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Jennifer Levi
Western New England University School of Law, jlevi@law.wne.edu

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BULLYING AND THE LAWS PERTAINING TO IT

BY JENNIFER LEVI
I am a civil rights attorney doing work at GLBTQ Legal Advocates & Defenders (GLAD), whose work has focused on transgender legal concerns for nearly 20 years. My inspiration for doing this work has been both my personal journey connected to my transgender and lesbian identities but also the history I experienced as a junior high school student witnessing the pitched battle waged to repeal the Miami-Dade Gay Rights Ordinance. In 1977 the so-called Save Our Children campaign was created to reverse one of the country’s first gay rights ordinances, a local law that prohibited discrimination on the basis of sexual orientation in areas of housing, employment, and public accommodation.

The memory I have associated with the Miami-Dade ordinance is of my typing teacher making reference to the Save Our Children campaign and saying something about the immorality of gay people. The rest of the class responded by laughing or saying disrespectful things about gay people. The ordinance, one of the first in the country to establish legal protections for gay people, was repealed by special election with a margin of nearly 70-30 in favor of repeal. Although the ordinance had nothing expressly to do with schools, the campaign was centrally focused on children and teachers. The message of the campaign and the vote was clear—gay was not good, to say the least.

In schools, the effect of the public debate was devastating. There were a few teachers in my school rumored to be gay, all of whom legitimately feared for their jobs if their sexuality was publicly disclosed. Florida had been a state in which there was a systematic effort to interrogate gay teachers and revoke their professional credentials. As a result, there was no ability to have any kind of reasoned public discussion, at least not within schools, about the public anti-gay campaign. The message to teachers and administrators who might stand in opposition to the anti-gay public statements being made by the Save Our Children campaign was that to speak out was to risk job security.

The climate of anti-gay sentiment and fear fostered for school teachers, administrators, and staff made it unsurprisingly difficult or impossible for lesbian, gay, bisexual, and transgender (LGBT) students to come out or seek any kind of support within school communities. So while in the 1970s the climate for students was of silence or invisibility, that climate eventually morphed into one of overt hostility toward LGBT students across most student populations in the country.

ANTI-LGBT BULLYING TODAY

Contemporary data shows dramatically high rates of hostility toward LGBT students, including negative climate and bullying. The bullying statistics in turn show alarming negative mental and physical health outcomes for LGBT youth. Anti-LGBT harassment is ubiquitous in schools. A 1998 survey showed that students reported hearing derogatory terms including “fag,” “sissy,” or “homo” nearly two dozen times per day. The Gay, Lesbian & Straight Education Network (GLSEN) 2013 National School Climate Survey (tinyurl.com/gpjckvz) showed that 75 percent of LGBT students heard the word “gay” used negatively frequently or often while 65 percent heard other homophobic language frequently or often.

The same survey documented high incidents of verbal, physical, and electronic harassment. Some 70 percent of LGBT students reported experiencing verbal harassment in the past year because of their sexual orientation; 36 percent reported physical harassment (including pushing or shoving), and another 16 percent reported physical
assault in the form of being punched, kicked, or injured with a weapon; 50 percent reported some form of electronic harassment (including online posting or text messaging).

Transgender students’ experience of bullying and harassment is particularly acute. In 2011 the National Transgender Discrimination Survey (tinyurl.com/mlh9gqah) found that 78 percent of people who expressed gender non-conformity or a transgender identity in grades K–12 experienced harassment at school, 35 percent experienced physical assault, and 12 percent experienced sexual assault; 35 percent of students experienced harassment at the hands of teachers or staff. GLSEN’s 2013 National School Climate Survey found that 75 percent of transgender students feel unsafe at school.

Students who are bullied are significantly more likely to have negative educational outcomes, including diminished school attendance and poor academic records. Bullying literally forces students out; according to the GLSEN survey, LGBT students who experienced victimization also have negative physical and mental health outcomes, including higher levels of depression and lower levels of self-esteem. According to the Human Rights Campaign’s 2013 report “Growing Up LGBT in America” (tinyurl.com/qdv9oal), LGBT youth are twice as likely to experiment with alcohol and drugs. A study published in the June 2014 issue of American Journal of Public Health (tinyurl.com/gqz3bhg) found that almost 23 percent of sexual minority youth had attempted suicide in the prior year, three times greater than their heterosexual counterparts. Further, when considering only serious suicide attempts, defined as attempts that resulted in injury requiring treatment by a medical professional, over 8 percent of sexual minority youth had made a serious suicide attempt in the prior year, four times that of heterosexual youth.

According to GLSEN’s 2013 National School Climate Survey, experiencing mistreatment at school is strongly correlated with lower income levels, incarceration, substance abuse, work in the underground economy, and homelessness. More than half of openly transgender or gender-nonconforming transgender people who were mistreated at school because of their gender identity or gender nonconformity reported having attempted suicide at least once. Further analysis of the National Transgender Discrimination Survey data (tinyurl.com/mxnamkh) reveals that 45 percent of young transgender people attempt suicide after high school, between ages 18 and 24, placing that age group at the highest risk.

