

# Teacher's Handbook Supplement

## Prepared by Respect Sacramento

# Issues Concerning Sexual Orientation or Gender Identity/Expression

What teachers need to know about issues concerning actual or perceived lesbian, gay, bisexual, or transgendered students.

1. The Law And Your Legal Obligations
  - *The California Student Safety and Violence Prevention Act of 2000 (AB 537)*
  - *How does AB 537 work?*
  - *What responsibilities do schools have under this law?*
  - *What are the consequences for schools for violating AB 537?*
  - *Haven't some schools been held liable for discrimination or harassment based on sexual orientation before AB 537?*
  - *Does AB 537 cover teachers?*
2. Discussing Sexual Orientation And Gender Issues In Our Schools
  - *Why does our school need to do anything in response to AB 537? We don't have any gay students or gay parents.*
  - *Does AB 537 really apply to us? We don't have a problem with harassment based on sexual orientation at our school.*
  - *Aren't elementary school children too young to begin a discussion of gay issues?*
  - *All of our students are reminded to treat others with respect. Isn't that enough?*
  - *How can we talk about sexual orientation issues without talking about sex?*
  - *What about the religious beliefs of families and teachers?*
3. What Administrators Can Do
4. What The Classroom Teacher Can Do
5. Resources
6. Appendix
  - a. Text of AB 537
  - b. Know Your Rights: Legal Protection for Gay, Lesbian, Bisexual, and Transgendered Education Employees (From the National Education Association)

# 1. The Law And Your Legal Obligations

## **The California Student Safety and Violence Prevention Act of 2000 (AB 537)**

On January 1, 2000, a new law went into effect in California: The California Student Safety and Violence Prevention Act of 2000. It is also known by its number in the legislature, AB 537, and is a revision to the California Education Code. This state law prohibits discrimination and harassment against students in California public schools based on sexual orientation or gender non-conformity.

Prior to the enactment of AB 537, schools (and the children who attend those schools) were only specifically prohibited from discriminating against students based on sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability. In addition, California's Education Code had a very narrow definition of sex discrimination. Discrimination and harassment based on sexual orientation or gender non-conformity were not specifically prohibited before the enactment of AB 537.

### **How does AB 537 work?**

AB 537 adds sexual orientation (actual or perceived) and a more expansive definition of gender to this list of characteristics. For the first time, the California Education Code now specifically prohibits harassment, threats and discrimination against gay and lesbian students, or straight students who are perceived as gay and lesbian. In addition, the more expansive definition of gender discrimination includes discrimination against a person because their identity, appearance or behavior is different than that traditionally associated with the person's sex at birth. That means it is illegal to discriminate against a female student because she wears boyish clothing, against a male student, because his mannerisms are perceived as "effeminate" or because a student is transgender identified.

### **What responsibilities do schools have under this law?**

Schools must not only ensure that teachers and other school employees not engage in prohibited behavior, but also that students are not subjected to prohibited behavior. In other words, student-to-student discrimination and harassment prevention is the responsibility of the school.

Schools are also responsible for ensuring that students are free from harassment and discrimination from any source while at school. This includes parent or community volunteers, and sports team coaches.

### **What are the consequences for schools for violating AB 537?**

Like any other violation of the California Education Code, schools and school districts can be sued for not complying with AB 537. Schools are responsible for ensuring that students are not victims of harassment or discrimination based on sexual orientation or perceived sexual orientation. If they fail in preventing or stopping that type of behavior, they can be sued. In addition, administrators, teachers and staff may be personally liable as well.

Complaints of sexual orientation or gender discrimination must be handled in the same manner as other discrimination complaints. Students can file a complaint with the school board, with an investigation and written response due in 60 days. If a student is not happy with the response, they can appeal to the California Department of Education. Students are also free to file a civil action for injunctive relief (an order to stop prohibited behavior) or for compensatory damages.

## **Haven't some schools been held liable for discrimination or harassment based on sexual orientation before AB 537?**

Prior to the enactment of AB 537, schools in California could be liable for discrimination and harassment based on sexual orientation in only four ways. (Note that these four ways are not always effective — these are merely the theories upon which claims have been made, some of which have worked.)

First, if a school district or school has a non-discrimination or anti-harassment policy based on sexual orientation in place, violation of that policy is grounds for a lawsuit.

Second, federal law (Title IX of the Education Amendments of 1972) and court decisions interpreting that law protect students against sexual harassment where that harassment constitutes a “sexually hostile environment.” Although “sexual orientation” is not specifically mentioned in Title IX, some cases of harassment based on sexual orientation may meet the elements for a claim under sexual harassment. What this means is that harassment based on sexual orientation doesn't clearly fall within Title IX, although students may have a claim for sexual harassment based on sexual orientation because the harassment has a sexual component to it.

Third, one federal appellate court found an extreme case of harassment based on sexual orientation to have violated the equal protection clause in the 14<sup>th</sup> amendment of the Constitution. In that case, a middle school boy, Jamie Nabozny, was subjected to years of unchecked physical and verbal abuse. The Court of Appeals found that the school failed to protect Jamie because he was male. In other words, if the harassment had been male to female, the school would have treated the matter differently.

Fourth, Article I, Section 28 (c) of the California Constitution declares that “all students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure and peaceful.”

In addition to a court finding of liability, some school districts have chosen to settle outside of court when faced with a harassment claim. In August 1998, the Laguna Salada School District in San Mateo County paid out \$160,000 after school officials allegedly failed to protect a 10-year-old boy from anti-gay slurs. Further, the settlement included that the Laguna Salada School District must include curriculum in its schools that educates and informs children about sexual harassment and sexual orientation harassment.

## **Does AB 537 cover teachers?**

Although AB 537 is usually spoken of in terms of what protections it offers students, the law applies equally to all persons in public schools, including 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.

