

## **FIFTEEN EXPENSIVE REASONS WHY SAFE SCHOOLS LEGISLATION IS IN YOUR STATE'S BEST INTEREST**

Following are summaries of fifteen cases that have been brought against school districts for failing to protect students from discrimination on the basis of sexual orientation. These cases illustrate the following:

- School districts can be held liable under existing federal law for failing to protect students from harassment based on sexual orientation and gender nonconformity.
- Without clear directives from their state legislature, many school districts have failed to protect students from harassment and discrimination, putting themselves at risk for potential legal liability.
- In all of the cases brought to date, the student either prevailed after trial or achieved a settlement.

### **STATE LEGISLATION PROTECTS STATES, SCHOOL DISTRICTS AND STUDENTS**

At a time in which fiscal discipline is critical to preserve statewide education priorities, the cost of avoidable lawsuits against a school district for failing to protect their students from anti-lesbian, gay, bisexual and transgender (LGBT) harassment and discrimination can hinder both school district and state budgets. Passing and effectively implementing and enforcing state laws that clearly prohibit discrimination and harassment on the basis of real or perceived sexual orientation and gender identity can help school districts avoid these expensive lawsuits, and, at the same time, help districts in fulfilling their general mission – to provide a safe and effective education for all of their students. The daily experience of many LGBT students and the persistence of lawsuits on these matters illustrate that schools and school districts across the country are not currently meeting their obligations.

### **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. The growing list of cases, 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.

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.

### **FOR MORE INFORMATION ON CRAFTING EFFECTIVE STATE LAWS:**

Effective guidance from the state legislature 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. GLSEN, the Gay, Lesbian and Straight Education Network, and NCLR, the National Center for Lesbian Rights, can help. For more information, contact:

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## SUITS AGAINST SCHOOL DISTRICTS FOR DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION

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Below is a sampling of fifteen cases that have been brought against school districts for failing to protect students from discrimination on the basis of sexual orientation. These cases illustrate several important points:

- In all of the cases, the student either prevailed after trial, or achieved a settlement.
- School districts have paid anywhere from \$40,000 to over \$1.1 million in settlements or judgments.
- These dollar figures do not include the districts' attorney's fees. In many cases, the attorney's fees were far greater than the amount of the settlement itself.
- Many of these lawsuits were brought and successfully won or settled in states that do not have state statutes prohibiting discrimination on the basis of sexual orientation, including lawsuits in Kentucky, Missouri, and Nevada.

### RESOLVED CASES

|                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <b>CASE:</b>       | <b>Flores v. Morgan Hill Unified School District, 324 F.3d 1130 (N.D. Cal. 2003)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>FACTS:</b>      | Suit brought on behalf of 6 former MHUSD districts who were subjected to daily harassment and threats of physical violence and actual physical violence on the basis of their real or perceived sexual orientation and gender.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>CLAIMS:</b>     | Equal Protection Clause, Title IX, state law claims                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>RESOLUTION:</b> | settlement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>MONETARY:</b>   | over \$1,100,000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>INJUNCTIVE:</b> | <ul style="list-style-type: none"><li>• Amendment of existing nondiscrimination policy to include sexual orientation and gender</li><li>• Training for all administrators, teachers, counselors, and other employees who monitor student behavior on harassment and discrimination on the basis of sexual orientation or gender identity</li><li>• Mandatory training for seventh and ninth graders on preventing anti-lgbt harassment and discrimination</li><li>• District policies and student handbooks will be revised so that they expressly state that harassment and discrimination based on actual or perceived sexual orientation and gender identity is expressly prohibited under district policies and state law</li><li>• The district must keep written records of any complaints made concerning anti-lgbt harassment or discrimination.</li></ul> |
| <b>CASE:</b>       | <b>Massey v. Banning Unified School District, 256 F. Supp. 2d 1090 (C.D. Cal. 2003)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>FACTS:</b>      | Eighth grade student alleged she was prohibited from attending physical education class on the basis of her sexual orientation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>CLAIMS:</b>     | Equal Protection Clause; state law claims (including AB 537 and Unruh Act)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>RESOLUTION:</b> | settlement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>MONETARY:</b>   | \$45,000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>INJUNCTIVE:</b> | <ul style="list-style-type: none"><li>• Amendment of existing nondiscrimination policy to include sexual orientation and gender</li><li>• Training for all district teachers and other school staff on issues of anti-discrimination and diversity</li></ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

- Training for students at all grade levels – k-12 – with respect to diversity

**CASE: Henkle v. Gregory, 150 F. Supp.2d 1067 (D. Nev. 2001) (settled 2002)**

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FACTS: Constant harassment, discrimination, intimidation based on his sex and sexual orientation, name calling, assaults, punched in face, lassoed around the neck, threatened, transferred from school to school and told to keep silent about his sexual orientation, put into adult education program

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

RESOLUTION: settlement

MONETARY: **\$451,000**

INJUNCTIVE:

- Adoption of new harassment policy including sexual orientation required
- Staff training required
- Student training required

**CASE: Loomis v. Visalia Unified School District (E.D. Cal.) (settled 2002)**

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**FACTS:** Verbal harassment and name calling by teachers and students, spit on in hallway, put in independent study program (thereby losing ability to attend any U.C. school), subjected to sexually suggestive touching

**CLAIMS:** Equal Protection Clause, Due Process Clause, state law claims, including AB 537

**RESOLUTION:** settlement

**MONETARY:** **\$130,000**

**INJUNCTIVE:**

- Required training for school staff, including a one-time 3 hour program, and 30 minute annual training
- Required training for students, including a mandatory 50 minute training
- Required to integrate peer-to-peer education and counseling into existing programs
- Required to revise anti-harassment policy to include real or perceived sexual orientation and gender
- Required to have two compliance coordinators at each school, one male and one female (although only one required for elementary schools)
- Required to submit an annual report
- Required to keep and submit incident records

**CASE: Dahle v. Titusville (Pa.) (settled 2002)**

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**FACTS:** Severely tormented based on sexual orientation, daily verbal and physical assaults over 5-year period. Harassment was so traumatizing that student attempted suicide.

