

Advocating for LGBTQ Student Rights in the Mississippi Delta Resource Guide



An Education Resource Guide produced by the
Nollie Jenkins Family Center and the ACLU of Mississippi



Advocating for LGBTQ Student Rights in the Mississippi Delta

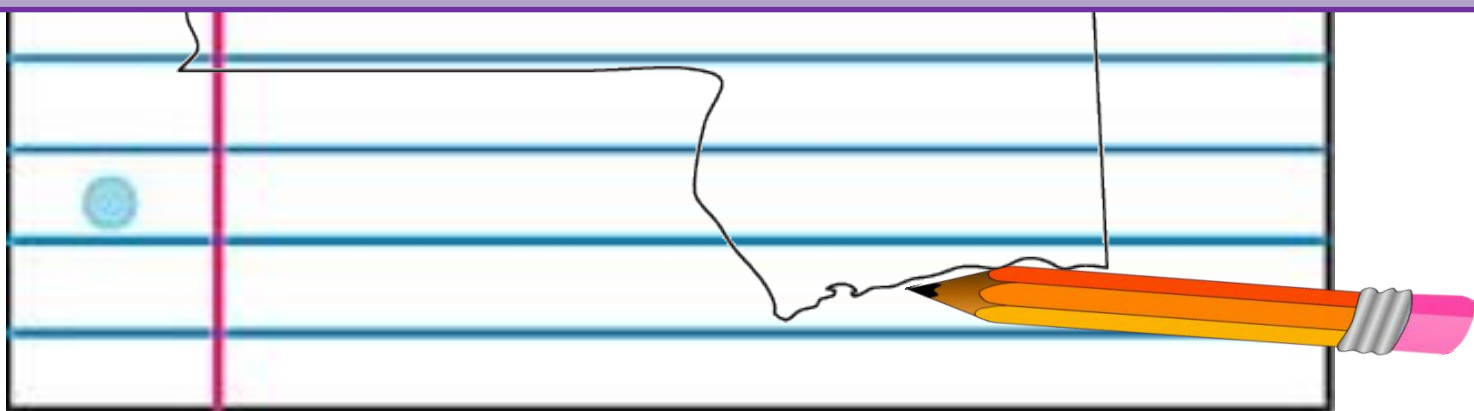


Illustration Created by Nollie Jenkins Family Center Youth

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Introduction: Why do we need LGBT curricula in the Mississippi Delta?

Why create materials specific to the Mississippi Delta? Mississippi is steeped in culture. We are very proud of our music, our traditions, and our heritage and we hold strong to our systems of beliefs and values. Our feelings about Mississippi and how others feel about this state are very often reflected and revealed by images and experiences as deep and rich as the Mississippi Delta soil. Sometimes, our treasured values and traditions are often neglectful and rejecting of lesbian, gay, bi-sexual, and transgender [LGBT] members of our community.

Individuals identifying as LGBT represent 2.6% of Mississippi's population.¹ Mississippi also boasts the highest percentage (26%) of same sex couples raising children. Many of these people live in the Mississippi Delta region. Amongst youth, about 5-7% identify as LGBT.² These students are left alone attempting to strike a balance between familial beliefs and their personal identities. LGBT students are often harassed, ostracized, and criminalized. However, LGBT children are our children. They should not be left alone to fend for themselves or to navigate perilous systems. Like every other child, LGBT children in our communities must be made to feel safe.

This guide is intended to be used as a reference to support the creation of safe spaces for LGBT students. The materials included within should be used as an advocacy tool for parents, students and advocates to encourage a community that is inclusive of LGBT diversity. Too often, LGBT students are subjected to discrimination and harassment, especially at school. Without a welcoming learning environment, there are significant consequences to a student's sense of safety and ability to succeed in school.

¹ "LGBT Percentage Highest in D.C., Lowest in North Dakota," *State of the States*, Gallup Politics (15 February 2013), available at <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>.

² Center for American Progress, *The Unfair Criminalization of Gay and Transgender Youth*, available at https://cdn.americanprogress.org/wp-content/uploads/issues/2012/06/pdf/juvenile_justice.pdf.

I. Definitions: Importance of Maintaining an Updated, Respectful and Appropriate Vocabulary

To build inclusive communities, it is essential to utilize a vocabulary that is respectful towards everyone. The words we use can shape attitudes towards LGBT issues, often unconsciously. For those who are afraid of saying the wrong thing, familiarity with these terms will make conversations easier. As individuals grow, they may change the words that they use to describe their own gender and sexuality. There is great variety on the spectrum of sexuality and gender. Because of these variations, our vocabulary is also expanding as we attempt to accurately describe our individual experiences. Therefore, it is critical to begin with a clear definition of sexuality and gender.



Chicagoer St. West, L.A., Cathy Cade 1972

Photographer Cathy Cade captured this moment in 1972. The movement to “abolish anti-gay” laws continues today but the vocabulary that is used to describe lesbian, gay, bisexual and transgender people has expanded greatly in the 35 years since this photograph was taken.

SEXUALITY: Sexuality is part of what makes us human. Our sexual orientation is comprehensive and multifaceted; it includes our physical, psychological and spiritual attraction to another person.

Sexual Orientation is an inherent enduring emotional, romantic, sexual and relational attraction to another person. It may be a same-sex orientation, opposite-sex orientation or a bisexual orientation.

Sexual Preference is what a person likes or prefers to do sexually; a conscious recognition or choice not to be confused with sexual orientation. Sexual preferences may change overtime and we must give room for people to express and explore their individual preferences as they learn to understand themselves better.

GENDER: Gender is the range of characteristics pertaining to, and differentiating between, masculinity and femininity.

Gender Identity is one's personal sense of their gender. For transgender people, their birth-assigned sex and their own sense of gender identity do not match. Gender Identity is the gender you choose to identify as which may or may not correspond to the gender you were assigned at birth.

Gender Expression is the external manifestation of one's gender identity, usually expressed through masculine, feminine or gender-variant behavior, clothing, haircut, voice or body characteristics.

LGBT The acronym "LGBT" is a common way to describe certain sexualities and genders. Here is a vocabulary list of terms to help us gain a better understanding of our human sexuality and gender:

"L" stands for *Lesbian*: a female who is emotionally, romantically, sexually and relationally attracted to other females.

"G" stands for *Gay*: Usually a male who is emotionally, romantically, sexually and relationally attracted to another male. Sometimes "gay" refers to both lesbians and gay people.

"B" stands for *Bi-sexual*: a person attracted to more than one sex and/or gender though not necessarily attracted simultaneously or in the same way or to the same degree

"T" stands for *Transgender* (not "Transgender-ed"): Transgender is an identification for a broad range of people who experience and/or express their gender differently from the norm or from the conventional. A transgender person has the right to say that they are neither a man nor a woman. Transgender status gives a person a space to declare that they are both a "man" and a "woman." People have the right to choose or not to choose a particular gender. Any person can "be" transgender if that is how they understand themselves to be. Typically, transgender people seek to make their gender expression match their gender identity, rather than their birth-assigned sex.

OTHER LETTERS USED IN ADDITION TO AND OR AS ALTERNATIVES TO “L G B T”

“+” stands for the additional words that may be added to the end of “LGBT”, as in “LGBT+.” As our understanding evolves, our vocabulary expands. The “+” sign is a reminder that human sexuality and gender vary greatly from person to person.

“Q” stands for *Queer*: Often used interchangeably with “LGBT.” Be mindful that the term may have negative or derogatory connotations for some people; however, many younger people are comfortable using it.

“I” stands for *Intersex*: This is a general term that is used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that doesn’t seem to fit the societal norms for male or female.

“A” stands for *Asexual*: Is the lack of sexual attraction to anyone, or low or absent interest in sexual activity.

“A” stands for *Aromantic*: Refers to the lack of romantic attraction or low interest in romantic activities.

“P” stands for *Pansexual*: This is sexual attraction, romantic love, or emotional attraction toward people of any sex or gender identity.

“SGL” stands for *Same-Gender Loving*: A term some prefer to use the letters “SGL” instead of “lesbian” or “gay” to express attraction to and love of people of the same gender.

ADDITIONAL DEFINITIONS REALTED TO SEXUALITY AND GENDER

Agender: Refers to people who identify outside of the gender binary. The word simply means having no gender.

Ally: A person who supports and honors the diversity of sexual orientation, acts accordingly to challenge homophobic remarks and behaviors and explores and understands these forms of bias within him- or herself.

Bigender: A gender identity that falls under the non-binary (non-binary refers to people who identify outside of the gender binary; identifies neither as a man or a woman.) umbrella. To identify as bigender generally, means you identify as two genders. You could identify as both at the same time. You can go back and forth between two genders.

Biphobia: a range of negative attitudes, feelings or actions toward bisexuality/polysexuality and bisexual/polysexual people as a social group or as individuals. People may receive this treatment from both straight and gay people.

Cisgender: a term for people whose gender identity matches their sex assigned at birth

Cissexism: the system that privileges cisgender people over transgender people

Coming Out: The process in which a person first acknowledges, accepts and appreciates his or her sexual orientation or gender identity and begins to share that with others.

Gender Fluid: An overlap of, or indefinite lines between, gender identity; having two or more genders (being bigender, trigender, or pangender); having no gender (being agender, non-gendered, genderless, gender-free or neutrois); moving between genders or having a fluctuating gender identity

Genderqueer: A person who does not subscribe to conventional gender distinctions but identifies with neither, both, or a combination of male and female genders

Homophobia/Queerphobia: a range of negative attitudes, feelings and actions toward homosexuality or people who are identified or perceived as being lesbian, gay, bisexual or queer

Heterosexism: the system that privileges heterosexual people over queer people

Internalized Homophobia: Self-identification of societal stereotypes by an LGBT person, causing them to dislike and resent their sexual orientation or gender identity.

Living Openly: A state in which LGBT people are comfortable about being out and open about their sexual orientation or gender identity – where and when it feels appropriate to them.

Non-binary: Refers to people who identify outside of the gender binary; identifies neither as a man or a woman.

PGP: preferred gender pronoun. This gender pronoun may or may not correspond to the gender assigned to the person at birth or with the gender pronoun that other people assign to the person.

Outing: Exposing someone's sexual orientation as being lesbian, gay, bisexual or transgender to others, without their permission; in essence "outing" them from the closet. Outing someone can have serious negative employment/economic/safety/religious repercussions in some situations.

Transphobia: The fear and hatred of, or discomfort with, people whose gender identity or gender expression do not conform to cultural gender norms.

Transsexual: A medical term describing people whose gender and sex do not line up, and who often seek medical treatment to bring their body and gender identity into alignment. Avoid using this term unless an individual self-identifies as transsexual

Transmisogyny: the negative attitudes, expressed through cultural hate, individual and state violence, and discrimination directed toward trans women and feminine trans people

Two Spirit: refers to an Indigenous person who feels their body simultaneously manifests both a masculine and a feminine spirit, or a different balance of masculine and feminine characteristics than usually seen in masculine men and feminine women.

II. Understanding and Respecting Gender Pronouns

Gender Neutral / Gender Inclusive Pronouns

A gender neutral or gender inclusive pronoun is a pronoun which does not associate a gender with the individual who is being discussed. She, her, hers and he, him, his are the most commonly used pronouns. Some people call these “female/feminine” and “male/masculine” pronouns, but many avoid these labels because, for example, not everyone who uses he feels like a “male” or “masculine” or “female” or “feminine”. There are also lots of gender-neutral pronouns in use. Here are a few you might hear:

HE/SHE	HIM/HER	HIS/HER	HIS/HERS	HIMSELF/HERSELF
They	Them	Theirs	Theirs	Themselves
zie	zim	zir	zis	zieself
Sie	sie	hir	hirs	hirsself
ey	em	eir	eirs	eirself
ve	ver	vis	vers	verself
tey	ter	tem	ters	terself

EXAMPLES:

- They, them, theirs (Jay ate their food because they were hungry.) This is a pretty common gender-neutral pronoun.... And yes, it can in fact be used in the singular.
- Ze, hir (Jay ate hir food because ze was hungry.) Ze is pronounced like “zee” can also be spelled zie or xe, and replaces she/he/they. Hir is pronounced like “here” and replaces her/hers/him/his/they/theirs.
- Some people prefer not to use pronouns at all, using their name as a pronoun instead. For example: “Jay ate Jay’s food because Jay was hungry.”

