

Congress of the United States
Washington, DC 20515

May 4, 2011

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To Whom it May Concern:

We write to draw your attention to the much needed federal response to the discrimination and harassment issue facing our nation's lesbian, gay, bisexual and transgender (LGBT) students. We would also like to commend the U.S. Commission on Civil Rights for holding this hearing and at long last acknowledging the specific and unique problems that face the LGBT student population. We consider this to be a civil rights matter of great importance requiring an urgent, cooperative response from the federal government.

Last year nearly 90 percent of LGBT high school students reported being harassed. More than two-thirds said that they feared for their safety, causing them to be more than three times as likely to miss classes.¹ Earlier this year, in Corpus Christi, Texas, school administrators originally denied a student-organized Gay-Straight Alliance (GSA) for its supposedly controversial nature, even though such clubs are protected under the federal Equal Access Act.² Constance McMillan from Itawamba County, Mississippi, had her school district take active steps to deceive and exclude her from her high school prom simply because she wanted to attend with her girlfriend to the point of organizing what amounted to a decoy prom.³ In Flagler County, Florida, a teacher publicly derided a student for his perceived sexual orientation,

¹ Gay, Lesbian and Straight Education Network, *The 2009 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in Our Nation's Schools*, 22, 26, 47, http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1675-1.pdf.

² American Civil Liberties Union of Texas, News Release: ACLU Demands Flour Bluff High School Allow Gay Straight Alliance, March 2, 2011, <http://www.aclutx.org/2011/03/02/flourbluffgsa/>.

³ *McMillen v. Itawamba County School District, et al.*, (2010) Northern District of Mississippi, Eastern Division, Civil action NO. 1:10-CV-0061-D-D.

encouraging laughter from fellow students.⁴ These cases demonstrate a failure of those in charge of our schools to commit fully to serving all of our children's educational needs.

A failure to properly enact and enforce non-discrimination policies has led to far worse than humiliation and isolation. Clinical studies have shown that peer aggression can lead to increased psychological problems,⁵ a higher likelihood of students carrying weapons,⁶ intentionally hurting animals as well as other people⁷ and thoughts of suicide.⁸ The suicides of Seth Walsh from California, Zach Harrington from Oklahoma and Asher Brown from Texas are a part of a growing list of tragedies triggered by a failure of schools to seriously address anti-LGBT discrimination and harassment. These students found themselves in unsafe, unwelcoming environments and were open targets for abuse.

Discrimination and harassment in our schools is not a new issue, nor is it one that promises to go away without intervention. As you are aware, the Department of Education (ED) has a strong track record in encouraging an educational environment that allows our students to receive a high quality education free from discrimination.⁹ Notably, the Office of Safe and Drug Free Schools (OSDFS) and the Office for Civil Rights (OCR), have been effective in using the tools at their disposal to foster safe school environments and prevent civil rights violations against students. However, current law does not explicitly empower the OCR to protect the rights of LGBT students. While Title IX of the Education Amendments of 1972 does afford protections against sex and gender-based discrimination, including harassment, the Congress must empower the OCR to do more to properly protect LGBT students by passing explicit statutory protections on the basis of sexual orientation and gender. Such a step would serve to fill a glaring existing gap in our federal civil rights laws that leave one of the most vulnerable students populations without the protections they need.

To end this unacceptable state of affairs, we introduced the Student Non-Discrimination Act (SNDA) in the 111th Congress, and again earlier this year in the 112th. This legislation would establish a comprehensive federal prohibition of discrimination, including harassment, in public K-12 schools based on actual or perceived sexual orientation or gender identity. It would provide protections for LGBT students and ensure that all students have access to a public

⁴ American Civil Liberties Union of Florida Press Release, March 17, 2011, http://www.aclufl.org/news_events/?action=viewRelease&emailAlertID=3902.

⁵ Andrea Schreier et al., *Prospective study of peer victimization in childhood and psychotic symptoms in a nonclinical population at age 12 years*, 66 Arch Gen Psychiatry 527–536 (2009).

⁶ Tonja R. Nansel et al., *Relationships between bullying and violence among US youth*, 157 Arch Pediatr Adolesc Med 348–353 (2003).

⁷ Jorge Sraabstein & Thomas Piazza, *Public health, safety, and educational risks associated with bullying behaviors in American adolescents*, 20 Int J Adolesc Med Health 223–233 (2008).

