

An Annotated Primer: What Everyone Should Know about LGBT Students and the Law

In public schools, lesbian, gay, bisexual and transgender (LGBT) students (as well as students who are perceived to be LGB or T) have the right to be protected from unequal treatment and bullying on the basis of sexual orientation and gender identity/expression. Also, LGBT students (and those perceived to be LGB or T) have rights to the same services and expressive freedoms as other youth. These rights stem from federal, state, and local laws and policies.

Bullying

- Schools must protect students who are bullied because of their sexual orientation or gender identity/expression, just as they must protect students who are bullied because of race, religion, or other protected categories. *L.W. v. Toms River Regional Schools* (2007); *Flores v. Morgan Hill Unified School District* (2003); *Henkle v. Gregory* (2002); *Nabozny v. Podlesny* (1995).
- Students have a right to be out at school. *Henkle v. Gregory* (2002); *Nabozny v. Podlesny* (1995).

Unequal Treatment

- Schools must address disciplinary infractions equally regardless of a student's sexual orientation or gender identity/expression. *Nguon v. Wolf* (2007); *Nabozny v. Podlesny* (1995).
- If a school permits students to form non-curricular clubs like the Key Club or the drama club, it also must permit students to form Gay-Straight Alliances. *Morrison v. Boyd County Bd. of Educ.* (2007); see also *SAGE v. Osseo Area Schools—District No. 279* (2007); *Gay-Straight Alliance of Okeechobee High Sch. v. Okeechobee Sch. Bd.* (2007); *White County High School PRIDE v. White County Sch. Dist.* (2006); *Franklin Central Gay/Straight Alliance v. Franklin Township Community School Corp.* (2002); *Colin v. Orange Unified School Dist.* (2000); *East High School Prism Club v. Seidel* (2000); *East High Gay/Straight Alliance v. Board of Education of Salt Lake City* (1999).

Expression

- Schools may not prohibit a student from bringing a same-sex date to the prom or any other school event. *Fricke v. Lynch* (1980).
- If a school permits students to wear t-shirts expressing support for political candidates, opinions about abortion, or other issues, the school must permit students to wear pro-gay t-shirts. *Myers v. Thornsberry* (2005).
- Schools may not discipline transgender students for expressing their gender identity even if that expression does not conform to their biological sex. *Doe v. Yunits* (2001).

Privacy

- Schools may not reveal students' sexual orientation or gender identity/expression to their families or anyone else without the students' permission, even if the students are out at school, unless there is a legitimate school-related reason for doing so. *Nguon v. Wolf* (2007); *Sterling v. Borough of Minersville* (2000).

If you have questions about the rights of LGBT students in your school, contact Sarah Schriber at the Illinois Safe Schools Alliance sarah@illinoisafeschools.org

The Stories Behind the Cases

Bullying

- SCHOOLS MUST PROTECT STUDENTS WHO ARE BULLIED BECAUSE OF THEIR SEXUAL ORIENTATION OR GENDER IDENTITY/EXPRESSION, JUST AS THEY MUST PROTECT STUDENTS WHO ARE BULLIED BECAUSE OF RACE, RELIGION, OR OTHER PROTECTED CATEGORIES. *L.W. v. Toms River Regional Schools* (2007); *Flores v. Morgan Hill Unified School District* (2003); *Henkle v. Gregory* (2002); *Nabozny v. Podlesny* (1995).

L.W. v. Toms River Regional Schools (2007).

In fourth grade, L.W. began to be subjected to antigay bullying. Other students frequently said to L.W., “you’re gay,” “you’re a homo,” and “you’re a fag.” By fifth grade, L.W.’s peers taunted him almost every day. That same year, L.W. began to refuse to attend school because he feared the harassment. In the seventh grade, students bullied L.W., calling him “butt boy” and “faggot” in the hallways. At one point, someone left a message on his locker stating: “you’re gay, you’re a faggot, and you don’t belong in our school, get out.”

