

EXPENSIVE REASONS WHY SAFE SCHOOLS LAWS AND POLICIES ARE IN YOUR DISTRICT'S BEST INTEREST

Introduction

School districts are routinely held liable for failure to protect their students from bullying and harassment. Following are summaries of a number of cases brought against school districts for failing to protect students from bullying and harassment, or discrimination, on the basis of sexual orientation or gender identity/expression. These preventable cases illustrate that school districts can be held liable under existing state and federal law for failing to provide a safe learning environment for all students.

Without clear direction and guidance from their states, many school districts fail to protect students from sexual orientation or gender identity-based harassment and discrimination, putting the districts and taxpayers at risk for significant legal liability. Many of these costly suits can be avoided through the implementation of meaningful bullying and harassment policies and prevention practices.

State Safe Schools Laws Protect States, School Districts, and Students

At a time in which fiscal discipline is critical to preserve statewide education priorities, no state or school district can afford the cost of avoidable lawsuits for failing to protect their students from anti-lesbian, gay, bisexual and transgender (anti-LGBT) harassment and discrimination. Given the media attention to the often tragic effects of bullying and harassment as well as the emphasis the US Department of Education has placed on this issue, schools cannot complacently ignore bullying against vulnerable students. Passing, effectively implementing, and enforcing state laws and school district policies that clearly prohibit discrimination, bullying and harassment on the basis of real or perceived sexual orientation and gender identity can help school districts avoid these expensive lawsuits in two ways:

- By establishing clear and comprehensive procedures for preventing, reporting, and investigating incidents of bullying, districts will reduce the overall level of bullying and harassment in school. Students who needs are met by school policies are far less likely to seek legal remedies.
- Taking steps to address bullying and harassment demonstrates concern on the part of the school and a willingness to act in the best interests of vulnerable students. Courts are likely to consider this factor when districts are sued for not doing enough to prevent bullying and harassment.

Such laws and policies also help districts in fulfilling their general mission — to provide a safe and effective education for all students.

NCLR

NATIONAL CENTER FOR LESBIAN RIGHTS

The National Center for Lesbian Rights is a national legal organization committed to advancing the civil and human rights of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education.

GLSEN®
GAY, LESBIAN & STRAIGHT
EDUCATION NETWORK

GLSEN, the Gay, Lesbian & Straight Education Network, is the leading national education organization focused on ensuring safe schools for all students. Established in 1990, GLSEN envisions a world in which every child learns to respect and accept all people, regardless of sexual orientation or gender identity/expression. GLSEN seeks to develop school climates where difference is valued for the positive contribution it makes to creating a more vibrant and diverse community.

Schools' Existing Obligations under Federal Law

Whether or not a state or a school district has an LGBT-inclusive law or policy, all public schools have obligations under federal law to protect students from anti-LGBT harassment and discrimination on an equal basis with all other students. Additionally, schools have a responsibility to protect students from harassment based on gender stereotyping and gender non-conformity, and from sexual harassment. The US Department of Education Office of Civil Rights has made this obligation clear to school districts through its publication of the October 2010 Dear Colleague Letter, which explains schools' obligations to protect students from bullying and harassment. The growing list of cases against schools who failed to protect

LGBT students from harassment, some of which are included below, explicitly illustrate this point.

- A school district and its employees may be held liable under the Equal Protection Clause of the federal Constitution for failing to protect students from anti-LGBT harassment. If a school official fails to take action when they learn of such harassment because they think that an LGBT student should expect to be harassed, or that the student provokes the harassment by being openly LGBT, then the school has failed to provide equal protection to the student. Likewise, school officials violate the Equal Protection Clause if they fail to provide the same level of protection against harassment to boys and girls, and to LGBT students and non-LGBT students.

DISCRIMINATION AGAINST TRANSGENDER STUDENTS

Discrimination often affects transgender students in particular ways that prevent them from fully participating in the school environment and impacts their ability to learn. (Discrimination can take forms such as: ignoring or failing to respond to ongoing bullying and harassment, holding the student to strict or unreasonable applications of a school dress code, preventing students from using appropriate restrooms, harassment by teachers and staff, and even expulsion.) Unfortunately this discrimination often creates such a substantial barrier that the student is prevented from attending class or even forced out of school. This factor combined with the fact that there are fewer transgender students helps to explain why we see fewer federal cases demonstrating school district liability for bullying and harassment of transgender students.

