



Education Department Resource

Report of the NEA Task Force on Sexual Orientation

At its meeting on February 8, 2002, the NEA Board of Directors approved the Report of the NEA Task Force on Sexual Orientation. The Report includes an in-depth examination of the needs of, and problems confronting, gay, lesbian, bisexual, and transgendered students and education employees. Set forth below are the results of that examination.

Needs of, and Problems Confronting, Gay, Lesbian, Bisexual, and Transgendered Students and Education Employees

The initial directive to the Task Force is to examine the needs of, and problems confronting, gay, lesbian, bisexual, and transgendered (g/l/b/t) students and education employees.¹ Put most simply, the overriding need of g/l/b/t students is to be educated in a safe and hospitable environment, and the overriding need of g/l/b/t education employees is to work in such an environment. By a "safe and hospitable environment," we mean an environment in which their physical, mental, and emotional well-being is not threatened, and they are welcomed and treated fairly. And, again put most simply, the problems confronting g/l/b/t students and education employees are the barriers that prevent the establishment and maintenance of such an environment -- including stereotyping, bullying, harassment, verbal and physical threats and abuse, lack of acceptance, and discrimination. We develop these points below -- dealing first with students and then with education employees.

Before turning to specifics, one preliminary comment is necessary. It is important to point out that students and education employees who in fact are "straight" but who may be perceived to be g/l/b/t because they do not appear to fit gender stereotypes, and "straight" students whose parents are acknowledged to be g/l/b/t, may to one degree or another have the same or similar needs and confront the same or similar problems.²

A. Students

Although adolescence can be a stressful and trying experience for many students, this experience is nothing short of traumatic for many g/l/b/t students. From their peers, these students face discrimination, harassment, and abuse that is specifically directed at them by reason of their actual or perceived sexual orientation or gender identification. All too often, these serious problems are met with inaction on the part of education employees and school officials. Indeed, at times, education employees and school officials themselves practice discrimination against g/l/b/t students. As a consequence, g/l/b/t students are at considerable -- and disproportionate -- risk for mental health problems, self-endangerment, and self-injury, as well as for poor school performance, absenteeism, and dropping out of school.

1. Gay, Lesbian, Bisexual, and Transgendered Student Population

A number of studies confirm that g/l/b/t students become aware of their sexual orientation or gender identification -- and identify themselves as gay, lesbian, bisexual, or transgendered -- early in their adolescence.³ Although precise figures are not available, there can be no question

that the number of g/l/b/t students is significant. The most reliable research on this issue shows that between five and six percent of American students are gay, lesbian, or bisexual.⁴ Using the 1990 census -- which placed the number of children in the U.S. between the ages of five and seventeen at approximately 45 million -- this means that the number of school-age children who fit into one of these categories can be estimated conservatively as somewhere between 2.25 and 2.7 million.⁵ We have found no reliable data on the number of transgendered students in American schools, but that number -- while surely smaller -- adds to an already significant population.⁶

It is widely documented that well before these students become aware of their sexual orientation or gender identification in their middle school or high school years, most already have been exposed to -- and have internalized -- hostile, discriminatory, attitudes toward g/l/b/t persons that are pervasive in society.⁷ As a consequence, "[i]n adolescence, young homosexually oriented persons are faced with a growing awareness that they may be among the most despised"⁸ -- an awareness that becomes all the more acute as they encounter acts of harassment and abuse. While systematic research on the experience of transgendered students is less common, the evidence shows that these students "are particularly vulnerable to being attacked both by their peers and by adults."⁹ Indeed, because the gender identification, and in turn the gender expression¹⁰, of transgendered students runs counter to the gender roles/stereotypes conventionally associated with their physical sex, such students tend to be misidentified as lesbian, gay, or bisexual -- and consequently encounter the same forms of discrimination and maltreatment as do gay, lesbian, and bisexual students.¹¹ And, as we document in the next section, schools are one of the primary arenas in which g/l/b/t students face these problems.

2. Harassment of, and Violence against, Gay, Lesbian, Bisexual and Transgendered Students

The data consistently show that g/l/b/t students almost uniformly encounter a pervasive atmosphere of hostility at school, which manifests itself in the form of verbal harassment and threats, sexual harassment, and physical abuse -- all based on these students' actual or perceived sexual orientation or gender identification. We review each of these manifestations of hostility in turn below.

