



Family Concerns

"Bridging the Information Gap"

A Publication of Concerned Women for America of Kansas

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NATIONAL SCHOOL BOARDS ASSOCIATION'S (NSBA) NEW LEGAL GUIDE

"Dealing with Legal Matters Surrounding Students' Sexual Orientation and Gender Identity" (www.nsba.org)

This publication was planned to coincide with "Lesbian, Gay, Bisexual and Transgender History Month"

"A good deal of misinformation and concern currently surround lesbian, gay, bisexual, and transgender issues in the schools. By providing clear information on schools' legal rights and responsibilities, we want to help educators respond to questions that may arise. Most important, we hope to help improve the educational climate for all students." *Julie Underwood, legal counsel to NSBA*

Participating organizations in this publication: American Association of School Administrators, American Federation of Teachers, American School Counselor Association, Association for Supervision and Curriculum Development, National Association of Elementary School Principals, National Association of Independent Schools, National Association of School Psychologists, National Association of Secondary School Principals, National Education Association, National School Boards Association, National Student Assistance Association, School Social Work Association of America, and United Church of Christ Justice and Witness Ministries. Also mentioned as "Additional Resources:" American Psychological Association's "Healthy Lesbian, Gay and Bisexual Students Project; American Psychological Association's "Just the Facts About Sexual Orientation & Youth: A primer for Principals, Educators and School Personnel;" American School Board Journal's "Be Prepared: What Your School Board Needs to Know about Boy Scouts, School Policies, and the Law;" Council of School Attorneys; Gay, Lesbian and Straight Education Network (GLSEN); National Gay and Lesbian Task Force Policy Institute; National Mental Health Association's "What Does Gay Mean: How to talk with Kids About sexual Orientation and Prejudice;" Parents, Family and Friends of Lesbians and Gays (PFLAG).

(Notably absent from the list of participants are groups that advocate for changing the gay lifestyle, such as Exodus, research groups such as National Association for Research and Therapy of Homosexuality, and Parents and Friends of Ex-Gays.)

The format of this material is in a question/answer style, so we will take excerpts from some of the questions *and* the answers to give you an idea of what to expect when you question your local school boards about these issues. Our comments may follow their answers in italics.

"Some students in my school want to form a Gay-Straight Alliance (GSA). What are my legal responsibilities?" Answer:

[Excerpted] The Equal Access Act requires that schools that receive federal money and have a "limited open forum" treat student clubs that address LGBT [lesbian, gay, bisexual, transgender] issues the same as other student groups. If schools allow only curriculum-related clubs, they are not required to grant access to a "non-curriculum-related club."

But I have students and parents who object to the formation of any student clubs that address gay issues. How am I supposed to handle this situation? Answer:

[Excerpted.] A school cannot refuse to allow a group like a gay-straight alliance to meet because other students, teachers, administrators, parents, or community members object to formation of the club. ... While schools may issue a general statement that they are not sponsoring student groups, but rather are merely providing all student groups an opportunity to meet, schools should not single out or target a particular group for this clarification. *Will they apply this premise equally to Bible clubs.*

How do I handle staff or outsiders wanting to be a part of the GSA? Answer: [Excerpted.] To be covered by the Equal Access Act, student clubs must be "student initiated." Outside community members "may not direct, conduct, control, or regularly attend activities of student groups, although they may attend occasionally, if invited by students, [Emphasis added.] unless the district has a policy prohibiting "non-school persons" from attending student group meetings. *Who will monitor this?*

I have been approached by some parents and members of the community who object to the fact that the Boy Scouts meet at the school. They feel that the Boy Scouts discriminate against gay people and that the school should not condone this. Answer: [Excerpted.] The No Child Left Behind Act contains a provision called the Boy Scouts of America Equal Access Act. This Act requires public schools that receive federal funds to provide the Boy Scouts with the opportunity to meet in school facilities, as long as the district makes school facilities available to other outside groups. *We have to be vigilant on this issue to ensure that schools follow this law.*

Recently, I have received complaints from transgender students about the prom, yearbook and graduation dress codes. These students tell me that separate dress requirements for girls and boys unfairly restrict their "gender identity" or "gender expression." Answer: [Excerpted.]

As a basic legal requirement, school rules must be reasonable or have a logical relationship to the school's legitimate interest. Dress codes that are reasonably related to a school's interest in ensuring that student attire is consistent with an effective educational environment are constitutionally acceptable. Dress codes that impose restrictions based on the student's gender (e.g., prohibiting boys but not girls from wearing earrings) should be adopted only after careful consideration, since they may draw challenges that the school is discriminating on the basis of sex. ... This does not suggest that all sex-specific dress regulations are permissible in all contexts. For example, a restriction on boys wearing dresses to school would be appropriate in communities where such attire on males would result in substantial disruption of the learning process, but in other locales, cross dressing might actually be more socially acceptable and cause minimal disruption in school, making such restriction less legally justifiable. *Community standards rule? What does this say to our kids?*

Some parents in my school have complained about what they see as "pro-homosexual" content in some classroom materials. Answer: [Excerpted.] ... [S]ome states have specific statutes that allow parents to opt their children out of classes or assemblies that include controversial topics such as sexuality, HIV, sexually transmitted diseases, abortion, or death. As a practical matter, school boards probably have the local discretion to adopt a more liberal parental opt-out policy than is required by state law. *More reason to attend local school board meetings!!!*

Our school has an anti-bullying policy that allows us to discipline students for harassing students because of their sexual orientation. Some students have claimed this violates their freedom of speech. How do you strike the balance? Answer: [Excerpted.] School districts have a legitimate interest in disciplining students for disruptive behavior and can enact effective anti-harassment policies to do so. Districts should write policies so as to protect students' First Amendment rights to free expression, while at the same time prohibiting genuinely threatening, demeaning, and harassing speech and/or behavior. *Another reason for attending local school board meetings to make sure all students' rights are protected. Who determines what constitutes a "threat?"*