However, numerous studies demonstrate that the bullying, harassment, and discrimination faced by transgender students is pervasive. According to GLSEN's Harsh Realities report, nearly nine in ten transgender students have been verbally harassed in the last year due to their gender expression (87%), and more than half have also been physically assaulted (53%). However, most (54%) transgender students do not feel that they can report incidents of victimization to school authorities, and less than a fifth of transgender students said that school staff intervened most of the time or always when hearing homophobic or negative remarks about someone's gender expression. In fact, more than a third of transgender students report that they have heard school staff make homophobic statements, sexist remarks, or negative remarks about someone's gender expression.

Although this resource focuses primarily on how federal laws like Title IX serve to protect LGBT students from bullying and harassment, transgender students can also face discrimination by their schools. The *Doe v. Yunits* (2000 WL 33162199 (Mass. Super. 2000)) case in Massachusetts provides an unfortunate but common example of how discrimination can prevent transgender and gender nonconforming students from receiving an appropriate education. A transgender girl in this middle school was repeatedly disciplined for wearing feminine clothing and make-up. Although any other girl at her school could have worn the outfits without being disciplined, she was not allowed to attend school without the principal approving her dress. The transgender student was forced to miss so many days that she was not able to pass the grade, and she eventually had to leave the school. The *Doe* court ultimately ordered the school to allow the student to wear any girls clothing that otherwise followed the general school dress code.

- In addition, Title IX, a federal law that applies to all schools that receive federal money, already requires schools to ensure that students are not sexually harassed. While Title IX does not explicitly prohibit discrimination on the basis of sexual orientation, it does prohibit harassment directed at an LGBT student that is sexual in nature. Title IX also prohibits harassment based on perceptions that a student does not conform to stereotyped notions of masculinity and femininity, which is often the case with students who identify as transgender or gender nonconforming.

For More Information on Crafting Effective State Safe Schools Laws:

Effective guidance from the state can help to ensure that schools and school districts meet their obligations under federal law, avoid costly and unnecessary lawsuits, and provide educational environments where all students can learn. Organizations such as the Gay, Lesbian & Straight Education Network (GLSEN) and the National Center for Lesbian Rights (NCLR) can help. For more information, you can contact GLSEN (phone 202-621-5821 or visit www.glsen.org) or NCLR (phone 800-528-6257 or email info@nclrights.org).

ENUMERATED ANTI-BULLYING LAWS AND POLICIES

Effective anti-bullying laws and policies should include a number of elements, including effective reporting mechanisms, prompt investigation procedures, and a focus on education and prevention. One element that research shows us is extremely important for protecting vulnerable students is the enumeration or listing of characteristics that are frequently the subject of bullying and harassment. While the goal of any anti-bullying and harassment policy is to protect all students, enumeration allows schools to make it clear that vulnerable students may not be targeted for characteristics such as race, disability, sex, sexual orientation, or gender identity and expression.

Research has consistently shown that students experience less bullying and harassment, they feel safer overall, they experience less absenteeism due to feeling unsafe, and teachers are more likely to intervene to prevent incidents of bullying and harassment in a school with an enumerated anti-bullying and harassment policy. The US Department of Education included enumeration in its guidance on effective practices in anti-bullying laws and policies.

NABOZNY V. PODLESNY

Background:

In 1988, Jamie Nabozny began middle school in Ashland, Wis. This is when he first started to be harassed because he was gay. Students called him a “faggot” and physically attacked him, including hitting him and spitting on him. After several students pretended to rape him, Jamie’s principal, Ms. Podlesny, just said that “boys will be boys” and that he should “expect” such treatment for being “so openly gay.” At the beginning of high school, another student knocked Jamie down in the restroom and urinated on him. The school responded by placing Jamie in special education classes. One day before school, eight students approached Jamie and began kicking him in the stomach for over five minutes. School officials told Jamie not to report the incident to the police. Weeks later, Jamie collapsed from internal bleeding.

