

RIGHTS FOR LGBTQ YOUTH IN CALIFORNIA



Amy Williams, Managing Attorney

Who Am I?



- Managing Attorney with LSNC
- Youth Group Facilitator at SGLC for 3 years at SGLC
- Founded and continue to operate the LGBT Legal Clinic at SGLC
- Train on LGBTQ cultural competence and poverty locally, statewide, and nationally
- Provide free legal services at a DV shelter
- Co-authored Publication: LGBT Guide to Public Benefits
- Experienced most of what we are going to talk about today firsthand

Who are you?



First name

Organization, if any

Ground Rules



- No group legal advice

Story time



- High school student transitions during the school year
- Bathrooms, locker rooms, bullying (teachers and kids)
- LGBTQ kids getting spit on by adults during a day of silence march
- Gender non-conforming foster youth getting harassed and inappropriately housed with boys, facing daily harassment and threats
- Lesbian couple being harassed by neighbors
- Non-citizen transgender woman fleeing persecution

Getting To Know Your LGBTQ Neighbors

- Myth: Gay Couples Have More Money than Heterosexual Couples
 - ▣ Lesbians, especially lesbians of color
- “According to an analysis of Census Bureau data from 2000 by the Williams Institute, the median income for same-sex couples raising children was \$46,200 while for married heterosexual couples raising children it was \$59,600. That’s a \$13,400 difference. The gap increases to \$15,507 when the average income for the gay couple (\$59,270) is matched up with that of the straight couple (\$74,777)

Getting to Know Your LGBTQ Neighbors



- Alarming numbers of homeless youth
 - ▣ Nationally 20% of homeless youth identify as LGBTQ
 - ▣ Almost 60% have experienced sexual abuse
 - ▣ Disproportionately placed in foster care
 - ▣ Forced and coerced prostitution (no real numbers)

Getting To Know Your LGBTQ Neighbors

- Employment and housing discrimination rampant against transgender individuals
 - ▣ According a TLC study, 70% of the transgender community experiences some sort of employment discrimination related **DIRECTLY** to their gender identity
- Majority of the calls I receive are about OVERT LGBTQ discrimination in employment

Bottom Line



- There is no safety net

Legal tools to try to level the playing field



- Just because there is a law on the books, doesn't mean that the bad thing won't happen
- Example: Eviction

Housing Protections



- LGBTQ persons in CA are guaranteed protection from discrimination in the sale or rental of housing and in mortgage lending based on their sexual identity or gender identity, or because of the perception of such identities, as per:
 - Civil Rights Housing Act of 2006
 - The Fair Employment and Housing Act 1999-AB 1001
 - AB 96 from 2003 offers further housing protections from discrimination based on gender identity

Rights in HUD Housing



- U.S. Department of Housing and Urban Development program regulations. In January 2012, HUD issued regulations explicitly prohibiting discrimination on the basis of gender identity, sexual orientation, or marital status in all federally-funded housing programs. These regulations apply to all public and assisted housing and rental assistance (voucher) programs that receive federal funds (including homeless shelters and other temporary housing), as well as to federally-insured home mortgages.

WHAT ARE YOUR HOUSING RIGHTS?

- What types of discrimination are covered by the law? It is illegal for a housing provider to do any of the following because you are LGBTQ, or because you are perceived as not conforming to gender/sexual ID stereotypes:
 - • Refuse to rent or sell you housing
 - • Refuse to admit you to a homeless shelter
 - • Tell you housing is unavailable when it is available
 - • Set different terms, conditions, or privileges for sale or rental of a dwelling
 - • Provide different housing services or facilities
 - • Deny you a mortgage loan, or impose different terms or conditions on a mortgage loan
 - • Deny you property insurance
 - • Conduct property appraisals in a discriminatory manner
 - • Harass, coerce, intimidate, or interfere with you exercising your fair housing rights
- Ask about your gender or sexual identity

How this applies to youth



- Affects youth who:
 - ▣ Live in LGBTQ households
 - ▣ Are in any public care, shelter, foster home, transitional facility
 - ▣ Are old enough to transition to their own independent living spaces that they could rent
 - ▣ Prepares youth for their futures as adults who must manage their own housing

Employment Rights: New Federal EEOC guidelines announced this week:

- EEOC has ruled that Title VII protects transgender workers from on-the-job discrimination. In part, the order states that "intentional discrimination against a transgender individual because that person is transgender is, by definition, 'based on ... sex' and such discrimination ... violates" the law.
- There are still no Federal EDNA protections for either sexual identity or gender identity.

