Child Advocacy Program
Art of Social Change:
Child Welfare, Education, & Juvenile Justice

Professor Elizabeth Bartholet
Assistant Director Cheryl Bratt

ASSIGNMENT PACKET for Session #8
March 26, 2015

LGBT Youth Rights:
Reflecting on Progress and Outlining the Work Ahead

Dr. Eliza Byard, Executive Director,
Gay, Lesbian & Straight Education Network (GLSEN)

Vickie Henry, Youth Initiative Director and Senior Staff Attorney,
Gay & Lesbian Advocates & Defenders (GLAD)
Session #8  
March 26, 2015  
Assignment

Speaker Biographies

Session Description

Readings:          Pages

Eliza Byard:

• Dr. Eliza Byard, GLSEN Executive Director, Speech at the European Union Presidency Conference on LGBT Youth & Social Inclusion, Dublin, Ireland, June 17, 2013, available at: https://www.youtube.com/watch?v=yNULOhSExXw

• GLSEN, 2013 National School Climate Survey, Executive Summary 1-15

• Dr. Eliza Byard, GLSEN Executive Director, Testimony Before the U.S. Commission on Civil Rights, May 13, 2011 16-19

• Lana Leonard, Local Students Participate in “No Name-Calling Week,” Home News Tribune, Jan. 30, 2015 20

• GLSEN, Model State Anti-Bullying & Harassment Legislation 21-28

• Casey Hoke, I’m a Transgender Teen and Which Restroom I Use Is None of Your Business, Huffington Post, Jan. 29, 2015 29-30

• GLSEN, Model District Policy on Transgender and Gender Nonconforming Students 31-43

• GLSEN, et al., Joint Statement to Senate Committee on the Judiciary, Ending the School-to-Prison Pipeline, Dec. 12, 2012 44-48
Vickie Henry:

- GLAD, LGBTQ Progress & Milestones 49

- Gary Buseck, GLAD Legal Director, 2013 GLAD Spirit of Justice Award, Oct. 25, 2013, also available at: https://www.youtube.com/watch?v=-nf9RUAPsvM 50-55

- Vickie Henry, Have No LGBTQ Youth Clients? Think Again. What Every Attorney Representing Youth Needs to Know 56-59

- GLAD, LGBTQ Youth Legal Issues 60-61


- Massachusetts Department of Elementary and Secondary Education, Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment, Nondiscrimination on the Basis of Gender Identity 65-77
Session #8  
March 26, 2015

Speaker Biographies

Eliza Byard is the Executive Director of the Gay, Lesbian & Straight Education Network (GLSEN). GLSEN is recognized worldwide as an innovative leader in the education, youth development and civil rights sectors fighting to end bias-based bullying, violence and discrimination in K-12 schools and promote a culture of respect for all.

Byard joined GLSEN in 2001 as deputy executive director, responsible for all program development and oversight, including the development of GLSEN’s award-winning national Think B4 You Speak campaign, the first-ever Ad Council campaign on lesbian, gay, bisexual, and transgender (LGBT) issues. She has shepherded the growth of GLSEN’s public education and advocacy efforts; student organizing and youth leadership development programs; professional development training for educators and school staff; research and program evaluation capacity; and in-school programming such as No Name-Calling Week, which the National School Boards Association termed “one of the most used and celebrated bullying-prevention programs in the country.”

During her tenure at GLSEN, Byard has crafted and implemented advocacy and legislative strategies that have won bipartisan support for GLSEN’s issues at all levels of government, and widespread acceptance of the urgency and importance of LGBT issues as part of our nation’s commitment to better educational opportunity for all. In 2011, the White House honored GLSEN as a “Champion of Change” for suicide prevention. In 2012, a division of GuideStar named GLSEN a Top 3 National Non-Profit for the organization’s impact on LGBT equality and support. As GLSEN’s primary spokesperson, Byard has appeared on The O’Reilly Factor, AC360, CNN, ABC World News, MSNBC, CBS This Morning, ABC 20/20 and National Public Radio’s Talk of the Nation, among other programs. She serves on the Board of Trustees of the America’s Promise Alliance and on their Blue Ribbon panel to select the “100 Best Communities for Youth.” Byard served on Mayor Michael Bloomberg’s Commission on Runaway and Homeless LGBT Youth, and on the Diversity and Inclusion Advisory Board for Sodexo NA. She currently serves on the Steering Committee of the National Collaboration for Youth and the LGBT Suicide Prevention Task Force of the National Action Alliance for Suicide Prevention. Byard is an award-winning filmmaker, and holds a B.A. from Yale University and a Ph.D. in US History from Columbia University. She lives with her partner and their two children in New York City.

Vickie Henry is the Youth Initiative Director and a Senior Staff Attorney at Gay & Lesbian Advocates & Defenders (GLAD). GLAD works in New England and nationally through strategic litigation, public policy advocacy, and education, to create a just
society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. Ms. Henry works to ensure that LGBTQ youth are safe, affirmed, and celebrated wherever they are—schools, the community, the child welfare system and the juvenile justice system. Ms. Henry also was instrumental in the “business amicus” brief filed by over 275 employers in the United States Supreme Court in *Windsor v. United States*. She and GLAD have worked to implement *Windsor* and to ensure marriage equality nationwide.

Prior to joining GLAD, Ms. Henry was a partner at the law firm Foley Hoag LLP, where she focused her practice on intellectual property and commercial litigation. Ms. Henry served as law clerk to the Honorable Denise R. Johnson of the Vermont Supreme Court. Ms. Henry is the recipient of many honors and awards. From 2009-11, she was Chair of the 1,500- member Commercial Litigation Committee of DRI-The Voice of the Defense Bar, the international organization of attorneys defending the interests of business and individuals in civil litigation. She received DRI’s Davis Carr Outstanding Committee Chair Award in 2011. She was named one of Massachusetts Lawyers Weekly’s Top Women of Law in 2012. She received the Massachusetts LGBTQ Bar Association Pioneering Spirit Award in 2008.
Session #8
March 26, 2015

Session Description

Twenty-five years ago, before Ellen DeGeneres announced on the cover of Time Magazine that she was gay, before the television show Glee positively depicted LGBT teens and storylines, and before the U.S. Supreme Court found unconstitutional laws that criminalized same-sex intimacy, LGBT youth had few resources, little protection, and scant societal recognition. It is in that era that the Gay, Lesbian & Straight Education Network (GLSEN) was founded by a small group of Massachusetts teachers who came together to advocate on behalf of their LGBT students, who were regularly bullied and discriminated against.

Today, thanks in large part to the tireless work of advocacy organizations like GLSEN, gay-straight alliance student groups can be found in all 50 states; 49 states have anti-bullying laws, with 17 and D.C. specifically prohibiting bullying based on sexual orientation; and the U.S. Department of Education has announced that Title IX prohibits discrimination on the basis of gender identity and expression. Still, harassment and discrimination characterize many LGBT students’ daily school experiences, and LGBT youth represent 40 percent of homeless or at-risk youth and 13-15 percent of those in the juvenile justice system.

As Executive Director of GLSEN, Eliza Byard will discuss how her organization advocates for LGBT youth, working with schools, communities, government agencies, and even international bodies, to help ensure that every student in every school feels safe and respected. She will reflect on GLSEN’s accomplishments over the last 25 years and articulate its vision for the future.

Vickie Henry, Senior Staff Attorney and Youth Initiative Director for Gay & Lesbian Advocates & Defenders (GLAD), will discuss her advocacy efforts in the child welfare, education, and juvenile justice systems to secure the equal treatment of LGBT youth and the children of LGBT parents.
The 2013 National School Climate Survey

EXECUTIVE SUMMARY

Key Findings on the Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation’s Schools
In 1999, GLSEN identified that little was known about the school experiences of lesbian, gay, bisexual, and transgender (LGBT) youth and that LGBT youth were nearly absent from national studies of adolescents. We responded to this national need for data by launching the first National School Climate Survey, and we continue to meet this continued need for current data by conducting the study every two years. Since then, the biennial National School Climate Survey has documented the unique challenges LGBT students face and identified interventions that can improve school climate. The survey documents the prevalence of anti-LGBT language and victimization, such as experiences of harassment and assault in school. In addition, the survey examines school policies and practices that may contribute to negative experiences for LGBT students and make them feel as if they are not valued by their school communities. The survey also explores the effects that a hostile school climate may have on LGBT students’ educational outcomes and well-being. Finally, the survey reports on the availability and the utility of LGBT-related school resources and supports that may offset the negative effects of a hostile school climate and promote a positive learning experience. In addition to collecting this critical data every two years, we also add and adapt survey questions to respond to the changing world for LGBT youth. For example, in the 2013 survey we added a question about hearing negative remarks about transgender people (e.g., “tranny”). The National School Climate Survey remains one of the few studies to examine the school experiences of LGBT students nationally, and its results have been vital to GLSEN’s understanding of the issues that LGBT students face, thereby informing our ongoing work to ensure safe and affirming schools for all.
In our 2013 survey, we examine the experiences of LGBT students with regard to indicators of negative school climate:

- Hearing biased remarks, including homophobic remarks, in school;
- Feeling unsafe in school because of personal characteristics, such as sexual orientation, gender expression, or race/ethnicity;
- Missing classes or days of school because of safety reasons;
- Experiencing harassment and assault in school; and
- Experiencing discriminatory policies and practices at school.

We also examine:

- The possible negative effects of a hostile school climate on LGBT students’ academic achievement, educational aspirations, and psychological well-being;
- Whether or not students report experiences of victimization to school officials or to family members and how these adults address the problem; and
- How the school experiences of LGBT students differ by personal and community characteristics.

In addition, we demonstrate the degree to which LGBT students have access to supportive resources in school, and we explore the possible benefits of these resources:

- Gay-Straight Alliances (GSAs) or similar clubs;
- School anti-bullying/harassment policies;
- Supportive school staff; and
- Curricula that are inclusive of LGBT-related topics.

Given that GLSEN has been conducting the survey for over a decade, we also examine changes over time on indicators of negative school climate and levels of access to LGBT-related resources in schools.

METHODS

The 2013 National School Climate Survey was conducted online. To obtain a representative national sample of lesbian, gay, bisexual, and transgender (LGBT) youth, we conducted outreach through national, regional, and local organizations that provide services to or advocate on behalf of LGBT youth, and conducted targeted advertising on the social networking sites, such as Facebook and Reddit. To ensure representation of transgender youth, youth of color, and youth in rural communities, we made special efforts to notify groups and organizations that work predominantly with these populations.

The final sample consisted of a total of 7,898 students between the ages of 13 and 21. Students were from all 50 states and the District of Columbia and from 2,770 unique school districts. About two thirds of the sample (68.1%) was White, slightly less than half (43.6%) was cisgender female, and over half identified as gay or lesbian (58.8%). Students were in grades 6 to 12, with the largest numbers in grades 10 and 11.
HOSTILE SCHOOL CLIMATE

Schools nationwide are hostile environments for a distressing number of LGBT students, the overwhelming majority of whom routinely hear anti-LGBT language and experience victimization and discrimination at school. As a result, many LGBT students avoid school activities or miss school entirely.

SCHOOL SAFETY

- 55.5% of LGBT students felt unsafe at school because of their sexual orientation, and 37.8% because of their gender expression.
- 30.3% of LGBT students missed at least one entire day of school in the past month because they felt unsafe or uncomfortable, and over a tenth (10.6%) missed four or more days in the past month.
- Over a third avoided gender-segregated spaces in school because they felt unsafe or uncomfortable (bathrooms: 35.4%, locker rooms: 35.3%).
- Most reported avoiding school functions and extracurricular activities (68.1% and 61.2%, respectively) because they felt unsafe or uncomfortable.

ANTI-LGBT REMARKS AT SCHOOL

- 71.4% of LGBT students heard “gay” used in a negative way (e.g., “that’s so gay”) frequently or often at school, and 90.8% reported that they felt distressed because of this language.
- 64.5% heard other homophobic remarks (e.g., “dyke” or “faggot”) frequently or often.
- 56.4% heard negative remarks about gender expression (not acting “masculine enough” or “feminine enough”) frequently or often.
- A third (33.1%) heard negative remarks specifically about transgender people, like “tranny” or “he/she,” frequently or often.
- 51.4% of students reported hearing homophobic remarks from their teachers or other school staff, and 55.5% of students reported hearing negative remarks about gender expression from teachers or other school staff.
HARASSMENT AND ASSAULT AT SCHOOL

- 74.1% of LGBT students were verbally harassed (e.g., called names or threatened) in the past year because of their sexual orientation and 55.2% because of their gender expression.
- 36.2% were physically harassed (e.g., pushed or shoved) in the past year because of their sexual orientation and 22.7% because of their gender expression.
- 16.5% were physically assaulted (e.g., punched, kicked, injured with a weapon) in the past year because of their sexual orientation and 11.4% because of their gender expression.
- 49.0% of LGBT students experienced electronic harassment in the past year (via text messages or postings on Facebook), often known as cyberbullying.
- 56.7% of LGBT students who were harassed or assaulted in school did not report the incident to school staff, most commonly because they doubted that effective intervention would occur or the situation could become worse if reported.
- 61.6% of the students who did report an incident said that school staff did nothing in response.

DISCRIMINATORY SCHOOL POLICIES AND PRACTICES

- 55.5% of LGBT students reported personally experiencing any LGBT-related discriminatory policies or practices at school (see below), and almost two thirds (65.2%) said other students had experienced these policies and practices at school.
- 28.2% of students reported being disciplined for public displays of affection that were not disciplined among non-LGBT students.
- 18.1% of students were prevented from attending a dance or function with someone of the same gender.
- 17.8% of students were restricted from forming or promoting a GSA.
- 17.5% of students were prohibited from discussing or writing about LGBT topics in school assignments.
- 15.5% of students were prevented from wearing clothing or items supporting LGBT issues 9.2% of students reported being disciplined for simply identifying as LGBT.
- Some policies particularly targeted transgender students:
  - 42.2% of transgender students had been prevented from using their preferred name (10.8% of LGBT students overall);
  - 59.2% of transgender students had been required to use a bathroom or locker room of their legal sex (18.7% of students overall); and
  - 31.6% of transgender students had been prevented from wearing clothes considered inappropriate based on their legal sex (19.2% of students overall).
EFFECTS OF A HOSTILE SCHOOL CLIMATE

A hostile school climate affects students’ academic success and mental health. LGBT students who experience victimization and discrimination at school have worse educational outcomes and poorer psychological well-being.

EFFECTS OF VICTIMIZATION

- LGBT students who experienced higher levels of victimization because of their sexual orientation:
  - Were more than three times as likely to have missed school in the past month than those who experienced lower levels (61.1% vs. 17.3%);
  - Had lower grade point averages (GPAs) than students who were less often harassed (2.8 vs. 3.3);
  - Were twice as likely to report that they did not plan to pursue any post-secondary education (e.g., college or trade school) than those who experienced lower levels (8.7% vs. 4.2%); and
  - Had higher levels of depression and lower levels of self-esteem.

- LGBT students who experienced higher levels of victimization because of their gender expression:
  - Were more than three times as likely to have missed school in the past month than those who experienced lower levels (58.6% vs. 18.2%);
  - Had lower GPAs than students who were less often harassed (2.9 vs. 3.3);
  - Were twice as likely to report that they did not plan to pursue any post-secondary education (e.g., college or trade school; 8.2% vs. 4.2%); and
  - Had higher levels of depression and lower levels of self-esteem.

EFFECTS OF DISCRIMINATION

- LGBT students who experienced LGBT-related discrimination at school were:
  - More than three times as likely to have missed school in the past month as those who had not (42.3% vs. 13.8%);
  - Had lower GPAs than their peers (3.0 vs. 3.3); and
  - Had lower self-esteem and higher levels of depression.

Academic Achievement and Severity of Victimization (LGBT Students’ Mean Reported Grade Point Average)

<table>
<thead>
<tr>
<th>Sexual Orientation</th>
<th>Gender Expression</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower Victimization</td>
<td>3.3</td>
</tr>
<tr>
<td>Higher Victimization</td>
<td>2.9</td>
</tr>
</tbody>
</table>

Academic Achievement and Experiences of Discrimination (LGBT Students’ Mean Reported Grade Point Average)

<table>
<thead>
<tr>
<th>Had Not Experienced Discriminatory Policies or Practices at School</th>
<th>Had Experienced Discriminatory Policies or Practices at School</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.3</td>
<td>3.0</td>
</tr>
</tbody>
</table>
LGBT-RELATED SCHOOL RESOURCES AND SUPPORTS

Students who feel safe and affirmed have better educational outcomes. LGBT students who have LGBT-related school resources report better school experiences and academic success. Unfortunately, all too many schools fail to provide these critical resources.

GAY-STRAIGHT ALLIANCES

AVAILABILITY AND PARTICIPATION
- Only half (50.3%) of students said that their school had a Gay-Straight Alliance (GSA) or similar student club.
- Although most LGBT students reported participating in their GSA at some level, almost a third (32.3%) had not.

UTILITY
- Compared to LGBT students who did not have a GSA in their school, students who had a GSA in their school:
  - Were less likely to hear “gay” used in a negative way often or frequently (67.2% compared to 81.1% of other students);
  - Were less likely to hear homophobic remarks such as “fag” or “dyke” often or frequently (57.4% vs. 71.6%);
  - Were less likely to hear negative remarks about gender expression often or frequently (53.0% vs. 59.6%);
  - Were more likely to report that school personnel intervened when hearing homophobic remarks—20.8% vs. 12.7% said that staff intervene most of the time or always;
  - Were less likely to feel unsafe because of their sexual orientation (46.0% vs. 64.4%);
  - Experienced lower levels of victimization related to their sexual orientation and gender expression. For example, 19.0% of students with a GSA experienced higher levels of victimization based on their sexual orientation, compared to 36.2% of those without a GSA; and
  - Felt more connected to their school community.

Presence of Gay-Straight Alliances and Feelings of Safety and Missing School

<table>
<thead>
<tr>
<th></th>
<th>School Does Not Have a GSA</th>
<th>School Has a GSA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Feel Unsafe Because of Sexual Orientation</td>
<td>64.4%</td>
<td>46.0%</td>
</tr>
<tr>
<td>Feel Unsafe Because of Gender Expression</td>
<td>44.2%</td>
<td>32.9%</td>
</tr>
<tr>
<td>Missed at Least One Day of School in the Past Month Due to Safety Concerns</td>
<td>36.7%</td>
<td>23.2%</td>
</tr>
</tbody>
</table>
INCLUSIVE CURRICULAR RESOURCES

AVAILABILITY

• Only 18.5% of LGBT students were taught positive representations about LGBT people, history, or events in their schools; 14.8% had been taught negative content about LGBT topics.