Why is it important to respect people's pronouns?

You can't always know someone's preferred gender pronoun (PGP) just by looking at them. Asking and correctly using someone's personal pronoun is one of the most basic ways to show your respect for their gender identity. To refer to someone with the wrong pronoun is disrespectful, invalidating, dismissive, and alienating.

It is a privilege to not have to worry about which pronoun someone is going to use for you based on how they perceive your gender. If you have this privilege, yet fail to respect someone else's gender identity, it is not only disrespectful and hurtful, but also oppressive.

How do I ask someone what pronouns they use?

Try asking: "What pronouns do you use?" or "Can you remind me what pronouns you use?" It can feel awkward at first, but it is not half as awkward as getting it wrong or making a hurtful assumption.

If you are asking as part of an introduction exercise and you want to quickly explain what a PGP is, you can try something like this: "Tell us your name, where you come from, and your personal pronoun. That means the pronoun that you use in reference to yourself. For example, "I'm Xena, I'm from Amazon Island, and I like to be referred to with she, her, and hers pronouns. So you could say, 'she went to her car' if you were talking about me."

What if I make a mistake?

It's okay! Everyone slips up from time to time. The best thing to do if you use the wrong pronoun for someone is to say something right away, like "Sorry, I meant she." If you realize your mistake after the fact, apologize in private and move on. It can be tempting to go on and on about how bad you feel that you messed up or how hard it is for you to get it right. But please, don't! It is inappropriate and makes the person who was misgendered feel awkward and responsible for comforting you, which is absolutely not their job. It is your job to remember people's PGPs. Taking an active role as an advocate for the right of everyone to self-identify.

In your classes, you may hear one of your students using the wrong pronoun for someone. In most cases, it is appropriate to gently correct them without further embarrassing the individual who has been mis-gendered. This means saying something like "Actually, Xena uses the pronoun she," and then moving on. If other students or faculty are consistently using the wrong pronouns for someone, do not ignore it! It is important to let your student know that you are their ally.

It may be appropriate to approach them and say something like "I noticed that you were getting referred to with the wrong pronoun earlier, and I know that that can be really hurtful. Would you be okay with me taking them aside and reminding them about your personal pronoun? I want to make sure that this group is a safe space for you." Take your cues from their comfort level of the person.

Do not refer to a person as "it" or "he/she." These are offensive slurs used against transgender and gender non-conforming individuals.

III. Reclaimed Language

Reclaimed language is any word or phrase that was used previously in an intentionally offensive way but that same word has been reclaimed and given more uplifting meaning in a group. To “reclaim language” is to use an attack word in a new, positive way. In every community, the use and meaning of words develop and change over time.

Hateful speech has long been a tool to intimidate and control people and groups. However, when those same hateful words can be reclaimed by the targeted community, over time, the words tend to lose some of their intended negative impact. A reclaimed word or phrase is used to affirm and support members of that same community that were previously targeted. The language that was once used to antagonize is reclaimed as a term of endearment and empowerment.

Each person has the right to use the terms that they wish to use in order to describe their sexual orientation and gender identity. This is a highly personal decision. However, this decision must take into account the wider context of the community. Negative labels are placed on particular communities and not just on singular persons. It is the members of that community alone who have the authority to determine how the previously antagonistic term should be reclaimed.

The choice to use reclaimed language must take into account whether or not you are a part of that community. Unless you are affected by the same oppression and marginalization that members of that particular LGBTQ community experience, it is not advisable to appropriate terms to oneself that belong to other communities.

Here is a short list of some words that have been and still are being used as demeaning words to describe LGBT people. These words are being reclaimed as a means of self-empowerment by individuals within LGBTQ communities.

EXAMPLES: Butch Dyke Queer Flamboyant Queen

The words listed above are strictly personal. If a person refers to themselves by using one of these terms, do not assume it is ok for you to refer to them using the same term. Ask politely and respectfully. This is a very small list because the words that may be reclaimed are still used as slurs against people in the LGBTQ community. Offensive terms are still used as methods of marginalizing people, it is better to err on the side of caution and to refrain from using these terms to describe members of the LGBTQ until that person is clear that they consider the term to be safe and appropriate. When in doubt, keep quiet. If you choose to ask, be polite. There are many respectful ways to communicate with people without using terms that may have the potential to offend them.

IV. Guidelines for Respecting LGBT Students



Charlene Nguon, Orange County, CA. The ACLU sued her school for outing her to her parents.

Always respect an individual's sexual orientation and gender identity. Call people by the words they choose (whether pronouns or names) in every situation. If you are unsure of which terms or gender pronouns to use when speaking to or about someone, it is always appropriate to ask. Until you have had the opportunity to find out a person's preferred words, avoid using gendered words. Correct yourself and others in the event of a mistake. Also, recognize and respect that people may use different names and pronouns in different situations.

It is extremely important to respect confidentiality and personal choices. NEVER "out" someone as LGBT without permission. Avoid assumptions about sexuality and gender, and try not to compliment people based on gender norms. For individuals who are transgender, do not ask invasive questions about their bodies or medical history. Until you have learned more about a person, do not criticize or comment on how much they look or act "like a man" or "like a woman."

V. Becoming an Ally

It can be easy to dismiss issues of sexual orientation and gender identity as relevant only to individuals identifying as LGBT. For many, policies that negatively affect LGBT students may seem unfair, but they appear ultimately to only affect “someone else.” However, an inclusive community is beneficial to everyone, and it is only possible to move towards this goal with broad support.



By openly supporting LGBT students, you have the opportunity to become an agent of change and improve the school environment for LGBT students. Collectively, we can work to combat policies that harm LGBT students and build a community that embraces identities and condemns discrimination.

The road to becoming an ally is not as simple as stating you're an ally and calling it quits. Being an ally the majority of the time requires a complete shift in behaviors, attitudes and thinking because regardless if you say you support the LGBTQ+ community, everyone grows up in the same queerphobic world that teaches us thoughts and mannerisms that are counterproductive to being an ally.

1. Do not assume that you know someone's sexual orientation based on looks or their current partner. Many bisexual and pansexual people are in different sex relationships. Allow people to open up as they wish, in their own time, concerning sexual orientation.
2. After someone has opened-up and given permission for you to identify them as having a particular sexual orientation; be as specific as possible whenever you refer to them. Use the words "gay, lesbian, bisexual, pansexual etc." The word homosexual historically has negative connotations and could make people uncomfortable.
3. Train yourself to use non-gender specific language. Most of us are in the habit of saying he or she when referring to people or when talking about people's romantic interest. Ask "are you seeing someone?" instead of "do you have a boyfriend or girlfriend?" However, if you know that the person dates exclusively men or women or non-binary people, it is fine to use specifics or if you know the person's specific pronouns.
4. Validate people's gender identity. For example, when speaking with a transgender woman use the pronouns that they wish to use.

5. Challenge society's and your own beliefs about appropriate gender behavior. What society says about how a man and woman should behave is not necessarily right for everyone for all time. Pay attention to comments like “a man should like football” or “a woman should like pink.” Gender roles are socially constructed therefore they can also be deconstructed. The deconstruction allows individuals space and freedom to most fully express their individuality.

Support all people regardless of gender identity or expression. No one is obligated to match every gender expression to some norm of gender identity. For example, a transman may enjoy wearing dresses. There is never a need to correct someone for not lining-up. We have no need for “gender police.”

8. When you hear others around making inappropriate comments about LGBTQ+ call them out on it. Do not be complacent in the verbal or physical mistreatment of LGBTQ+ individuals.

9. Educate yourself about the community you are supporting. While there are those who will willingly educate you, it is not a LGBTQ+ person's job to educate you. As an ally, it is your job to find the resources and information.

10. Support the community. Get involved in organizations and causes. Donate your time or money to help LGBTQ+ community but be sure that you are there in a strictly supporting capacity. Do not allow your voice as an ally to overshadow those of the community.

11. Hetero and Cisgender Privilege. Recognize that while you are an ally to the community, you, as a straight cisgender person, still benefit from the oppression of the LGBTQ+ community. Whenever one group receives unfair discrimination, there is another group that receives more privilege. We are all either being helped or hurt by The question for all of us is how do we use our privilege and our position in society. Recognizing unfair advantage is the first step toward justice. However, recognizing privilege is only a step, being fair, just and respectful in all of our interactions is a life-long journey.

12. It is enough to be good for good's sake. Recognize that you do not “get a cookie” for being a decent human being. Expecting a “pat on the back” for not discriminating is like expecting a discount from a store for not stealing.

VI. Addressing Contrary Beliefs

Occasionally, initiatives supporting diversity of sexual orientation and gender identity can lead to tension amongst community members. False stereotypes, misinformation, fear, and personal or cultural beliefs can motivate people to fight back against efforts to promote safe spaces in schools for LGBT students. One survey showed that, among Americans who oppose same-sex marriage, 46 percent base their position on the interpretation of biblical passages or religious beliefs in general.³ However, in a recent survey conducted in Mississippi, half of LGBT respondents reported that they are people of faith.⁴

Advancing the rights of LGBT students in the Mississippi Delta means confronting religiously-held beliefs. Many people feel personally conflicted about LGBT-related issues. They don't want to discriminate, but at the same time do not want to interfere with sincerely-held religious beliefs. We need to elevate this internal conflict, encouraging individuals to weigh the situation and feel more comfortable with making a decision to respect LGBT rights.



By highlighting shared values, we can outweigh the desire to uphold tradition. We must encourage communities to realize that, while we all have a fundamental right to our own religious beliefs, this does not entitle us to violate anti-discrimination laws. We may not all feel the same way about identifying as LGBT, but we likely can all agree that it is important to treat people fairly. Inclusion and respect by family and friends benefits the entire community by bringing people together, enriching our lives, and fostering a safe school environment. It is important to address harassment and negativity when they occur to prevent feelings of isolation and other significant consequences.

To combat anti-LGBT beliefs, it is important to carefully frame the issue to help enlist the empathy and support of key audiences. Advocates should remember that it is important to sincerely reaffirm that religious freedom is an important American value, so long as it is not used to harm or discriminate. This kind of genuine affirmation elevates the capacity of the listener to hear the remaining part of the message, and can allow them to be more receptive.

³ "Religion Big Factor for Americans Against Same-Sex Marriage," *State of the States*, Gallup Politics (15 February 2013), available at <http://www.gallup.com/poll/160517/lgbt-percentage-highest-lowest-north-dakota.aspx>.

⁴ "Human Rights Campaign Unveils Results of Largest LGBT Survey in Mississippi History" (2014), available at [http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Mississippi_Messaging_7.14.pdf#__utma=149406063.1477494815.1423842130.1424391408.1424465547.4&__utmb=149406063.12.9.1424466106975&__utmc=149406063&__utmz=149406063.1424465547.4.4.utmcsr=google|utmccn=\(organic\)|utmcmd=organic|utmctr=\(not%20provided\)&__utmvl=-&__utmk=264549647](http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Mississippi_Messaging_7.14.pdf#__utma=149406063.1477494815.1423842130.1424391408.1424465547.4&__utmb=149406063.12.9.1424466106975&__utmc=149406063&__utmz=149406063.1424465547.4.4.utmcsr=google|utmccn=(organic)|utmcmd=organic|utmctr=(not%20provided)&__utmvl=-&__utmk=264549647).

Utilize accepting religious community members whenever possible and include religious leaders at the table. They are in the best position to relate to those with closely-held religious beliefs. Your message to refrain from judging should be communicated clearly and consistently. Recruit spokespeople, including family members and friends of LGBT students, to recount their personal journey from internal conflict about the issue to a realization that religion teaches us that it is not our place to judge. Use visual and emotional cues that elicit empathy and include images of families inclusive of LGBT students. Reinforce LGBT students as an important part of the community; don't isolate them visually or in narratives.

VII. Understanding the Rights of LGBT Students

In order to guard against discrimination and harassment in schools, we must understand the full spectrum of rights afforded to LGBT students. Many school officials are simply unaware of laws that mandate protection of LGBT students. Therefore, it is important to educate yourself about these legal rights, so that you can recognize a situation when a school is breaking the law and take appropriate action. If any problems are encountered at school, the first step is to talk to the principal or other official. If nothing happens, it's time to take action.

a. Right to be Free of Harassment

Harassment and discrimination can be verbal, non-verbal, intimidating, hostile, or physically aggressive. This can be extremely frightening and damaging to students in public schools. Under federal law, public schools are required to take action to remedy harassment of LGBT students. Title IX of the Education Amendments of 1972 "prohibits sexual harassment and gender-based harassment of all students, regardless of the actual or perceived sexual orientation or gender identity of the harasser or target."⁵



Title IX does not expressly prohibit discrimination that is solely based on sexual orientation or gender identity. Nevertheless, Title IX protects all students, including LGBT students, from sex and gender discrimination. The fact that the harassment is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation to investigate and remedy overlapping sexual harassment or gender-based harassment.

