



May 6, 2011

Via Electronic Mail

Kim Tolhurst, Esq., Acting General Counsel
U.S. Commission on Civil Rights
624 Ninth St., N.W.
Washington, D.C. 20001

Dear Commission Members:

It is my privilege to submit on behalf of the Gay, Lesbian and Straight Education Network the following information for consideration by the Commission at its May 13, 2011, hearing on school violence and issues of student harassment and bullying.

I. Introduction

Founded in 1990 by educators, the Gay, Lesbian and Straight Education Network (GLSEN) now is the leading national education organization focused on safe schools for all students. GLSEN envisions a world in which every child learns to respect and accept all people, regardless of sexual orientation, gender identity, or gender expression. Because bullying and harassment, including conduct motivated by homophobia and heterosexism, undermine a healthy school climate, GLSEN's evidence-based work centers on the following:

- Working with education leaders and policymakers regarding the urgent need to address anti-LGBT behavior and bias in our schools through the development of comprehensive and effective safe schools laws and policies.
- Building awareness and capacity of school leaders and teachers, who are working to make their schools safe places to learn with evidence-based programs, including curricula and professional development for school personnel.
- Educating school communities and the public about the damaging effect of bullying and harassment and bias on students and adults, including their impact on school effectiveness.

GLSEN also empowers students with tools to improve school climate, including supporting Gay-Straight Alliance student clubs that represent a coalition of diverse students working together to foster respect on campus, and sponsoring the National Day of Silence, in which hundreds of thousands of students raise awareness about bullying. GLSEN additionally sponsors the national No Name-Calling Week, a program endorsed by organizations such as the National Association of Elementary School Principals, the National Association of School Psychologists, the National Middle Schools Association, and the Girls Scouts of the USA. An organization rooted in schools and working with schools and organizations throughout the country, GLSEN proudly educates K-12 students and schools about the negative impact of bullying and harassment.

For the last 11 years, GLSEN has documented the school experiences of LGBT youth—the prevalence of anti-LGBT language and victimization, the effect that these experiences have on LGBT students' achievement, and the utility of interventions to both lessen the negative effects of a hostile climate and promote a positive educational experience. GLSEN's national research and work confirms what the current national conversation and media headlines indicate: school bullying and harassment is an issue of vital consequence—to the health and safety of our students, to the success of our schools, and ultimately to our nation's economic vitality.

Although our work centers on the plight faced by LGBT youth every day, we also remain attuned to the fact that the issues that we address are not limited to LGBT students. That is why we enthusiastically endorse the letter brief submitted by the National Safe Schools Partnership (NSSP), of which we are a member. NSSP is a coalition of almost 90 national organizations committed to ensuring that America's schools are safe for all children. We proudly join in the positions set forth by the NSSP, reflective of the interests, experience, and expertise of many, including education groups comprised of administrators, teachers, librarians, nurses, psychologists, and counselors.¹

Conversely, in the context of the broad-based prevalence of the incidents of bullying and harassment, the unfortunate truth is that LGBT students are disproportionately targets and victims of such conduct—and its consequences. We very much appreciate the initiative of the United States Commission on Civil Rights to establish as a priority issue bullying, violence, and harassment in K-12 public schools—including bullying, violence, and harassment against LGBT students. This is as it should be, given the indisputable evidence that too many LGBT students in too many schools unnecessarily suffer the harms associated with bullying, harassment, and violence due to their actual or perceived sexual

¹ The letter brief submitted by NSSP describes with strong research foundations the pervasiveness of school bullying and harassment, as well as the consequences and harms associated with such conduct, and advocates for the federal government to make changes in federal law that assure that schools and districts maintain sensible and effective anti-bullying and anti-harassment policies for all students—including the adoption of comprehensive anti-harassment and bullying policies as a condition of federal funding that enumerate some of the bases upon which such conduct is specifically prohibited.

orientation, gender expression, or gender identity. In sum, the issues of bullying and harassment simply cannot be divorced from a focus on and understanding about the plight of LGBT youth.²

II. The Harm to LGBT Youth

Bullying and harassment are severe and pervasive problems in our schools, affecting all students, including lesbian, gay, bisexual, and transgender (LGBT) youth. Indeed, LGBT youth are more likely than their peers to be victims of bullying and harassment because of their sexual orientation, gender identity, or gender expression and, therefore, must be a central part of any conversation about school bullying and harassment.

