing their right to self-expression is an unlawful violation of the First Amendment.

National RESOURCES

LAMBDA LEGAL DEFENSE AND EDUCATION FUND

www.lambdalegal.org
legalhelpdesk@lambdalegal.org
Help Desk 1-866-542-8336

National Headquarters

120 Wall Street, Suite 1500
New York, NY 10005-3904
T 212-809-8585
F 212-809-0055

Western Regional Office

3325 Wilshire Boulevard
Suite 1300
Los Angeles, CA 90010-1729
T 213-382-7600
F 213-351-6050

Midwest Regional Office

11 East Adams
Suite 1008
Chicago, IL 60603-6303
T 312-7663-4413
F 312-663-4307

Southern Regional Office

730 Peachtree Street, NE
Suite 1070
Atlanta, GA 3030-1210
T 404-897-1880
F 404-897-1884

South Central Regional Office

3500 Oak Lawn Avenue
Suite 500
Dallas, TX 75219-6722
T 214-219-8585
F 214-219-4455

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and those with HIV through impact litigation, education and public policy work. The organization provides legal assistance and representation to students and school professionals facing discrimination, harassment and censorship based on sexual orientation or gender identity.

ADVOCATES FOR YOUTH

2000 M Street, NW
Suite 750
Washington, DC 20036
T 202-419-3420
F 202-419-1448
www.advocatesforyouth.org
www.youthresource.com
information@advocatesforyouth.org

Advocates for Youth is dedicated to creating programs and advocating for policies that help young people make informed and responsible decisions about their reproductive and sexual health. Advocates provides information, training and strategic assistance to youth-serving organizations, policy makers, youth activists and the media in the United States and the developing world.

YouthResource, a project of Advocates for Youth, is a website created by and for LGBT youth 13 to 24 years old, which offers support, community, resources and peer-to-peer education about issues of concern.

AMERICAN CIVIL LIBERTIES UNION LGBT AND AIDS PROJECTS

125 Broad Street, 18th Floor
New York, NY 10004
T 212-549-2627
www.aclu.org/getequal
getequal@aclu.org

Founded in 1986, the Lesbian & Gay Rights and AIDS Projects are a special division of the American Civil Liberties Union. The "Get Equal" website provides, among other things, a step-by-step guide showing how to get an anti-harassment policy in your school district and tools for a gay-straight alliance at your school.

BISEXUAL RESOURCE CENTER

P.O. Box 1026
Boston, MA 02117-1026
T 617-424-9595
www.biresource.org
brc@biresource.org

The Center educates the public and organizations about bisexuality and provides an information and support network.

NATIONAL RESOURCES

CHILDREN OF LESBIANS AND GAYS EVERYWHERE (COLAGE)

1550 Bryant Street, Suite 830
San Francisco, CA 94110
T 415-861-5437
F 415-255-8345
www.colage.org
colage@colage.org

COLAGE is a national and international organization that supports young people with gay, lesbian, bisexual and transgender parents through education and community building.

FAMILY EQUALITY COUNCIL

P.O. Box 206
Boston, MA 02133
info@familyequality.org
www.familyequality.org

The Family Equality Council works to ensure equality for LGBT families by building community, changing hearts and minds, and advancing social justice for all families.

THE GAY AND LESBIAN NATIONAL HOTLINE (GLNH)

2261 Market Street PMB 296
San Francisco, CA 94114
GLBT National Hotline:
1-888-843-4564
GLBT National Youth Talkline:
1-800-246-7743
www.glnh.org
questions@
GLBTTNationalHelpCenter.org

GLNH provides nationwide toll-free peer counseling, information and referrals to the LGBT community. Peer counselors are available Monday–Friday, 4:00 p.m. to midnight, and Saturday, noon to 5:00 p.m. EST.

THE GAY, LESBIAN AND STRAIGHT EDUCATION NETWORK (GLSEN)

90 Broad Street, 2nd Floor
New York, NY 10004
T 212-727-0135
F 212-727-0254
www.glsen.org
glsen@glsen.org

GLSEN strives to assure that each member of every school community is valued and respected regardless of sexual orientation or gender identity/expression. It provides safe school tools and guides and is an official sponsor of the Day of Silence (www.dayofsilence.org), an annual event to raise schools' awareness of and protest discrimination against LGBT students.

GAY-STRAIGHT ALLIANCE NETWORK

1550 Bryant St., Suite 800
San Francisco, CA 94103
T 415-552-4229
F 415-552-4729
www.gsanetwork.org
info@gsanetwork.org
info@gsanetwork.org

GSA Network is a youth leadership organization that connects school-based GSAs to each other and community resources.

