

*Protections Against
Discrimination
and Harassment:*
THE LAW IS ON YOUR SIDE

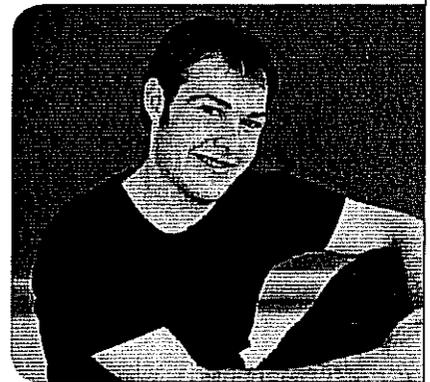
**SHARE THIS FACT SHEET WITH PARENTS, EDUCATORS
AND OTHER STUDENTS TO INFORM THEM ABOUT THE
RIGHT TO BE FREE FROM ANTI-LGBTQ DISCRIMINATION
AND HARASSMENT AT SCHOOL.**

This toolkit provides important information about general legal principles, but it is not legal advice. If you need information about how the laws described here apply to your particular situation, contact Lambda Legal.

THE CONSTITUTION

The Constitution guarantees all people, including LGBTQ people, "equal protection of the laws." State constitutions contain similar protections. This means that public schools can't single out LGBTQ students for negative treatment just because school officials disapprove of being gay or feel uncomfortable around people whose gender expression falls outside the norm. When it comes to peer conflicts and abuse, courts have made clear that the federal Constitution prohibits public schools from taking bullying and harassment any less seriously just because the targets are LGBTQ.

You don't have to be out to be protected under the Constitution from anti-LGBTQ discrimination. You don't even have to be LGBTQ. Discrimination based on *perceived* sexual orientation or gender identity violates your constitutional rights, as may discrimination based on your friendship, family relationship or other association with LGBTQ people.



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Derek Henkle Took Action

PROTECTIONS AGAINST DISCRIMINATION AND HARASSMENT: THE LAW IS ON YOUR SIDE

TITLE IX

A federal law called Title IX, which bans discrimination based on sex, protects students at schools that receive federal funds. Courts have agreed that the sex discrimination prohibited by Title IX not only includes discrimination for being a girl or boy, but also includes sexual harassment and discrimination for failing to conform to gender stereotypes. LGBTQ targets of sex discrimination and harassment have successfully relied on Title IX's protections in several court cases involving schools.

STATE LAWS

A growing number of states are taking additional steps to protect LGBTQ youth by explicitly including sexual orientation, gender identity, and gender expression in laws that protect against discrimination and harassment in schools. States can vary widely in how they structure, apply and enforce these laws, and you should consult Lambda Legal or a local attorney if you are facing discrimination and need more specific information about laws in your area.

Some of the strongest and most detailed safeguards exist in California, Iowa, Maryland, New Jersey, and Vermont. Laws in all of these states require local school boards to enact anti-harassment policies that specifically include sexual orientation and gender identity/expression. The policies must allow for complaints and investigations, impose consequences for violations and protect students who report harassment from retaliation. Schools must also make sure students learn about these policies.

While laws in other states may not take the same form or go into the same detail, they may still protect against abuse and discrimination at school. For example, in addition to the states listed above, Colorado, the District of Columbia, Illinois, Maine, Minnesota, Oregon, Rhode Island and Washington State have laws barring discrimination against students based on sexual orientation and gender identity/expression. In Connecticut, Massachusetts, New York, and Wisconsin, state laws prohibit discrimination against students based on sexual orientation. At press time, the student protections in these last four states did not yet specifically reference gender identity or gender expression, but some courts have interpreted laws addressing sex discrimination to prohibit discrimination based on gender identity/expression.

Many other states have enacted antibullying laws without specifically mentioning (that is, without "enumerating") sexual orientation or gender identity/expression. But this doesn't mean that schools can ignore anti-LGBTQ bullying. Remember, Title IX covers all schools that receive federal funds (nearly all schools in the country), and the federal Constitution requires states to apply antibullying protections equally to all public school students.

