

STRENGTHENING
THE
LEARNING
ENVIRONMENT:

*A School Employee's Guide to
Gay, Lesbian, Bisexual,
& Transgender Issues,*

2nd Edition



National Education Association

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*Great Public Schools
for Every Child*

A NOTE ON THIS MANUAL

The information in this manual is meant to aid Association members and staff who may confront issues involving gay, lesbian, bisexual or transgender (GLBT) students or colleagues, or who may encounter bias based on sexual orientation or gender identity. While we have attempted to provide information that is accurate and up-to-date, this manual is not a substitute for legal advice. If you have a specific legal question, you should follow school district policy or directives from your supervisor; if necessary, you should also consult with your UniServ director or Association attorney. The opinions expressed in this publication should not be construed as representing the policy or position of the National Education Association, but rather as general information for educators who have particular interests in these issues.

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FROM OUR PRESIDENT

Dear Colleagues,

The National Education Association has a long history of fighting for the equality of all individuals. Discrimination and stereotyping based on race, gender, sexual orientation, gender identification, disability, ethnicity, immigration status, occupation, and religion are repugnant to us.

We are committed to the proposition that a great public school is a fundamental right of every child. And we know, as educators, that for a school to be great it must be safe; it must be free from intimidation and harassment; and it must have an atmosphere that is conducive to good teaching and learning.

I hope you will use this manual to help address and eliminate the bullying and harassment that gay, lesbian, bisexual, and transgender students experience. Every student deserves the right to learn in an environment that is free from discrimination. When we say a great public school is a basic right of every child, we mean every child.

Team NEA, let us lead the way.

*Reg Weaver
President*

PREFACE

Great public schools are a basic right for every child. And every child should be in schools that are safe. **Strengthening the Learning Environment: A School Employee's Guide to Gay, Lesbian, Bisexual, and Transgender Issues, 2nd Edition** provides resources to accomplish this goal.

This manual has been updated to incorporate changes and developments in information, resources and the law. It has been expanded to address the needs of not only students but school employees as well.

Since this manual's original publication in 1999, progress has been made for gay, lesbian, bisexual and transgender (GLBT) youth and adults. Increasingly, in communities across the nation, there is more recognition of GLBT students, parents, guardians, and employees. Students and school personnel are self-identifying as GLBT with greater frequency. Schools in many communities are increasingly likely to welcome students who are children of nontraditional families.

Despite these advances, statistics involving the treatment of GLBT students continue to be alarming. According to a 2003 national survey, more than 91 percent of GLBT students say they hear homophobic slurs or expressions frequently; nearly 58 percent of GLBT students have had property stolen or deliberately damaged at school; and more than 64 percent of GLBT students say they feel unsafe at school because of their sexual orientation.

GLBT school personnel, too, face not only adverse physical and emotional effects but also job related discrimination. As of December 2005, according to the Human Rights Commission, only 11 states had

in place a law, regulation, or policy prohibiting harassment or discrimination in schools on the basis of sexual orientation.

There is much work to do, still.

The effects of bullying, harassment, and discrimination are clear. Students who are subjected to frequent harassment do less well academically, and are much more likely to be truant or drop out of school, be depressed or suicidal, consume drugs or alcohol, or carry a weapon to school. For GLBT school personnel, the consequences include stress and depression on the job, lack of support among colleagues, and, sadly, instances where talented educators must leave the profession. These effects are an unacceptable price to pay in a nation in which every student and school employee has a basic right to great public schools.

NEA has stepped up to the plate by attending to the needs of, and problems confronting, GLBT students and employees. At its meeting on February 8, 2002, the NEA Board of Directors approved the recommendations of the NEA Task Force on Sexual Orientation, which emphasized that "the overriding need of [GLBT] students is to be educated in a safe and hospitable environment, and the overriding need of [GLBT] education employees is to work in such an environment."

NEA stands committed to addressing the needs of and challenges faced by both GLBT students and our GLBT members and colleagues. And we will continue to work to secure GLBT rights as part of our larger effort to secure human and civil rights for all in and outside of the classroom.

TABLE OF CONTENTS

I. Facts

- A. Statistics: Effect of Harassment on Health and Safety
- B. Statistics: Effect of Harassment on Learning
- C. Statistics: School Response to Harassment
- D. Terminology
- E. Common Questions and Answers
- F. Misconceptions and Stereotypes

II. Legal Issues

- A. Where to Look: Laws and Policies
- B. Harassment of Students
- C. Employment Discrimination
- D. “Coming Out” and Pro-GLBT Speech
- E. School Events
- F. Dress Code
- G. Student Clubs
- H. Curriculum and Library Resources
- I. Retaliation for Whistle Blowing

III. Tips

- A. Supporting GLBT Students and Employees
- B. Preventing Suicide
- C. Understanding Sexual Orientation and Racial/Ethnic Minorities
- D. Including Transgender Students or Colleagues
- E. Ending the Bullying and Harassment of Students
- F. Ending the Harassment and Discrimination of School Employees
- G. Responding to Objections
- H. Enhancing Staff Development
- I. Improving Classroom Instruction

- J. Improving School/District Policies

- K. Supporting School Clubs

IV. Resources

- A. NEA Training Program
- B. NEA Health Information Network Training Program
- C. NEA Publications
- D. NEA GLBT Caucus
- E. Additional Resources

I. FACTS

This section is designed to provide facts about gay, lesbian, bisexual and transgender (GLBT) people. Facts can dispel many misconceptions or stereotypes that exist concerning the GLBT community.

The statistics presented here are compiled from various surveys, including the 2003 National School Climate Survey and the 1995 Seattle Teen Health Survey, as well as recent reports by the American Academy of Child and Adolescent Psychiatry (2005), the FBI (2003), the UC-Davis 4-H Center for Youth Development (2004), the U.S. Secret Service National Threat Assessment Center (2001), and GLSEN (www.glsen.org).

A. Statistics: Effect of Harassment on Health and Safety

What has research revealed about the experiences of GLBT students and of the impact of anti-GLBT bias in schools?

1. *Physical Health and Violence*

- » 39 percent of GLBT students report being physically harassed (pushed, shoved) because of their sexual orientation. Among transgender youth, 55 percent report being physically harassed.
- » 64 percent of GLBT students report feeling unsafe at school because of their sexual orientation.
- » 58 percent of GLBT students reported having property stolen or deliberately damaged at school.
- » Hate crimes against people on the basis of sexual orientation represent the third largest percentage of bias-motivated incidents (16.7 percent). In California, 7.5 percent of all students report being harassed on the basis of sexual orientation, regardless of actual sexual orientation.
- » One study showed that 4 out of 5 students who are harassed on account of perceived sexual orientation are heterosexual.

2. *Emotional Health and Violence*

- » 84 percent of GLBT students report being verbally harassed (name calling, threats) because of their sexual orientation.
- » 45 percent of GLBT youth of color are verbally harassed because of both their sexual orientation and race/ethnicity.
- » Students harassed based on actual or perceived sexual orientation are more than twice as likely to report depression.

3. *Suicide*

- » Suicide is the third leading cause of death among 15-to-24 year-olds.
- » GLBT youth experience a significantly higher rate of suicide ideation and attempts compared to heterosexual youth.
- » Transsexuals may be at higher risk than homosexuals and much higher risk than the general population for suicidal behavior.

4. *Weapons and Homicide*

- » Students harassed based on actual or perceived sexual orientation are more than five times

as likely to be injured or threatened with a weapon at school.

- » Students harassed based on actual or perceived sexual orientation are more than three times as likely to carry a weapon to school. More than two-thirds of school shootings are motivated by revenge because a student felt persecuted or bullied by someone.
- » More than half of school-shooting perpetrators between 1999 and 2001 had a history of extreme depression, and more than three-quarters had made suicidal gestures or threatened to try to kill themselves prior to the shootings.

5. Alcohol, Drugs, Smoking

- » Students harassed based on actual or perceived sexual orientation are more than twice as likely to use methamphetamines or inhalants, and are more likely to smoke cigarettes, drink alcohol, binge drink, or use marijuana.

B. Statistics: Effect of Harassment on Learning

1. Academic Performance

- » Students who frequently experienced harassment because of their sexual orientation had grade point averages that were more than 10 percent lower than those who did not.
- » GLBT students who are frequently harassed are twice as likely to say they will not go to college as GLBT students who are less frequently harassed.

2. Truancy and Dropouts

- » 29 percent of GLBT students missed at least one entire day of school in the past month

because they felt unsafe. This equals at least two weeks of school per year.

- » 35 percent of GLBT youth of color missed at least one entire day of school in the past month because they felt unsafe. This equals at least two weeks of school per year.

C. Statistics: School Response to Harassment

1. Classroom Instruction

- » Students who learn about GLBT issues and bias as part of their formal instruction are more than 20 percent less likely to be bullied on account of their sexual orientation or gender identity.
- » Students learn just as much, if not more, from the informal lessons as they do from formal ones. Informal lessons consist of messages that pupils learn indirectly through the experience of attending school, as opposed to explicit lessons in the classroom.