• Less than half (44.2%) of students reported that they could find information about LGBT-related issues in their school library.

• Less than half of students (45.3%) with Internet access at school reported being able to access LGBT-related information online via school computers.

UTILITY

• LGBT students in schools with an LGBT-inclusive curriculum:
  – Were less likely to hear “gay” used in a negative way often or frequently (54.7% compared to 78.5% of other students);
  – Were less likely to hear homophobic remarks such as “fag” or “dyke” often or frequently (46.3% vs. 68.7%);
  – Were less likely to hear negative remarks about gender expression often or frequently (43.5% vs. 59.2%);
  – Were less likely to feel unsafe because of their sexual orientation (34.8% vs. 59.8%);
  – Were less likely to miss school in the past month (16.7% of students with an inclusive curriculum missed school in past month because they felt unsafe or uncomfortable compared to 32.9% of other students);
  – Were more likely to report that their classmates were somewhat or very accepting of LGBT people than other students (75.2% vs. 39.6%); and
  – Felt more connected to their school community.

• LGBT high school seniors were more likely to be interested in studying STEM (Science, Technology, Engineering, or Math) or Social Science in college if their relevant high school classes had included positive LGBT content (35.8% vs. 18.5% for STEM majors; 29.0 vs. 19.7% for Social Science majors).

75.2% OF LGBT STUDENTS IN SCHOOLS WITH AN INCLUSIVE CURRICULUM SAID THEIR PEERS WERE ACCEPTING OF LGBT PEOPLE, COMPARED TO 39.6% OF THOSE WITHOUT AN INCLUSIVE CURRICULUM.
SUPPORTIVE EDUCATORS

AVAILABILITY
- Almost all LGBT students (96.1%) could identify at least one staff member supportive of LGBT students at their school.
- Less than two thirds of students (61.0%) could identify at least six supportive school staff.
- Only 38.7% of students could identify 11 or more supportive staff.
- Over a quarter (26.1%) of students had seen at least one Safe Space sticker or poster at their school (these stickers or posters often serve to identify supportive educators).

UTILITY
- LGBT students with many (11 or more) supportive staff at their school:
  - Were less likely to feel unsafe than students with no supportive staff. (36.3% vs. 74.1%);
  - Were less likely to miss school because they felt unsafe or uncomfortable (14.7% vs. 50.0%);
  - Felt more connected to their school community;
  - Had higher GPAs than other students (3.3 vs. 2.8); and
  - Were less likely to not plan on attending college (3.0% vs. 12.0%).
- Students who had seen a Safe Space sticker or poster in their school were more likely to identify school staff who were supportive of LGBT students and more likely to feel comfortable talking with school staff about LGBT issues.

COMPREHENSIVE BULLYING/HARASSMENT POLICIES

AVAILABILITY
- Although a majority (82.1%) of students had an anti-bullying policy at their school, only 10.1% of students reported that their school had a comprehensive policy (i.e., that specifically enumerate both sexual orientation and gender identity/expression).

UTILITY
- Students in schools with a comprehensive policy:
  - Were less likely to hear “gay” used in a negative way often or frequently (59.2% compared to 77.1% of students with a generic policy and 80.2% of students with no policy);
  - Were less likely to hear homophobic remarks such as “fag” or “dyke” often or frequently (50.4% compared to 66.4% of students with a generic policy and 72.4% of students with no policy);
  - Were less likely to hear negative remarks about gender expression often or frequently (41.7% compared to 57.6% of students with a generic policy and 62.3% of students with no policy); and
  - Were more likely to report that staff intervene when hearing homophobic remarks.

“I am so glad to have teachers who are cool with students being LGBT. If it weren’t for them, I know I would’ve dropped out of high school.”
CHANGES IN SCHOOL CLIMATE FOR LGBT YOUTH OVER TIME

School climate for LGBT students has improved somewhat over the years, yet remains quite hostile for many. Increases in the availability of many LGBT-related school resources may be having a positive effect on the school environment.

CHANGES IN INDICATORS OF HOSTILE SCHOOL CLIMATE

HARASSMENT AND ASSAULT

- LGBT students in the 2013 survey experienced lower verbal and physical harassment based on sexual orientation than in all prior years, and lower physical assault based on sexual orientation since 2007.
- Changes in harassment and assault based on gender expression were similar to those for sexual orientation—verbal and physical harassment were lower than in all prior years of the survey, and physical assault has been decreasing since 2007.

ANTI-LGBT REMARKS

- LGBT students in the 2013 survey reported a lower incidence of homophobic remarks than in all prior years. The percentage of students hearing these remarks frequently or often has dropped from over 80% in 2001 to about 60% in 2013.
- Although the expression “that’s so gay” remains the most common form of anti-LGBT language heard by LGBT students, its prevalence has declined consistently since 2001.
- In 2013 the prevalence of hearing negative remarks about gender expression was at its lowest levels.
CHANGES IN AVAILABILITY OF LGBT-RELATED SCHOOL RESOURCES AND SUPPORTS

GAY-STRAIGHT ALLIANCES

- The percentage of LGBT students reporting that they have a GSA in their school was higher in 2013 than in all prior survey years.

CURRICULAR RESOURCES

- The percentage of LGBT students reporting positive representations of LGBT people, history, or events in their curriculum was significantly higher in 2013 than in all prior survey years.
- The percentage of students with access to LGBT-related Internet resources was higher in 2013 than in all prior survey years.
- More students also had access to LGBT-related content in their textbooks than in all prior survey years.

SUPPORTIVE EDUCATORS

- A higher percentage of LGBT students reported having supportive school staff in 2013 than in all prior survey years.

ANTI-BULLYING/HARASSMENT POLICIES

- More LGBT students reported having an anti-bullying/harassment policy at their school in 2013 than in all prior survey years, including a modest increase in the percentage of students reporting that their school had a comprehensive policy, i.e., one that included protections based on sexual orientation and gender identity/expression.

The percentage of students with LGBT-related resources in their school library has not changed noticeably in recent survey years.

Availability of Curricular Resources Over Time

Percentage of LGBT Students who Report Having Resources in School (Accounting for Covariates)

- Access to LGBT Websites
- LGBT-Related Library Resources
- LGBT-Related Content in Textbooks/Assigned Readings
- LGBT-Inclusive Curriculum

Access to LGBT Websites

LGBT-Related Library Resources

LGBT-Related Content in Textbooks/Assigned Readings

LGBT-Inclusive Curriculum

0% 20% 40% 60%

2001 2003 2005 2007 2009 2011 2013
DEMOGRAPHIC AND SCHOOL CHARACTERISTIC DIFFERENCES IN LGBT STUDENTS’ SCHOOL EXPERIENCES

LGBT students are a diverse population, and although they share many similar experiences, their experiences in school vary based on their personal demographics, the kind of school they attend, and where they live.

DIFFERENCES IN LGBT STUDENTS’ SCHOOL EXPERIENCES BY PERSONAL DEMOGRAPHICS

RACE OR ETHNICITY
- Overall, Asian/South Asian/Pacific Islander students experienced the lowest frequencies of victimization based on sexual orientation and gender expression.
- White/European American LGBT students experienced lower frequencies of victimization based on race/ethnicity than all LGBT youth of color groups.

GENDER IDENTITY
- Compared to other LGBT students, transgender, genderqueer, and other non-cisgender students faced the most hostile school climates.
- Cisgender female students experienced the lowest frequencies of anti-LGBT victimization.

GENDER NONCONFORMITY
- Gender nonconforming cisgender students (students whose gender expression did not align to traditional gender norms) experienced worse school climates compared to gender conforming cisgender students.

“I hate my school’s discrimination of me for being transgender. Kids would spit on me, kick me, call me a dyke, and push me down the stairs. An administrator told me ‘you should expect to be treated that way.’”
DIFFERENCES IN LGBT STUDENTS’ SCHOOL EXPERIENCES BY SCHOOL CHARACTERISTICS

SCHOOL LEVEL

- LGBT students in middle school were more likely than students in high school to hear anti-LGBT language in school.
- Students in middle school reported higher frequencies of victimization based on sexual orientation and gender expression than students in high school.
- Students in middle school were less likely to have access to each LGBT-related school resource: GSAs, supportive educators, inclusive curriculum, and comprehensive anti-bullying/harassment policies; the disparity between middle and high school students was greatest for GSAs (7.5% for middle school students vs. 58.5% for high school students).

SCHOOL TYPE

- LGBT students in private, non-religious schools were less likely to hear anti-LGBT biased language than students in other schools.
- Students in public schools experienced higher frequencies of victimization based on sexual orientation and gender expression compared to students in private or religious schools.
- Overall, students in private schools had greater access to LGBT-related resources and supports in school than students in other schools.

REGION

- Students in the Northeast and the West reported hearing “gay” used in a negative way less frequently than students in the South and the Midwest.
- Overall, LGBT students from schools in the Northeast and the West reported significantly lower levels of victimization based on sexual orientation and gender expression than students from schools in the South and the Midwest.

In general, students in the Northeast were most likely to report having LGBT-related resources at school, followed by students in the West. Students in the South were least likely to have access to these resources and supports.

SCHOOL LOCALE

- Students in rural/small town schools reported the highest frequency of hearing anti-LGBT language at school.
- Students in rural/small town schools experienced higher frequencies of victimization in school based on sexual orientation and gender expression.
- Students in rural/small town schools were least likely to have LGBT-related school resources or supports, particularly GSAs and supportive school personnel.
It is clear that there is an urgent need for action to create safe and affirming learning environments for LGBT students. Results from the 2013 National School Climate Survey demonstrate the ways in which school-based support—such as supportive staff, anti-bullying/harassment policies, curricular resources inclusive of LGBT people, and GSAs—can positively affect LGBT students’ school experiences. Based on these findings, we recommend:

- Increasing student access to appropriate and accurate information regarding LGBT people, history, and events through inclusive curricula and library and Internet resources;
- Supporting student clubs, such as GSAs, that provide support for LGBT students and address LGBT issues in education;
- Providing professional development for school staff to improve rates of intervention and increase the number of supportive teachers and other staff available to students;
- Ensuring that school policies and practices, such as those related to dress codes and school dances, do not discriminate against LGBT students; and
- Adopting and implementing comprehensive bullying/harassment policies that specifically enumerate sexual orientation, gender identity, and gender expression in individual schools and districts, with clear and effective systems for reporting and addressing incidents that students experience.

Taken together, such measures can move us toward a future in which all students have the opportunity to learn and succeed in school, regardless of sexual orientation, gender identity, or gender expression.

“I firmly believe that it does not just ‘get better.’ I am an example of someone who went out of their comfort zone to change their school environment for future LGBT students. I am graduating my high school this year and leaving it a very different place.”
GLSEN (the Gay, Lesbian & Straight Education Network) is the leading national education organization focused on ensuring safe schools for all students. Established in 1990, GLSEN envisions a world in which every child learns to respect and accept all people, regardless of sexual orientation or gender identity/expression. GLSEN seeks to develop school climates where difference is valued for the positive contribution it makes to creating a more vibrant and diverse community.

For more information on our educator resources, research, public policy agenda, student leadership programs or development initiatives, visit www.glsen.org.

© 2014 Gay, Lesbian & Straight Education Network
Testimony of Eliza Byard, Ph.D.

Executive Director, GLSEN

Before the U.S. Commission on Civil Rights

May 13, 2011

Members of the Commission:

I appreciate the invitation to testify today regarding issues of bullying, harassment and violence in our schools.

An Introduction to Joey

I would like to begin my remarks by introducing you to Joey, a typical teenager. Joey, a high school junior, works at McDonald’s, listens to Lady Gaga and spends way too much time on Facebook. But something about Joey, who turns seventeen next week, is different from most of his classmates. Joey is gay. Up until the time he revealed this fact to friends in middle school, Joey was a popular kid and never thought twice about whether he was safe at school. After he came out, Joey’s school experience changed dramatically for the worse. He was harassed daily, a problem that escalated to the moment when a student threatened Joey with a knife. Rather than intervene, a school administrator’s response was to encourage Joey to act “less gay” and to consider whether the bullying he experienced was something he deserved because of who he is.

The consequences? Joey's grades dropped, he withdrew from former friends and school life, and at one point, considered taking his own life. I spoke with Joey earlier this week. When I told him that the United States Commission on Civil Rights was holding a hearing on student-on-student violence that would include consideration of the harassment faced by lesbian, gay, bisexual, and transgender youth, Joey asked me to say something to the Commission on his behalf. He asked me to say: Thank you.

GLSEN: Who we are and what we stand for

My name is Eliza Byard. I am the executive director of GLSEN, the Gay, Lesbian and Straight Education Network. Founded in 1990 by a group of educators, parents and students in Massachusetts, GLSEN is now the leading national education organization focused on LGBT issues in K-12 schools and committed to promoting safe schools for all students. Every day, GLSEN and our chapters are at work in communities around the country, partnering with school districts, students and parents to build awareness, promote policies and deliver programs that foster healthy school cultures in which every child learns to respect and accept all people, regardless of sexual orientation, gender identity, or gender expression.

I will echo my young friend in thanking you for shedding light on an urgent crisis in our schools that has left countless American children behind. But I must also urge you to act. Visible or invisible, LGBT youth are in every district in this country, and are drawn from every constituency that you are empowered to
protect. They need your help and federal leadership to cut through the noise that too often surrounds this issue with recommendations that specifically address the needs of LGBT youth as well as all other students affected by bullying and violence in our schools. The simple fact is that too many LGBT students face bullying, harassment and violence on a daily basis that can deprive them of equal educational opportunity, undermine their individual well-being, and keep them from achieving their full potential.

**Bullying and harassment of LGBT students: prevalence, impact and prevention**

Sadly, Joey’s story is by no means an anomaly. LGBT students experience bullying at an alarming rate in America. In GLSEN’s 2009 National School Climate Survey, nearly nine out of ten LGBT students said they were verbally, physically or sexually harassed in the past year because of their sexual orientation and nearly two-thirds because of their gender expression. One in five had been physically assaulted in the past year. One in three had missed a day of school in the past month because they were simply too afraid to go. Three in five did not feel safe in school because of who they are.

It is no surprise that the youth who face this violence do less well in school and are less likely to plan to graduate and go on to college. And it is no surprise that LGBT youth are more likely to engage in behaviors that put them at risk – including attempts at suicide – because of the discrimination and violence they suffer.

These statistics are simply unacceptable, and the situation they illuminate is grim. Equally disheartening, however, is that this situation has not yet sparked the urgent and comprehensive response it requires. Only eleven states have anti-bullying laws that explicitly protect students from bullying and harassment on the basis of sexual orientation and gender identity. On the level of individual responses, the vast majority of LGBT students – 80 percent – report that when a member of the faculty and school staff witness anti-LGBT behavior, they do little or nothing about it. The majority say that they do not report many incidents of violence they face because they do not believe there will be a response from school authorities. And those who do report victimization to the school say the most common response is nothing – no action at all.

A core challenge in the effort to create safer schools for all students is the fact that bias-based bullying complicates adult response. Whether it is out of fear of controversy, failure to recognize the seriousness of the behavior, or active indifference to the fate of the students involved, adults charged with the education and care of our sons and daughters during the school day are not consistently living up to their responsibilities. Federal leadership is necessary to make the extent of their responsibilities crystal clear, and to assure those who fear controversy or backlash that they are indeed doing the right thing.

Research consistently shows that the policies that most effectively address anti-LGBT bullying actually name the problem, as is true with other types of bias-based bullying. General anti-bullying laws and policies leave some of our most vulnerable youth behind, a statement I make based on research and as a representative of an organization rooted in schools that works with schools and knows firsthand that if you are not willing to tell a bully directly that his or her behavior is wrong, he or she is not going to stop. LGBT youth whose schools’ anti-bullying policies include enumeration are less likely be victimized, more
likely to report incidents that do occur to school authorities, and more likely to say that school staff intervened when they witnessed anti-LGBT behavior. I would mention that the general population of students also benefits from the presence of such a policy – students of all kinds whose schools have such a policy in place are less likely to say that bullying is a serious problem at their school.

**The emerging patchwork of protection and the need for federal action**

We are grateful to the Office of Civil Rights at the Department of Education and to the Department of Justice for their commitment to exercising what authority they have under Title IX to protect LGBT students. But these statutes cover only some of the serious challenges LGBT students face. As evidence has mounted of the effectiveness of enumerated anti-bullying and anti-harassment policies, we have seen some much-needed movement. The Department of Education recently included enumeration in its memo to state education authorities regarding “best practices” in bullying-prevention law and policy. In recent months, school districts across the country, in Oklahoma City; Jackson, Mississippi; Dallas, Texas; and Park City, Utah have adopted enumerated policies that included sexual orientation and gender identity among their protections for all students. And just last month Arkansas passed an anti-bullying law that does the same – a bill that passed unanimously in its Senate. Unfortunately, however, state laws and district policies create only a patchwork quilt of protection for LGBT students.

As a baseline matter of safety, we need federal leadership to establish a national floor of protection that fills in the gaps that do not extend protections for all students, upon which states and districts may build. As a national issue of equity, we also need non-discrimination protections for some of our nation’s most vulnerable students. As the Commission considers how it can help to address violence and harassment directed at LGBT students and those perceived to be LGBT, I encourage the Commission to support the Safe Schools Improvement Act (SSIA), an anti-bullying bill introduced in Congress with bipartisan support in both chambers and broad-based support among education, youth development, health, religious and civil rights organizations. The Safe Schools Improvement Act is supported by the National Safe Schools Partnership, comprised of nearly 90 national organizations from these worlds including GLSEN. I also ask the commission to support the Student Non-Discrimination Act (SNDA), which would extend non-discrimination protections to students on the basis of sexual orientation and gender identity. GLSEN, the National Safe Schools Partnership, and a number of other organizations have submitted briefs to the Commission in support of these two pieces of legislation, and I ask that you consider them carefully.

You may hear some of my colleagues testify that there is no urgent need to address anti-LGBT bullying and violence in our schools, or that to do so would compromise the First Amendment rights of other students with strongly held personal beliefs regarding homosexuality. As an educator and as a parent, I am firmly committed to the principle of respectful debate and dialogue across lines of difference in our vibrantly diverse society. But let me be very clear: the words “faggot” and “dyke” are not part of any religious creed. And harassment and assault are crimes.
To those who deny the need for action and attack the principle of enumeration, I challenge them to provide data to support their flawed arguments rather than innuendo and tired assertions that seek to perpetuate the status quo. The U.S. Department of Health and Human Services has declared the bullying problem in our schools to be a “national public health crisis,” and it is a crisis that cannot be addressed without a clear-headed assessment of the specific behaviors at its heart. It is a crisis that harms students, their families, and their schools every day, and contributes to the greater crisis gripping American education.