GENDER PUBLIC ADVOCACY COALITION (GENDERPAC)

1743 Conn. Avenue, NW
Fourth Floor
Washington, DC 20009-1108
T 202-462-6610
F 202-462-6744
www.gpac.org
gpac@gpac.org

GenderPAC works to end discrimination and violence caused by gender stereotypes by changing public attitudes, educating elected officials and expanding legal rights. The GenderYOUTH program organizes campus activists to serve as role models and empower high school students.

GENDER SPECTRUM EDUCATION AND TRAINING

1122 E Pike St #796
Seattle WA 98122
T 877-809-4159
www.genderspectrum.org
info@genderspectrum.org

An organization that provides education, resources and training to help create a more gender sensitive and supportive environment for all people, including gender variant and transgender youth.

HUMAN RIGHTS CAMPAIGN

1640 Rhode Island Avenue, NW
Washington, DC 20036-3278
T 202-628-4160
F 202-347-5323
TTY 202-216-1572
www.hrc.org

HRC is a nonpartisan organization that works to advance equality based on sexual orientation and gender expression and identity, to ensure that LGBT Americans can be open, honest and safe at home, at work and in the community.

NATIONAL CENTER FOR LESBIAN RIGHTS (NCLR)

870 Market Street, Suite 370
San Francisco, CA 94102
Legal Help Line:
800-528-6257
T 415-392-6257
F 415-392-8442
www.nclrights.org
info@nclrights.org

NCLR staffs a toll-free youth legal information line and provides resources on building safe school environments, with a special focus on LGBT youth in sports.

NATIONAL GAY AND LESBIAN TASK FORCE (NGLTF)

1325 Massachusetts Avenue, NW
Suite 600
Washington, DC 20005
T 202-393-5177
F 202-393-2241
TTY 202-393-2284
www.thetaskforce.org
info@thetaskforce.org

The Task Force is a national progressive organization working for the civil rights of LGBT people. Its website provides reports and guides

NATIONAL RESOURCES

for activists, including a report on making schools safe. At its annual conference—"Creating Change"—it offers a number of LGBT youth-related sessions and panels.

NATIONAL RUNAWAY SWITCHBOARD

3080 N. Lincoln Avenue
Chicago, IL 60657
Hotline: 1-800-RUNAWAY
Agency and Information Line:
800-344-2785
T 773-880-9860
F 773-929-5150
www.1800runaway.org
info@nrscrisisline.org

The National Runaway Switchboard provides crisis intervention and local and national referrals to youth and their families, training materials and resources for communities and schools and is the federally designated national communication system for runaway and homeless youth.

NATIONAL CENTER FOR TRANSGENDER EQUALITY

1325 Massachusetts Ave., Suite 700
Washington, DC 20005
T 202-903-0112
F 202-393-2241
www.nctequality.org
ncte@nctequality.org

NCTE is a social justice organization dedicated to advancing the equality of transgender people through advocacy, collaboration and empowerment.

NATIONAL YOUTH ADVOCACY COALITION (NYAC)

1638 R Street, NW, Suite 300
Washington, DC 20009
Toll free: 800-541-6922
T 202-319-7596
F 877-492-8916
TTY 202-319-9513
www.nyacyouth.org
Email: nyac@nyacyouth.org

In collaboration with national and community organizations, NYAC addresses public policy issues

related to LGBT youth and distributes resources and information about local LGBT youth agencies.

OUTPROUD: THE NATIONAL COALITION FOR GAY, LESBIAN, BISEXUAL AND TRANSGENDER YOUTH

369 Third Street, Suite B-362
San Rafael, CA 94901-3581
www.outproud.org
info@outproud.org

OutProud provides advocacy, information, resources and support to LGBT youth.

PARENTS, FAMILIES AND FRIENDS OF LESBIANS AND GAYS (PFLAG)

1726 M Street, NW, Suite 400
Washington, DC 20036
T 202-467-8180
F 202-467-8194
www.pflag.org
info@pflag.org

PFLAG is a national nonprofit organization with over 200,000 members and supporters and almost 500 affiliates in the United States. As part of its "Our House to the Schoolhouse" campaign, PFLAG provides resources and plans for making schools safe for LGBT youth.