## **2. Discussing Sexual Orientation And Gender Issues In Our Schools**

### **Why does our school need to do anything in response to AB 537? We don't have any gay students or gay parents.**

Many schools believe that gay and lesbian issues aren't relevant to their particular school; that all the gay people are in other schools or other districts. However, there are students in every elementary school who will become gay or questioning adolescents. Every school district has gay or lesbian parents and employees. An even higher percentage of students, parents or teachers may have a gay or lesbian family member, parent, sibling, child or friend. School personnel may not know of any gay, lesbian, bisexual or transgender people, but this does not exclude their existence. Students, parents or employees who are gay or lesbian often do not feel safe enough to let others know.

Even if you believe you have no gay or lesbian families in your school, gay bashing can still occur. AB 537 protects students not only against harassment based on sexual orientation, but based on gender identity and perceived sexual orientation as well.

### **Does AB 537 really apply to us? We don't have a problem with harassment based on sexual orientation at our school.**

The fact that teachers and administrators do not always hear anti-gay slurs does not mean that they're not occurring. Often, name-calling will occur on the playground, in the hall, the restrooms, lunchrooms and gym or during other less structured times.

Second, some teachers and parents aren't attuned to gender-based name-calling. Some believe that if one child calls another child "gay," it's not wrong if the offending child doesn't know what "gay" means. Also, gender-based name-calling (e.g., "you throw like a girl") often doesn't engender the same response as a racist epithet.

Third, often teachers are uncomfortable addressing anti-gay slurs because they believe that any such discussion must involve a discussion of sexuality.

### **We're an elementary (or middle) school. Do we really need to be concerned about harassment?**

At most elementary schools, the word "gay" is used as a slur and insult by students in all grades, including kindergarten. According to the study from the *Massachusetts Governor's Commission on Gay and Lesbian Youth, Making Schools Safe for Gay and Lesbian Youth, (1993) p. 51*, among second graders, "that's so gay" is the second most common insult (after "that's so stupid").

These slurs escalate to increasingly ugly language (fag, dyke), accompanied by threats and physical violence, increasing in middle and high school. By addressing and ending this verbal violence early on, safer schools can be created for all students, and the risk of liability can be reduced. By educating students about the appropriate use of terms associated with gay issues, we teach respect for the diversity of the larger community.

In its 1993 report on sexual harassment in America's schools, the American Association of University Women (AAUW) Educational Foundation found that 85% of the boys and 87% of the girls surveyed said they would be "very upset" if they were called gay or lesbian. No other type of harassment—including actual physical abuse—provoked a reaction this strong.

As previously indicated, a school district in San Mateo County has settled a case for \$160,000 based on a claim that it failed to protect a child against anti-gay harassment.

## **Aren't elementary school children too young to begin a discussion of gay issues?**

Elementary school children are already dealing with these issues, possibly at home and/or school. Children watch television and movies that discuss, satirize and ridicule gays and lesbians. (Yes, even on Nickelodeon and the Disney channel.) Even if you haven't heard it, children at your school have used "gay" or "faggot" as an insult, often without knowing what it means. They just know that it's a derogatory and demeaning term. Your obligation as an educator is to confront stereotypes and address inappropriate language to make the schools safe for all students and families. These discussions are not about sex, but about respect for differences.

## **All of our students are reminded to treat others with respect. Isn't that enough?**

Teaching children about "the golden rule" does not specifically address harassment based on issues of gender and perceived sexual orientation. When children hear that they must be kind to others and that they must not engage in name-calling, they don't necessarily make the connection between gender bashing/teasing and name-calling. For children to understand why harassing behavior is not acceptable, it is important to teach them in a way that is specific, developmentally appropriate and as experiential as possible.

## **How can we talk about sexual orientation issues without talking about sex?**

A discussion about respect for differences is not a discussion about human sexuality. The focus is on making school climates safe for all students and families, including gay, lesbian, bisexual and transgender persons. This discussion concerning equity and civil rights has nothing to do with sex. Often, we confuse sexual orientation with sexual behavior. Elementary school children know that people can be married without understanding the specifics of human sexuality.

Gender issues are another source of serious harassment at our schools. Children who have non-traditional expressions of gender identification often suffer cruel repercussions from peers at school without sufficient intervention from adults. Allowing children to express themselves in a natural way that is comfortable for them, without fear of cruelty of repercussions, has nothing to do with human sexuality. It has everything to do with safety and respect for differences.

## **What about the religious beliefs of families and teachers?**

There exists a separation of church and state in the United States. One of our greatest freedoms allows people to believe whatever they want, and this includes religious beliefs. Students need to be taught to respect differences that include sexual orientation. This does not mean that students are expected to like

everyone who is different, but to respect the rights of others in our community. This does not infringe on any religious beliefs. No religion advocates harassment of children.

Teachers may have religious beliefs that make talking about gay and lesbian issues uncomfortable for them. However, a teacher's first responsibility is to provide a safe environment for his/her students. This responsibility does not impinge on a teacher's religious belief. If a teacher is too uncomfortable to deal with a situation of anti-gay harassment, the situation should be referred to someone who can.

### 3. What Administrators Can Do

## An Administrator's Guide To Handling Anti-Gay Harassment

**To protect and support a targeted young person, you should:**

- ***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).
- ***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.
  - help to problem-solve ways he or she might protect him or herself in the future ... but make very clear that you are not assuming that he or she is to blame for what happened.
  - the option of removing him or herself from danger (e.g., to drop the class where the harassment is happening, to change for PE somewhere else, etc.) ... but recognize that this might contribute to his or her social isolation, hence feeling more like punishment than protection.
- ***remove the offenders*** from the situation (transferring them to a different PE class, banning them from the bus, etc.).
- ***arrange for staff to be present*** wherever the harassment has been occurring (e.g., in the south corridor before and after lunch or next to the basketball court during second grade recess).
- ***encourage the targeted student to report retribution***, if the offender(s) are disciplined, but also ***arrange for your staff to 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 in the permanent files of the targeted student, with his or her permission, and of the offenders, if there has been any disciplinary action. Also keep an incident report on file in a malicious harassment log, so that patterns can be discerned and on-going problems can be addressed.

**To investigate what happened, you should:**

- ***interview all the witnesses***, as well as the protagonists, so that if the offenders are disciplined it will not be only the targeted student who turned them in.

