

February 2, 2011

Dear School Principals, Administrators, and Board Members:

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

### *The Problem*

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

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

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

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

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

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

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

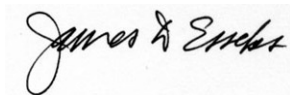
Furthermore, a school's failure to communicate anti-harassment policies to students despite an awareness of hostility toward LGBT students may also create liability. The message is clear, school officials may not stand mute while anti-gay harassment takes place.

### *Available Resources*

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

You can find resources, including model anti-harassment and nondiscrimination policies, on the schools portion of the ACLU's "Get Busy, Get Equal" website at [www.aclu.org/getequal](http://www.aclu.org/getequal). Your local ACLU affiliate can also provide more information and direct you to other groups that are working to promote safer schools. If you have questions, please feel free to contact us at [getequal@aclu.org](mailto:getequal@aclu.org).

Sincerely,



James Esseks  
Director