Employment Rights: California



- LGBTQ Californians are entitled more protection from discrimination on the job than Federal regulations provide for. These rights are articulated in:
 - Omnibus Labor and Employment Non-Discrimination Act AB 2900
 - Fair Employment and Housing Act AB 1001
 - AB 196 protects from discrimination due to gender ID on the job

Employment Rights

- Right to work free of harassment due to sexual or gender ID
- Right to not be asked to prove sexual or gender ID
- Right to use gender segregated facilities (bathrooms, locker rooms) of one's personal choice appropriate with what gender the individual identifies as
- Right to equal treatment in hiring, firing and discipline
- Right to present as one's gender identity

Public Benefits



- What are public benefits?
- The “Modern” family
- Factors to consider: Federal v. State? Relationship recognition?
- Concept of HH/AU
- Ex. SSI family
- Relationship Quandry – to recognize or not to recognize (personal decision)
 - ▣ Food Stamps

Juvenile Justice/Foster Care Sources of Law

- AB 458, the Foster Care Non-Discrimination Act, went into effect on January 1, 2004. This law is the first of its kind in the United States to explicitly include protections for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth and adults involved with the foster care system.
- SB 518 Fact Sheet: The California Juvenile Justice Safety and Protection Act
This bill provides a comprehensive bill of rights to protect youth in California juvenile justice facilities from discrimination and harassment based on sexual orientation and gender identity.

Public Benefits



- For more information, See the LGBT Public Benefits Guide at National Center for Lesbian Rights (nclrights.org)
- http://www.nclrights.org/site/DocServer/LGBT_Public_benefits_advocates_guide.pdf?docID=8741

Juvenile Justice/Foster Care AB 458



- All foster children and all adults engaged in the provision of care and services to foster children have a right to fair and equal access to all available services, placement, care, treatment and benefits.
- All foster children and all adults engaged in the provision of care and services to foster children have a right not to be subjected to discrimination or harassment on the basis of actual or perceived sexual orientation or gender identity.

Juvenile Justice/Foster Care AB 458

- All group home administrators, foster parents, and department licensing personnel must receive initial and ongoing training on the right of a foster child to have fair and equal access to all available services and to not be subjected to harassment or discrimination based on their actual or perceived sexual orientation or gender identity.
- All community college districts that provide orientation and training to relative caregivers must make available to relative and extended family caregivers orientation and training courses that cover the right of a foster child to have fair and equal access to all available services, placement, care, treatment, and benefits and the right of foster youth not to be subjected to discrimination or harassment on the basis of actual or perceived sexual orientation or gender identity

What discrimination can look like in foster care

- ❑ Failing or refusing to take steps to protect an LGBTQ youth from harassment based on their actual or perceived sexual orientation or gender identity;
- ❑ Failing to use the requested name and pronoun that is in accordance with a transgender youth's gender identity;
- ❑ Treating displays of affection by same-sex couples differently than displays of affection by different-sex couples;
- ❑ Refusing to allow a youth to wear clothing that is consistent with their gender identity;
- ❑ Not allowing an LGBTQ youth to attend a gay prom;
- ❑ Confiscating LGBTQ supportive materials.

Rights in Juvenile Justice

- SB 518 mandates that:
- There be a statewide prohibition on harassment and discrimination based on actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, and HIV status in all California Department of Juvenile Justice (DJJ) facilities. That means that all DJJ facilities must ensure the safety and dignity of every youth in their care, and must provide care, placement, and services to youth without discriminating on these bases.

Rights at School

- Sources of protection at school for California LGBTQ youth:
 - California Student Safety and Violence Prevention Act: AB 537 Protects LGBT youth from discrimination in publicly-funded educational programs and activities.
 - Federal Equal Protection
 - The Safe Place to Learn Act (AB 394), and the Student Civil Rights Act (SB 77), were passed in 2007 and required the California Department of Education to monitor school districts' creation and publication of anti-harassment policies and complaint procedures and updated the list of prohibited bases of discrimination and harassment.
 - Seth's Law
 - Fair Education Act

What are these rights at school?



- For students to be free from harassment and to have administrators intervene in harassment
- Students have a right to not be “outed” by their schools
- The right to express oneself and one’s identity as equally as other students are allowed such expression
- The right to form a Gay Straight Alliance student club, specifically via the Equal Access Act
- The right to attend prom as a same sex couple

Practice Tip



- Students do not need to admit to being LGBTQ to get the protections. The perpetrator perceiving them as such is enough.
- Don't ask.
- Don't do a good deed and warn other teachers, administrators, etc.

Practice Tip



- If a student presents as a different gender than their sex, allow them to participate fully with their selected gender
- Don't force unisex bathrooms, single stall dressing rooms
- Treat the student the same as other students

Seth's Law: AB 9

- Although California has adopted anti-bullying legislation, LGBT youth are still subject to harassment, intimidation and bullying. Seth's Law tightens anti-bullying policies in California schools by ensuring that all schools have clear and consistent policies and by establishing timelines for investigating claims of bullying. Passed 2011.

What Seth's Law Requires



- Requires each school district to include in its non-discrimination policy an enumerated list of the bases on which discrimination, harassment, intimidation, and bullying are prohibited under existing law—actual or perceived sexual orientation, gender, gender identity expression, race or ethnicity, nationality, religion, disability, or association with a person or group with one or more of these actual or perceived characteristics.

What Seth's Law Requires Cont.



