LGBT Youth in America's Schools

Cianciotto, Jason, Cahill, Sean

Published by University of Michigan Press

Cianciotto, Jason and Sean Cahill.
LGBT Youth in America's Schools.
Project MUSE. muse.jhu.edu/book/14133.

For additional information about this book
https://muse.jhu.edu/book/14133

For content related to this chapter
https://muse.jhu.edu/related_content?type=book&id=436631
In response to the need to protect youth in schools, some students, parents, teachers, and administrators are creating ways to protect and support LGBT students. Interventions include gay-straight alliances, nondiscrimination policies, safe schools programs, and curricula designed to provide positive and inclusive examples of the contributions that LGBT people have made to American and world culture. Unfortunately, such programs are often met with harsh resistance from antigay organizations and activists, who falsely claim that “homosexuals recruit public school children”¹ and that “there is evidence that harassment of gay teens may neither be as frequent, as severe, nor as disproportionate, as some pro-homosexual rhetoric would suggest.”² By summarizing initiatives that have succeeded despite such opposition, we hope to inspire and equip parents, teachers, and school administrators to protect and nurture LGBT youth.

A variety of policies and support systems can help communities combat and eventually eliminate anti-LGBT harassment and violence in their public schools:

• The equal protection clause of the U.S. Constitution and existing federal laws, including Title IX of the Education Amendments Act of 1972 and the Equal Access Act of 1984, offer LGBT students some protection from harassment and violence, as well as the freedom to create and attend gay-supportive clubs on school campuses.³
• States can pass, implement, and enforce comprehensive nondiscrimination and antibullying legislation that explicitly includes protections based on sexual orientation and gender identity of students.
• School districts can implement and enforce nondiscrimination and antiharassment policies that protect LGBT students and teachers.
• Teachers can include LGBT culture and history in curricula and create a safe environment by not tolerating anti-LGBT harassment; those who are either LGBT or LGBT-friendly can also serve as role models for both their gay and straight students and coworkers.4
• Gay-straight alliances or other support groups can give LGBT students and their straight allies a place to meet on school property in a safe and supportive environment; their very existence is symbolic of a school’s commitment to a safe and inclusive environment for all students.

Combined, these resources can comprehensively meet the needs of LGBT students. A pilot study of the Massachusetts Safe Schools Program found that clear nondiscrimination policies that are backed by financial resources and support from key administrators, educators, and community and student leaders are at least as important as GSAs in creating more tolerant and safer environments for LGBT students.5 The decentralized nature of the U.S. public education system demands that each individual school district act to implement such measures, especially because efforts to mandate these protections and curriculum changes at the federal level have been unsuccessful.

The Equal Protection Clause of the U.S. Constitution

The equal protection clause of the Fourteenth Amendment to the U.S. Constitution requires that all government agencies treat similarly situated persons in the same way. Federal courts have held that public schools have an obligation under the equal protection clause to protect students from harassment and discrimination based on their sexual orientation or gender identity.6

An equal protection claim requires the student to show that school officials did not abide by antiharassment policies when dealing with sexual orientation harassment or that the student was treated differently from other similarly situated students. In other words, if school administrators or teachers enforce rules against harassment for heterosexual students, but fail to enforce the same rules for LGBT students, then an equal protection violation may have occurred. The same claim can be made when
school districts take disciplinary action against LGBT students but not heterosexual students for similar behaviors.\textsuperscript{7}

Additionally, if school officials fail to stop anti-LGBT harassment or violence either because they believe that a student who is out of the closet should expect to be harassed or simply because they are uncomfortable addressing the situation, the school can be held liable for failing to provide equal protection for that student.\textsuperscript{8}

Schools also must treat transgender students the same way they would treat students of the same gender identity. For example, if a female-identified transgender student is prevented from wearing the same type of clothing that other female students are allowed to wear in school, that school may be violating the equal protection clause. A transgender student’s right to dress according to his or her gender identity is also protected under the First Amendment and due process clause of the Constitution.\textsuperscript{9}

School Held Liable for Failing to Protect Students from Harassment

A Profile of Alana Flores

Alana Flores met her first girlfriend the summer before her sophomore year of high school, but she did not come out of the closet until the end of her senior year. Nonetheless, she endured harassment and death threats at Live Oak High School in Morgan Hill, California, because other students believed she was gay. For three years, threatening notes and pornographic images were repeatedly taped to her locker. One note threatened, “Die, Die . . . Dyke Bitch, Fuck off. We’ll kill you.”\textsuperscript{10} When Alana went to a teacher for help, the teacher only asked, “Why does that word bother you? Are you a lesbian?”\textsuperscript{11} The harassment continued, and Alana went to her principal for help, but he did nothing to stop the harassment. When Alana asked for a new locker, the principal replied, “Yes, sure, sure, later. You need to go back to class. Don’t bring me this trash anymore. This is disgusting.”\textsuperscript{12} The threats and the failure of school officials to stop them, combined with Alana’s own reluctance to accept her sexual orientation, kept Alana in the closet and reinforced her fear of coming out. By her senior year, the stress became too much, and she attempted suicide.\textsuperscript{13}

While in the hospital after her suicide attempt, Alana told her parents that she was a lesbian and about the constant harassment
and death threats. Her family expressed unconditional love and support and stood by her when, nine months after graduation, she decided to file a lawsuit against the school for failing to protect her from pervasive and ongoing harassment. The ACLU and the National Center for Lesbian Rights (NCLR) represented Alana and five other plaintiffs who joined the case, including one student who was hospitalized after a group of male students shouted “faggot” and other homophobic slurs while hitting and kicking him at a bus stop in full view of the bus driver. All of the plaintiffs had endured significant emotional distress related to harassment and violence that occurred on school property. Some suffered from flashbacks and felt generally unsafe in the world.

