

The Legal Liability Associated with Homosexuality Education in Public Schools

**An assessment of the risks and liabilities associated with
policies and programs that normalize homosexual
behavior in public schools**

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Since the early 1990s, homosexual activist organizations have been working for greater access to public schools with the stated purpose of making them a “safer” place for young people who have become involved in homosexual behavior.

One of the most active organizations on school campuses, the Gay Lesbian and Straight Education Network (GLSEN), insists that self-identified homosexual students are regularly harassed, threatened and abused, creating an environment in which they cannot learn. Also promoting this idea is Parents, Families and Friends of Lesbians and Gays (PFLAG), which is gaining a significant presence in many schools across the country. Similar organizations exist at the local level and may or may not be affiliated with these national groups.

According to GLSEN and PFLAG, the reason schools are not safe for students involved in such behavior is the ignorance, prejudice and hatred of heterosexual classmates. They claim the only answer, then, is to teach everyone in the K-12 school system – administrators, teachers, and students – that homosexual behavior is normal, healthy, and natural. They believe this will “change attitudes” and stop so-called “prejudice [against homosexuality] before it begins” and will produce respect for, and encourage tolerance of, the perceived diversity that exists among the public school population.

How They Frame the (Non) Issue

GLSEN’s Executive Director Kevin Jennings admitted in a speech in 1995 how he used “safety” to delude the Massachusetts legislature into adopting the pro-homosexual agenda for the schools in their state. The speech, “Winning the Culture War,” was given at a conference on March 5, 1995. Notice the “safety” Trojan horse:

In Massachusetts, the effective reframing of this issue was the key to the success of the Governor’s Commission on Gay and Lesbian Youth. We immediately seized upon the opponent’s calling card – safety – and explained how homophobia represents a threat to students’ safety by creating a climate where violence, name-calling, health problems, and suicide are common. Titling our report ‘Making Schools Safe for Gay and Lesbian Youth,’ we automatically threw our opponents onto the defensive and stole their best line of attack. This framing short-circuited their arguments and left them back-pedaling from day one.¹

Safety? Or Sex?

What is becoming increasingly clear, however, is that despite claims to the contrary, the “safe school” message of these organizations is nothing more than a deceptive ploy designed to preach safety while actually encouraging sexual behaviors that are quite unsafe.

Exposure to and experimentation with homosexual behavior carries serious risks that school officials should be aware of in order to protect students. There is concern that by allowing access by homosexual activist organizations, and by establishing policies that have the effect of normalizing homosexual behavior, schools may have become responsible for physical and emotional harm to the students entrusted to their care.

In addition, because homosexual behavior has been proven to contribute to many harmful consequences for those who engage in it, school officials should be aware that it is possible that a legal liability exists for the tort of negligence if it is proven that homosexual activist organizations were granted access to students under the school's responsibility and that students subsequently suffered physical or mental harm.

Liability for the tort of negligence generally rests on four elements:

1. A duty or obligation to protect another from unreasonable risk;
2. A failure to observe that duty;
3. A causal connection between the failure and the alleged injury; and
4. Actual loss or damage that resulted.

Forewarned is Forearmed

The purpose of this document is to inform school officials of those serious physical and mental health risks so that they might be able to fulfill their duty to protect the students in their schools and thus avoid legal action related to the negligent injury of a student, or violations of criminal and constitutional law.

ENDANGERING THE PHYSICAL HEALTH OF A CHILD

It is generally recognized by the majority of adults in our society, and backed up by many studies, that early participation in sexual activity by children is undesirable for many reasons. Serious endangerment to the physical health of the child is just one compelling reason.

When a child is encouraged to accept homosexuality as normal, healthy and natural, any such encouragement to engage in or experiment with homosexual behavior at a school-sanctioned club or event, has the potential for legal liability, should the child experience injury to his or her physical health through such experimentation.

Sexually Transmitted Diseases

It is undeniable that the most serious physical harm that can come to someone engaging in homosexual behavior is the contraction of HIV. Even after many years of "safe-sex" education targeted at high-risk groups, particularly men having sex with men, according to *HIV/AIDS Surveillance Report*, a publication produced by the Centers for Disease Control and Prevention (CDC), this category continues to account for the largest number of people reported with AIDS each year.

Oxford University's *International Journal of Epidemiology* indicates that gay and bisexual men involved in same-sex activity risk cutting years off their lives. One study showed:

*In a major Canadian centre, life expectancy at age 20 years for gay and bisexual men is 8 to 20 years less than for all men. If the same pattern of mortality were to continue, we estimate that nearly half of gay and bisexual men currently aged 20 years will not reach their 65th birthday. Under even the most liberal assumptions, gay and bisexual men in this urban centre are now experiencing a life expectancy similar to that experienced by all men in Canada in the year 1871.*²

While HIV infection is very serious, same-sex sexual behavior exposes individuals to many other serious and life-threatening health risks. The Medical Institute for Sexual Health research reveals that:

*Homosexual men are at significantly increased risk of HIV/AIDS, hepatitis, anal cancer, gonorrhea and gastrointestinal infections as a result of their sexual practices. Women who have sex with women are at significantly increased risk of bacterial vaginosis, breast cancer and ovarian cancer than are heterosexual women.*³

Perils of the Human Papillomavirus

Genital human papillomavirus (HPV) infections are sexually transmitted infections of increasing public health concern. The CDC has stated it is the most common STD in the U.S. and has no cure. While it has been known for years that HPV is a cause of genital warts, there is a growing body of evidence demonstrating its association with a variety of anogenital cancers.