2. Role of School Personnel

- » 37 percent of GLBT students do not feel comfortable discussing GLBT issues with teachers.
- » 83 percent of GLBT students report that school personnel never or only sometimes intervened when homophobic remarks were made when they were present.
- » 61 percent of GLBT students hear school personnel making homophobic remarks.
- » GLBT students who cannot identify supportive adults at school are more than twice as likely on planning not to go to college.

- » GLBT students who can identify supportive adults at school do more than 10 percent better academically than those who cannot.

3. *Gay-Straight Alliances, Policy Awareness*

- » GLBT students in schools with gay-straight alliances (GSAs) were more likely to feel safe in school than students whose schools do not have a GSA. GLBT students who did not have (or did not know of) a school policy protecting them from harassment were nearly 40 percent more likely to skip school than those who knew of such a policy.

D. Terminology

SEXUAL ORIENTATION: The basis of a person's romantic, sexual and/or emotional attractions (i.e., a person's status as straight, gay/lesbian, or bisexual).

STRAIGHT/HETEROSEXUAL: A person who is romantically, sexually, and/or emotionally attracted to persons of a different sex (i.e., a man who is attracted to women or vice versa).

GAY: A person (usually referring to a male) who is romantically, sexually, and/or emotionally attracted to persons of the same sex (i.e., a man who is attracted to other men).

LESBIAN: A female who is romantically, sexually, and/or emotionally attracted to other females (i.e., a woman who is attracted to other women).

BISEXUAL: A person who is romantically, sexually, and/or emotionally attracted to males and females (i.e., a person who can be attracted to a man or a woman).

BIOLOGICAL SEX: The physiological and anatomical characteristics that lead to labels of "female," "male," and for some individuals, "intersexual."

INTERSEXUAL: A person whose biological sex is neither strictly female nor strictly male because of ambiguous anatomy and/or chromosomes. Previously labeled as "hermaphrodite."

GENDER IDENTIFICATION: A person's psychological sense of being "male," "female," somewhere in between, or somewhere outside of these gender categories (i.e., a person's feeling or understanding of whether they are male, female, or neither).

TRANSSEXUAL: A person whose gender identity does not match their biological sex (i.e., a person identified as male at birth but who identifies as a woman or vice versa). A transsexual may or may not be gay.

TRANSGENDER PERSON: A person who does not conform to society's expectation of how that person should express his/her gender (such as a girl who does not act or dress and play in "feminine" ways). A transgender person may or may not be transsexual and may or may not be gay.

Terms related to bias:

HETEROSEXISM: The privileging of heterosexuality (such as when heterosexuals receive benefits because theirs is the only sexual orientation considered to be natural, normal, or acceptable).

HOMOPHOBIA/BIPHOBIA/TRANSPHOBIA: The marginalizing of different sexual orientations or gender identifications. Taken from the root "phobia" meaning "fear of," these terms can manifest as fear, hatred, or intolerance of GLBT people and of oneself, as well as of behaviors attributed to GLBT people. Also called anti-gay bias or anti-GLBT bias.

Terms Related to Community:

GLBT (OR LGBT, LGBTQ): Acronym for gay, lesbian, bisexual, transgender and questioning (i.e., a person who is unsure of his or her sexual orientation or gender identity).

COMING OUT: Disclosing one’s sexual orientation or gender identity.

CO-PARENTS: Adults who are raising a child together, and who may or may not be biologically related to the child. This term avoids distinguishing between “biological” and “nonbiological” parents.

HETEROSEXUAL ALLIES: Heterosexual people who challenge anti-GLBT bias.

GSA: Acronym for gay-straight alliance, which is a student extracurricular organization in which gay and straight students work to challenge bias in schools.

QUEER: A derogatory label in some contexts, this term is an affirming label in other contexts, namely, when GLBT people self-identify as “queer.” The latter, affirming use of the term reflects a person’s refusal to adhere to what some people in society define as “normal.” As an affirming term, “queer” is most often used by GLBT people and allies to refer to GLBT people; otherwise it may be a slur.

A Note on Slurs:

Examples of anti-GLBT slurs include: *gay* (when used to mean “stupid”), *fag* or *faggot*, *homo*, *dyke* (in reference to girls), *sissy* (in reference to boys), *queer*, *joto* or *maricon* (in Spanish). School personnel may hesitate to address such language when it is used as a “joke” or as a put-down, but not with an explicitly anti-gay purpose. For example, two males may call each other “fag” in jest, not intending to call attention to each other’s sexual orientation. Consider that this so-called

“innocent” use of slurs is still harmful because of its frequency, its equating GLBT people with a negative emotion, its possible effect on a student who may not have revealed or resolved his or her sexual orientation, and its fostering of a hostile climate, especially for students within earshot who may be GLBT or have gay parents. Permitting the use of “innocent” slurs also invites a common excuse: Many students claim that their use of *fag* or *queer* was of the nonspecific, teasing variety even when it was not. Students should understand that no use of an anti-gay slur is acceptable.

E. Common Questions and Answers***Am I using the right terminology?***

The terms a person uses can reflect how much that person knows about or accepts GLBT people. For example, the 2006 update of the *Associated Press Stylebook* (www.apstylebook.com) calls for the use of the terms, “gay” and “lesbian” over “homosexual,” except in clinical contexts, because the latter term is often used pejoratively. Similarly, the *AP Stylebook* notes the preference of “sexual orientation” over the inaccurate terms, “sexual preference” and “lifestyle.” The umbrella term “transgender” is generally more inclusive than the more specific term “transsexual.” If you do not know what term is most inclusive and affirming, do not be afraid to ask, especially since language usage is changing all the time.

Why is a discussion of transgender people included in this manual?

Although being transgender is distinct from sexual orientation, both groups have much in common, including a history of discrimination, stereotypes and feelings of not fitting in because of their gender identities, roles, or expression. In fact,

much bullying and bias against GLBT people is not based on sexual orientation (which often cannot be observed), but rather, on gender nonconformity (as when boys act “like girls” or when girls dress “like boys”). Transgender students face similar (if not greater) problems at school than GLB students.

Is there a greater prevalence of homosexuality among whites than people of other races? How do attitudes on homosexuality differ by race or ethnicity?

There is no scientific evidence of a greater prevalence of homosexuality among whites. While many GLBT people who are visible in the media are white, there are many GLBT people of color. However, cultural factors may influence the prevalence of “out” GLBT people within each community. GLBT people of color may face dual stigmas—based on race and sexual orientation—which may influence their willingness to “come out.”

Is it appropriate to talk about sexual orientation and gender identity in the classroom?

GLBT issues are best taught in ways that are age appropriate and appropriate to the situation. Examples include age-appropriate lessons on family diversity, science and health, current events, and civil rights. Additionally, slurs that reference sexual orientation and gender identity should be addressed, just as all slurs should be addressed, and this involves talking about them sensitively and informatively. Unfortunately, some children learn to use slurs against GLBT people from multiple sources, including television. They have already been introduced to sexual orientation through misinformation. Remember that talking about bias regarding sexual orientation and gender identity is not the same as talking about sex. It is not appropriate to discuss same sex sexual activity with

young children, but it is appropriate to discuss bias, sexual orientation, gender identity, and diverse communities, and these can be discussed in age appropriate ways without broaching topics related to sex or reproduction.

Can I tell if someone is gay or lesbian?

The only way to know is if they tell you so. Being gay or lesbian does not necessarily mean that a person does not conform to gender stereotypes. Sexual orientation is not the same as gender expression or even sexual behavior. So, even if you think a person may be gay, he or she may not identify as such (the person might be bisexual, questioning, or straight). Therefore, it’s best not to assume.

How young can students be when they “come out” as GLBT? How old?

There is no right or wrong age for students to come out. Some “come out” in early elementary school, while others come out in college and even much later into adulthood.

Is it possible that it’s a “phase?”

Parents often ask this about their children. Some people first think they are straight before realizing that they are gay or bisexual. Other people first enter same sex relationships and then find themselves in heterosexual relationships in the future. Still other people identify as GLBT at a young age and continue to do so as adults. The important thing is to accept people as they are and where they are in their own growth.

Are people entitled to express religious or moral opposition to the GLBT community?

Yes. Within the school context, however, students have more limited free speech rights. Student speech can be prohibited if it is likely to cause a substantial disruption of school activities or create a hostile educational environment. Epithets, slurs, and harassment fall outside the free speech protection.

Will talking about GLBT issues encourage students to become GLBT?

Educating children about GLBT issues does not influence their sexual orientation or gender identity. However, it does create a healthy environment in which students who are GLBT may feel safer and are better able to learn.

What if there are no GLBT people in my community?

The 2000 U.S. Census revealed that 99.3 percent of U.S. counties included at least one of the 594,391 same sex couples counted. While there may be no openly GLBT people in your community that you are aware of, this does not mean that there are no GLBT people around you or that there is nobody near you that may struggle with being GLBT in the future. Moreover, many heterosexual children are taunted for being perceived as GLBT. So, it is important to address GLBT issues in every community, not just where GLBT people live. Ultimately, the more informed our communities are about GLBT issues, the better they will prepare students to live in a diverse and democratic society.

F. Misconceptions and Stereotypes

There are many misconceptions and stereotypes regarding GLBT people. Misconceptions are ideas that are not based on facts. Stereotypes often begin with observable characteristics that are applied to an entire community as a way to oversimplify who they are and to exaggerate their differences or imply their inferiority to others. Examples of misconceptions and stereotypes of GLBT people include the following:

Gay men are effeminate; lesbians are masculine.