For four years, despite Jamie’s two suicide attempts and repeated pleas from his parents, school officials ignored the severe harassment and blamed Jamie for the attacks. He and his family moved to Minneapolis, where he was diagnosed with Post Traumatic Stress Disorder.

Court Case:

In 1995, Jamie Nabozny filed a legal action against his school administrators and the school district, on the grounds that the school violated his Fourteenth Amendment right to equal protection by failing to take any action to protect him.

The appeals court found that the school treated Jamie differently due to his gender or sexual orientation. The court said that the government can’t treat people differently just because of their sexual orientation. It was unconstitutional for the school district to ignore Jamie’s complaints that he was being harassed and abused just because he was gay.

On July 31, 1996, the Ashland Public School District settled for \$962,000.

Meaning of Case:

Nabozny v. Podlesny means that the same level of protection from harassment must be given to all students. A school official cannot allow gay students to be harassed while addressing other kinds of harassment. Schools also cannot send a gay or lesbian victim of abuse to a different class or school if the school would usually move the harassers in other situations. This case shows that federal law requires schools in all states to protect LGBT students from harassment and abuse. Failure to protect LGBT students can come with a high financial cost.

HENKLE V. GREGORY

Background:

In fall 1995, Derek Henkle, a student at Galena High School in Washoe, Nev., appeared on a local TV program about the experiences of gay high school students. Afterward, he was severely bullied and physically attacked at school. One time, several students surrounded Derek, shouted anti-gay slurs, tried to put a lasso around his neck, and threatened to drag him behind the back of a truck. The school took no action even though they knew who the harassers were. For months, the school did nothing when Derek reported other incidents. Instead, school personnel regularly told him that he should keep his sexuality private to stop the harassment.

At the end of that semester, Derek left Galena to escape the abuse. He was transferred to Washoe High School, an alternative high school, where the principal told him to “stop acting like a fag.” Later, he transferred to Wooster High School, where he was again told by school officials to keep his sexuality private. Though he tried, students found out he was gay, and the harassment began again. One time, school police witnessed students yelling anti-gay slurs and hitting Derek in the face, yet did nothing to help him. School police discouraged him from reporting it as a hate crime and no action was taken. After continued harassment, school administrators sent Derek to an adult education program, which made him unable to get a high school diploma.

Court Case:

In January 2000, Derek Henkle filed a legal action against Washoe principal Ross Gregory, several school administrators from his three high schools, and Washoe County School District for violating his freedom of speech by telling him to hide his orientation. On August 28, 2002, Derek settled the case for \$451,000. The district was also required to adopt a new anti-harassment policy including sexual orientation and have required staff and student training about sexual harassment and intimidation.

Meaning of Case:

Henkle vs. Gregory says that students have a constitutional right to express their sexual orientation in school without harassment or discrimination.

Telling a student they have to hide their sexuality and ignoring bullying and harassment violates the student's right to protected speech under the First Amendment. Derek Henkle's advocate, Lambda Legal, explained that this case “tells schools across the country that they must allow gay students to be fully out and must protect them from discrimination.”

FLORES V. MORGAN HILL UNIFIED SCHOOL DISTRICT

Background:

In 1997, Alana Flores arrived at her locker to find it covered with a lewd photo, anti-gay slurs, and death threats. This was not the first time. She had been harassed all through high school because students thought she was a lesbian. When she reported what happened, the assistant principal seemed to think that because Alana was not actually gay, she had nothing to be upset about. No action was taken, despite Flores' repeated reports of harassment.

At the same time, other students in the same school district were being harassed. One middle school student was beaten by six other students as they yelled anti-gay slurs. The student was hospitalized for severely bruised ribs. School administrators punished only one of the attackers, and transferred the victim to another school. Two female students were targeted after they started dating. Several male students surrounded them in a parking lot, yelled anti-gay slurs and threw plastic items at them. An assistant principal took no action other than them to report the incident to campus police.