For every Jackson, Mississippi, and Park City, Utah, there are places where bullying-prevention efforts do not explicitly protect all students and where the consequences are all too real. Joey knows this all too well: bullying forced him and his family to move across state lines to find a school where he would be treated with the same respect as every other student. Fortunately for Joey, his family had the means and inclination to find that safe school. Many parents don’t. Indeed, no parent should have to make that choice.

Communities across our country wrestle with these issues every day – and do it on their own. We need federal leadership to fill the gaps in local laws and policies that exist and that currently allow the kinds of harm that Joey experienced to be all too pervasive. We must ensure that the physical, mental, academic, and social well being of our nation’s LGBT youth are not left to the vagaries of local practice – especially when there are commonsense solutions built upon significant common ground among people of goodwill and divergent politics and belief.

Each child in this nation who enters a school every morning deserves a school environment where they are safe and respected. They deserve the same chance to excel as every other child. Bullying and violence can rob them of that, and far too many of our children who are affected by harassment are suffering needlessly— with consequences for our schools, our communities and our nation. I ask today that you all signal your support for appropriate federal action that will create a foundation upon which all of our children can walk the halls of their schools free of the threat of bullying and harassment, and with the opportunity to become the person they were meant to be.

Thank you.
Local students participate in ‘No Name-Calling Week’

LANA LEONARD
GLSEN CENTRAL NEW JERSEY

In honor of Martin Luther King Jr. Day on Jan. 19, high school students from Somerset and Middlesex counties took part in discussions about anti-bullying and safe schools at the Kidsbridge Tolerance Museum in the Ewing Community and Senior Center.

Sponsored by Kidsbridge, the Central New Jersey chapter of the Gay, Lesbian and Straight Education Network (GLSEN), the Coalition for Peace Action and the community and senior center, the day of dialogue and youth activities also coincided with the start of GLSEN’s No Name-Calling Week.

The first panel, Creating Respectful Schools/No Name-Calling Week, was led by Alyssa Cannon, a senior at Hillsborough High School, and Carol Watchler, co-chair of GLSEN Central New Jersey.

Wearing a bright, colorful sweater, Watchler said No Name-Calling Week is a way for students, teachers and administrators to celebrate kindness throughout the week.

Cannon said the week is “a way of making everyone safe and welcome in school.”

She created a flier for her school that aims to help students understand No Name-Calling Week.

“The fliers (aim to) remind students to think twice about using derogatory terms such as ‘gay,’ ‘fat,’ and ‘retarded,’” she said.

Watchler said students are usually picked on or called names based on assumptions of sexual orientation.

Two South Brunswick Gay Straight Alliance (GSA) members, Maya Henry and Anushka Sindhu, said many at their school reacted positively during No Name-Calling Week when they put fliers in their hallways and on lockers with peaceful, intelligent and optimistic messages such as “You are a beautiful person. Keep doing what you’re doing.”

While the panel informed older students and adults, children had the chance to join many activities to learn about differences and generate respect.

Henry and Sindhu gave children advice on the dangers of stereotyping. Children also created and performed with puppets and created artwork to show their commitment to ending name-calling.

The second panel, Social Justice and Prejudice Reduction, featured Edith Savage Jennings, a colleague of Martin Luther King Jr.; Jonette Smart, president of the Trenton NAACP; Irene Etkin Goldman, board chair of the regional Coalition for Peace Action; and civil rights advocate and NAACP member Thelma Napoleon Smith.

After sharing stories about King, Jennings said we must be ‘mentors’ and teach children in order to carry on his legacy.

Goldman mentioned King’s belief in nonviolence, citing the lecture he gave in 1964, “The Quest for Peace and Justice,” after receiving the Nobel Peace Prize.

Smith took the lead discussing Trenton’s Proud Heritage, Hedgepeth-Williams v Trenton Board of Education.

She talked about the struggles to desegregate schools in New Jersey’s capital. She grew up in Trenton and went to a segregated school. There was no bus to pick her up, she said, so she would have to walk. But during inclement weather, she and her siblings would get sick.

Her mother, Berline Williams, had enough, and in 1943, sued (along with another mom), taking the case all the way to the New Jersey Supreme Court.

It paid off, for in 1944, in Hedgepeth-Williams v Trenton Board of Education, New Jersey’s schools became desegregated.

Ten years later, the U.S. Supreme Court would rule on Brown v. Board of Education, which declared laws establishing separate public schools for black and white students to be unconstitutional.

Thurgood Marshall, the future Supreme Court justice, and his team of NAACP attorneys cited Hedgepeth-Williams while making their arguments.

At the time, it was the only state anti-segregation legal precedent in the nation.
This document presents our Model State Anti-Bullying and Harassment Legislation, explains the policy objectives for each section of the Model, and presents some key points and alternatives to consider. The commentary below will help you tailor the model language to the specific needs of your state, while keeping the original intent of the legislation intact. While this document provides a useful model, it is still necessary to carefully consider the legislative background of your state, the local political environment, the fiscal impact of any proposal, and any existing laws with which this legislation might interact.

If you have any questions about this document or would like GLSEN’s assistance to construct your own anti-bullying and harassment bill, you may contact our Public Policy Department at 202-621-5821 or by email at publicpolicy@glsen.org.
MODEL LANGUAGE

Be it enacted by the Legislature of the State of ______: 

Section 1.
This Act, henceforth known as the Safe Schools Act, shall be hereby enacted to read as follows:

A. The Legislature finds and declares that:
   (1) All students have the right to participate fully in the educational process, free from bullying and harassment;
   (2) A safe and civil environment in school is necessary for students to learn and to achieve high academic standards;
   (3) Bullying and harassment, like other disruptive or violent behaviors, are forms of conduct that disrupt both a student’s ability to learn and a school’s ability to educate its students in a safe environment; and
   (4) Because students learn by example, school administrators, faculty, staff, and volunteers should be expected to demonstrate appropriate behavior, treat others with civility and respect, and refuse to tolerate bullying and harassment.

LOCAL MEDIA CONSIDERATIONS

In some states the need for state anti-bullying and harassment legislation is made particularly relevant by media recognition of incidents of bullying or their unfortunate consequences. If local media has been publicizing stories about bullying in schools, you may wish to include in the Legislative Findings section a short statement about the demonstrated need for this legislation in your state.

It’s also possible to name the legislation after a particular student or students, especially if a high-profile event in the state has drawn attention to the issue of bullying and harassment. For example, Florida’s anti-bullying law provides that “This section may be cited as the ‘Jeffrey Johnston Stand Up for All Students Act,’” after Jeffrey Johnston, a 15 year old boy that died by suicide after being bullied relentlessly.

POLICY OBJECTIVES

- Explain the context and need for the legislation
- If appropriate, mention particular local needs or recognized incidents

This statement provides the context for the legislation, which clearly explains why anti-bullying and harassment legislation is important. Often in attempting to decide how to rule on a particular case, courts will look to the “legislative intent” behind the law. The inclusion of a section like this — which describes the importance of a safe school environment and the way in which bullying and harassment can adversely affect that environment — can help answer that question.

SHOULD PRIVATE SCHOOLS BE COVERED?

Ideally, anti-bullying and harassment legislation should protect all students by applying to both public and private schools. However, state laws tend to treat public and private schools differently, and many safe schools laws cover only public schools. You should determine whether it’s possible, in your state, to reach private schools and whether there will be higher levels of resistance. As an example, Minnesota’s anti-bullying law specifically defines an “Education institution” to mean a:

Public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, and a business, nursing, professional, secretarial, technical, vocational school; and includes an agent of an education institution. Minn. Stat. Ann. § 363.01, Subd. 15.

If the proposed legislation is intended to govern private schools, consider whether to include an exception applicable to certain religious schools to accommodate their constitutional rights. For example, California’s law provides that:

This article shall not apply to an educational institution which is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization. Cal. Educ. Code § 220.5.
MODEL LANGUAGE

Section 2. Definitions and Scope of Proscribed Conduct

A. This act applies to conduct occurring on all public elementary and secondary school premises, at any school-sponsored functions or activities, and on school-sponsored transportation. This act also applies to usage of electronic technology and electronic communications that occurs on all public elementary and secondary school premises, at any school-sponsored functions or activities, on school-sponsored transportation, and on school computers, networks, forums and mailing lists.

B. As used in this Chapter:

(1) The term ‘bullying’ used in this act means conduct that:
   (a) Adversely affects the ability of one or more students to participate in or benefit from the school’s educational programs or activities by placing a student in reasonable fear of physical harm; and
   (b) Includes conduct based on a student’s actual or perceived race, color, national origin, sex, gender, disability, sexual orientation, gender identity or expression, religion, or any other distinguishing characteristics that may be defined by a State or local education agency; or
   (c) Is based on association with a person or group with any person with one or more of the actual or perceived characteristics listed in (b).

(2) The term ‘harassment’ used in this act means conduct that:
   (a) Adversely affects the ability of one or more students to participate in or benefit from the school’s educational programs or activities because the conduct as reasonably perceived by the student is so severe, persistent, or pervasive; and
   (b) Includes conduct based on a student’s actual or perceived race, color, national origin, sex, gender, disability, sexual orientation, gender identity or expression, religion, or any other distinguishing characteristics that may be defined by a State or local educational agency; or
   (c) Is based on association with a person or group with any person with one or more of the actual or perceived characteristics listed in (b).

POLICY OBJECTIVES

- Make the Act applicable to all public schools and school-related activities
- Focus definitions of bullying and harassment on effect of behavior
- Specify definitions of bullying and harassment that enumerate specific categories of students to be protected
- Provide separate definitions for bullying and harassment

In some cases, state legislatures have defined bullying and harassment coextensively—as if they were the same thing. A better view recognizes that while certain behavior may represent both bullying and harassment, there are cases in which harassment will not constitute bullying, and vice versa. In defining bullying and harassment, the focus should be on how the conduct interferes with a student’s ability to participate in educational opportunities. By focusing on the impact of the behavior of the “bully” or “harasser,” we do not become involved in issues of the actor’s intent. Rather, we stay focused on real harm to real students—which can adversely affect their educational opportunities.

In addition, this focus will help the legislation comply with the free expression requirements of the First Amendment. To maintain consistency between various state and local bullying laws as well as proposed federal laws, you should use the definitions of bullying and harassment as we have laid them out here. Enumerated categories are a key element in making sure that the legislation will protect LGBT students.

ENUMERATION

As an advocate for anti-bullying and anti-harassment laws, policies and programs at the national, state and local level, you will be challenged to explain why enumerated categories are better than no categories at all.

When a law enumerates categories it usually identifies types of individuals or things that need to be protected. We generally refer to these individuals or things as groups or classes. Anti-bullying and harassment bills are designed to address the needs of students who experience bullying and harassment in their schools. This is best achieved through a policy which both requires that all students are protected from bullying and harassment and also specifies categories of students who must be included by name (e.g., LGBT students).

Any time an anti-bullying and harassment bill is introduced we urge its sponsor to enumerate the kinds (Cont.)
with an enumerated policy report that others are harassed far less often in their school for reasons like their physical appearance (36% vs. 52%), their sexual orientation (32% vs. 43%) or their gender expression (26% vs. 37%).

- Students whose schools have a policy that specifically includes sexual orientation and gender identity/expression are less likely than other students to report a serious harassment problem at their school (33% vs. 44%).

- Enumeration gives teachers and other educators the tools they need to implement anti-bullying and harassment policies, which makes it easier for them to intervene to prevent bullying. School personnel often fear that they will themselves be targeted for intervening on behalf of LGBT students. When they can point to language that provides clear protection for LGBT students, they feel more comfortable enforcing the policy. Students reported that teachers were significantly more likely to intervene always or most of the time in states with enumerated policies, as compared to states with either non-enumerated policies or no policies at all (25.3% vs. 15.9% and 12.3%).

- Students from schools with a enumerated policy are 50% more likely to feel very safe at school (54% vs. 36%). Students without such a policy are three times more likely to skip a class because they feel uncomfortable or unsafe (16% vs. 5%).

- Research has shown that students in states with non-enumerated bullying laws are no more protected from bullying than students who live in states without any anti-bullying and harassment laws (74.3% with generic policies vs. 75.0% with no policies report ‘often or frequently’ hearing homophobic remarks based on sexual orientation).

- Students report less overall harassment when they know their school has a comprehensive policy that includes enumeration. Students from schools with an enumerated policy report that others are harassed far less often in their school for reasons like their physical appearance (36% vs. 52%), their sexual orientation (32% vs. 43%) or their gender expression (26% vs. 37%).

- Students whose schools have a policy that specifically includes sexual orientation and gender identity/expression are less likely than other students to report a serious harassment problem at their school (33% vs. 44%).

- Enumeration gives teachers and other educators the tools they need to implement anti-bullying and harassment policies, which makes it easier for them to intervene to prevent bullying. School personnel often fear that they will themselves be targeted for intervening on behalf of LGBT students. When they can point to language that provides clear protection for LGBT students, they feel more comfortable enforcing the policy. Students reported that teachers were significantly more likely to intervene always or most of the time in states with enumerated policies, as compared to states with either non-enumerated policies or no policies at all (25.3% vs. 15.9% and 12.3%).

- Evidence shows that school officials often do not recognize that anti-LGBT harassment and discrimination are unacceptable behaviors, or do not respond to the problem due to prejudice or community pressure without the cover of a specific law or policy.

- Students from schools with a enumerated policy are 50% more likely to feel very safe at school (54% vs. 36%). Students without such a policy are three times more likely to skip a class because they feel uncomfortable or unsafe (16% vs. 5%).

All statistics quoted above are from the following two reports:

Harris Interactive and GLSEN (2005). From Teasing to Torment: School Climate in America, A Survey of Students and Teachers. New York: GLSEN.

**STATE DEPARTMENT OF EDUCATION RESPONSIBILITIES**

**MODEL LANGUAGE**

**Section 3.** State Department of Education Responsibilities

A. To assist school districts in developing policies for the prevention of bullying and harassment, the Department of Education shall develop and maintain a model policy that is:
   (1) Applicable to grades kindergarten through 12; and
   (2) Contains definitions of bullying and harassment consistent with this Act.

B. The Department of Education shall adopt rules to implement this legislation.

C. The Department of Education shall develop appropriate procedures for:
   (1) Investigating violations of this Act;
   (2) Reporting of and responding to failures to implement this Act by districts, schools, and administrators;
   (3) Reporting of incidents of bullying and harassment by districts and schools;
   (4) Publication of statewide statistics concerning bullying and harassment, as defined in this chapter; and
   (5) Filing complaints regarding district failure to develop and implement policies that provide the protections set forth in this chapter.

**POLICY OBJECTIVES**

- Require the Department of Education (DOE) to maintain a model policy
- Require that the DOE Model Policy is consistent with the Act
- Grant DOE the responsibility to implement regulations
- Specify that DOE should develop procedures for investigating and responding to violations and publicizing bullying statistics
- Provide a procedure for filing complaints with the DOE

Throughout this text, we have used the term Department of Education. Your state may use a slightly different term and you should modify your legislation accordingly.

**DISTRICT RESPONSIBILITIES**

**MODEL LANGUAGE**

**Section 4.** District Responsibilities

A. Each school district shall adopt a policy prohibiting harassment and bullying as defined in this legislation. Such policies shall, at a minimum, incorporate the model policy established by the Department of Education.

B. Each school district shall adopt policies pursuant to this legislation that, at a minimum:
   (1) Prohibit bullying and harassment of all students, as specified and defined in this legislation;
   (2) Designate one person in the district as the primary contact regarding the anti-bullying and harassment policy. The primary contact shall receive copies of all formal and informal complaints, have responsibility for assuring the implementation of the policy and procedure, and serve as the primary contact on the policy and procedures between the school district and the Department of Education;
   (3) Require that school employees and trained volunteers who witness incidents of bullying or harassment, or possess reliable information that would lead a reasonable person to suspect that a person is a target of bullying or harassment, promptly report that information to the school principal and district designee;
   (4) Provide a procedure for prompt investigation of reports of complaints of bullying or harassment, identifying either the principal or the principal’s designee as the person responsible for the investigation;
   (5) Delineate the range of ways in which a school will respond once an incident of bullying or harassment is identified, including a range of age-appropriate consequences that may or will attach to the prohibited bullying and harassment;
   (6) Prohibit reprisal or retaliation against any person who reports an act of bullying or harassment and describe appropriate remedial action for a person who engages in reprisal or retaliation;
   (7) Allow for anonymous reporting while clarifying that no remedial action may be undertaken solely on the basis of an anonymous report;
   (8) Include a statement of how the policy is to be publicized, including that the school district’s policy shall appear in new employee training materials, any publication of the school district that sets forth the comprehensive rules, procedures and standards of conduct for schools within the school district, and in any student handbook; and
   (9) Describe a process by which data on incidents of bullying and harassment shall be collected, reported and analyzed at least on an annual basis.

(Cont.)
DISTRICT RESPONSIBILITIES

POLICY OBJECTIVES

- Ensure that the policy is mandatory in every school district
- Include a reporting procedure with a primary contact in each district
- Require a defined disciplinary process and consequences
- Provide protection from retaliation for those who report incidents
- Provide for initial anonymous reporting of incidents
- Require that policy must use definitions of bullying and harassment that include enumerated categories of students
- Require publication of the anti-bullying and harassment policy
- Require the incorporation of the model DOE policy

You should note that school districts and schools will, in all cases, have an existing code of student conduct, which includes many of the provisions called for in the model legislation. Therefore many if not most of these requirements will not impose major new obligations on schools or districts. At most, schools and districts will be required to amend existing policies to include the specific projections set forth in the legislation.

This is one area in which you will want to carefully review existing state law. It is likely that your state already requires a student discipline code and, if so, you should consider presenting this legislation as an amendment to the legislation which requires the discipline code.