FACT: Both heterosexual and homosexual people (whether male or female) show varying degrees of masculinity or femininity.

Bisexuals are really either gay or straight.

FACT: Some people find themselves attracted to both men and women. It is not correct to assume that a bisexual person is in a “phase” one way or the other. This does not mean that bisexual people do not sometimes prefer to date or have a stronger attraction to one gender over the other. It also does not mean they are sexually indecisive or opportunistic. Remember that being bisexual means a person can be attracted to men or to women, not that they are in a relationship with a man and a woman at the same time.

GLBT people are sexually promiscuous and cannot have long-term relationships.

FACT: The sexual nature and longevity of GLBT relationships vary, like heterosexual relationships.

Transgender people are flamboyant cross-dressers.

FACT: The transgender community is diverse. “Cross-dresser” is a term that describes people

who wear gender-non-conforming clothing (mostly applied to men who dress as women or “drag queens”), and many cross-dressers do not identify as transgender. Transgender people, like all people, dress in a way that reflects their gender identity. There is no one “look” that describes transgender people.

GLBT people are wealthy.

FACT: There are no reliable statistics on the income of GLBT versus heterosexual people. Media images of the visible portion of the GLBT community (which is often the most affluent portion) fuel this stereotype, as do perceptions (often false) that GLBT adults do not have children and thus have more disposable income.

GLBT people are young.

FACT: There are many GLBT senior citizens.

In a same sex relationship, one person plays the “male” role, while the other person plays the “female” role.

FACT: There is no one pattern of gender roles that typifies a same sex relationship.

Children of GLBT parents become GLBT or confused about gender roles.

FACT: More than 30 studies have shown that, while there may be a greater openness to the possibility that one might be gay among children of same sex parents, there is no significant difference in the actual sexual orientation and gender identity of children of same sex parents versus children of opposite sex parents.

Gay men molest children.

FACT: Most men who sexually abuse boys identify as heterosexual. The abuse of children is more closely related to a need for power than to sexuality.

Gay people are white.

FACT: People of all different racial and ethnic backgrounds are GLBT. There is no strict correlation between race and sexual orientation or gender identity.

GLBT people are anti-religion.

FACT: There are many GLBT people of different religious denominations and faiths, notwithstanding the fact that some religious denominations do not accept openly gay worshippers.

II. LEGAL ISSUES

This section outlines some of the more common legal issues involving sexual orientation and gender identity in schools. More discussion of legal rights and responsibilities regarding sexual orientation and gender identity can be found in two recent NEA publications: *Dealing with Legal Matters* and *Know Your Rights* (see Section IV-C in this NEA Publication for more information).

A. Where to Look: Laws and Policies

The law surrounding the rights of GLBT persons in schools on issues of discrimination, harassment and free speech is evolving. GLBT students and school personnel in public schools may be protected by the U.S. Constitution, Title IX, and other federal laws. Moreover, some states and cities provide additional protections under state law and local ordinances. While this manual provides general information, you are encouraged to seek the advice from Association staff to determine what legal protections may be available to you.

Before turning to the law, however, the first place to look for most students and school personnel should be the school handbook or other document where employer or school policies are maintained. This includes any official complaint procedures.

- » **Food for thought:** Although many school nondiscrimination policies are perfunctory and brief, they should, at the very least (if they are not out of date), reflect basic protections found in federal, state, and local laws. Many schools include more specificity and additional protections

in their school policies in order to prevent the first signs of hostility or escalating violence (such as some acts of bullying or harassment) not recognized by the law, and to prevent unnecessary litigation. School policies, therefore, have the potential to be more helpful and expedient for students, school employees, and administrators than the law.

Policies, collective bargaining agreements, and employment contracts often provide specificity and guidelines not found in the law. Review these documents for any mention of sexual orientation/preference, gender, gender identity, or gender expression, and contact your Association representative if you have any questions.

B. Harassment of Students

Title IX is the federal law prohibiting schools that receive federal funds from discriminating on the basis of sex. The U.S. Supreme Court has ruled that public schools can be held liable under Title IX for failing to remedy known instances of sexual harassment, including harassment perpetrated by fellow students.¹ In a somewhat different context, the Supreme Court has held sexual harassment can be committed by members of the same sex.² Significantly, the U.S. Department of Education, which is the federal agency responsible for enforcing Title IX, has issued an official guidance declaring that Title IX also prohibits sexual harassment based on a student's failure to conform to stereotypical notions of masculinity and femininity.³ In addition, two federal appellate courts have issued rulings binding in

¹ *Davis v. Monroe County Board of Education*, 526 US 629 (1999); *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 75 (1992).

² *Oncale v. Sundowner Offshore Services, Inc.*, 523 US 75 (1998) (Title VII covers same-sex sexual harassment).

³ Office of Civil Rights, Revised Sexual Harassment Guidance, § III (Jan. 2001).

12 states that schools can also be held liable under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution for failing to remedy known instances of anti-gay sexual harassment.⁴

Harassment vs. Free Speech

While individuals have a limited, school-based First Amendment right to engage in speech that may be offensive to some, no person has a constitutional right to bully or intimidate other students. The question of what is bullying/threatening versus protected “speech” is fact-specific; however, in general, the more directed and disruptive the language or behavior, the more likely it is to fall outside the protected First Amendment zone, particularly in the school setting.

C. Employment Discrimination

Despite mounting evidence that gay, lesbian, bisexual, and transgendered persons suffer from employment discrimination at an alarming rate,⁵ Congress has not enacted legislation to prohibit discrimination on the basis of sexual orientation/gender identification.⁶

⁴ *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996) (case later resulted in nearly \$1 million settlement on behalf of plaintiff); *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130 (9th Cir. 2003) (case later resulted in \$1.1 million settlement on behalf of plaintiffs).

⁵ According to studies, “nearly one-third of all gay men surveyed report being discriminated against in some form on the job, and 17 percent report having lost or having been denied employment because they were gay. Similarly, nearly one-quarter of lesbians surveyed report that they have been discriminated against in the workforce.” See Lambda Legal Defense and Education Fund, *Sexual Orientation Discrimination in Employment: A Guide to Remedies* (March 2, 1998), at p. 5.

⁶ Title VII is the major federal law that bans employment discrimination on the basis of race, sex, religion, and national origin. Although Title VII does not prohibit discrimination on the basis of sexual orientation, several courts have construed the statute to prohibit discrimination based on an employee’s failure to conform to the stereotypes of his/her gender, *e.g.*, a male who is effeminate or a female who is too masculine. *Bibby v. Philadelphia Coca Cola Bottling Co.*, 260 F.3d 257 (3rd Cir. 2001); *Higgins v. New Balance Athletic*

Efforts to secure job protections have been somewhat successful at the state and local levels. The District of Columbia and 16 states—California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Rhode Island, Vermont, and Wisconsin—have adopted legislation prohibiting employment discrimination on the basis of sexual orientation. Additionally, more than 100 cities and counties have enacted local laws banning this form of discrimination.⁷

The courts have also recognized that GLBT persons may enjoy protection from discrimination under the U.S. Constitution. In 1996, the U.S. Supreme Court struck down an amendment to the Colorado Constitution prohibiting state and local governments—including school districts—from enacting laws and policies banning discrimination against GLBT persons. In *Romer v. Evans*, the Court ruled that the amendment violated the Equal Protection Clause of the Fourteenth Amendment, in part, because it was prompted by animosity toward GLBT persons and “a bare desire to harm a politically unpopular group.”⁸ The Court also said that it infringed on the rights of gays and lesbians to participate in the political process.

Relying on the *Romer* decision, federal district courts in Ohio and Utah ruled in 1998 that it is unconstitutional for a school district to discriminate against a gay or lesbian teacher. In the Ohio case, *Glover v. Williamsburg*

Shoe, Inc., 194 F.3d 252, 261, n. 4 (1st Cir. 1999); *Heller v. Columbia Edgewater Country Club*, 195 F.Supp.2d 1212, 1222 - 24 (D.Or. 2002).

⁷ See Lambda Legal Defense and Education Fund, *Map of States, Cities, and Counties Which Prohibit Sexual Orientation Discrimination*, available on the Internet at <http://www.lambdalegal.org/cgi-bin/pages/states/antidiscrimi-map>.

⁸ *Romer v. Evans*, 517 U.S. 620, 634 (1996). The *Romer* decision is also posted on the Internet at: <http://supct.law.cornell.edu/supct/html/94-1039.ZS.html>.

Local School District,⁹ the court ruled that a district violated a gay teacher's Equal Protection rights by not renewing his contract because of his sexual orientation. Similarly, in the Utah case, *Weaver v. Nebo School District*,¹⁰ the court held that a school district violated the Equal Protection Clause by taking away coaching responsibilities from a lesbian teacher because of her sexual orientation.