Court Case:

In 1998, Alana Flores and five other students filed a lawsuit against the school district for violating their right to equal protection. On January 6, 2004, the case settled for \$1.1 million. The district also agreed to change their discrimination policy and student handbooks to include sexual orientation and gender identity, and to keep written records of all complaints of anti-LGBT harassment. The school agreed to train all teachers and staff, and to train seventh and ninth graders about preventing LGBT harassment and discrimination.

Meaning of Case:

Just having nondiscrimination and anti-harassment policies is not enough to make sure schools are safe. Schools must enforce these policies or they can be liable under the law. The court found that school officials' deliberate indifference to anti-LGBT harassment violated the students' rights under the constitution. The court said, "the guarantee of equal protection...requires the defendants to enforce District policies in cases of peer harassment of homosexual and bisexual students in the same way that they enforce those policies in cases of peer harassment of heterosexual students...The constitutional violation lies in the discriminatory enforcement of the policies, not in the violation of the school policies themselves."

VANCE V. SPENCER COUNTY PUBLIC SCHOOL DISTRICT

Background:

In November 1992, students began to harass Alma McGowen after she started sixth grade, calling her the “German gay girl.” Students thought that Alma was a lesbian. For three years, Alma’s classmates sexually harassed her verbally and physically, groping her and asking for sexual favors. Students shoved Alma into walls. They would grab Alma’s book-bag and steal or destroy her homework. Once, a boy stole her bag and took her pen. When Alma tried to get back the pen the boy stabbed her in the hand with it.

In seventh grade, while her teacher was out of the room, a group of boys backed Alma against a wall. The boys grabbed Alma’s hands and hair and began yanking off her shirt. One boy said he was going to have sex with her and began taking off his pants before another student stopped him.

Alma and her mother repeatedly complained to teachers and school officials from 1992-1995. Despite their complaints, Alma’s harassers were never disciplined. School officials only talked with the harassers about their conduct. The school started providing sexual harassment presentations to its students and training to its teachers. But none of this stopped Alma’s harassers. Alma claimed that she was asked for sexual favors, hit with books, or touched inappropriately in almost every class. In 1995, Alma was diagnosed with depression. She filed a complaint under federal Title IX with the school district explaining the sexual harassment she experienced. The school district never looked into her complaint.

Court Case:

On July 1, 1996, Alma sued the Spencer County Public School District. Alma claimed that the school district violated federal Title IX because it did nothing to stop the severe harassment that prevented her from getting an education. Alma also claimed the school district violated federal law by allowing her to be harassed because of her national origin. In 1998, a jury found that the school district had violated the law and assessed damages at \$220,000. The school district appealed, but the verdict was upheld in 2000.

Meaning of Case:

Title IX protects all students from sexual harassment. When students inform school officials that they are being harassed, the school must investigate and act to end the harassment if it has occurred. If the first action doesn’t end the harassment, schools must try again. If schools take only ineffective actions that do not end the harassment, they may be liable under Title IX.

DOE V. ANOKA-HENNEPIN SCHOOL DISTRICT NO. 11 & E.R. V. ANOKA-HENNEPIN SCHOOL DISTRICT

Background:

Many schools in the Anoka-Hennepin School District in Minnesota presented a frightening and harmful toxic environment for LGBT students. This toxic environment was created in part by a district policy which prevented educators from discussing LGBT issues, which stigmatized students and denied them access to necessary resources and supportive educators. Students were subjected to constant anti-LGBT and gender-based slurs, threats, and assaults, which their schools did not protect them from. In some instances, school officials told the students who were harassed to “stay out of people’s way” and, in one instance, suggested that a student who was being harassed leave the school because they could not protect him. One student eventually dropped out of school and attempted suicide after the emotional toll of the years of constant harassment became too much to bear.

Court Case:

Six students who had experienced severe harassment sued the school district in federal court, asserting that the district’s policies and its failure to protect LGBT students from harassment violated the students’ rights under the United States Constitution, Title IX, and the Minnesota Human Rights Act. The U.S. Department of Justice (DOJ) and the U.S. Department of Education (DOE) began investigations of the harassment, and the U.S. Department of Justice (DOJ) also filed a lawsuit against the school in federal court.