In some states, local control is a very important issue and legislation that appears to ignore or supersede local authority may face difficulties. In such situations, another option is to state that each local jurisdiction must adopt a policy “that has a definition of harassment and bullying no less inclusive

TRAINING & PREVENTION PROGRAMS

In order to ensure that school staff and teachers are actually aware of district policies enacted under this law to prevent bullying and harassment, it is advisable to have a requirement that they be trained about the policy. Generally, training requires resources, which may present a stumbling block to getting this legislation passed, particularly in a poor economic environment. At a minimum, however, the District Responsibilities section should include a requirement that information regarding the policy be incorporated into training programs for new employees. Because most districts require training for new employees anyway, this will present few resource implications. For example:

C. Information regarding a local school district policy against bullying and harassment shall be incorporated into a school’s employee training program.

Additionally, you may add a subsection encouraging but not requiring training and education programs to be developed at the district level. For example:

D. Schools and school districts are encouraged to establish programs designed to help eliminate bullying and harassment, and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement, and community members.

Alternately, you may require training at the local level if resources are later appropriated. For example:

E. School districts are encouraged to; and to the extent funds are appropriated for these purposes, they are required to:
   (1) At least annually ensure that all schools provide training regarding the school district’s/ school’s bullying and harassment policies that conform to this legislation to school employees and volunteers that have significant contact with students; and
   (2) Develop and implement a program for discussing bullying and harassment issues and related school policies with all students.
SANCTIONS & CIVIL LIABILITY

MODEL LANGUAGE

**Section 5.** Sanctions and Civil Liability

A. Any district or school not complying with the terms of this title shall be ineligible to receive state funds.
B. This act is not intended to establish any private right of action.
C. This act is not intended to limit the rights of any individual currently available under any other available law, civil or criminal.
D. A school employee is immune from a cause of action for damages arising from any failure to remedy the reported incident, if they:
   (1) Promptly report an incident of bullying or harassment to the appropriate official designated by the school district’s policy; and
   (2) Make this report in compliance with the procedures in the district’s policy.
E. A school employee, student or volunteer shall not engage in reprisal, retaliation or false accusation against a victim, witness or one with reliable information about an act of bullying or harassment.

POLICY OBJECTIVES

- Allow for administrative sanctions, such as denial of funds for noncompliance
- Ensure that the language does not limit current legal remedies
- Create a provision for immunity, so that the Act encourages teachers who witness bullying to report it
- Forbid reprisals or false accusations against those who bring complaints and witnesses

PRIVILEGED RIGHTS OF ACTION

You may decide to propose legislation that establishes a student’s right to sue a school or district for failure to adhere to the requirements of this law. If you want the legislation to include such a private cause of action, it must be spelled out in the legislation. A court will typically not infer such a right of action where the legislation is not specific. Ideally, this provision should specify that monetary damages, injunctive relief, and any other appropriate relief may be awarded for a violation of the statute.

It is also important to make clear that any remedies specifically provided by the legislation do not waive one’s right to pursue other legal remedies. For example, the California law provides that, “It is the intent of the Legislature that … the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.” Cal. Educ. Code § 201(g).

It is important to note that a private cause of action may prove to be very controversial and may create larger challenges in getting your legislation passed. Creating a private right of action can be a very complex issue, and you should consult with an attorney familiar with this area of the law before proceeding. In addition, when considering whether to create a private right of action, you should be familiar with sovereign immunity principles in your state. Sovereign immunity is the principle that the government is generally immune to law suits unless it consents to be sued.

MISCELLANEOUS

MODEL LANGUAGE

**Section 6.** Miscellaneous

A. The provisions of this title shall be severable, and if any court of competent jurisdiction declares any phrase, clause, sentence or provisions of this title to be invalid, or its applicability to any government agency, person or circumstance is declared invalid, the remainder of this article and its relevant applicability shall not be affected.
B. The provisions of this article shall be liberally construed to give effect to the purposes thereof.
C. Nothing in this title is intended to interfere with the First Amendment rights of free speech and expression of any person affected.

POLICY OBJECTIVES

- Allow for severability so that provisions of the Act may remain in effect even if other sections are found unconstitutional
- State that the Act should be interpreted liberally in order for judges to consider the intent of the law, as laid out in Section 1
- Ensure that the Act is not intended to interfere with any individual’s freedom of expression
I'm a Transgender Teen and Which Restroom I Use Is None of Your Business

Casey Hoke, Visual Arts Student & GLSEN Ambassador

Huffington Post Posted: 01/29/2015 9:30 am EST Updated: 01/29/2015 9:59 am EST

Out of the seven-hour school day in my Louisville, Kentucky high school, I spend an average of two minutes in the restroom. That's it. Business as usual. No one bats an eye.

Just an hour away in Frankfort, Kentucky, my business and the business of every other transgender student attending a public school in Kentucky is not as usual. In fact, it's under scrutiny by a drafted bill in the Kentucky Legislature titled the Kentucky Student Privacy Act.

The Kentucky Student Privacy Act, as proposed by Kentucky State Sen. C.B. Embry, would deny access to restrooms, locker rooms and other gender-specific spaces to students who do not identify with the gender assigned to them at birth. The act also suggests "compromises" with transgender students who fit these circumstances. In this case, the transgender student would have to use a unisex facility, which many schools do not have, or use the faculty restrooms.

To give a student perspective on this situation: The only private restroom space in my own school building is set away from general classroom areas and separated by two floors from most of my classes. The two minutes I take out of changing classes or instructional time for going about my business would turn into a longer period, taking a chunk out of my academic and social time. And along with that -- it would create embarrassment and less affirmation for my gender. While assigned female at birth, I identify as male, express this identity and go along with my day as any other guy. The prospect of having to go out of the way to take special action due to private anatomy (hence the word "private") is segregation.

The Kentucky Student Privacy Act creates another problem, even a witch-hunt of sorts. The bill states in Section 3, #4 (a): A student encountering a person of the opposite biological sex shall have a private cause of action against the school if school personnel:

1. Gave the person encountered permission to use facilities of the opposite biological sex; or
2. Failed to take reasonable steps to prohibit the person encountered from using facilities designated for use by the opposite biological sex.

Along with these stipulations, the student who encountered the transgender individual could take their case to a local circuit court and receive $2500 of so-called "compensation" from the school "for all psychological, emotional and physical harm suffered" (Section 2, #3 [b]) as quoted in Sen. Embry's bill.

Now, when I and many other out transgender individuals use the restroom, we are there to take care of our business wherever we deem comfortable for our identities and expression. We're just like everyone else. And to be honest, I want to be out of the restroom as soon as I can to continue my school day and to avoid any problems with the few transphobic individuals in school who may know my history and ask intrusive questions. (Unfortunately, that has happened.)
As long as private stalls are available, absolutely no one should suffer from "harm" in the presence of a transgender person unless the person creates a threatening or harmful situation for the other people in the facility. That's bullying, and can come from anyone of any identity. As well as this, one would have to take some pretty inappropriate measures in order to figure out if the person using the restroom is in fact transgender. That's that.

But why was the compensational aspect introduced? That's where the witch-hunt analogy is brought into play. Misinformed and/or transphobic students who encounter a person who they have heard is transgender could easily cook up a plot for receiving their "rightful compensation," as proposed in Sen. Embry's bill.

It's one thing for a school to offer private facilities for students who identify as gender-neutral or are not comfortable using male- or female-designated facilities because of their gender identity -- but to force all transgender students to do so is, in fact, a definite breach in privacy for students wishing to remain stealth and affirmed in their identity. So much for an act with the word "privacy" plastered on it.

On a positive note, several schools and governments around the nation (and the world, for that matter) have adopted a number of policies to allow transgender students to use the restrooms, locker rooms and even join sports teams that correspond with their gender identities, not their sex assigned at birth. And so far, in light of California's "School Success and Opportunity Act," affected in January 2014, problems of "embarrassment, shame and psychological injury to students" have yet to be reported with regards to transgender students using these facilities, unlike the outcomes predicted in Sen. Embry's proposed bill. We have a lot of catching up to do.

Thanks to the marginalization of and lack of education about transgender individuals (as shown by the proposed bill), as well as sensationalized media headlines that loom around transgender topics, it's tough to feel at ease. As a transgender teen who has risked losing friends and others close to me, struggled with "passing" and even struggled with the transition to use the facilities in accordance with my identity without worry or question, I want to feel equal to my peers. And I sure don't wish to have my authenticity judged through government measures.

Because of this, I wish to continue standing alongside anyone who is or may be subjected to injustice of this kind from their own school systems or government. To lend even more help, Kentucky has many groups that advocate for LGBT+ identified students through educating the public and lobbying for positive government action. These include Fairness Campaign, GLSEN's Bluegrass chapter and the ACLU of Kentucky. From my own work with GLSEN and the connections I've built with these groups, I am assured that these groups will not halt efforts until justice and fair treatment is ensured for all.

So, my statement to Sen. C.B. Embry and to those in support of the proposed bill? The only "declaration of emergency" here is that laws to segregate transgender students are taking precedence over respectful and enumerated policies that would truly keep LGBT+ youth safe and welcome in the school environment. And lastly: How we go about our business is none of yours.
MODEL DISTRICT POLICY ON TRANSGENDER AND GENDER NONCONFORMING STUDENTS

Model Language, Commentary & Resources
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>PURPOSE</td>
<td>1</td>
</tr>
<tr>
<td>A NOTE ON TERMINOLOGY</td>
<td>1</td>
</tr>
<tr>
<td>DEFINITIONS</td>
<td>2</td>
</tr>
<tr>
<td>MEDICAL CONSIDERATION AND IDENTITY DOCUMENTS</td>
<td>2</td>
</tr>
<tr>
<td>SCOPE</td>
<td>3</td>
</tr>
<tr>
<td>BULLYING, HARASSMENT, DISCRIMINATION</td>
<td>3</td>
</tr>
<tr>
<td>SAFE SCHOOLS LAWS</td>
<td>3</td>
</tr>
<tr>
<td>FEDERAL PROTECTIONS</td>
<td>3</td>
</tr>
<tr>
<td>PARENTAL INVOLVEMENT</td>
<td>3</td>
</tr>
<tr>
<td>PRIVACY/CONFIDENTIALITY</td>
<td>4</td>
</tr>
<tr>
<td>MEDIA AND COMMUNITY COMMUNICATION</td>
<td>4</td>
</tr>
<tr>
<td>DEALING WITH MEDIA REQUESTS</td>
<td>4</td>
</tr>
<tr>
<td>DISCRIMINATION AGAINST TRANSGENDER AND GENDER NONCONFORMING STUDENTS</td>
<td>5</td>
</tr>
<tr>
<td>OFFICIAL RECORDS</td>
<td>6</td>
</tr>
<tr>
<td>NAMES AND PRONOUNS</td>
<td>6</td>
</tr>
<tr>
<td>ACCESS TO GENDER-SEGREGATED ACTIVITIES AND AREAS</td>
<td>6</td>
</tr>
<tr>
<td>ADDITIONAL STEPS TO ENSURE EQUAL</td>
<td>6</td>
</tr>
<tr>
<td>ACCESS TO GENDER-SEGREGATED SPACES</td>
<td>6</td>
</tr>
<tr>
<td>DRESS CODE</td>
<td>7</td>
</tr>
<tr>
<td>DRESS CODE ALTERNATIVES</td>
<td>7</td>
</tr>
<tr>
<td>STUDENT TRANSITIONS</td>
<td>8</td>
</tr>
<tr>
<td>TRAINING AND PROFESSION DEVELOPMENT</td>
<td>8</td>
</tr>
<tr>
<td>PUBLICATION</td>
<td>8</td>
</tr>
<tr>
<td>CASE STUDIES: TRANSGENDER AND GENDER NONCONFORMING STUDENTS IN SCHOOL</td>
<td>9</td>
</tr>
<tr>
<td>ADDITIONAL RESOURCES</td>
<td>10</td>
</tr>
</tbody>
</table>
INTRODUCTION

This document presents our Model District Policy on Transgender and Gender Nonconforming Students, which outlines best practices for schools to ensure that all students are safe, included and respected in school, regardless of their gender identity or expression — including transgender and gender nonconforming students. The model presents some policy objectives, key points and alternatives to consider. It is meant to be adaptable to the specific needs of your school district, while keeping the original intent of the policy intact. Our model was developed by examining strong local policies and models and generalizing them for a national context.

This model has been constructed so that you can easily copy model language in order to draft your own district policy. Model policy language is indicated by a white background and sidebar language is indicated by a yellow background (or gray background if the model is printed in black and white).

If you have any questions about this document or would like assistance to construct your own policy pertaining to transgender and gender nonconforming students, you may contact GLSEN’s Public Policy Department at 202-621-5821 or by email at publicpolicy@glsen.org or NCTE at 202-903-0112 or by email at ncte@transequality.org.

The purpose of this policy is:

(1) to foster an educational environment that is safe and free from discrimination for all students, regardless of sex, sexual orientation, gender identity, or gender expression, and

(2) to facilitate compliance with local, state and federal laws concerning bullying, harassment and discrimination.

This policy should be interpreted consistent with the goals of reducing the stigmatization of and improving the educational integration of transgender and gender nonconforming students, maintaining the privacy of all students, and fostering cultural competence and professional development for school staff. Furthermore, this policy will support healthy communication between educators and parents/guardians to further the successful educational development and well-being of every student.

A NOTE ON TERMINOLOGY

Transgender and gender nonconforming youth use a number of words to describe their lives and gendered experiences. To list just a few examples, these students may refer to themselves as trans, transsexual, transgender, male-to-female (MTF), female-to-male (FTM), bi-gender, two-spirit, trans man, trans woman, and a variety of other terms. Terminology and language describing transgender individuals can differ based on region, language, race or ethnicity, age, culture, and many other factors. Generally speaking, school staff and educators should inquire which terms students may prefer and avoid terms that make these students uncomfortable; a good general guideline is to employ those terms which the students use to describe themselves.
Definitions

These definitions are provided not for the purpose of labeling students but rather to assist in understanding this policy and the legal obligations of District staff. Students may or may not use these terms to describe themselves.

**GENDER IDENTITY:** A person’s deeply held sense or psychological knowledge of their own gender. One’s gender identity can be the same or different than the gender assigned at birth. Most people have a gender identity that matches their assigned gender at birth. For some, however, their gender identity is different from their assigned gender. All people have a gender identity, not just transgender people. Gender identity is an innate, largely inflexible characteristic of each individual’s personality that is generally established by age four, although the age at which individuals come to understand and express their gender identity may vary based on each person’s social and familial social development.

**GENDER EXPRESSION:** The manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms.

**TRANSGENDER:** An adjective describing a person whose gender identity or expression is different from that traditionally associated with an assigned sex at birth. Other terms that can have similar meanings are transsexual and trans.

**TRANSITION:** The process in which a person goes from living and identifying as one gender to living and identifying as another.

**GENDER NONCONFORMING:** A term for people whose gender expression differs from stereotypical expectations, such as “feminine” boys, “masculine” girls, and those who are perceived as androgynous. This includes people who identify outside traditional gender categories or identify as both genders. Other terms that can have similar meanings include gender diverse or gender expansive.

**BULLYING:** Bullying means written, verbal or physical conduct that adversely affects the ability of one or more students to participate in or benefit from the school’s educational programs or activities by placing the student (or students) in reasonable fear of physical harm. This includes conduct that is based on a student’s actual or perceived race, color, national origin, sex, disability, sexual orientation, gender identity or expression, religion (or any other distinguishing characteristics that may be included by the state or local educational agency). This also includes conduct that targets a student because of a characteristic of a friend, family member, or other person or group with whom a student associates.

**MODEL DISTRICT POLICY ON TRANSGENDER AND GENDER NONCONFORMING STUDENTS**

**MEDICAL CONSIDERATIONS AND IDENTITY DOCUMENTS**

Some, but not all, transgender youth choose medical treatments to assist their transition. Treatments such as hormone therapy may be unaffordable, not medically indicated or contraindicated for many youth. Surgical treatments are generally not available for school-age transgender youth.

With this in mind, policies adopted by School Districts should not require proof of medical treatments as a prerequisite for respecting the student’s gender identity or expression. If a school has an objective basis that would justify questioning whether a student’s asserted gender identity or expression is genuine, it may ask for information to show the gender identity or expression is sincerely held. No particular type of information (such as medical history information) should be specifically required.

Transgender youth often have difficulty changing government-issued identity documents and other records to correspond to their preferred name and gender identity. In fact, some states do not allow correction of gender markers at all, and many allow individuals to change their gender marker on identity documents only upon the completion of medical procedures that may be unavailable or inappropriate for many youth. Due to varying state and federal policies, youth may have identity documents with inconsistent name and gender information. Amendment of state- or federally-issued identity documents should not be a prerequisite for respecting a student’s gender identity or expression.
**Harassment:** Harassment means written, verbal or physical conduct that adversely affects the ability of one or more students to participate in or benefit from the school's educational programs or activities because the conduct is so severe, persistent or pervasive. This includes conduct that is based on a student's actual or perceived race, color, national origin, sex, disability, sexual orientation, gender identity or expression, religion [or any other distinguishing characteristics that may be defined by the state or local educational agency]. This also includes conduct that targets a student because of a characteristic of a friend, family member, or other person or group with whom a student associates.

**Scope**

This policy covers conduct that takes place in the school, on school property, at school-sponsored functions and activities, on school buses or vehicles and at bus stops. This policy also pertains to usage of electronic technology and electronic communication that occurs in the school, on school property, at school-sponsored functions and activities, on school buses or vehicles and at bus stops, and on school computers, networks, forums, and mailing lists. This policy applies to the entire school community, including educators, school and District staff, students, parents, and volunteers.

**Bullying, Harassment, and Discrimination**

Discrimination, bullying, and harassment on the basis of sex, sexual orientation, or gender identity or expression shall be prohibited within the School District. It is the responsibility of each school and the District and all staff to ensure that all students, including transgender and gender nonconforming students, have a safe school environment. The scope of this responsibility includes ensuring that any incident of discrimination, harassment, or bullying is given immediate attention, including investigating the incident, taking age and developmentally appropriate corrective action, and providing students and staff with appropriate resources. Complaints alleging discrimination or harassment based on a person's actual or perceived gender identity or expression are to be taken seriously and handled in the same manner as other discrimination, bullying, or harassment complaints.

School administrators shall make every effort to keep transgender and gender nonconforming students at the original school site. Transfers shall not be a school's first or preferred response to harassment of transgender and gender nonconforming students and shall be considered only when necessary for the protection or personal welfare of the transferred student or when requested by the student or the student’s parent. The student or the student’s parent or guardian must consent to any such transfer.

