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RESEARCH-BASED OPTIONS FOR EDUCATION POLICYMAKING

Addressing School Environment and Safety for LGBT Students

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As a simple and self-evident moral imperative, all students have the right to be free of abuse, harassment or attack. Schools must therefore create healthy, welcoming environments conducive to learning for all students. These requirements are particularly salient for lesbian, gay, bisexual and transgendered (LGBT) youth, who are disproportionately at risk of an unsafe and unhealthy school environment.

Yet, an extensive national study conducted in 2011 by the Gay, Lesbian and Straight Education Network (GLSEN) found 81.9% of LGBT students reported being verbally harassed, 38.3% reported being physically harassed, and 18.3% reported being physically assaulted. More than 60% of these students did not report the incidents to school officials, believing that little or no action would be taken or that the situation might even be exacerbated if reported.¹ The suicide rate for LGBT students continues to be three to four times higher than that of their straight counterparts, and in some parts of the country LGBT runaways may account for up to 40% of the teen homeless population.²

Attending school in an adverse environment inevitably affects both achievement and aspirations. Of the LGBT students surveyed by GLSEN, 31.8% missed a day of school in the past month because of feeling unsafe, compared with only 4.5% of a national sample of

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secondary school students. Not only do their grades suffer as a result, but the percentage of LGBTs who do not plan to pursue a post-secondary education is almost twice the national average.³

Conducted biennially since 1999, the latest GLSEN survey shows a significant decrease in anti-LGBT language over the years as well as a significant decrease in victimization. Recent advances in law, in societal views, and in school policies have undoubtedly helped many LGBT students, but the problems these youth face in the nation's schools are still substantial.

Scholarship focusing on gay and gender-non-conforming youth consistently finds that large percentages of LGBT students in K-12 public schools continue to experience ongoing challenges above and beyond those of the typical adolescent, such as negative self-image. These challenges occur at every level of social interaction.⁴

Under well-settled legal mandates, school-district employees must endeavor to provide a safe and supportive learning environment for every student.⁵ Affirmative steps are necessary in order to overcome the obstacles faced by gay and gender-non-conforming youth. To some extent, these additional steps would build on legal protections arising from constitutional protections (arising from the First and Fourteenth Amendments) and from statutory protections (arising from Title IX and from the Equal Access Act). These steps are also grounded in the basic goals of schooling and of society, that schools provide healthy learning environments for all students.

In a legislative brief published by NEPC, Biegel and Kuehl⁶ set forth these affirmative steps in guiding principles:⁷

- Organizational change should include teacher education and administrator training in credentialing programs, professional development within individual districts, school-family-community partnerships, and collaborative leadership by educators.
- LGBT students should not be viewed as separate and apart from other identifiable persons and groups, particularly since gay and gender-non-conforming youth often have multiple identities as, for example, people of color, English-language learners, students with disabilities, devoutly religious, dedicated athletes, etc.⁸
- Strategies do not always have to be LGBT-specific to succeed. Indeed, broad, general approaches applicable to all students can help address many LGBT needs.
- School-climate policies seeking to promote respectful interaction can be designed in a manner that comports with the First Amendment. Education officials have broad power to restrict expressive activity that is reasonably likely to lead to material and substantial disruption or to interference with the rights of others.⁹ Indeed, a key component of K-12 First Amendment jurisprudence is its focus on preventing the type of escalating violence that is often set in motion by bullying, harassment, and intimidation.¹⁰
- LGBT educators can serve as valuable resources, both day to day in the schools and in professional-development settings. Yet, instead of taking advantage of the fact

that openly LGBT teachers, coaches, and school-site administrators can play a central and highly positive role, too many districts continue to put explicit or implicit pressure on these educators to keep their identities closeted.¹¹

- It is not possible to address problems without being able to talk about them. To fully and effectively take on the LGBT-related issues that persist in schools, all members of the school community must be able to discuss the topic openly, in a courteous, respectful, and professional manner, and in all possible settings.

Recommendations

Implementing these principles requires advances in three areas of school policy: school climate, curriculum and pedagogy, and school sports.

Key Policy Recommendations about School Climate

- Adopt proactive school climate initiatives that demonstrate a commitment to inclusive policies and shared values within our pluralistic society.
- End discriminatory disciplinary practices and the inappropriate referral of LGBT students to special education.
- • Implement LGBT-specific programs or activities at individual school sites, which may include safe zones, gay-straight alliances, and suicide prevention programs.

Key Policy Recommendations about Curriculum and Pedagogy

- Develop and implement LGBT-related professional development, locally determined and agreed upon by faculty and staff, for all school-site personnel.
- Align classroom pedagogy with shared values and respect for differences.
- Include age-appropriate LGBT-related content in the curriculum.

Key Policy Recommendations about School Sports

- Involve key members of campus athletic programs in LGBT-related initiatives.
- Make it clear that homophobic comments and actions by coaches and student athletes are completely unacceptable.
- Encourage student athletes to participate in targeted programs such as initiatives addressing bullying and hate violence, as well as gay-straight alliances, safe zones, and wellness programs.

Legislative Recommendations: A Menu of Options at the State Level

The NEPC legislative brief from which this digest is primarily drawn also contains a range of legislative options from which state policymakers may choose. The complete brief as well as model policies and model legislation can be found at:

Biegel, S. & Kuehl, S. J. (October, 2010). *Safe at School: Addressing the school environment and LGBT safety through policy and legislation* (NEPC policy brief). Retrieved from http://nepc.colorado.edu/files/Biegel_LGBT.pdf/.

