

December 10, 2012

Via Email (Stephanie Trifone@Judiciary-dem.Senate)

U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Graham, and Committee Members,

Lambda Legal appreciates this opportunity to submit testimony to the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights in its hearing on *Ending the School-to-Prison Pipeline*. We seek to provide the committee with information, insight and examples regarding the negative impact of school disciplinary actions that inappropriately push students out of schools, into alternative schools, or into juvenile justice systems. These actions ravage some of the most marginalized and victimized students in schools: those who are or who are perceived to be lesbian, gay, bisexual, transgender or questioning (LGBTQ).

Our Background

As the oldest and largest national legal organization committed to achieving full recognition of the civil rights of LGBT people and people with HIV, Lambda Legal has focused for years on young peoples' rights both in public schools and in state custody. Our docket has included numerous cases on behalf of LGBTQ youth in schools and their allies,¹ a high priority because of the devastating impact discrimination in schools has on all members of the school community. We are committed to helping schools become welcoming environments for all students, including those young people who identify as, or are perceived as, LGBTQ.² Youth who are unsupported by families and schools often end up in foster care or juvenile facilities. Lambda Legal's work to support youth in out-of-home care³ reflects their needs—and informs us that LGBT students unsupported in schools and at home are at immense risk for juvenile detention and, later, incarceration.

Lambda Legal has also been involved in engaging students, educators and community members in convenings about the intersection of safe schools for LGBT youth and dismantling the school-to-prison pipeline. We have participated for two years in the southern regional conferences "South Star: Safe Schools Convening of the South," where more than forty organizations

¹ See <http://www.lambdalegal.org/issues/schools>.

² To this end, we provide online toolkits and resources for LGBTQ youth and their allies, including Out, Safe and Respected (<http://www.lambdalegal.org/publications/out-safe-respected>) and our interactive online tool located at <http://www.lambdalegal.org/kyr/youth>.

³ See <http://www.lambdalegal.org/issues/youth-in-out-of-home-care>.

collaborate on workshops and strategy sessions to address anti-LGBT bullying and harsh disciplinary policies.

THE PROBLEM

In our cases and in calls we receive, we note patterns that clearly feed into the disturbing scenario dubbed “the school-to-prison pipeline.” Students targeted for harassment are isolated or sent to inappropriate alternative schools, driven from their school placements rather than protected. Without appropriate official leadership and intervention to address school environments, students avoid school in attempts to keep themselves safe. They become truant, lose educational opportunities, and are more likely to be found on the street and in encounters with law enforcement that result in juvenile and criminal records. Those who are harassed and targeted and remain unsupported in schools may finally attempt to defend themselves and end up lashing back at tormenters—for which they are disciplined, often harshly.

A review of calls to our Legal Help Desk shows that in recent years Lambda Legal has received more than 50 reports of students having been unfairly and unequally punished, including students expelled because of their sexual orientation or gender expression; school officials pressuring parents to homeschool their children because of a student or parent's sexual orientation; and children uprooted and sent to alternative schools simply because school officials were uncomfortable with their sexual orientation. Too often this blatant discrimination cannot be remedied through litigation. Students are a fairly transient population, while unhealthy school environments tend to take root and fester if unaddressed. And remedies after the fact can barely approximate justice for students previously damaged and deprived of their educational opportunities. But practically all students on whose behalf we advocate and litigate have had some experience with damaging dynamics that feed the pipeline.

While discipline, including expulsion or even criminal or quasi-criminal prosecutions directed at students who violate rules against harassing other students, may sometimes protect LGBT youth, too often disciplinary measures that push youth out of schools are also applied to the targets of harassment, or disproportionately meted out to students who are or are perceived to be LGBT and/or are students of color. Through our caseload we observe that hostile school environments and harassment escalate, as a rule. Well-executed and well-publicized educational policies, comprehensive curricula, high-quality staff training, and support for LGBT-affirming activities and clubs like gay-straight alliances contribute to environments that help prevent discrimination and foster an atmosphere where problems are addressed early, before they escalate to the point where severe discipline might be appropriately considered.

In short, we support measures to comprehensively address the school environment and foster an atmosphere where all students can learn peacefully and with mutual respect. And where disciplinary measures are needed, we support interventions that protect all students and endeavor where possible to avoid depriving young people of the opportunity to learn and fulfill their potential. We offer the following information and suggestions in support of sensible laws and policies to interrupt the school-to-prison pipeline.