In eighth grade, students’ harassment of L.W. became physical. In the cafeteria, a group of between 15-20 students accosted L.W., hitting him on the head while calling him “homo” and “faggot.” No one intervened even though a teacher observed the beating. When L.W. and his mother alerted the principal about the incident, she responded by inquiring them about L.W.’s relationship with his father. Subsequently, the principal spoke with only two of the students involved in L.W.’s assault, telling one of them that name calling was inappropriate. She took no further action.

Later that year, again in the cafeteria, a student approached L.W. and called him a “faggot.” He then grabbed L.W.’s genitals and “humped” him, asking “Do you like it, do you like it like this?” L.W. escaped the student’s grasp for a moment, but the student caught up with him and repeated the assault. After the incident, L.W.’s mother temporarily removed L.W. from school.

In high school, L.W. continued to be bullied. One assault injured L.W.’s face so badly that he missed school for several days. On another occasion, L.W. was beaten again during lunch. Finally, stating that she would no longer send her son to school to be “tortured,” L.W.’s mom moved him to a school outside of the district.

Ultimately, L.W. and his mother brought a lawsuit against the school district for failing to protect him. In a unanimous decision, the New Jersey Supreme Court wrote: “Students in the classroom are entitled to no less protection from unlawful discrimination and harassment than their adult counterparts in the workplace.” The Court continued: “[W]e require school districts to implement effective preventive and remedial measures to curb severe or pervasive discriminatory mistreatment.”

For more information about L.W.'s case, go to <http://www.aclu-nj.org/legal/closedcasearchive/lwvtomsriverregionalschool.htm>.

Flores v. Morgan Hill Unified School District (2003).

From 1991 through 1998, students at a number of middle and high schools in the Morgan Hill Unified School District experienced severe anti-gay harassment to which the administrators failed to respond or responded inappropriately. For example, at the high school, students placed pages torn from pornographic magazines in Alana Flores's locker and scratched anti-gay obscenities into the paint on her locker door. Although Alana reported it, the school left the words on her locker for months before painting over them. In January of 1997, Alana found a picture of a naked woman, bound and gagged, with her legs spread and her throat slashed taped to her locker. On the picture, someone had written, "Die, die? dyke bitch, fuck off. We'll kill you." Frightened and crying, Alana took the photo to the assistant principal's office. He brushed her off and told her to go back to class, saying, "Don't bring me this trash anymore, this is disgusting." He then asked Alana if she was gay and said, "If you're not gay, why are you crying?"

Freddie Fuentes was in 7th grade when a group of students surrounded him at a school bus stop one morning and brutally beat and kicked him, calling him "faggot." The bus driver ignored the scene when he drove up, let the attackers board the bus, and left Freddie lying on the ground at the bus stop as he drove away. He had to be treated at a hospital. The school only disciplined one of the attackers. Freddie transferred to another school, after school officials said that they couldn't ensure his safety if he stayed.

Students shouting anti-gay epithets pelted Jeanette Dousharm with food at lunch, and a group of students placed penis-shaped balloons on the table in front of her, saying, "If you knew what this was, maybe you wouldn't be a lesbian." This took place in front of a campus monitor, who did nothing. When Jeanette was harassed in the halls, administrators told her to go to class early to avoid the students who were tormenting her. Jeanette was also told to change clothes for gym in an area away from the rest of her class because the other girls said her presence made them uncomfortable.

In 1998, Alana, Freddie, Jeanette, and three other students sued the school district, charging that school district employees repeatedly ignored or minimized many reports by the students that they were being abused by others who thought they were gay. After the trial court ruled that the students had a right to sue the district, the district appealed. The 9th Circuit Court of Appeals unanimously ruled that if a school knows anti-gay harassment is taking place, it is obligated to take meaningful steps to end it and to protect students. Afterwards, the parties settled the case. As a result, the district pledged to implement a comprehensive training program for administrators, staff, and students to combat anti-gay harassment.

For more information about Alana, Freddie, and Jeannette's case, go to <http://www.aclu.org/lgbt/youth/11947res20040106.html>.

Henkle v. Gregory (2002).