The plaintiff’s lawyers were able to document a long history of anti-LGBT harassment at Live Oak High School, including a 1993 incident reported in the school’s newspaper, the Oak Leaf. The paper described graffiti reading, “Kill all gays. Keep it in the closet,” which had been written in an area where a few gay students tried to organize a support group. NCLR lawyer Leslie Levy argued that the history of harassment “was so open and obvious that teachers and administrators had to know about it”; that “it was clear that the school district, in almost every instant [sic], failed to respond appropriately”; and that this failure violated the equal protection clause of the U.S. Constitution. On April 8, 2003, the U.S. Court of Appeals for the Ninth Circuit issued a historic decision in Flores v. Morgan Hill Unified School District. Holding that school officials had failed in their constitutionally mandated duty to treat LGB students equally by not protecting them from harassment, the court ordered them to eliminate any harassment of LGB students in the future.

After winning the case, NCLR executive director Kate Kendell commented, “This decision is long overdue. Finally, it’s clear that schools can no longer stand back and turn a blind eye to the kind of debilitating harassment that so many lesbian, gay and bisexual students face everyday.” Matt Coles, director of the Lesbian and Gay Rights Project of the ACLU, added, “The court made it very clear that going through the motions is not enough. Schools have to really deal with the problem of antigay harassment.” Alana explained why she chose to sue the school in the first place: “I could have graduated from Live Oak, moved on with my life, and never looked back. But there was always something in me that said that’s
not the right thing to do, because it could happen to somebody else, over and over and over again.” Unfortunately, many youth will continue to experience harassment and violence at schools across the country due to their real or perceived sexual orientation. Thanks to Alana, the ACLU, and the NCLR, however, students can demand that schools be held responsible for failing to protect them.

Existing Federal Law: Title IX and The Equal Access Act

Although they do not explicitly protect students based on sexual orientation or gender identity, Title IX of the Education Amendments of 1972 and the Equal Access Act are federal laws that provide some protection for LGBT students. Usually associated with access to sports programs, Title IX guarantees equal educational opportunities regardless of a student’s sex, and it also prohibits schools from limiting or denying a student’s participation in any school program on the basis of sex. Specifically, Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance.” Claims under Title IX are tenable under the following conditions:

1. school personnel have actual knowledge of the harassment;
2. school officials demonstrate deliberate indifference or take actions that are clearly unreasonable;
3. the harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victim(s) of access to the educational opportunities or benefits provided by the school.

Title IX does not explicitly protect LGBT students from harassment based on their sexual orientation or gender identity, but if an LGBT student can show that he or she was harassed because of gender non-conformity or was the victim of same-sex sexual harassment because of his or her sexual orientation, that student may have a Title IX claim.

In guidelines that clarify the applicability of Title IX to sexual harassment in public schools, the U.S. Department of Education explains how Title IX protects LGBT students:
Although Title IX does not prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program constitutes sexual harassment prohibited by Title IX. . . . For example, if a male student or a group of male students target a gay student for physical sexual advances, serious enough to deny or limit the victim’s ability to participate in or benefit from the school’s program, the school would need to respond promptly and effectively . . . just as it would if the victim were heterosexual. On the other hand, if students heckle another student with comments based on the student’s sexual orientation (e.g., “gay students are not welcome at this table in the cafeteria”), but their actions do not involve conduct of a sexual nature, their actions would not be sexual harassment covered by Title IX. . . . Gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond, if it rises to a level that denies or limits a student’s ability to participate in or benefit from the educational program.26

Title IX does not hold a school responsible for the behavior of students who harass; it holds a school accountable for failing to correct harassment once school officials have been notified. A U.S. Supreme Court ruling in 1999 reinforced this policy, specifically stating that schools are liable for student-to-student sexual harassment if the school has been informed of the problem. In its decision, the Court wrote that schools are liable for monetary damages “only if they were ‘deliberately indifferent’ to information about ‘severe, pervasive, and objectively’ offensive harassment among students.”27 This has been critical to the outcome of a number of lawsuits filed by students who were harassed because of their real or perceived sexual orientation.

In 2004, the U.S. Court of Appeals for the Third Circuit affirmed a district court ruling that the Belafonte School District in Pennsylvania was not liable under Title IX for sexual harassment a student experienced over the course of three years because he was effeminate. Each time the student complained, the school district responded with appropriate disciplinary action against the offending students and even sponsored assemblies and enacted policies that addressed student harass-
ment. The district also distributed memorandums to school faculty and staff soliciting assistance with reporting and preventing future incidents. In contrast, one year later, a federal district court in Kansas ruled that Dylan Theno, a heterosexual student who was the victim of antigay harassment in the Tonganoxie School District, had an actionable claim under Title IX because the school failed to take appropriate action to protect him. In response, the school district agreed to pay Dylan $440,000 in damages. According to the court,

the plaintiff was harassed because he failed to satisfy his peers’ stereotyped expectations for his gender because the primary objective of plaintiff’s harassers appears to have been to disparage his lack of masculinity. . . . [The harassment was] so severe, pervasive, and objectively offensive that it effectively denied [him] an education in the Tonganoxie school district.