Rochelle Hamilton, Vallejo, CA. The ACLU sued her school after she was harassed by teachers for being a lesbian.

When students are subjected to harassment on the basis of their LGBT status, they are often subjected to forms of gender or sex discrimination, which are expressly prohibited under Title IX.

⁵ U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter (October 26, 2010), available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010_pg8.html

Thus, it can be sex discrimination if students are harassed either for exhibiting what is perceived as a stereotypical characteristic for their sex, or for failing to conform to stereotypical notions of masculinity and femininity.

Gender-based harassment is also expressly prohibited under Title IX, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping. Public schools can't ignore harassment or bullying based on appearance or behavior that doesn't "match" a student's gender: boys who wear makeup, girls who dress "like a boy," or students who are transgender. Nor can school officials tell youth to change who they are or that they brought the harassment on themselves by dressing or behaving "inappropriately."

Under the law, schools are not permitted to turn a blind eye to harassment when it is "severe, pervasive or persistent" or when it "creates a hostile environment." Harassment creates a "hostile environment" when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates civil rights law. A school is responsible for addressing harassment incidents about which it knows or reasonably should have known.

Harassment on the basis of sexual orientation or gender identity can lead to severe consequences for a student's academic success, health and safety. Empower students to know that they do not have to take it! Schools are required to take action. Once school officials are on notice of harassment, they must take measures to protect students. In response to an act of harassment, school employees should intervene immediately. If appropriate, they should punish the harassment promptly, consistently and proportionately to the seriousness of the act.

The response should not end there. Staff members should deter future harassment with continuing lessons that condemn harassment and highlight tolerance and respect. Schools should also develop and publicize rules that explain how harassment can be reported and how reports of harassment will be handled. Such policies should prohibit retaliation against anyone who reports harassment and protect the confidentiality of anyone involved.

b. Right to form a GSA

A Gay-Straight Alliance (GSA) is a type of extracurricular student organization. They involve students of any sexual orientation, not just gay kids. A GSA serves many important purposes, providing a safe zone for LGBT students at school and a forum for discussing topics related to sexual orientation and gender identity. For students who are questioning or struggling with their identity as LGBT, GSAs can serve as a critical support group. GSAs can help to end homophobia, through educating the broader school community about sexual orientation and gender identity issues.

All public school students have the right to form a GSA, which are protected from discrimination under federal law. According to the Federal Equal Access Act, public high schools that allow students to form extracurricular clubs must also allow students to start GSAs. As the law states, "It shall be unlawful for any public secondary school which receives Federal financial assistance...to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting ...on the basis of the religious, political, philosophical, or other content of the speech at such meetings."⁶

If a GSA is formed, a school is also required by law to treat it the same as other non-curricular clubs. Failure to do so is a violation of the law. Therefore, if a school lets other clubs gather on campus, advertise for meetings, and organize school events, they must allow the same privileges to a GSA.

However, because of the nature of a GSA, confidentiality should be provided. As discussed in the *Right to Privacy* section later in this guide, schools are not permitted to "out" students to anyone.

A student wanting to form a GSA should follow the general procedures of a specific school, just like any other non-curricular club. Check with school officials to determine a school's particular rules for forming

a student organization, and follow these closely. Some requirements, such as a faculty sponsor, may be imposed. However, such requirements must be uniformly applied to all non-curricular clubs.

In January 2015, the ACLU-MS responded to the Rankin County School District policy change after students wanted to start a Gay Straight Alliance in a nearby high school.



⁶ Federal Equal Access Act, 20 U.S. Code § 4071 (a)

c. Right to Privacy

Students have a constitutional right to remain private about their sexual orientation or gender identity. Further, sexual orientation or gender identity may not be used to manipulate a student in any way. Without full and voluntary consent, it is against the law for a teacher or school official to “out” a student to anyone, including that student’s parents or other school employees. In *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977), the Supreme Court confirmed that the federal constitutional right to privacy protects not only an individual’s right to bodily autonomy, but also the right to control the release of highly personal information.

This right to privacy certainly extends to students within the school setting, preventing the disclosure of information about sexual orientation or gender identity without consent. Even when a student appears to be open about his or her sexual orientation or gender identity at school, it is that student’s right to limit the extent to which, and with whom, the information is shared. An individual’s sexual orientation and gender identity is inherently private, and the need to respect this right is significant considering the reality of widespread discrimination against the LGBT community.

“Outing” an LGBT student without permission can lead to tragic consequences. School officials may think they are doing the right thing by revealing a student’s sexual orientation or gender identity to their parents. However, doing so not only violated the student’s privacy rights, but it can negatively impact a young person’s life. Many LGBT students who have been “outed” to their families often face subsequent rejection or abuse at home. Family conflict over a young person’s sexual orientation or gender identity can lead to further severe consequences, such as homelessness or suicide.

School administrators have a legal obligation to implement policies and procedures that maintain the privacy and safety of all students, including those that identify as LGBT. If a teacher, counselor, or any other school official threatens to tell parents that a student identifies as LGBT, that student should make it clear that there is not permission to do so. Failing to honor the decisions of a student to withhold information about their sexual orientation or gender identity is a violation of the law.

d. Right to Freedom of Speech and Expression



Sometimes schools try to silence students who are open about their sexual orientation or gender identity. However, public schools are required to respect the freedom of speech and expression for students who choose to be open about their sexual orientation or gender identity. Students have a right, guaranteed by the U.S. Constitution, to be out of the closet, to voice their opinions, and to express their individuality. In *Tinker v. Des Moines*, 393 U.S. 503, 506 (1969) the Supreme Court confirmed that students don't "shed their constitutional rights to freedom of speech of expression at the schoolhouse gate."

It is against the law for schools to punish students for talking about their identity as LGBT or issues related to sexual orientation or gender

identity. This protection extends to clothing and other forms of expression. If a school dress code generally permits items that reflect beliefs, it is illegal to ask students not to wear certain clothing because of a LGBT-related message. The only time a school may restrict an individual student's speech is when it causes a significant disruption in the classroom. For example, standing up and yelling "I'm gay!" in the middle of class would likely be considered a significant disruption, but talking with a friend at school about being gay is entirely permissible.

e. Right to Attend Prom, Homecoming, and Other School Events

Federal law protects the right to bring a same-sex date and the right to choose your attire as forms of freedom of expression. Therefore, public schools may not prohibit students from bringing a same-sex date to prom or other school dances. Additionally, schools may not require that attendees at school events wear clothing that conforms to traditional gender norms. Such policies are discriminatory, only serving to exclude LGBT students from full participation in the school experience.

In *McMillen v. Itawamba County School District*, 702 F. Supp. 2d 699, 703-704 (E.D. Miss. 2010), a federal court ruled that the First Amendment rights of students are violated when a public school denies the opportunity to bring a same-sex date to events. The Court further decided that the student's rights were violated when the school cancelled prom, instead of allowing her to attend the event with a same-sex date. If a student's right to bring a same-sex date is threatened, a letter should be sent to the principle, discouraging anti-LGBT policies and citing this legal authority.



"I just want other kids to know that it's not right for schools to do that," Constance McMillen said about her school not allowing her to go to prom with a same-sex date.

f. Rights of LGBT Youth Who Are Incarcerated

Youth who are incarcerated nevertheless maintain rights. All juveniles have a right to equal protection under the law while they are confined. LGBT youth should not be isolated, even if meant for their safety, as this practice violates the constitutional right to be free from unreasonably restrictive confinement. The law requires that facilities employ less stigmatizing responses to address the risk of violence rather than just isolating LGBT youth.

Further, confined youth have a constitutional right to be free from physical, emotional and sexual abuse. They also have a right to receive adequate medical and mental healthcare and nondiscriminatory treatment. For instance, transgender youth must receive appropriate health care, including continued hormone therapy, to address their needs while detained.

Juvenile justice professionals must provide services and fair and equal treatment to all youth, including LGBT youth. LGBT youth may not be refused services or programs because of their sexual orientation or gender identity, nor should they be treated differently from other youth engaged in the program or residing at the facility. For instance, facility staff should not isolate LGBT youth for their protection, should not ignore LGBT-related violence or victimization, and should not move LGBT youth from one placement to another because of harassment without first addressing the problematic behavior.

Even while incarcerated, all juveniles have the right to freedom of speech and expression, which includes the right to be open about one's sexual orientation and the right to express one's gender identity through clothing, accessories and grooming.⁷

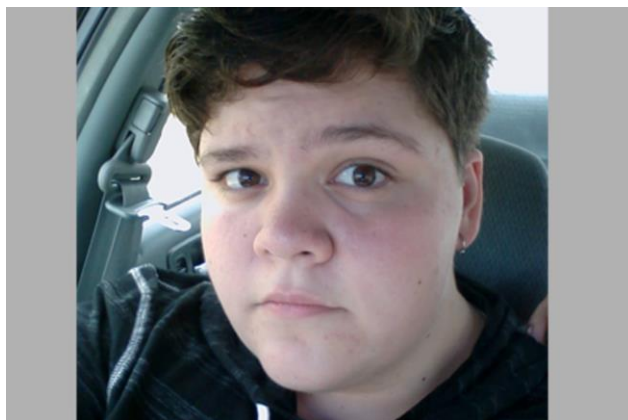
⁷ The Equity Project, LGBT Youth in Juvenile Court: Practice Tips for Juvenile Defenders, available at http://www.equityproject.org/pdfs/LGBT_Youth_in_Juvenile_Court.pdf.

g. Right to Be Transgender or Transitioning Gender in School

The right to be yourself in school includes the right to be transgender or to transition your gender in school. Unfortunately, there aren't yet clear rules in most places about how schools should accommodate students when they transition. There are often many obstacles to deal with, including restroom and locker room accessibility, your name and what pronouns to use when talking about you, and how official records classify you.

Check out the model school policy for trans and gender nonconforming students in Section VIII(d) (*Model Policies*). Talk to schools about being transgender or transitioning. The more support a student has in being transgender, the better. If possible, involve parents, guardians, doctors, and reach out to supportive teachers and other staff. Explain to the school that it is legally obligated to create a safe learning environment for all students, and that there is a constitutional right to express who you are in school.

Schools should assess the needs of students on an individualized basis, and work out a plan. In all cases, a school's goals should be to ensure safety, support, and emotional well-being so that students can learn and achieve their full potential. Schools can accomplish this by taking action to prevent harassment or bullying, making sensible accommodations with respect to restrooms and lockers, and protecting privacy by not giving information that may reveal a student is transgender to others unless consent has been given to do so.



Gavin Grimm, Gloucester, VA. The ACLU filed a lawsuit against his school district for adopting a discriminatory bathroom policy that segregates transgender students from their peers.

VIII. Inequalities of Care for LGBT Students

This section will only begin to cover information concerning the realities that LGBT students face within their schools and communities on a daily basis. Discrimination and harassment on the basis of sexual orientation and gender identity can create an extremely hostile learning environment, threatening the physical and psychological well-being of students and leading to harmful feelings of isolation or insecurity. LGBT youth of color particularly vulnerable to harassment, as they may be bullied on the basis of race, sexual orientation, gender identity or all the above at once. Research suggests that there is “significant overlap in race and sexual orientation-based harassment.”⁸

No student should have to feel unsafe or unwelcome in their own school because of their sex, or because they don’t conform to stereotypical notions about how boys or girls should behave. Students who feel excluded from their school community simply do not receive a fair shot at opportunity and success. By understanding the challenges that LGBT students face, as outlined in this section, we can move towards the creation of an inclusive school community.

a. Harassment

Discrimination on the basis of sexual orientation or gender identity does not belong in the classroom. Nevertheless, the school environment can be extremely hostile for LGBT students, causing them to feel as though they are not valued within their communities. It is common for students to experience harassment and victimization in school, fostering a climate of fear. Harassment may be committed by other students, or even by school staff. Because of this, many LGBT students avoid school activities or drop out entirely.