Although the civil rights battle is far from over, these recent developments suggest that the U.S. Constitution and federal courts may yet provide GLBT education employees with protection from invidious job discrimination.¹¹

D. Coming Out and Pro-GLBT Speech

The law is unclear whether a GLBT teacher can come out to his/her students in the classroom. The free speech rights of school employees are strongest when speaking off duty about matters of "public concern" and weakest when speaking in the classroom about purely personal matters. In fact, several recent "academic freedom" cases suggest that, when speaking in the classroom, teachers are not speaking as private individuals, but as representatives of the school district and, thus, have virtually no free speech rights.

On the other hand, if a GLBT teacher is tenured or has "just cause" protection under a collective bargaining

⁹ *Glover v. Williamsburg Local School District*, 20 F. Supp.2d 1160 (S.D. Ohio 1998).

¹⁰ *Weaver v. Nebo School District*, 29 F. Supp.2d 1279 (D. Utah 1998). The *Weaver* decision is also posted on the Internet at: <http://www.acluutah.org/Wendydecision.htm>.

¹¹ See also, *Stemler v. City of Florence*, 126 F.3d 856 (6th Cir. 1997) (selective prosecution for DUI on basis of sexual orientation violates Equal Protection Clause); *Zavatsky v. Anderson*, 130 F. Supp. 2d 349 (D. Conn. 2001) (discrimination on basis of sexual orientation (denial of child visitation) violates Equal Protection Clause; individual defendants not entitled to qualified immunity).

agreement, then a strong argument can be made that the act of disclosing his/her sexual orientation does not constitute just cause for discharge or discipline. In addition, one federal court has ruled that if heterosexual teachers routinely discuss their home life and spouses in class without punishment, it is a violation of the Equal Protection Clause for the school administration to discipline gay, lesbian, or bisexual teachers for sharing similar information with their students.¹²

GLBT students, by contrast, have a virtually unqualified right to "come out" at school at any age as long as they do not substantially disrupt school operations and do not use language that is vulgar or offensive; they also have a qualified right to speak out on GLBT issues at school depending on the manner and context of the speech.¹³

It should be noted that, as of the printing of this manual, there are still very few cases concerning the issue of openly gay school personnel. Therefore, personnel should be aware that, despite the possibility of strong legal claims, in some jurisdictions there is a risk that employers will not follow the law or that a court would interpret legal protections narrowly so that a particular exercise of GLBT-related speech is not protected. As a practical matter, therefore, school personnel may wish to speak privately with an Association attorney, as well as their colleagues and administrators, before "coming out" or engaging in other GLBT-related speech in order to ascertain the school's likely response and to ensure a coordinated response in the event of an adverse reaction in the community.

¹² *Weaver v. Nebo School Dist.*, 29 F. Supp.2d 1279, 1289-90 (D. Utah 1998).

¹³ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 106 S.Ct. 3159 (1986).

E. School Events

Students occasionally organize or want to participate in an activity or event to raise awareness for GLBT students, such as a “Day of Silence” or “Diversity Days.” A school’s policy toward such events should be applied in the same way it is applied to non-GLBT, student initiated events. Schools may generally exercise less control over student-initiated activities than over the school’s own activities. Of course, the First Amendment allows schools to restrict speech that is lewd, vulgar, indecent, clearly offensive, or substantially interferes with school operations or the rights of others. Schools have discretion as to whether to sponsor or participate in student initiated events that are consistent with the school’s educational mission. The school should not change its criteria for sponsorship based on the viewpoint or content of the event.

Some students may want to organize or participate in an event that expresses objections to homosexuality. Whether the school permits such an event follows much of the same criteria as above. If the event is school sponsored, the school generally has greater control over content. In “open forum” type events (including those initiated by students or outside groups), schools probably would be well advised to accommodate viewpoints against homosexuality as long as they are not lewd, vulgar, indecent, clearly offensive, or would substantially interfere with school operations or the rights of others. These cases, however, are highly fact specific; local history and variables will influence the permissibility of limiting certain student activities.

F. Dress Code

Students sometimes wear clothing that is either pro- or anti-GLBT (typically, message T-shirts or pins). Students have a First Amendment right to free speech and expression, which includes wearing clothes that express a message.¹⁴ However, courts have allowed schools to prohibit messages on clothing that are lewd, vulgar, indecent, clearly offensive, or contrary to the school’s educational mission.¹⁵ Clothing that does not fall into one of these categories should be allowed unless the speech substantially interferes with or disrupts school operations or the rights of other students. (This means something more than the fact that some people find the speech distasteful or disagree with it.) The fact that a similar T-shirt has caused actual disruption in the past (such as a fight among students) would probably justify a school’s decision to ban a T-shirt. However, schools cannot ban speech or

¹⁴ *Harper ex rel. Harper v. Poway Unified School Dist.*, 345 F.Supp.2d 1096 (S.D.Cal. 2004) (upholding right of high school student to wear T-shirt proclaiming “Homosexuality Is Shameful Romans 1:27”); *Nixon v. Northern Local School Dist. Bd. of Educ.*, 383 F.Supp.2d 965 (S.D. Ohio 2005) (upholding right of high school student to wear T-shirt with Christian Bible verse on front and message “homosexuality is a sin, Islam is a lie, abortion is murder, some issues are just black and white” on the back); *Newsom ex rel. Newsom v. Albemarle County School Bd.*, 354 F.3d 249 (4th Cir. 2003) (upholding right of student to wear T-shirt depicting three black silhouettes of men holding firearms superimposed on the letters “NRA” positioned above the phrase “SHOOTING SPORTS CAMP”); *Barber ex rel. Barber v. Dearborn Public Schools*, 286 F.Supp.2d 847 (E.D.Mich. 2003) (upholding right of high school student to wear T-shirt displaying photograph of President George W. Bush with caption “International Terrorist”).

¹⁵ *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 106 S.Ct. 3159 (1986) (school district acted entirely within its permissible authority in punishing student for his offensively lewd and indecent speech); *Boroff v. Van Wert City Bd. of Educ.*, 220 F.3d 465 (6th Cir. 2000) (student has no right to wear Marilyn Manson T-shirt depicting “three-headed Jesus” because the band “promotes destructive conduct and demoralizing values that are contrary to the educational mission of the school, [and] mocking any religious figure is contrary to the school’s educational mission, which is to be respectful of others and others’ beliefs”); *Brandt ex rel. Brandt v. Board of Educ. of City of Chicago*, 326 F.Supp.2d 916 (N.D.Ill. 2004) (upholding ban on student T-shirt ridiculing disabled students); *Scott v. School Bd. of Alachua County*, 324 F.3d 1246 (11th Cir. 2003) (upholding ban of Confederate flag on school grounds).

expression simply out of speculation that there might be disruption.

Some GLBT students wear gender nonconforming clothes. Courts have upheld dress codes that are reasonably related to a school's interest in maintaining an effective educational environment.¹⁶ Enforcement of dress codes that prescribe attire based on gender may be allowed in some cases, depending on the likelihood of disruption in the community, the setting, the age of students, and the gender identity expressed by the student. Schools probably do not have as legitimate an interest in regulating gender-specific attire in a nonclassroom setting (such as proms or off-campus events) as they do in the classroom.¹⁷ In some states with legal protections for individuals on the basis of gender identity or expression, overly restrictive gender specific dress codes that do not accommodate the rights of transgender or other gender nonconforming individuals would invite legal challenges.¹⁸

G. Student Clubs

GLBT-related student groups such as gay-straight alliances (GSAs) are protected by the federal law known as the Equal Access Act (EAA).¹⁹ That law provides that, if a school district recognizes student clubs that are not related to the curriculum (such as the chess club or community service club), then the district also must recognize and give "equal access" to GSAs and other GLBT-related student groups.²⁰ If the school district

¹⁶ *E.g., Blau v. Fort Thomas Public Sch. Dist.*, 401 F.3d 381 (6th Cir. 2005).

¹⁷ *Fricke v. Lynch*, 491 F. Supp. 381 (D. Mass. 1980) (upholding right of same-sex couple to attend prom).

¹⁸ *See, e.g., Cal. Educ. Code* § 201 et seq.

¹⁹ 20 U.S.C. § 4071 et seq.

²⁰ *Board of Educ. of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990) (Christian student club); *Colin v. Orange Unified School Dist.*, 83 F.Supp.2d 1135 (C.D.Cal. 2000) (GSA); *East High Gay/*

recognizes only student groups directly related to courses offered by the school (such as the French club or math club), then EAA does not apply.

The right of equal access means the same right afforded to other clubs to meet at school and use school facilities. And the protects both GSAs and student-initiated religious clubs that may express disapproval of homosexuality (as long as they do not substantially disrupt the school environment).²¹ Even if significant community opposition to recognition to a GSA arises, a school district still has the legal obligation to comply with EAA.

Advisors of student clubs should make sure that the clubs' activities are consistent with the policies and mission of the school, and that the content promoted by the club is age appropriate for its audience and not lewd or vulgar, clearly offensive, or substantially disruptive to school operations or the rights of others. In addition, schools should establish and adhere to neutral policies governing the recognition and regulation of student clubs.

H. Curriculum and Library Resources

The issue of GLBT content in school curricula or libraries has caused controversy and, in some cases, parental desire to opt their children out of particular courses. Schools have a great deal of discretion to control curricular content, and the courts generally have upheld schools' refusal to allow parents to excuse their children from classes they find objectionable, including mandatory diversity training.²² Some states, however,

Straight Alliance v. Board of Educ. of Salt Lake City School Dist., 81 F.Supp.2d 1166 (D.Utah 1999) (GSA).