The Equal Access Act (EAA) was passed by a bipartisan majority of Congress and signed into law by President Ronald Reagan in 1984. The purpose of the bill was to counteract perceived discrimination against religious speech in public high schools, while maintaining the constitutional separation of church and state. The legislation was developed after two federal appellate courts held that student-led religious groups could not meet on school property before or after school hours. The law was eventually challenged in the Supreme Court, which ruled that it was constitutional in 1990. Under the EAA, a school cannot deny equal access to student activities because of the “religious, political, philosophical, or other content of the speech at such meetings.” This also had an unexpected, secondary effect: it provided legal standing for the formation of gay-straight alliances in all public schools that allow any other school-sponsored clubs. In 2000, a federal judge in California ruled that under the Equal Access Act, schools could not pick and choose among clubs based on what they think students should or should not discuss.

The [school] Board members may be uncomfortable about students discussing sexual orientation and how all students need to accept each other, whether gay or straight. . . . [But they] cannot censor the students’ speech to avoid discussion[s] on campus that cause them discomfort or represent an unpopular viewpoint. In order to comply with the Equal Access Act . . . the members of the Gay-Straight Alliance must be permitted access to the school
campus in the same way that the District provides access to all clubs, including the Christian Club and the Red Cross/Key Club.\textsuperscript{33}

In the same ruling, the judge recognized that violence and harassment against gay students was “widespread” and that his ruling was not just about promoting tolerance for diverse points of view: “As any concerned parent would understand, this case may involve the protection of life itself.”\textsuperscript{34}

**Proposed Federal Legislation: The Safe Schools Improvement Act and the Student Nondiscrimination Act**

In 2007, the National Safe Schools Partnership—a coalition of over thirty education, health, civil rights, law enforcement, youth development, and other organizations—released recommendations to the U.S. Congress for bridging gaps in federal law that would promote school improvement, safety, and student achievement. The partnership proposed that this objective be carried out through amendment of the Elementary and Secondary Education Act (ESEA) so that bullying and harassment is defined

- With specific reference to conduct that causes harm to students, defined as conduct that adversely affects one or more students, depriving them of access to educational opportunities or benefits provided by their schools.
- To clarify that it can be based on any grounds set forth by a district or state; and to enumerate specific bases related to the highest frequency of such incidents, including conduct that is based on a student’s actual or perceived race, color, national origin, sex, disability, sexual orientation, gender identity, or religion.
- To exclude any action that would constitute protected free expression.\textsuperscript{35}

Specifically, the coalition made three recommendations:

1. Federal law should ensure that schools and districts have comprehensive and effective student conduct policies that include clear prohibitions against bullying and harassment;
2. Federal law should ensure that schools and districts focus on ef-
To achieve these objectives, the coalition recommended passage of two pieces of legislation: the Safe Schools Improvement Act (SSIA) and the Student Nondiscrimination Act.

The SSIA was first introduced in the House of Representatives on June 23, 2007, by Representative Linda Sánchez (D-CA), with seventy-eight cosponsors (seventy-five Democrats and three Republicans). It amends the Safe and Drug-Free Schools and Communities Act (Title IV of ESEA as amended by the No Child Left Behind Act) to require schools and districts receiving federal funds to adopt codes of conduct that specifically prohibit bullying and harassment, including on the basis of sexual orientation and gender identity. It also requires states to collect and report data on bullying and harassment to the Department of Education. The bill was referred to the House Committee on Education and Labor, where no further action was taken. It was reintroduced in the House again in 2009, with 117 cosponsors, and for the first time in the Senate in 2010 by Senator Robert Casey (D-PA), with eleven cosponsors (all Democrats).

On July 8, 2009, Sirdeaner Walker, the mother of Carl Joseph Walker-Hoover, testified in support of the SSIA before the House Subcommittee on Early Childhood, Elementary, and Secondary Education and the Subcommittee on Healthy Families and Communities. At age eleven and just a few months before his mother’s testimony, Carl completed suicide as the result of pervasive bullying and harassment in school (see his profile in chapter 2). The following are excerpts from Mrs. Walker’s testimony:

... My name is Sirdeaner Walker, and four months ago, I would not have dreamed that one day I would be testifying on Capitol Hill. I was an ordinary working mom, looking after my family and doing the best I could as a parent.

But my life changed forever on April 6, 2009.

That was the night I was cooking dinner when my son, Carl Joseph Walker-Hoover, went to his room where I imagined he’d
be doing his homework or playing his video games. Instead, I found him hanging by an extension cord tied around his neck.

He was 11 years old.

Carl liked football and basketball and playing video games with his little brother. He loved the Lord and he loved his family. What could make a child his age despair so much that he would take his own life?

That question haunts me to this day, and I will probably never know the answer.

What we do know is that Carl was being bullied relentlessly at school. He had just started secondary school in September, and we had high hopes, but I knew something was wrong, almost from the start.