THE SAFE SCHOOLS COALITION

2124 Fourth Avenue
Seattle, WA 98121
24-Hour Crisis Line:
1-877-723-3723
T 206-957-1621
www.safeschoolscoalition.org

The Safe Schools Coalition offers a variety of resources to help youth, educators, administrators, parents and guardians end bullying and create safe school environments for LGBT youth. Resources include hotlines for LGBT youth experiencing harassment.

TRANSGENDER LAW CENTER

870 Market Street, Room 823
San Francisco, CA 94102
T 415-865-0176
F 877-847-1278
www.transgenderlawcenter.org
info@transgenderlawcenter.org

A civil rights organization advocating for transgender communities.

TRANSYOUTH FAMILY ALLIES

PO Box 1471
Holland, MI 49422-1471
www.imatyfa.org
info@imatyfa.org

Partners with educators, service providers and communities to develop supportive environments in which gender may be expressed and respected.

THE TREVOR PROJECT

9056 Santa Monica Blvd.,
Suite. 208
West Hollywood, CA 90069
Toll-free hotline:
866-4U-TREVOR
T 310-271-8845
F 310-271-8846
www.thetrevorproject.org
Support@thetrevorproject.org

The Trevor Project provides a national 24-hour toll-free suicide prevention hotline aimed at LGBT and questioning youth and offers an educational package and other resources to raise tolerance for LGBT youth in school and institutional settings.

YOUTH GUARDIAN SERVICES

101 E. State Street, #299
Ithaca, NY 14850
T 877-270-5152
F 703-783-0525
www.youth-guard.org

Youth Guardian Services is a youth-run, nonprofit organization that provides support and services on the Internet to LGBT and straight, supportive youth.

Contact Lambda Legal

NATIONAL HEADQUARTERS

120 Wall Street
Suite 1500
New York, NY 10005-3904
tel 212-809-8585
fax 212-809-0055

WESTERN REGIONAL OFFICE

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DE 152-54

JAN/BOD Pkt. | 49

**PROPOSED TRANSGENDER PARTICIPATION POLICY
FOR CONSIDERATION AND DISCUSSION**

GENDER IDENTITY PARTICIPATION - All eligible students should have the opportunity to participate in interscholastic athletics in a manner that is consistent with their gender identity and expression, irrespective of the gender listed on a student's birth certificate and/or records. Should any situation arise regarding a student's request to participate in a gender-segregated athletic event consistent with his or her gender identity and expression, a student may seek review of his or her eligibility for participation through the procedures set forth below:

NOTICE TO THE SCHOOL: The student and parent(s) or guardian(s) shall contact the school administrator or athletic director, **prior to the official start date of the sport season as listed in the official FHSAA Planning Calendar**, indicating the student has a consistent gender identity and expression different than the gender listed on the student's school registration records and the student desires to participate in a gender-segregated athletic sport in a manner consistent with his/her gender identity and expression.

DOCUMENTATION: The appealing student must provide the school administrator or athletic director, and the FHSAA, the following documentation and information:

- A. Current transcript and school registration information
- B. All information required for participation and eligibility in FHSAA athletics (i.e. Birth certificate, proof of residency, EL2, and EL3)
- C. A written statement from the student affirming the consistent gender identity and expression to which the student self-relates.
- D. Documentation from individuals such as, but not limited to parents, friends and/or teachers, which affirm that the actions, attitudes, dress and manner demonstrate the student's consistent gender identification and expression.
- E. A complete list of all the student's prescribed, non-prescribed or over the counter, treatments or medications.
- F. Written verification from an appropriate health-care professional (doctor, psychiatrist, psychologist) of the student's consistent gender identification and expression.
- G. Any other pertinent documentation or information which the student or parent(s) or guardian(s) believe relevant and appropriate.

NOTICE TO THE FHSAA: The school administrator shall contact the FHSAA, which will assign a facilitator who will assist the school and student in preparation and completion of the FHSAA "Gender Identity Eligibility Review Process".

FIRST LEVEL OF REVIEW: The student will be scheduled for a review hearing before a committee, specifically established to preside over gender identity reviews. The FHSAA will schedule a hearing as expeditiously as possible, but in no case later than fifteen (15) school/business days after the first practice date of a sport, which is the subject of the petition, or within a reasonable time thereafter in cases of emergencies or extenuating circumstances. The Gender Eligibility Review Committee will render a written determination of the student-athletes eligibility to participate in a gender-segregated athletic sport consistent with his or her gender identity and expression.

