

## Inclusion of Enumerated Categories in Safe School Legislation/Policies

There is now extensive evidence that lesbian, gay, bisexual and transgender (LGBT) students are disproportionately targeted for harassment and discrimination in schools. Left unchecked, this harassment and discrimination may escalate to the level of physical violence or violent crime.

The most effective way to protect these students, allowing them to receive the safe and effective education they deserve and protect schools from potential liability is (1) to adopt and implement laws and policies that explicitly prohibit discrimination and harassment on the basis of sexual orientation and gender identity; (2) to establish clear procedures for responding to complaints under the policy; and (3) to provide training for staff and teachers necessary to implement these laws and policies.

Results from the 2001 National School Climate Survey indicate that:

- 83.2% of LGBT students reported being verbally harassed because of their sexual orientation; and
- 68.6 % of LGBT students reported feeling unsafe in school because of their sexual orientation.<sup>1</sup>

Moreover, studies also indicate that school officials often fail to respond to or, in some cases, even participate in the discrimination and harassment.<sup>2</sup> One study documented this problem, reporting that:

- 80% of prospective teachers reported negative attitudes towards LGBT people; and
- 66% of guidance counselors maintain negative feelings about and towards LGBT people.<sup>3</sup>

The climate of fear created may result in increased absenteeism, decreased academic performance and increased risk of suicide for LGBT students. The National School Climate Survey also found that 30.9% of LGBT students had missed at least one entire day of school in the past month because they felt unsafe.<sup>4</sup>

One critical step that state legislatures and local school districts can take to respond to these alarming statistics is to pass and implement "safe school legislation"<sup>5</sup> and policies that explicitly include sexual orientation and gender identity.<sup>6</sup> These laws and policies are the most effective way to protect students from discrimination, while helping schools fulfill their legal responsibility to provide safe and effective learning environments for all students.

### **Is a blanket prohibition against discrimination and harassment without enumerated categories sufficient to protect LGBT students?**

No. While harassment of any kind is unacceptable and should be dealt with quickly, firmly and with appropriate consequences and remedies, certain groups of people

have suffered systematic institutional prejudice, discrimination and, as a result, are at a disproportionate risk of being the target of harassment and violence. In recent history, nondiscrimination laws such as race, sex, national origin, religion or color have been passed in order to help these groups of people. Harassment and discrimination based on these characteristics has decreased over time due, in part, to the protection afforded by these laws.

Evidence shows that school officials often do not recognize that anti-gay harassment and discrimination are unacceptable behaviors.<sup>7</sup> As schools have often been complacent about responding to this type of harassment, many teachers are often reluctant to intervene for fear of becoming targets of harassment themselves.

Without specifically enumerating sexual orientation and gender identity as protected categories, many school officials may continue to believe that anti-gay conduct is not covered by the school's harassment policy. As the United States Supreme Court has explained: "Enumeration is the essential device used to make the duty not to discriminate concrete and to provide guidance for those who must comply."<sup>8</sup> Inclusion of the enumerated categories will provide clear direction to teachers, administrators and students about the scope of the law or policy. It is also necessary to give teachers

and staff the backing they need in order to feel confident about responding to LGBT harassment.

**Is it necessary to add gender identity in particular?**

Yes. Transgender youth are disproportionately likely to face harassment. In a recent survey, 89.5% of transgender students reported feeling unsafe based on their gender expression.<sup>9</sup> Also, the harassment tends to be particularly violent. A recent survey analyzing reported instances of bias-motivated violence against LGBT people from 1995 through 1998 found that although anti-transgender violence accounted for only a relatively small percentage of all reported cases, those incidents accounted for 20% of all reported murders, and approximately 40% of all police-initiated violence.<sup>10</sup> These conditions put transgender youth at great risk of suicidal feelings and behavior. Moreover, harassment on the basis of gender nonconformity—behaving in a manner not conforming to traditional gender characterizations—perpetuates and reinforces gender-based stereotypes that hurt everyone.

**Lesbian, gay, bisexual, and transgender (LGBT) students are disproportionately targeted for harassment and discrimination in schools. It is now clear that school districts can be held legally accountable for failing to protect LGBT students.<sup>11</sup>**

**The most effective way to protect both students and schools is to adopt and enforce a state law and local policy that clearly prohibits discrimination and harassment on the basis of real or perceived sexual orientation and gender identity.**

Endnotes

1. GLSEN National School Climate Survey, 2001, available at [www.glsen.org](http://www.glsen.org).
2. See, e.g., HUMAN RIGHTS WATCH, HATRED IN THE HALLWAYS: VIOLENCE AND DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS IN U.S. SCHOOLS (2001) (hereinafter *Hatred in the Hallways*), available at [www.hrw.org/reports/2001/uslgbt/](http://www.hrw.org/reports/2001/uslgbt/).
3. James Sears, *Educators, Homosexuality, and Homosexual Students: Are Personal Feelings Related to Professional Beliefs*, in COMING OUT OF THE CLASSROOM CLOSET (Karen Harbeck ed., 1992).
4. GLSEN National School Climate Survey, 2001.
5. This is the phrase that is often used to describe school-based anti-discrimination statutes.
6. See *Hatred in the Hallways* at 14 ("Recommendations to State Governments. Enact legislation to protect students from harassment and discrimination on the basis of sexual orientation and gender identity.").
7. See, e.g., Sears, above note 3.
8. Romer v. Evans, 517 U.S. 620 (1996).
9. GLSEN National School Climate Survey, 2001.
10. *Anti-Lesbian, Gay, Bisexual and Transgender Violence in 1998, A Report of the National Coalition of Anti-Violence Programs* (1999).
11. Nabozny v. Podlesny, 92 F.3rd 446 (7th Cir. 1996).

*For More Information, Contact:*

Allison Bauer, State & Local Policy Manager  
MK Cullen, Director of Public Policy  
GLSEN  
1012 14th Street, N.W.  
Suite 1105  
Washington, D.C. 20005  
(202) 347-7780  
[abauer@glSEN.org](mailto:abauer@glSEN.org)  
[mkcullen@glSEN.org](mailto:mkcullen@glSEN.org)

Courtney Joslin, Staff Attorney  
National Center for Lesbian Rights  
870 Market Street  
Suite 570  
San Francisco, CA 94102  
(415) 392-6257  
[joslin@nclrights.org](mailto:joslin@nclrights.org)



GLSEN is the leading national organization working to end anti-gay bias in K-12 schools. Established nationally in 1995, GLSEN has become one of the premiere voices for safety and equality in the education system. For more information visit [www.glsen.org](http://www.glsen.org).