He didn’t want to tell me what was bothering him, but I kept at him, and he finally told me that kids at school were pushing him around, calling him names, saying he acted “gay,” and calling him “faggot.”

Hearing that, my heart just broke for him. And I was furious. So I called the school right away and told them about the situation. I expected they would be just as upset as I was, but instead, they told me it was just ordinary social interaction that would work itself out.

I desperately wish they had been right. But it just got worse. By March, other kids were threatening to kill him.

I did everything that a parent is supposed to: I chose a “good” school; I joined the PTO; I went to every parent-teacher conference; I called the school regularly and brought the bullying problem to the staff’s attention. And the school did not act. The teachers did not know how to respond.

After Carl died, I could have stayed at home and mourned him, but instead, I’ve chosen to get involved, to speak out about school bullying—and I have learned a lot in a short time.

And the most important thing I’ve learned is that bullying is not an inevitable part of growing up. It can be prevented. And there isn’t a moment to lose.

Since my son died on April 6, I met the mother of another 11-year-old boy who was also being seriously bullied at school and killed himself. And I know there are others. This has got to stop.

School bullying is a national crisis, and we need a national solution to deal with it. That is why I am here today. Teachers, ad-
ministrators and other school personnel need additional support and clear guidance about how to ensure that all kids feel safe in school. Congress can make sure they have that guidance and support by making anti-bullying policies mandatory in all of our nation’s schools.

Policies that make it clear exactly what kind of behavior will not be tolerated. Policies that include training teachers and other school personnel to recognize bullying and harassment and enforce the rules with immediate, appropriate discipline. Policies that recognize that to prevent bullying, we have to teach young people to treat each other with respect. . . .

. . . The Safe Schools Improvement Act would help achieve the goals I have outlined today and I urge the subcommittees to move this legislation forward. . . . We cannot afford to wait for another child to drop out of school, struggle academically or even worse, take his own life before we take this problem seriously.41

In the spring of 2011, the SSIA was reintroduced in the Senate by Senator Robert Casey, this time with 30 cosponsors, and in the House by Representative Sanchez, with over 100 cosponsors. As of September 2011, neither version had passed out of committee.

Modeled after Title IX of the ESEA, the second piece of legislation supported by the National Safe Schools Partnership is the Student Nondiscrimination Act (SNDA). First introduced in the House on January 27, 2010, by Representative Jared Polis (D-CO), with 124 cosponsors (122 Democrats and two Republicans), the bill was referred to the House Committee on Education and Labor.42 The Senate version of SNDA was introduced by Senator Al Franken (D-MN) on May 20, 2010, with twenty-four cosponsors (all Democrats), and was referred to the Senate Committee on Health, Education, Labor, and Pensions.43 SNDA prohibits school programs or activities that receive federal funding from discriminating against any public school student based on actual or perceived sexual orientation or gender identity. SNDA also prohibits discrimination against any public school student because of the actual or perceived sexual orientation or gender identity of a person with whom a student associates or has associated. Discrimination, as defined by SNDA, also includes harassment of a student. SNDA also prohibits retaliation based on an individual’s opposition to conduct made illegal by the bill, and it affirms the right of any individual who believes he or she has been harmed under its provisions to pursue legal recourse.44
In a press release in support of SNDA, the ACLU highlighted the story of Constance McMillen, a student it represented in a lawsuit against the Itawamba County School District in Fulton, Mississippi, as an example of the need for SNDA. On April 2, 2010, officials cancelled a school prom in order to prevent Constance from attending with a same-sex date and from wearing a tuxedo. Blamed for the cancellation of the prom, Constance was harassed by other students at school, and when an alternative prom was organized by students’ parents, Constance was directed to a “decoy” prom to prevent her from attending.

The ACLU argued that the school violated Constance’s First Amendment right to free expression, and the U.S. District Court for the Northern District of Mississippi agreed. In July 2010, the Itawamba County School District settled with Constance out of court, agreeing to pay her thirty-five thousand dollars to end the lawsuit. The school district also agreed to implement a nondiscrimination policy including sexual orientation and gender identity as protected categories, the first of its kind in the state. Constance, who eventually transferred to and graduated from a high school in a different district to escape harassment, was happy with the settlement “not for the money, but the policies. . . . That’s going to change things for so many people at my school.”

While the federal court ruled in favor of Constance’s First Amendment claim in this instance, a different court may have interpreted Constance’s claim under the First Amendment differently and ruled against her. SNDA would make the discrimination she experienced explicitly illegal. Under SNDA, public school students, whether at a school prom or any other school-sponsored activity, would be protected from discrimination based on their actual or perceived sexual orientation or gender identity. In March 2011, SNDA was reintroduced in the Senate by Senator Al Franken, this time with 34 cosponsors, and in the House by Representative Polis, with 134 cosponsors. As of September 2011, neither version had passed out of committee.