- ***involve the police*** if you believe a crime may have been committed (including malicious harassment), or ***Child Protective Services***, especially if you believe a child is in serious jeopardy of further harm.

### **To discipline and educate the offenders, you can:**

- ***explain to them why*** their behavior is so wrong, beyond its simply violating a rule.
- ***reprimand them*** in a serious no-nonsense tone.
- ***warn them*** that if the behavior continues they'll be disciplined.
- ***require them*** to write a note of apology or to make restitution or do relevant community service.
- ***discipline them*** in a way that is consistent with what is done for other forms of malicious harassment (for example, if the offender used a gay slur while hitting someone, you might want to discipline him/her not just for assault but in whatever way an assault accompanied by a racial or religious or disability-related slur would be handled).
- ***call their parent(s) or guardian(s)***, if the offenders are students.
- ***counsel them***, if the offenders are employees, and if their actions don't improve, ***use progressive discipline***.

### **To support your staff, you should:**

- ***assure a targeted staff person that:***
  - you take what happened seriously.
  - you believe he or she deserves a safe working environment.
  - you will do everything in your power to make sure school is safe for him or her.
  - you will not tolerate retribution for his or her having reported the incident.
- ***consider an employee's professionalism and competence to be the ONLY criteria for working in your school*** and say so to any student, employee, or parent who questions whether someone they perceive to be gay belongs in this career.
- ***provide your staff on-going training*** in how to enforce your school's malicious harassment policy ... how to intervene, educate, discipline and protect students, visitors and staff.
- ***follow up when an employee enforces your school's harassment policy***, ensuring that the offending student knows that you endorse what the teacher (secretary, counselor) said were the rules.

### **To prevent future incidents, you should:**

- ***announce a firm anti-harassment policy*** (one which explicitly prohibits orientation-based harassment along with other forms of harassment and which spells out specific consequences) in faculty meetings and student assemblies every year.

- ***educate your student body*** so that even if they don't like homosexuality they will not turn a deaf ear on harassment. Education should dispel stereotypes, provide accurate information, and build students' skills for standing up for themselves and their peers non-violently.

### **For the sake of consistent, aggressive policy enforcement:**

***inform your supervisor*** (superintendent, school board president, or whomever you report to) of serious infractions of your school district's harassment policy, especially if you take disciplinary actions and you have the slightest concern that your judgment will be challenged. Your supervisor can support you only with full understanding of your investigation and conclusions.

### **The bottom line is ...**

***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.

## 4. What Teachers Can Do

### An Educator's Guide To Intervening In Anti-Gay Harassment

#### First, stop the behavior:

- *Cut it out!*
- *Keep your hands to yourself!*
- *That's way out of line!*
- *Whoa, that is not OK!*
- *Hey, that was uncalled for!*
- *That is unacceptable!*

#### Then educate:

- *That was a stereotype. Stereotypes are a kind of lie and they hurt people's feelings.*
- *That was a putdown. I don't think it belongs at (name of school).*
- *You may not have meant to hurt anyone, but that was a really derogatory gesture ... It implied he was Gay in a really disrespectful way.*
- *That's mean and it's sexual harassment. It could get you suspended.*
- *Do you guys know what that word means? It's a put down for a Gay man. That's like putting down people of a different race from yours or a different religion.*
- *She may or may not be Lesbian, but writing graffiti and spreading rumors is wrong.*

#### Educating is a crucial step.

It is not enough to stop the behavior. Students may interpret a simple, "Stop it right now!" to mean that it is OK to bully Johnny, but not during math. And while stopping to educate may take a moment in the short run, it will save time and energy, not to mention some child's heart, in the long run. And that child might not be the one who was targeted. It might be the bystander or the bully. You may be preventing a much more serious assault or a suicide down the road. It is worth the extra moment.

#### Do you educate on the spot or take the offender aside and educate in private?

Sometimes one is more appropriate; sometimes, the other. On the one hand, the target and the witnesses need to hear what you have to say. It can be a very valuable chance to model standing up for someone. And it can reassure them that your classroom really is a safe space. However, allowing the child who said the slur to save face *may* lead to sincere regret and changed behavior. And pursuing the issue at length in front of the target may only embarrass him or her. Use your professional judgment. The point is to support and educate *all* the children.

#### What if the offender retaliates against you for speaking up, by demanding, "Why do you care? Are you gay??!"

You have lots of choices:

- You can ask, "*Why? Do you think only gay people have the courage to stand up against bullying?*"
- You can say, "*I hope I would speak up about meanness no matter **what** my orientation was!*"
- You can answer the question honestly. For example: "*No, but what difference does my sexual orientation make?*" or "*Yes, I actually am. But the issue here is that you are harassing Chris, Pat. That's not OK in my class or in any other class in this school!*"
- You can decline to respond, falling back on previously established classroom ground rules, "*That's a really personal question. Remember we had a class ground rule that we would all protect our own, and other people's, privacy here? And anyway, I think my identity is irrelevant.*"
- Of course, some students will assume that you would not be declining to answer if you were really heterosexual. **If you are heterosexual**, being ambiguous about it may be difficult for you, while it provides a valuable learning experience for your students. **If you are actually a sexual minority**, ambiguity may be almost as emotionally and practically risky as coming out.
- On the other hand, **authenticity is a very important component in developing a climate of community and trust in the classroom**. So there is something to be said, if the political climate in your school and district allows it, for a genuine answer to a direct question, even if the question is a defiant, angry one. Young people need sexual minority role models who are not afraid to be open and openly heterosexual role models who object to anti-gay harassment and violence.
- Again, your professional judgment must ultimately determine how you respond. The point is to think about it ahead of time and to **practice** how you will handle this kind of situation, so that your fear won't get in the way of protecting children.

### **What if I am not sure I have my administrator's support?**

You still have a moral and legal obligation to protect every student from harassment and violence. So do stand up for targeted children.