When he was in the ninth grade, Derek Henkle came out on public-access television in his hometown of Reno, Nevada. Almost immediately, he was harassed about his sexual orientation. He was spit on, punched, and kicked almost every day. School administrators and teachers stood by while other students harassed, threatened and beat Derek. On one occasion students lassoed a rope around his neck in the school parking lot and threatened to kill him by dragging him from their truck, while an assistant principal laughed. Rather than addressing the antigay harassment and violence, school administrators transferred Derek to an alternative school for troubled students—as if he were the problem.

At his new school, the principal told Derek to “stop acting like a fag.” After a transfer to yet a third school, Derek was beaten bloody by another student while two school security guards stood by. Unwilling to take measures to create a safe educational environment for Derek, school officials had him take classes at a local community college to obtain a GED instead of a high school diploma.

Ultimately, Derek sued his school district, which resulted in a landmark settlement: Derek received \$451,000 in damages, the largest pretrial award of its kind in the nation, and the Washoe County School District agreed to implement sweeping new policies to protect students from discrimination based on sexual orientation.

For more information about Derek Henkle’s case, go to <http://www.lambdalegal.org/our-work/in-court/cases/henkle-v-gregory.html>.

Nabozny v. Podlesny (1995).

For four years, Jamie Nabozny was subjected to relentless antigay verbal and physical abuse by fellow students at his public high school in Ashland, Wisconsin. Students urinated on him, pretended to rape him during class and, once when they found him alone, kicked him so many times in the stomach that he required surgery. School officials were aware of the abuse, but responded to Jamie that he should expect such treatment if he was gay. Jamie attempted suicide several times, dropped out of school, and ultimately ran away.

After years, Jamie sued his school district. The trial court dismissed his lawsuit. Lambda Legal represented Jamie on appeal and the appellate court issued the first judicial opinion in the nation’s history finding that a public school could be held accountable for not stopping antigay abuse. The case went back to trial and a jury found the school officials liable for the harm they caused to Jamie for failing to protect him. The case then settled for close to \$1 million.

For more information about Jamie Nabozny’s case, go to <http://www.lambdalegal.org/our-work/in-court/cases/nabozny-v-podlesny.html>.

- STUDENTS HAVE A RIGHT TO BE OUT AT SCHOOL. *Henkle v. Gregory* (2002); *Nabozny v. Podlesny* (1995).

***Henkle v. Gregory* (2002).** See Bullying.

***Nabozny v. Podlesny* (1995).** See Bullying.

Unequal Treatment

- SCHOOLS MUST ADDRESS DISCIPLINARY INFRACTIONS EQUALLY REGARDLESS OF A STUDENT’S SEXUAL ORIENTATION OR GENDER IDENTITY/EXPRESSION. *Nguon v. Wolf* (2007).

***Nguon v. Wolf* (2007).** See Privacy.

- IF A SCHOOL PERMITS STUDENTS TO FORM NON-CURRICULAR CLUBS LIKE THE KEY CLUB OR THE DRAMA CLUB, IT ALSO MUST PERMIT STUDENTS TO FORM GAY-STRAIGHT ALLIANCES. *Morrison v. Boyd County Bd. of Educ.* (2007); see also *SAGE v. Osseo Area Schools—District No. 279* (2007); *Gay-Straight Alliance of Okeechobee High Sch. v. Okeechobee Sch. Bd.* (2007); *White County High School PRIDE v. White County Sch. Dist.* (2006); *Franklin Central Gay/Straight Alliance v. Franklin Township Community School Corp.* (2002); *Colin v. Orange Unified School Dist.* (2000); *East High School Prism Club v. Seidel* (2000); *East High Gay/Straight Alliance v. Board of Education of Salt Lake City* (1999).

***Morrison v. Boyd County Bd. of Educ.* (2007).**

In 2002, students at Boyd County High School in Ashland, Kentucky circulated a petition to start a Gay Straight Alliance to address the homophobic climate there. In one of the student’s English class, several students had stated that they needed “to take all of the fucking faggots out in the back woods and kill them.” During a basketball game, students had used megaphones to chant to a particular student: “faggot-kisser,” “GSA” and “fag-lover.” On a regular basis, students called out “homo,” “fag,” and “queer” to other students on their way to classes. On the Day of Silence, students called out epithets and threw things at students they perceived to be observing the day. Two students dropped out of school as a result of antigay harassment. The student organizers felt a GSA at the school would help promote tolerance, understanding and acceptance of one another regardless of sexual orientation.