**Safe Schools Laws**

Several states have antibullying and nondiscrimination laws that specifically protect students on the basis of gender identity and expression. In some jurisdictions, many elements of this model policy may be explicitly incorporated in policies or regulations implementing these state laws. With or without explicit state mandates, School Districts may adopt policies that ensure fairness, respect and safety for all students. The policy language included here regarding bullying, harassment, and discrimination is not comprehensive, and districts are encouraged to consult GLSEN’s Model District Anti-Bullying and Harassment Policy for more comprehensive recommended policy language.

**Federal Protections**

It is important to note that federal law, specifically Title IX, prohibits sexual harassment and discrimination based on gender throughout the country. While Title IX does not specifically use the terms “transgender” or “gender identity or expression,” courts and the U.S. Department of Education agree that harassment and other discrimination against transgender and gender nonconforming people constitutes illegal sex discrimination. For more information on these protections, please see the 2010 and 2014 Department of Education guidance, the GLSEN/PFLAG Claim Your Rights resources, and the NCTE Your Rights at School resource, listed in the Resource section.

**Parental Involvement**

The parents and guardians of transgender and gender nonconforming students can play a critical role both establishing a safe and accepting school environment for such youth. Transgender and gender nonconforming youth are both coming out in growing numbers and transitioning earlier. We encourage schools to work with supportive parents and guardians whenever possible to establish healthy communication and ensure the needs of the needs of these often vulnerable students are fully met.
DEALING WITH MEDIA REQUESTS

Schools and Districts may receive requests for information about transgender students or policies. These types of inquiries can occur when local media learns about a student transitioning or adoption of a policy regarding transgender students. In such cases, it is important that school and District staff respond appropriately in order to avoid undue and potentially harmful attention to individual students.

Organizations such as GLSEN and NCTE may be able to provide assistance to advocates and school staff dealing with this type of media scrutiny. In general, if the media inquires regarding the adoption of a new policy or the presence of transgender students, a designated spokesperson should develop information about appropriate terminology and use of preferred names and pronouns and prepare a statement or set of talking points regarding the issue for use with the media.

The school or District should avoid raising issues relating to transgender students or policies through public hearings or communication to the media or community. For example, a school should never make a community announcement or other statement simply because a transgender student is in the process of transitioning or has joined the school community. Additionally, in order to maintain the privacy of students and their families, any transgender students and their parents should be advised not to speak to the media.

Privacy/Confidentiality

All persons, including students, have a right to privacy, and this includes the right to keep one’s transgender status private at school. Information about a student’s transgender status, legal name, or gender assigned at birth also may constitute confidential medical information. Disclosing this information to other students, their parents, or other third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act (FERPA). The District shall ensure that all medical information relating to transgender and gender nonconforming students shall be kept confidential in accordance with applicable state, local and federal privacy laws. School staff shall not disclose information that may reveal a student’s transgender status to others, including parents and other school staff, unless legally required to do so or unless the student has authorized such disclosure.

Transgender and gender nonconforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information. The fact that a student chooses to disclose his or her transgender status to staff or other students does not authorize school staff to disclose other medical information about the student. When contacting the parent or guardian of a transgender student, school staff should use the student’s legal name and the pronoun corresponding to the student’s gender assigned at birth unless the student, parent, or guardian has specified otherwise. (See “Student Transitions” below.)

Media and Community Communication

When communicating to the media or community about issues related to gender identity, the school or District shall have a single spokesperson to address the issue. Rather than directly commenting on the issue, other District and school staff shall direct parents and the media to the designated spokesperson. Protecting the privacy of transgender and gender nonconforming students must be a top priority for the spokesperson and all staff, and all medical information shall be kept strictly confidential. Violating confidentiality of this information is a violation of this policy and may be a violation of local, state or federal privacy laws.
DISCRIMINATION AGAINST TRANSGENDER AND GENDER NONCONFORMING STUDENTS

Discrimination often affects transgender and gender nonconforming students in particular ways that prevent them from fully participating in the school environment and impacts their ability to learn. Discrimination can take forms such as ignoring or failing to respond to ongoing bullying and harassment, holding the student to strict or unreasonable applications of a school dress code that results in discipline and may prevent them from attending class, preventing students from using appropriate restrooms, harassment by teachers and staff, and even expulsion. By adopting policies such as this Model, School Districts will have procedures in place for accommodating both transgender or gender nonconforming students and the wider community without resorting to these forms of discrimination.

Numerous studies demonstrate that the bullying, harassment, and discrimination faced by transgender and gender nonconforming students is often pervasive. According to GLSEN’s Harsh Realities report, nearly nine in ten transgender students have been verbally harassed in the last year due to their gender expression (87%), and more than half have also been physically assaulted (53%). However, most (54%) transgender students do not feel that they can report incidents of victimization to school authorities, and less than a fifth of transgender students said that school staff intervened most of the time or always when hearing homophobic or negative remarks about someone’s gender expression. In fact, more than a third of transgender students report that they have heard school staff make homophobic statements, sexist remarks, or negative remarks about someone’s gender expression.

A hostile school climate can negatively impact the educational career of transgender students and have an effect on their capacity for employment throughout their lives. Nearly half of transgender students report regularly skipping school because of safety concerns, clearly impacting their ability to receive an education, and nearly one in six (15%) of transgender and gender nonconforming students face harassment so severe that they are forced to leave school. Transgender students who experience high levels of harassment had grade point averages about half a grade lower, and were also less likely to plan to go to college. Furthermore, the effects of school victimization may extend into adulthood. LGBT young adults who were targeted with LGBT-biased bullying and victimization in secondary school show elevated rates of depression, suicidal ideation, and risk for STDs and HIV (Russell, Ryan, Toomey, Diaz, & Sanchez, 2011).

The Doe v. Yunits (2000 WL 33162199 (Mass. Super. 2000)) case in Massachusetts provides an unfortunate but common example of how discrimination can prevent transgender and gender nonconforming students from receiving an appropriate education. A transgender girl in this middle school was repeatedly disciplined for wearing feminine clothing and make-up. Although any other girl at her school could have worn the outfits without being disciplined, she was not allowed to attend school without the principal approving her dress. The transgender student was forced to miss so many days that she was not able to pass the grade, and she eventually had to leave the school. The Doe court ultimately ordered the school to allow the student to wear any girls clothing that otherwise followed the general school dress code.
Official Records

The school shall maintain a mandatory permanent student record that includes a student’s legal name and legal gender. However, to the extent that the school is not legally required to use a student’s legal name and gender on other school records or documents, the school shall use the name and gender preferred by the student. The school will change a student’s official record to reflect a change in legal name or gender upon receipt of documentation that such change has been made pursuant to a court order, or through amendment of state or federally-issued identification. [School IDs, for example, are not legal documents and should use the student's preferred name.] In situations where school staff or administrators are required by law to use or to report a transgender student’s legal name or gender, such as for purposes of standardized testing, school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information.

Names and Pronouns

Every student has the right to be addressed by a name and pronoun that corresponds to the student’s gender identity. A court-ordered name or gender change is not required, and the student need not change his or her official records. It is strongly recommended that teachers privately ask transgender or gender nonconforming students at the beginning of the school year how they want to be addressed in class, in correspondence to the home, or at conferences with the student’s guardian.

Access to Gender-Segregated Activities and Areas

With respect to all restrooms, locker rooms or changing facilities, students shall have access to facilities that correspond to their gender identity. Schools may maintain separate restroom, locker room or changing facilities for male and female students, provided that they allow students to access them based on their gender identity.

In any gender-segregated facility, any student who is uncomfortable using a shared facility, regardless of the reason, shall, upon the student’s request, be provided with a safe and non-stigmatizing alternative. This may include, for example, addition of a privacy partition or curtain, provision to use a nearby private restroom or office, or a separate changing schedule. However, requiring a transgender or gender nonconforming student to use a separate, nonintegrated space threatens to publicly identify and marginalize the student as
transgender and should not be done unless requested by a student. Under no circumstances may students be required to use sex-segregated facilities that are inconsistent with their gender identity.

Where available, schools are encouraged to designate facilities designed for use by one person at a time as accessible to all students regardless of gender, and to incorporate such single-user facilities into new construction or renovation. However, under no circumstances may a student be required to use such facilities because they are transgender or gender nonconforming.

Physical Education Classes and Intramural and Interscholastic Athletics

All students shall be permitted to participate in physical education classes and intramural sports in a manner consistent with their gender identity. Furthermore, [unless precluded by state interscholastic association policies,] all students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity.

Other Gender-Based Activities, Rules, Policies and Practices

As a general matter, schools should evaluate all gender-based activities, rules, policies, and practices — including but classroom activities, school ceremonies, and school photos — and maintain only those that have a clear and sound pedagogical purpose. Students shall be permitted to participate in any such activities or conform to any such rule, policy, or practice consistent with their gender identity.

Dress Code

Schools may enforce dress codes pursuant to District policy. Students shall have the right to dress in accordance with their gender identity, within the constraints of the dress codes adopted by the school. School staff shall not enforce a school’s dress code more strictly against transgender and gender nonconforming students than other students.
Student Transitions

In order to maintain privacy and confidentiality regarding their transition and gender identity, transgender students may wish — but are not required — to transition over a summer break or between grades. Regardless of the timing of a student's transition, the school shall act in accordance with the following age-appropriate policies.

**ELEMENTARY SCHOOL:** Generally, it will be the parent or guardian that informs the school of the impending transition. However, it is not unusual for a student's desire to transition to first surface at school. If school staff believe that a gender identity or expression issue is presenting itself and creating difficulty for the child at school, approaching parents about the issue is appropriate at the elementary level. Together, the family and school can then identify appropriate steps to support the student.

**SECONDARY SCHOOL:** Generally, notification of a student's parent about his or her gender identity, expression or transition is unnecessary, as they are already aware and may be supportive. In some cases, however, notifying parents carries risks for the student, such as being kicked out of the home. Prior to notification of any parent or guardian regarding the transition process, school staff should work closely with the student to assess the degree to which, if any, the guardian will be involved in the process and must consider the health, well-being, and safety of the transitioning student.

When a student transitions during the school year, the school shall hold a meeting with the student (and parents if they are involved in the process) to ascertain their desires and concerns. The school should discuss a timeline for the transition in order to create the conditions supporting a safe and accepting environment at the school. Finally, the school shall train school administrators and any educators that interact directly with the student on the transition plan, timelines for transition, and any relevant legal requirements.

Training and Professional Development

The District shall conduct staff training for all staff members on their responsibilities under applicable laws and this policy, including teachers, administrators, counselors, social workers, and health staff. Information regarding this policy shall be incorporated into training for new school employees.

To the extent funding is available, the School District shall implement ongoing professional development to build the skills of all staff members to prevent, identify and respond to bullying, harassment and discrimination. The content of such professional development shall include, but not be limited to:

(i) terms, concepts, and current developmental understandings of gender identity, gender expression, and gender diversity in children and adolescents;

(ii) developmentally appropriate strategies for communication with students and parents about issues related to gender identity and gender expression that protect student privacy;

(iii) developmentally appropriate strategies for preventing and intervening in bullying incidents, including cyberbullying;

(iv) school and district policies regarding bullying, discrimination, and gender identity and expression issues and responsibilities of staff.

Publication

This policy will be distributed annually and will also be included in any student codes of conduct, disciplinary policies, student handbooks, and school websites.
CASE STUDIES: TRANSGENDER AND GENDER NONCONFORMING STUDENTS IN SCHOOL

The model policy is based on the principle of treating students in a manner consistent with their gender identity. The person best situated to determine a student’s gender identity is that student himself or herself, or in the case of young students not yet able to advocate for themselves, a parent or guardian. A student’s gender identity may be established by their consistent assertion of that identity at school — or by confirmation from a parent, family member, family friend, counselor, health care provider, staff member or another person familiar with the student. The following examples illustrate how the application of this principle to a variety of situations. These examples do not define every transgender or gender nonconforming student. Transgender and gender nonconforming students form a diverse community, and they may differ in how they present, including differences in factors like their comfort level with being known as transgender or gender nonconforming, their transition status, their age, and their gender expression. No student should ever be required to dress or present themselves in a stereotypically feminine or masculine way in order to be treated respectfully.

EXAMPLE: Sharon and Karen both wear long ponytails, minimal makeup, and a wardrobe that includes t-shirts, jeans, skirts, blouses, sneakers, and heeled sandals. Both identify as female and use female pronouns and other gendered language. Karen, however, was assigned male at birth and her legal name is Calvin. Both students have a female gender identity and should be treated as such at school.

EXAMPLE: Although Casey attended kindergarten and first grade as a boy, about midway through first grade, she and her family decided that Casey would transition and begin presenting as a girl. Casey prefers to dress in stereotypically feminine attire such as dresses or skirts. Although she is growing her hair out, it is still in a rather short, typically boyish haircut. Casey, her parents, and school administrators have asked her friends and teachers to use female pronouns to address her, but occasionally her friends and teachers make mistakes. Casey has a female gender identity and should be treated as such at school.

EXAMPLE: Juan was named Juanita at birth. Upon the start of middle school, he began to live as a boy and asked everyone to call him “he.” Several months into the school year, after a round of particularly hurtful bullying, for a few days he presented as female and asked people to call him Juanita. After a few days, however, he realized he could not be the Juanita everyone wanted him to be, and he went back to being Juan with male pronouns. Despite this brief change in presentation, Juan has a male gender identity and should be treated as such at school.

EXAMPLE: As part of the school’s annual Spirit Week, each year there is a day when the school’s football players dress like cheerleaders. During this day, while the football players are dressed in a stereotypically feminine way, they are not expressing a sincere gender identity. Instead, they are clearly dressing in a costume meant to be humorous, and therefore this situation falls outside the scope of the model policy.
ADDITIONAL RESOURCES


GLSEN Changing the Game Resources, accessible at http://sports.glsen.org/

GLSEN Model District Anti-Bullying and Harassment Policy, accessible at http://www.glsen.org/binary-data/GLSEN_ATTACHMENT/file/000/001/1718-1.pdf

GLSEN & PFLAG. Claim Your Rights! Report Bullying, Harassment, or Discrimination of Lesbian, Gay, Bisexual, and Transgender (LGBT) Students, accessible at: http://community.pflag.org/claimyourrights


Massachusetts Dept. of Elementary and Secondary Educ. (2013), Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment: Nondiscrimination on the Basis of Gender Identity.


Toronto District School Board (2011), TDSB Guidelines for the Accommodation of Transgender and Gender Non-Conforming Students and Staff, accessible at http://www.tdsb.on.ca/wwwdocuments/programs/gender_based_violence_prevention__gbvp/docs/tdsb%20transgender%20accommodation%20FINAL_1_.pdf


U.S. Dept. of Educ., Office for Civil Rights (Apr. 29, 2014). Questions and Answers on Title IX and Sexual Violence, accessible at http://www2.ed.gov/about/offices/list/ocr/ (see page 5 for coverage of gender identity discrimination)

Washington Superintendent of Schools (2012), Prohibiting Discrimination in Washington Public Schools: Guidelines for school districts to implements Chapters 28A.640 and 28A.642 RCW and Chapter 392-190 WAC.
Thank you for the opportunity to submit a statement on ending the school to prison pipeline. The Gay, Lesbian & Straight Education Network (GLSEN) is the leading national education organization working to create safe schools for all students. Established in 1990, GLSEN works to ensure that every child learns to respect and accept all people, regardless of sexual orientation or gender identity/expression. We applaud our partners throughout the advocacy world who have spent considerable time and energy to study this problem and propose solutions, and we look forward to continuing to partner with them.

GLSEN is pleased to work with other lesbian, gay, bisexual and transgender (LGBT) organizations to submit a statement highlighting the impact that exclusionary discipline and zero tolerance policies have on LGBT youth. While our work has largely focused on bullying and harassment, GLSEN and our partner organizations have worked tirelessly to ensure fair treatment for LGBT youth within the school discipline and criminal justice systems. We know that many youth face excessive discipline practices that may result from their perceived sexual
orientation or gender identity. We believe such issues should be taken into consideration in any
conversation examining the school to prison pipeline.

In recent years there has been an unprecedented conflation of school discipline policy and
sanctions traditionally reserved for the juvenile justice system. In fact, the connection between
school discipline and the juvenile courts has become so close that it led to the coining of the
phrase “school-to-prison pipeline.” The pervasive use of exclusionary discipline and zero-
tolerance policies that have the effect of funneling youth out of the school system and into the
juvenile justice system impacts a broad swath of youth across lines of race, ethnicity, gender
and sexual orientation and gender identity/expression; and at their core, these policies threaten
our national aspiration to make schools safe and supportive environments for all young people.

GLSEN, along with our diverse coalition of LGBT advocacy organizations, share a concern for
the well-being of all students, and applaud the many federal efforts—such as the U.S.
Department of Education and U.S. Department of Justice’s Supportive Schools Discipline
Initiative—to understand and address this issue. Still recent data from the U.S. Department of
Education’s Office of Civil Rights indicates that we have a long way to go, particularly where
exclusionary discipline is applied to youth of color. For instance, although black students made
up only 18 percent of those enrolled in the schools sampled, they accounted for 35 percent of
those suspended once, 46 percent of those suspended more than once and 39 percent of all
expulsions. Further, one in five black boys and more than one in 10 black girls received an out-
of-school suspension. Overall, black students were three and a half times likely to be suspended
or expelled than their white peers. And in districts that reported expulsions under zero-
tolerance policies, Hispanic and black students represent 45 percent of the student body, but 56
percent of those expelled under such policies.

GLSEN and partner organizations have for some time been exploring intersections between the
work of organizations seeking to dismantle the school-to-prison pipeline for reasons related to
disproportionate impact on youth of color, and our own work focused primarily on LGBT
youth. What we now know as a result of this exploration is that the interest in making schools
places where youth are valued regardless of sexual orientation or gender identity/expression is wholly consistent with those of other civil rights organizations that are seeking to stem the flow of youth of color from schools and into the juvenile justice system. In fact, many youth of color subjected to exclusionary discipline are also LGBT. Still, while many civil rights organizations have the benefit of ample data, collected by the U.S. Department of Education Office of Civil Rights, to support their contention that students of color are disproportionately affected by zero tolerance and other exclusionary discipline policies, there is a relative scarcity of data on how these policies may affect LGBT students.

Only one key study, published in the Journal of the American Academy of Pediatrics, exists that expresses what we believe anecdotally to be true, that “non-heterosexual youth suffer disproportionate educational and criminal-justice punishments that are not explained by greater engagement in illegal or transgressive behaviors.” While we have ample support—from GLSEN’s widely-recognized National School Climate Survey, for instance—for the contention that many schools remain hostile climates for LGBT students, not only because of bullying and harassment from other students but because of mistreatment by school officials, there is a relative lack of scrutiny given to the question of whether, and to what extent, LGBT students are: 1) disproportionately subjected to exclusionary discipline, and 2) funneled into the juvenile justice system as a result.