TAKING ACTION:

Derek Henkle

From the age of 14, when Derek Henkle came out on public-access television, his life in the Nevada school system was a nightmare. "I would be spit on, punched and kicked," he remembers. "I was humiliated every day." School administrators and teachers stood by while other students harassed, threatened and physically assaulted Derek. One assistant principal actually laughed after students tried to tie Derek to a truck and drag him down the street. Rather than addressing the antigay harassment and violence, school administrators transferred Derek to other schools — as if he were the problem. At 16, Derek, who had been in a program for gifted and talented students since the fourth grade, was forced to resort to adult-education classes, where it was impossible to obtain a high school diploma. Derek fought back. He contacted Lambda Legal and with our help secured a precedent-setting court ruling recognizing the rights of gay students. After the ruling, the school district agreed to sweeping policy changes to protect students from harassment, a \$450,000 settlement payment, and put a letter in his academic file explaining why his education was cut short.

LOCAL LAWS AND SCHOOL DISTRICT POLICIES

Even if your state legislature hasn't specifically banned anti-LGBTQ discrimination and harassment in school, city ordinances and local school districts within your state may have done so. More and more communities — from small rural towns to large urban areas like Dallas, Miami-Dade, Nashville and Philadelphia — have enacted rules protecting students from discrimination and harassment based on sexual orientation and/or gender identity. Consult with a friendly school official, a local attorney or Lambda Legal to learn more.

PROTECT YOURSELF EVEN IF THE LAW IS SUPPOSED TO PROTECT YOU

Remember that school officials and employees sometimes don't know about, don't understand or simply refuse to comply with their legal responsibilities to address anti-LGBTQ discrimination and harassment. Even authorities in an area with strong protections written into the law might not respond in a helpful way to anti-LGBTQ

mistreatment at school. Take steps to protect yourself and to document and report bad treatment, no matter where you live. For more information, check out our "Stand Up for Your Right to Be Safe" insert.

And if you live in a state or city without specific protections against anti-LGBTQ discrimination and harassment, consider joining efforts to get a law or policy approved. For organizing tips, check out resources on GLSEN's website, www.glsen.org.

PRIVATE SCHOOLS

Private schools are often governed by a very different set of legal rules from those described above. If you have questions about what sorts of protections exist for private school students in your state, contact Lambda Legal's Help Desk at 1-866-542-8336 or email legalhelpdesk@lambdalegal.org.

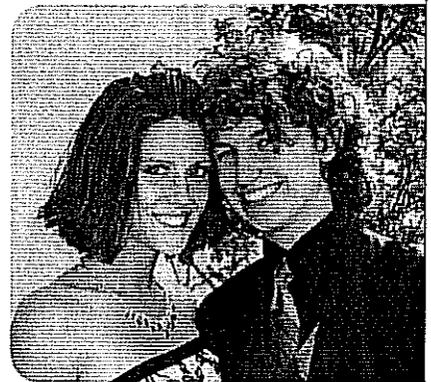
Your SPEECH RIGHTS

YOU HAVE THE RIGHT:

- to voice your support for LGBTQ equality at school
- to wear T-shirts or distribute leaflets expressing LGBTQ-positive statements without censorship based on your opinion or viewpoint
- to hang posters, make announcements and hold meetings for LGBTQ-related groups on the same terms as other student organizations
- to write a column or article in a personal or student-led publication addressing LGBTQ issues without discrimination based on your LGBTQ-supportive ideas

Knowing your speech rights is important for everyone, but especially so for minority communities. LGBTQ students and students with LGBTQ family and friends may fear repercussions for speaking out against discrimination, face roadblocks in forming support groups or clubs, or worry about censorship when distributing written information to other students or putting up posters at school.

Sometimes we rely on our speech rights when we choose *not* to speak. Each year, on the student-led National Day of Silence, a project of the Gay, Lesbian & Straight Education Network (GLSEN), thousands of students around the country remain silent for all or part of the school day to call attention to harassment and discrimination faced by lesbian, gay, bisexual, transgender and questioning youth. Here are some facts about your rights to free speech in school. While we've used the Day of Silence as an example, the ideas here apply to a range of student expression.



Lisa Brandt and Tommy Ward
Took Action

GLSEN'S DAY OF SILENCE: THE FREEDOM TO SPEAK (OR NOT)

YOUR SPEECH RIGHTS

DO STUDENTS HAVE THE RIGHT TO PARTICIPATE IN AND ADVOCATE FOR THE DAY OF SILENCE?

In most circumstances, yes. Under the Constitution, public schools must respect students' right to free speech. The right to speak normally includes the right not to speak, as well as the right to wear buttons or T-shirts expressing support for a cause. Public school officials may not censor a student just because they disapprove of the student's ideas, because the student's speech makes them uncomfortable or because they want to avoid controversy.