The lawsuits were settled in March 2012 and provided significant new protections to prevent harassment of students who are, or are perceived to be, LGBT or gender non-conforming, as well as students who have LGBT friends or parents. The settlement also includes a comprehensive, systemic plan to counter and prevent future harassment in district education programs and activities and requires the district to pay \$270,000. Prior to the resolution of this case, the district agreed to repeal their anti-LGBT curriculum policy.

Meaning of the Case:

Schools have an obligation under Title IX to protect students on the basis of sex, which includes gender stereotyping and gender non-conformity. When the district fails to address harassment, it can become widespread throughout the district, leading to severe consequences for students facing harassment.

Compilation of Cases Wherein School Districts Were Found Liable for Bullying and Harassment under Federal Law

Dahle v. Titusville Area School District (W.D. Pa. 2001)

DESCRIPTION: A student faced daily verbal and physical assaults over a 5-year period because of his sexual orientation. The harassment was so traumatizing that the student attempted suicide and was forced to drop out of school.

CLAIMS: Equal Protection Clause, Federal Title IX

OUTCOME: Settled in 2002 for \$312,000.

Doe v. Anoka-Hennepin School District (2009)

DESCRIPTION: Student was harassed by two teachers on the basis of his perceived sexual orientation.

CLAIMS: Settlement reached through state Department of Human Rights.

OUTCOME: Settled in 2009 for \$25,000.

Doe v. Anoka-Hennepin School District (2012)

DESCRIPTION: District-wide discrimination, bullying, and harassment against LGBT students was left unchecked. Schools failed to adequate steps to protect students.

CLAIMS: Equal Protection Clause, Federal Title IX, state law claims.

OUTCOME: The Civil Rights Division of the United States Department of Justice and the Office of Civil Rights of the Department of Education joined the case. They reached a settlement where the district agreed to implement a comprehensive plan to address bullying, harassment, and discrimination and pay \$270,000.

Doe v. Perry Community School District (S.D. Iowa 2004)

DESCRIPTION: Student perceived to be gay was physically and verbally abused for over three years. School staff ignored the student's complaints.

CLAIMS: Federal Title IX

OUTCOME: Judgment in 2004 for \$27,500.

Flores v. Morgan Hill Unified School District, 324 F.3d 1130 (9th Cir. 2003) [California]

DESCRIPTION: Six students experienced daily harassment, threats, and physical violence on the basis of their actual or perceived sexual orientation and gender identity/expression.

CLAIMS: Equal Protection Clause, Federal Title IX, state law claims

OUTCOME: Settled in 2004 for \$1.1 million. The settlement required the school district to establish training program for students and staff to combat anti-gay harassment, to revise their harassment policies, and to keep written records of complaints of harassment.

Hamilton v. Vallejo City Unified School District (2009)

DESCRIPTION: Student was harassed by students and teachers on the basis of her sexual orientation.

CLAIMS: Settlement reached without going to court.

OUTCOME: Settled in 2009 for \$25,000. The settlement required the school district to adopt new policies, provide mandatory training, and allow monitoring by local ACLU.

Henkle v. Gregory, 150 F. Supp. 2d 1067 (D. Nev. 2001)

DESCRIPTION: Student was harassed, threatened, and assaulted because of his gender expression and sexual orientation. School officials told him to keep silent and transferred him into an adult education program.

CLAIMS: First Amendment, Equal Protection Clause, Federal Title IX, state law claims

OUTCOME: Settled in 2001 for \$451,000. The settlement required the school district to adopt a new harassment policy and to train staff and students.

Iversen v. Kent School District (W.D. Wash. 1998)

DESCRIPTION: A student was assaulted in hallways and in classrooms and verbally harassed on the basis of his perceived sexual orientation. Teachers who knew about harassment did nothing.

OUTCOME: Settled in 1998 for \$40,000. The settlement required the school district to conduct anti-harassment training for staff, and to revise its policies.

J.L. v. Mohawk Central School District, 09-CV-943 (N.D.N.Y. 2010)

DESCRIPTION: A 14-year-old student was harassed, assaulted, and threatened because he was gay and gender non-conforming. The school did not look into what happened.