Initially, the principal of BCHS and the Superintendent of the district stated that the GSA should be approved. However, after the community was alerted that there would be a GSA at the school, controversy ensued. Students who opposed the GSA wore t-shirts stating “Adam and Eve—Not Adam and Steve” and “I’m straight.” In the midst of the controversy, the group of students wanting the GSA applied for club status. The principal asked them to wait to submit their application until the controversy died down and the student agreed to wait for one month.

After one month passed, the students submitted their application to start the GSA. Even though the principal had asked the students to delay their submission, the school denied the club recognition, claiming it was too late in the school year. The principal assured the would-be faculty advisor that the GSA's application would "slide right through" in the fall.

At the beginning of the new school year, 20 student groups were approved; the GSA was the only group to be denied. The ACLU wrote the school, explaining the requirements of the Equal Access Act, and asked that the GSA be reconsidered. Instead, discussion of the GSA was tabled. In October, the school approved the GSA. While the members of the GSA remained silent at hearing the news, those opposed were acrimonious, verbally and physically threatening the students who supported the GSA.

Two days before the GSA was to have its first meeting as a student group, a group of students protested the school's decision to approve it, by standing outside the school's entryway and shouting "if you go inside, you're supporting faggots." The members of the GSA made no response and classes proceed that day without disruption. Nevertheless, the opposition to the GSA grew and turned toward the school board. The board received calls from angry parents, many of them expressing concern for the education and safety of the students, and teachers. A number of parents threatened to remove their children from the school. No one did.

In December, the board recommended banning all noncurricular related student groups to end the fury around the GSA despite that it was those students, parents, and teachers who opposed the GSA who had caused all of the disruption. The board voted to suspend all student clubs not related to the curriculum for the remainder of the school year.

Despite the board's action purportedly banning all student groups, it looked the other way as certain of the groups, including the Bible Club and the Drama Club, continued to meet at the school. Ultimately, the students who had started the GSA filed a lawsuit requesting a preliminary injunction to force the school district to treat the GSA the same as other student groups at BCHS.

Ultimately, the court ruled in favor of the GSA. For more information about the BCHS students' case, go to <http://www.aclu.org/lgbt/youth/25060res20050302.html>.

For information about more GSA cases, go to www.aclu.org/getequal.

Expression

- SCHOOLS MAY NOT PROHIBIT A STUDENT FROM BRINGING A SAME-SEX DATE TO THE PROM OR ANY OTHER SCHOOL EVENT. *Fricke v. Lynch* (1980).

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In 1980, Aaron Fricke, a high school student in Rhode Island, asked Paul Gilbert to the prom. Paul said yes, but Aaron's principal said no.

Aaron knew he should be able to go to the prom like everyone else, and he filed a lawsuit. Not only did Aaron win the right to take Paul to the prom, but his school also had to provide enough security so that he and Paul would be safe. Aaron helped show that unless a school has reason to believe someone's date will cause a "serious disruption," students must be allowed to go to the prom with the date of their choice.

For more information about Aaron Fricke's case, go to <http://www.aclu.org/FilesPDFs/fricke.pdf>.

- IF A SCHOOL PERMITS STUDENTS TO WEAR T-SHIRTS EXPRESSING SUPPORT FOR POLITICAL CANDIDATES, OPINIONS ABOUT ABORTION, OR OTHER ISSUES, THE SCHOOL MUST PERMIT STUDENTS TO WEAR PRO-GAY T-SHIRTS. *Myers v. Thornberry* (2005).

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In 2004, LaStaysha Myers, a 15-year-old student at Webb City High School in Missouri, was twice sent home from school for wearing t-shirts that expressed her support of equal rights for gay people; first, for wearing one stating "I support the gay rights!" and "Who are we to judge?" and the next day for wearing one with a rainbow and the Webster's dictionary definition of "gay": "M[e]rry, happy." Before censoring Myers, school officials routinely allowed students to wear shirts expressing other messages, including endorsements of the Bush and Kerry presidential campaigns, students' views on abortion, and religious messages.

