**Education Law and LGBT Concerns**

Judy Chiasson, Ph.D.

*This document highlights the rights of LGBTQ students.*

*LGBT adults have similar guarantees in employment*.

**Gay, lesbian, bisexual, and transgender students are entitled to a learning environment that is safe and free of harassment, violence and hostility**. Numerous laws guarantee this right. Though it is not necessary to know the stipulations called for in each law, it may be helpful to know their overarching influence. Because schools are trusted with the well-being of the students, we are mandated to ensure students’ safety on campus.

**Title IX forbids discrimination based on gender**. Nabozny v. Podlesny was the 1996 landmark case where the courts fined the schools $900,000 for deliberate indifference toward the brutalization the student plaintiff received at the hands of his peers. Since then, numerous lawsuits have been won by youth who were harassed, bullied, and injured by peers and the school did not protect them from harassment or violence. In the 2005 ruling of Theno v. Tonganoxie Unified School District, the court awarded the plaintiff $440,000 because his school district failed to halt the anti-gay harassment. The fact that Theno was heterosexual was immaterial because the *intent* of the harassment was anti-gay.

**Title IX requires that all rules and activities on campuses be gender-neutral.** Thus if the dress code allows girls to wear make-up, skirts and heels, but requires them to cover their midriff, the same rule applies to the boys. Care should be taken that schools enforce rules and policies consistently. It would be discriminatory if a particular rule (e.g., no kissing) was differentially enforced.

**The 2000 California Safe and Violence Free Schools (AB537) has two important clauses that affect our schools.** It added sexual orientation and gender identity, real or presumed, to the protected categories at schools. The “real or presumed” means that if a student is the target of anti-gay harassment, it is immaterial whether he/she is in fact gay. Under privacy rights, school staff may not ask, and certainly cannot disclose, that information. AB537 also stipulated that all school personnel are personally obligated to intervene in cases of harassment. Thus, a teacher who is deliberately indifferent to the plight of a student who is being harassed is not protected by the corporate shield of the school districts. It is important that all school staff know that they can be personally liable if they fail to advocate on behalf of targeted students.

**No Opt -Out Clause for Diversity Education:** Under AB537 (and upheld by a federal ruling) parents may not opt out of LGBT diversity education, even if their objections are religiously based. Parent notification is required to discuss family planning and sexually transmitted diseases *only.* Persons may not opt out of trainings designed to promote safety and equality for LBGT persons, even if their objections are religiously based. The focus of diversity trainings is to advocate for the safe treatment of all students, not challenge religious tenets.

**Student Right to Privacy:** Students have a state constitutional right to privacy. A child’s sexual orientation is considered confidential. A school may not reveal to parents or other inquiring parties that a student is, or suspected to be, gay, lesbian, bisexual, or transgender. This has far reaching significance. If a student is caught engaging in sexual activity on campus, the school may not reveal the name or gender of the other party. To do so would violate the rights of both students.

**Transgender students may express themselves openly in the gender by which they identify:** Students should be called by the gender and preferred name of choice. Schools are required to accommodate these students’ restroom and locker room needs. Parent permission or knowledge is not required.

**Student Freedom of Expression:** LGBT students are free to wear symbols of pride and declare their sexual orientation/ and gender identity. LGBT youth may form clubs under the same guidelines as all other clubs on campus. Parent notification or permission is not required.

**Bias-Motivated Incidents Based on Sexual Orientation or Gender Identity:** Schools are required to gather and report data and follow specific District procedures if it is suspected that a student is the target/perpetrator of bias-motivated incidents. Whether the incident meets the criteria of a hate crime is the determination of law enforcement personnel.