**State and Local Laws and Policies**

In addition to federal laws that protect students, the majority of states have laws or regulations that prohibit discrimination, harassment, and/or bullying in schools. However, most of these laws do not explicitly include sexual orientation or gender identity as enumerated categories of protection. GLSEN warns that such enumeration is critical to ensur-
ing the safety of LGBT students, a position supported by a critical U.S. Supreme Court ruling in 1996. In Romer v. Evans, the Court ruled against an amendment to the Colorado Constitution that prevented the state from passing legislation or adopting policies that prohibited discrimination based on sexual orientation. In his majority opinion, Justice Anthony Kennedy not only declared that LGB Americans have the same right to seek government protections from discrimination as any other group, but he also declared that specific enumeration of sexual orientation in such laws was critical: “Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply.” This is among the reasons why groups like GLSEN argue that student antibullying and nondiscrimination laws should specifically include sexual orientation and gender identity as protected categories. State laws and policies without them may still leave LGBT students vulnerable.

As of September 2011, sixteen states and the District of Columbia had laws that addressed discrimination, harassment, and/or bullying of students based on sexual orientation and gender identity, among other enumerated categories (see fig. 1): Arkansas, California, Colorado, Connecticut, District of Columbia, Illinois, Iowa, Maine, Maryland, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Oregon, Vermont, and Washington. Additionally, Massachusetts and Wisconsin banned discrimination, harassment, and/or bullying based on sexual orientation (gender identity was not included as a protected category). Twenty-seven states prohibited discrimination, harassment, and/or bullying in schools but did not enumerate categories of protection: Alabama, Alaska, Arizona, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming.

The state board of education in Hawaii had a policy prohibiting school employees from bullying, harassing, or discriminating against a student based on sexual orientation or gender identity and expression. The state also had a regulation that prohibited students from bullying, cyberbullying, or harassing a fellow student on the basis of sexual orientation or gender identity and expression. New Mexico’s Public Education Department also had a regulation that prohibits bullying and harassment of students based on sexual orientation, but gender identity is not included as a protected category. In addition to their statewide laws
that do not include enumerated categories of protection, Pennsylvania and Georgia also have school regulations that prohibit discrimination based on sexual orientation. Only three states—Michigan, Montana, and South Dakota—did not have a law prohibiting discrimination, harassment, and/or bullying of students.

Given the U.S. Supreme Court’s ruling in favor of nondiscrimination laws with enumerated protections, we excluded states that do not include sexual orientation or gender identity as enumerated categories from our analysis of the proportion of the public school student population (K–12) protected by such laws (see fig. 2). To show any change in proportion of students protected over time, our calculations included the 2000, 2005, and 2010 academic school years.

As illustrated in figure 2, only 2 percent of the over forty-seven million K–12 public school students in the United States in 2000 were protected by a statewide law that addressed discrimination, harassment, and/or bullying based on sexual orientation and gender identity.

Fig. 1. Map of Safe Schools laws and regulations
However, by 2005, 21 percent of the public school student population was covered by a fully inclusive law. By the beginning of the 2010 school year, the proportion of students covered nearly doubled: 39 percent were protected by a fully inclusive law. Despite the progress made over the past decade in passing inclusive state nondiscrimination and antibullying laws, nearly twenty-eight million students (56 percent) in 2010 attended public schools in a state that did not specifically protect them from discrimination and harassment based on their real or perceived sexual orientation or gender identity.

In the absence of statewide laws, some school districts have implemented nondiscrimination and antiharassment policies with enumerated protection for LGBT students. This strategy may be effective in states with political leadership that is indifferent or even hostile to passing more comprehensive statewide laws. In Sexual Orientation and School Policy: A Practical Guide for Teachers, Administrators, and Community Activists, Ian Macgillivray describes “High Plains School District’s” struggle to establish, implement, and enforce a districtwide
nondiscrimination policy to protect LGBT students. This true story is an example of successful community-based activism that accomplished its goals without relying on state and federal statutes or constitutional protections.

Traditionally, the relatively affluent city of High Plains had been supportive of the LGBT community and local gay rights policies. In 1992, the High Plains School District’s school board easily adopted a policy outlining procedures for resolving conflicts, including those related to sexual orientation. The policy was rarely discussed, however, and had drifted into relative obscurity within a few years.

Prompted by a 1992 state ballot initiative limiting legal recourse for LGB persons, “Trisha,” an openly gay teacher, founded a group called the Coalition in 1993 to offer support to LGBT youth. The Coalition later became known as the High Plains Safe Schools Coalition (HPSSC). Having previously organized classes for teachers, administrators, and other staff on how to work with LGBT youth, Trisha felt that a more structured approach would be more effective in advocating for the school district to adopt specific goals to support LGBT students. HPSSC discussed the possibility of integrating LGBT issues into the curricula but, sensing the conservative slant of the current school board, opted instead to focus on continuing the classes and on getting sexual orientation included in the diversity goal of the district’s strategic plan, the set of districtwide policies that serve to guide each school’s goals.

Through networking with school district administrators and several community meetings, HPSSC got the attention of the school board. It framed its advocacy as a request for the formation of a committee to provide recommendations to the board on ways to promote tolerance and respect for all people. The first two meetings went well, and the HPSSC provided to the board testimony by local experts and LGBT youth on issues related to discrimination.