“Public schools should never make a student feel like an outcast just for being who they are. LGBT kids and gender-nonconforming kids deserve to feel welcomed and safe in school.”

– Ceara Sturgis

Harassment comes in many forms. It can include bullying, verbal acts, name-calling, crude jokes, pejorative terms, written statements, images, physical assault or any other conduct that may be threatening, harmful, or humiliating. It can also include information transmitted electronically through the Internet, computers, or cell phones. To be actionable, “harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.”⁹ It may occur in various settings, including hallways, classrooms, restrooms, gymnasiums, school-sponsored social or sports events, curricular or extracurricular activities, at recess and on the school bus.

⁸ GSA Network, *LGBTQ Youth of Color*, available at http://www.gsanetwork.org/files/aboutus/LGBTQ_brief_FINAL-web.pdf.

⁹ U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter (October 26, 2010), available at http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010_pg8.html

A recent study by GLSEN revealed statistics about the experiences of LGBT youth in schools.¹⁰ On the basis of sexual orientation, 74.1% of LGBT students have experienced verbal harassment, 36.2% have been physically harassed, and 16.5% have been physically assaulted. Similarly, on the basis of gender identity, 55.2% of LGBT students have experienced verbal harassment, 22.7% have been physically harassed, and 11.4% have been physically assaulted. Further, 49% of LGBT students had experienced electronic harassment, or “cyber-bullying,” within the last year.

These statistics confirm that a significant number of LGBT students experience some form of harassment at school. Nevertheless, the GLSEN study also revealed that only 43.3% of victims report incidents of harassment to school employees. The most common reasons cited for this include doubt that intervention by school officials will occur, or concern that the situation could become worse if reported. As feared, amongst students who did report an incident of harassment, 61.6% of students said that schools employees did nothing in response.

b. Dating Violence

The term “dating violence” is broad, including physical or sexual violence, as well as psychological and emotional abuse. In addition to hate crimes, harassment and bullying, LGBT youth also experience violence in their dating relationships. According to a recent study, the risk of abuse is greater among LGBT couples, when measured against their heterosexual counterparts.¹¹

Specifically, victimization is most common for transgender and female youth. Physical dating violence was reported in 43% of LGBT teens surveyed, compared to 29% of respondents who identified as LGBT. Nearly one in four (23%) of LGBT youth experienced sexual coercion, which was reported in only 12% of heterosexual youth. Emotional abuse was reported by 59% of LGBT youth, but only by 46% of heterosexual respondents.

The study also found that certain factors can lead to a greater risk of dating violence and abuse for youth. These factors include depression, suicidal thoughts, family maltreatment, substance abuse, poor school performance and a lack of social acceptance. Many of these risk factors are seen at higher levels among LGBT youth, largely because of the discrimination that they may face from their peers, teachers and families.

¹⁰ GLSEN, The National School Climate Survey (2013). available at

http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf

¹¹ Dank, Lackman, Zweig & Yahner, Urban Institute, *Dating Violence Experiences of Lesbian, Gay, Bisexual, and Transgender Youth* (2013), available at <http://www.urban.org/UploadedPDF/412892-Dating-Violence-Experiences-of-Lesbian-Gay-Bisexual-and-Transgender-Youth.pdf>

c. Exile

Many LGBT students fear or experience a loss of support or rejection from their families as a result of exposing their sexual orientation or gender identity. One study¹² found that around half of LGBT youth experience a negative reaction for their families. Further, 26% are kicked out of the home, and 33% experience physical assault by family members.

For all youth, conflict within the family is the primary cause of homelessness. Youth identifying as LGBT therefore, experience homelessness at a disproportionate rate. Between 20 - 40% of all homeless youth identify as LGBT. This is alarming, compared against the 3 - 5% of the entire U.S. population that identifies as LGBT. Many homeless LGBT youth suffer from mental health issues, substance abuse or risky behavior. Further, homelessness is the greatest predictor of involvement with the juvenile justice system.¹³

“It’s already a rough time in high school. Everybody wants to be accepted. The family’s acceptance is 100 times more important than people they go to school with.”

– Constance McMillen

In addition to problems at home, many LGBT students may feel as though they are excluded from the school community, which are skewed towards heterosexuality. Classroom curricula often involve lessons about families or traditions. However, LGBT families or individuals are not generally recognized or reflected in lessons, textbooks or other materials. Media and religious organizations can spread inaccurate information about what it means to identify as LGBT. Without a support system, “out” role models or positive cultural images, students internalize negative stereotypes and feel isolated as though they are “the only one around.”

Further, many students are exposed to direct anti-gay messages at school. It is not uncommon for young people to use LGBT-related words and other homophobic remarks in hurtful, misinformed ways. As a result, over 55.5% of LGBT students reported feeling unsafe in school because of their sexual orientation, 37.8% because of their gender expression.¹⁴ Rather than face a hostile school climate, many LGBT students skip school or drop out entirely.

¹² Ray, Nicholas, The National Gay and Lesbian Task Force, *Lesbian, Gay Bisexual and Transgender Youth: An Epidemic of Homelessness* (2006), available at http://www.thetaskforce.org/static_html/downloads/reports/reports/HomelessYouth_ExecutiveSummary.pdf

¹³ The Equity Project, *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts*, available at http://www.equityproject.org/pdfs/hidden_injustice.pdf.

¹⁴ GLSEN, *The National School Climate Survey* (2013), available at http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_0.pdf

d. Criminalization

One study conducted by the GSA Network reported significant discipline disparities, confirming that students of color, students with disabilities, and LGBT students are all subjected to more harsh punishment for the same or similar infraction in comparison to their peers. LGBT students, in particular, are “consistently blamed for their own victimization.”¹⁵

The “school-to-prison pipeline” [STPP] describes the pervasive practice of driving students out of school, and into the criminal justice system. Policies that are unnecessarily punitive in light of the underlying behavior, such as “zero tolerance,” fuel the STPP. Underlying bias against LGBT students and homophobia fuel further criminalization of LGBT students and those who associate with them. Many LGBT students who are affected by such push-out practices experience marginalization in school, drop out entirely prior to graduation, or are referred directly to the criminal justice system by the school.

As a result of school push-out practices, victimization, and abandonment by families and communities, LGBT youth are significantly over-represented in the juvenile justice system. About 5-7% of the nation’s youth identify as LGBT. However, 13-15% of youth currently in the juvenile justice system identify as LGBT. This disparity confirms the reality that LGBT youth are at a heightened risk of entering the STPP. However, the juvenile justice system is not equipped to address the unique experiences and challenges that LGBT youth face.

e. Suicide

A supportive family and school environment are critically important to the safety of youth identifying as LGBT. As discussed in the preceding sections of this report, LGBT youth are more likely than their heterosexual peers to encounter social challenges, including harassment, isolation, marginalization, bullying, physical assault, and violence. These negative attitudes towards LGBT individuals can put these youth at an increased risk of suicide-related behaviors.¹⁶ Studies have shown that youth identifying as lesbian, gay or bisexual [LGB] are 4 times more likely to attempt suicide than straight peers. Further, nearly half of transgendered youth have seriously thought about taking their lives, and one-quarter report having made a suicide attempt.

Significantly, LGBT youth with highly unsupportive families are 8.4 times more likely to attempt suicide than LGBT peers who reported no or low levels of familial rejection.¹⁷ This data demonstrates that a supportive environment can be lifesaving. GSAs and other similar peer groups can also be effective providers of psychological support.

¹⁵ GSA Network, *LGBTQ Youth of Color*, available at http://www.gsanetwork.org/files/aboutus/LGBTQ_brief_FINAL-web.pdf.

¹⁶ Centers for Disease Control and Prevention, *Lesbian, Gay, Bisexual, and Transgender Health: LGBT Youth*, available at <http://www.cdc.gov/lgbthealth/youth.htm>.

¹⁷ The Trevor Project, *Facts About Suicide*, available at <http://www.thetrevorproject.org/pages/facts-about-suicide>.

IX. Advancing the Rights of LGBT Students

This section is a “toolkit” of resources, including general tips when working with teens and schools, sample letters to inform schools about LGBT rights, and model policies that schools could adopt to protect students against discrimination and harassment. With the help of these materials, you will become an advocate on behalf of LGBT students in your community, and influence schools to improve the learning climate in school.

a. What Can You Do as a Parent or Community Member?

You can help to ensure that schools do not exclude or discriminate against LGBT students just because of who they are. Be supportive and stay involved! Initiate and invite discussion to talk openly with teens about any problems or concerns that they have. Be aware of behaviors that might indicate that a teen is a victim of bullying or violence, or that a teen might be victimizing others. Take immediate action if you suspect bullying, violence, or depression.



If you suspect that a school is treating a student differently because of sexual orientation or gender identity: *be respectful and follow the rules*. It is important to not lose your temper, or give the school any other reason for treating the student badly. Encourage students to document everything, keep copies, and take detailed notes about everything: dates, where things happened, who was there, who said or did what, and any other details that might come in handy. The more documentation of the interaction with the school, the better your chances of getting it addressed.

Next, *get support*. Look for resources that can help you improve your school’s learning environment. In communities with limited access to support groups, you may join online discussion forums and support groups.

b. How Can You Encourage Schools to Support all Students?

There are many opportunities for you to improve the learning environment for LGBT youth, enabling them to feel socially, emotionally, and physically safe and supported. A welcoming school has the potential to reduce instances of violence, harassment, depression, truancy, substance abuse, and suicidal thoughts among LGBT students. This can be accomplished by launching a campaign to change local schools, and working towards goals of inclusion, such as:

- Adopting clear policies and procedures, including anti-bullying and anti-discrimination policies, at the school, school district, or state-wide level that encourage respect and prohibit harassment and violence against all students. See *Model Policies* VIII(d).
- Defending the rights of LGBT students by sending formal letters to the school or school district. See *Model Letters* VIII(c).
- Creating “safe spaces” where LGBT students can receive support, including counselor’s offices, designated classrooms, or student organizations like a GSA.
- Inspiring all student-led and student-organized clubs to promote a safe, welcoming, and accepting school environment.
- Ensuring that health education curricula use inclusive terminology and materials that are relevant to LGBT youth, concerning HIV, STD, or pregnancy prevention.
- Encouraging trainings for school district and school staff, on how to create a safe and supportive school environment for all students, regardless of sexual orientation or gender identity.
- Facilitating access to local providers of community-based support, including health services, HIV/AIDS testing, social counseling, and psychological services.
- Organizing meetings with faith leaders to talk about the challenges that LGBT youth face, and to highlight shared religious values.

X. Resources for LGBT Students

Nollie Jenkins Family Center	662-834-0089	nolliejenkinsfamilycenter.org
ACLU of Mississippi	601-354-3408	aclu-ms.org
AIDS Healthcare Foundation	601-368-3440	aidshealth.org
Aids Services Coalition	601-450-4286	http://ascms.weebly.com
Human Rights Campaign	601-613-0111	hrc.org/states/mississippi
Lambda Legal	1-866-542-8336	lambdalegal.org/states-regions/mississippi
South Mississippi AIDS Task Force	228-385-1214	smatf.com
Mississippi Gulf Coast Rainbow Center		http://gulfcoastrainbowcenter.org/
Mississippi Safe Schools Coalition	662.205.6772	http://www.mssafeschools.org/
My Brother's Keeper	601-957-3625	mbkinc.org
Open Arms Health Care	601-500-7660	oahcc.org
Safe Harbor Family Church	601-906-8934	safeharborfamilychurch.org

Southern Poverty Law Center	601-948-8882	splcenter.org
State Health Department	601-576-7634	mdhc.state.ms.us
The Dandelion Project	601-433-7266	thedandelionproject.org
The PRISM Center	662-471-8647	facebook.com/RainbowCenterJxn
The Spectrum Center		http://www.thespectrumcenterms.org/
Unity Mississippi		http://unityms.org/

XI. Model Letters

If you encounter a situation where a LGBT student's rights are being violated, prepare to advocate on their behalf. Many school districts may not understand their obligations under federal law to recognize certain rights. You can utilize the following letters to school officials of the legal framework that requires them to take action on behalf of LGBT students. If school officials fails to address underlying situation after receipt of these letters, please do not hesitate to contact the ACLU of Mississippi at 601-354-3408.

a. Letter to School Officials about [Addressing Anti-LGBT Harassment and Bullying](#)

Dear Superintendent and members of the School Board:

There may be a case of harassment at one or more of your schools within your school district against a student or students who are, or are perceived to be, lesbian, gay, bisexual or transgender (LGBT). I am writing to inform you it is your legal responsibility to investigate such cases of bullying, both physical and verbal, and ensure that they stop.