But **definitely** talk with your supervisor about the problem, before you begin to intervene in it. Share a copy of the Safe Schools Report, "*They Don't Even Know Me: Understanding Anti-Gay Harassment and Violence in Schools.*" Discuss examples of harassment and ostracism you have witnessed in your own building, or about which students have told you.

If your supervisor agrees that something must be done, make a proposal. Explain how you would like to address the problem. Try to agree on a strategy.

If your supervisor explicitly forbids you from intervening in peer-on-peer anti-gay harassment, do **not** become "insubordinate." Talk with your union representative. If you don't belong to a union, or if your union is unresponsive, contact:

- GLSEN, the Gay Lesbian Straight Education Network (212-727-0135 or [glsen@glsen.org](mailto:glsen@glsen.org))
- Lambda Legal Defense and Education Fund (212-809-8585 or [lambdalegal@lambdalegal.org](mailto:lambdalegal@lambdalegal.org))

But defying an explicit directive can jeopardize your job. We don't recommend it.

If, on the other hand, you leave the conversation with your supervisor still unsure of where you stand, and if you happen to be gay, lesbian, bisexual or transgender, we would urge you to find a way to object to bullying that doesn't require your "coming out." We know that young people need role models, but without your supervisor's support it can be professionally risky to be honest ... and losing you altogether as their teacher will clearly not help your students.

### **The bottom line is ...**

**Legally and ethically, you must do whatever is necessary to stop the harassment** against children and teens who are perceived to be gay. Seeing you stand up against bullying will make every child, gay and straight alike, feel safer at school. Only when they feel safe, can students learn.

## 5. Resources

# Respect Sacramento Resource Directory

### General Resources

#### [GLSEN \(www.glsen.org\)](http://www.glsen.org)

The Gay Lesbian Straight Education Network is an education organization creating safe schools for all lesbian, gay, bisexual, and transgender students. Lots of news, information, and resources for teachers and students. See GLSEN Greater Sacramento's links web page for an expanded list of local, regional, and state resources ([www.geocities.com/sacglsen/links](http://www.geocities.com/sacglsen/links)).

#### [Human Rights Campaign \(www.hrc.org\)](http://www.hrc.org)

Working for lesbian, gay, bisexual, and transgender rights

#### [National Gay and Lesbian Task Force \(www.nglftf.org\)](http://www.nglftf.org)

NGLTF is the national progressive organization working for the civil rights of gay, lesbian, bisexual and transgendered people, with the vision and commitment to building a powerful political movement.

#### [The Safe Schools Coalition of Washington \(www.safeschoolscoalition.org\)](http://www.safeschoolscoalition.org)

The Safe Schools Coalition from Washington state offers resources as a starting point for educators, parents/guardians and youth. Lots of great material.

#### [Lavender Library Archives and Cultural Exchange \(www.lavenderlibrary.org\)](http://www.lavenderlibrary.org)

Provides resources specific to youth / schools. Doing any kind of research? Need resources? Check them out! Sacramento is lucky to have this valuable library.

[sacmwb@pacbell.net](mailto:sacmwb@pacbell.net)

#### [CAPE \(www.calcape.org\)](http://www.calcape.org)

California Alliance for Pride and Equity

The California Alliance for Pride and Equity is a nonprofit, nonpartisan, grassroots-based, statewide advocacy organization representing the interests of the lesbian, gay, bisexual, and transgender communities.

### Support for LGBTQ Youth

(See also Gay-Straight Alliance heading)

#### [Lambda Youth Group \(www.lambdasac.org\)](http://www.lambdasac.org)

Information/rap group for teens

Every Friday at 8:00 pm- 9:30 pm for teens to early 20s

Wednesday s at 6:30 to 8 pm for teens 13-19

Lambda Community Center

1927 J Street, Sacramento

(916) 442-0185

#### **Stockton Gay Straight Youth Alliance**

Contact Veronica Lopez, 5619 N. El Dorado Street, Stockton

(209) 477-0972

#### [L.Y.R.I.C. \(www.lyric.org\)](http://www.lyric.org)

Lavender Youth Recreation and Information Center

Bay Area youth organization. Offers resources for LGBTQ youth, including trained youth peer support hotline, volunteer opportunities in the greater Bay Area, academic support, job training, and workshops and conferences.

123-127 Collingwood Street, San Francisco

Youth Talk Monday-Saturday 6:30pm-9:00pm

Info Line, 24/7: 1-800-246-PRIDE or (415) 863-3636

### Support for Gay-Straight Alliances

Student clubs supporting diversity in schools

#### [GLSEN \(www.glsen.org\)](http://www.glsen.org)

The Gay Lesbian Straight Education Network. Check out the Student Pride section for youth resources.

#### [GSA Network \(www.gsanetwork.org\)](http://www.gsanetwork.org)

Gay-Straight Alliance Network is a youth-led organization that connects school-based GSAs to each other and community resources. Great resource for students looking to start or maintain a GSA, with a directory of other GSAs in northern California.

#### [Lambda Legal Defense Fund \(www.lambdalegal.org\)](http://www.lambdalegal.org)

The nation's oldest and largest legal organization dedicated to the civil rights of lesbians, gay men, and people with HIV/AIDS. Need to convince adults of your rights to form a GSA? Facing discrimination? This site has lots of great legal information to back you up.

#### [National Center for Lesbian Rights \(www.nclrights.org\)](http://www.nclrights.org)

Another prominent legal support resource center. Always worth a visit.

### Support for Families and Friends of LGBTQ Youth

#### [Sacramento PFLAG \(www.sacramentopflag.org\)](http://www.sacramentopflag.org)

Sacramento Parents, Families, and Friends of Lesbians and Gays Support, education, and advocacy for LGBTQ persons, families, and friends.

