



ADVOCATING FOR OUR COMMUNITIES

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April 27, 2011

Kimberly Tolhurst, Esq.
Acting General Counsel
U.S. Commission on Civil Rights
624 9th Street NW, 6th Fl.
Washington, DC 20001

Re: Peer Violence Against Transgender and Gender Nonconforming Students

Dear Ms. Tolhurst,

The Transgender Law Center submits these comments on peer violence against transgender and gender nonconforming youth in schools. The Transgender Law Center is a transgender legal organization advocating for improvements in our legal system that allow us to all safely be who we are. We exist because the discrimination that transgender and gender nonconforming people face is life threatening, and it affects our physical and economic security by denying us opportunities in everything from basic health care to gainful employment. We are fortunate to work primarily in California, a state with some of the strongest transgender-specific antidiscrimination laws in the U.S., including protections in the areas of housing, employment, education, insurance, and public accommodations. In our experience, however, there is a gap between the promise of the law and the lived reality of transgender people's lives. Nowhere is this more evident than in our nation's public and charter schools, where despite strong antidiscrimination and anti-bullying laws, transgender and gender nonconforming youth experience persistent discrimination, harassment, and bullying. As a result, it is imperative that the federal government take steps to protect the civil rights of vulnerable transgender and gender nonconforming youth.

Background on transgender and gender nonconforming youth

The term "gender identity" refers to a person's deeply rooted sense of their gender – whether they feel male or female. Often, a person expresses their gender identity through social cues such as the way they dress or style their hair, or through their mannerisms and choice of name. External characteristics and behaviors that are perceived as masculine or feminine are collectively referred to as a person's "gender expression." A transgender person is someone whose gender identity and/or gender expression is different than the sex they were assigned at birth. It is important to realize that everyone has a gender identity and gender expression – not just transgender people. Having a transgender identity is not the same thing as being lesbian or gay. Lesbianism and gayness refer to a person's sexual orientation – who they are physically and emotionally attracted to and love – while gender identity refers to a person's innate sense of maleness and femaleness.

Young people often have a very firm sense of their gender identity. Many know from an early age that they do not identify as the sex they were assigned at birth. For example, a youth who is assigned “male” by a physician at birth may very early in life realize that they feel female, and express a feminine gender identity. Such a youth would be a “transgender girl.” However, some young people are less certain of their gender identity. These young people may feel male in some ways, and female in others ways. Practically speaking, these are “gender nonconforming” youth because something about their gender identity or expression does not conform to stereotypes about what is appropriate behavior for their birth gender. School environments, with their heightened attention to sports, dating, and socializing, can be frustrating, uncomfortable, and even dangerous for many transgender and gender nonconforming young people.

Peer Violence Against Transgender and Gender Nonconforming Youth in Schools

Studies indicate that the actions of bullies are designed to “reinforce expected cultural norms for boys and girls and punish students who don’t fit the ideals of traditional gender roles.”¹ Nationally, research shows that transgender students face unsafe school environments to a greater extent even than lesbian, gay, and bisexual students. A survey by the Gay, Lesbian, and Straight Education Network (GLSEN) found that nearly all transgender students experienced verbal harassment at school, more than half experienced physical harassment, and more than a quarter experienced physical assaults because of their sexual orientation and gender expression.² A similar study of transgender and gender nonconforming youth in Western states showed that physical violence in their lives was common place: students described being “pushed around” regularly, as well as “getting the crap beat out of them” and “getting their asses kicked” by other students. Verbal harassment, teasing, and peer rejection were also common.³

In California, research by the California Safe Schools Coalition shows that students who identify as transgender report the most harassment at school, including repeated harassment. Additionally, transgender students reported that they “sometimes” or “often” heard students making negative comments based on their gender nonconformity. And sadly, transgender students were more likely to have heard a teacher or staff member make a negative comment than to have heard a teacher stop another student from making negative comments.⁴ These findings are particularly disappointing given that California has strong education antidiscrimination laws, including the California Student Safety and Violence Prevention Act of 2000 which added actual or perceived gender identity or expression to existing

¹ Higdon, M.J. (2010). *To Lynch a Child: Bullying and Gender Non-conformity in our Nation’s Schools*. University of Tennessee College of Law. Attached as Exhibit A.

² 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*. New York: GLSEN. Executive Summary attached as Exhibit B.

³ McGuire, J.K., Russell, S.T., Anderson, C. (2007). *Assessment of Resources and Needs for Transgender Identified Adolescents within the Context of Sexual Minority Focused Community Centers*. Society for the Psychological Study of Social Issues: Internship Award Report.

⁴ California Safe Schools Coalition, *Research Brief 12: Gender Non-Conformity and School Safety: Documenting the Problem and Steps Schools Can Take*. Attached as Exhibit C and available online at: http://www.casafeschools.org/CSSC_Research_Brief_12.pdf

antidiscrimination protections for publicly-funded schools, and the California Student Civil Rights Act, which created uniform nondiscrimination standards in the Education Code.