²¹ *See Good News Club v. Milford Central Sch.*, 533 U.S. 98 (2001); *Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2002).

²² *Morrison v. Board of Educ. of Boyd County, Kentucky*, 2006 WL

have enacted statutes granting parents the right to have their children opt out of certain delineated topics, including sex education.²³

In addition, schools generally have the right to select appropriate materials for school libraries. School officials may not, however, remove materials from libraries simply because they disagree with the ideas expressed in the books.²⁴ Therefore, a school's decision not to include a GLBT resource for financial reasons would probably be valid, whereas the decision to *remove* a GLBT resource for viewpoint reasons would invite a legal challenge, and one court has held that school officials violated the First Amendment by removing the book *Annie on My Mind* from a school library because the officials disapproved of the book's gay themes.²⁵

I. Retaliation for Whistle Blowing

Some states offer protections for people who report discrimination or harassment, whether on their own behalf or someone else's (sometimes called "whistle blower" protections). At the federal level, the Supreme Court has held that it is a violation of Title IX for school officials to fire, demote, or otherwise retaliate against a teacher/coach for speaking out in opposition to school policies or practices that discriminate against female students.²⁶ Two lower courts have ruled that it is a violation of the First Amendment for school officials to retaliate against teachers for speaking out on behalf of students with disabilities and African-American students who had been the victims of discrimination.²⁷ School personnel who face the threat of disciplinary action for reporting GLBT harassment or discrimination should contact their Association representative to determine whether a legal remedy is available.

385314 (E.D.Ky. 2006) (parents have no constitutional right to have their child opt out of mandatory "student diversity training" designed to stop the harassment of GLBT students); *Leebaert v. Harrington*, 332 F.3d 134, 141 (2d Cir. 2003) (parent has no constitutional right to have his child excused from a mandatory health education course that promotes "respect for others' feelings, rights and differences"); *Mozert v. Hawkins County Bd. of Educ.* 647 F. Supp. 1194 (E.D. Tenn. 1986), *aff'd*, 827 F.2d 1058 (6th Cir. 1987) (parents have no constitutional right to have their children opt out of required reading course that utilized textbook that parents claimed offended their religious beliefs); *Fleischfresser v. Directors of School Dist. 200*, 15 F.3d 680 (7th Cir.1994) (same)

²³ *E.g.*, *Hobolth v. Greenway*, 218 N.W.2d 98 (Mich. Ct. App. 1974).

²⁴ *Board of Education v. Pico*, 457 U.S. 853 (1982).

²⁵ *Case v. Unified School Dist. No. 233*, 908 F.Supp. 864 (D.Kan. 1995) (book removal held unconstitutional where the motivating factor behind the vote the school board members' personal disapproval of the ideas contained in the book).

²⁶ *Jackson v. Birmingham Board of Ed.*, 544 U.S. 167 (2005).

²⁷ *Settlegoode v. Portland Public Schools*, 371 F.3d 503 (9th Cir 2004) (student with disabilities), *Love-Lane v. Martin*, 355 F.3d 766 (4th Cir. 2004) (African-American students).

III. TIPS

The harmful effects of anti-GLBT bias (Section I) and the legal rights and responsibilities of students and school employees (Section II) make it clear that schools must be proactive in making schools safe for everyone, including GLBT students and employees. This section describes tips for school employees and advocates to create safe schools for all.

A. Supporting GLBT Students and Employees

Anti-GLBT bias and harassment impact student achievement, as reflected in the statistics in Section I. This can lead some GLBT students to hide who they are and even to refrain from revealing the harassment they experience, despite the laws that support them to “come out” in school (see Section II-D) and to be safe in school (see Section II-B). GLBT *employees* have less legal protection from discrimination (see Section II-C), depending on the state in which they live. But ALL students and employees, including GLBT students and employees, deserve to be safe and supported in school.

If a GLBT student or employee approaches you with a problem, how can you support him/her?

The appropriate individuals in school need to know how to talk to GLBT students and employees about problems they may be encountering. Legal advisors agree that employees who are not counselors should not provide counseling. Legal advisors also agree that employees should not meet to talk with students alone and behind closed doors for any reason, because they may run the risk of being accused of impropriety. In addition to pointing to appropriate resources, mental health

professionals recommend several strategies when talking to GLBT students and employees about problems they are encountering:

LISTEN. Find a quiet space where you can maintain confidentiality. Be patient; listen fully before responding. This conversation can be a stressful moment for some people, especially if they have never or only rarely discussed GLBT issues before.

REASSURE students or colleagues that they have your acceptance and respect. Offer support and encouragement for the decisions they need to make.

RESPECT CONFIDENTIALITY. This includes not telling other colleagues or a student’s parents or guardians that someone has “come out” to you without a specific reason. Let the colleague or student be your guide in this realm. In most cases, individuals who “come out” must be the one to discuss their sexual orientation with their friends and relatives.

- » It may be necessary to breach students’ confidentiality if their safety is in jeopardy. Even then, limit sharing information to necessary individuals (for example, the principal first, who may discuss with a parent) and necessary information (for example, say, “Sue is being threatened with anti-gay remarks,” not “Sue told me she is a lesbian”).
- » If the parents must be notified, coordinate with your principal to proceed cautiously. Some parents may not react well, even if their own child is being harassed; they may even go so far as to eject the child from the home. If possible, explore parents’ likely reaction with the student first; come up with strategies for worst case scenarios. Do not blindside students by telling family members without their knowledge.

WATCH for mental health signs. While some people who “come out” will be and remain emotionally healthy, others may not.

REFER the individual to appropriate personnel and resources within the school or school district. In addition, provide phone numbers and Web sites of support groups to the student or colleague if you see signs of depression.

CHECK IN often with your student or colleague. He/she may feel vulnerable for quite a while. On a personal level, sexual identity development can last years, moving through stages of awareness, acceptance, and integration. On a professional level, the workplace can be a site of discrimination and harassment.

MONITOR your own reactions. It is not uncommon to feel conflicted, surprised, worried, and even distant when a close contact raises these issues.

- » Lack of interest in/problems with friends, family
- » Lack of interest in social activities that were formerly of interest
- » Lack of energy
- » Poor performance in school or work
- » Boredom, restlessness, irritability, loss of concentration, or memory
- » Inability to make decisions
- » Weight gain, loss
- » Chronic aches, pain

VERBAL warning signs:

- » Express feelings of sadness, emptiness, hopelessness, pessimism, guilt, helplessness, worthlessness
- » “Instructors, classmates, coworkers, families, and friends do not care.”
- » “Life isn't worthwhile.”
- » “People are better off without me.”
- » “Everything seems to be going wrong.”
- » “I don't need this any more.”
- » Talk of death, suicide

If you think a student might be suicidal:

TALK openly and freely and ask direct questions about the student's or colleague's intention (i.e., see if they have a plan).

LISTEN to what is said and treat it seriously. Do not add to your student's or colleague's guilt by debating, arguing, or lecturing about whether or not suicide is right or wrong.

DO NOT leave a person who is suicidal alone.

ENCOURAGE the person to seek help.

GET HELP immediately and contact your administrator.

B. Preventing Suicide

Suicide is the leading cause of death among GLBT youth. GLBT adults also experience high rates of depression and suicide. Below are some warning signs that someone may be suicidal. Keep in mind that these are also signs of depression. Depressed people may not necessarily be actively contemplating suicide; however, attention is still warranted. (The following warning signs are excerpted from Roosevelt University Counseling Center, April 2002, www.roosevelt.edu/counseling.)

NON-VERBAL warning signs:

- » Giving away personal or prized possessions
- » Increased alcohol or drug use
- » Sleeping too much or too little
- » Lack of interest in personal appearance

C. Understanding Sexual Orientation and Racial/Ethnic Minorities

Some ethnic-minority youth, including American Indian/Alaska Native, Asian American, Native Hawaiian and other Pacific Islander, Black, and Hispanic youth, face significant and unique social and cultural barriers that are different from those of white gay youth and other adolescents. Ethnic-minority GLBT youth may grapple with intense alienation from their families and minority group as well as rejection from the white GLBT community.

FACT: There is a higher percentage (according to some studies, nearly double) of suicide attempts by ethnic-minority gay youth than by white gay youth.

Ethnic-minority gay youth must often contend with discrimination and alienation from their own ethnic group. The ostracism and separation from their own ethnic group is particularly painful and difficult for these youth, who naturally expect acceptance by those like themselves who have experienced discrimination and stereotyping. However, in ethnic communities, homosexuality is often seen as an issue only for white gay males. Ethnic-minority gay youth may be seen as an embarrassment to their cultural and/or racial group.

Many youth face cultural and language barriers in speaking to their family about their sexual orientation or gender identity. Many Asian American, Hispanic, and immigrant youth, in particular, must communicate issues to their parents in a second language; nuances in culture and language may influence attitudes about same sex attraction and relationships.