The prevalence of bullying and harassment of LGBT students is particularly pronounced – confirming that bullying and harassment of LGBT students is central to the school violence problem.³ Schools nationwide often represent hostile environments for a large number of LGBT students, more broadly. After physical appearance, the most common reason cited by students for frequent harassment is sexual orientation, with one-third of teens reporting that students are frequently harassed at school because of their actual or perceived sexual orientation.⁴ Correspondingly, LGBT students are three times as likely as non-LGBT students to feel not safe at school.⁵ Similarly, GLSEN's 2009 National School Climate Survey found that 61.1% of LGBT students felt unsafe at school because of their sexual orientation and 39.9% because of how they expressed their gender.⁶ These perceptions are

² And, as a consequence, there can be little doubt that the comprehensive and inclusive focus by the Commission on issues of bullying and harassment – including issues affecting LGBT students – is justified. The Commission was, in fact, established to address federal legal and policy issues implicating "equal protections of the laws under the Constitution." See Pub. L. No. 85-315 (1957). See also *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996) (holding that school district, school principals, and school assistant principal violated the federal equal protection rights of gay student who was harassed and assaulted at school by discriminating against him on the basis of his gender or sexual orientation). This one case, which resulted in a \$1 million settlement for the student, demonstrates the importance of establishing effective and comprehensive preventive measures to address bullying and harassment issues.

³ See, e.g., Ueno, K. (2005). *Sexual Orientation and Psychological Distress in Adolescence: Examining Interpersonal Stressors and Social Support Processes*, SOCIAL PSYCHOLOGY QUARTERLY, 68(3), 258–277; Bontempo, D. E. & D'Augelli, A. R. (2002). *Effects of At-School Victimization and Sexual Orientation on Lesbian, Gay, or Bisexual Youths' Health Risk Behavior*, J. OF ADOLESCENT HEALTH, 30, 364–374; D'Augelli, A. R., Pilkington, N. W. & Hershberger, S. L. (2002). *Incidence and Mental Health Impact of Sexual Orientation Victimization of Lesbian, Gay, and Bisexual Youths in High School*, SCHOOL PSYCHOLOGY QUARTERLY, 17(2), 148–167.

⁴ Harris Interactive and GLSEN (2005). *From Teasing to Torment: School Climate in America, A Survey of Students and Teachers*.

⁵ *Id.*

⁶ Kosciw, J.G., Greytak, E.A., Diaz, E.M. & Bartkiewicz, M.J. (2010). *The 2009 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools*.

inextricably related to research and data that affirm the underlying problems related to LGBT youth:

- 84.6% were verbally harassed (e.g., name calling, threats) at school because of their sexual orientation (63.7% because of their gender expression);
- 40.1% were physically harassed (e.g., pushed or shoved) at school because of their sexual orientation (63.7% because of their gender expression);
- 18.8% were physically assaulted (e.g., punched, kicked, injured with a weapon) because of their sexual orientation (12.5% because of their gender expression); and
- 52.9% of LGBT students were harassed or threatened by their peers via electronic mediums (e.g., text messages, emails, instant messages, or postings on Internet sites such as Facebook), often known as cyberbullying.⁷

And though LGBT students suffer higher instances of bullying and harassment than the general student population, they are even less likely to report this conduct. 62.4 percent of LGBT students who were harassed or assaulted in school did not report the incident to staff, believing little to no action would be taken or the situation could become worse if reported. Further, 33.8% of students who did report an incident said that school staff did nothing in response.⁸

While bullying and harassment take many forms,⁹ all forms of bullying and harassment result in harm to student victims including consequences for student academic

⁷ *Id.* Other studies confirm that LGB youth experience hostile school environments. See, e.g., Garofolo, R., Cameron Wolf, R., Kessel, S., Palfrey, J. & DuRant, R. H. (1998). *The Association between Health Risk Behaviors and Sexual Orientation among a School-Based Sample of Adolescents*, PEDIATRICS, 101(5), 895-902; D'Augelli, *supra* note 3; Bontempo, *supra* note 3.

⁸ *Id.* See also Dinkes, R., Kemp, J., Baum, K. & Snyder, T. (2009). *Indicators of School Crime and Safety: 2008* (NCES 2009-022/NCJ 226343). Washington, D.C., National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, and Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice (finding that 57% of students who were bullied or harassed at school never reported the incident or incidents to teachers or other school personnel).