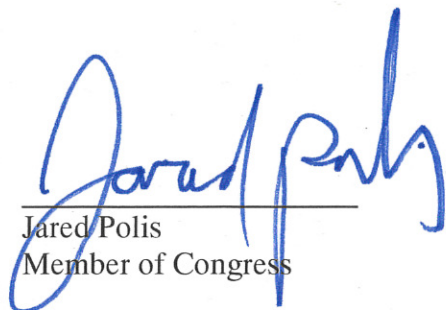
⁸ Martin H. Teicher et al., *Hurtful Words: Association of Exposure to Peer Verbal Abuse With Elevated Psychiatric Symptom Scores and Corpus Callosum Abnormalities*, AiA Am J Psychiatry 1 (2010).

⁹ United States Department of Education, Annual Report to Congress of the Office for Civil Rights Fiscal Year 2007-08, 1-2, <http://www2.ed.gov/about/reports/annual/ocr/annrpt2007-08/annrpt2007-08.pdf>.

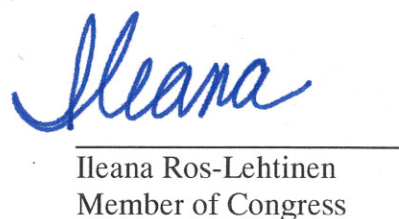
education in a safe environment free from discrimination, including harassment, bullying, intimidation and violence. As with Title IX and other civil rights statutes over the past 50 years, the SNDA would prompt responses from public schools to prevent and avoid discrimination and harassment. And like Title IX, schools would be required to adopt policies prohibiting and remedying discrimination.¹⁰ By Congress enacting the SNDA, there would be a bright line definition of discrimination and harassment that would finally, and explicitly, include all LGBT students.

In the name of our children's safety, their academic interests and their basic civil and human rights, school districts must be motivated to end discrimination and harassment against LGBT students. Enacting the SNDA is the best guarantee that all students can learn and grow in schools free of discrimination and violence.

Sincerely,



Jared Polis
Member of Congress



Ileana Ros-Lehtinen
Member of Congress

¹⁰ United States Department of Education, Office for Civil Rights, Dear Colleague, October 26, 2010, 1-2, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

112TH CONGRESS
1ST SESSION

H. R. 998

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2011

Mr. POLIS (for himself, Mr. ACKERMAN, Mr. FARR, Mr. BACA, Mr. FILNER, Ms. BALDWIN, Mr. FRANK of Massachusetts, Ms. BERKLEY, Mr. AL GREEN of Texas, Mr. BERMAN, Mr. GRIJALVA, Mr. BLUMENAUER, Mr. GUTIERREZ, Mr. BRADY of Pennsylvania, Mr. HASTINGS of Florida, Mr. BRALEY of Iowa, Mr. HIMES, Mrs. CAPPES, Mr. HINCHEY, Mr. CAPUANO, Ms. HIRONO, Ms. CASTOR of Florida, Mr. HOLT, Ms. CHU, Mr. HONDA, Mr. CICILLINE, Mr. ISRAEL, Ms. CLARKE of New York, Mr. JACKSON of Illinois, Mr. COURTNEY, Ms. JACKSON LEE of Texas, Mr. CROWLEY, Mr. KILDEE, Mrs. DAVIS of California, Mr. KUCINICH, Mr. DEFazio, Mr. LANGEVIN, Ms. DEGETTE, Mr. LARSON of Connecticut, Mr. DEUTCH, Ms. LEE of California, Mr. DOYLE, Mr. LEVIN, Mr. ELLISON, Mr. LEWIS of Georgia, Mr. ENGEL, Ms. ZOE LOFGREN of California, Ms. ESHOO, Mr. LUJÁN, Mr. KEATING, Mrs. MALONEY, Mr. MARKEY, Ms. ROSLEHTINEN, Ms. MATSUI, Mr. ROTHMAN of New Jersey, Mrs. MCCARTHY of New York, Ms. ROYBAL-ALLARD, Ms. MCCOLLUM, Ms. LINDA T. SÁNCHEZ of California, Mr. MCDERMOTT, Mr. SARBANES, Mr. MCGOVERN, Ms. SCHAKOWSKY, Mr. MEEKS, Mr. SERRANO, Mr. MICHAUD, Mr. SHERMAN, Ms. MOORE, Ms. SPEIER, Mr. MORAN, Mr. STARK, Mr. MURPHY of Connecticut, Ms. SUTTON, Mr. NADLER, Mr. TONKO, Mrs. NAPOLITANO, Mr. TOWNS, Mr. NEAL, Ms. TSONGAS, Ms. NORTON, Mr. VAN HOLLEN, Mr. OLVER, Ms. WASSERMAN SCHULTZ, Mr. PALLONE, Mr. WAXMAN, Mr. PETERS, Mr. WEINER, Ms. PINGREE of Maine, Mr. WELCH, Mr. QUIGLEY, Ms. WOOLSEY, Ms. RICHARDSON, Mr. WU, Mr. YARMUTH, Mr. COHEN, Mr. CUMMINGS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. PASCRELL, Mr. CARSON of Indiana, and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Non-Discrimi-
5 nation Act of 2011”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds the following:

8 (1) Public school students who are lesbian, gay,
9 bisexual or transgender (LGBT), or are perceived to
10 be LGBT, or who associate with LGBT people, have
11 been and are subjected to pervasive discrimination,
12 including harassment, bullying, intimidation and vio-
13 lence, and have been deprived of equal educational
14 opportunities, in schools in every part of our Nation.

15 (2) While discrimination, including harassment,
16 bullying, intimidation and violence, of any kind is
17 harmful to students and to our education system,
18 actions that target students based on sexual orienta-
19 tion or gender identity represent a distinct and espe-
20 cially severe problem.

1 (3) Numerous social science studies dem-
2 onstrate that discrimination, including harassment,
3 bullying, intimidation and violence, at school has
4 contributed to high rates of absenteeism, dropout,
5 adverse health consequences, and academic under-
6 achievement among LGBT youth.

7 (4) When left unchecked, discrimination, includ-
8 ing harassment, bullying, intimidation and violence,
9 in schools based on sexual orientation or gender
10 identity can lead, and has lead to, life-threatening
11 violence and to suicide.

12 (5) Public school students enjoy a variety of
13 constitutional rights, including rights to equal pro-
14 tection, privacy, and free expression, which are in-
15 fringed when school officials engage in discrimina-
16 tory treatment or are indifferent to discrimination,
17 including harassment, bullying, intimidation and vio-
18 lence, on the basis of sexual orientation or gender
19 identity.

20 (6) While Federal statutory protections ex-
21 pressly address discrimination on the basis of race,
22 color, sex, religion, disability, and national origin,
23 Federal civil rights statutes do not expressly include
24 “sexual orientation” or “gender identity”. As a re-
25 sult, students and parents have often had limited

1 legal recourse to redress for discrimination on the
2 basis of sexual orientation or gender identity.

3 (b) PURPOSES.—The purposes of this Act are—

4 (1) to ensure that all students have access to
5 public education in a safe environment free from dis-
6 crimination, including harassment, bullying, intimi-
7 dation and violence, on the basis of sexual orienta-
8 tion or gender identity;

9 (2) to provide a comprehensive Federal prohibi-
10 tion of discrimination in public schools based on ac-
11 tual or perceived sexual orientation or gender iden-
12 tity;

13 (3) to provide meaningful and effective rem-
14 edies for discrimination in public schools based on
15 actual or perceived sexual orientation or gender
16 identity;

17 (4) to invoke congressional powers, including
18 but not limited to the power to enforce the 14th
19 Amendment to the Constitution and to provide for
20 the general welfare pursuant to section 8 of article
21 I of the Constitution and the power to enact all laws
22 necessary and proper for the execution of the fore-
23 going powers pursuant to section 8 of article I of the
24 Constitution, in order to prohibit discrimination in

1 public schools on the basis of sexual orientation or
2 gender identity; and

3 (5) to allow the Department of Education to ef-
4 fectively combat discrimination based on sexual ori-
5 entation or gender identity in public schools through
6 regulation and enforcement, as the Department has
7 issued regulations under and enforced title IX of the
8 Education Amendments of 1972 and other non-
9 discrimination laws in a manner that effectively ad-
10 dresses discrimination.

11 **SEC. 3. DEFINITIONS.**

12 For purposes of this Act:

13 (1) PROGRAM OR ACTIVITY.—The terms “pro-
14 gram or activity” and “program” have same mean-
15 ings given such terms as applied under section 606
16 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-
17 4a) to the operations of public entities under para-
18 graph (2)(B) of such section.

19 (2) GENDER IDENTITY.—The term “gender
20 identity” means the gender-related identity, appear-
21 ance, or mannerisms or other gender-related charac-
22 teristics of an individual, with or without regard to
23 the individual’s designated sex at birth.

24 (3) HARASSMENT.—The term “harassment”
25 means conduct that is sufficiently severe, persistent,

1 or pervasive to limit a student’s ability to participate
2 in or benefit from a public school education program
3 or activity, or to create a hostile or abusive edu-
4 cational environment at a public school, including
5 acts of verbal, nonverbal, or physical aggression, in-
6 timidation, or hostility, if such conduct is based
7 on—

8 (A) a student’s actual or perceived sexual
9 orientation or gender identity; or

10 (B) the actual or perceived sexual orienta-
11 tion or gender identity of a person or persons
12 with whom a student associates or has associ-
13 ated.