The role of religion is particularly strong in the lives of many ethnic-minority gay youth. Many ethnic minority cultures have historically believed that homosexuality is a sin according to the faiths practiced within the community. Some ethnic-minority parents may use religion as the standard to evaluate same-sex

attraction and relationships. Ethnic-minority gay youth may internalize these religious values and experience added guilt.

The family also plays a unique role among many ethnic-minority gay youth. Many ethnic-minority families place strong expectations that their children will fulfill social roles and perpetuate the extended family. A homosexual orientation is sometimes seen as a sign of disrespect to the family and even a threat to the family's survival. Many ethnic minority gay youth have tremendous fears of losing their extended family and being alone in the world. This fear is made greater by the isolation they may already experience in society.

Some-ethnic minority GLBT people may experience race discrimination or alienation within the GLBT community. There is a possibility that local GLBT support groups and meeting places may not be racially and culturally diverse or sensitive. Help minority GLBT people locate the best resources and mentors and take a stand when racial or cultural bias emerges.

(Much of the information above is compiled from the research collected at <http://fsw.ucalgary.ca/ramsay/gay-lesbian-bisexual/index.htm>.)

D. Including Transgender Students or Colleagues

“Transgender” is an umbrella term to describe people whose gender expression is nonconforming and/or whose gender identity is different from their birth assigned gender. In other words, people who identify as transgender range from those who behave, act, appear or dress in a gender nonconforming way to those who “transition” (from male to female, or female to male) by undergoing medical treatment or procedures to achieve “congruence” between their gender identity and their physiology. Transgender people are widely misidentified and mislabeled as simply cross-dressers, “drag queens,”

or transvestites. Behind the labels and stereotypes exists a diverse community with a wide range of traits and personal or medical reasons for their gender expression.

Most schools do not have policies in place to address transgender or gender nonconforming youth and pursue policies or training only after a transgender student or employee enrolls or “transitions” unexpectedly. The result is often disastrous. Because of the many practical concerns that arise when accommodating gender nonconforming youth or faculty, administrators and school boards should consider the following issues in advance:

PREJUDICE, HARASSMENT: Transgender and gender nonconforming people are widely misunderstood, feared, and stereotyped by people around them; this often leads to extremely high and dangerous levels of bullying and harassment. Among transgender or gender nonconforming adults, this can lead to discrimination, including forced suspensions, dismissals, and denial of gender recognition.

EDUCATION: Sensitivity training is indispensable to address ignorance and fears around gender nonconformity.

POLICY REFORM: School discrimination and harassment policies should protect people on the basis of gender identity and expression.

NAMES/PRONOUNS: Schools should honor the request of a member of the school community to be called by a different name and pronoun (he vs. she). Most requests of this nature will not be frivolous, as judged by the requester's age and presentation. For school purposes, the requester should not be required to obtain a court order or legal gender change in advance. Steps should be taken to inform staff of the requested name, which should be placed alongside the student or employee's legal name in school records.

LEGAL NAME/GENDER CHANGE: Should a student or employee provide documentation of a legal change of name and gender, official school records should reflect this change immediately.

E. Ending the Bullying and Harassment of Students

BULLYING includes unprovoked, repeated, and aggressive actions or threats of action by a person who has (or is perceived to have) more power or status than the person he or she is targeting. The intent of bullying is to cause fear, distress, or harm. Bullying can consist of physical, verbal, or psychological acts.

- » Examples may include: Name calling, taunting, teasing, put downs, inappropriate notes, graffiti, text messages, e-mail, Internet postings, ostracism from activities, coercion to perform acts, threats of bodily harm, hitting, kicking, tripping, shoving, inappropriate touching or grabbing, and taking or damaging personal property.

HARASSMENT includes conduct that is severe or pervasive and interferes with a student's opportunity to learn.

- » Examples may include: Repeated and severe acts of bullying (see above), sexual harassment (unwanted and unwelcomed sexual behavior), frequent anti-gay epithets or comments directed at a person, and exclusion of a GLBT student from school activities or facilities.

Federal law requires public schools to remedy peer-to-peer harassment by students. Some state laws address anti-GLBT bullying and/or harassment.

Key points:

- » **Bullying is not a rite of passage.** Bullying is not a proper, healthy, or effective way for students to “toughen up” or to learn how to cope in the world, nor is it an inevitable aspect of youth.
- » **Bullying and harassment can be reduced.** The key is to adopt low-, mid- and high-level activities to combat bullying at the individual and institutional levels (see below).
- » **Teasing is not the same as bullying or harassment.** While some teasing may cause harm and should be addressed, teasing does not become bullying or harassment unless its intent is to intimidate; it involves a power disparity between the actors; or it is severe, pervasive and interferes with the student’s school life.
- » **GLBT students are bullied or harassed at very high rates** in K—12 schools; there is probably no school in which anti-GLBT harassment does not occur some or all of the time, despite the best laid plans.
- » **Anti-GLBT acts affect the entire school community.** One study showed that seven in 10 students bullied for being perceived to be GLBT identified as heterosexual. (Seattle Teen Health Survey 1999).
- » **Anti-GLBT acts often stem from discomfort with gender nonconformity.** Boys who have feminine traits or girls who have masculine traits are likely to be targeted for being gay or lesbian regardless of their actual sexual orientation.
- » **The actual sexual orientation or sexual history of students is irrelevant** to addressing the behavior of perpetrators and the underlying reason for their actions (bias, fear, ignorance).

Specific Tips:**Individual Actions:**

1. Watch for signs of bullying.
2. Invite students to talk to you.
3. Intervene when you witness something inappropriate.
4. “Small interventions” are OK; memorize a 15-second response, such as:
“___” is a word that insults gay and lesbian people. I want to remind you that there are or there may be gay and lesbian people at this school, and when you use words like that you make them feel unsafe and unwelcome. It is important to me that everyone at this school feel safe and welcome. I don’t want you to use that word anymore. (Taken from the Mazzoni Center, www.mazzonicenter.org)
5. Adopt ground rules for classroom behavior.
6. Wear a supportive pin; hang a poster.
7. Monitor how respected and safe *you* feel as an adult.
8. Examine ways in which you may unconsciously pass messages about GLBT people.

Institutional Actions:

1. Survey staff and students about what they see and experience on campus.
2. Allow for anonymous feedback and confidential walk-in hours when people can report incidents.
3. Update bullying and harassment policies to reflect GLBT concerns.
4. Train school personnel on policies and GLBT issues.
5. Reduce tension among staff and faculty that may transmit to students.
6. Involve parents and families.

7. Address GLBT issues in the classroom.
8. Encourage GSAs, student assemblies, peer counseling.

however, will likely look to see if the employee's work life has suffered as a result of the school's actions or inaction.

F. Ending the Harassment and Discrimination of School Employees

School personnel who are GLBT face ostracism, harassment, and discrimination. Anti-GLBT discrimination is damaging, not only to the affected employees, but to students as well. For example, employees may be reluctant to intervene on behalf of victimized students or to support GLBT students. In addition, schools that practice employment discrimination send a message to students that it is okay to attack people because of who they are.

10 QUESTIONS to Help Assess Acts of Harassment for Possible Legal Action:

1. **Did harassment occur?** Harassment includes offensive verbal and/or physical behavior that substantially disrupts a person's work or educational life or that creates a hostile work environment.
2. **How severe or pervasive was the harassment?** An isolated incident should not be dismissed, but is less likely to be legally addressable unless the conduct is severe.
3. **Was the harassment based on sex, sexual orientation, both, or neither?** While any kind of harassment should be addressed, it helps to determine the nature and type of harassment. Factually and legally, many acts of anti-GLBT harassment constitute both sexual and anti-gay harassment.
4. **Did the target of harassment suffer harm?** Schools should address known harassment regardless of evidence of actual harm. A court,

5. Did harassment occur in a location or event in which the school was responsible?

Schools are responsible for the safety of people on campuses. They may be liable for some off-campus behavior (for example, behavior that occurs on buses or school routes, athletic events, or trips away from campus). Cyber-bullying involving threatening communications via the Internet is another evolving area in which the extent of the school's monitoring responsibility is being tested.

6. Was the harassment perpetrated by a supervisor?

If the harassment was perpetrated by co-worker or student, did the employee notify a responsible school official of the harassment?

7. When did the harassment occur?

School personnel should report incidents of harassment as soon as possible. Statutes of limitation may bar legal redress of incidents occurring too long ago. Employees have only 180 days from the act of harassment to file a charge of discrimination with the Equal Employment Opportunity Commission.

8. Has the school responded reasonably?

Employees are required to take all reasonable steps to stop the sexual harassment of employees.

9. What about "lesser" acts, including bullying?

Individuals should report all acts that cause them to be in fear of their own safety. Note that even if an act of bullying does not legally constitute "harassment," this does not mean nothing can or should be done.

10. Has the victim followed the administrative procedures?

In addition to consulting

an attorney and/or union representative, employees should attempt to follow standard grievance/complaint procedures established by their school districts.

Other Considerations:

PROTECT yourself. If you are being harassed, seek out counseling and supportive friends or family; also, immediately inform the school official who is responsible for receiving and resolving complaints of sexual harassment. Seek to have perpetrators isolated or temporarily suspended.