- **Verbal and Other Non-Physical Harassment:**

In its exhaustive study of discrimination and violence against g/l/b/t students published in 2001, the international human rights organization Human Rights Watch found that verbal and non-physical harassment of g/l/b/t students is endemic in American schools, and is nearly a daily reality for many students. Such harassment comes in a myriad of forms -- e.g., derogatory comments by classmates in hallways or classrooms, obscene or demeaning gestures, written notes or graphic pictures, threats, and hostile graffiti.¹² This point is buttressed by a very recent national statistical study showing that an overwhelming majority of g/l/b/t students (83.2%) reported incidents of name-calling, threats, or other forms of verbal harassment during the past year.¹³ More than 84% reported hearing derogatory remarks aimed at sexual orientation, such as "dyke" or "faggot"; and more than 90% reported hearing the term "gay" used in a pejorative manner.¹⁴

Such verbal and non-physical harassment is, of course, damaging in-and-of-itself, in that it undermines students' security and feelings of self-worth. In addition, when such harassment is not remedied, it has the capacity to escalate into sexual and/or physical harassment and physical assaults. As we indicate below, these latter problems are alarmingly prevalent as well.

- **Sexual Harassment:**

Harassment of g/l/b/t students is frequently sexual in nature -- ranging from sexually suggestive remarks or gestures to unwelcome physical touching or grabbing in a sexual manner.¹⁵ More than 64% of g/l/b/t students surveyed in 2000 reported having been the object of this type of sexual harassment.¹⁶ This problem is particularly acute for lesbian and bisexual female students and for transgendered students: in 2000, 74.2% of lesbian and bisexual female students reported incidents of sexual harassment, as did 73.7% of transgendered students.¹⁷

- **Physical Harassment and Assault:**

Physical harassment of and assaults against g/l/b/t students -- while less prevalent than the types of discriminatory treatment cataloged above -- are commonplace: 41.9% of g/l/b/t high school students surveyed in 2000 reported physical harassment (such as being shoved or pushed), and 21.1.% reported being assaulted (such as by being punched, kicked, or injured with a weapon) by reason of their actual or perceived sexual orientation.¹⁸ Their heterosexual peers -- were more than two times as likely to have been assaulted or in a physical fight, and three times as likely to have been threatened or injured with a weapon at school.¹⁹

For g/l/b/t students, these harms are compounded when -- as is all too frequently the case -- acts of student-on-student harassment are met with indifference by school authorities. According to Human Rights Watch, "official inaction" was cited by the students surveyed as "the most common response to harassment."²⁰ More than 81% of g/l/b/t students in a nationwide study reported that teachers and other staff either never intervened or intervened only some of the time when derogatory comments based on sexual orientation/gender identification were made in their presence.²¹ Worse still, in some cases teachers and other staff themselves take part in harassing students by reason of their actual or perceived sexual orientation/gender identification.²² Nearly 25% of g/l/b/t students reported hearing derogatory comments from teachers and other staff.²³

This failure by school authorities to take action in response to -- and official participation in -- acts of discrimination has a doubly injurious effect. For the harassers and abusers who are emboldened by their seeming impunity, continuance and escalation of the behavior is fostered. For the targets, their sense of security -- already injured -- can be shattered by the lack of support from school authorities.²⁴

In sum, the majority of g/l/b/t students feel unsafe at school,²⁵ and this "forces [g/l/b/t] students to concentrate on survival rather than on education and destroys [g/l/b/t] teenagers' self-esteem during a critical developmental period."²⁶

3. Consequences for Gay, Lesbian, Bisexual, and Transgendered Students

This climate of discrimination, harassment, and abuse that characterizes life at school for many g/l/b/t students exacts a heavy toll on those students. Depression is widespread,²⁷ and, on every measure considered by researchers, g/l/b/t students -- when compared to their heterosexual peers -- are disproportionately at risk for self-endangerment and for poor school performance/attendance.

- **Self-Endangerment/Self-Injury:**

G/l/b/t students engage in self-endangering behavior -- i.e., behavior that places their health and well-being at risk -- and self-injurious behavior at disproportionate rates.