- Requires schools to include in their complaint procedures a method for receiving and investigating discrimination and harassment complaints. Schools would be required to act on discrimination and harassment complaints expeditiously so that investigation and resolution may be reached quickly. Further, faculty and staff working on school campuses would be required to intervene when they witness acts of bullying.

What Seth's Law Requires Cont.



- The Superintendent of Public Instruction would be instructed to post and periodically update on the Department of Education website a list of statewide resources, including community-based organizations that provide support to youth who have been subjected to school-based discrimination, harassment, intimidation, and bullying and to the families of these youth.

Why this is important



- When a school district ignores....
- Example: Anoka-Hennepin School District Bullying Lawsuits (March 2012) – Minnesota (pending)

Anoka-Hennepin School District



- The Problem
- Six students endured daily harassment: slurs, threats, etc.
- Teachers told the students to “stay out of the way” when it was reported to them
- One student attempted suicide

Anoka-Hennepin School District

- The settlement – DOE and DOJ both intervened on behalf of the six students
- Retain the Great Lakes Equity Center systemic review and recommend revisions to district policies and practices related to sex and sexual-orientation related harassment.
- Fully investigate reports of harassment; escalate remedial efforts through additional measures when students are harassed on a repeated basis; and mitigate the effects of harassment that occurs.
- Take proactive measures to address the hostile environment.
- Develop procedures for parental notification while maintaining sensitivity to a student's right of privacy
- Hire a district-level, harassment-prevention official

Anoka-Hennepin School District

- Develop improved and effective trainings, consistent with best practices, on harassment for all students and employees who interact with students.
- A mental health professional to be available during school hours for students in need.
- Hire a mental health consultant to review and assess current practices in the district
- Strengthen its annual anti-bullying survey.
- Enhance a recently formed harassment-prevention task force to advise the district regarding how to best foster a positive educational climate.
- Work with the Equity Center to identify hot spots in district schools where harassment is most problematic, including outdoor locations and on school buses, and work with the equity consultant to develop corrective actions.

Fair Education Act SB 48



- The Fair, Accurate, Inclusive and Respectful (FAIR) Education Act amends the education code to require schools to integrate factual information about social movements, current events and history of people with disabilities and LGBT people into existing social studies lessons. It also prevents the State Board of Education from adopting instructional materials that discriminate.
- July 2011

FAIR Continued, why make these changes?

- Ensure that LGBT people are included in instructional materials, which studies have shown is linked to greater student safety and lower rates of bullying.
- LGBT Americans are included and recognized for their important historical contributions to the economic, political, and social development of California. Specifically, this legislation would add LGBT to the existing list of underrepresented cultural and ethnic groups, which are covered by current law related to inclusion in textbooks and other instructional materials in schools.
- The FAIR Education Act will bring classroom instruction into alignment with non-discrimination laws passed by the California Legislature and adopted by the State Board of Education a decade ago, by prohibiting the adoption of discriminatory instructional materials and textbooks.

More about FAIR



- Climate of respect and keeping our schools safe.
- Accurate depictions of LGBT Americans in classroom materials teach all students to respect each other's differences, thereby increasing students' sense of belonging and ability to learn.
 - By middle school, studies show that students who are bullied based on actual or perceived sexual orientation feel so unsafe that they skip school and their grades suffer compared to their peers.

What FAIR requires in the classroom



- That all public middle school history and social studies curriculums begin to be LGBTQ inclusive as of January 2012. Some resources to begin with as teachers/administrators:
- This is an affirmative duty that all California public educators are obligated to meet already (went into effect Jan. 1)

Cyberbullying in CA

- AB 86 from 2008 gives school administrators the authority to discipline students for bullying others offline or online. This law took effect, January 1, 2009.
- This law combined with Seth's Law increases the affirmative duty of public school administrators to address the bullying/harassment of their LGBTQ students regardless of whether the harassment occurs on or off campus.
- AB 746 from 2011 amended to include social networking sites like Facebook

Local Resources



- Gender Health Center
- Sacramento Gay & Lesbian Center
- WIND Youth Services
- Legal Services of Northern California
- SCUSD Connect Center
- SCUSD Bullying Prevention Specialist

Research/Resources



- National Center for Lesbian Rights
- Transgender Law Center
- Fair Education Action
- Gay, Lesbian, and Straight Education Network

What LSNC Does



- Trains staff on LGBT issues (You never know best)
- Direct services, litigation, policy, education, outreach
- Go to the community
 - ▣ SGLC Legal Clinic
 - ▣ LGBTQ focused meetings, groups
 - ▣ Works with local law schools to develop young LGBTQ attorneys to work in the area

Contact Information

- ❑ Legal Services of Northern California
- ❑ Walk in: 515 12th Street
- ❑ Call: 916.551.2137
- ❑ Connect Center Referral
- ❑ SGLC on Mondays
- ❑ Lsnc.net or health.lsnc.net



Legal Services
of
NORTHERN CALIFORNIA