By the third meeting, however, conservative parents and community members had heard about HPSSC’s work and had organized campaigns opposing the change in district policy. Supporters (including members of the local chapter of Parents, Families, and Friends of Lesbians and Gays) and protesters (including members of Boy Scouts of America) were in full force, making for a contentious, emotionally charged meeting. After a heated session of community input, the school board failed to pass the inclusion of sexual orientation issues in the curriculum (citing these issues as “values instruction”) or to form a committee to further explore HPSSC’s proposal.
The school board president proposed a compromise by way of a districtwide nondiscrimination policy that would state, “[The High Plains School District] will not tolerate discrimination, harassment, or violence against anyone, including students or teachers, regardless of race, ethnicity, gender, sexual orientation, or religion, and will encourage respect for all people.” Another board member, who proposed that the policy needed language stating how the district would handle discrimination should it occur, moved to amend the president’s original statement to continue, “study and recommend to the board ways to encourage tolerance and respect for all people, clarify the board’s policy intent to prohibit harassment and discrimination, resolve conflicts that arise, and develop accountability procedures for those instances where conflicts are not resolved.” Citing the “extremely broad language of that statement,” the motion failed. The board president reintroduced her previous statement, and it passed. High Plains School District nondiscrimination policy now read,

The Board affirms that there shall be no discrimination against anyone in the school system on the basis of race, age, marital status, creed, color, sex, disability, or national origin.

The High Plains School District will not tolerate discrimination, harassment, or violence against anyone, including students and staff members, regardless of race, ethnicity, gender, sexual orientation, age, disability, or religion.

HPSSC saw this as a victory, since its primary goal of integrating sexual orientation into both the curricula and the district’s diversity goal had resulted in a districtwide nondiscrimination policy addressing sexual orientation. Trisha summarized, “. . . we were sitting there going, ‘Oh my God. They’re writing a policy! We’re getting a policy out of it, not a committee!’ [laughing] And, ‘Okay, who cares about the curriculum stuff. That’s gonna come later anyway. . . . once it’s in the policy, that’s so much more than what we were asking for. We can really build on that. We can really take it and run.’” Meanwhile, protestors, pleased that the board had stopped short of integrating LGBT issues into the curricula, were fine with the policy as a compromise.

The nondiscrimination policy was implemented, then published in a 1995 edition of Students’ and Parents’ Rights and Responsibilities, a handbook distributed to all students each school year. HPSSC continued to offer classes for staff on LGBT issues. But by 1998, HPSSC found that
discrimination against LGBT students persisted in High Plains School District. Many teachers and administrators were unaware of the policy, and few, if any, resources were available to gay youth seeking protection from bullying and discrimination. By this time, a new, less socially conservative school board had been elected, and HPSSC saw this as an opportunity to advocate for better enforcement of the nondiscrimination policy and to reintroduce efforts to integrate sexual orientation into the diversity goal.

In 1998, the board began reconsideration of the district’s diversity goal and invited input from the community. Both HPSSC and Concerned Citizens, a group opposing the integration of sexual orientation in the diversity goal, participated in the debate. HPSSC’s efforts secured support from local churches and a synagogue, community organizations, government officials, and a state senator. It presented testimony by LGBT youth on the harassment and discrimination they experienced in the district’s schools, as well as information on the legal implications of this issue, including Title IX protections.

The debate continued for months and ultimately came down to semantics. The proposed inclusion of sexual orientation in the diversity goal accompanied a directive to “value diversity and promote understanding.” Opponents preferred the word respect over value, claiming that it would avoid the impression that students would be forced to “value homosexuality.” Further, they did not support spelling out the protected classes, stating that this was limiting. The board met with both groups, together and separately, in an effort to come to a compromise regarding the language and content of the diversity goal.

Finally, by a vote of five to two, the board decided to include the phrase “value diversity,” a victory for HPSSC. The statement and beliefs of the High Plains School District’s diversity goal now read as follows:

STATEMENT
Value Diversity and Promote Understanding

BELIEFS
1. All human beings have inherent worth.
2. All students, regardless of race, ethnicity, gender, sexual orientation, age, disability or religion, deserve a quality education.
3. HPSD will not tolerate discrimination, intimidation, harassment or violent based on race, ethnicity, gender, sexual orientation, age, disability or religion.
4. Healthy school communities respect differences, welcome diversity and promote cultural plurality.

5. Racial, ethnic and cultural diversity should be evident across all employee groups and central administration.

Macgillivray presents strategies that HPSSC successfully utilized to build community and district support, including

- Establish relationships with other diversity groups (e.g., groups advocating for equity for students of color)
- Cultivate understanding between opposing groups by organizing face-to-face meetings
- Build alliances with community organizations and individuals
- Present testimony of LGBT youth
- Meet with individual schools' governance teams, including students, staff, and parents, and ask them to rate their schools on various LGBT discrimination scales, including prevalence of anti-gay remarks, number of LGBT-related books in the library, whether or not nondiscrimination policies are clearly posted, whether harassment reports are readily available, etc.
- Approach individuals on a personal level
- Keep the school's Gay-Straight Alliance (GSA) strong and organized
- Encourage professional development for staff
- Ensure that nondiscrimination regulations are clearly drafted
- Ensure that enforcement involves both discipline and education
- Be aware of existing nondiscrimination policies and laws
- Anticipate common barriers (e.g., lack of top-down support, staff misunderstanding and/or unawareness of policies, lack of implementing resources, fear, stigma, etc.)