Perhaps the most alarming trend is the relative prevalence of suicide attempts and successful suicides among g/l/b/t students. Nationally and regionally representative studies spanning more than a decade consistently have shown that gay, lesbian, and bisexual students are two to three times as likely to attempt suicide as their heterosexual peers, and that gay, lesbian, and bisexual students constitute up to 30% of successful student suicides.²⁸ The 1999 Massachusetts Youth Risk Behavior Survey showed that gay, lesbian, and bisexual students were more than twice as likely as their heterosexual peers to consider suicide and to make a suicide plan, more than three times as likely to actually attempt suicide, and three times as likely to require medical treatment for a suicide attempt.²⁹

G/l/b/t students also are at disproportional risk for other self-endangering and self-injurious behavior. For example, both the Massachusetts Youth Risk Behavior Survey and the Seattle Teen Health Survey found that heavy or high-risk drug use is far more likely among g/l/b/t students than it is among heterosexual students.³⁰

- **School Attendance and Performance:**

Given the foregoing, it should come as no surprise that the hostile school environment faced by many g/l/b/t students also negatively affects their performance in school. In order to avoid harassment and abuse, g/l/b/t students have been shown to be two to four times more likely than heterosexual students to miss school.³¹ Even more troubling, g/l/b/t students are dropping out of school at alarming rates because they feel unsafe at school.³² And, data from the National Longitudinal Study of Adolescent Health suggest that those gay, lesbian, bisexual, and transgendered students who remain in school fall below their heterosexual peers in standard measures of academic performance.³³

As the foregoing evidence amply demonstrates, the need of g/l/b/t students to be educated in a safe and hospitable environment is not being met.

B. Education Employees

Discrimination in schools on the basis of sexual orientation/gender identification is not confined to students. Employment discrimination directed at g/l/b/t education employees is commonplace. Such employees frequently face dismissal or other adverse employment actions on the basis of their sexual orientation/gender identification, often as a result of private declarations of their sexual orientation/gender identification.³⁴ And there is no federal legislation prohibiting employment discrimination based on sexual orientation/gender identification³⁵, and relatively few states have enacted such legislation.

The problem of employment discrimination against g/l/b/t education employees -- while often acknowledged³⁶ -- has not received the same level of systematic and comprehensive scrutiny as the problems confronting g/l/b/t students, and the Task Force is not aware of any statistical studies documenting the incidence of such discrimination. Notwithstanding the absence of hard data as to the nature and extent of discrimination against education employees on the basis of sexual orientation/gender identification, the evidence suggests that such discrimination is severe and widespread. Both the NEA Office of General Counsel and the Gay and Lesbian Rights Project of the American Civil Liberties Union inform us that they encounter a number of cases each year in which education employees have suffered employment discrimination if their sexual orientation/gender identification is disclosed. Indeed, the very nature of the problem ensures that many cases of discrimination go unreported. Because many g/l/b/t education employees are vulnerable to adverse employment action if they reveal their sexual orientation/gender identification, victims of such discrimination are caught in a Catch-22 situation. Challenging a

discriminatory employment action serves to draw attention to the victim's sexual orientation/gender identification, and thus increases the risk of further discrimination. Consequently, the cases that do arise are surely only the tip of the iceberg. In order to demonstrate the nature of the problem, we discuss below several illustrative cases.

Wendy Weaver is a lesbian public school teacher in Salem, Utah, who chose to challenge her employer's discrimination.³⁷ In 1997, Ms. Weaver had been teaching psychology and physical education for nineteen years. During the period of her employment, Ms. Weaver's reputation was "unblemished," and she consistently received favorable evaluations. Ms. Weaver also served as the school's volleyball coach, and led the girls' volleyball team to four state championships. Prior to the beginning of the 1997-98 school year, a prospective volleyball team member asked Ms. Weaver if she was a lesbian. Ms. Weaver responded, truthfully, "Yes." The student informed Ms. Weaver that she would not play on the volleyball team, and the student and her parents then met with school district officials. They informed the officials that Ms. Weaver was a lesbian, and that the student had decided not to play on the volleyball team for that reason. In response, the school board removed Ms. Weaver as volleyball coach and ordered her "not to make any comments, announcements or statements to students, staff members, or parents of students regarding [her] lifestyle," instructing her that if any "students, staff members, or parents of students ask about [her] sexual orientation or anything concerning the subject," she was to answer that "the subject is private and personal and inappropriate to discuss with them." Ms. Weaver sued the school district and the officials that disciplined her on the ground that their actions violated her right under the United States Constitution to equal protection of the law. She eventually won reinstatement to her position as coach of the volleyball team and a lifting of the school district's "gag order." But the decision to fight the school board's action was, as Ms. Weaver made clear in an interview following the resolution of her court case, not an easy one: "It's been hard. All the publicity. The charges of immorality. We were worried about the impact of going public . . ."³⁸