I. LGBT students face harsher punishments for similar infractions than their heterosexual counterparts.

Research has finally emerged showing what LGBT advocates who work with youth have long known: our LGBT teens and young adults are more often punished by school and criminal authorities than are straight youth.⁴ Data from a nationally representative sample of more than 15,000 people interviewed both as teens in grades 7 through 12 and again when they were 18 to 26 years old show that LGBT⁵ adolescents are about 40 percent more likely than other teens to be punished by school authorities, police and the courts. As noted by the lead author, Kathryn E.W. Himmelstein,

We found that virtually all types of punishment — including school expulsions, arrests, juvenile convictions, adult convictions and especially police stops — were more frequently meted out to LGBT youth.⁶

According to the research, these disparities in punishments are not explained by differences in the rates of misbehavior. In fact, the study showed that adolescents who identified themselves as LGBT actually engaged in less violence than their peers. As Himmelstein reported,

Our numbers suggest that school officials, police and judges, who should be protecting LGBT youth, are instead singling them out for punishment based on their sexual orientation. LGBT teens can't thrive if adults single them out for punishment because of their sexual orientation.⁷

Students of color also experience disproportionate rates of discipline and expulsion from school. Data released by the U.S. Department of Education this year showed, for example, that African-American students are far more likely to be suspended or expelled from school. Black students made up 18 percent of those included in the government survey, yet comprised 39 percent of students who were expelled. For LGBT students of color, therefore, the risk of facing disproportionate punishment is compounded.⁸

II. Unchecked anti-LGBT bullying and harassment in school leads LGBT students and students perceived to be LGBT to take matters into their own hands, resulting in higher rates of school violence, discipline and incarceration.

⁴ Kathryn E. W. Himmelstein & Hannah Brückner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 *Pediatrics* 49, 49-57 (2010).

⁵ The study did not explore the experiences of transgender youth, but anecdotal reports suggest that they are similarly at risk for excessive punishment.

⁶ Karen N. Peart, *Lesbian, Gay and Bisexual Teens Singled Out for Punishment*, Yale News, Dec. 6, 2010, <http://news.yale.edu/2010/12/06/lesbian-gay-and-bisexual-teens-singled-out-punishment>.

⁷ *Id.*

⁸ U.S. Department of Education, *New Data from U.S. Department of Education Highlights Educational Inequities Around Teacher Experience, Discipline and High School Rigor*, March 6, 2012, <http://www.ed.gov/news/press-releases/new-data-us-department-education-highlights-educational-inequities-around-teache>.

A 2011 study found that 63.5% of LGBT students felt unsafe in their school because of their sexual orientation.⁹ Not surprisingly, the result is that 1 out of every 3 LGBT students reports skipping school based on safety concerns¹⁰, rendering them truant and pushing them closer to suspension and expulsion.

Such commonplace harassment and abuse also leads to a more dangerous environment for all students, and puts LGBT students at higher risk of being pushed out of school. Victims of such harassment and abuse “may turn to physically defending themselves against bullies, carrying weapons, and other survival tactics that endanger the school community.”¹¹ Common sense leads to the sad conclusion that unchecked harassment (84.5 percent of LGBT students in a 2011 survey reported that when anti-LGBT remarks were made, faculty or staff “never” or only intervened “some of the time”)¹² triggers increased fights with other youth. Because “zero-tolerance” policies generally disregard the circumstances leading to an altercation, the result is push-out discipline for the victim ensnared in the fighting. This result is especially likely where schools routinely refuse to protect the target from continued anti-LGBT harassment. (Note that 71.3 percent of LGBT students in a 2011 study reported hearing remarks such as “faggot” or “dyke” frequently or often at school).¹³

III. LGBT students who do not feel safe at school are more likely to be truant, to drop out, and to engage in other risky behaviors such as substance abuse and sexual exploitation.

Schools should provide a safe environment for all students; unfortunately, many schools fail to protect their LGBT students. The Centers for Disease Control and Prevention acknowledges the adverse health effects of an unsafe school environment, noting that “[n]egative attitudes toward gays, lesbians, bisexuals, and transgender people put LGBT youth at increased risk for experiences with violence, compared with other students.”¹⁴ The CDC notes that these stresses experienced by LGBT youth put them at greater risk for mental health problems, substance use, and physical health problems.