The Gender Identity Eligibility Committee: The committee will be comprised of a minimum of three of the following categories, one of which must be from the physician or mental health profession category:

- A. Physician with experience in gender identity health care and the World Professional Association for Transgender Health (WPATH) Standards of Care.
- B. Psychiatrist, psychologist or licensed mental health professional familiar with the World Professional Association for Transgender Health (WPATH) Standards of Care.



Florida High School Athletic Association

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Board of Directors Meeting – Agenda Item

Site: FHSAA Robert W. Hughes Building

Date: January 27 & 28, 2013

General Business: X
 Finance Committee:
 Governance Committee: X
 Operations Committee:

Action:
 Discussion: X
 Information:
 Presentation:

Topic:

The FHSAA needs to develop a Transgender Participation Policy compatible with the national research, legal decisions and other state association's procedures in handling requests for participation consistent with a student's gender identity and expression.

Detailed Information (brief statement--background, observations, etc.):

See Attachment (*attach item submitted by individual/advisory committee*) A DRAFT copy of a proposed FHSAA Policy is attached for review and discussion. In addition, a fifty-six paged document related to the research, best practices and policy recommendations will be distributed to Board Members at the meeting. This document will be for study and review prior to June's Annual Meeting, where policy adoption is conducted.

Executive Director Recommendation:

The Executive Director Recommends the Board Consider this DRAFT and other pertinent materials for Policy consideration and adoption coming in June of 2013.

Rationale:

Alternative to Recommendation:

Data Source:

Impact:

Individual/Committee Submitting Item

Dr. Roger Dearing
FHSAA Staff Member Presenting Item

Signature

Roger Dearing
Signature

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- C. School administrator from outside the member school's FHSAA administrative district
- D. Athletic Director from outside the member school's FHSAA administrative district
- E. An athletic coach, of the sport in which participation is desired, from outside the member school's FHSAA administrative district
- F. An individual selected by the FHSAA familiar with Gender Identity and Expression issues

SECOND LEVEL OF REVIEW (IF NEEDED): Any school, on behalf of a student-athlete, which was denied participation at the First Level of Review wishing for a Second Level of Review of the Gender Identity Eligibility Committee's decision shall file notice with the Executive Director of the FHSAA on or before the tenth (10th) school/business day following the date of receipt of the written decision of the Gender Identity Eligibility Committee. The Executive Director shall schedule a Second Level of Review hearing to commence on or before the fifteenth (15th) school/business day following the date of receipt of the written notice, or within a reasonable time thereafter in cases of emergencies or extenuating circumstances. Written notice of the time and place of the hearing shall be delivered to the petitioner's school, for personal delivery to the student-athlete and parent(s) and/or guardian(s).

FINAL DETERMINATION OF REVIEW: When there is sufficient documentation and confirmation of a student's consistent gender identity and expression, the eligibility committee or FHSAA Executive Director will affirm the student's eligibility to participate in FHSAA athletics, consistent with the student's gender identification and expression. Once the student has been granted eligibility to participate in the sport(s) consistent with his/her gender identity and expression, ~~the eligibility is granted and binding for the duration of the student's participation in every sport season of every school year.~~ All discussion and documentation will be kept confidential, and the proceedings will be sealed unless the student and family make a specific request.

The Florida High School Athletic Association will assist and facilitate the provision of resources and training for any member school seeking assistance regarding gender identity and expression procedures and requirements.

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DE 152-55

Do federal civil rights laws cover harassment of LGBT youth?

- Title IX and Title IV do not prohibit discrimination based solely on sexual orientation, but they protect all students, including students who are LGBT or perceived to be LGBT, from sex-based harassment.
- Harassment based on sex and sexual orientation are not mutually exclusive. When students are harassed based on their actual or perceived sexual orientation, they may also be subjected to forms of sex discrimination recognized under Title IX.

What are a school's obligations regarding harassment based on protected classes?

Anyone can report harassing conduct to a school. When a school receives a complaint they must take certain steps to investigate and resolve the situation.

- Immediate and appropriate action to investigate or otherwise determine what happened.
- Inquiry must be prompt, thorough, and impartial.
- Interview targeted students, offending students, and witnesses, and maintain written documentation of investigation
- Communicate with targeted students regarding steps taken to end harassment
- Check in with targeted students to ensure that harassment has ceased
- When an investigation reveals that harassment has occurred, a school should take steps reasonably calculated to:
 - End the harassment,
 - Eliminate any hostile environment,
 - Prevent harassment from recurring, and
 - Prevent retaliation against the targeted student(s) or complainant(s).