14 (4) PUBLIC SCHOOLS.—The term “public
15 schools” means public elementary and secondary
16 schools, including local educational agencies, edu-
17 cational service agencies, and State educational
18 agencies, as defined in section 9101 of the Elemen-
19 tary and Secondary Education Act of 1965.

20 (5) SEXUAL ORIENTATION.—The term “sexual
21 orientation” means homosexuality, heterosexuality,
22 or bisexuality.

23 (6) STUDENT.—The term “student” means an
24 individual who is enrolled in a public school or who,
25 regardless of official enrollment status, attends

1 classes or participates in a public school's programs
2 or educational activities.

3 **SEC. 4. PROHIBITION AGAINST DISCRIMINATION; EXCEP-**
4 **TIONS.**

5 (a) IN GENERAL.—No student shall, on the basis of
6 actual or perceived sexual orientation or gender identity
7 of such individual or of a person with whom the student
8 associates or has associated, be excluded from participa-
9 tion in, or be denied the benefits of, or be subjected to
10 discrimination under any program or activity receiving
11 Federal financial assistance.

12 (b) HARASSMENT.—For purposes of this Act, dis-
13 crimination includes, but is not limited to, harassment of
14 a student on the basis of actual or perceived sexual ori-
15 entation or gender identity of such student or of a person
16 with whom the student associates or has associated.

17 (c) RETALIATION PROHIBITED.—

18 (1) PROHIBITION.—No person shall be excluded
19 from participation in, be denied the benefits of, or
20 be subjected to discrimination, retaliation, or re-
21 prisal under any program or activity receiving Fed-
22 eral financial assistance based on his or her opposi-
23 tion to conduct made unlawful by this Act.

1 (2) DEFINITION.—For purposes of this sub-
2 section, “opposition to conduct made unlawful by
3 this Act” includes, but is not limited to—

4 (A) opposition to conduct reasonably be-
5 lieved to be made unlawful by this Act,

6 (B) any formal or informal report, whether
7 oral or written, to any governmental entity, in-
8 cluding public schools and employees thereof,
9 regarding conduct made unlawful by this Act or
10 reasonably believed to be made unlawful by this
11 Act,

12 (C) participation in any investigation, pro-
13 ceeding, or hearing related to conduct made un-
14 lawful by this Act or reasonably believed to be
15 made unlawful by this Act, and

16 (D) assistance or encouragement provided
17 to any other person in the exercise or enjoy-
18 ment of any right granted or protected by this
19 Act,

20 if in the course of that expression, the person in-
21 volved does not purposefully provide information
22 known to be false to any public school or other gov-
23 ernmental entity regarding a violation, or alleged
24 violation, of this Act.

1 **SEC. 5. FEDERAL ADMINISTRATIVE ENFORCEMENT; RE-**
2 **PORT TO CONGRESSIONAL COMMITTEES.**

3 Each Federal department and agency which is em-
4 powered to extend Federal financial assistance to any edu-
5 cation program or activity, by way of grant, loan, or con-
6 tract other than a contract of insurance or guaranty, is
7 authorized and directed to effectuate the provisions of sec-
8 tion 4 of this Act with respect to such program or activity
9 by issuing rules, regulations, or orders of general applica-
10 bility which shall be consistent with achievement of the
11 objectives of the Act authorizing the financial assistance
12 in connection with which the action is taken. No such rule,
13 regulation, or order shall become effective unless and until
14 approved by the President. Compliance with any require-
15 ment adopted pursuant to this section may be effected—

16 (1) by the termination of or refusal to grant or
17 to continue assistance under such program or activ-
18 ity to any recipient as to whom there has been an
19 express finding on the record, after opportunity for
20 hearing, of a failure to comply with such require-
21 ment, but such termination or refusal shall be lim-
22 ited to the particular political entity, or part thereof,
23 or other recipient as to whom such a finding has
24 been made, and shall be limited in its effect to the
25 particular program, or part thereof, in which such
26 noncompliance has been so found, or

1 (2) by any other means authorized by law,
2 except that no such action shall be taken until the depart-
3 ment or agency concerned has advised the appropriate per-
4 son or persons of the failure to comply with the require-
5 ment and has determined that compliance cannot be se-
6 cured by voluntary means. In the case of any action termi-
7 nating, or refusing to grant or continue, assistance be-
8 cause of failure to comply with a requirement imposed
9 pursuant to this section, the head of the Federal depart-
10 ment or agency shall file with the committees of the House
11 and Senate having legislative jurisdiction over the pro-
12 gram or activity involved a full written report of the cir-
13 cumstances and the grounds for such action. No such ac-
14 tion shall become effective until 30 days have elapsed after
15 the filing of such report.