Whether or not there is a statewide law protecting students from anti-LGBT discrimination and bullying, school districts that fail to protect students risk lawsuits based on violations of the equal protection clause, the due process clause, and the First Amendment of the U.S. Constitution, as well as Title IX of the Education Amendments Act of 1972. The majority of cases brought against school districts to date have either been won by the students or settled in their favor, and such settlements are costly. In fifteen lawsuits involving anti-LGBT harassment or discrimination, compiled and summarized by the NCLR and GLSEN,
school districts have paid between $40,000 and $962,000 in settlements to the parents of harassed students. These figures do not include district attorney’s fees, which, in many cases, were far greater than the settlement itself. A number of lawsuits were also settled for undisclosed amounts, making it difficult to quantify the true cost of failing to protect students. For example, in California’s *Ray v. Antioch*, which was settled for an undisclosed amount, the plaintiff had urine-soaked towels thrown on him and was beaten by another student because he was perceived to be gay and because one of his parents is transgender.102

As summarized in table 1, five of the fifteen cases that resulted in settlements were in states that had nondiscrimination and antiharassment laws at the time of filing, including California and Minnesota. Some of these lawsuits have even been filed in states that do not have statutes explicitly prohibiting bullying based on sexual orientation or gender identity, including Kentucky, Missouri, and Nevada. However, even in states with laws specifically protecting them, LGBT students continue to experience harassment and violence. While the passage and enforcement of such laws is necessary, education and intervention at the local level must also continue to be a priority.

In addition to the fifteen lawsuits summarized by the NCLR and GLSEN, additional lawsuits that have happened since 2002, highlighted by the ACLU, have resulted in nearly two million dollars awarded to students who have been victims of anti-LGBT harassment in schools.103

Although many settlements have required teachers and staff to receive sensitivity training, state legislation does not usually mandate the inclusion of LGBT-positive curricula or safe schools training for students. However, school districts throughout the country should follow the lead of these court rulings, by taking proactive steps to support and protect LGBT students from harassment and discrimination, rather than waiting for a lawsuit. Concurrently, they should provide education and training to their students and employees.

**Parental Notification and “No Promo Homo” Laws**

Parental notification laws in four states—Arizona,104 California,105 Nevada,106 and Utah107—require students to obtain the written consent of their parents before they participate in classes in which such topics as sex, sexuality, and HIV are discussed. (These laws do not, however, require prior written consent if teachers want to discuss discrimination or
harassment related to a student’s sexual orientation or gender identity.) State parental notification laws with opt-out provisions are also common. They allow parents to remove their children from classes or assemblies that include education on sexuality, HIV, sexually transmitted diseases, or even death. Such laws exist in several dozen states and the District of Columbia, varying in their provisions and scope. In 2003, the legislature in Massachusetts considered a bill that would have converted its parental opt-out policy into a more restrictive, opt-in law. The new policy would have also expanded the scope of parental control beyond “curriculum which primarily involves human sexual education or human sexuality issues” to also encompass “school sanctioned program or activity, which primarily involves human sexual education, human sexuality issues, or sexual orientation issues.” The bill did not become law.

### TABLE 1. Summary of 15 Lawsuits Against Public School Districts That Failed to Protect Students from Anti-LGBT Discrimination and/or Harassment

<table>
<thead>
<tr>
<th>Name of Case</th>
<th>State</th>
<th>Date of Settlement</th>
<th>Monetary Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nabozny v. Podlesny</td>
<td>Wisconsin</td>
<td>1996</td>
<td>$962,000</td>
</tr>
<tr>
<td>Wagner v. Fayetteville Public Schools*</td>
<td>North Carolina</td>
<td>1998</td>
<td>None</td>
</tr>
<tr>
<td>Iverson v. Kent*</td>
<td>Washington</td>
<td>1998</td>
<td>$40,000</td>
</tr>
<tr>
<td>Vance v. Spencer County Public School District</td>
<td>Kentucky</td>
<td>2000</td>
<td>$220,000</td>
</tr>
<tr>
<td>Lovins v. Pleasant Hill Public School District</td>
<td>Missouri</td>
<td>2000</td>
<td>$72,000</td>
</tr>
<tr>
<td>Ray v. Antioch Unified School District</td>
<td>California</td>
<td>2000</td>
<td>Undisclosed</td>
</tr>
<tr>
<td>Montgomery v. Independent School District</td>
<td>Minnesota</td>
<td>2000</td>
<td>Undisclosed</td>
</tr>
<tr>
<td>Putman v. Board of Education of Somerset Independent Schools*</td>
<td>Kentucky</td>
<td>2000</td>
<td>$135,000</td>
</tr>
<tr>
<td>Snelling v. Fall Mountain Regional School District</td>
<td>New Hampshire</td>
<td>2001</td>
<td>None</td>
</tr>
<tr>
<td>Dahle v. Titusville Area School District*</td>
<td>Pennsylvania</td>
<td>2002</td>
<td>$312,000</td>
</tr>
<tr>
<td>Gay/Straight Alliance Network v. Visalia Unified School District</td>
<td>California</td>
<td>2002</td>
<td>$130,000</td>
</tr>
<tr>
<td>Henkle v. Gregory</td>
<td>Nevada</td>
<td>2002</td>
<td>$451,000</td>
</tr>
</tbody>
</table>