Volusia school district considers bullying protections for transgender kids

February 22, 2011|By Ludmilla Lelis, Orlando Sentinel

The Volusia County [School](#) Board voted to advertise a proposed change to school policy that adds "gender identity or expression" to the existing list of categories protected from bullying or harassment.

The Volusia County School Board agreed tonight to consider changes to [school district](#) policy that would specifically protect transgender students from bullying and harassment.

The board, meeting in DeLand, voted to advertise a proposed change to school policy that would add "gender identity or expression" to the list of categories protected from bullying or harassment.

19.

The Escambia County School Board adds "gender identity/expression" to its nondiscrimination policy



(Photo: Tony Giberson/tgiberson@pnj.com, Tony Giberson/tgiberson@pnj.com)

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The Escambia County School Board recently added language to include discrimination against one's gender identity and gender expression in its bullying and harassment definitions after a call for action from the community and American Civil Liberties Union. The board voted 3-0 to approve the 2014-15 Students Rights and Responsibilities Handbook, which included the added language, at its meeting Tuesday. Two school board members, Patty Hightower and Jeff Bergosh, are out of the country and did not attend the meeting.

After the approval, applause erupted from the audience, and several speakers expressed gratitude to the board for its action.

"Not only does it affect the students at the schools, but it affects the teachers as well," Washington High teacher Leslie Owen told the board. "I strongly believe outreach should continue. There are still children who feel unsafe in our high schools. And the only way a child can learn is if their learning environment is a safe one."

In April, the U.S. Education Department alerted districts in a memo on sexual violence that it would welcome civil rights complaints from transgender students under Title IX, the 1972 law that bans gender discrimination at schools.

Previously, the handbook included discrimination against sexual orientation under its definitions of bullying and harassment, but lacked the more explicit language that discrimination against gender identity and gender expression was prohibited as well. The new language will allow transgender students to have added confidence that bullying and harassment targeted at them will not be tolerated, said Sara Latshaw, director of the Northwest Region of the ACLU Foundation of Florida.

"Transgender people are protected from discrimination whether or not it's in their (school district's) codes," Latshaw said. "But the clarifying of the language will help provide a better environment for those students."

School Board member Bill Slayton said the added language wasn't a big change to the district's policies, which already prohibited bullying and harassment.

"We don't allow anyone to harass anyone," Slayton said. "We want everyone to treat each other how they would want to be treated. "But if it makes kids feel safer, then OK." Slayton added that the approval of the handbook was prudent so that it would be ready by the time school begins Aug. 18.

"We needed to approve it so that principals will have that book by the first day of school," he said.

Latshaw said the ACLU has worked in the past months with the superintendent and school board, advocating the addition of "gender identity/expression" to its bullying and harassment policies.

"There's federal government guidance that essentially said that transgender people are protected," Latshaw said. "Using that advice and the fact that we believe no one should be discriminated against, we spoke with school board members and the superintendent that this would be a good addition to their nondiscrimination policies."

ONLINE

See the district's amended policy on bullying and harassment for yourself at [www.escambia.k12.fl.us/board/PDF 14/July/07_15_14_specmtg/II_a.PDF](http://www.escambia.k12.fl.us/board/PDF%2014/July/07_15_14_specmtg/II_a.PDF).

Orange County School Board approves LGBT protections

December 12, 2012|By Lauren Roth, Orlando Sentinel

After listening to nearly six hours of testimony on both sides of the issue, the Orange County School Board added protections for gay, lesbian and transgender students and staff to the district's nondiscrimination policy early Wednesday. More than 200 people had packed into the Orange County school-district headquarters for a heated debate on the proposal.

The board approved the changes on a 6-2 vote after rejecting a proposal that would have approved the protections for sexual orientation only, and not gender identity and expression.

DE 152-56

Transgender and Gender Non-Conforming Youth

Recommendations For Schools

Transgender Law Center

www.transgenderlawcenter.org
info@transgenderlawcenter.org
(415) 865-5619 or 865-0176

Overall Problem:

Transgender students face severe discrimination and harassment in schools. 89.5% of transgender students report feeling unsafe in schools.[1] Transgender students are at higher risk of dropping out of school and of suicide.

Example of harassment:

School was.... Hell. No one wanted to sit near me in the cafeteria. No one wanted to talk to me. I was treated like I had leprosy of AIDS. I was the freak kid. Kids would say, "Oh, hi, Lawrence." And I would speak back. And, "oh my God, you sound just like a girl." Guys wanted to pick fights. People would say just a whole bunch of vulgar tings to me. Every day I'd come home from school cryin'. Kids would yell from the school bus, "Faggot!" Throw stuff out of the windows. Make me hate kids, hate school, hate life."[2]

-- Lawrence, 19 year old transgender youth

Overall Recommendations:

A) To protect transgender and gender non-conforming students by creating an explicit anti-discrimination and anti-harassment policy – and to enforce these policies meaningfully.