The cycle of harassment, violence, and discipline leads to students being pushed out or dropping out of school. One report found that, “[z]ero-tolerance discipline sends a clear message to

⁹ Joseph G. Kosciw, et al., Gay, Lesbian & Straight Education Network, *The 2011 National School Climate Survey* xiv (2011), available at http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/002/2105-1.pdf. See also Centers for Disease Control and Prevention, *Lesbian, Gay, Bisexual and Transgender Health*, <http://www.cdc.gov/lgbthealth/youth.htm> (last visited Dec. 10, 2012) (citation omitted).

¹⁰ Gay, Lesbian & Straight Education Network, *FAQs: Top 5 Frequently Asked Questions From the Media*, <http://www.glsen.org/cgi-bin/iowa/all/news/record/1970.html> (last visited Dec. 10, 2012).

¹¹ Advancement Project, Alliance for Educational Justice & GSA Network, *Two Wrongs Don’t Make A Right: Why Zero Tolerance is Not the Solution to Bullying* 4 (June 2012), available at http://gsanetwork.org/files/aboutus/API-005_D5-FINALsmall.pdf.

¹² Joseph G. Kosciw, et al., *supra* note 9, at 17.

¹³ *Id.* at 14.

¹⁴ Centers for Disease Control and Prevention, *Lesbian, Gay, Bisexual and Transgender Health*, <http://www.cdc.gov/lgbthealth/youth.htm> (last visited Dec. 10, 2012) (citation omitted).

students that they are not valued; unfortunately that message has gotten through to far too many students who have been pushed out of school by unnecessarily severe disciplinary measures.”¹⁵ Given the tragic reality that many LGBT students are not welcome in their families, many of these LGBT youth end up on the streets. Indeed 20 to 40 percent of homeless youth identify as LGBT.¹⁶ Once homeless, LGBT youth are at higher risk for victimization (LGBT youth are roughly 7.4 times more likely to experience acts of sexual violence than heterosexual homeless youth), mental health problems, and unsafe sexual practices.¹⁷ The path to prison for young people pushed out of schools and into the streets is both predictable and avoidable.

IV. Potential solutions limit interventions that push students out of school, and provide accountability and clear guidance and support for LGBTQ youth.

Measures that help interrupt the school-to-prison pipeline may include but not be limited to the following:

1. Establish enumerated antibullying policies that include sexual orientation and gender identity and expression. Make these policies clearly accessible in student handbooks and online.
2. Incorporate comprehensive curricula regarding difference, tolerance, and respect for all.
3. Train administrators, educators, and school safety officers on effectively addressing anti-LGBT bullying, harassment, and name-calling.
4. Support LGBT-affirming clubs such as gay-straight alliances, and promote safe spaces for LGBTQ youth in schools.¹⁸
5. Limit the use of expulsions, disciplinary transfers, out-of-school suspensions, referrals to law enforcement, and school-based arrests to conduct that poses a serious threat to students and staff.
6. Comply with or create a public reporting system for school discipline data including expulsions, in- and out-of-school suspensions, school-based arrests, and referrals to law enforcement with data disaggregated by offense, age, grade, gender, gender identity, race/ethnicity, sexual orientation, disability, and school.
7. Consider alternative disciplinary programs when appropriate, including peer mediation, conflict resolution, guidance counseling, peer juries and courts, mentoring, character education, and parental and community involvement initiatives.

¹⁵ Advancement Project, et al., *supra* note 11, at 6

¹⁶ Lambda Legal, *Know Your Rights: Homeless LGBTQ Youth*, <http://www.lambdalegal.org/know-your-rights/homeless-lgbtq-youth> (last visited Dec. 10, 2012).

¹⁷ National Coalition for the Homeless, *LGBT Homeless*, <http://www.nationalhomeless.org/factsheets/lgbtq.html> (last visited Dec. 10, 2012).

¹⁸ Advancement Project, et al., *supra* note 11, at 14.

On behalf of Lambda Legal, we thank you for this opportunity to provide information relevant to dismantling the school-to-prison pipeline. We would be pleased to address further inquiries.

Sincerely,



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