Contact: Kathleen Montgomery

Meets on the third Tuesday of the month at 7:30 pm

St. Marks Methodist Church

St. Marks Way, Sacramento

(916) 978-0410

[SacPFLAG@sacramentoPFLAG.org](mailto:SacPFLAG@sacramentoPFLAG.org)

#### **Yolo County PFLAG**

Contact: Betty in Woodland

(530) 662-8970

[yoloPFLAG@aol.com](mailto:yoloPFLAG@aol.com)

#### **El Dorado / Placerville PFLAG**

(530) 621-6700

## Resources for Youth in Crisis & Hotlines

### [Diogenes Youth Services \(www.diogenesnet.com/\)](http://www.diogenesnet.com/)

Crisis counseling for youth (12-24 yrs.), short term shelter services (2-3 weeks), youth and parent support services, medical services, 9837 Folsom Blvd., Suite L, Sacramento (916) 363-9943, 1-800-339-7177

[DYS9837@aol.com](mailto:DYS9837@aol.com)

### [WEAVE \(www.weaveinc.org\)](http://www.weaveinc.org)

Women Escaping a Violent Environment  
Provides services to survivors of domestic violence and their families as well as survivors of sexual assault in Sacramento County. WEAVE offers a vast array of crisis intervention, advocacy and counseling programs.

### [Alateen \(www.ncwsa.org/sac/\)](http://www.ncwsa.org/sac/)

Alateen is a fellowship of young people whose lives have been affected by alcoholism in a family member or a close friend. We help one another by sharing our experience, strength and hope (916) 334-2970 (closed Fridays)  
(916) 454-1100 (Alcoholics Anonymous hotline)

### **CA Youth Crisis Line**

Provides referrals for cities statewide  
1-800-843-5200

### **National Runaway Hotline**

1-800-621-4000

### **GLBT Hate Crimes Hotline**

(800) 686-HATE

### **Gay & Lesbian National Hotline**

(888) THE-GLNH

### **National Child Abuse Hotline**

(800) 422-4453

## Law Enforcement / Legal Services

### **Sacramento Police Department**

Hate crimes information (916) 454-2427  
Hate crimes reporting (916) 264-5476

### **Sacramento County Sheriff's Department**

(916) 874-5115 Non-emergencies  
(916) 875-8811 Bias Crimes Unit

### **Lambda Law Referral Service**

Mondays 5:30 – 9 pm at the Lambda Community Center  
(916) 442-0185

### **National Youth Legal Information Line (NCLR)**

(800) 528-NCLR

Confidential and free legal and practical support, information, and assistance regarding safety in school, psychiatric abuse or forced commitment to a mental hospital or treatment center, homelessness, discrimination in the foster care system or juvenile justice system, and medical and legal issues for transsexual youth.

## LGBTQ Supportive Churches

### **Pioneer United Church of Christ**

2700 L Street, Sacramento  
(916) 443-3727

### **River City Metropolitan Community Church**

Community and support services  
Rev. Freda Smith, Pastor  
10500 Chaplain Ave., (Mather Field), Rancho Cordova  
(916) 364-4325

### **Trinity Episcopal Cathedral**

2620 Capitol Avenue, Sacramento (916) 446-2513

## Health / Medical Support

### **The Effort, Inc.**

Low or no cost AIDS education, STD testing, and medical clinic  
1820 J Street, Sacramento (916) 325-5556

### **Planned Parenthood**

Pregnancy / HIV / STD testing and treatment, birth control services, counseling  
1125 10th Street, Sacramento (916) 444-7966  
550 Franklin Blvd., Sacramento (916) 452-7305  
5700 Watt Ave., North Highlands (916) 332-5715

## Local LGBTQ Related Media/Bookstores

### [The Open Book Ltd. Bookstore & Coffeehouse \(www.openbookltd.com\)](http://www.openbookltd.com)

Since opening its doors in 1996, The Open Book, Ltd. has become one of the country's leading independent bookstores specializing in gay, lesbian, bisexual and transgender titles. Over the years it has become more than just a personalized, service-oriented bookstore and coffeehouse; it has also become a community resource center where customers can meet with their friends and family members in a comfortably designed and safe environment. **Check out the community resource guide on their website**, as well as the events calendar. Larry and Ron operate one of Sacramento's finest retail establishments.

### [Mom Guess What Newspaper \(www.mgwnews.com\)](http://www.mgwnews.com)

1725 L Street, Sacramento  
(916) 441-6397

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### [California Teachers Association \(www.cta.org\)](http://www.cta.org)

Offers LGBTQ sensitivity training, "Breaking the Silence." Contact your local chapter rep for more information.

## 6. Appendix

### The California Student Safety and Violence Prevention Act

An act to amend Sections 200, 220, 66251, and 66270 of, to add Section 241 to, and to amend and renumber Sections 221 and 66271 of, the Education Code, relating to discrimination.

#### LEGISLATIVE COUNSEL'S DIGEST

AB 537, Kuehl. Discrimination.

(1) Existing law provides that it is the policy of the State of California to afford all persons in public schools and postsecondary institutions, regardless of their sex, ethnic group identification, race, national origin, religion, or mental or physical disability, equal rights and opportunities in the educational institutions of the state.

Existing law makes it a crime for a person, whether or not acting under color of law, to willfully injure, intimidate, interfere with, oppress, or threaten any other person, by force or threat of force, in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics. This bill would also provide that it is the policy of the state to afford all persons in public school and postsecondary institutions equal rights and opportunities in the educational institutions of the state, regardless of any basis referred to in the aforementioned paragraph.

(2) Existing law prohibits a person from being subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability in any program or activity conducted by any educational institution or postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

This bill would also prohibit a person from being subjected to discrimination on the basis of any basis referred to in paragraph (1) in any program or activity conducted by any educational institution or postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

(3) This bill would state that it does not require the inclusion of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or a postsecondary educational institution and would prohibit this bill from being deemed to be violated by the omission of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or a postsecondary educational institution.

To the extent that this bill would impose new duties on school districts and community college districts, it would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that

reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

AB 537: The California Student Safety and Violence Prevention Act of 2000

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This bill shall be known, and may be cited, as the California Student Safety and Violence Prevention Act of 2000.

SEC. 2. (a) The Legislature finds and declares all of the following:

(1) Under the California Constitution, all students of public schools have the inalienable right to attend campuses that are safe, secure, and peaceful. Violence is the number one cause of death for young people in California and has become a public health problem of epidemic proportion. One of the Legislature's highest priorities must be to prevent our children from the plague of violence.

