

September 3, 2024

Dear Principal or Superintendent:

You're being given this letter because your school or a school in your district may be failing to protect lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) students from severe bullying and harassment. It is your legal responsibility to investigate such cases of bullying – both physical and verbal – to ensure that harassment stops and your school is a safe learning environment for all students.

Public schools that fail to adequately protect LGBTQ students from severe bullying and harassment have been held liable for damages awards and settlements as high as \$1.1 million. *See, e.g., Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130 (9th Cir. 2003) (awarding \$1.1 million in damages and attorneys' fees); *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996) (awarding \$962,000 in damages); *Dickerson v. Aberdeen Sch. Dist. No. 5*, No. 3:10-cv-5886 (W.D. Wash. 2010) (awarding \$100,000 in damages); *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 404 F.Supp.2d 1281 (D. Kan. 2005) (awarding \$440,000 in damages and attorneys' fees); *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001) (awarding \$451,000 in damages); *Vance v. Spencer*, 231 F.3d 253 (6th Cir. 2000) (\$220,000 in damages); *Putman v. Bd. of Educ. of Somerset Ind. Schools*, No. 6:00-cv-00145 (E.D. Ky. 2000) (awarding \$135,000 in damages).



Under Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. § 1681, schools may be held liable if they act with deliberate indifference in failing to protect students from severe peer harassment on the basis of sex. *Cianciotto on behalf of D.S. v. New York City Dept. Oof Educ.*, 600 F. Supp. 3d 434, 451-52 (S.D.N.Y. 2022); *Davis ex rel. LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999). Courts have held that harassment based on a student's gender identity, sexual orientation, or failure to conform to sex stereotypes is a form of harassment based on sex under Title IX. *See Grabowski v. Ariz. Bd. of Regents*, 69 F.4th 1110, 1116 (9th Cir. 2023); *Spruill v. School District of Philadelphia*, 569 F. Supp. 3d 253, 262 (E.D. Pa. 2021); *Videckis v. Pepperdine U.*, 150 F. Supp. 3d 1151 (C.D. Cal. 2015); *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 150 (N.D.N.Y. 2011).

Deliberate indifference to severe harassment and bullying of LGBTQ students, by refusing to adequately act once the harassment is brought to the school's attention, also violates the Fourteenth Amendment. *See, e.g., Nabozny*, 92 F.3d at 458 ("Reasonable persons in the defendants' positions . . . would have concluded that discrimination against [a public-school student] based on his sexual orientation was unconstitutional."); *Cianciotto*, 600 F. Supp. 3d at 455-58 (describing school's deliberate indifference to anti-gay harassment of a student); *Flores*, 324 F.3d at 1134-35. It is therefore incumbent on school officials to take claims of LGBTQ-related harassment seriously and work hard to resolve them fully and effectively. *See id.* ("Failure to take any further steps once [the school administrator] knew his remedial measures were inadequate supports a finding of deliberate indifference"); *Martin v. Swartz Creek Cmty. Schs.*, 419 F. Supp. 2d 967, 974 (E.D. Mich. 2006) ("[If] the school district's efforts . . . did not abate

the frequency or severity of [anti-gay bullying], [the ineffective remedy] might alone create a jury question of whether the school was deliberately indifferent.”).

With this information in mind, we urge you to investigate and respond appropriately to the LGBTQ-related harassment that may be occurring at your school or schools. Please contact the ACLU if you have any questions about this letter or wish to discuss it further. We can be reached at helpgbtq@aclu.org.

Sincerely,



James D. Esseks
Director
ACLU LGBTQ & HIV Project



Students and parents: Feel free to use this letter as an advocacy tool in your school.