*Settled out of court
A number of states have also passed laws preventing even mention of the word *homosexual* by teachers in the classroom or mandating that homosexuality be presented in an exclusively negative way. South Carolina bans discussion of “alternative sexual lifestyles from heterosexual relationships including, but not limited to, homosexual relationships, except in the context of instruction concerning sexually transmitted disease.” Arizona law prohibits instruction that “promotes a homosexual lifestyle, portrays homosexuality as a positive alternative lifestyle, or suggests that it is possible to have ‘safe’ homosexual sex.” Alabama requires any mention of homosexuality to be made within the context “that homosexuality is not a lifestyle acceptable to the general public.” Texas requires any mention of gay-related issues to be followed by the admonition that homosexual conduct is a criminal offense in the state, yet its sodomy laws were struck down in 2003. Utah prohibits the “advocacy” of homosexuality.

Some expected that state laws requiring schools to teach that homosexual conduct is illegal would be changed or struck down in light of the 2003 U.S. Supreme Court ruling in *Lawrence v. Texas*, which held that sodomy laws—which made homosexual sex a criminal offense in those states—violate the U.S. Constitution. However, these laws remain in effect as of August 2011.

In the meantime, these laws are having an adverse impact on students. Kay Coburn, an administrator with the Temple (Texas) Independent School District, told Human Rights Watch in 2002 that there is “no discussion of homosexuality” or “any message in the curriculum about how homosexuals might protect themselves from HIV. Abstinence is the only message. The traditional family is where you have sex. The curriculum doesn’t address sex outside this structure.” Cheryl Cox, a health teacher and member of her Robinson (Texas) High School Health Education Advisory Council, noted that coverage of homosexuality and other “lifestyle options” was “not needed or necessary. . . . I can’t see it ever being acceptable to discuss homosexuality, as it’s a very conservative community. It’s a topic that I’m not supposed to be talking about because of the standards set forth by the community and by the health advisory board.” Terry Cruz, an abstinence educator in Laredo, Texas, told Human Rights Watch that “probably the only time I touch on the subject [of homosexuality] is with HIV, referring to how HIV originally started.”

Fear of “promoting homosexuality” due to these provisions sometimes prevents school districts from protecting LGBT students. In re-
sponse to violence and harassment against gay students, the West Virginia Attorney General’s Office searched for a program that would promote tolerance through school curricula. The state received eighty thousand dollars in federal grants from the U.S. Department of Justice to implement a model program from Maine that included training manuals for teachers. However, when the West Virginia Family Foundation, a conservative Christian group, found references in those manuals to making LGBT students feel safer, they brought two hundred people to a state board of education meeting wearing antigay T-shirts and accused the attorney general of “promoting homosexuality.” The program was immediately suspended. Anti-LGBT activists around the country have forced LGBT youth to defend themselves not only against their peers but also against the parents, administrators, and religious leaders who have targeted schools as the primary sphere for their moralistic crusades.

Schools are battlegrounds for the right. So much of their “cultural war” is waged over curricula, teachers’ roles, parental rights, censorship, and privatization. Queer youth are on the front lines of these battles, often in isolation and without organizational support. In the name of family and community moral standards, the right fights against any mention of homosexuality in schools, whether in books, sex education classes, counseling sessions, or through the presence of openly queer youth and teachers. This enforced silence leaves our schools riddled with homophobia and provides no opportunities for young people to learn truths about queer lives and to have open discussions of their own sexuality.

Although some state “no promo homo” laws are written to specifically cover sexuality and health education, others use such sweeping language that their scope is unclear, and they have a chilling effect not only on discussions of sexual orientation and gender but on scholarship in general. As a result of such a law in New Hampshire, teachers decided not to discuss Shakespeare’s *Twelfth Night* because a female character disguises herself as a man. They also declined to show a video about Walt Whitman that mentioned he was gay.

In contrast, California law explicitly states that “instruction or materials that discuss gender, sexual orientation, or family law and do not discuss human reproductive organs or their functions” are not subject to parental opt-out provisions. In effect, for any school programs that do not reference sexual health or the prevention of HIV or other sexually
transmitted diseases—such as programs that promote tolerance or the prevention of bullying and harassment—parents need not be notified in advance, and parents do not have an opt-out option with respect to their children’s participation.

Legislation Censoring Books and Textbooks

State lawmakers have considered laws banning books that portray LGBT people in a neutral or positive light. For example, in 2004 and 2005, legislation was introduced in Alabama and Arkansas to censor books that, according to representatives, “promote the gay agenda” and the teaching of homosexuality as a “normal” lifestyle. In Alabama, state representative Gerald Allen (R-Cottondale), who sponsored legislation banning same-sex marriage in 2004, introduced a bill that would prohibit the use of public funds for “the purchase of textbooks or library materials that recognize or promote homosexuality as an acceptable lifestyle.” If the proposed bill did not fail in the state legislature, it would have barred any representation of homosexuality in schools, libraries, and state-funded universities. Similarly, Arkansas state representative Roy Ragland (R-Marshall) proposed a bill in 2005 that would have forced the state’s school districts to only purchase textbooks that define marriage as between one man and one woman. Ragland said that the legislation was aimed at bringing schoolbooks in line with the state constitution, which was amended by voters in 2004 to ban same-sex marriage. However, this bill failed in the state senate.