(2) The fastest growing, violent crime in California is hate crime, and it is incumbent upon us to ensure that all students attending public school in California are protected from potentially violent discrimination. Educators see how violence affects youth every day; they know first hand that youth cannot learn if they are concerned about their safety. This legislation is designed to protect the institution of learning as well as our students.

(3) Not only do we need to address the issue of school violence but also we must strive to reverse the increase in teen suicide. The number of teens who attempt suicide, as well as the number who actually kill themselves, has risen substantially in recent years. Teen suicides in the United States have doubled in number since 1960 and every year over a quarter of a million adolescents in the United States attempt suicide. Sadly, approximately 4,000 of these attempts every year are completed. Suicide is the third leading cause of death for youths 15 through 24 years of age. To combat this problem we must seriously examine these grim statistics and take immediate action to ensure all students are offered equal protection from discrimination under California law.

SEC. 3. Section 200 of the Education Code is amended to read:

200. It is the policy of the State of California to afford all persons in public schools, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, or regardless of any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

SEC. 4. Section 220 of the Education Code is amended to read:

220. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program

or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

SEC. 5. Section 221 of the Education Code is renumbered to read:

220.5. This article shall not apply to an educational institution which is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

SEC. 6. Section 241 is added to the Education Code, to read:

241. Nothing in the California Student Safety and Violence Prevention Act of 2000 requires the inclusion of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or postsecondary educational institution; the California Student Safety and Violence Prevention Act of 2000 shall not be deemed to be violated by the omission of any curriculum, textbook, presentation, or other material in any program or activity conducted by an educational institution or postsecondary educational institution.

SEC. 7. Section 66251 of the Education Code is amended to read:

66251. It is the policy of the State of California to afford all persons, regardless of their sex, ethnic group identification, race, national origin, religion, mental or physical disability, or regardless of any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code, equal rights and opportunities in the postsecondary institutions of the state. The purpose of this chapter is to prohibit acts that are contrary to that policy and to provide remedies therefor.

SEC. 8. Section 66270 of the Education Code is amended to read:

66270. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, or mental or physical disability, or any basis that is contained in the prohibition of hate crimes set forth in subdivision (a) of Section 422.6 of the Penal Code in any program or activity conducted by any postsecondary educational institution that receives, or benefits from, state financial assistance or enrolls students who receive state student financial aid.

SEC. 9. Section 66271 of the Education Code is renumbered to read:

66270.5. This chapter shall not apply to an educational institution that is controlled by a religious organization if the application would not be consistent with the religious tenets of that organization.

SEC. 10. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

# **Know Your Rights: Legal Protection for Gay, Lesbian, Bisexual, and Transgendered Education Employees**

Prepared by NEA Office of General Counsel, April 2002  
National Education Association  
1201 Sixteenth Street NW  
Washington DC 20036

## **Foreward**

The struggle for full employment rights for gay, lesbian, bisexual, and transgendered education employees is an ongoing civil rights movement being fought on a number of fronts. Although Congress has not yet enacted a comprehensive ban on sexual orientation/gender identification discrimination in the workplace, there may be other sources for possible job protections that apply to your situation. In addition, several recent court decisions suggest that discrimination on the basis of sexual orientation/gender identification may violate the U.S. Constitution.

This section is intended to provide an overview of recent legal developments, identify the sources for job rights protections, and offer practical advice about what to do if you believe that you are the victim of sexual orientation/gender identification discrimination.

But the most important thing to remember is this: if you believe that your employer has discriminated against you because of your sexual orientation/gender identification, you should contact your local UniServ representative immediately. In consultation with state affiliate legal counsel, your UniServ representative will be able to advise you about what job protections, if any, apply to your situation and will provide the assistance and support that you need.

NOTE: This section provides general background information only and is not a substitute for a particularized assessment of an actual problem by an attorney familiar with the governing local laws of your area.

# **Know Your Rights: Legal Protection for Gay, Lesbian, Bisexual, and Transgendered Education Employees**

## **Overview**

Despite mounting evidence that gay, lesbian, bisexual, and transgendered persons suffer from employment discrimination at an alarming rate, [\[1\]](#) the federal government has not enacted legislation to prohibit discrimination on the basis of sexual orientation/gender identification. Title VII of the Civil Rights Act of 1964, the federal law banning employment discrimination, provides protection on the basis of race, color, religion, sex, and national origin. Discrimination on the basis of sexual orientation/gender identification, however, is not unlawful under Title VII. Although various members of Congress have introduced legislation to outlaw sexual orientation discrimination, these efforts have been unsuccessful to date.

Efforts to secure job protections have been somewhat successful at the state and local levels. The District of Columbia and 12 states - California, Connecticut, Hawaii, Maryland, Massachusetts, Minnesota,

Nevada, New Hampshire, New Jersey, Rhode Island, Vermont, and Wisconsin have adopted legislation prohibiting employment discrimination on the basis of sexual orientation. Additionally, more than 100 cities and counties have enacted local laws banning this form of employment discrimination. [2]

In addition to working for the passage of state and local statutory protections, advocates for nondiscrimination have turned to the federal courts for help. Borrowing from the civil rights movement of the 1960s, they have argued that discrimination against gay, lesbian, bisexual, and transgendered persons violates the U.S. Constitution, specifically the Equal Protection Clause of the Fourteenth Amendment. This strategy has resulted in several significant rulings.

In 1996, the U.S. Supreme Court struck down an amendment to the Colorado Constitution prohibiting state and local governments - including school districts - from enacting laws and policies that banned discrimination against gay, lesbian, and bisexual persons. In *Romer v. Evans*, the Court ruled that the amendment violated the Equal Protection Clause, in part, because it was prompted by animosity toward homosexuals and “a bare desire to harm a politically unpopular group.” [3] The Court also said that it infringed on the rights of gays and lesbians to participate in the political process. The Court’s ruling is an important victory because it provides advocates with a new legal weapon for challenging sexual orientation discrimination.