This data gap has proven to be a significant impediment to our administrative advocacy efforts to protect the rights of LGBT students—as co-equal with all other students—in schools. While there are several interdepartmental working groups in the federal government focused on studying bullying of LGBT students (which we applaud) there is no serious effort to examine the extent to which official school discipline policy has similar effects on LGBT students as on students of color. Nor do we know whether a disproportionate number of students of color affected by exclusionary discipline may be LGBT. What we do know is that in juvenile justice systems across the country, there is a disproportionality of LGBT youth with some estimates as high as 30 percent of youth in locked confinement being identified as LGBT.
We firmly believe that the increasing use of exclusionary discipline and zero tolerance policies in our schools is the wrong approach and contributes to unhealthy school climates, strengthens, rather than dismantles the school-to-prison pipeline and may be a contributing factor to the disproportionally high numbers of LGBT youth in custody.

Relatedly, over the last several years, the issue of bullying and harassment in schools has garnered increased public attention and media coverage. Each story has generated new and increased public interest, leading to calls for Congress to pass anti-bullying and anti-harassment legislation and for the White House to take action. We recognize that there are currently a number of legislative approaches before Congress on how best to address bullying and harassment in our nation’s schools, including the Safe Schools Improvement Act, the Student Non-Discrimination Act, and the Successful, Safe, and Healthy Students Act. Each bill addresses the problem of bullying and harassment in various ways, with the same overall goal: to ensure that America’s schools are safe for all children and to create productive and effective spaces for learning. But our support for these pieces of legislation should not be understood to be a call for continued disproportionate application of punishment against those who engage in bullying behavior. Indeed, the goal of safe schools cannot be accomplished if some children are disproportionately subjected to exclusionary discipline and funneled toward the criminal justice system, whether because of their race, ethnicity sexual orientation, or gender identity/expression.

Moving forward, we respectfully request that in addition to supporting a balanced legislative approach, any proposed solutions will include measures that collect and examine data about the experiences of LGBT youth with exclusionary discipline and zero tolerance policies, and interpret current civil rights protections to include and protect LGBT students who also disproportionately experience bullying and harassment.
Examples of Disproportionate Discipline on LGBT Youth

- After a surveillance tape showed him and another male student kissing on school grounds, a 17-year old male student at Alice High School in Texas claims he was removed from the cheerleading squad and suspended from school for two days as punishment. Since public displays of affection are common occurrences in the school and rarely disciplined, the student claims his sexual orientation was targeted by the administration. Though the school has denied these accusations, they have refused to articulate a reason for his punishment and have stood by his suspension.

- Darnell “Dynasty” Young, an openly gay 17-year-old student, was suspended and subsequently expelled when he fired a stun gun into the air to ward off bullies. On April 16, 2012, Young found himself surrounded by six students who hurled homophobic insults as well as rocks and glass bottles at him. Young fired the stun gun into the air as a warning and was then handcuffed and disciplined by school administrators for breaking their ‘zero tolerance’ policy. Previous to this incident, the school administrators had blamed Young for his harassment, saying his dress and behavior was too ‘flamboyant’ and needed to be more stereotypically masculine.

- Asante Cotman, a 17-year-old openly gay junior at Charles City High School in Virginia, was suspended by school officials told him the pair of heels he was wearing was “disrupting the school.” Refusing to take the heels off, the school administration suspended him for three days. Asante believes his outfit was not bothering anyone nor was inappropriate for the school. After serving out his suspension, Asante hopes this incident sparks discussion and reflection within his community to prevent similar incidents from happening again.

---

1 Criminal-justice and school sanctions against nonheterosexual youth: A national longitudinal study, KEW Himmelstein, H Brückner - Pediatrics, 2011 - Am Acad Pediatrics
LGBTQ Progress & Milestones

Sexual Liberty
1961: 1st state repeal of sodomy law (IL) → 1986: S. Ct. upholds constitutionality of sodomy laws (Bowers v. Hardwick) → 2003: S. Ct. reverses itself; gay people have equal liberty and respect for their private lives (Lawrence v. Texas)

Non-Discrimination

Relationship Recognition

Federal Laws & Challenges

Gender Identity

Life’s Continuum (youth, parenting, aging)

Through strategic litigation, public policy advocacy, and education, Gay & Lesbian Advocates & Defenders works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation.
Good evening everyone:

I’m Gary Buseck.

This year marks GLAD’s 35th anniversary. And at these milestones I always think it is good to remember our heroes. There are many, but I would like to mention two of mine: John Ward, GLAD’s founder, who had the vision back in 1978 that we could change the world, and John Mitzel, (or just plain Mitzel) the owner of Calamus Bookstore who died three weeks ago today. It is fair to say that Mitzel was one of the first loud, uncompromising voices of gay liberation – a founder of the gay publication he named Fag Rag back in 1971. He also wrote one of his books – “The Boston Sex Scandal” – about the events that gave birth to GLAD.

This is not going to be a typical GLAD legal update. It’s more like a call to action. And I want to argue for pessimism around a glass half-empty.

Now, everyone says it’s good to organize a talk into three parts. So, here are my three parts:

1. Things used to be really bad. Ok, enough for Part 1.

2. It’s gotten a helluva lot better. Well, I hope you all know about our gains– marriage equality in the 6 New England states; DOMA gone; people with HIV protected under the Americans with Disabilities Act; sodomy laws unconstitutional; laws banning discrimination based on sexual orientation in all six New England states; and laws banning discrimination based on gender identity and expression in 5 of the 6 New England states. Ok, done with Part 2.

Part 3. But don’t kid yourself – that doesn’t mean we’re done.

So, what I really want to talk about tonight is my worry about my complacency or smugness or perhaps it’s really about empathy.

Back in 1979, I met John Ward when I was a second-year Boston College law student. He took me to a Boston gay lawyer gathering. This group was social and John’s agenda was to get them from socializing to activism. Well, I’ve never forgotten that event.

As a naïve, lower-middle-class boy from Erie, PA, I found myself in an astonishingly beautiful restored row house in the South End, standing around in a sumptuous library filled with handsome men drinking and talking. Our host, a partner in a prestigious Boston law firm, sitting in a beautiful arm chair responded to something provocative that John had said with this, “I’m not oppressed. No gay person needs to be oppressed.”

I was shocked. Honestly still am!

I mention it tonight because I think I am – we all are – today – in danger of being lulled into a similar complacency.
My world’s looking pretty good. I’m not feeling oppressed. Got my job. Got my family.
Getting my state and federal benefits just like everyone else.

Guess we’re done.

That’s a pretty natural reaction. We’ve worked hard; we’ve invested a lot; we’ve accomplished a lot; we’re kind of tired and don’t we get to relax.

But the fact is it’s not so good for many of our brothers and sisters and – truth be told – not yet so good for any of us.

Because is it really so good for any us when our legal fate in the U.S. Supreme Court rests in the hands of one justice and we can’t be sure where that court might be headed in the future? Or when Congress refuses year after year to pass national protections against employment discrimination? Or that when scientists measure disgust – you know, how we react at the prospect of eating a cockroach let’s say – that gay men and our sexuality sit right at the very tippy top of that list. Not so good.

So, do we think my non-oppressed law partner sitting in splendor in the South End in 1979 was really free? Or simply anesthetized by the sense of safety that money and privilege had bought him?

Let me posit some pieces of a goal so we can test where we are in relation to it.

Imagine a world in which every child can grow up experiencing and developing their sense and expressions of sexuality and gender without any negative cultural bias or stereotypes. And where no sexual orientation or gender identity or expression of itself has negative consequences in education, employment, housing, medical care, access to public services or accommodations or in one’s participation in any level of government or civic institutions. And where sexual orientation or gender identity has no relevance to personal safety and well-being anywhere in the world and particularly for those young or elderly or in the care or custody of a government.

Now, think about some of the things we know to be true today – not 35 years ago – but today:

For our young people in school – where the most common slur remains, “Oh that’s so gay.” Where so-called comprehensive sex education virtually never includes the sexuality of LGBTQ youth. Where the curriculum is a wasteland when it comes to teaching America’s youth about LGBT history. Where pitched battles are fought over innocuous books that show the broad diversity of America’s families. Where we win those legal battles but lose those wars, when schools choose the safer path of dropping the book in order to avoid conflict and cost.

And that does not even touch on the epidemic of bullying and, more broadly, the fact that LGBT people are by far the largest target of hate crimes in America measured by percentage of the population.

Are we really ready to declare victory?
And if we think things are bad in our schools, peek at the lives of youth who are homeless or in the care of the state. We could talk endlessly about this topic but let me just say that between 20 and 40% of all homeless youth in the country, i.e., hundreds of thousands of youth, are lgbt. And the prime causes? Conflict and abandonment at home and victimization in school. When lgbt youth end up in foster care or in the juvenile justice system, they are totally misunderstood and unattended to.

GLAD has been ramping up its efforts in the youth area. Roughly three full-time lawyers plus a number of education staffers attempt to address these many issues by doing outreach to young people and to the people who work with youth; collaborating with other organizations and public officials on improving policies and regulations in areas affecting youth; intervening legally in situations where youth are being treated inappropriately; and exploring litigation where changes in the law might broadly improve the lives of our youth.

We could easily become GLYAD – Gay & Lesbian Youth Advocates & Defenders – and the work for and with lgbtg youth would still overwhelm us at our size today.

And let’s talk about employment, which remains a huge issue for our community. Many of us do not feel secure at work and are unable to be open and honest about our lives on the job. Fully 60% of lgbt employees encounter antigay slurs or jokes at work, and roughly 25% of lgb employees report hitting the “gay ceiling,” being passed over for promotion because of their sexual orientation. And a full quarter of transgender employees report having been fired from a job solely because of their gender identity.

Are we ready to declare victory?

GLAD is refocusing on employment knowing that the simple fact that we have laws against employment discrimination in the 6 New England states (with a few holes in our transgender discrimination protections) is not enough. We need to explore new and creative ways to use the law to improve this situation. One thing we are doing right now is charting a path to ending employers’ refusal to extend health insurance benefits to our spouses when different-sex spouses are covered.

And let me make a pitch. If you work for a company that is self-insured and that refuses to extend spousal coverage to your spouse or if you know someone in that situation, let us know. Email me. Contact our GLAD Answers service. But get in touch.

Now, think about HIV for moment. And that’s one of the problems today – we collectively have not been thinking about HIV. And while we have been diverting our eyes, bad things have been happening. The CDC identifies 7% of the population as men who have sex with men, and they account for 78% of all new infections, a 12% increase among gay men between 2008 and 2010. And of all the new infections for gay men the highest number is among young African-American men.
Roughly a thousand teenagers a month are becoming infected and 45% of them are African-American. The most heavily affected population right now is gay males between 13 and 24, who experienced a 22% increase between 2008 and 2010.

Are we ready to declare victory yet?

GLAD is committed to being a part of a renewed community effort to stamp out this disease for good – something that all the experts agree is within reach if only we will focus our attention on this work.

And for those living with the disease, GLAD has most recently been focused on lipodystrophy, a side effect of some aids medications that cause pockets of fat accumulation in the body, commonly around the neck and shoulders, creating both physical and emotional discomfort and harm.

Well, as seems so amazingly common with medical treatments facing lgbt people, the insurance industry deems treatment of lipodystrophy “cosmetic” and therefore not covered. GLAD has challenged this absurd position a number of times and prevailed. However, we realized that the insurers would effectively see GLAD coming; cave; provide the coverage to our client; but then continue as a general practice to refuse to cover this important treatment.

So we decided that a legislative fix was necessary and we started here in Massachusetts. GLAD is leading a coalition to pass legislation to mandate that insurers end their callous treatment of people living with HIV and cover lipodystrophy treatments. So, if glad or some other organization reaches out to you to lend your voice in support of this bill in the months ahead, please, please respond.

Criminalization of HIV also remains an issue, whether based on sexual activity or other interactions with people with HIV. GLAD has worked on this before, and we are now providing counsel to a young person with HIV who has been overcharged with the felony of attempted murder, based upon their interaction with a police officer that would have been a simple assault in any other case.

Youth, employment, HIV – and we are just getting started. For all of our transgender brothers and sisters, the issues are even broader and vastly in need of urgent legal attention.

Does anyone think our culture’s policing of gender and gender expression is good for any of us? Does anyone think that work is done?

We are committing new resources to GLAD’s Transgender Rights Project, including having added a new staff attorney in September, to address as many of the issues facing the transgender community as we can.

For example, we are representing a young transgender woman who was denied a bed in the women’s dormitory in a homeless shelter and made to sleep in a storage area. And we are awaiting a decision from the highest court of Maine on a challenge to the denial of access to the
girls’ restroom for a transgender girl in elementary school. And then there is the coalition work where glad is critical to the effort to finish the work on the Massachusetts transgender non-discrimination law to add protections in public accommodations. Of course, there are the rampant exclusions of gender transition care from so many, many insurance policies and from Medicare and Medicaid – and GLAD is in the thick of the strategic and practical work to end these exclusions, both locally and nationally.

Beyond these areas of concern, there are so many more that I don’t have time to give more than a mention.

Think of the lgbt elders who are afraid to be out in a long-term care facility – and for good reason given recent studies. In one, 43% had witnessed or experienced mistreatment of lgbt seniors. GLAD is working to put additional resources into this new, important area.

Are we ready to declare victory?

Why isn’t our country more hospitable to asylum claims from lgbt people from around the world who are harassed, hunted down, criminalized, even tortured and killed simply for being lgbt?

Why is it still OK to exclude transgender soldiers from our military? Why do our laws continue to fail to make room for how our families are formed and thus fail to recognize those whom our children surely know are their parents?

Why is there so much credence given to the idea that any person, based upon a simple statement of religious belief, can discriminate against an lgbt person in any way – even simple things like selling them a cake?

So, can I ask you one last time. Do we really think it would be OK to declare victory? I’m pretty sure your answer is the same as mine: NO!

OK. I don’t want to be a total Debbie Downer. We surely have knocked down some huge barriers in the past 35 years. We’ve made inroads in some areas of heterosexual privilege – like marriage and the military and the Boy Scouts.

We have marvelous opinions from important courts like our Massachusetts Supreme Judicial Court with the beautiful opinion in the Goodridge case written by our distinguished honoree tonight, Chief Justice Margaret H. Marshall. Those opinions are laying the groundwork for legal progress to be made in the future as the words dignity and equality for example are associated with our community.

More important, we have created momentum and opportunities to push forward.

Let’s keep going. Let’s keep building on this momentum. Let’s take the attitude that the glass is still half empty and be pessimistic for justice and equality’s sake.
As GLAD does its legal work, I submit it is our duty to focus intensely on what is missing in the half empty glass. We need you to join us just as intensely in that focus on what still needs to be done.

Let me come full circle and back to one of my two heroes – John Mitzel. As Michael Bronski just wrote in remembering him, John was “one of the generation who invented and fought for gay liberation.” For the sake of our “greatest generation,” let’s remember and honor them by finishing the work and making total liberation a reality.

From everyone at GLAD, thank you for your support. We do this work because you make it possible.

Thank you.
Have No LGBTQ Youth Clients? Think Again. What Every Attorney Representing Youth Needs to Know

By: Vickie L. Henry, Senior Staff Attorney, Gay & Lesbian Advocates & Defenders

All lawyers will have clients who are or are perceived to be LGBTQ. To fulfill your professional and ethical obligation to be a zealous advocate, particularly when you represent LGBTQ children and adolescents, it is essential that you educate yourself about the unique stressors and risk factors of this largely hidden population, and how they might affect your client’s experience in court.

But first, let’s cover some basic vocabulary so we understand each other:

Definitions

**LGBTQ** means lesbian, gay, bisexual, transgender and queer. (For some, the Q means questioning.)

**Gender identity** is the individual’s internal sense of being male or female.

**Gender expression** refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns, and social interactions.

**Queer** is an umbrella term that includes anyone who a) wants to identify as queer, and b) who feels somehow outside of the societal norms in regards to gender, sexuality and/or even politics, including young straight allies.

**Sexual orientation** refers to a person’s physical and/or emotional attraction to the same and/or different gender. “Heterosexual,” “bisexual” and “homosexual” are all sexual orientations. A person’s sexual orientation is distinct from a person’s gender identity and expression.

**Transgender individuals** are people with a gender identity that is different from the sex assigned to them at birth.

**Gender transition** is the process by which a transgender person goes from living and working as one gender to another.

For more explanation, see

The Genderbread Person.

http://itspronouncedmetrosexual.com/2012/01/the-genderbread-person/
Why You Need to Know if Your Client is LGBTQ

At a minimum, under Massachusetts’s ethical rules, an attorney shall not “engage in conduct manifesting bias or prejudice based on . . . sex . . . or sexual orientation against a party, witness, counsel, or other person.”1 Bias and prejudice are harmful. But ignorance can be just as harmful.

If a youth’s LGBTQ status is a significant factor in their case (e.g., if it relates to why they are court-involved or which parent should get custody), failure to have this issue on your radar screen means your representation may fall short of your ethical obligation to provide competent representation, including inquiry into and analysis of the factual and legal elements of the matter.2 Even if the relevance of your clients’ LGBTQ status is not immediately apparent, various statistics indicate that their actual or perceived sexual orientation and gender expression can affect their experience in the judicial system.

Here are just some of the statistics:

LGBTQ Status Makes a Difference:

- Though LGBTQ youth represent only 5-7% of the overall youth population, they comprise:
  - 13-15% of the juvenile justice system.3
  - 40% of out-of-home or at-risk youth.4
- LGBTQ adolescents experience punishment by school and criminal justice authorities disproportionate to their rates of transgressive behavior, being between 1.5 and 3 times as likely as their peers to experience sanctions for similar behavior.5
- LGBTQ youth in the juvenile justice system are twice as likely as their peers to have experienced family conflict, child abuse, and homelessness.6
- LGBTQ youth without family support and involvement in their case face more negative outcomes at every stage in the juvenile justice system.7
- LGBTQ youth who have experienced family rejection are at very high risk for health and mental health problems (suicide attempts, depression, illegal drug use, and risk for HIV and sexually transmitted diseases).8

So, the risk is significant that the LGBTQ status of a young client may be a substantial, relevant factor in your representation – and one that you cannot ignore.