The consequences of such widespread bullying and harassment are serious and may be long-lasting. A study by the California Safe Schools coalition found that “the damage to the victims of bullying may be physical, emotional, and psychological and the resulting trauma can last a lifetime.”⁵ A similar study found that students who had been harassed at their school because of their gender were twice as likely as their classmates to report having carried a gun to school or to report having tried to commit suicide.⁶ Not surprisingly, students who feel bullied or targeted at school because of their gender identity feel unsafe, and are more likely to miss school or have academic challenges. A 2001 survey on this topic found that more than 100,000 absences in California schools each year are due to harassment based on actual or perceived sexual orientation, costing California school districts almost \$40 million each year.⁷

Effect of Peer Violence Against Transgender and Gender Nonconforming Youth

The Transgender Law Center frequently receives requests for assistance from transgender and gender nonconforming youth and their parents. A particularly devastating incident involved a transgender male youth who had been “outed” to his classmates by a student aid who discovered the youth’s birth gender in a school record, took a picture of it with her phone, and sent it to her and the youth’s classmates. Within hours, the youth’s high school experience was irreparably damaged: students asked him if it was “true that he was a girl,” asked him questions about his genitals, pushed and shoved him into lockers, and sent him threatening and harassing text messages for “lying” to them about who he “really was.” In another incident, we were contacted by the parents of a 10 year old gender nonconforming youth who was bullied on a school camping trip. The other boys in the youth’s cabin taunted, bullied, and ostracized him for his female mannerisms. The youth’s parents could not intervene because they didn’t know about his experience until the camp was almost over, when a counselor called to apologize for the severe teasing the youth was experiencing and to express hope that the issue was resolved after he had been moved to another cabin.

In both these cases, the parents were stymied as they tried to seek explanations and apologies from their local school districts. In the first case, the school disciplined the student aid for violating the youth’s privacy and pledged to make policy changes to safeguard transgender students’ rights generally. But the district saw it as an isolated incident of the student aid’s “bad judgment” and refused to adopt comprehensive recommendations put forth by the California Safe Schools Coalition out of fear that such policies “go too far.” In the second instance, after the school was unresponsive to the parents’ requests for a thorough investigation, the parents filed a complaint with the U.S. Department of Education Office of Civil Rights. The existence of such egregious complaints and such inadequate responses from school districts, given

⁵ California Safe Schools Coalition, *Anti-Gay Bullying: What’s the Big Deal?* Attached as Exhibit D and available online at: http://www.safeschoolscoalition.org/Anti-GayBullying_Whats-theBigDeal.pdf

⁶ California Safe Schools Coalition, *Safe Schools Research Brief 2: Harassment Based Upon Sexual Orientation and its Consequences*. Attached as Exhibit E and available online at: http://www.casafeschools.org/CSSC_Research_Brief_2.pdf

⁷ California Safe Schools Coalition, *Safe Schools Research Brief 5: The Economic Cost of Bullying at School*. Attached as Exhibit E and available online at: <http://www.casafeschools.org/FactSheet5rev2.pdf>

California's strong antidiscrimination law, speaks to the need for increased federal attention to the civil rights of transgender and gender nonconforming youth.

Conclusion

There have been numerous well-publicized suicides in the past few years of transgender and gender nonconforming youth who experienced pervasive bullying and harassment at school. The Transgender Law Center is saddened by these premature passings, and acutely aware that every life cut short is devastating loss for both a family and our community. We believe that the presence of strong antidiscrimination laws alone, however, does not serve as sufficient deterrent to bullying and harassment. Because youth are often not able to advocate for themselves, and because parents are often at a disadvantage when dealing with school districts, existing state remedies (in states that have them) such as making a complaint and requesting an investigation from a school are not practical.

As a result, we strongly commend the U.S. Commission on Civil Rights for addressing peer violence against transgender and gender nonconforming youth on a federal level. In order to reduce peer violence, our country needs a culture of respect for all young people. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Masen Davis".

Masen Davis
Executive Director
Transgender Law Center

List of Attached Exhibits

- A. Higdon, M.J. (2010). *To Lynch a Child: Bullying and Gender Non-conformity in our Nation's Schools*. University of Tennessee College of Law.
- B. 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*. New York: GLESN. (Executive Summary.)
- C. California Safe Schools Coalition, *Research Brief 12: Gender Non-Conformity and School Safety: Documenting the Problem and Steps Schools Can Take*.
- D. California Safe Schools Coalition, *Anti-Gay Bullying: What's the Big Deal?*
- E. California Safe Schools Coalition, *Safe Schools Research Brief 2: Harassment Based Upon Sexual Orientation and its Consequences*.
- F. California Safe Schools Coalition, *Safe Schools Research Brief 5: The Economic Cost of Bullying at School*.