CLAIMS: Equal Protection Clause, Federal Title IX, state law claims

OUTCOME: The Civil Rights Division of the United States Department of Justice asked to join the case in 2010. The case settled for \$75,000, plus counseling fees for the student. The school district was required to have staff trainings and to change its harassment policies with help from an outside expert. The district also had to send reports to the Department of Justice on its progress.

Ketchum v. Newport-Mesa Unified School District (2009)

DESCRIPTION: Several students engaged in homophobic cyberbullying against several other students, and this harassment continued on school grounds. Plaintiff claimed that the school district did little to stop this behavior and allowed a hostile environment to develop towards gay and female students.

CLAIMS: Equal Protection Clause, Federal Title IX, state law claims

OUTCOME: Settled in 2009. The school paid attorneys fees and agreed to institute anti-harassment training program for students and teachers.

L.W. v. Tom's River Regional Schools Board of Education, 886 A.2d 1090 (N.J. 2007)

DESCRIPTION: L.W. experienced verbal and physical harassment because of sexual orientation. The school took no action even though they knew about the harassment.

CLAIMS: Federal Title IX, state law claims

OUTCOME: Judgment in 2007 for \$70,000. School district was required to create a new harassment policy.

Loomis v. Visalia Unified School District, 262 F. Supp. 2d 1088 (E.D. Cal. 2001)

DESCRIPTION: A student was verbally and sexually harassed by teachers and students. Rather than addressing the harassment, the school transferred him to an independent study program that made him ineligible to attend a University of California college.

CLAIMS: Equal Protection Clause, Due Process Clause, state law claims

OUTCOME: Settled in 2002 for \$130,000. The settlement required the school district to revise anti-harassment policy, to require training for staff and students, to have compliance officers at each school, and to submit an annual report of incidents.

Lovins v. Pleasant Hill Public School District, 99-0550-CV-W-2 (W.D. Mo. 2000)

DESCRIPTION: A student was harassed and physically assaulted from 8th to 11th grade based on his perceived sexual orientation, eventually forcing him to leave the school.

CLAIMS: Equal Protection Clause, Federal Title IX

OUTCOME: The Civil Rights Division of the United States Department of Justice joined the case. The case settled for \$72,500 in 2000. The school district was required to have trainings for staff and students and to change its harassment policies. The district also had to hire an expert to put its harassment policies into practice, to have compliance officers at each school, and to submit reports on its progress.

Martinazzi v. Upper-Lake Union Elementary School District (2008)

DESCRIPTION: Student was harassed and assaulted throughout elementary and middle school based on gender identity and perceived sexual orientation.

CLAIMS: Settlement reached without going to court.

OUTCOME: Settlement in 2008 required the school district to adopt a new anti-discrimination and harassment policies and institute training for staff.

Massey v. Banning Unified School District, 256 F. Supp. 2d 1090 (C.D. Cal. 2003)

DESCRIPTION: Eighth-grader was prohibited from attending physical education class on the basis of her sexual orientation.

CLAIMS: Equal Protection Clause, state law claims

OUTCOME: Settled in 2003 for \$45,000. The settlement required the school district to change its non-discrimination policy and require training for staff and students.

Nabozny v. Podlesny, 92 F.3d 446 (7th Cir. 1996) [Wisconsin]

DESCRIPTION: A student was sexually harassed and assaulted because of his sexual orientation and gender. School officials knew of the harassment but did nothing to protect the student.

CLAIMS: Equal Protection Clause, Due Process Clause

OUTCOME: Settled in 1996 for \$962,000.

Putman v. Board of Education of Somerset Independent Schools (E.D. Ky. 2000)

DESCRIPTION: Student was verbally harassed, received death threats, and assaulted based on actual or perceived sexual orientation.

CLAIMS: Equal Protection Clause, Federal Title IX

OUTCOME: Settled in 2001 for \$135,000. The settlement required the school district to enact a new harassment policy.

Ramelli and Donovan v. Poway Unified School District, 167 Cal. App. 4th 567 (Cal. Ct. App. 2008)

DESCRIPTION: Several students were repeatedly harassed and attacked because of their sexual orientation. Although the school knew about it, nothing was done.

