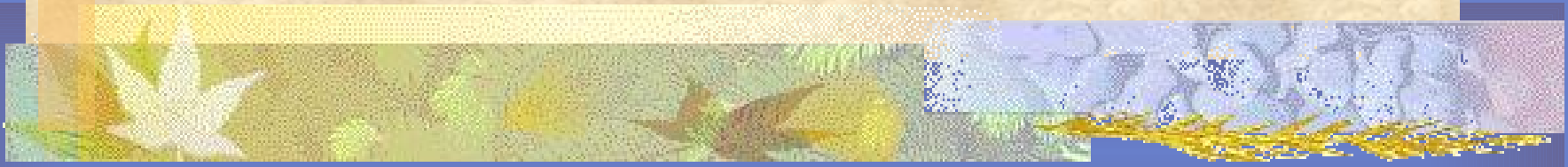


# Making Schools Safe for All



Issues Concerning Sexual  
Orientation or Gender  
Identity/Expression in K-12 schools



# Reaching Common Ground on Sexual Orientation

- How do we promote respect for all and deal with those who are uncomfortable with the issue of homosexuality?
- Refocus: The issue is not one of being for or against homosexuality
- Schools must provide a learning environment where all students feel safe. No student should face harassment or humiliation on school grounds that interferes with his or her education.

# The Problem of Harassment

*Frequency of Hearing Homophobic Remarks*



**a** Frequently: 77.2%  
**b** Often: 14.3%  
**c** Sometimes: 6.0%  
**d** Rarely: 1.0%  
**e** Never: 1.5%

LGBT = Lesbian / Gay /  
Bisexual / Transgender

- In a 2003 survey of over 6000 high school students, 91.5% reported hearing anti-LGBT slurs “often or frequently” on campus.

# The Lack of Intervention

*How Often Faculty Intervene  
When Hearing Homophobic Remarks*



- a** Always: 3.4%
- b** Most of the Time: 13.7%
- c** Some of the Time: 45.5%
- d** Never: 37.4%

- 82.9% of students reported that faculty or staff never intervened or intervened only some of the time when present and homophobic remarks were made.



# Harassment and Abuse

- 64.3% of LGBT students felt unsafe at their school because of their sexual orientation.
- 39.1% of LGBT students were physically harassed (being shoved, pushed, etc.) because of their sexual orientation.
- 28.6% of LGBT students missed at least one day of school in the past month because they felt unsafe.



# What Teachers Need to Know

- Federal and state laws protect LGBT students from harassment and discrimination
- School districts, administrators, and individual teachers have been held liable for failing to protect LGBT students or intervene when harassment was present



# Federal Law

- Sexual orientation discrimination may violate these federal laws:
  - Equal Protection Clause of the US Constitution
  - Title IX
  - Section 1983 of the Civil Rights Act
  - Equal Access Act



# Federal Equal Access Act

- If a public secondary school allows any student-led group to meet that is:
  - Voluntary
  - Non-curricular
  - Student-initiated
- It must allow *all* student groups (e.g. Gay-Straight Alliance, a Bible Club) to meet and be treated on an equal basis



# State Law

- State laws that prohibit harassment or discrimination based on sexual orientation or gender identity / expression:
  - Unruh Civil Rights Act
  - Sex Equity in Education Act
  - California Student Safety and Violence Protection Act of 2000 (AB 537)



# AB 537

- California Student Safety and Violence Protection Act of 2000
  - prohibits discrimination and harassment based on actual or *perceived* sexual orientation and/or gender identity/expression



# What is “Gender?”

- A person’s actual sex or perceived sex and including perceived identity, appearance, or behavior, whether or not that identity is different from that traditionally associated with a person’s sex at birth.



# State Regulations

- State regulations prohibit
  - Harassment in the educational environment
  - Discrimination in extracurricular and club activities
  - Retaliation against complainants




# Liability

- School employees are personally liable for their own acts of harassment.
- School officials may be personally liable for another's harassment if they are "aware of specific risk of harm" and they fail to take reasonable steps.
- School employees may not be protected by immunities, or by district or insurance carrier duties to defend and indemnify.
  - *Reno v. Baird* (1998) 18 Cal.4th 640; *Oona v. McCaffery* (1997) 122 F.3d 1207; Government Code section 825.