Moreover, many education employees who choose to fight discrimination based upon their actual or perceived sexual orientation/gender identification do not achieve vindication in the courts. For instance, in a 1992 case, Vernon Jantz, a teacher in Wichita, Kansas, was rejected when he applied for a vacant position because he was perceived to have "homosexual tendencies." Mr. Jantz challenged this action as a violation of the United States Constitution's equal protection guarantee. Although the trial court allowed Mr. Jantz's suit to go forward, the United States Court of Appeals for the Tenth Circuit dismissed the suit, ruling that the school officials were immune from these claims because, at the time that the officials engaged in this discriminatory conduct, it was not sufficiently clear that the conduct was illegal.³⁹

Finally, it should be emphasized that the discrimination faced by g/l/b/t education employees is not limited to adverse job actions such as dismissals, suspensions, or transfers. Even in states where the law does protect g/l/b/t education employees from discrimination, many g/l/b/t education employees are confronted with a hostile work environment -- as illustrated by California teacher Dawn Murray, whose case currently is pending in the California courts. Ms. Murray has taught biology in San Diego since 1983, and has won state and national teaching awards as well a teaching fellowship from Princeton University. In addition to being denied a promotion because she is a lesbian, Ms. Murray became the target of harassment by students and fellow employees, including vicious anti-lesbian remarks, false rumors, and obscene graffiti. When Ms. Murray complained to school officials, she was met not only with inaction regarding her complaint, but with threats of disciplinary action. Ms. Murray challenged the school district's failure to act on her complaints of harassment and the retaliatory discipline under California law by filing a lawsuit in 1996, which the trial court dismissed. After four years of legal proceedings,

the California Supreme Court ultimately held that Ms. Murray had the right to proceed with her lawsuit.⁴⁰

This discrimination against g/l/b/t education employees is damaging not only to the affected employees themselves, but to g/l/b/t students as well. In a discriminatory environment, g/l/b/t education employees may be reluctant to intervene on behalf of victimized g/l/b/t students or otherwise be supportive of such students in order to avoid disclosure of their own sexual orientation/gender identification, and both g/l/b/t and non-g/l/b/t education employees may be reluctant to do so out of concern that they might be perceived as promoting homosexuality.⁴¹ Moreover, when students observe employment discrimination on the basis of sexual orientation/gender discrimination, it reinforces attitudes in a way that places g/l/b/t students in a form of double jeopardy: "Abusive youth justify their harassment by pointing to societal and governmental support for discrimination, and abused youth get the message that even adults in positions of authority can be attacked because of who they are."⁴²

Definitions

The term "sexual orientation" makes reference to "gay, lesbian, bisexual, and transgendered students and educational employees." The term "transgendered" involves the concept of "gender identification" -- which is related to, but distinct from, sexual orientation. To avoid confusion over terminology, we begin with definitions of the above terms:

Sexual Orientation: The structure of a person's romantic, sexual, and/or emotional attractions. More specifically, a person's attraction to persons of the opposite sex, persons of the same sex, or persons of both sexes;

Gender Identification: A person's internal, deeply felt, sense of being male, female, somewhere in between, or somewhere outside of these gender categories. Sometimes this internal, deeply felt, sense does not correspond with the person's biological sex -- e.g., a person may be born anatomically male, but nonetheless identify as female. (See definition of "transgendered" below.)