There are some limits on free speech rights at school. For example, schools have some control over students' speech in the classroom or during other supervised, school-sponsored activities. If a teacher tells a student to answer a question during class, the student generally doesn't have a constitutional right to refuse to answer. Students who want to remain silent during class on the Day of Silence are less likely to encounter problems if they seek permission from their teachers beforehand. Outside of the classroom, in areas like hallways and cafeterias, students have a much broader right to free speech. Schools can't censor students unless they use lewd or foul language, promote illegal drug use, harass other students or substantially disrupt the school environment.

DO STUDENTS HAVE A RIGHT TO DISPLAY POSTERS AND MAKE ANNOUNCEMENTS ABOUT THE DAY OF SILENCE?

In many circumstances, yes. If a public school opens up an opportunity for student speech — for example, by allowing students or student organizations to display posters or make announcements on the public address system — the school may not create restrictions based on the message or viewpoint that students want to express. So if students are generally allowed to announce events and put up posters on school property, Day of Silence participants must be allowed to announce events and put up posters, too.

CAN A SCHOOL JUSTIFY BANNING SPEECH BY CLAIMING IT WILL BE DISRUPTIVE?

If a public school wants to restrict student expression because it fears disruption, school officials have to show facts that reasonably lead them to believe that the speech will cause a substantial disruption to the school. A school can't just assume that the Day of Silence or speech related to it will disrupt the school.

And schools can't censor students just because other students might respond in a disruptive way. If students who disagree with a speaker's ideas create a disruption, the school can punish the disruptive students but can't punish the speaker. So, for example, if a Day of Silence participant puts up a poster and another student responds with name-calling and harassment, the solution must be to discipline the harasser and to protect, not censor, the Day of Silence participant.

WHAT IF A SCHOOL SAYS IT HAS TO RESTRICT DAY OF SILENCE ACTIVITIES SO COMMUNITY MEMBERS WON'T THINK THE SCHOOL IS ENDORSING THE EVENT?

Schools have more control over student speech if other students or community members would reasonably believe the speech represents the school's own speech or viewpoint. For example, if a student helps write an official school publication, like a school newsletter, the school has some control over what the student says, because people reading the publication may think the school endorsed the student's expression. But this doesn't give the school the right to control what students express on their own, or what they express through means generally open for independent student expression at school, like posters and announcements when student groups are allowed to speak. Schools cannot discriminate against students based on their ideas in those contexts, because nobody could reasonably think that the student speech represents the school's speech. In the words of Supreme Court Justice Sandra Day O'Connor, "The proposition that schools do not endorse everything they fail to censor is not complicated."

TAKING ACTION:
**Amber King, Tommy Ward
and Lisa Brandt**

Amber King, a middle school student in Central Florida, stood up to LGBTQ oppression by wearing a sign with "Join thousands," "Talk to teachers only!" "Have love!" and similar messages printed on it to support the Day of Silence. Amber's principal removed her from school that day, claiming her sign was "disruptive." In Southern California, Tommy Ward and Lisa Brandt, student leaders of their gay-straight alliance, were prohibited from putting up posters or making announcements to support the Day of Silence at their high school. Lambda Legal wrote letters to both school districts, demanding respect for the students' freedom of expression. In response, Tommy and Lisa's school lifted the restrictions in time for them to participate fully in the Day of Silence. Amber's school, which had sent her home on the Day of Silence, confirmed that she would be allowed to support the event in the future, without censorship based on her LGBT-supportive expression.

CAN A SCHOOL RESTRICT STUDENT SPEECH BECAUSE IT OFFENDS OTHER STUDENTS OR PARENTS?

No. So long as student expression isn't lewd or profane, and doesn't harass others, schools can't restrict it just because some students or parents find it offensive. As Supreme Court Justice William J. Brennan, Jr. wrote, "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

MORE QUESTIONS?

Check out www.lambdalegal.org/out-safe-respected for updated FAQ sheets about your free speech rights. For questions about legal issues related to the Day of Silence, you can also write to Lambda Legal's Help Desk at legalhelpdesk@lambdalegal.org, or call 1-866-542-8336 and ask for the Day of Silence Help Desk. For more information about the Day of Silence, including tips on how to organize your own Day of Silence at your school, visit www.dayofsilence.org.

(This document gives information on general legal principles only and is not intended as legal advice. For legal assistance, contact Lambda Legal's Help Desk, using the toll-free line or our other telephone numbers at the end of this guide.)