7. See Majd.
How to be a Zealous Advocate for an LGBTQ Youth

There are, of course, still other ways to better represent LGBTQ youth more effectively:

Most significantly, you need to develop basic cultural competence about LGBTQ youth. Unlike other demographic characteristics such as race or age, LGBTQ status may not be readily recognizable. You need to set the stage for a client to feel that it is safe to tell you that he or she is LGBTQ. You also need to be prepared to deduce for yourself if these issues are at play by considering the question as you review the facts and circumstances of the case. On the other hand, forcing the issue could damage your attorney-client relationship and it may not be necessary for effective representation as long as you are aware of the issue. If, for example, your client is an effeminate boy, you do not need to know if he is gay, bisexual, or transgender to get a safety plan in place at school. You should go a step further though and determine if the school climate is LGBTQ positive or not. If it is not, you are more likely to need to monitor compliance and enforce the safety plan. If you cannot identify any LGBTQ clients on your roster, chances are you are missing what is in plain sight and you should re-evaluate.

Here are some additional things you, as a lawyer, can do:

• Familiarize yourself with LGBTQ terminology.

• Display LGBTQ-positive signs such as rainbow stickers, posters, or books.

• Tell all clients (not just ones you perceive to be LGBTQ) that you are an ally who will work hard for your client, no matter their sexual orientation, gender identity or expression, or HIV status.

• Tell your clients that it could be helpful to their case if they are LGBTQ to tell you.

Here are some things to avoid:

• Don’t use the terms “homosexual,” “lifestyle,” or “choice” (some find these terms off-putting).

• Don’t assume someone’s sexual orientation or gender identity.

• Don’t “out” the youth to others.

• Don’t call someone’s romantic interest their “friend.”

More Resources:

• Don’t use the terms “homosexual,” “lifestyle,” or “choice” (some find these terms off-putting).

• Don’t assume someone’s sexual orientation or gender identity.

• Don’t “out” the youth to others.

• Don’t call someone’s romantic interest their “friend.”

   http://www.wikihow.com/Respect-a-Transgender-Person
   www.GLADAnswers.org
   www.GLAD.org/youth
Beyond the Basics

Beyond basic cultural competence, there are still other ways to better represent an LGBTQ youth client:

Be open to whether LGBTQ issues are at play
In every matter, you should be mindful whether the problems that have caused your client to need services are related to the client's actual or perceived sexual orientation, gender identity or expression, or HIV status. For example, if your client is skipping school, consider the possibility that he or she is being bullied because he or she is or is perceived to be LGBTQ even if he or she does not immediately tell you that. You may need to do some sleuthing here. Review school discipline reports and comments made about your client on Facebook and other social media for anti-LGBTQ statements, including about failure to conform to sex stereotypes. Also subtly ask family and friends why they believe your client is skipping school. And, being mindful of stereotypes, consider your client’s appearance and manner to assess whether others might perceive your client to be LGBTQ. This could require you to confront discrimination and institutional bias where it arises.

Confront your own discomfort
You might think a young client is “flamboyant” and would “get along” better if only he or she would just tone it down. At the same time, the client likely feels he or she is simply being himself or herself. Clients get to make choices as long as they are educated about them, even if you are uncomfortable with the choice.¹

Help educate family members
You may face a situation where parents are at odds with their child because their child is LGBTQ, or parents who are at odds with each other because one is supportive of the youth and the other is not. In some cases, you can begin to educate the non-supportive parent. Resources such as the Family Acceptance Project offer research-based information to help parents evolve in their acceptance of their child. It also addresses religious questions, as do movies such as “For The Bible Tells Me So.” In other cases, you may have to help the young person advocate for a supportive placement using research to show the harm of an unsupportive placement. Every case is different and needs individual consideration.

Maintain client confidences
Your client is the gatekeeper of information about his or her sexual orientation, gender identity and expression, and HIV status. As an attorney, you are obligated to keep client confidences.² The urgency is particularly great because family rejection can be devastating for an LGBTQ youth.

Know how to find LGBTQ resources
It is important to have a referral list of LGBTQ-friendly providers of services for the youth client. If you do not have one, you can develop such a list by calling GLAD’s free information line, GLAD Answers:
800-455-GLAD (Mondays-Fridays, 1:30-4:30 p.m.)
www.GLADAnswers.org

If you take these basic steps, you can make the world of difference to young LGBTQ clients and even serve as a role model to your colleagues.

# LGBTQ Youth Legal Issues

<table>
<thead>
<tr>
<th>Setting</th>
<th>Issues</th>
<th>High risk populations</th>
</tr>
</thead>
<tbody>
<tr>
<td>School-based</td>
<td>Discrimination</td>
<td>Youth of color</td>
</tr>
<tr>
<td></td>
<td>Bullying &amp; Harassment</td>
<td>HIV+ youth</td>
</tr>
<tr>
<td></td>
<td>Punishment rates / disproportionate punishment / school to prison pipeline</td>
<td>Transgender youth</td>
</tr>
<tr>
<td></td>
<td>GSAs</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Formation (denial generally; middle schools)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Name</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- No sponsor</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Equal access to resources</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Parents’ permission is required</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Student speech/First Amendment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Expressive t-shirts</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- School newspapers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Day of Silence</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Internet filtering</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dances/prom</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dress and dress codes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Generally</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Yearbook</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Graduation (gowns &amp; clothes)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Curriculum inclusiveness</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Sex/health education</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Representation of LGBTQ people &amp; families</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Single sex education (gender stereotypes)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sports – participation in</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Transgender inclusion:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Sex-segregated facilities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Overnight trips/field trips</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Name changes and gender markers /records management (while in school &amp; after-the-fact)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Schools outing youth</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rights in college &amp; university</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Advocates</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Employment discrimination/retaliation for advocating for youth</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Speech issues</td>
<td></td>
</tr>
</tbody>
</table>
### LGBTQ Youth Legal Issues

<table>
<thead>
<tr>
<th>Setting</th>
<th>Issues</th>
<th>High risk populations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Community-based</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Family rejection</td>
<td>Undocumented LGBTQ &amp; HIV+ youth</td>
</tr>
<tr>
<td></td>
<td>Parental custody disputes over transgender children</td>
<td>Transgender youth</td>
</tr>
<tr>
<td></td>
<td>Employment discrimination</td>
<td>Youth of color</td>
</tr>
<tr>
<td></td>
<td>- particularly by customers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Public accommodations access</td>
<td>HIV+</td>
</tr>
<tr>
<td></td>
<td>Sports community</td>
<td>Children of LGBTQ parents</td>
</tr>
<tr>
<td></td>
<td>Reparative therapy (or Sexual Orientation and Gender Identity Change Efforts)</td>
<td>Adult advocates for youth</td>
</tr>
<tr>
<td></td>
<td>Religious discrimination</td>
<td></td>
</tr>
<tr>
<td><strong>Child Welfare &amp; Out-of-home Youth</strong></td>
<td>DCF (state child welfare agencies)</td>
<td>Youth of color</td>
</tr>
<tr>
<td></td>
<td>- Policies generally</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Residential care</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Response to rejecting families (that reasonable efforts are made to educate parents &amp; keep youth in-home)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Foster care</td>
<td>Transgender youth</td>
</tr>
<tr>
<td></td>
<td>Shelters / street</td>
<td>HIV+</td>
</tr>
<tr>
<td></td>
<td>- Policies generally</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Lack of youth shelters</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Minors being reported back to parents</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Health care for minors</td>
<td>Children of LGBTQ parents</td>
</tr>
<tr>
<td></td>
<td>Data collection (lack of)</td>
<td>Adult advocates for youth</td>
</tr>
<tr>
<td></td>
<td>Children in child welfare system should not be assigned</td>
<td></td>
</tr>
<tr>
<td></td>
<td>probation officers or entered in Court Activity Record Information (CARI)</td>
<td></td>
</tr>
<tr>
<td><strong>Juvenile Justice</strong></td>
<td>Sex workers/decriminalizing prostitution by minors</td>
<td>Transgender youth</td>
</tr>
<tr>
<td></td>
<td>Romeo &amp; Juliet laws needed</td>
<td>Youth of color</td>
</tr>
<tr>
<td></td>
<td>Interrupting school to prison pipeline</td>
<td>HIV+</td>
</tr>
<tr>
<td></td>
<td>Data collection (lack of)</td>
<td>Children of LGBTQ parents</td>
</tr>
<tr>
<td></td>
<td>Police</td>
<td>Adult advocates for youth</td>
</tr>
<tr>
<td></td>
<td>- Discrimination by</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Procedures</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Prosecutors</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Defense counsel</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Judiciary</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Probation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Custodial Care</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Pretrial detention</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Adjudicated delinquent</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Access to health care</td>
<td></td>
</tr>
</tbody>
</table>
Rights of LGBTQ Youth in Rhode Island

Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Youth have the right:

To attend school in safety and free from discrimination and harassment based on their sexual orientation or gender identity or expression.

- LGBTQ youth must have equal access to and be allowed to participate on equal terms in all school programs, including extracurricular activities.

- Schools must keep LGBTQ youth safe from harassment and violence by teachers and staff, or other students.

- Schools must respect the gender identity of transgender students, including using appropriate names and pronouns, and allowing transgender students to wear clothing consistent with their gender identity.

- LGBTQ youth have the right to be open about their sexual orientation and gender identity and expression.

- Students have the right to form extracurricular groups, such as Gay-Straight Alliances, on the same terms and with the same privileges and resources as all other extracurricular groups.

- LGBTQ youth have the right to express themselves on issues relating to sexual orientation or gender identity and expression.

- Students have the right to learn about LGBT issues and must have access to information and resources about LGBT issues and people, regardless of objecting school officials or parents.
To safe and appropriate placements in the child welfare system, free from discrimination and harassment based on their sexual orientation or gender identity or expression.

- LGBTQ youth have the right to be free from harassment and abuse based on actual or perceived sexual orientation or gender identity or expression in foster care placements.\(^9\) This means that youth should be protected from both physical\(^10\) and emotional harm\(^11\) in their placements, and should be placed with caretakers who will ensure their safety and wellbeing outside the home.\(^12\)

- LGBTQ youth have the right to be open about their sexual orientation and gender identity and expression.\(^13\)

- Transgender youth have the right to be identified by the name and pronouns that accord with their gender identities and to wear clothing consistent with their gender identities.\(^14\)

- LGBTQ youth have the right to be free from religious indoctrination that condemns or disparages their sexual orientation or gender identity or expression.\(^15\)

To equal treatment and to access appropriate services while in the child welfare system for their sexual orientation or gender identity or expression.

- LGBTQ youth must have access to appropriate medical or mental health care,\(^16\) and should not be forced to undergo improper or disreputable services damaging to their wellbeing,\(^17\) such as reparative or conversion therapy.\(^18\)

- LGBTQ youth should be treated equally to heterosexual and gender conforming youth, including with regard to age appropriate displays of affection.\(^19\)

- LGBTQ youth should have access to supportive materials and resources.\(^20\)

To safe and appropriate placements in the juvenile justice system free from discrimination and harassment based on their sexual orientation or gender identity or expression.

- LGBTQ youth are entitled to protection from physical, emotional or sexual abuse by other youth or facility staff.\(^21\)

- A facility’s response to harassment or violence against an LGBTQ youth cannot be to move the LGBTQ youth to a more restrictive facility or to isolate the LGBTQ youth.\(^22\)
• LGBTQ youth cannot be segregated\textsuperscript{23} or classified as sex offenders\textsuperscript{24} based on myths that LGBTQ youth will prey on other youth.

• LGBTQ youth have the right to be open about their sexual orientation and gender identity and expression.\textsuperscript{25}

• Transgender youth have the right to be identified by the name and pronouns that accord with their gender identity and to wear clothing consistent with their gender identity.\textsuperscript{26}

To equal treatment and to access appropriate services while in the juvenile justice system for their sexual orientation or gender identity or expression.

• LGBTQ youth must have access to appropriate medical and mental health care, both for general services and for any medical services that may be unique to LGBTQ youth.\textsuperscript{27}

• LGBTQ youth should not be forced to undergo improper or disreputable services damaging to their wellbeing, such as reparative or conversion therapy.\textsuperscript{28}

• LGBTQ youth may not be disciplined for engaging in age-appropriate romantic or sexual conduct that would not be punishable between two different-sex youth.\textsuperscript{29}

• LGBTQ youth have the right to be free from religious indoctrination by facility staff that condemns or disparages their sexual orientation or gender identity or expression.\textsuperscript{30}
Guidance for Massachusetts Public Schools
Creating a Safe and Supportive School Environment

Nondiscrimination on the Basis of Gender Identity

An Act Relative to Gender Identity (Chapter 199 of the Acts of 2011),1 which became effective on July 1, 2012, amended several Massachusetts statutes prohibiting discrimination on the basis of specified categories, to include discrimination on the basis of gender identity. Among the statutes amended is G.L. c. 76, § 5, prohibiting discrimination on the basis of gender identity against students who enroll in or attend the public schools. G.L. c. 76, §5 now reads as follows:

Every person shall have a right to attend the public schools of the town where he actually resides, subject to the following section. No school committee is required to enroll a person who does not actually reside in the town unless said enrollment is authorized by law or by the school committee. Any person who violates or assists in the violation of this provision may be required to remit full restitution to the town of the improperly-attended public schools. No person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of race, color, sex, gender identity, religion, national origin or sexual orientation. (Emphasis added)

In June 2012, the Massachusetts Board of Elementary and Secondary Education (Board) adopted revised Access to Equal Education Opportunity Regulations, 603 CMR 26.00, and Charter School Regulations, 603 CMR 1.00, to reflect the broadened student anti-discrimination provision in G.L. c. 76, §5. The Board also directed the Department of Elementary and Secondary Education (Department) to provide guidance to school districts to assist in implementing the gender identity provision.

All students need a safe and supportive school environment to progress academically and developmentally. Administrators, faculty, staff, and students each play an important part in creating and sustaining that environment. This guidance is intended to help school and district administrators take steps to create a culture in which transgender and gender nonconforming students feel safe, supported, and fully included, and to meet each school’s obligation to provide equal educational opportunities for all students, in compliance with G.L. c. 76, §5 and the state regulations. The guidance sets out general principles based on the law, and addresses

1 The Act can be found at http://www.malegislature.gov/Laws/SessionLaws/Acts/2011/Chapter199.
common issues regarding transgender and gender nonconforming students. It offers case studies based on experiences of schools and students in Massachusetts, and reflects the need to consider issues on a case-by-case basis. The list of issues is not exhaustive, and the examples are intended to be illustrative, not prescriptive.

In preparing this guidance, the Department reviewed policies and guidance from several states, organizations, and athletic associations and consulted with the field. We appreciate the input we received from school and district administrators, advocacy groups, parents, students, and other interested constituents.

Definitions

Understanding the terminology associated with gender identity is important to providing a safe and supportive school environment for students whose rights are protected under the law. The following terms appear in this document and are defined to assist in understanding the guidance presented. Although these are the most commonly used terms, students may prefer other terms to describe their gender identity, appearance, or behavior. The term “gender identity” is specifically defined in the Mass. General Laws, as amended by An Act Relative to Gender Identity (the gender identity law).

- **Gender expression**: the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, or mannerisms.
- **Gender identity**: as defined in part at G.L. c. 4, § 7, is “a person’s gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person’s physiology or assigned sex at birth…”
- **Gender nonconforming**: a term used to describe people whose gender expression differs from stereotypic expectations. The terms “gender variant” or “gender atypical” are also used.
- **Transgender**: an umbrella term used to describe a person whose gender identity or gender expression is different from that traditionally associated with the assigned sex at birth.

The Law

The gender identity law amended G.L. c. 76, § 5,2 to establish that no person shall be excluded from or discriminated against in admission to a public school of any town, or in obtaining the advantages, privileges and courses of study of such public school on account of gender identity, among other characteristics. The amended Access to Equal Educational Opportunity regulations, 603 CMR 26.00, and the non-discrimination provision of the Charter School

---

2 The Act amends several other statutes as well, including G.L. c. 151B (governing nondiscrimination in employment), to prohibit discrimination on the basis of gender identity.
regulations, 603 CMR 1.00, require schools to establish policies and procedures, provide training, and implement and monitor practices to ensure that obstacles to equal access to school programs are removed for all students, including transgender and gender nonconforming students.

All districts and schools should review existing policies, handbooks, and other written materials to ensure that they are updated to reflect the new law. At a minimum, this means including the category of “gender identity” within the identification of legally protected characteristics. For example:

*The [ ] Public Schools strives to provide a safe, respectful, and supportive learning environment in which all students can thrive and succeed in its schools. The [ ] Public Schools prohibits discrimination on the basis of race, color, sex, gender identity, religion, national origin, or sexual orientation and ensures that all students have equal rights of access and equal enjoyment of the opportunities, advantages, privileges, and courses of study.*

The gender identity law reflects the reality that transgender and gender nonconforming students are enrolled in Massachusetts public schools. These students, because of widespread misunderstanding and lack of knowledge about their lives, are at a higher risk for peer ostracism, victimization, and bullying. The 2011 National School Climate Survey by the Gay, Lesbian & Straight Education Network (GLSEN), found that 75.4% of transgender students had been verbally harassed in the previous year, 32.1% had been physically harassed, and 16.8% had been physically assaulted. Educators play an essential role in advocating for the well-being of these students and creating a school culture that supports them.

**Understanding Gender Identity**

The gender identity law defines “gender identity” to mean “a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth.” The law also states that “[g]ender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held as part of a person's core identity; provided, however, that gender-related identity shall not be asserted for any improper purpose.”

Transgender youth are those whose assigned birth sex does not match their internalized sense of their gender (their “gender-related identity”), and gender nonconforming youth are those whose gender-related identity does not meet the stereotypically expected norms associated with their assigned sex at birth. A transgender boy, for example, is a youth who was assigned

---

4 Id.
the sex of female at birth but has a clear and persistent identity as male. A transgender girl is a youth who was assigned the sex of male at birth but has a clear and persistent identity as female. Gender nonconforming youth range in the ways in which they identify as male, female, some combination of both, or neither.

The responsibility for determining a student’s gender identity rests with the student or, in the case of young students not yet able to advocate for themselves, with the parent. One’s gender identity is an innate, largely inflexible characteristic of each individual’s personality that is generally established by age four, although the age at which individuals come to understand and express their gender identity may vary based on each person’s social and familial social development. As a result, the person best situated to determine a student’s gender identity is that student himself or herself.