**CLAIMS:**

**RESOLUTION:** settlement

**MONETARY:** **\$312,000**

**CASE: Snelling v. Fall Mountain Regional Sch. Dist., 2001 WL 276975 (D.N.H. 2001)**

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**FACTS:** Two brothers were harassed and subjected to verbal and physical abuse based on perpetrators' sex based stereotypes of masculinity, including one incident where another student bounced a basketball off P's head, which required hospital treatment, P also received death threat

**CLAIMS:** Title IX; state law

**CASE: Putman v. Bd. of Educ. of Somerset Ind. Sch. (E.D. Ky.)**

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**FACTS:** Death threats, repeated unwanted sexual contact, offensive and hostile verbal abuse, sexual intimidation and humiliation including sexually explicit graffiti on school parking lot depicting 2 male figures engaged in sexual act with plaintiff's name above picture

**CLAIMS:** Title IX; Equal Protection Clause

**RESOLUTION:** Settlement

**MONETARY:** **\$135,000**

**INJUNCTIVE:** amend anti-harassment policy to include actual or perceived sexual orientation.

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**CASE: Montgomery v. Indep. School Dist., 109 F. Supp.2d 1081 (D. Minn. 2000)**

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FACTS: Name calling based on his perceived sexual orientation from K thru 10<sup>th</sup> grade, physical threats and assaults beginning in 6<sup>th</sup> grade, mock rapes, unwanted sexual contact from 9<sup>th</sup> grade

CLAIMS: Title IX; Equal Protection Clause, Due Process Clause, state law claims

RESOLUTION: Settlement

MONETARY: **undisclosed financial settlement**

INJUNCTIVE: District required to enforce anti-harassment policy

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**CASE: Ray v. Antioch, 107 F. Supp. 2d 1165 (N.D. Cal. 2000)**

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FACTS: Plaintiff was harassed, threatened, insulted, taunted and abused based on perpetrators perception of his sexual orientation and because P's mother is transgender, beaten by another student causing concussion, hearing impairment, severe and permanent headache, psychological injury, urine soaked towels thrown on him

CLAIMS: Title IX

RESOLUTION: Undisclosed financial settlement

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**CASE: O.H. v. Oakland, 2000 WL 33376299 (N.D. Cal. 2000)**

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FACTS: Harassment, intimidation, physical abuse because of perceived sexual orientation, raped 3 times by another student who forced him to leave campus at knife point

CLAIMS: Title IX; Equal Protection Clause; Due Process Clause; state law claims

RESOLUTION: settlement

MONETARY: undisclosed, confidential monetary amount

INJUNCTIVE: no

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**CASE: Lovins v. Pleasant Hill (W.D. Mo.) (settled 2000)**

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FACTS: Plaintiff was harassed from 8<sup>th</sup> grade through 11<sup>th</sup> grade based on real or perceived sexual orientation. Plaintiff was assaulted, and was eventually forced to leave school because of harassment and discrimination.

CLAIMS: Title IX, Equal Protection Clause

RESOLUTION: settlement

MONETARY: **\$72,000**

INJUNCTIVE:

- Required training for school staff
- Required to include student training in the curriculum
- Required to revise harassment policy, and to hire expert to implement other appropriate policies
- Required to have two coordinators at each school, one male and one female
- Required to submit number of comprehensive reports

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**CASE: Vance v. Spencer, 2000 WL 1651376 (6<sup>th</sup> Cir. 2000)**

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FACTS: Harassed, teased, called "German gay girl," and "Lezzie," constantly shoved into walls and books and homework taken, unwanted sexual contact + and questioning in class, stabbed in hand with pen, students ripped her shirt off, another threatened to rape her and took his pants off before another intervened

CLAIMS: Title IX, and National Origin Discrim. claim

RESOLUTION: jury award (affirmed on appeal)

MONETARY: **\$220,000**

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**CASE: Iverson v. Kent (settled 1998)**

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**FACTS:** Plaintiff was pushed into lockers with broom sticks, called names, teacher told him “I already have 20 girls, I don’t need another,” beaten by 8 students in classroom while 30 students watched

**CLAIMS:**

**RESOLUTION:** settlement

**MONETARY:** **\$40,000**

**INJUNCTIVE:**

- Required training for teachers and administrators
- Required to revise anti-harassment training procedures

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**CASE: Wagner v. Fayetteville (settled 1998)**

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**FACTS:** Plaintiff suffered physical and psychological harassment over a period of 2 years. He was beaten, and suffered a broken nose and kidney damage. Sexually explicit drawings of student were circulated in school.

**CLAIMS:** Title IX

**RESOLUTION:** settlement

**MONETARY:** No

**INJUNCTIVE:**

- Required one-time training for school staff, and additional training required for all staff with responsibility to implement the policy
- Required to formally notify students that sexual harassment is prohibited
- Required to provide training for students on sexual harassment and other student policy issues
- Agreed to review policy and revise if necessary, and to disseminate policy

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**CASE: Nabonzy v. Podlesny, 92 F.3d 446 (7<sup>th</sup> Cir. 1996)**

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**FACTS:** Harassment and physical abuse because of sexual orientation and sex, mock rape in front of 20 students, urinated on, put in special education, beaten by 8 students causing internal bleeding

**CLAIMS:** Equal Protection Clause; Due Process Clause

**RESOLUTION:** settlement

**MONETARY:** **\$962,000**

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