

August 26, 2020

Dear Principal or Superintendent:

You're being given this letter because your school or a school in your district may be failing to protect lesbian, gay, bisexual, transgender, queer, and questioning (LGBTQ) students from severe bullying and harassment. It is your legal responsibility to investigate such cases of bullying, both physical and verbal, and ensure that harassment stops and your school is a safe learning environment for all students.

Public schools that fail to adequately protect LGBTQ students from severe bullying and harassment can be held liable under Title IX and the Equal Protection Clause. Cases that have found school districts are liable for anti-LGBTQ bullying as a result of their deliberate indifference have led to damages awards and settlements as high as \$1.1 million for students whose schools failed to protect them from anti-LGBTQ harassment. *See, e.g., Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130 (9th Cir. 2003) (awarding \$1.1 million in damages and attorneys' fees); *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996) (awarding \$962,000 in damages); *Dickerson v. Aberdeen Sch. Dist. No. 5*, No. 3:10-cv-5886 (W.D. Wash. 2010) (awarding \$100,000 in damages); *Theno v. Tonganoxie Unified Sch. Dist. No. 464*, 404 F.Supp.2d 1281 (D. Kan. 2005) (awarding \$440,000 in damages and attorneys' fees); *Henkle v. Gregory*, 150 F. Supp. 2d 1067 (D. Nev. 2001) (awarding \$451,000 in damages); *Vance v. Spencer*, 231 F.3d 253 (6th Cir. 2000) (\$220,000 in damages); *Putman v. Bd. of Educ. of Somerset Ind. Schools*, No. 6:00-cv-00145 (E.D. Ky. 2000) (awarding \$135,000 in damages).

Under Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. § 1681, schools may be held liable if they act with deliberate indifference in failing to protect students from severe peer harassment on the basis of sex. *See Davis ex rel. LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999). Harassment based on a student's gender identity, sexual orientation, or failure to conform to sex stereotypes is a form of harassment based on sex under Title IX. *See Videckis v. Pepperdine Univ.*, No. CV 15-00298 DDP JCX, 2015 WL 1735191, at *7 (C.D. Cal. Apr. 16, 2015); *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 150 (N.D.N.Y. 2011).

Deliberate indifference to severe harassment and bullying of LGBTQ students also violates the Fourteenth Amendment. *See, e.g., Nabozny*, 92 F.3d at 458 ("Reasonable persons in the defendants' positions . . . would have concluded that discrimination against [a public school student] based on his sexual orientation was unconstitutional."); *Flores*, 324 F.3d at 1134-35. It is therefore incumbent on school officials to take claims of LGBTQ-related harassment seriously, and work hard to fully and effectively resolve them. *See Flores* at 1135-36 ("Failure to take any further steps once [the school administrator] knew his remedial measures were inadequate supports a finding of deliberate indifference"); *Martin v. Swartz Creek Cmty. Schools*, 419 F. Supp. 2d 967, 974 (E.D. Mich. 2006) ("[If] the school district's efforts . . . did not abate the frequency or severity of [anti-gay bullying], [the ineffective remedy] might



alone create a jury question of whether the school was deliberately indifferent.”).

With this information in mind, we urge you to investigate and respond appropriately to the LGBTQ-related harassment that may be occurring at your school or schools. Please do not hesitate to contact the ACLU if you have any questions about this letter or wish to discuss it further. We can be reached at 212-549-2673.

Sincerely,



James D. Esseks

Director

ACLU Lesbian Gay Bisexual Transgender & HIV Project



Students and parents: Feel free to use this letter as an advocacy tool in your school.