B) To train all teachers, administrators, counselors, and students in transgender sensitivity, in what it means to treat all people respectfully and equally.

California protects transgender and gender non-conforming students in public schools from discrimination and harassment. (AB 537 – Student Violence and Prevention Act). So, in California, the above recommendations are the law. Minnesota and New Jersey have similar protections.

Specific Problems and Recommendations:

Problem 1 : Incorrect and Disrespectful Names and Pronouns

Frequently, transgender and gender non-conforming students are not addressed by the appropriate pronouns or names. Having our gender recognized and validated is important for our emotional health. As anyone can imagine, it is extremely disrespectful to be called by a pronoun or name one does not chose for oneself. It invalidates ones identity and self-concept. This lack of validation and recognition can and often does lead to depression and suicide.

Recommendation 1: Correct Names/Pronouns – according to student self-identification

Transgender and gender non-conforming students have the right to be addressed by a name and pronoun corresponding to their gender identity. This is true regardless of whether the student has obtained a court ordered name or gender change. Intentionally addressing a student by the incorrect name or pronoun is a form of discrimination. The directive does not prohibit inadvertent slips or honest mistakes, but it does apply to an intentional and persistent refusal to respect a student’s gender identity.[3]

Students who wish to use pronouns other than the masculine or the feminine (such as zhe and hir) need to be respected equally.

Problem 2: Lack of appropriate restroom accessibility

Many transgender and gender non-conforming students have no access to bathrooms. Some are told to use the bathroom that does not correspond to their gender identity. Many are expelled from school because the school does not know where the person should use the bathrooms.

Recommendation 2: Gender appropriate restroom accessibility

All students have a right to safe and appropriate restroom facilities. This includes the right to use a restroom that corresponds to the student’s gender identity, regardless of the student’s sex assigned at birth.[4] Requiring the student to ‘prove’ their gender (by requiring a doctor’s letter,

identity documents, etc.) is not acceptable. The student's self-identification is the sole measure of the student's gender.

Problem 3: Lack of gender neutral bathrooms

Often transgender and gender non-conforming students do not feel safe in either the men's or women's restrooms. Many students are harassed in both women's and men's restrooms – because they are perceived to be sufficiently stereotypically feminine or masculine.

In a transgender focus group, the Gay Straight Alliance Network found that the lack of safe bathrooms is the biggest problem that gender non-conforming students face. For instance, "One youth wouldn't use the restroom at school. Instead, he would cross the street to a restaurant and use the men's room there where people didn't know he was biologically female." [5]

"For transgender and gender non-conforming people, the lack of safe bathroom access is "the most frequent form of discrimination faced but the least acknowledged by policy makers" [6] Even in San Francisco, many transgender and non-transgender people have no safe places to go to the bathroom - get harassed, beaten, and arrested in both women's and men's rooms. Many avoid public bathrooms altogether and develop health problems.

Respondents to the San Francisco Human Rights Commission's "Bathroom Survey," [7] a survey of almost 500 people documenting the problem caused by the lack of gender-neutral bathrooms, describes the problems we face on a daily basis most starkly:

- "Women jump out of their shoes; I get harassed by the guys"
- "Security chased me"
- "I have been slapped, pushed, and dragged out by security guards"
- "Got beaten up for using the 'wrong bathroom'"
- "Having the door almost knocked down by teenagers"
- "I run into problems 80% of the time"
- "This is a problem every day"

•“I have spent so many hours avoiding public multi-stall bathrooms that I have damaged my bladder and put pressure on my kidneys.”

Recommendation 3: More Gender Neutral Bathrooms

In addition, where possible, School District will also provide an easily accessible unisex single stall bathroom for use by any student who desires increased privacy, regardless of the underlying reason. However, use of a unisex single stall restroom should always be a matter of choice for a student. No student should be compelled to use one either as a matter of policy or due to continuing harassment in a gender appropriate facility.[8] If possible, we encourage more than one gender neutral bathroom.

Problem 4: Lack of Locker Room Accessibility

Transgender and gender non-conforming students also face difficulties in locker room facilities. Gender non-conforming students are harassed, no matter what locker room. Often, transgender students are kept from going into any locker room.