16 **SEC. 6. CAUSE OF ACTION.**

17 (a) CAUSE OF ACTION.—Subject to subsection (c) of
18 this section, an aggrieved individual may assert a violation
19 of this Act in a judicial proceeding. Aggrieved persons may
20 be awarded all appropriate relief, including but not limited
21 to equitable relief, compensatory damages, cost of the ac-
22 tion, and remedial action.

23 (b) RULE OF CONSTRUCTION.—This section shall not
24 be construed to preclude an aggrieved individual from ob-
25 taining other remedies under any other provision of law

1 or to require such individual to exhaust any administrative
2 complaint process or notice-of-claim requirement before
3 seeking redress under this section.

4 (c) **STATUTE OF LIMITATIONS.**—For actions brought
5 pursuant to this section, the statute of limitations period
6 shall be determined in accordance with section 1658(a) of
7 title 28 of the United States Code. The tolling of any such
8 limitations period shall be determined in accordance with
9 the law governing actions under section 1979 of the Re-
10 vised Statutes (42 U.S.C. 1983) in the forum State.

11 **SEC. 7. STATE IMMUNITY.**

12 (a) **STATE IMMUNITY.**—A State shall not be immune
13 under the 11th Amendment to the Constitution of the
14 United States from suit in Federal court for a violation
15 of this Act.

16 (b) **WAIVER.**—A State’s receipt or use of Federal fi-
17 nancial assistance for any program or activity of a State
18 shall constitute a waiver of sovereign immunity, under the
19 11th Amendment to the Constitution or otherwise, to a
20 suit brought by an aggrieved individual for a violation of
21 section 4 of this Act.

22 (c) **REMEDIES.**—In a suit against a State for a viola-
23 tion of this Act, remedies (including remedies both at law
24 and in equity) are available for such a violation to the
25 same extent as such remedies are available for such a vio-

1 lation in the suit against any public or private entity other
2 than a State.

3 **SEC. 8. ATTORNEY'S FEES.**

4 Section 722(b) of the Revised Statutes (42 U.S.C.
5 1988(b)) is amended by inserting “the Student Non-
6 discrimination Act of 2011,” after “Religious Land Use
7 and Institutionalized Persons Act of 2000,”.

8 **SEC. 9. EFFECT ON OTHER LAWS.**

9 (a) FEDERAL AND STATE NONDISCRIMINATION
10 LAWS.—Nothing in this Act shall be construed to pre-
11 empt, invalidate, or limit rights, remedies, procedures, or
12 legal standards available to victims of discrimination or
13 retaliation under any other Federal law or law of a State
14 or political subdivision of a State, including title VI of the
15 Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title
16 IX of the Education Amendments of 1972 (20 U.S.C.
17 1681 et seq.), section 504 of the Rehabilitation Act of
18 1973 (29 U.S.C. 794), the Americans with Disabilities Act
19 of 1990 (42 U.S.C. 12101 et seq.), or section 1979 of the
20 Revised Statutes (42 U.S.C. 1983). The obligations im-
21 posed by this Act are in addition to those imposed by title
22 IX of the Education Amendments of 1972 (20 U.S.C.
23 1681 et seq.), title VI of the Civil Rights Act of 1964 (42
24 U.S.C. 2000d et seq.), and the Americans with Disabilities
25 Act of 1990 (42 U.S.C. 12101 et seq.).

1 (b) FREE SPEECH AND EXPRESSION LAWS AND RE-
2 LIGIOUS STUDENT GROUPS.—Nothing in this Act shall be
3 construed to alter legal standards regarding, or affect the
4 rights available to individuals or groups under, other Fed-
5 eral laws that establish protections for freedom of speech
6 and expression, such as legal standards and rights avail-
7 able to religious and other student groups under the 1st
8 Amendment to the Constitution and the Equal Access Act
9 (20 U.S.C. 4071 et seq.).

10 **SEC. 10. SEVERABILITY.**

11 If any provision of this Act, or any application of such
12 provision to any person or circumstance, is held to be un-
13 constitutional, the remainder of this Act, and the applica-
14 tion of the provision to any other person or circumstance
15 shall not be affected.

16 **SEC. 11. EFFECTIVE DATE.**

17 This Act shall take effect 60 days after the date of
18 the enactment of this Act and shall not apply to conduct
19 occurring before the effective date of this Act.

○