Relying on the *Romer* decision, for example, a federal appeals court in Wisconsin ruled later that year that it is a violation of the Equal Protection Clause for a school district to fail to protect a gay student from anti-gay harassment perpetrated by his peers. The court’s ruling in *Nabozny v. Podlesny* [4] resulted in a settlement of nearly \$1 million for the student.

More recently, federal district courts in Ohio and Utah ruled in 1998 that it was unconstitutional for a school district to discriminate against a gay or lesbian teacher, citing the *Romer* decision. In the Ohio case, *Glover v. Williamsburg Local School District*, [5] the court ruled that a district violated a gay teacher’s Equal Protection rights by not renewing his contract because of his sexual orientation. Similarly, in the Utah case, *Weaver v. Nebo School District*, [6] the court held that a school district violated the Equal Protection Clause by taking away coaching responsibilities from a lesbian teacher because of her sexual orientation.

Although the civil rights battle is far from over, these recent developments suggest that the U.S. Constitution and federal courts may yet provide gay, lesbian, bisexual, and transgendered education employees with protection from egregious job discrimination. [7]

## Questions and Answers

### **Q. What job protections are available if my employer discriminates against me because of my sexual orientation/gender identification?**

A. As discussed in the overview, the U.S. Constitution, specifically the Equal Protection Clause, may provide you with legal protection. However, you should contact your UniServ representative to assess your particular situation. Other sources of job protection may include:

- Nondiscrimination Clause in the Collective Bargaining Agreement. Many collective bargaining agreements contain a nondiscrimination clause prohibiting the employer from discriminating on the basis of sexual orientation/gender identification, as well as race, gender, and the like. Such provisions are

generally enforceable through the grievance/ arbitration process.

- “Just Cause” Provision in the Collective Bargaining Agreement. Most collective bargaining agreements prohibit discipline or discharge except for “just cause.” This protection should prohibit an employer from punishing an employee solely because of his or her sexual orientation/gender identification. In fact, a Pennsylvania arbitrator in 1994 relied on a “just cause” provision to overturn a school district’s decision to fire a teacher because he was gay.
- State Tenure or Continuing Contract Law. Even in states where school employees lack bargaining rights, most teachers enjoy the benefits of a tenure or continuing contract law, which prohibits discipline or discharge except for “just cause.” Such a statute should prevent an employer from dismissing or otherwise punishing an employee because of his or her sexual orientation/gender identification.
- School Board Policy. Some school boards have voluntarily adopted policies prohibiting sexual orientation/gender identification discrimination. These policies are generally enforceable in court.
- State or Local Anti-Discrimination Law. As mentioned in the overview, 12 states and the District of Columbia, as well as numerous cities and counties, have enacted laws banning discrimination on the basis of sexual orientation. Citations to these statutory protections can be found on the website for the Lambda Legal Defense and Education Fund at <http://www.lambdalegal.org/cgi-bin/iowa/states/antidiscrimi-map>.
- First Amendment. The First Amendment of the U.S. Constitution protects public employees from retaliation for speaking out about issues of public concern, so long as the employee’s speech is not disruptive to the employer. This would include publicly protesting discrimination or advocating for a change in the law. In 1984, a federal appeals court in *National Gay Task Force v. Board of Education of Oklahoma City* [8] struck down an Oklahoma statute that prohibited teachers from “advocating, encouraging or promoting public homosexual activity.” The court ruled that the statute violated a teacher’s First Amendment right to advocate publicly against discrimination on the basis of sexual orientation.

## **Q. What should I do if my employer discriminates against me because of my sexual orientation/gender identification?**

A. Follow this advice:

- Call your UniServ representative immediately. Your UniServ representative is trained to help you assess the best approach for handling your situation and has access to legal counsel. You are ill-advised to make any decision prior to consultation with your UniServ representative.
- Document the discrimination. Proving a discriminatory motive is often the hardest part of any legal dispute. Keep a written record of incriminating statements, including the dates and names of witnesses. Because such records may be used as evidence, however, be careful not to refer to supervisors or others in pejorative terms.
- Get emotional support. Make sure you have proper emotional support from family and friends. Seek help from a professional if necessary.
- Avoid signing resignation letters, negative evaluations, or written warnings until you have consulted

with your UniServ representative. By signing such documents, you may impair your ability to fight the discrimination.

· If you've been discharged, look for another job. You have a legal obligation to minimize your damages. Keep records of your job search, including a log of telephone contacts and interviews.

### **Q. What should I do if my employer threatens public disclosure of my sexual orientation against my wishes?**

A. Consult your UniServ representative immediately. At least one federal appeals court has ruled that threatened public disclosure of a person's suspected sexual orientation is unlawful. In *Sterling v. Borough of Minersville*, [\[9\]](#) a police officer threatened to disclose the suspected homosexuality of an arrested youth to his family members. The youth subsequently committed suicide, and his family sued the police officer in federal court. The court ruled that the officer's threat to disclose that the youth was gay violated his constitutional right to privacy.

### **Q. What should I do if I'm harassed by my students or coworkers because of my sexual orientation or gender identification?**

A. Treat this harassment like any other form of harassment. With the assistance of your UniServ representative, notify your supervisor and insist that he or she take whatever action is necessary to make the harassment stop. You may be able to file a complaint under the school's anti-harassment policy or file a grievance. The worst thing you can do is remain silent; the employer has no obligation to take remedial action if you do not complain about the harassment. Anti-gay harassment is a form of sexual orientation discrimination. If your employer fails to take prompt and appropriate remedial action, you may be entitled to legal recourse.