In one Massachusetts town, the parents of a pre-school-age biologically female child noted throughout the child’s early years that their child identified as a boy. For as long as the parents could remember, the child preferred to play with boys rather than girls, wanted a short haircut, rejected wearing any clothing that the child identified as “something a girl would wear,” and ignored anyone who called him by his stereotypically feminine name. When it was time for the child to enter kindergarten, the child said to his parents, “You have to tell them when I go to kindergarten that I’m a boy.”

Consistent with the statutory standard, a school should accept a student’s assertion of his or her gender identity when there is “consistent and uniform assertion of the gender-related identity, or any other evidence that the gender-related identity is sincerely held as part of a person’s core identity.” If a student’s gender-related identity, appearance, or behavior meets this standard, the only circumstance in which a school may question a student’s asserted gender identity is where school personnel have a credible basis for believing that the student’s gender-related identity is being asserted for some improper purpose.

In most situations, determining a student’s gender identity is simple. A student who says she is a girl and wishes to be regarded that way throughout the school day and throughout every, or almost every, other area of her life, should be respected and treated like a girl. So too with a student who says he is a boy and wishes to be regarded that way throughout the school day and throughout every, or almost every, other area of his life. Such a student should be respected and treated like a boy.

The statute does not require consistent and uniform assertion of gender identity as long as there is “other evidence that the gender-related identity is sincerely held as part of [the] person’s core identity.” Many transgender people experience discrimination, and some

---

5 When used in this document, the term “parent” refers to parent as well as legal guardian.
experience violence due to their status. Some environments may feel safe and inclusive, and others less so, challenging a person’s ability to live consistently with one gender identity in all aspects of life. For example, it is possible that a biologically male student with a female gender identity who lives as a girl does not express her female gender identity all the time. In one case, such a student agreed to present as a boy when visiting relatives until the student’s parents could explain the student’s transgender identity to them. The fact that the student did not exclusively assert her female identity did not alter the fact that she had a female gender identity.

Confirmation of a student’s asserted gender identity may include a letter from a parent, health care provider, school staff member familiar with the student (a teacher, guidance counselor, or school psychologist, among others), or other family members or friends. A letter from a social worker, doctor, nurse practitioner, or other health care provider stating that a student is being provided medical care or treatment relating to her/his gender identity is one form of confirmation of an asserted gender identity. It is not, however, the exclusive form upon which the school or student may rely. A letter from a clergy member, coach, family friend, or relative stating that the student has asked to be treated consistent with her/his asserted gender identity, or photographs at public events or family gatherings, are other potential forms of confirmation. These examples are intended to be illustrative rather than comprehensive.

In one Massachusetts middle school, a biologically male student explained to her guidance counselor that she was a transgender girl who expressed her female gender identity only at home. The stress associated with having to hide her female gender identity at school was having a negative impact on her mental health, as well as on her academic performance. The student and her parents asked if it would be okay if she expressed her female gender identity at school. The guidance counselor assured the student and her parents that she could do so. The fact that the student presented no documentation to support her gender identity was not a concern since the school had no reason to believe the request was based on anything other than a sincerely held belief that she had a female gender identity.

Gender Transition

Many, though not all, transgender youth undergo the experience of gender transition. The term “gender transition” describes the experience by which a person goes from living and identifying as one gender to living and identifying as another. For most youth, and for all young children, the experience of gender transition involves no medical intervention. Rather, most transgender youth will undergo gender transition through a process commonly referred to as “social transition,” whereby they begin to live and identify as the gender consistent with their gender-related identity. Some transgender youth who are close to reaching puberty, or after commencing puberty, may complement social transition with medical intervention that may include hormone suppressants, cross-gender hormone therapy, and, for a small number of young people, a range of gender-confirming surgeries. The decision about whether and how to
undergo gender transition is personal and depends on the unique circumstances of each individual. There is no threshold medical or mental health diagnosis or treatment requirement that any student must meet in order to have his or her gender identity recognized and respected by a school.

Some transgender and gender nonconforming students are not openly so at home for reasons such as safety concerns or lack of acceptance. School personnel should speak with the student first before discussing a student’s gender nonconformity or transgender status with the student’s parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, e.g., appropriate pronoun use, in written communication to the student’s parent or guardian.

**Names and Pronouns**

The issue of the name and pronoun to use in referring to a transgender student is one of the first that schools must resolve to create an environment in which that student feels safe and supported. Transgender students often choose to change the name assigned to them at birth to a name that is associated with their gender identity. As with most other issues involved with creating a safe and supportive environment for transgender students, the best course is to engage the student, and in the case of a younger student, the parent, with respect to name and pronoun use, and agree on a plan to initiate that name and pronoun use within the school. The plan also could include when and how this is communicated to students and their parents. In the case of a transgender student who is enrolling at a new school, it is important that the school respect the student’s privacy (see the following section) and chosen name.

*In one situation where a transgender girl was entering high school, she and her parent asked the principal to inform her teachers that even though her school records indicate that her name is John, she goes by the name Jane and uses female pronouns. The school principal sent the following memorandum to the student’s classroom teachers: “The student John Smith wishes to be referred to by the name Jane Smith, a name that is consistent with the student’s female gender identity. Please be certain to use the student’s preferred name in all contexts, as well as the corresponding pronouns. It is my expectation that students will similarly refer to the student by her chosen name and preferred pronouns. Your role modeling will help make a smooth transition for all concerned. If students do not act accordingly, you may speak to them privately after class to request that they do. Continued, repeated, and intentional misuse of names and pronouns may erode the educational environment for Jane. It should not be tolerated and can be grounds for student discipline. If you need any assistance to make sure that Jane Smith experiences a safe, nondiscriminatory classroom atmosphere, please contact me or Ms. O’Neill. – Mr. Jones, Principal.”*
Massachusetts’ law recognizes common law name changes. An individual may adopt a name that is different from the name that appears on his or her birth certificate provided the change of name is done for an honest reason, with no fraudulent intent. Nothing more formal than usage is required. Hence, when requested, schools should accurately record the student’s chosen name on all records, whether or not the student, parent, or guardian provides the school with a court order formalizing a name change.

The Department has a procedure in place to update name changes and gender markers in the Student Information Management System (SIMS) upon request. The document Assigning State Assigned Student Identifiers (SASIDs) to Massachusetts’ Public School Students, which may be found at http://www.doe.mass.edu/infoservices/data/sims/sasid/, guides schools through changing names and gender markers on school records.

In sum, school personnel should use the student’s chosen name and pronouns appropriate to a student’s gender identity, regardless of the student’s assigned birth sex. For those students who have been attending a school and undergo gender transition while attending the same school, it is important to develop a plan for initiating use of the chosen name and pronouns consistent with the student’s gender identity.

**Privacy, Confidentiality, and Student Records**

Under state law, information about a student’s assigned birth sex, name change for gender identity purposes, gender transition, medical or mental health treatment related to gender identity, or any other information of a similar nature, regardless of its form, is part of the individual’s student record (see Massachusetts Student Records Regulations, 603 CMR 23.00), is confidential, and must be kept private and secure, except in limited circumstances. 603 CMR § 23.04. One circumstance is when authorized school personnel require the information to provide administrative, teaching, counseling, or other services to the student in the performance of their official duties. For transgender students, authorized school personnel could include individuals such as the principal, school nurse, classroom teacher(s), or guidance or adjustment counselor.

When a student new to a school is using a chosen name, the birth name is considered private information and may be disclosed only with authorization as provided under the Massachusetts Student Records Regulations. If the student has previously been known at school or in school records by his or her birth name, the principal should direct school personnel to use the student’s chosen name. Every effort should be made to update student records (for example, Individualized Education Programs) with the student’s chosen name and not circulate records with the student’s assigned birth name. Records with the student’s assigned birth name should

7 For certain transactions, such as banking and applying for governmental benefits or licenses, it may be necessary to have a formal legal document establishing one’s change of name for identity and other purposes.
8 The federal Family Educational Rights and Privacy Act, 20 USC 1232g, also protects the privacy of education records and requires that personally identifiable information be kept secure and confidential.
be kept in a separate, confidential file.

One school nurse dealt with information in the student’s file by starting a new file with the student’s chosen name, entered previous medical information (for example, immunizations) under the student’s chosen name, and created a separate, confidential folder that contained the student’s past information and birth name.

When determining which, if any, staff or students should be informed that a student’s gender identity is different from the assigned birth sex, decisions should be made in consultation with the student, or in the case of a young student, the student’s parent or guardian. The key question is whether and how sharing the information will benefit the student.

In one case, parents of a transgender male-to-female elementary school student requested that only the school principal and the school nurse be aware that the student was assigned the sex of male at birth. After a discussion with the school principal, the parents agreed that the student’s teacher, the school secretary, and the district superintendent would also be informed. In this situation, the school principal kept the student’s birth certificate in a separate, locked file that only the principal could access, and put a note in the student’s other file saying that the principal had viewed the student’s birth certificate. In another situation, where a biological male came to school after April vacation as a girl, the school principal and guidance counselor, in collaboration with the student and her parents, developed a plan for communicating information regarding the student’s transition to staff, parents, and students. The plan included who was going to say what to whom, and when the communication would take place.

Transgender and gender nonconforming students may decide to discuss and express their gender identity openly and may decide when, with whom, and how much to share private information. A student who is 14 years of age or older, or who has entered the ninth grade, may consent to disclosure of information from his or her student record. If a student is under 14 and is not yet in the ninth grade, the student’s parent (alone) has the authority to decide on disclosures and other student record matters. 9

**Gender Markers on Student Records**

A gender marker is the designation on school and other records that indicates a student’s gender. For most students, records that include an indication of a student’s gender will reflect a student’s assigned birth sex. For transgender students, however, a documented gender marker (for example, “male” or “female” on a permanent record) should reflect the student’s

---

9 See 603 CMR §§23.01 and 23.07. If a student is from 14 through 17 years of age or has entered ninth grade, both the parent and the student may make decisions concerning the student record, or either the student or the parent acting alone may decide.
gender identity, not the student’s assigned sex. This means that if a transgender student whose gender identity is male has a school record that reflects an assigned birth sex as female, then upon request by the student or, in the case of young students not yet able to advocate for themselves, by the parent or guardian, the school should change the gender marker on the record to male.10 Schools are advised to collect or maintain information about students’ gender only when necessary.

One school reviewed the documentation requests it sent out to families and noticed that field trip permission forms included a line to fill in indicating the student’s gender. Upon consideration, the school determined that the requested information was irrelevant to the field trip activities and deleted the line with the gender marker request.

In addition, transgender students who transition after having completed high school, may ask their previous schools to amend school records or a diploma or transcript that include the student’s birth name and gender. When requested, and when satisfied with the gender identity information provided, schools should amend the student’s record, including reissuing a high school diploma or transcript, to reflect the student’s current name and gender.

**Restrooms, Locker Rooms, and Changing Facilities**

All students are entitled to have access to restrooms, locker rooms and changing facilities that are sanitary, safe, and adequate, so they can comfortably and fully engage in their school program and activities. In meeting with the transgender student (and parent) to discuss the issues set forth in this memorandum, it is essential that the principal and student address the student’s access to the restrooms, locker room and changing facility. Each situation needs to be reviewed and addressed based on the particular circumstances of the student and the school facilities. In all cases, the principal should be clear with the student (and parent) that the student may access the restroom, locker room, and changing facility that corresponds to the student’s gender identity. While some transgender students will want that arrangement, others will not be comfortable with it. Transgender students who are uncomfortable using a sex-segregated restroom should be provided with a safe and adequate alternative, such as a single “unisex” restroom or the nurse’s restroom. Similarly, some transgender students may not be comfortable undressing in the changing facilities that correspond to the student’s gender identity. The following are examples of ways in which school officials have responded to these situations:

*In one elementary school, a transgender second-grader socially transitioned from female to male. The principal informed the staff: For the remainder of this year, he will use Nurse Margaret’s restroom, and toward the end of the year we will make future*

10 As discussed in the section on Names and Pronouns, the Department’s publication Assigning State Assigned Student Identifiers (SASiDs) to Massachusetts’ Public School Students guides district staff through the process of adding or revising SIMS data.
determinations of restroom use in consultation with his family.

In one middle school, a male-to-female transgender sixth-grader socially transitioned after spring break. For the rest of the school year, she used the nurse’s restroom and the other unisex restrooms at the school. Beginning in seventh grade, she used the girls’ restroom.

In one high school, a transgender male-to-female student was given access to the female changing facility, but the student was uncomfortable using the female changing facility with other female students because there were no private changing areas within the facility. The principal examined the changing facility and determined that curtains could easily be put up along one side of a row of benches near the group lockers, providing private changing areas for any students who wished to use them. After the school put up the curtains, the student was comfortable using the changing facility.

Some students may feel uncomfortable with a transgender student using the same sex-segregated restroom, locker room or changing facility. This discomfort is not a reason to deny access to the transgender student. School administrators and counseling staff should work with students to address the discomfort and to foster understanding of gender identity, to create a school culture that respects and values all students.

The Department strongly recommends that districts include an appropriate number of gender-neutral restrooms commensurate with the size of the school, and at least one gender-neutral changing facility, into the design of new schools and school renovations.

School staff as well as students and their families may find the use of restrooms and changing facilities to be among the more challenging issues presented by the gender identity law, perhaps due to issues of personal privacy. As emphasized in other sections of this guidance, these issues should be resolved on a case-by-case basis, through dialogue with students and parents, and through leadership in creating safe and supportive learning environments.

Physical Education Classes and Intramural and Interscholastic Athletic Activities

Physical education is a required course in all grades in Massachusetts’ public schools, and school-based athletics are an important part of many students’ lives. Most physical education classes in Massachusetts’ schools are coed, so the gender identity of students should not be an issue with respect to these classes. Where there are sex-segregated classes or athletic activities, including intramural and interscholastic athletics, all students must be allowed to participate in a manner consistent with their gender identity. With respect to interscholastic athletics, the Massachusetts Interscholastic Athletic Association will rely on the gender determination made by the student’s district; it will not make separate gender identity determinations.

At one school, a transgender girl joined the girls’ cheerleading squad. The school supported the student’s participation on the team. When the team was going to a regional competition, however, several of the team members raised a concern that the
school would be made to compete in the coed cheerleading portion of the competition rather than in the all-girls portion for which they prepared. With the permission of the student, the principal wrote a letter that she gave to the coach to take to the competition in case officials at the competition questioned the team’s participation in the all-girls’ portion of the event. The letter explained: “Student, Jane Smith, is a transgender girl who has been a member of the girls’ team since (date). Jane has a sincerely held female gender identity and, therefore, according to state law must be permitted to participate as a girl on the girls’ cheerleading team.” The team participated in the regional competition without incident.

Other Gender-Based Activities, Rules, Policies, and Practices

As a general matter, schools should evaluate all gender-based policies, rules, and practices and maintain only those that have a clear and sound pedagogical purpose. Gender-based policies, rules, and practices can have the effect of marginalizing, stigmatizing, and excluding students, whether they are gender nonconforming or not. In some circumstances, these policies, rules, and practices may violate federal and state law. For these reasons, schools should consider alternatives to them.

Whenever students are separated by gender in school activities or are subject to an otherwise lawful gender-specific rule, policy, or practice, students must be permitted to participate in such activities or conform to such rule, policy, or practice consistent with their gender identity.

The new law on gender identity provides a good opportunity for schools to review their gender-distinct policies. For example, some schools require students to wear gender-based garb for graduation or have gender-based dress codes for prom, special events, and daily attire. Schools should eliminate gendered policies and practices such as these. For example, one school that previously had blue graduation gowns for boys and white ones for girls switched to blue gowns for all graduates. The school also changed its gender-based dress code for the National Honor Society ceremony, which had required girls to wear dresses.

Similarly, some classroom teachers may routinely include gender-based practices in the classroom. For example, some teachers may have boys and girls line up separately to leave the classroom to go to lunch, the gymnasium, restrooms, or recess, and may never have considered the educational value of non-gendered alternatives, such as having students line up in the order of their birthdays, or alphabetically by name, or in the order in which they are sitting.11

11 Gender and Children: A Place to Begin for Educators www.welcomingschools.org


**Education and Training**

In order to further a safe and supportive school environment for all students, schools should incorporate education and training about transgender and gender nonconforming students into their anti-bullying curriculum, student leadership trainings, and staff professional development.

As with other efforts to promote a positive school culture, it is important that student leaders and school personnel, particularly school administrators, become familiar with the gender identity law, regulations, guidance, and related resources, and that they communicate and model respect for the gender identity of all students.

Professional development for school staff could include topics on gender identity and gender nonconformity such as: the *Massachusetts Student Anti-discrimination Law and Regulations*; the *ESE Guidance on Notifying Parents When a Student Has Been Bullied Based on Sexual Orientation or Gender Identity/Expression*; key terms related to gender identity and expression; the development of gender identity; the experiences of transgender and other gender nonconforming students; risk and resilience data regarding transgender and gender nonconforming students; ways to support transgender students and to improve the school climate for gender nonconforming students; gender-neutral language and practices; and this guidance.

**Communication with School Community and Families**

Superintendents and principals need to review existing policies, handbooks, and other written materials to ensure that they are updated to reflect the inclusion of gender identity in the student antidiscrimination law, and may wish to inform all members of the school community, including school personnel, students, and families, of the recent change to state law and its implications for school policy and practice. This could take the form of a letter that states the school’s commitment to being a supportive, inclusive environment for all students, as well as the school’s legal obligation to provide equal educational opportunities for all students. Such a letter might include the definitions provided at the beginning of this document and some basic information about transgender and gender nonconforming youth; a link to the school’s antibullying and anti-harassment policies; a link to this guidance; and other resources, including individuals to contact with additional questions. 12

---

12 For example, a letter from one principal explained: “All people have a gender identity. For most people, their gender identity matches their assigned sex at birth. For transgender people, that is not the case. Transgender girls are individuals who were assigned the male sex at birth but whose lived experience of who they are is female. Transgender boys are individuals who were assigned the female sex at birth but whose lived experience of who they are is male. As a school community, we want to provide a safe environment and support all of our students so they can achieve academically. That means making sure that our school’s policies and practices are inclusive and respectful of all students, including transgender students. Toward that end, we have …[describe steps taken to implement the law].”
Conclusion

This guidance cannot anticipate every situation in which questions may come up in the implementation of this law, and the needs of each transgender or gender nonconforming student should be assessed and addressed on a case-by-case basis. The Department will continue to provide assistance, support, and resources as we work together to create a safe and supportive school environment for all students.

For further information or questions about the content of this guidance, please contact Center for Student Support @ sasca@doe.mass.edu.