This is clearly established law. Federal courts throughout the United States, including trial courts and appeals courts, have recognized the Constitutional requirement of equal protection of gays and lesbians for decades, including in public schools.

- *Nabozny v. Podlesny*, 92 F.3d 446, 458 (7th Cir. 1996) (“Reasonable persons in the defendants’ positions... would have concluded that discrimination against [public school student] Nabozny based on his sexual orientation was unconstitutional.”);
- *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134-35 (9th Cir. 2003) (“The plaintiffs are members of an identifiable class for equal protection purposes because they allege discrimination on the basis of sexual orientation.”). It is therefore incumbent on school officials to take seriously claims of LGBT-related harassment and fully and effectively resolve them.
- See *Flores* at 113536 (“Failure to take any further steps once he knew his remedial measures were inadequate supports a finding of deliberate indifference”);
- *Martin v. Swartz Creek Cnty. Schools*, 419 F. Supp. 2d 967, 974 (E.D. Mich. 2006) (“that the school district’s efforts ...did not abate the frequency or severity of [anti-gay bullying], might alone create a jury question of whether the school was deliberately indifferent.”)

Public schools that ignore or inadequately respond to harassment and bullying of LGBT students pay significantly for such discriminatory treatment. Cases challenging a school district’s deliberate indifference to bullying against students because of actual or perceived LGBT status have led to damages awards or settlements as high as \$1.1 million.

- *Flores*, 324 F.3d 1130 (\$1.1 million in damages and attorneys’ fees); *Nabozny*, 92 F.3d 446 (\$962,000 in damages);
- *Dickerson v. Aberdeen School Dist. No. 5*, No. 3:10-cv-5886 (W.D. Wash. 2010) (\$100,000 in damages); *Theno v. Tonganoxie Unified School Dist. No. 464*, 404 F.Supp.2d 1281 (D. Kan. 2005) (\$440,000 in damages and attorneys’ fees);
- *Henkle v. Gregory*, 150 F.Supp.2d 1067 (D. Nev. 2001) (\$451,000 in damages);
- *Vance v. Spencer*, 231 F.3d 253 (\$220,000 in damages);
- *Putman v. Bd. of Educ. of Somerset Ind. Schools*, No. 6:00-cv-00145 (E.D. Ky. 2000) (\$135,000 in damages)).

In addition to the clearly established case law, the U.S. Department of Education issued guidelines on bullying in 2010 that further confirm the responsibility of public schools to take seriously harassment of students on the basis of their actual or perceived LGBT status. The guidelines state, “When students are

subjected to harassment on the basis of their LGBT status, they may also... be subjected to forms of sex discrimination prohibited under Title IX. The fact that the harassment includes anti-LGBT comments or is partly based on the target's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy overlapping sexual harassment or gender-based harassment." Asst. Sec'y of Educ. Russlynn Ali, Dep't of Educ. Office of Civ. Rights, Guidance on Combating Bullying (October 26, 2010), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

With this information in mind, we urge you to investigate and respond appropriately to the LGBT-related harassment that may be occurring at your school or schools.

Sincerely,

[INSERT YOUR NAME]

b. Letter Urging Adoption of Policies Prohibiting Anti-LGBT Harassment and Bullying

Dear School Principals, Administrators, and Board Members:

Harassment of lesbian, gay, bisexual, and transgender (LGBT) students is a significant problem in schools throughout the United States and is likely a significant problem in your school as well. As it is part of your responsibility to ensure the safety and educational opportunity of all students, we urge you to take specific steps to combat and eliminate this unlawful harassment.

The Problem

A 2009 nationwide survey of lesbian, gay, bisexual and transgender students found:

- 18.8% of LGBT students reported experiencing physical assault at school in the last year because of their sexual orientation;
- 40.1% of LGBT students reported being physically harassed (shoving, pushing, etc) at school in the last year;
- 61.1% of LGBT students reported feeling unsafe in their school.

Your school community must respond to these startling facts now. In fact, you may be legally liable if your school environment is unsafe.

In 1996, a Wisconsin student sued his former school because it allowed antigay harassment against him to escalate to the point that a group of students performed a mock rape on him with a broomstick. The school's response? "Boys will be boys." In the first federal appeals court decision dealing with school-based discrimination against an LGBT student, the court decided that school officials violate a student's constitutional rights when they fail or refuse to protect a student from anti-gay harassment (*Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996)). On the eve of a jury trial to determine damages, the school district agreed to pay the student nearly \$1 million.

Since then, in cases brought all over the country from Kentucky to California, LGBT students have recovered hundreds of thousands of dollars from school districts that failed to protect them from harassment and violence.

In 2003, a federal appeals court made clear that simply taking some action in response to a complaint of harassment won't save a school from liability-the school is only safe from legal responsibility if it actually works to solve the harassment problem (*Flores v. Morgan Hill Unified School District*, 324 F. 3d 1130 (9th Cir. 2003)). In this case, six high school students were repeatedly physically and verbally abused.

The court held the school could be liable even when school officials responded to the students' complaints by taking some action, if the response was too limited or incompletely addressed the problem. For example, after a group of boys shouted anti-gay slurs and threw a cup at two female students, an assistant principal told the victims to report the incident to the campus police, but failed to conduct an independent investigation to identify and discipline the harassing students. In another incident, the principal and assistant principal disciplined only one of several students who beat another student while saying, "Faggot, you don't belong here." In both cases, the court held that the school's response was insufficient and that it could be held liable.

Furthermore, a school's failure to communicate anti-harassment policies to students despite an awareness of hostility toward LGBT students may also create liability. The message is clear, school officials may not stand mute while anti-gay harassment takes place.

Available Resources

Schools should make sure that everyone in the school community understands that anti-LGBT harassment will not be tolerated. To send that message and avoid legal liability, your district should ensure that its anti-harassment policies include sexual orientation and gender identity. It should also publicize the policies within the school community and diligently enforce them as well.

Sincerely,

[INSERT YOUR NAME]

c. Letter to Principals and Superintendents about Boys Being Prevented from Wearing Dresses

Dear Superintendent or Principal:

There may be in effect a policy at one or all of your schools prohibiting boys from wearing dresses to the prom. I'm writing to inform you that such a rule violates students' federal constitutional and statutory rights and must be rescinded immediately.

A requirement that all boys wear traditionally male attire to school dances, first of all, constitutes gender discrimination, prohibited by federal statutes. Federal courts have consistently ruled that acting against a person for not conforming to traditional gender norms amounts to illegal sex stereotyping, prohibited by civil rights laws.

Price Waterhouse v. Hopkins, 490 U.S. 228, 250 (1989) (denying promotion for female employee of accounting firm because she didn't walk, talk, and dress femininely was illegal sex stereotyping). These protections apply in the context of public schools. Logan v. Gary Cnty. Sch. Corp., 2008 WL 4411518 (N.D. Ind. Sept. 25, 2008) (transgender student whom school prohibited from wearing a dress to the prom stated a claim under Title IX and the First Amendment);

Montgomery v. Ind. Sch. Dist. No. 709, 109 F.Supp.2d 1081 (D. Minn. 2000) (failing to protect gay student from harassment because he didn't meet male stereotypes triggered liability for school district).

The equality provisions of the Fourteenth Amendment also prohibit a public school from engaging in this type of gender discrimination.

- Glenn v. Brumby, 663 F.3d 1312, 1314-1321 (11th Cir. 2011) (holding that government employer violated U.S. Constitution by terminating transgender employee whose wearing of women's clothes the employer deemed "unnatural"). You may impose a requirement of proper, even formal, attire for the prom (provided it doesn't create an undue financial burden for students). To mandate dress requirements, however, based on outdated notions that only boys can wear tuxedos and only girls can wear dresses is illegal.
- Knussman v. Maryland, 272 F.3d 625 (4th Cir. 2001) (prohibitions on sex stereotyping also apply under constitutional law). Different treatment based on sex is constitutional only if supported by a significant governmental interest, and there is certainly no significant governmental interest in barring boys from wearing traditionally feminine outfits or forcing them to wear tuxedos.

A policy prohibiting boys from wearing dresses to the prom, moreover, violates important First Amendment rights. The freedom to select what to wear to one's prom (and whom to bring as a date) is protected by the First Amendment's guarantee of free expression and association.

- Doe v. Yunits, No. 001060A, 2000 WL 33162199 (Mass. Super. 2000) (preliminarily enjoining school officials from disciplining transgender student for wearing girls' clothes or accessories), aff'd Doe v. Brockton Sch. Cmte., 2000 WL 33342399 (Mass. App. Ct. Nov. 30, 2000);

- *McMillen v. Itawamba County Sch. Dist.*, 702 F.Supp.2d 699 (N.D. Miss. 2010) (holding that school's prohibition of a female student from wearing a tuxedo and bringing a same-sex date to prom violated her First Amendment rights). In *McMillen*, judgment was entered against the school and the student was awarded over \$116,000 in damages and attorneys' fees.

We are writing now in an effort to resolve this situation short of litigation. To comply with the law, you must change your policy to allow male students the option of wearing the appropriate formal attire of their choice.

Sincerely,

[INSERT YOUR NAME]

d. Letter to Principals and Superintendents about Girls Being Prevented from Wearing Tuxes

Dear Superintendent or Principal:

There may be in effect a policy at one or all of your schools prohibiting girls from wearing tuxedos to the prom. I'm writing to inform you that such a rule violates federal constitutional and statutory rights of students and must be rescinded immediately.

A requirement that all girls wear traditionally female attire to school dances, first of all, constitutes gender discrimination, prohibited by federal statutes. Federal courts have consistently ruled that acting against a person for not conforming to traditional gender norms amounts to illegal sex stereotyping, prohibited by civil rights laws. [See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989) (denying promotion for female associate of accounting firm because she didn't walk, talk, and dress femininely was illegal sex stereotyping); *Montgomery v. Independent School District No. 709*, 109 F. Supp. 2d 1081 (D. Minn. 2000) (failing to protect gay student from harassment because he didn't meet male stereotypes triggered liability for school district); *Rosa v. Park West Bank*, 214 F.3d 213 (1st Cir. 2000) (denying a cross-dressing man a loan application until he went home to change constitutes sex discrimination).]

The equality provisions of the 14th Amendment also prohibit a public school from engaging in this type of gender discrimination. You may impose a requirement of proper, even formal, attire for the prom (provided it doesn't create an undue financial burden for students). To mandate dress requirements, however, based on outdated notions that only boys can wear tuxedos and only girls can wear dresses is illegal. [See *Knussman v. Maryland*, 272 F.3d 625 (4th Cir. 2001) (prohibitions on sex stereotyping also apply under constitutional law).] Different treatment based on sex is constitutional only if supported by a significant governmental interest, and there is certainly no significant governmental interest in barring girls from wearing tuxedos or forcing them to wear dresses.

A policy prohibiting girls from wearing tuxedos to the prom, moreover, violates important First Amendment rights. The freedom to select what to wear to one's prom (and whom to bring as a date) is protected by the First Amendment's guarantee of free expression and association. [See *Doe v. Yunits*, No. 001060A, 2000 WL 33162199 (Mass. Super. 2000) (preliminarily enjoining school officials from disciplining transgender student for wearing girls' clothes or accessories), *aff'd Doe v. Brockton School Committee*, 2000 WL 33342399 (Mass.App.Ct. Nov. 30, 2000); *Fricke v. Lynch*, 491 F.Supp. 381 (D.R.I. 1980); *McMillen v. Itawamba County School District*, 702 F.Supp.2d 699 (N.D. Miss. 2010) (holding that school's prohibition of a female student from wearing a tuxedo and bringing a same-sex date to prom violated her First Amendment rights).] In *McMillen*, judgment was entered against the school.

We are writing now in an effort to resolve this situation short of litigation. To comply with the law, you must change your policy to allow female students the option of wearing the appropriate formal attire of their choice.

e. Letter to Principals and Superintendents about [the Right to Bring a Same-Sex Date to Prom](#)

Dear Superintendent or Principal:

There may be in effect a policy at one or all of your schools prohibiting couples of the same sex from attending proms or school dances. I'm writing to inform you that such a rule violates the constitutional rights of gay and lesbian students and must be rescinded immediately.