⁹ As the NSSP letter brief noted, bullying and harassment can include, often in combination, the following types of conduct: physical harm and the threat of physical harm; purposeful exclusion from activities; destruction of property; verbal taunting and teasing; the spreading of targeted rumors; hate-infused words or graffiti; cyberbullying through the use of electronic mediums; and more. And students may be targeted as victims for numerous reasons, including their appearance, as well as their actual or perceived religious beliefs, race or ethnicity, disability, sexual orientation, and more. Dinkes, *supra* note 8; Harris Interactive, *supra* note 4; Nansel, T. R., Overpeck, M., Pilla, R., Ruan, W., Simons-Morton, B. & Scheidt, P. (2001). *Bullying Behaviors among U.S. Youth: Prevalence and Association with Psychosocial Adjustment*, J. OF THE AMERICAN MEDICAL ASSOCIATION, 285(16), 2094-2100.

achievement and goals, psychological and social-emotional wellbeing, and physical health and safety.¹⁰ As the U.S. Department of Education recently observed, bullying and harassment "foster[] a climate of fear and disrespect that can seriously impair the physical and psychological health of its victims and create conditions that negatively affect learning, thereby undermining the ability of students to achieve their full potential."¹¹ Because LGBT students are more likely to be victims of bullying and harassment, they suffer these consequences acutely. The direct negative impact on students and their families manifests itself in several ways:

- **Reduced academic achievement:** As the NSSP letter brief observes, research and experience confirm that students who experience high levels of bullying and harassment do not perform as well academically. Because they feel uncomfortable or unsafe in school, these students are more likely to exhibit decreased interest in school and lower grade point averages, and to be absent from school and experience lower educational aspirations to pursue postsecondary degrees.¹²

LGBT students experience these academic consequences at significantly heightened levels. Research indicates that they receive grade point averages almost half a grade lower than students less often harassed at school and are less likely to pursue any postsecondary education. Similarly, LGBT students are three times likelier to have missed classes and four times likelier to have missed at least one day of school in the past month because they felt unsafe or uncomfortable at school, as compared to the general population of secondary school students.¹³

- **Harm to psychological and social-emotional health and wellbeing:** Students who are victims of bullying and harassment, including LGBT students, suffer greater levels of depression and anxiety and have lower self-esteem.¹⁴ Bullying and harassment undermines LGBT students' sense of belonging and connectedness to their school community.¹⁵ Additionally, long-term effects include violent and antisocial behavior.¹⁶ These psychological and social-emotional health and

¹⁰ See, e.g., American Association of University Women (2001). *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*.

¹¹ U.S. Dept. of Educ., Office for Civil Rights (Oct. 26, 2010). *Dear Colleague Letter*.

¹² See, e.g., Kosciw, *supra* note 7.

¹³ *Id.*

¹⁴ American Association of University Women, *supra* note 11.

¹⁵ Kosciw, *supra* note 7.

¹⁶ Nansel, *supra* note 10.

wellbeing consequences are inextricably linked to the poor academic outcomes discussed above.

- **Harm to physical health and wellbeing:** In-school victimization is related to increased health risk behaviors, such as substance abuse and suicides.¹⁷

The picture of harm is not limited to student surveys or research reports. In countless examples, the reality of the experience of being bullied and harassed—and its consequences—is all too vivid. For instance:

- **Joey Kemmerling** of Haddon Heights, New Jersey, had to move to New Jersey to attend high school after experiencing harassment at his previous two Pennsylvania high schools. Joey was been threatened by a student with a knife and harassed on a daily basis. "You wake up in the morning and you just think, 'I have to go face them again. I have to spend another eight hours in that prison.'"
- **Cassandra Morris** of West Branch, Michigan, dropped out of school after being bullied relentlessly. One such incident involved a boy, in front of a teacher, telling Cassie she should "just off yourself now and save your friends and family the embarrassment." Cassie endured anti-gay and sexually explicit slurs on a daily basis and was physically assaulted in a hallway.
- **Loan Tran** of Charlotte, North Carolina, was bullied when she got on the bus for the first day of high school, hearing people question whether she was a girl or boy and calling her "dyke." This bullying continued throughout her high school years.
- **Preston Whitt** of Decatur, Alabama, experienced harassment long before he identified as gay, being forced by a physical education teacher to be the "queer" in a game the coach called "Smear the Queer." Bullying got so bad that Whitt trained himself to go the entire school day without using the bathroom at school out of fear.
- **Lawrence King** of Oxnard, California, was shot and killed in class in 2008 by a fellow student because of King's sexual orientation and gender expression. King was 15 years old. His alleged murderer was 14.

These harrowing examples, amplified by the research described above, confirm the wisdom of the Commission's identification of school violence against LGBT students as a very real and consequential issue worthy of the federal government's attention and action.

¹⁷ Bontempo and D'Augelli, *supra* note 3.