### **Q. What legal remedies are available if my employer fails to make the harassment against me stop?**

A. The Equal Protection Clause of the U.S. Constitution may provide you with protection. In addition to the Nabozny decision mentioned in the overview, a federal district court in New York recently ruled that a police department violated the Equal Protection rights of a gay police officer by failing to stop harassment by his coworkers. The case is *Quinn V. Nassau County Police Department*. [\[10\]](#) Other sources of job protection may include:

· Title VII. Although Title VII does not prohibit harassment on the basis of sexual orientation/ gender identification, it does prohibit sexual harassment in the workplace, regardless of the victim's sexual orientation. Thus, if the harassment meets the legal definition of "sexual harassment," i.e., it is conduct of a sexual nature that is unwelcome and severe or pervasive, then it is unlawful under Title VII. Also, the Supreme Court has ruled that same-sex sexual harassment (e.g., male-on-male) can be a Title VII violation. [\[11\]](#)

· Nondiscrimination Clause in the Collective Bargaining Agreement. A comprehensive nondiscrimination clause, as described in the first question, would prohibit an employer from ignoring employee complaints about harassment based on sexual orientation/gender identification in the workplace.

- “Safe Working Conditions” Provision in the Collective Bargaining Agreement. Some collective bargaining agreements contain provisions barring employees from working in “unsafe or hazardous conditions.” Arguably, such a provision would require an employer to stop abuse on the basis of sexual orientation/gender identification because it creates an “unsafe working condition” for the employee.
- School Board Policy. Some school boards have adopted comprehensive anti-harassment policies that prohibit sexual orientation/gender identification harassment, as well as sexual harassment.
- State or Local Anti-Discrimination Law. Harassment based on sexual orientation/gender identification also may be illegal in those jurisdictions where there is a state or local law banning sexual orientation/gender identification discrimination.

### **Q. Do I have the right to “come out” to my students in the classroom?**

A. It is virtually impossible to answer this question in the abstract. On one hand, it is unlikely that you have the right under the First Amendment to make such a statement in the classroom. Your free speech rights are strongest when speaking off-duty about matters of “public concern” and weakest when speaking in the classroom about purely personal matters. In fact, several recent “academic freedom” cases suggest that, when speaking in the classroom, teachers are not speaking as private individuals, but as representatives of the school district, and thus have virtually no free speech rights.

On the other hand, if you are tenured or have “just cause” protection under a collective bargaining agreement, then a strong argument can be made that the act of disclosing your sexual orientation does not constitute just cause for discharge or discipline. In addition, if heterosexual teachers routinely discuss their home life and spouses in class without punishment, it arguably would be discriminatory under the Equal Protection Clause for the school administration to discipline gay, lesbian, or bisexual teachers for sharing similar information with their students. [\[12\]](#)

### **Q. But can I respond honestly if a student asks me directly if am gay?**

A. The answer is the same: it depends on the facts of your particular case. While such a private conversation probably is not protected under the First Amendment (at least if it occurs in the workplace), a tenure law or collective bargaining agreement may preclude discipline. For this reason, if you are considering “coming out” to your students, you should first consult with your UniServ representative and assess what legal protections, if any, are available to you.

### **Q. Working through my local Association, what preventive measures can I take to protect my job before discrimination occurs?**

A. Working through the Association, you can:

- Bargain protections. Make sure your collective bargaining agreement contains the protections outlined in this pamphlet, i.e., a nondiscrimination clause that covers sexual orientation/gender identification, a just cause provision, and/or a safe working conditions provision.
- Work with your school board to adopt a nondiscrimination policy. In non-bargaining states, encourage your school board to adopt a policy that prohibits sexual orientation/gender identification discrimination and harassment and provides a grievance procedure for resolving complaints.

- Be politically active. Lobby Congress, your state legislature, and your city or county council to enact statutory protections against this form of employment discrimination.
- Keep a clean record. Because petty problems attributed to the employee's job performance can be used by a school district as a pretext for discrimination, try to keep your employment record clean.
- Build community coalitions. Working with other local organizations is one way to achieve the goal of a nondiscriminatory workplace.

## Notes

1. According to studies, "nearly one-third of all gay men surveyed report being discriminated against in some form on the job, and 17 percent report having lost or having been denied employment because they were gay. Similarly, nearly one quarter of lesbians surveyed report that they have been discriminated against in the workforce." See Lambda Legal Defense and Education Fund, *Sexual Orientation Discrimination in Employment: A Guide to Remedies* (March 2, 1998), at p.5.
2. See Lambda Legal Defense and Education Fund, *Map of States, Cities, and Counties Which Prohibit Sexual Orientation Discrimination*, posted on the Internet at <http://www.lambdalegal.org/cgi-bin/iowa/states/antidiscrimi-map>.
3. *Romer v. Evans*, 517 U.S. 620, 634 (1996). The *Romer* decision is also posted on the Internet at <http://supct.law.cornell.edu/supct/html/94-1039.ZO.html>
- 4 *Nabozny v. Podlesny*, 92 E3d 446 (7th Cir. 1996). The *Nabozny* decision is also posted on the Internet at <http://www.kentlaw.edu/7circuit/1996/jul/95-3634.html>.
5. *Glover v. Williamsburg Local School District*, 20 E Supp.2d 1160 (S.D. Ohio 1998).
6. *Weaver v. Nebo School District*, 29 F. Supp.2d 1279 (D. Utah 1998). The *Weaver* decision is also posted on the Internet at <http://www.acluutah.org/weaverdecision.htm>.
7. See also *Stemler v. City of Florence*, 126 F.3d 856 (6th Cir. 1997) (selective prosecution for DUI on basis of sexual orientation violates Equal Protection Clause); *Zavatsky v. Anderson*, 130 F. Supp.2d 349 (D. Conn. 2001)(discrimination on basis of sexual orientation (denial of child visitation) violates Equal Protection Clause; individual defendants not entitled to qualified immunity).
8. *National Gay Task Force v. Board of Education of City of Oklahoma City*, 729 E2d 1270 (10th Cir. 1984), aff'd by equally divided court, 470 U.S. 903(1985).
9. *Sterling v. Borough of Minersville*, 232 F.3d 190 (3d Cir. 2000). The *Sterling* decision is also posted on the Internet at <http://www.ca3.uscourts.gov/opinions/991768o.txt>.
10. *Quinn v. Nassau County Police Department*, 53 E Supp.2d 347 (E.D.N.Y. 1999).
11. *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998).
12. *Weaver v. Nebo School District*, 29 E Supp.2d 1279, 1289-90 (D. Utah 1998).