Any policy excluding same-sex couples from proms or school dances violates the right to free expression guaranteed by the First Amendment to the U.S. Constitution. This is the conclusion of at least two federal courts in cases in which a gay high school student successfully challenged his or her school's ban on same-sex couples at prom. [Fricke v. Lynch, 491 F. Supp. 381 (D.R.I. 1980)]; [McMillen v. Itawamba County School District, 702 F.Supp.2d 699 (N.D. Miss. 2010)].

Whether based on prejudice or not, it is unconstitutional to exclude same-sex couples from school dances. In Fricke v. Lynch, the principal being sued testified in court that the school's prom policy was based on concern about possible disruption and violence at the prom in reaction to the participation of a gay couple. The federal judge was convinced of the sincerity of the principal's concern, but ruled that the Constitution required the school to take steps to protect the couple's free expression rather than to stifle it. "To rule otherwise would completely subvert free speech in the schools by granting other students a 'heckler's veto', allowing them to decide through prohibited and violent methods what speech will be heard," wrote the judge.

Three decades after Fricke was decided, a public school in Mississippi cancelled its prom rather than allow a student to bring a same-sex date. [McMillen v. Itawamba County School District, 702 F.Supp.2d 699 (N.D. Miss. 2010)]. In that case, a federal court determined once again that school policies that ban same-sex dates at the prom violate the right to free expression guaranteed by the First Amendment. The Court found that "this expression and communication of her viewpoint [bringing a same-sex date to prom] is the type of speech that falls squarely within the purview of the First Amendment... For all of the foregoing reasons, the Court finds that [the student's] First Amendment rights have been violated." The Court further held that the school district had violated the student's rights by cancelling the prom instead of allowing her to attend with her same-sex date. This case resulted in a judgment entered against the school, as well as more than \$116,000 in damages and attorneys' fees.

In addition to violating free speech rights, a policy prohibiting same-sex couples from attending prom or school dances has equal protection implications. The U.S. Supreme Court has ruled that a policy of a public entity (like a public school) that's based on animosity or prejudice towards gay people violates equality rights guaranteed to all Americans by the 14th Amendment. [Romer v. Evans, 517 U.S. 620 (1996)].

Sincerely,

[INSERT YOUR NAME]

f. Letter to Principals and Educators about [LGBT Censorship in School](#)

Dear Principal or Educator,

One or more of your schools may have a policy prohibiting students from wearing clothing or accessories with slogans or symbols expressing support for acceptance and fair treatment of lesbian, gay, bisexual, or transgender (LGBT) people (e.g., a t-shirt with the slogan “Gay, Fine By Me,” or a rainbow wristband or sticker). On behalf of the American Civil Liberties Union Foundation (ACLU), I’m writing to inform you that any such rule violates important federal constitutional rights of students and must be rescinded immediately.

The U.S. Supreme Court, as long ago as 1969, ruled that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gates.” *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969) (upholding rights of high school and middle school students to wear black armbands to exhibit their disapproval of the Vietnam War). As long as it is neither obscene nor threatening, a student’s speech may be lawfully proscribed only if it would substantially disrupt the work of the school or interfere with the rights of others. *Tinker*, 393 U.S. at 513. There is nothing obscene, violent or disruptive about a student peacefully displaying his or her support for fairness and equality for LGBT people.

The case of *Gillman v. School Board for Holmes County, Florida*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008) provides a good example of what might transpire in court if you persist in a policy of censorship. In *Gillman*, the school board banned students from displaying rainbows, pink triangles, and pro-gay slogans such as “Gay Pride,” “I Support My Gay Friends,” “Pro-Gay Marriage,” and “Sexual Orientation is not a Choice. Religion, however, is.” In striking down the ban, the federal judge ruled that the school board had violated the students’ right to free speech and had discriminated against their viewpoint, in violation of the 1st and 14th Amendments. The court also awarded the students \$325,000 for their legal fees and expenses.

Holmes County school officials claimed that censorship was necessary to prevent disruption of the work of the school. Following the standard articulated in *Tinker* that the speech ban must be justified “by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint” (393 U.S. at 509), the federal judge in *Gillman* rejected the school board’s argument. The judge noted, in fact, that the “vast majority of episodes involving the speech at issue were indistinguishable from the typical background noise of high school.” *Gillman*, 567 F. Supp. 2d at 1373.

The United States Supreme Court in *Tinker* acknowledged that a protest against the Vietnam War in a high school would be politically controversial, especially because a former student at the high school had recently been killed in the war. But the Court went on to explain why school officials’ fear of a disturbance caused by people expressing an unpopular viewpoint was not enough to overcome the right to freedom of expression.

Any departure from absolute regimentation may cause trouble. Any variation from the majority’s opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom—this kind of

openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society. *Tinker*, 393 U.S. at 508-509.

School officials, when challenged on their ban of pro-LGBT expression, sometimes try to defend themselves by claiming that this expression is sexually suggestive and conjures images in children’s minds of people engaging in sexual acts. That’s what the school officials in the *Gillman* case argued, but the court rejected it as “an obvious mischaracterization of the speech.” 567 F.Supp.2d at 1377. Instead, the court found that the principal had banned the students’ speech because of his personal disagreement with its message, which he may not lawfully do. *Gillman*, 567 F. Supp. 2d at 1376.

To comply with the law, you must ensure that your policy permits students to express their support for the respect, equal treatment, and acceptance of LGBT people.

Sincerely,

[INSERT YOUR NAME]

g. Letter to School Officials about [LGBT Student Privacy](#)

Dear School Administrator,

One or more of your schools may be violating the constitutional privacy rights of its students. You are legally obligated to prevent and stop such violations. Specifically, without full and voluntary consent by the student, it is against the law to disclose a student's sexual orientation or gender identity, or compel a student to disclose his or her sexual orientation or gender identity, even to a student's parents or other school administrators.

The United States Supreme Court has long recognized that the federal constitutional right to privacy not only protects an individual's right to bodily autonomy but also the right to control the nature and extent of highly personal information released about that individual.

- *Whalen v. Roe*, 429 U.S. 589, 599- 600 (1977) (holding that the constitutional right to privacy respects not only an individual's autonomy in intimate matters, but also an individual's interest in avoiding divulgence of highly personal information). This right to informational privacy restricts the government's ability to disclose information about an individual's personal matters, especially those matters that are protected by the federal Constitution from unwarranted government intrusion, such as contraception, abortion, marriage, family life, and sexual associations.
- *Thorne v. El Segundo*, 726 F.2d 459, 468 (9th Cir. 1983); see also *Doe v. Luzerne Cnty.*, 660 F.3d 169 (3d Cir. 2011)
- *Bloch v. Ribar*, 156 F.3d 673, 685 (6th Cir. 1998) ("Publicly revealing information [about sexuality] exposes an aspect of our lives that we regard as highly personal and private.").

This right to privacy extends to students in a school setting. Students have the constitutional right to share or withhold information about their sexual orientation or gender identity from their parents, teachers, and other parties, and it is against the law for school officials to disclose, or compel students to disclose, that information. See

Whalen v. Roe, 429 U.S. 589, 599-600 (1977); *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir. 2000) ("It is difficult to imagine a more private matter than one's sexuality and a less likely probability that the government would have a legitimate interest in disclosure of sexual identity."); *Eastwood v. Dep't of Corr.*, 846 F.2d 627, 631 (10th Cir. 1988) (right to privacy "is implicated when an individual is forced to disclose information regarding sexual matters.").

Even when a student appears to be open about his or her sexual orientation or gender identity at school, it is that student's right to limit the extent to which, and with whom, the information is shared. *C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005) ("the fact that an event is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of that information to others") (quoting *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 770 (1989)). Courts have long recognized that an individual's privacy interest in this matter is particularly compelling because of the undeniable stigma attached to homosexuality. See, e.g., *Varnum v. Brien*, 763 N.W.2d 862, 889-90 (Iowa 2009) and *Snetsinger v. Montana Univ. Sys.*, 325 Mont. 148, 161-65 (2004) (recounting widespread societal discrimination against gays and lesbians).

School officials may think they are doing the right thing by revealing a student's sexual orientation or gender identity to his or her parents. However, doing so not only violates the student's privacy rights, but can negatively impact a young person's life. Young people whose schools have "outed" them to their families often report subsequent rejection and/or abuse at home.

Experts on homelessness have determined that family conflict over a young person's sexual orientation or gender identity is a significant factor leading to youth homelessness. See, e.g., Hyde, J., "From Home to Street: Understanding Young People's Transitions Into Homelessness," 28 *J. of Adolescence* 171, 175 (2005); Clatts, M.J., et al., "Correlates and Distribution of HIV Risk Behaviors Among Homeless Youth in New York City," 77 *Child Welfare* 195 (1998). At least one study indicates that approximately half of all gay teens experienced a negative reaction from their parents when they "came out" and over a quarter of teens have been kicked out of their homes after sharing this information with their parents. See National Gay and Lesbian Task Force Policy Institute and National Coalition for the Homeless, *Lesbian Gay Bisexual and Transgender Youth: An Epidemic of Homelessness* (2006).

As a school administrator, you have a legal obligation to implement policies and procedures that maintain the privacy and safety of your students, including those who are lesbian, gay, bisexual or transgender.

Sincerely,

[INSERT YOUR NAME]

h. Letter to School Officials about Gay Straight Alliances

Dear School Principal, Administrators, and School Board Members:

Students in your school are interested in forming a student organization, often called a gay/straight alliance or GSA, to focus on combating anti-gay harassment and discrimination and on educating the school community about these issues. Federal law requires that you treat such organizations the same as any other non-curricular club at your schools. Indeed, the United States Department of Education issued a letter to school officials and legal guidelines affirming that under federal law, GSA's must be treated the same as other student clubs. See

<http://www2.ed.gov/policy/elsec/guid/secletter/110607.html> (Letter from Education Secretary Duncan); <http://www2.ed.gov/policy/elsec/guid/secletter/groupsguide.doc> (legal guidelines). Where schools have refused to allow gay/straight alliances to form or otherwise denied these groups equal treatment, courts have held them to be in violation of the law¹.

Allowing the club to meet is not just a legal duty; it makes sense from an educational and a safety perspective, too. According to the federal Equal Access Act, if a public high school allows any student group whose purpose is not directly related to the school's curriculum to meet on school grounds during lunch or before or after school, then it can't deny other student groups the same access to the school because of the content of their proposed discussions. Schools may not pick and choose among clubs based on what they think students should or should not discuss. As a federal judge concluded in one Equal Access Act case:

The Board Members may be uncomfortable about students discussing sexual orientation and how all students need to accept each other, whether gay or straight. . . . [But] Defendants cannot censor the students' speech to avoid discussions on campus that cause them —————discomfort or represent an unpopular viewpoint. In order to comply with the Equal Access Act, Anthony Colin, Heather Zeitin, and the members of the Gay-Straight Alliance must be permitted access to the school campus in the same way that the District provides access to all clubs, including the Christian Club and the Red Cross/Key Club.

Colin v. Orange Unified Sch. Dist., 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000). The judge went on to emphasize that the gay/straight alliance provides an important forum for students who are concerned about sexual orientation. Recognizing the impact of discrimination on gay youth, the judge wrote: "This injunction is not just about student pursuit of ideas and tolerance for diverse viewpoints. As any concerned parent would understand, this case may involve the protection of life itself." *Id.* at 1150.

In ruling as he did, the judge recognized that anti-gay harassment and violence are widespread among teenagers, especially in schools. Some of the most common epithets that teens use today to disparage each other are "faggot," "dyke," and "queer." A disproportionate amount of physical violence against lesbian, gay, bisexual and transgender people of all ages is perpetrated by teenage boys. Gay/straight alliances help to combat verbal and physical harassment. They create a space where students can come together to share their experiences, to discuss anti-gay attitudes they may experience in school, or to debate different perspectives on gay-related issues. Students talking openly and honestly with other

students is a uniquely effective way of making young people aware of the harms caused by discrimination and violence.

School officials should not silence these student-initiated debates and discussions, as long as they do not involve targeted harassment of an individual student or group of students. Silencing ideas in a non-curricular setting because some people don't like them is not only incompatible with the educational values of open inquiry and wide-ranging debate that are central to our free political system — it is against the law.