III. The Need for Greater Protection in Federal Law and Policy

Like the NSSP, GLSEN is particularly cognizant of the limited protections for student victims of bullying and harassment under current federal law—with particular attention to the gaps in federal law that limit protections for LGBT students. For example, current federal law establishes clear prohibitions against student harassment in schools based on the race, ethnicity, sex, and disability of the targeted student, but that kind of protection does not extend fully to LGBT students.¹⁸ Therefore, GLSEN endorses the federal law and policy recommendations of the NSSP, outlined in the NSSP letter brief, and emphasizes the need for federal legislation that specifically and comprehensively establishes bullying and harassment in schools as actions that will not be countenanced.

A central feature of the proposed Safe Schools Improvement Act (SSIA), supported by almost 90 education, health, youth development and civil rights organizations, is the requirement that sexual orientation and gender identity, along with other personal characteristics often targeted for bullying and harassment, be enumerated in anti-bullying and anti-harassment policies. Enumeration strengthens the effectiveness of federal law, ensures that all students are covered by anti-bullying and anti-harassment policies, and allows flexibility for localities to include additional student characteristics germane to their communities. The relevant provision of the proposed law provides:

Bullying and harassment "includes conduct that is based on –

- (i) a student's actual or perceived –
 - (I) race;
 - (II) color;
 - (III) national origin;
 - (IV) sex;
 - (V) disability;
 - (VI) sexual orientation;
 - (VII) gender identity; or
 - (VIII) religion;
- (ii) any other distinguishing characteristics that may be defined by a State or local educational agency; or
- (iii) association with a person or group with 1 or more of the actual or perceived characteristics listed in clause (i) or (ii).¹⁹

¹⁸ To be sure, LGBT students may be protected by such laws when they are victims of otherwise covered action—such as in cases where sexual harassment occurs, and the victim of that harassment is a gay student. That protection, however, is not the same as protection against anti-gay harassment affecting that student. *See, e.g.,* U.S. Dept. of Educ., *Dear Colleague Letter*, *supra* note 12 ("Although Title IX does not prohibit discrimination based solely on sexual orientation, Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination."); U.S. Dept. of Educ., Office for Civil Rights (Jan. 19, 2001). *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 66 Fed. Reg. 5,512.

¹⁹ H.R. 1648 (Apr. 15, 2011); S. 506 (Mar. 8, 2011).

Research and experience confirm that being very explicit about harmful behavior associated with students based on their backgrounds or characteristics, such as sexual orientation and gender identity, is most effective at preventing bias-based bullying and harassment. All schools have conduct codes, which (under existing federal laws) are required to outline harassment prohibitions when harassment is based upon race, ethnicity, sex and disability. There is no requirement, however, that those policies reflect anti-LGBT bias that leads to harm—whether by bullying or harassment. Thus, the proposed federal legislation would address this gap.²⁰

Research consistently shows that in states with comprehensive laws and in schools with enumerated policies, including those that acknowledge sexual orientation and/or gender identity or expression, students experience less bullying, feel safer overall, and are less likely to skip classes because they feel uncomfortable or unsafe. Among LGBT students who have been harassed or assaulted at school, those in schools with an enumerated policy were more likely to tell school personnel about the events than LGBT students in schools with a generic policy or no policy at all. Further, teachers are more likely to intervene to address and prevent incidents of bullying in schools with enumerated policies, perhaps because they can point to language that provides clear protection for students.²¹ And students in schools with comprehensive bullying and harassment policies felt a greater sense of connectedness and belonging in their school communities.²² Similarly, LGBT students in states with comprehensive laws report safer school climates, with fewer homophobic remarks, negative remarks about gender expression, and victimization.²³

IV. Conclusion

School should be a safe place, conducive to academic exploration and achievement for all students. If we allow barriers to stand in the way, then we as an education community will have failed. One way that we can work to avoid that failure is through the promotion of effective, common sense solutions to preventable problems. The Safe Schools Improvement Act—with its specificity about the kind of conduct in schools that should never be tolerated—is one such step.

²⁰ Roughly half of school harassment policies do not mention sexual orientation or gender identity. See Harris Interactive, *supra* note 4.

²¹ See *id.*; Kosciw, *supra* note 7. See also Kosciw, J.G., Diaz, E.M., & Greytak, E.A. (2008). *The 2007 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools*.

²² Diaz, E.M., Kosciw, J.G. & Greytak, E.A. (2010). *School Connectedness for Lesbian, Gay, Bisexual, and Transgender Youth: In-School Victimization and Institutional Supports*, THE PREVENTION RESEARCHER, 17(3), 15-17.

²³ Seventeen states and the District of Columbia have education laws explicitly providing protection related to sexual orientation and/or gender identity.

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GLSEN applauds the efforts of the United States Commission on Civil Rights to study, analyze, and consider our position, as well as that of the NSSP, in an effort to make the school experiences of our nation's LGBT youth more enriching and rewarding.