Gay: Although this term refers to any person who is romantically, sexually, and/or emotionally attracted to persons of the same sex, it commonly is used, and is used in this Report, to refer to a male who is attracted to other males -- as distinguished from a "lesbian" (see definition of "lesbian" below);

Lesbian: A female who is romantically, sexually, and/or emotionally attracted to other females;

Bisexual: A person who is romantically, sexually, and/or emotionally attracted to persons of both sexes;

Transgendered: A person who does not identify with the traditional gender role assigned to him or her by society based on his or her biological sex.

1 Although the Task Force recognizes that g/l/b/t students and education employees have needs and problems in various contexts, we have -- consistent with what we understand to be the focus of the charge -- limited our inquiry to school and school-related needs and problems.

2 See, e.g., Human Rights Watch, Hatred in the Hallways, supra note 6, at 27-30.

3 See, e.g., Dennis Anderson, "Family and Peer Relations of Gay Adolescents," 14 Adolescent Psychiatry: Developmental and Clinical Studies 162 (Chicago 1987); Human Rights Watch,

Hatred in the Hallways, supra note 6 at 18-19 (citing G. Herdt and A. Boxer, Children of Horizons (Boston 1996).

4 The most recent and comprehensive study of adolescent youth in the United States is the National Longitudinal Study of Adolescent Health, undertaken by the Carolina Population Center at the University of North Carolina at Chapel Hill. That study surveyed a nationally representative sample of more than 12,000 7th to 12th grade students and found that 6 percent of participants reported that they felt same-sex romantic attraction. See National Longitudinal Study of Adolescent Health (2001), available at <http://www.cpc.unc.edu/addhealth> (accessed October 25, 2001). See also Human Rights Watch, Hatred in the Hallways, supra note 6 at 24-25.

5 See Human Rights Watch, Hatred in the Hallways, supra note 6 at 18.

6 Anecdotally, many of the members of the Task Force have in the course of their educational employment encountered at least one student who could be classified as transgendered.

7 See Deborah Zera, "Coming of Age in a Heterosexist World: The Development of Gay and Lesbian Adolescents," 27 Adolescence 849-54 (1992); A. Damien Martin and Emery Hetrick, "The Stigmatization of the Gay and Lesbian Adolescent," 15 Journal of Homosexuality 163-83 (1988).

8 A. Damien Martin, "Learning to Hide: The Socialization of the Gay Adolescent," 10 Adolescent Psychiatry: Developmental and Clinical Studies 52, 57 (S. Feinstein et al., eds. 1982).

9 Human Rights Watch, Hatred in the Hallways, supra note 6 at 18.

10 "Gender expression" is defined as "the external characteristics and behaviors that are socially defined as masculine or feminine, including dress, mannerisms, speech patterns, and social interactions." Human Rights Watch, Hatred in the Hallways, supra note 6 at xiv.

11 Id. at 18, 27.

12 Human Rights Watch, Hatred in the Hallways, supra note 6 at 32-34.

13 Office of Public Policy of the Gay, Lesbian and Straight Education Network ("GLSEN"), National School Climate Survey (2001), available at <http://www.glsen.org> (accessed October 25, 2001). This study surveyed a sample of 904 g/l/b/t students from 48 states and the District of Columbia.

14 Id.

15 Human Rights Watch, Hatred in the Hallways, supra note 6 at 41; see also S. Fineran, "Sexual Minority Students and Peer Sexual Harassment in High School," 11 Journal of the Sch. of Social Work (2001).

16 GLSEN, National School Climate Survey, supra note 20.

17 Id.; see also Fineran, "Sexual Minority Students and Peer Sexual Harassment in High School," supra note 22.

18 GLSEN, National School Climate Survey, supra note 20.

19 Massachusetts Department of Education, 1999 Massachusetts Youth Risk Behavior Survey ("YRBS") (Boston 2000), available at www.doe.mass.edu/lss/yrbs99 (accessed October 25, 2001).