Recommendation 4: Locker room accessibility

In locker rooms that involve undressing in front of others, transgender students who want to use the locker room corresponding to their gender identity must be provided an accommodation that best meets the student’s needs. Such accommodations can include: (A) use of a private area within the public area (a bathroom stall with a door, an area separated by a curtain, a PE instructor’s office in the locker room), (B) a separate changing schedule in the private area (either utilizing the locker room before or after the other students), (C) use of a nearby private area (a nearby restroom, a nurse’s office), (D) access to the locker room corresponding to the student’s sex assigned at birth, or (E) satisfaction of PE requirement by independent study outside of gym class (either before or after school or at a local recreational facility).

It is not an acceptable accommodation to deny a student’s opportunity for physical education either through not allowing the student to have PE or by forcing the student to have PE outside of the assigned class time. Requiring a transgender student to use the locker room corresponding to the student’s sex assigned at birth is likewise prohibited.[9]

Problem 5: Lack of access to sports and gym class

Often, transgender and gender non-conforming students are forced to be on a sports team that does not fit their gender identity. This is yet one more way in which transgender and gender non-conforming students are not taken seriously and are told that their identities are not valid. Being repeatedly told that one's self perception is invalid is extremely psychologically harmful.

Recommendation 5: Sports and gym class

Generally, students should be permitted to participate in gender-segregated sports and gym class activities in accordance with the student's gender identity. In some situations, legitimate questions about fairness in athletic competitions will need to be resolved on a case-by-case basis. This exception will not, however, apply to participation in gym class where the activity is recreational instead of competitive.

Gender segregation in other areas

This directive outlines the main areas where students may find themselves segregated by gender. It does not, however, purport to identify and address all such circumstances. As a general rule, any other time students are segregated by gender (i.e. classroom discussion, field trips, or support/counseling groups) students must be permitted to participate in accordance with their gender identity. [10]

Problem 6: Inappropriate Dress codes

Often students are required to wear clothing that is inconsistent with their gender identity. For instance, Pat Doe, a male to female transgender student was told that she could not wear girl's clothes. Every single day, first thing in the morning, she had to go to the principal's office, where the principal would look at her and decide if she was dressed enough like a boy. This student brought a suit against the school, a suit which she won. [11]

Recommendation 6: Students can dress according to their gender identity

School District can enforce reasonable student dress codes for the purposes of maintaining a safe and orderly school environment, and ensuring that the school can fulfill its educational mission. However, All School District employees must respect the right of a student to dress in accordance with the student's gender identity.[12] Further, students should not have to chose between male and female clothing. Some students are

most comfortable in and most themselves in clothing that is not clearly male or female or a combination of the two.

Problem 7: Unsupportive Families:

Some transgender and gender non-conforming students are not openly so at home because of safety reasons. “Transsexual youth who are open about their identity face extreme abuse and rejection from families and peers. Many are forced to leave their home communities and survive on the streets.”[13]

Recommendation 7: Confidentiality

A school should never disclose the student’s gender non-conformity or being transgender to the student’s parents unless the student consents.

Problem 8: Lack of role models and access to accurate information

Often, transgender students feel like they are all alone in the world. There are very few transgender role models in schools. There are no books in schools that teach about transgender and gender non-conforming people. Often schools reinforce stereotypical gender norms. And, further, schools do not teach students that there are gender options beyond female and male. In fact, most school structures reinforce the myth of two genders: male and female segregated bathrooms, male and female segregated locker rooms, female and male segregated sports teams and activities, etc.

Recommendation 8: More role models and access to accurate information

Schools should make an effort to employ transgender and gender non-conforming teachers. Schools should have books about transgender and gender non-conforming people. Schools should make sure that everyone is aware that there is a great human gender diversity that certainly includes female and male, but goes far beyond.

Prepared by Jody Marksamer and Dylan Vade

The Transgender Law Center is sponsored by the National Center for Lesbian Rights, Female-to-Male International, the Echoing Green Foundation, the Yale University Initiative for Public Interest Law, the Horizons Foundation, the Sisters of Perpetual Indulgence, and the Common Counsel Foundation.

DE 152-57

DEFENDANT'S
EXHIBIT
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LGBT

Transgender Student Files Federal Complaint Against School District For Banning Him From The Boys Restroom

Gavin Grimm and the ACLU argue that the Gloucester County School Board violated Title IX when it approved a rule restricting school restrooms to students with “corresponding biological genders.”

posted on Dec. 19, 2014, at 10:24 a.m.