GLSEN would welcome the Commission's endorsement of the Safe Schools Improvement Act as one important step toward achievement of those goals. In addition, GLSEN requests that the materials included in Attachment One be made part of the Commission's record in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Eliza Byard". The signature is fluid and cursive, with the first name "Eliza" written in a larger, more prominent script than the last name "Byard".

Eliza Byard
Executive Director
Gay, Lesbian and Straight Education Network

Attachment One

GLSEN requests that the following materials be made part of the Commission's record:

1. American Association of University Women (2001). *Hostile Hallways: Bullying, Teasing, and Sexual Harassment in School*, accessible at <http://www.aauw.org/learn/research/upload/hostilehallways.pdf> (last accessed on May 5, 2011).
2. Bontempo, D. E. & D'Augelli, A. R. (2002). *Effects of At-School Victimization and Sexual Orientation on Lesbian, Gay, or Bisexual Youths' Health Risk Behavior*. *J. OF ADOLESCENT HEALTH*, 30, 364-374, accessible at <http://www.jahonline.org/article/S1054-139X%2808%2900102-X/abstract> (last accessed on May 5, 2011).
3. D'Augelli, A. R., Pilkington, N. W. & Hershberger, S. L. (2002). *Incidence and Mental Health Impact of Sexual Orientation Victimization of Lesbian, Gay, and Bisexual Youths in High School*, *SCHOOL PSYCHOLOGY QUARTERLY*, 17(2), 148-167, accessible at <http://psycnet.apa.org/journals/spq/17/2/148.html> (last accessed on May 5, 2011).
4. Diaz, E.M., Kosciw, J.G. & Greytak, E.A. (2010). *School Connectedness for Lesbian, Gay, Bisexual, and Transgender Youth: In-School Victimization and Institutional Supports*, *THE PREVENTION RESEARCHER*, 17(3), 15-17, accessible at http://www.tpronline.org/article.cfm/School_Connectedness_for_LGBT_Youth (last accessed on May 5, 2011).
5. Dinkes, R., Kemp, J., Baum, K. & Snyder, T. (2009). *Indicators of School Crime and Safety: 2008* (NCES 2009-022/NCJ 226343). Washington, D.C., National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, and Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, accessible at www.eric.ed.gov/ERICWebPortal/recordDetail?accno=ED504994 (last accessed on May 5, 2011).
6. Garofolo, R., Cameron Wolf, R., Kessel, S., Palfrey, J. & DuRant, R. H. (1998). *The Association between Health Risk Behaviors and Sexual Orientation among a School-Based Sample of Adolescents*, *PEDIATRICS*, 101(5), 895-902, available at <http://pediatrics.aappublications.org/cgi/content/abstract/101/5/895> (last accessed on May 6, 2011).
7. Harris Interactive and GLSEN (2005). *From Teasing to Torment: School Climate in America, A Survey of Students and Teachers*, accessible at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/499-1.pdf (last accessed on May 5, 2011).
8. Kosciw, J.G., Diaz, E.M. & Greytak, E.A. (2008). *2007 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools*, accessible at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1290-1.pdf (last accessed May, 5 2011).
9. Kosciw, J.G., Greytak, E.A., Diaz, E.M. & Bartkiewicz, M.J. (2010). *2009 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools*, accessible at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1675-1.pdf (last accessed on May 5, 2011).
10. Nansel, T. R., Overpeck, M., Pilla, R., Ruan, W., Simons-Morton, B. & Scheidt, P. (2001). *Bullying Behaviors among U.S. Youth: Prevalence and Association with Psychosocial Adjustment*, *J. OF THE*

AMERICAN MEDICAL ASSOCIATION, 285(16), 2094-2100, accessible at <http://jama.ama-assn.org/content/285/16/2094.full.pdf> (last accessed on May 5, 2011).

11. U.S. Dept. of Educ., Office for Civil Rights (Oct. 26, 2010). *Dear Colleague Letter*, accessible at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (last accessed on May 5, 2011).
12. U.S. Dept. of Educ., Office for Civil Rights (Jan. 19, 2001). *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, 66 Fed. Reg. 5,512, accessible at <http://www2.ed.gov/offices/OCR/archives/pdf/shguide.pdf> (last accessed on May 5, 2011).
13. Ueno, K. (2005). *Sexual Orientation and Psychological Distress in Adolescence: Examining Interpersonal Stressors and Social Support Processes*, SOCIAL PSYCHOLOGY QUARTERLY, 68(3), 258–277, accessible at <http://spq.sagepub.com/content/68/3/258.full.pdf> (last accessed on May 5, 2011).