20 Human Rights Watch, Hatred in the Hallways, supra note 6 at 80.

21 GLSEN, National School Climate Survey, supra note 20.

22 Human Rights Watch, Hatred in the Hallways, supra note 6 at 84-87.

23 GLSEN, National School Climate Survey, supra note 20.

24 See Human Rights Watch, Hatred in the Hallways, supra note 6 at 36, 80-82.

25 GLSEN, 2001 National School Climate Survey, supra note 20.

26 Donna I. Dennis & Ruth E. Harlow, "Gay Youth and the Right to Education," 4 Yale L. & Policy Rev. 446, 448 (1986).

27 Human Rights Watch, Hatred in the Hallways, supra note 6 at 68-69; see also R.C. Savin-Williams, "Verbal and Physical Abuse as Stressors in the Lives of Lesbian, Gay, and Bisexual Youths: Associations With School Problems," 62 J. of Consulting & Clinical Psych. 262 (1994).

28 See Paul Gibson, Gay Male and Lesbian Youth Suicide, Report of the Secretary's Task Force on Youth Suicide 3-1110, 3-1112 (U.S. Dep't of Health & Human Services 1989); Massachusetts YRBS, supra note 26; Human Rights Watch, Hatred in the Hallways, supra note 6 at 75.

29 Massachusetts YRBS, supra note 26. Other regionally representative studies have reached similar conclusions. See Human Rights Watch, Hatred in the Hallways, supra note 6 at 75.

30 See Massachusetts YRBS, supra note 26; Seattle Public Schools, 1999 Seattle Teen Health Survey, results available at <http://www.safeschoolscoalition.org/healthofharassedyouth.pdf> (accessed Dec. 10, 2000). The Seattle Teen Health Survey, like the Massachusetts YRBS, is conducted as part of the Youth Risk Behavior Survey coordinated by the Centers for Disease Control and Prevention. See id.

31 See Massachusetts YRBS, supra note 6; Seattle Teen Health Survey, supra note 35.

32 Human Rights Watch, Hatred in the Hallways, supra note 6 at 35-38. A 1989 study by the Department of Health and Human Services reported that 28% of the gay and lesbian students in the study had dropped out of school, Gibson, supra note 35 at 3-1113.

33 National Longitudinal Study of Adolescent Health, supra note 11.

34 See Developments in the Law -- Sexual Orientation and the Law, 102 Harv.L. Rev. 1508, 1554, 1595 (1989).

35 As explained infra at note 58, the Equal Protection Clause of the United States Constitution affords some protection against adverse employment actions based upon sexual orientation.

36 See generally, One Teacher in 10: Gay and Lesbian Educators Tell Their Stories (Kevin Jennings, ed. 1994) (documenting more than thirty case histories); see also Weaver v. Nebo School District, 29 F.Supp. 2d 1279, 1287 (D. Utah 1998) (referring to "mounting evidence that gay males and lesbians suffer from employment discrimination").

37 Except where otherwise noted, the following recitation of Ms. Weaver's story is based on the facts as found by the United States District Court in the case of Weaver v. Nebo School District, 29 F. Supp. 2d 1279 (D. Utah 1998).

38 Human Rights Watch, Hatred in the Hallways, supra note 6 at 112.

39 Jantz v. Muci, 976 F.2d 623 (10th Cir. 1992); see also Rowland v. Mad River School District, 730 F.2d 444, 451 (6th Cir. 1984) (upholding dismissal of school counselor for disclosing her sexual orientation to co-workers); Burton v. Cascade Sch. District, 512 F.2d 850 (9th Cir. 1975) (upholding discharge of teacher for "immorality" due to her sexual orientation).

40 See Murray v. Oceanside Unified Sch. Dist., 95 Cal. Rptr. 2d 28 (Cal. App. 4th 2000), review denied 2000 Cal. LEXIS 6449 (Cal. 2000); Complaint, Murray v. Oceanside Unified Sch. Dist., Cal. Super. Ct. No. N71842 (filed June 25, 1996).

41 Theresa J. Bryant, "May We Teach Tolerance? Establishing the Parameters of Academic Freedom In Public Schools," 60 U. Pitt. L. Rev. 579, 589-90 (1990); Human Rights Watch, Hatred in the Hallways, supra note 6 at 90.

42 Human Rights Watch, Hatred in the Hallways, supra note 5 at 90; see also Bryant, "May We Teach Tolerance? Establishing the Parameters of Academic Freedom in Public Schools," supra note 49, at 589-90.