REPORTING harassment vs. actual sexual orientation. Some employees who are gay and targeted for anti-gay harassment or discrimination have not “come out” at work. Other employees who are targeted for anti-gay harassment do not personally identify as gay. The actual sexual orientation of the victim should remain irrelevant to a school’s response; proper inquiries focus on inappropriate *conduct* in the workplace, not a person’s identity or sexual orientation. Thus, while you may not prevent speculation that you are gay, you should seek help and action based on anti-gay harassment and discrimination regardless of your actual sexual orientation or your decision (if you are gay) to “come out” or not.

STAY on the job. Do not resign. By quitting a job, an employee may compromise legal avenues to address discrimination.

ACT promptly to inform a supervisor. Do not delay in reporting incidents to a supervisor or administrator; by waiting, you risk further harm to yourself and may compromise your right to sue for discrimination.

DOCUMENT acts of discrimination and harassment. Be precise as to what, when, and who. Record names and contact information of all witnesses.

IF the school district takes an adverse employment action, such as transfer, demotion, or termination, call your union representative immediately.

COLLECT and review documents. If you face a negative employment consequence due to discrimination, study your employment contract, collective bargaining agreements, school/employer policies, and state tenure laws, if any, for recourse.

WITH THE ASSISTANCE of your school representative, file a grievance or complaint. Most school districts have an anti-harassment grievance or uniform complaint policy. Keep in mind that many acts of anti-gay and same sex harassment also constitute gender harassment and/or sexual harassment, which may be prohibited under Title IX or Title VII. Following an official grievance policy does not preclude you from also seeking independent legal avenues through an attorney.

G. Responding to Objections

School personnel may encounter objections from parents or guardians concerning discussion of sexual orientation or gender identity in the classroom or during school sponsored activities. Some of these objections may stem from personal religious beliefs or moral values. Here are some tips to address this scenario:

- » **Do not suggest that a parent or guardian’s religious or moral beliefs are invalid or dismiss them as inconsistent with school policy.** People are entitled to their religion and to instill religious beliefs in their children at home; even

if such beliefs conflict with school policy, it is rarely productive to point out this difference in a way that suggests that a religious belief is invalid, insincere or inapplicable.

- » **Clarify the pedagogical goals of the program or lesson concerning bias that is based on sexual orientation or gender identity.** These may include school safety, fostering respect, and an equal educational environment, improving test scores, addressing harassment and discrimination, and reducing truancy.
- » **Distinguish between “sex education” and topics related to sexual orientation.** The latter may be introduced to students in age appropriate ways; the former is usually highly regulated by grade level and appropriate only in a health or family life class.
- » **Inform parents and guardians in advance of your classroom or program materials.** If possible, invite them to review materials. You may also sponsor an after-school event with parents to answer questions in a group. Taking these steps prevents surprised parents from learning about the unit only through their children; it also allows parents to help answer questions their children may have.
- » **Speak to an administrator prior to delivering your lesson or program.** By doing this you gain approval and support and can coordinate a school response to possible objections. Some administrators, even if they have no objections to the content, may object to being unprepared for complaints from parents and the public.
- » **Solicit the aid of supportive parents and guardians.** These people make the best allies when addressing the concerns of other parents or guardians.

- » **Determine whether your school has a policy allowing parents or guardians to remove or “opt out” their children from sex education curriculum and, if so, whether your lesson about GLBT issues would be covered by that policy.** Depending on which state or local school district you live in, sex education may fall under an “opt out” or “opt in” provision, and if your unit on GLBT issues is linked to sex education, your unit may also fall under an opt out/opt in provision.

H. Enhancing Staff Development

Schools must provide an environment where staff and students feel valued, welcome, and safe. Staff development is essential to ensure that GLBT students and staff are protected from the effects of homophobia, stereotyping, and ignorance. It also may help school districts avoid litigation initiated by staff and students who believe that they have been psychologically or physically harmed at school.

Useful in-service or staff development agenda items:

- » **State the topic and objective.** Clearly articulate the goal of the training.
- » **Review vocabulary.** Ensure that staff understand terminology.
- » **Heighten awareness.** Use statistics of anti-GLBT harassment and bullying, including statistics related to adult attitudes toward GLBT people. In addition, use statistics regarding the prevalence of discomfort among those working with GLBT colleagues or responding to anti-GLBT incidents. Also link effects of anti-GLBT harassment to health, safety, school attendance, and academic and/or work

performance. Finally, highlight the diversity among GLBT people.

- » **Discuss school climate.** Discuss the climate toward GLBT students at your school site and ways to improve the climate.
- » **Explore staff/personnel climate.** Discuss how staff interact and feel about the workplace. Many schools ignore staff interaction when addressing student needs. Staff should feel safe regardless of their own sexual orientation or gender identity and unified as to their commitment to foster a safe campus; adult feelings of disunity and insecurity can be transmitted to students.
- » **Provide legal overview.** Staff should understand their legal rights and responsibilities.
- » **Address gender nonconformity.** Much anti-gay bullying stems from discomfort with gender nonconformity among youth regardless of their sexual orientation. Personnel should be aware of this and the impact on every student.
- » **Moral/religious concerns:** Distinguish the rights that school personnel have to hold their own personal and religious beliefs and behavior at home versus the public and legal duty of personnel to foster respect and safety in the professional environment.
- » **Identify steps for intervention/action.** Delineate concrete ways to respond to anti-GLBT epithets and bullying.
- » **Discuss reporting procedures.** Review the process for filing grievances/complaints and reporting incidents.
- » **Showcase resources.** Identify resources that are available within and outside the school district.

I. Improving Classroom Instruction

Inclusion of GLBT-related topics and themes in classroom instruction is an important step in fostering a safe environment for GLBT and gender nonconforming students. One study found that GLBT students' feeling of safety increased when there was explicit mention of GLBT issues in the curriculum. (UC Davis 2004). Inclusion of GLBT-related curricula also helps heterosexual youth to better understand and develop healthy attitudes toward themselves and their fellow students.

Formal or official lessons include lessons and materials explicitly about GLBT issues and may include student activities, books and other media, guest speakers, and collaborative homework assignments between parents and students.

- » Remember that most school districts have approval processes that identify what steps must be undertaken before adding new topics to the curriculum.
- » Consult parents, staff, administrators, and students in the process of developing lessons and materials.
- » Teachers must also receive adequate staff development to feel well trained, comfortable, and safe discussing sexual orientation in the context of the approved curriculum.
- » Many teachers are restricted from teaching topics that are not aligned with state standards. Fortunately, most curricula relating to GLBT content can be aligned with these standards.

Informal lessons consist of all the unintended or indirect ways that a student may learn messages or values at school. This includes a teacher's behavior, statements and interaction with students, and a school's policies, practices, and culture, as well as what is missing or goes unaddressed in school. (For example: consider a

school's decision to observe one religious holiday and not another or to stop one form of harassment but not another.) Some scholars believe that students learn more from informal lessons than formal ones. Here are some tips on how to address the informal lessons learned in your classroom or school:

- » Display posters, pins, or rules that explicitly create a safe space for GLBT people. Point out these items in the beginning of the year.
- » Be sensitive when referring to a student's parent or guardian. For example, say, "Take this note home to a parent or guardian" versus "Take this note home to mom and dad."
- » Show respect and attention toward students who may be GLBT or appear gender nonconforming. This sends a signal that other students should respect them as well.
- » Be sure that your school policies include protections on the basis of sexual orientation and gender identity.
- » Find ways to raise awareness of anti-GLBT bias and of contributions of GLBT people.
- » Find appropriate ways to mention a GLBT-related person, issue, or event in the context of a literature or social studies lesson or when creating a hypothetical word problem or scenario. GLBT people and issues already exist in schools. For example, when reading the literature produced by an author who was GLBT, examine how the author's sexual orientation or gender identity influenced what and how he or she wrote.

Note: The NEA National Training Program on Safety, Bias, and GLBT Issues offers a workshop, *Walking the Talk*, that prepares educators to design lessons about anti-GLBT bias and align them with curriculum or learning standards. See Section IV-A of this manual for more information.

J. Improving School/District Policies

Many school districts are required by the state to include sexual orientation and/or gender identity in their school nondiscrimination policies. Unfortunately, some school nondiscrimination policies are perfunctory and not useful. Your superintendent or board may be interested in assembling a task force to amend them to reflect GLBT-related issues. Here are some tips for improving policies:

- » **Address both staff and students.** All students and employees should be protected under the same nondiscrimination policies. Such policies promote a shared sense of responsibility for maintaining the code of conduct. This does not preclude separately tailored language directed specifically toward staff or students.
- » **Mission statement.** Include specific affirmation of respect that includes all staff and students regardless of sexual orientation or gender identity/expression and that includes neutral rationales for this mission, such as fostering health, safety, attendance, and academic success.
- » **Describe prohibited conduct.** Provide a nonexhaustive list of examples of taunting, teasing, bullying, and other unacceptable behavior.
- » **Define relevant terms.** All members of the community should have a shared understanding of certain general terms, including "harassment" (not only "sexual harassment"), "bullying," and "discrimination," along with more specific terms that might be included in a nondiscrimination statement, such as "sexual orientation," "gender identity," or even "race." These terms are not familiar to some or even most people, especially children.