Notes and References

1 Kosciw, J.G., Greytak, E.A., Bartkiewicz, M. J., Boesen, M. J., & Palmer, N. A. (2012). *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools*. Gay, Lesbian and Straight Education Network. Retrieved May 16, 2013, from http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/002/2105-1.pdf/;

Kosciw, J.G., Diaz, E. M. & Greytak, E. A. (2008). *2007 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools*. Gay, Lesbian and Straight Education Network. Retrieved May 9, 2013, from <http://www.glsen.org/cgi-bin/iowa/all/news/record/2340.html/>.

2 Biegel, S. & Kuehl, S. J. (2010, October). *Safe at School: Addressing the school environment and LGBT safety through policy and legislation*. NEPC policy brief. Retrieved May 9, 2013, from http://nepc.colorado.edu/files/Biegel_LGBT.pdf/;

Wagner, D. (2010). *Nowhere to go: Issue brief on gay and transgender youth homelessness*. Center for American Progress. Retrieved May 9, 2013, from http://www.americanprogress.org/issues/2010/08/homelessness_brief.html/;

Ray, N. (2006). *Lesbian, gay, bisexual and transgender youth: An epidemic of homelessness*. National Gay and Lesbian Task Force. Retrieved May 9, 2013, from <http://www.thetaskforce.org/downloads/HomelessYouth.pdf/>;

Russell, S. T. (2003). Sexual minority youth and suicide risk. *American Behavioral Scientist*, 46, 1241-1257.

3 Biegel, S. & Kuehl, S. J. (2010) (see note 2);

Kosciw, J.G., Diaz, E. M. & Greytak, E. A. (2008) (see note 1);

Kosciw, J.G., Greytak, E.A., Bartkiewicz, M. J., Boesen, M. J., & Palmer, N. A. (2012) (see note 1).

4 Ryan, C. C. & Futterman, D. (1998). *Lesbian and gay youth: Care and counseling*. New York: Columbia University Press.

5 These mandates are reflected in legal doctrine addressing K-12 public school safety in every state, under principles derived from negligence law, threat law, and harassment law. See generally:

Biegel, S. (2009). Education and the law, (12-46, 71-95, 226-249, 261-302). St. Paul, MN: West.

6 Biegel & Kuehl, 2012 (see note 2), 9-16.

7 Biegel & Kuehl, 2012 (see note 2), 9-10.

8 Innovative scholarship exploring the boundaries and overlapping of multiple identities in this context has emerged in recent decades, with researchers identifying the potential for new paradigms. See, e.g.:

Wu, J. (2010). *An alternative is possible: A rebellious vision of intersectional lawyering*. Unpublished manuscript, UCLA School of Law, Los Angeles, CA.;

Grady, J. & Marquez, R. (2010). *Rethinking revolutionary critical pedagogy: Queer youth of color creating dialogues of resistance*. Paper presented at the annual meeting of the American Educational Research Association, Denver, CO.

Also, see generally:

Crenshaw, K. (1989). Demarginalizing the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory, and antiracist politics. *University of Chicago Legal Forum*, 1989, 139-167.

9 The basic principles linking student freedom of expression to campus safety in the K-12 public schools are set forth in *Tinker*, where the U.S. Supreme Court held that First Amendment rights are explicitly made available to public school students, subject to limitations that arise out of the special characteristics of the school environment. See:

Tinker v. Des Moines Indep. Commun. Sch. Dist., 393 U.S. 503 (1969).

The 2007 case *Ponce v. Socorro Indep. Sch. Dist.* built on the jurisprudence of *Tinker* and its progeny in this context. In *Ponce*, the Fifth Circuit determined that in the aftermath of the tragic events at Columbine High School in 1999 and in light of the U.S. Supreme Court's 2007 decision in *Morse v. Frederick*, 551 U.S. 393 (2007), the heightened vulnerability of students arising from the lack of parental protection and the close proximity of students with one another make schools places of special danger' to the physical safety of the student. And it is this particular threat that functions as the basis for restricting the First Amendment in schools: school officials must have greater authority to intervene before speech leads to violence. See:

Ponce v. Socorro Indep. Sch. Dist., 508 F.3d 765 (5th Cir. 2007), at 770.

10 In another recent decision, the Seventh Circuit Court of Appeals, per Judge Richard Posner, upheld the constitutionality of a policy that sought to improve school climate by prohibiting derogatory comments that refer to race, ethnicity, religion, gender, sexual orientation, or disability.

Nuxoll v. Indian Prairie Sch. Dist. #204 Bd. of Educ., 523 F.3d 668 (7th Cir. 2008), at 669-674.

11 Recent poll data and national survey results continue to support the conclusion that there has been a significant positive change in the attitudes of Americans toward LGBT educators. It remains the case, however, that a substantial percentage of people--particularly in rural areas and certain regions of the country--continue to oppose the hiring of LGBT teachers. See:

Neidorf, S. & Morin, R. (2007). Four in ten Americans have close friends or relatives who are gay: Survey finds familiarity is closely linked to greater tolerance. Pew Research Center for the People & the Press. Retrieved May 9, 2013, from <http://pewresearch.org/pubs/485/friends-who-are-gay/>.

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