CLAIMS: Federal Title IX, state law claims

OUTCOME: Settled in 2008 for \$300,000

Riccio v. New Haven Board of Education, 467 F. Supp. 2d 219 (D. Conn. 2006)

DESCRIPTION: A student was harassed on the basis of her gender and perceived sexual orientation.

CLAIMS: Federal Title IX

OUTCOME: The court found the student could sue based on Title IX.

Roe v. Gustine Unified School District, 678 F. Supp. 2d 1008 (E.D. Cal. 2009)

DESCRIPTION: A student was physically assaulted, sexually assaulted, and harassed at football camp because of perceived sexual orientation.

CLAIMS: Equal Protection Clause, Federal Title IX, state law claims

OUTCOME: The court found the student could sue based on Title IX.

Schroeder v. Maumee Board of Education, 296 F. Supp. 2d 869 (N.D. Ohio 2003)

DESCRIPTION: A high school student was harassed, threatened, and assaulted because other students thought he was gay. School officials were aware of the harassment but did not investigate or respond.

CLAIMS: First Amendment, Equal Protection Clause, Federal Title IX

OUTCOME: The court found the student could sue the school based on Title IX and the Equal Protection Clause.

Seiwert v. Spencer-Owen Community School Corporation, 497 F. Supp. 2d 942 (S.D. Ind. 2007)

DESCRIPTION: Student was assaulted, harassed, and received death threats because of perceived sexual orientation. School officials were aware of harassment but ignored it or took minimal action.

CLAIMS: Equal Protection Clause, Federal Title IX, state law claims

OUTCOME: The court found the student could sue based on Title IX and the Equal Protection Clause.

Shaposhnikov v. Pacifica School District, 2006 U.S. Dist. LEXIS 18330 (N.D. Cal. 2006)

DESCRIPTION: A 12-year-old student was harassed and physically abused for being perceived as gay. The student told school officials but they took little action.

CLAIMS: Equal Protection Clause, Federal Title IX, state law claims

OUTCOME: School district settled in 2006 on unknown terms. The parents of the students who harassed the plaintiff settled for \$100,000 in 2005.

Tehachapi Unified School District v. US Department of Education, Office of Civil Rights (2011)

DESCRIPTION: A 13-year-old student suffered severe harassment based on his sexual orientation and gender expression, and the school failed to take steps to prevent such harassment. The student ultimately died by suicide.

CLAIMS: Federal Title IX, Federal Title IV.

OUTCOME: The Civil Rights Division of the United States Department of Justice and the Office of Civil Rights of the Department of Education pursued this complaint. They reached a settlement where the district agreed to revise its policies and implement a comprehensive plan to address bullying and harassment.

Theno v. Unified School District 464, Tonganoxie 377 F. Supp. 2d 952 (D. Kan. 2005)

DESCRIPTION: A student was verbally harassed for four years because he was perceived to be gay. School officials ignored his complaints and the student was eventually forced to leave school.

CLAIMS: Federal Title IX

OUTCOME: Settled in 2005 for \$440,000.

Vance v. Spencer, 231 F.3d 253 (6th Cir. 2000) [Kentucky]

DESCRIPTION: A student was harassed, assaulted, and received unwanted sexual contact because students thought she was a lesbian and because of her national origin.

CLAIMS: Federal Title IX, national origin discrimination claim

OUTCOME: Jury awarded the student \$220,000 in 2000.

Additional Resources

The following resources examine the experiences of both LGBT students and all students with regard to bullying and harassment in schools and discuss ways to effectively protect students as required under federal law.

Harris Interactive and GLSEN (2005). *From Teasing to Torment: School Climate in America, A Survey of Students and Teachers*. New York: GLSEN.

Kosciw, J. G., Greytak, E. A., Diaz, E. M., and Bartkiewicz, M. J. (2010). *The 2009 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools*. New York: GLSEN.

U.S. Dept. of Educ., Office for Civil Rights (Oct. 26, 2010). *Dear Colleague Letter*, accessible at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

U.S. Dept. of Educ., Office for Civil Rights (Dec. 16, 2010). *Dear Colleague Letter*, accessible at <http://www2.ed.gov/policy/gen/guid/secletter/101215.html>.



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