Myers and the ACLU filed a lawsuit the high school for violating her free speech rights. After months of negotiations, the school agreed to no longer punish students for wearing t-shirts expressing support for gay rights.

For more about LaStaysha Myers's case, go to <http://www.aclu.org/lgbt/youth/12167res20050405.html>.

- SCHOOLS MAY NOT DISCIPLINE TRANSGENDER STUDENTS FOR EXPRESSING THEIR GENDER IDENTITY EVEN IF THAT EXPRESSION DOES NOT CONFORM TO THEIR BIOLOGICAL SEX. *Doe v. Yunits* (2001).

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Pat Doe was a transgender student at Brockton, a Massachusetts middle school. Pat's principal sent her home on numerous occasions stating that her clothing was too "girl-like." In addition, the principal went out of his way to make sure that, on any given day, Pat's clothes were "boy-like."

By the time Pat was in eighth grade, the principal requested that she check with him each day so that he could approve her clothing. He continued to send her home regularly despite no evidence of disruption. Pat stopped going to school as a result of the hostility she endured there. Ultimately, Pat sued the school and won.

For more information about Pat Doe go to http://www.transgenderlaw.org/cases/app_opp.pdf.

Privacy

- SCHOOLS MAY NOT REVEAL STUDENTS' SEXUAL ORIENTATION OR GENDER IDENTITY/EXPRESSION TO THEIR FAMILIES OR ANYONE ELSE WITHOUT THE STUDENTS' PERMISSION, EVEN IF THE STUDENTS ARE OUT AT SCHOOL. *Nguon v. Wolf* (2007); *Sterling v. Borough of Minersville* (2000).

***Nguon v. Wolf* (2007).**

When Charlene Nguon was a junior at Santiago High School in Orange County, California, she was disciplined numerous times for showing affection to her girlfriend. Ultimately, the principal told Charlene that either she or her girlfriend would have to transfer to a different high school.

While explaining to Charlene's parents why he was punishing her, the principal bluntly revealed that she was a lesbian. Charlene had not come out to them previously. Fortunately, they were supportive of her, but Charlene's treatment at Santiago (after the ACLU interceded to keep her from having to transfer) took a heavy toll on her. Her grades slipped and she became depressed, contemplating suicide.

Charlene and her mother sued the school district and the principal at Santiago. The judge affirmed his earlier holding that school officials typically do not have a right to disclose a student's sexual orientation, although it is permissible to out a student if it is necessary for a school-related purpose.¹

For more about Charlene Nguon's case, go to <http://www.aclu.org/lgbt/youth/22177res20051205.html>.

***Sterling v. Borough of Minersville* (2000).**

In 1997, police approached Marcus Wayman, a high school student in Minerville, Pennsylvania, who was sitting in a parked car with a 17-year-old male friend. The police claimed to be investigating the break-in of a liquor store and were suspicious. They

¹ The court also ruled that the principal did not violate Charlene's rights when he punished her for showing affection to her girlfriend because the facts revealed that heterosexual students were similarly punished. It would be unlawful to discipline two students differently for the same conduct simply because one of them is a lesbian. Charlene has the opportunity to appeal the court's ruling.

searched the car, and when they found condoms, they asked the young men if they had met up to have sex. They then arrested them for under-age drinking.

At the police station, the officers lectured the young men about the Bible's condemnation of homosexuality. One of the officers warned Wayman that if he did not tell his grandfather about his being gay, he would take it upon himself to disclose the information.

Not long after, Wayman confided to the other young man that he was going to kill himself. Upon his release from custody, Wayman committed suicide in his home.

On behalf of her son Marcus, Madonna Sterling sued Minersville and the individual police officers, alleging, among other things, that the officers' conduct had violated her son's constitutional right to privacy. The Third Circuit Court of Appeals agreed and ruled in Sterling's favor.

For more information about Marcus Wyman's case, go to <http://www.aclu.org/lgbt/youth/12302prs20001107.html> and <http://www.danpinello.com/Sterling.htm>.

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