The Equal Access Act was signed into law in 1984 after being heavily promoted by religious groups who wanted to ensure that students could form Christian clubs in public schools. The authors of the law understood that if this right were extended to students who wanted to start religious clubs, then it must be extended to all students.

Common ways schools try to block GSA's — and why you shouldn't try them

1. **Refusing to approve a GSA on the basis of morality:** The Equal Access Act specifically provides that a school cannot deny equal access to student activities because of the “religious, political, philosophical, or other content of the speech at such meetings.” 20 U.S.C. § 4071(a). Since any moral objections the school may have to a Gay/Straight Alliance are based on the religious, political, or philosophical views of its members, such an objection isn't recognized by the Act. Simply put, the school cannot ban a GSA based on issues of morality if the GSA doesn't interfere with the orderly conduct of educational activities in the school.
2. **Refusing to approve GSA because the school doesn't want to be viewed as “endorsing homosexuality”:** Simply allowing a GSA to meet at a school does not indicate that the school approves or endorses the subject matter of the meetings. Observing that “the proposition that schools do not endorse everything they fail to censor is not complicated,” the Supreme Court has held that secondary school students are mature enough to understand that a school does not endorse or support speech that it merely permits on a nondiscriminatory basis. *Bd. Of Educ. of Westside Community Schools v. Mergens*, 496 U.S. 226, 250 (1990). Congress recognized the same point, stating that “Students below the college level are capable of distinguishing between State-initiated, school sponsored, or teacher led religious speech on one hand and student-initiated, student-led religious speech on the other.” *Mergens*, 496 U.S. at 250-51 (quoting S.Rep. No. 98-357, p. 8 (1984)). In short, this excuse is no answer to a lawsuit that students can bring under the Equal Access Act.
3. **Refusing to approve a GSA because the discussion of sex is not appropriate for high school students and/or violates the school's abstinence education policy:** In *Colín v. Orange Unified School District*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000), the court recognized that the focus of most GSA's is not sex, but issues related to sexual orientation and how to combat unfair treatment and prejudice. The court also noted that assuming a GSA will discuss sex and other clubs will not unfairly singles out the GSA based on a stereotype. Courts have also rejected the argument that GSA's are in conflict with school abstinence education policies. *Gay-Straight Alliance of Yulee High School v. Sch. Bd of Nassau County*, 2009 WL 635966 (M.D. Fla., March 11, 2009); *Gonzalez v. Sch. Bd. of Okeechobee County*, 571 F.Supp.2d 1257 (S.D.Fla. 2008). As one court put it:

[The school board] has failed to demonstrate that the GSA's mission to promote tolerance towards individuals of non-heterosexual identity is inherently inconsistent with the abstinence only message [the board] has adopted. *Gonzalez*, 571 F. Supp. 2d at 1264. Finally, as indicated by the fact that even religious groups in school sometimes discuss sex-related topics and sex education is taught in classes, there is no reason to believe that high school students can't discuss sex-related topics. An administrator's discomfort is not sufficient reason to ban a GSA if the GSA does not create a substantial disruption.

4. **Refusing to approve a GSA because you think the Equal Access Act doesn't apply to the GSA at your school:** As noted above, the protections of the Equal Access Act are triggered if the school allows just one non-curricular student activity on campus. While the Act itself doesn't define the differences between curricular and non-curricular clubs, a Supreme Court case does. In *Mergens*, 496 U.S. 226, the court held that a non-curricular student group is any group that doesn't "directly relate" to courses offered by the school. Let's say your school teaches swimming. A swim team or club would then be considered curricular; a scuba diving club would be considered non-curricular, even though it involves swimming. Groups like a chess club, a stamp-collecting club, a community service club, or a GSA are usually considered non-curricular, because what they do is not taught in any class.

The line between curricular student activities and non-curricular activities can be blurry, and schools that get it wrong can pay a high price. For example, a school district in Kentucky recently thought that the Equal Access Act did not apply to it because, in its view, the school had no non-curricular clubs on campus. A federal judge held otherwise, noting that the school's community service club, drama club, and class officer organizations continued to meet and were not "directly related" to the curriculum. *Boyd County High Sch. Gay Straight Alliance v. Bd. Of Educ. of Boyd County*, 258 F. Supp. 2d 667 (E.D. Ky. 2003).

Even if a school successfully eliminates all non-curricular clubs, it may still have to allow a GSA to meet if that group is curricular. In Utah, a school district eliminated all non-curricular clubs in an attempt to prevent a GSA from meeting. The GSA students simply formed a different club, whose purpose was to discuss subjects taught in the school's curriculum such as American government and law, U.S. history, and sociology, but from a lesbian and gay rights perspective. When the school rejected the students' application, the students sued. The court held that the school was not applying its policy evenly because it was allowing a very broad interpretation of "curricular" for some groups but not others, and ordered the school to recognize the club. *East High Gay/Straight Alliance v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1166 (D. Utah 1999).

In short, trying to prevent a GSA from meeting by eliminating all non-curricular clubs, or by limiting the kind of curricular clubs that can meet, is asking for a lawsuit. It also imposes a significant and unjustifiable cost on all students, depriving them of numerous after-school activities simply in order to silence students concerned about harassment and discrimination. That's just not a proper role for a school.

5. **Refusing to approve a GSA because a GSA will cause disruption:** When there is disruption surrounding a GSA, school officials need to ask themselves, "Who's really being disruptive here?" If

students, parents, or community members get in an uproar because they don't like a GSA, *they* are the ones causing the disruption — not the GSA itself. A court in Kentucky recently ruled that even extensive disruption in the community and in school (thousand-person rallies, a boycott by half the student body) isn't enough to justify shutting down a GSA where the GSA members themselves are not causing the commotion. *Boyd County High School Gay/Straight Alliance*, 258 F. Supp. 2d 667.

6. **Refusing to approve a GSA, claiming that it is under the control of some outside group or organization:** Although most high school clubs that address LGBT issues are referred to as GSA's, and although some national organizations like the Gay, Lesbian, Straight Education Network have attempted to compile informal contact directories of GSA's across the U.S., GSA's remain local and student-driven. There is *no* national organization or governing body for GSA's.

A school must apply restrictions regarding involvement of non-school persons uniformly. For example, if other clubs have names from outside organizations (for example a Key Club) and have not been prohibited, then the school cannot deny the GSA approval based on its name. *Colin*, 83 F. Supp. 2d at 1146-47.

7. **Imposing conditions on the GSA that don't apply to other clubs:** Schools cannot subject GSA's to any conditions that do not apply to all other non-curricular clubs. Requiring a faculty advisor for the GSA but not for other groups, or placing different requirements on a GSA's posters, leaflets, and announcements than it places on other groups, are examples of differential treatment that's unlawful. See, e.g., *Straights and Gays for Equality v. Osseo Area Schools-District No. 279*, 540 F.3d 911 (8th Cir. 2008). In addition, delaying acting on the GSA's application for approval can itself be disparate treatment that violates the EAA.
8. **Requiring a GSA to change its name:** Many clubs want to use the name Gay/Straight Alliance, although some come up with other names (one group wanted to call itself Helping Unite Gays and Straights, or "HUGS"). Whatever the name is, schools cannot require that any reference to sexual orientation be removed, since doing so changes the focus and goals of the club. Courts have specifically ruled that school cannot tell a GSA to remove the term "gay" from its name. *Colín*, 83 F. Supp. 2d at 1147-48; *Gay-Straight Alliance of Yulee High Sch.*, 2009 WL 635966.

We hope this letter has given you a firm understanding of why schools should allow GSA's to form as well as how you can remain in compliance with the Equal Access Act. By acknowledging students' right to form GSA's, you are not only obeying the law and avoiding potential legal liability, you are supporting diversity in your schools and taking a strong step towards addressing anti-gay harassment.

Many resources are available in your community to help you learn more about your legal duties under the Equal Access Act.

¹ See *Straights and Gays for Equality v. Osseo Area Schools-District No. 279*, 540 F.3d 911 (8th Cir. 2008); *Gay-Straight Alliance of Yulee High Sch. v. Bd of Nassau County*, --- F.Supp.2d ---, 2009 WL 635966 (M.D. Fla., March 11, 2009); *Gonzalez v. Sch. Bd. of Okeechobee County*, 571 F.Supp.2d 1257 (S.D.Fla. 2008); *White County High Sch. Peers Rising in Diverse Educ. v. White County Sch. Dist.*, No. 2:06-CV-29WCO, 2006 WL 1991990 (N.D. Ga. July 14, 2006); *Boyd County High Sch. Gay Straight Alliance v. Bd. of Educ. Of Boyd County*, 258 F. Supp. 2d 667 (E.D. Ky. 2003); *Franklin Cent. Gay/Straight Alliance v. Franklin Township Cmty. Sch. Corp.*, No. IP01-1518 C-M/S, 2002 WL 32097530 (S.D. Ind. Aug. 30, 2002); *Colin v. Orange Unified Sch. Dist.*, 83 F. Supp. 2d 1135, 1148 (C.D. Cal. 2000); *East High Gay/Straight Alliance v. Bd. of Educ. of Salt Lake City Sch. Dist.*, 81 F. Supp. 2d 1166 (D. Utah 1999).

XII. Model Policies

In addition to sending letters when the rights of LGBT students are violated, you can urge the school to adopt policies that proactively provide protections. By adopting policies, like the ones contained in this section, schools and school districts will have procedures in place for accommodating LGBT students and the wider community without resorting to these forms of discrimination. If you have questions about these document or would like assistance constructing your own anti-bullying and harassment policy, please contact the ACLU of Mississippi at 601-354-3408.

i. Model School Anti-Bullying and Harassment Policy¹⁸

1. Prohibition Against Bullying and Harassment: Bullying and harassment are prohibited in [name of school or district]
2. Definition of 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 association with a person or group with one or more of the abovementioned characteristics, whether actual or perceived.
3. Definition of 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 association with a person or group with one or more of the abovementioned characteristics, whether actual or perceived.
4. 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, 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.
5. Notice: This policy will be distributed annually and will also be included in any student codes of conduct, disciplinary policies, student handbooks and school websites.
6. Reporting Bullying and Harassment: All allegations of bullying or harassment shall be reported to the principal or a designated staff member. Prior to notification of any parent or guardian regarding any incident of bullying, harassment or cyber-bullying, school authorities must consider the issue of notification as they would any other educationally-relevant decision, considering the health, well-being, and safety of any students involved in the incident. Whoever is designated to accept complaints will also be responsible for investigating the allegation in a timely manner and determining appropriate disciplinary action. The principal or designated staff member will be held accountable for doing everything possible, within reason, to resolve the situation.
7. Anonymous Reports: Reports may be filed anonymously. However, disciplinary action cannot be taken solely based on an anonymous report. Anonymous reports will be investigated with the same procedure, timeliness and vigor as other reports and disciplinary action can occur based on the results of the investigation.

¹⁸ GLSEN, School Model Policy, downloaded from http://www.glsen.org/sites/default/files/Model%20Policy%20-%20School%204.12.13_0.pdf.

8. False Reports: Students who file false reports of bullying or harassment will be subject to disciplinary action.
9. Parental Reports: Reports alleging bullying or harassment may be filed with the principal or the designated staff member by parents and school volunteers.
10. Responsibility of Students: Any student who observes an act of bullying or harassment should report the bullying or harassment to the principal or the designated staff member.
11. Responsibility of Staff: All staff members will take reasonable measures to prevent bullying and harassment and are obligated to report any such acts that come to their attention.
12. Retaliation: Retaliation or threats of retaliation meant to intimidate the victim of bullying or harassment or toward those investigating the incident will not be tolerated.
13. Investigation of Bullying and Harassment: Once reported, any allegation of bullying or harassment will be promptly investigated by the principal or a designated staff member. Proper disciplinary action will be taken immediately following the conclusion of the investigation.
14. Discipline and Remediation: Disciplinary actions for bullying and harassment may include, but are not limited to: warnings; counseling; loss of opportunity to participate in extracurricular activities, school social events or graduation exercises; loss of school bus transportation; community service; in-school suspension; short term suspension; or transfer to another school among others. The specific consequences should be consistent, reasonable, fair, age appropriate and match the severity of the incident. If necessary, counseling will be provided for the target and/or the student perpetrating the bullying or harassment.
15. Training and Prevention: Students and staff will be given instruction on how to prevent bullying and harassment. This will also include instruction on the process for filing complaints and the process/ consequences that will result from the complaint.

ii. Model District Policy on Anti-Bullying and Harassment¹⁹

1. Statement of Purpose: This School District acknowledges that all students have the right to participate fully in the educational process, free from bullying and harassment, and in that regard, a safe and civil environment in school is necessary for students to learn and to achieve high academic standards. 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. 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.
2. Definitions:
 - a. "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 defined by the district or state educational agency. This also includes association with a person or group with one or more of the abovementioned characteristics, whether actual or perceived.
 - b. "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 district or state educational agency. This also includes association with a person or group with one or more of the abovementioned characteristics, whether actual or perceived.
 - c. "Cyber-bullying" means use of any electronic communication technology to bully or harass, as defined above, one or more students, regardless of location or the type of electronic communication used.
3. Scope of Proscribed Conduct: This policy is applicable to all educators, staff members, students, and volunteers, and 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 is used for bullying, harassment, or cyberbullying.
4. Prohibition on Bullying Behavior: Bullying, harassment, and cyber-bullying are prohibited in this District. Retaliation or threats of retaliation meant to intimidate the victim of bullying, harassment, or cyber-bullying, or toward those investigating incidents thereof, are also prohibited.