- » **Include distinct nondiscrimination, anti-bullying, anti-slur, conflict resolution, and harassment policies.** While these issues overlap, they are each unique and have different manifestations, legal precedents, and remedies.
- » **Include/adopt a school safety plan.** Many schools are required to do this by statute or regulation.
- » **Include complaint procedures.** Policies should include detailed procedures for reporting incidents of harassment or bullying (including where and to whom students and employees should report incidents). The reporting procedure and name of the complaint officer should be posted in age appropriate language in designated areas at each school site. Complaints of harassment brought against school employees should be handled pursuant to procedures set forth in the collective bargaining agreement, where applicable.
- » **Include a response and investigation procedure.** Outline the duties of administrators and staff when incidents come to their attention. Consider designating a school equity or respect coordinator at each site to handle such complaints.
- » **List possible disciplinary or remedial actions.** Students and staff should understand the consequences of policy violations.
- » **List the appeal process** for persons judged to be in violation of school policies.
- » **Include a protection against retaliation** for individuals who report or cooperate in the investigation of incidents of harassment.
- » **Include privacy protections** for parties who report or cooperate in the investigation of incidents.
- » **Include a procedure for keeping records** of complaints and investigations of incidents of bullying or harassment.
- » **Include a procedure for notifying parties** to a complaint of the disposition and action to be taken.
- » **Include a procedure for annual dissemination, display, and explanation of policies.** Children, especially, may need a lesson on what the policies mean.
- » **Include procedures for providing counseling or education for both the perpetrators and the targets of incidents.** The behavior and needs of perpetrators should be examined and addressed not merely through discipline.
- » **Include a provision for periodic training of employees** on how to appropriately intervene in a dispute, including expectations from adults who observe a dispute or an act of taunting, harassment, or bullying.
- » **Include a provision for peer counseling, mediation, and conflict resolution programs for students.** And encourage extracurricular clubs and activities that foster respect and diversity awareness.
- » **Include a provision for curricula** related to building character, conflict resolution, multicultural education, diversity awareness, and bias prevention.
- » **Maintain a list of successful strategies** that the school has used in the past to foster respect or combat bias or discrimination.

K. Supporting School Clubs

Providing students with a place to meet and talk about issues related to sexual orientation, gender identity, and bias can help to change a school's climate and make school a safer, more hospitable place.

Here are different avenues for starting a club:

- » Students may initiate a gay-straight alliance (GSA), which is a student run club, typically in a high school, which provides a safe place for GLBT, questioning, and heterosexual students to meet, support each other, talk about issues, and organize awareness raising events.
- » Students may decide to initiate a club that includes only GLBT or questioning students.
- » The school may invite all students, teachers and school staff, families, and community members to join a GLBT support group.
- » Adults in the school may form a parallel faculty/staff support and study group that works alongside a student run group.
- » Students and adults may form a group that focuses broadly on safety, respect, diversity or civil rights, and that covers multiple issues, including sexual orientation and gender identity.
- » Members of the school community may join a community based GLBT group that is open to all interested students, parents, teachers, administrators, and community members.

IV. RESOURCES

A. NEA Training Program

The *NEA National Training Program on Safety, Bias, and GLBT Issues* consists of three workshops, each 90—120 minutes in length, which can be delivered separately or together. The workshops are designed especially for people who are not gay, lesbian, bisexual, or transgender, but who are interested in addressing bias regarding sexual orientation and gender identity. A group of certified trainers from all regions of the country is now available to deliver these workshops at little or no cost to schools, school districts, and state and local affiliates.

- » *Taking A Stand: Creating Safe Schools for All Students* is an introductory workshop designed for all school personnel. It uses video clips and hands-on activities to examine the obvious and subtle ways that bias plays out in schools and offers resources for creating schools that are safe for all students, regardless of sexual orientation and gender identity.
- » *Making the Case: Communication Strategies on GLBT Issues* is an introductory workshop designed for Association members, leaders, and staff. It provides an overview of effective messaging and communication strategies on controversial issues, as well as resources and models for talking to constituents about the need to address anti-GLBT bias in schools.
- » *Walking the Talk: Classroom Resources for Addressing Bias* is an advanced workshop designed specifically for K—12 classroom instructors. It examines various approaches to designing and integrating activities into the classroom that raise awareness of bias and empower students to advocate for change, especially around anti-GLBT bias.

This program is a collaboration with the American Federation of Teachers; the Gay, Lesbian and Straight Education Network; and the Respect for All Project. It is made possible by the generous support of the Gill Foundation, the Liberty Education Forum, the National Gay and Lesbian Task Force, and the Washington Education Association. For inquiries, or to request a workshop, contact NEA Human and Civil Rights, 202-822-7700, hcrinfo@nea.org.

B. NEA Health Information Network Training Program

- » *Can We Talk?: Helping Families Talk About Keeping Kids Healthy and Safe*. Parents play a crucial role in creating safe schools and challenging bias. This training package includes videos and booklets to help parents talk with their children about such health and safety issues as peer pressure, media messages, healthy relationships, drug abuse, HIV, and bullying and harassment. More information is online at www.canwetalk.org.

C. NEA Publications

- » *Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity*. This handbook, published by NEA, the National School Boards Association, and 11 other national organizations, offers practical guidance on schools' legal rights and responsibilities. Available online at www.nea.org/teachers/images/glbtaguide.pdf.
- » *Just the Facts about Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel*. This factsheet, published by NEA, the American Psychological Association, and eight other national organizations, provides factual and

scientific information about the development of sexual orientation in youth. Available online at www.apa.org/pi/lgbc/facts.pdf.

- » *Know Your Rights: Legal Protection for Gay, Lesbian, Bisexual, and Transgendered Education Employees.* This handbook, produced by the NEA Office of General Counsel, offers practical advice for victims of sexual orientation/gender identification discrimination. Available from NEA Human and Civil Rights, 202-822-7700, hcrinfo@nea.org.
- » *Report of the NEA Task Force on Sexual Orientation.* Adopted by the NEA Board of Directors in 2002, this report includes an in-depth examination of the needs of, and problems confronting, gay, lesbian, bisexual, and transgendered students and education employees. Available online at www.nea.org/nr/02taskforce.html.
- » *“Safe Zone” Poster.* This 8.5 x 11 inch downloadable color poster shows students that their schools are taking a stand against intolerance and bias in all forms, including racism, sexism, classism, heterosexism, ageism, ableism, anti-Semitism and other forms of religious bias. Available online at www.nea.org/schoolsafety/safezone.html.
- » *State-by-State Directory of Trainers on GLBT Issues, 2004 Edition.* This state-by-state directory lists over 900 individuals and organizations that are available to deliver workshops on GLBT issues in education. NEA has not screened or endorsed these trainers; their listing is provided for informational purposes only. Available online to members at <https://www.nea.org/membersonly/news/glbt-trainers.html>.

D. NEA GLBT Caucus

The *NEA Gay, Lesbian, Bisexual, and Transgender Caucus* is an organization, independent of NEA, that works to educate the Association about issues regarding sexual orientation and gender identity and to promote nondiscriminatory policies and actions that support GLBT persons. More information on the caucus is online at www.nea-glbtc.org.

E. Additional Resources

Note: This listing provides merely a sampling of the many organizations around the country that provide free publications, training, and other resources for addressing bias based on sexual orientation and gender identity. Most of the organizations listed have Web sites that contain links to many other organizations and resources. NEA has not endorsed these organizations, the content on their Web sites, or the resources they offer; their inclusion in this listing is merely for informational purposes.

- » American Civil Liberties Union: Safe Schools Program
(www.aclu.org/getequal/scho/index.html)
- » American Psychological Association: Healthy Lesbian, Gay, and Bisexual Students Project
(www.apa.org/ed/hlgb/homepage.html)
- » Children of Lesbians and Gays Everywhere
(www.colage.org)
- » Family Pride Coalition
(www.familypride.org)
- » Gay and Lesbian Alliance Against Defamation
(www.glaad.org)
- » Gay, Lesbian, and Straight Education Network
(www.glsen.org)
- » Gay-Straight Alliance Network
(www.gsanetwork.org)
- » Gender Public Advocacy Coalition
(www.gpac.org)
- » Human Rights Campaign
(www.hrc.org)
- » Lambda Legal Defense and Education Fund
(www.lambdalegal.org)
- » National Association of LGBT Community Centers (www.lgbtcenters.org)
- » National Center for Lesbian Rights
(www.nclrights.org)
- » National Gay and Lesbian Task Force
(www.thetaskforce.org)
- » National Mental Health Association
(www.nmha.org/whatdoesgaymean)
- » National Youth Advocacy Coalition
(www.nyacyouth.org)
- » Parents, Families, and Friends of Lesbians and Gays (www.pflag.org)
- » The P.E.R.S.O.N. Project
(www.personproject.org)
- » Project to Eliminate Homophobia in Sport
(www.homophobiainsports.com)
- » The Respect for All Project
(www.respectforall.org)
- » Teaching Tolerance
(www.tolerance.org)
- » Transgender Law Center
(www.transgenderlawcenter.org)
- » Trevor Project: 24-hour hotline for youth
(www.thetrevorproject.org)
- » YouthResource: Youth of Color Community
(www.youthresource.com/living/youth_of_color.htm)