# Damages

- Sexual Orientation Harassment - proven liability may result in
  - Compensatory damages
  - Attorneys' fees
  - Declaratory and injunctive relief



# Does AB 537 Protect LGBT Teachers?

- Although usually referred to of in terms of students, the law specifically applies equally to all *persons* in public schools
- This includes teachers and other school employees.
- There are also protections against employment discrimination on the basis of sexual orientation in the California Fair Employment and Housing Act (Section 12940 of the California Government Code) that apply to teachers and other school employees.




# What teachers can do

- First: You already define what is unacceptable in your class, in the hallway, cafeteria, gym, locker room, etc. Include in your “beginning-of-the-year” talk specific words or phrases in their context that are unacceptable. Use the word gay or lesbian, and let students know that there are appropriate and inappropriate uses for these words.



# Responding to slurs

- Your response to name-calling and harassment will be impacted by
  - Time
  - and place
- If “time and place” allow for only punitive or reactive responses, make sure to carve out a future “time and place” to deal with the situation more reflectively. Education will go much further than punishment alone



# Structured Setting (Classroom, library, etc.)

- “That is unacceptable in this room.”
- “You know the class ground rules.”
- “Please apologize.”
- “Out of this room!”

**LESS TIME AVAILABLE**  
(between periods, at dismissal, etc.)

- “Do you understand the meaning behind what you said?”
- “That was a stereotype. Let’s discuss it...”
- “Why did you choose those words? How else might you have expressed your feelings?”
- “You may not have meant to be hurtful, but here’s how your comment hurt...”

**MORE TIME AVAILABLE**  
(during class, conference time,  
etc.)



## **Unstructured Setting (hallway, locker room, cafeteria, etc.)**

- “Cut it out!”
- “Keep your hands to yourself!”
- “Stop it right now!”
- “Go to the office!”

**LESS TIME AVAILABLE**  
(between periods, at dismissal, etc.)

- “That’s bullying. It is against school rules...”
- “That’s harassment. You could get suspended...”
- “That was really mean. Why did you say that?”
- “Do you understand why that was so hurtful?”

**MORE TIME AVAILABLE**  
(during class, conference time, etc.)



# Administrators and staff

- To protect and support a targeted student
  - Assure the targeted student that:
    - you take what happened seriously.
    - you believe he or she deserves a safe learning environment.
    - he or she is not required to talk face-to-face with the offenders, even with a mediator present (bias-based harassment is substantially different from ordinary peer conflict).



# To protect and support a targeted student

- offer the targeted student:
  - first aid, if necessary, and a private room in which to recover and a telephone in case he or she wants to call a parent or guardian or some other responsible adult (e.g., counselor, spiritual advisor) or the police.
  - the chance to tell his or her side of the story.
  - the option of removing him or herself from danger



# Take care about calling home

- “Outing” the student to parents in a phone call home is completely inappropriate and unethical
- Listen and be sensitive to the student’s wishes



# To protect and support a targeted student

- Remove the offender from the situation
- Try to make sure that staff is present wherever the harassment has been known to occur or may occur
- Encourage the targeted student to report retribution
- Be vigilant so that if there is retribution the targeted young person won't have to be the only one reporting it.
- Keep a record of the events



# To discipline and educate offenders:

- Explain to them why their behavior is wrong, beyond its simply violating a rule.
- Reprimand them in a serious no-nonsense tone.
- Warn them of the consequences of their continued offenses
- Discipline them in a way that is consistent with what is done for other forms of malicious harassment



# General tips

- Let students know that your classroom is a safe space for all students, regardless of race, creed, ethnicity, sex, sexual orientation, or gender identity/expression
- Assume that some of your students, your students relatives or friends, or your colleagues are gay, lesbian, bisexual, or transgendered
- Use gender-neutral language where possible
  - Ex: A teacher asks what a female student did over the weekend. The student replies “I went on a date.” Rather than asking “Where did you and your boyfriend go?” you might simply say “Where did you go?”



## The Bottom Line...

- *Legally and ethically, you must do whatever is necessary to stop harassment against all students and staff, including those who are perceived to be gay. When they are safe, teachers can teach and students can learn.*



[www.respectsacramento.org](http://www.respectsacramento.org)  
[info@respectsacramento.org](mailto:info@respectsacramento.org)