¹⁹ GLSEN, District Model Policy, downloaded from <http://www.glsen.org/sites/default/files/GLSEN%20model%20district%20policy.pdf>

5. District Responsibilities:

- a. The Superintendent shall identify the district administrator(s) responsible for collecting and responding to reports of bullying, harassment, or cyber-bullying.
- b. The District shall provide a report on the aggregate complaints of bullying, harassment, and cyber-bullying and responses to these complaints to the Board at least annually. This report shall be made available to the public.
- c. The District shall receive and investigate complaints from parents, students, educators, and staff members, which allege that a school is failing to implement this policy.
- d. This policy will be distributed annually, and will also be included in any district-wide student codes of conduct, disciplinary policies, student handbooks, and websites.

6. School Responsibilities:

- a. The school principals and designated administrators within this district shall create environments where the school community upholds the standards of respect and civility and understands that bullying, harassment, and cyberbullying are inappropriate, harmful and unacceptable.
- b. This policy will be distributed annually and will also be included in any student codes of conduct, disciplinary policies, student handbooks, and school websites.
- c. Schools within this district shall identify the school administrator(s) responsible for receiving reports of, and responding to, complaints of bullying, harassment, or cyberbullying. The system for reporting suspected bullying, harassment, and cyber-bullying must ensure the reporting can be done easily, safely and privately.
- d. Schools within this district shall maintain written or electronic records regarding all complaints of bullying, harassment, and cyber-bullying, any investigation thereof, and any disciplinary action taken. These records shall be maintained for no less than 5 years.
- e. All schools shall report on all complaints of bullying, harassment, and cyber-bullying and responses to these complaints to the District at least every three months.

7. Educator and Staff Responsibilities: Educators, school and district staff share responsibility for modeling appropriate behavior and creating an environment where mutual respect, civility, tolerance, and acceptance among students and staff are promoted and where students understand that bullying and harassment are inappropriate, harmful and are taken seriously. All educators, school and district staff members will take reasonable measures to prevent bullying, harassment, and cyber-bullying and are obligated to report in a timely manner any such acts or complaints of such that come to their attention.

8. Student Responsibilities: Students share responsibility for helping to create a safe school environment by not engaging in or contributing to bullying, harassment, or cyber-bullying, treating everyone with respect, and being sensitive as to how others might perceive their actions or words. Any student who observes an act of bullying, harassment, or cyberbullying should report the incidents to school authorities in a timely manner.

9. Complaint Procedure:

- a. All allegations of bullying, harassment, or cyber-bullying shall be reported to the designated school administrator, either orally or in writing. Any student, parent or guardian, volunteer, educator, or staff member may file such a report. If a report contains incomplete information, the designated administrator shall take reasonable measures to contact the individuals involved to determine whether an investigation should be pursued.
- b. Upon receiving a complaint of bullying, harassment, or cyber-bullying from any student, educator, staff member, or parent, the designated school administrator shall:
 - i. Promptly and thoroughly investigate the alleged incident of bullying, harassment, or cyber-bullying;
 - ii. Take immediate steps, at the administrator's discretion, to protect any involved students, educators, or staff pending completion of an investigation;
 - iii. Provide notification to the parents or guardians of all involved students, provided that such notification does not endanger the health, safety or well-being of any student;
 - iv. Maintain a written or electronic record of the complaint, any investigation, and any intervention or disciplinary actions taken;
 - v. Take proper disciplinary action immediately following the conclusion of the investigation; and
 - vi. Issue a report in a timely manner regarding the complaint, investigation, and any disciplinary measures taken to all involved students, parents, and educators, while maintaining the privacy and safety of any involved students.
- c. Reports of bullying, harassment, and cyber-bullying may be filed anonymously. However, disciplinary action cannot be taken solely based on an anonymous report. Anonymous reports will be investigated with the same procedure, timeliness and vigor as other reports and disciplinary action can occur based on the results of the investigation.
- d. Students who file false reports of bullying, harassment, or cyber-bullying will be subject to discipline.
- e. School administrators shall also use this procedure to investigate complaints of retaliation or threats of retaliation meant to intimidate the victim of bullying, harassment, or cyber-bullying or toward those investigating incidents thereof.
- f. Incidents of bullying, harassment, or cyber-bullying that involve criminal activity shall be reported to law enforcement.
- g. A complainant may request that the District conduct an independent review if they: (1) believe that the school did not correctly analyze the complaint and failed to conduct an investigation of the incident because the school believed the alleged conduct did not constitute bullying or harassment, (2) are dissatisfied with the final determination following an investigation as to whether bullying or harassment occurred, or (3) believe that although a final determination was made that bullying or harassment occurred, the school's response was inadequate to correct the problem. The complainant shall make such a request in writing to the Superintendent. Upon such request, the Superintendent

shall promptly initiate an independent review by a neutral person, and the school and all employees shall cooperate with the independent reviewer so that they may proceed expeditiously. The review shall consist of an interview of the complainant and relevant school officials and a review of the written materials from the school's investigation.

10. Notification of Parents and Guardians: When a complaint of bullying, harassment, or cyber-bullying is filed, the designated school administrator shall notify the parents or guardians of all involved students. Additionally, when the investigation is completed, the designated administrator shall issue a report in a timely manner regarding the complaint, investigation, and any disciplinary measures taken to the parents and guardians of any involved students. Private educational or personal data regarding an alleged perpetrator who is a student or employee of the District shall not be disclosed, to the extent protected by law. In certain circumstances, disclosure of the basis for which a student is bullied may result in additional negative consequences to the student's health and well-being. Prior to notification of any parent or guardian regarding any incident of bullying, harassment, or cyber-bullying, school authorities must consider the issue of notification as they would any other educationally-relevant decision, considering the health, well-being, and safety of any students involved in the incident.
11. Discipline and Counseling: Disciplinary actions for bullying, harassment, and cyber-bullying may include, but are not limited to: warnings; counseling; loss of opportunity to participate in extracurricular activities, school social events or graduation exercises; loss of school bus transportation; community service; in-school suspension; short term suspension; or transfer to another school among others. The specific consequences should be consistent, reasonable, fair, age appropriate and match the severity of the incident. While the District takes ALL reported cases of bullying, harassment, and cyber-bullying seriously, we promote progressive discipline and intervention as opposed to "zero tolerance" policies. If necessary, counseling will be provided for the target and/or the student perpetrating the bullying, harassment, or cyber-bullying.
12. Professional Development: The school district shall implement ongoing professional development to build the skills of all staff members, including, but not limited to educators, school and district staff, to prevent, identify and respond to bullying, harassment, and cyberbullying. The content of such professional development shall include, but not be limited to: (i) developmentally appropriate strategies to prevent bullying, harassment, and cyber-bullying incidents; (ii) developmentally appropriate strategies for immediate, effective interventions to stop bullying, harassment, and cyber-bullying incidents; (iii) information regarding the complex interaction and power differential that can take place between and among a perpetrator, victim and witnesses to the bullying, harassment, and cyber-bullying; (iv) research findings on bullying, harassment, and cyber-bullying, including information about specific categories of students who have been shown to be particularly at risk for bullying, harassment, and cyber-bullying in the school environment; (v) information on the incidence and nature of cyber-bullying; and (vi) internet safety issues as they relate to cyber-bullying. The district shall identify and offer information on alternative methods for fulfilling the professional development requirements of this section.

13. Student Training and Prevention: Each school shall present in age-appropriate language the District's policy on bullying, harassment, and cyber-bullying as part of any orientation program conducted for students at the beginning of each academic term. This will also include instruction on how to prevent bullying, harassment, and cyber-bullying; the process for filing complaints; and the process/ consequences that will result from the complaint. This policy will be distributed annually and will also be included in any student codes of conduct, disciplinary policies, student handbooks, and school and district websites.

iii. Model District Policy on Transgender and Gender Nonconforming Students²⁰

1. Statement of Purpose:

- a. 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.
- b. 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.

2. 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.

- a. **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.
- b. **GENDER EXPRESSION:** The manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms.
- c. **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.
- d. **TRANSITION:** The process in which a person goes from living and identifying as one gender to living and identifying as another.
- e. **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.
- f. **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

²⁰ GLSEN, Model District Policy on Transgender and Gender Nonconforming Students, downloaded from http://www.glsen.org/sites/default/files/Trans_ModelPolicy_2014.pdf

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.

- g. **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 extends 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:**
- a. 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.
- b. 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.

5. Privacy/Confidentiality:

- a. 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.
- b. 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.)

6. 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.

7. 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.

8. 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.
9. 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.
 - a. *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.
 - b. *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 not limited to 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.
10. 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.
11. 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.

- a. **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.
 - b. **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.
12. **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 .
13. **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.

XIII. Publishers

The Nollie Jenkins Family Center, Inc.



Nollie Jenkins Family Center, Inc. is a leadership education, development and training organization working to develop youth, parents, grassroots leaders and organizers to empower the African-American community in Holmes County, Mississippi. Our primary objective is to enable communities to make the political, economic, and environmental and education systems accountable to the needs and interests of the African American community.

Nollie Jenkins Family Center emphasizes the importance of building strong community organization, through the effective community organizing work, as the essential means through which to advance the fundamental goal of empowering the community. A special emphasis for Nollie Jenkins Family Center is the active inclusion of the young people in the community in this process on the same basis as adults. The young people are the present, as well as the future, and their effective participation is essential if the struggle to empower the African American community in Holmes County and throughout Mississippi is to be successful.

www.nolliejenkinsfamilycenter.org



The Mississippi Coalition for the Prevention of Schoolhouse 2 Jailhouse, a project of Nollie Jenkins Family Center, Inc., is a statewide group of court-involved youth, parents, educators, community, legal and public policy groups dedicated to using cost-effective and humane methods to close Mississippi's schoolhouse to jailhouse pipeline and reform its wasteful, ineffective education and juvenile justice systems.

Funded by:

Astraea Lesbian Foundation for Justice LGBTQ Racial Justice Fund ("The Fund"), a collaborative philanthropic initiative that envisions a United States where LGBTQ people of color can safely and vibrantly

pursue full authentic lives. The Fund's collaborative partners, the Astraea Lesbian Foundation for Justice, the Ford Foundation, the Arcus Foundation and anonymous donors, aim to develop and strengthen a strategic and effective advocacy sector addressing the needs of LGBTQ communities of color in the Southeastern United States.



The ACLU of Mississippi



The ACLU of Mississippi is dedicated to promoting, defending, and extending civil liberties to all Mississippians with emphasis on issues related to criminal justice reform, equality and freedom of speech and expression. We accomplish our mission through legislation, litigation, and advocacy.

The production of this educational resource guide is central to our work to promote and protect equality for all Mississippians, regardless of race, gender, sexual orientation, or disability by challenging discriminatory immigration policies and practices, ensuring the rights of persons with disabilities, advocating for reproductive freedom, ensuring the protection and rights of individuals who are discriminated against because of their race or ethnicity, and protecting voter rights.

ACLU of Mississippi
P.O. Box 2242
Jackson, MS 39225
Phone: 601-354-3408
Email: office@aclu-ms.org

Your opinion matters!

Please [click here to let us know your thoughts about this guide.](#)