In addition to documenting the experiences of student bullying, the GLSEN survey also revealed clear, obvious, and readily available ways to diminish bullying and negative educational outcomes for LGBT students. LGBT students in schools with LGBT-inclusive curriculum were less likely to hear homophobic language or negative remarks about gender expression and more likely to report that their classmates were somewhat or very accepting of LGBT people. LGBT students with many supportive staff at their school (11 or more) were less likely to feel unsafe and had higher GPAs. Students who saw a Safe Space sticker or poster in their school were better able to identify staff who were supportive of LGBT students and more likely to feel comfortable talking with school staff about LGBT issues. LGBT students with a gay-straight alliance (GSA)—student groups that provide supportive programming and social and academic programming for students—were less likely to feel unsafe in school and less likely to experience victimization than LGBT students in schools without a GSA. Finally, the survey showed that students in schools with comprehensive policies were less likely to hear homophobic remarks or negative remarks about gender expression, and staff were more likely to intervene when hearing such remarks. Ultimately, the survey showed that all of these interventions led to LGBT students feeling more connected to their school community.

ANTI-LGBT BULLYING AND THE LAW

The U.S. Department of Education (USDOE) has been focused on addressing bullying concerns in schools, including bullying against LGBT students. In 2010 the Office of Civil Rights of the USDOE sent a “dear colleague” letter to all schools highlighting the fact that student misconduct can give rise to school liability under federal laws (including under Title IX of the Education Amendments of 1972) that prohibit discrimination in schools on the basis of sex.

That letter also included as an example of unlawful harassment a case in which a student who identified as gay “was called names (including anti-gay slurs and sexual comments) both to his face and on social networking sites,
physically assaulted, threatened, and ridiculed because he did not conform to stereotypical notions of how teenage boys are expected to act and appear (e.g., effeminate mannerisms, nontraditional choice of extracurricular activities, apparel, and personal grooming choices). The case study went on to explain that although the school disciplined the offending students, its doing so failed to address the overall climate of harassment faced by the student. The letter explained that the fact that Title IX does not include “sexual orientation” as a prohibited basis of discrimination does not mean that the law does not cover sex-based harassment of the like described when experienced by a gay student. The 2010 USDOE letter was a critical step in changing the school climate nationwide for LGBT students.

Several times since, the USDOE has issued increasingly clear guidance to schools both with regard to their obligations to support student efforts to create GSAs and with regard to their affirmative obligations to report and respond to incidents of anti-LGBT bullying.

In 2011 the USDOE Office for Civil Rights released a “dear colleague” letter informing all schools that sexual harassment of students, including acts of sexual violence, is a form of sex discrimination prohibited by Title IX. It emphasized that “[i]f a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.” A harassed student, his or her parent, or a third party may file a complaint under the school’s grievance procedures or otherwise request action on the student’s behalf under Title IX.

In 2011 the USDOE issued “Questions and Answers on Title IX and Sexual Violence” stating that “Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity[,]” and schools have an affirmative obligation to “investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards [they use] in all complaints involving sexual violence.” It also emphasized that GSAs and similar student-initiated groups can play an important role in creating safer school climates for LGBT students. Also in 2011 the USDOE issued a “dear colleague” letter identifying harassment and bullying of LGBT students as a serious problem in schools. It noted the positive effects of GSAs and announced the issuance of a set of legal guidelines by the USDOE General Counsel that affirmed schools’ legal obligation to prevent unlawful discrimination against any student-initiated groups.

In 2015 the USDOE released the “Title IX Resource Guide,” which reiterated that gender-based harassment is prohibited by Title IX and that Title IX permits claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.

Notwithstanding the clear school liability for failure to properly address anti-LGBT harassment faced by students, anti-LGBT school climates persist. There are reasons, however, for some hope and optimism about the future. Bullying figures had long persisted in the 30 percent range in schools, but data from 2015 show the first statistically significant decreases—some reduced to just over 22 percent (still high, to be sure). In Massachusetts, rates of bullying have similarly declined for all students, including lesbian, gay, and bisexual students, over the past decade. According to Jeff Perrotti, founding director of the Massachusetts Safe Schools Program, “unfortunately, a disparity still remains, and lesbian, gay, and bisexual students remain more than twice as likely as their heterosexual peers to be bullied. And while we don’t have trend data for transgender students, recent static data focused on transgender students is alarming.”

The lessons derived from the bullying and school climate surveys along with USDOE guidance and experience is clear. Several critical steps are essential to change the experience of LGBT students in school. These include:

1. All schools must adopt and consistently enforce clear, inclusive, comprehensive policies against anti-LGBT bullying.
2. Schools must strive for an environment that fosters and encourages teachers, staff, and administrators to be proactive in responding to anti-LGBT statements and conduct and not rely on student reporting.
3. Schools must act swiftly and aggressively to respond to reported incidents of bullying.
4. Schools are strongly encouraged to adopt a curriculum that highlights the experiences of targeted minorities including lesbian, gay, bisexual, and transgender people.
5. Any student who is experiencing bullying should take notes of dates and general descriptions of the experience and report each incident as soon as possible to a supportive school administrator or teacher.
6. Parents of a student who is experiencing bullying should report incidents of bullying to a school administrator or teacher and work assertively with the school to implement a plan to eradicate the bullying but also to create or deepen an LGBT-supportive school climate.

Jennifer Levi (jlevi@glad.org) is the director of the Transgender Rights Project at GLBTQ Legal Advocates & Defenders (GLAD), a professor of law at Western New England University in Springfield, Massachusetts, and a nationally recognized expert on transgender legal issues.