Dominic Holden

BuzzFeed News Reporter



Gavin Grimm

A transgender teenager in rural Virginia is taking his case to the U.S. Department of Justice, arguing in a complaint that the Gloucester County School Board violated his rights by approving a policy this month prohibiting students from using restrooms that do not correspond to their "biological genders."

The complaint, sent Thursday, argues the school board ran afoul of Title IX, a 1972 law that bans gender-based discrimination, which has been interpreted recently to protect students from discrimination based on their gender identify.

"I felt like it was my moral responsibility to stand up for the rights of all transgender students, as well as my own," the 15-year-old sophomore told BuzzFeed News.

Lawyers at the American Civil Liberties Union sent the complaint, which cites a slew of legal decisions and precedents. "Federal courts have made clear that the protections in Title IX from discrimination based on 'sex' include discrimination based on gender identity or transgender status," the lawyers write.

However, it was Grimm's decision to pursue the complaint. "I am not afraid at all. I am not afraid of any discourse within the community," he said. "My hope is that as a result of this complaint, there will be a formal policy within Gloucester County Public Schools that protect the rights of transgender students."

Starting in October, Grimm had been allowed by teachers and administrators at his high school to use the boys restroom. But the school board intervened at a standing-room-only meeting on Dec. 9 by passing a policy that, while apparently singling out Grimm, has the practical effect of banning all transgender students from using the restrooms and locker rooms that reflect their gender identity. When he returned to school, Grimm said his principal said he must use a unisex restroom or the school nurse's office restroom.

"I go to [the] nurse's office," Grimm said. "It's a lot easier to pretend you are in the nurse's office for a headache. Otherwise, people will see me go into the unisex bathroom and that is humiliating for me, and I won't do it."

"When a school district accepts federal funds, it does so on the condition of following federal laws," school board member Kimberly Hensley, who is also an attorney, told BuzzFeed News before the complaint was filed. She cast the only dissenting vote on the seven-member school board. "I truly believe we are in violation of Title IX and at risk of losing our federal funding."

The complaint explains: "As a practical matter, the 'biological gender' policy at [Gloucester County Public Schools] significantly interferes with the ability of Gavin and other transgender students to fully participate in daily school activities because it singles out transgender students for different treatment and forces them to travel to separate facilities which are often further away and inconveniently located whenever they have to use the restroom."

The Gloucester County Public School (GCPS) school board "apparently adopted the policy in order to protect the privacy rights of boys who are not transgender and guard against the possibility that transgender boys would look at other boys' 'private parts,'" the complaint says. "If any student — whether transgender or not — violates another student's privacy in the restroom, GCPS can and should take appropriate action. But there has not been any complaint that Gavin has engaged in misconduct, and stated privacy concerns appear to be nothing more than irrational prejudice or stigma against transgender people."

Although Grimm is prepared to be the center of public discussion, some of the discourse thus far been unkind, according to the letter directed to the education section of the Dept. of Justice's Civil Rights Division. The school board meeting on Dec. 9 included public testimony that called Grimm "a girl" and "a freak," the letter says.

"Indeed," the complaint goes on, "the stigmatizing policy breeds or fosters gender-stereotype-based hostility toward Gavin from his peers, which [the school district] has an obligation to protect him from instead of encouraging."

UPDATE

One of the country's leading religious freedom organizations has offered to defend the policy. Jeremy Tedesco, senior counsel for Alliance Defending Freedom, told BuzzFeed News that one day before the complaint was filed, his group "offered to assist the district should it face legal action."

"No federal law requires schools to treat their bathrooms, locker rooms, or showers as genderless facilities," Tedesco said. His group supports the school board's vote and has a history of butting heads with the ACLU. "Indeed, the idea that reserving a girl's locker room for girls violates Title IX is a tortured reading of the law."

Tedesco continued: "No policy should be tailored to a few students at the expense of every other student. Schools can accommodate a small number of students with different needs without compromising the rights of other children and their parents. No child should be forced into an intimate setting — like a bathroom or a locker room — with another child of the opposite sex."

Neither Randy Burak, chair of the Gloucester County School Board, nor the other five board members who voted in favor of the policy responded to questions from BuzzFeed News about the claims in Grimm's legal complaint. Dec. 22, 2014, at 2:14 p.m.

Dominic Holden is the national LGBT reporter for BuzzFeed News and is based in New York.

Contact Dominic Holden at dominic.holden@buzzfeed.com



Tagged:transgender, aclu, gavin grimm, gloucester county school board

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