HPV is a collection of more than 70 types of viruses that tend to cause warts, or papillomas, on various parts of the body. Most HPV infections are subclinical or asymptomatic, while only one in a hundred people experience any symptoms of genital warts.⁴

According to the CDC, an estimated 5.5 million people become infected with HPV each year in the U. S., and an estimated 20 million are currently symptomatic, accounting for 15% of Americans ages 15-49. A staggering estimated 75% of the reproductive-age population has been infected with sexually transmitted HPV at some point in their lives.

HPV – “Hard to Prevent Virus”

HPV no doubt has a one-two punch. First, because the person infected generally is not aware of the contagion, he or she passes it on without knowing it. Secondly, if someone is infected, it is virtually impossible to prevent transmission via sexual contact.

*HPV differs from other STDs in its method of transmission; it is not spread from one person to another through the exchange of bodily fluids. Rather, it spreads through skin-to-skin contact. Since HPV is a regional, multicentric disease, it infects the entire genital area: the penis, scrotum, vulva, and surrounding areas. Condoms do not cover the scrotum, nor most of the other areas that can be infected with the virus.*⁵ (emphasis added)

A CDC report dated July 20, 2001 entitled “Scientific Evidence on Condom Effectiveness for Sexually Transmitted Disease (STD) Prevention” has provided convincing evidence for the lack of protection condoms provide from HPV infection. The National Institute of Allergy and Infectious Diseases, National Institutes of Health, and the Department of Health and Human Services released the results of a workshop sponsored by a number of federal agencies assigned with the task of answering the following question: “*What is the scientific evidence on the effectiveness of latex male condom-use to prevent STD transmission during vaginal intercourse?*”

Though the workshop was held in June 2000, the agencies sat on the controversial report for more than a year and released it only after the threat of a Freedom of Information Act request. The results were so alarming that one group of physicians charged the government with a medical cover-up and called for the resignation of the CDC director.

When finally released, the report revealed that there is insufficient evidence that condoms prevent the spread of most STDs. “*For HPV, the Panel concluded that there was no epidemiologic evidence that condom use reduced the risk of HPV infection.*”⁶ (emphasis added)

Alarmed by the results of the study, HHS Secretary Tommy Thompson was also called on to enforce the federal law requiring all federal agencies to provide “medically accurate information regarding the effectiveness or lack of effectiveness of condoms.” The law’s author now believes “that when condom use is discussed it is no longer medically accurate – or legal for the CDC – to refer to sex as ‘safe’ or ‘protected.’”⁷

As well, public schools should be required to insure that medically accurate information is given to students if the school is directly or indirectly involved in the distribution of condoms.

The facts are plain: it is risky to think that condoms will protect students, or anyone for that matter, from HPV or most STDs, and ignoring the clear evidence expressed in the above-referenced study will expose a school to certain liabilities.

HPV and homosexual behavior

A report contained in *Tracking the Hidden Epidemics 2000* by the CDC, noted a study with an extremely high prevalence of HPV infection among gay and bisexual men: 60% of those HIV-negative and almost universal infection among HIV-positive individuals.

Gay Health, a popular magazine on health issues related to homosexuals, states that HPV causes most anal cancers in men who have sex with men (MSM). Among those infected with HPV, the risk of anal cancer soars by nearly 4,000% for MSM and doubles again in the case of HIV-positive men.

Pro-Homosexual Groups Promote Unsafe Sex

Pro-homosexual youth organizations often claim to encourage only 'safe sex' to students, with an emphasis on the use of condoms. But in practice, they are promoting behaviors that have devastating physical consequences and could expose schools to liability if the organizations are allowed access to students on campus or at school events.

Conference workshops on sexually related topics often place students at serious health risks. For example, on the weekend of March 25, 2000, GLSEN/BOSTON & Project 10 East held their tenth annual "Teach Out!" conference at Tufts University. One particular workshop, "What They Didn't Tell You About Queer Sex & Sexuality in Health Class," was described in conference materials as follows:

*This workshop for youth addresses what is different for glbt (gay, lesbian, bisexual, transgender, transsexual) youth when it comes to sex, dating, relationships, HIV etc. Come and discuss the questions you couldn't or didn't ask in health class. What's it like to be young, queer and beginning to date? Are lesbians at risk for HIV? What does it mean to identify as queer and still be sexually active with the opposite sex? Who can you talk to about these things? And, why aren't queer issues addressed in Sex Ed classes? We will address the information you want about queer sexuality and some of the politics that prevent us from getting our needs met.*⁸

Scott T. Whiteman, a concerned parent from Boston, attended the GLSEN workshop and noted the workshop's discussion on condoms:

*As often as we hear that there is an aggressive HIV/AIDS prevention campaign, the session ran 55 minutes before the first mention of "protection" and safer sex came. In the context of the "safer sex" discussion, however, it was pointed out that these children could make an informed decision not to use a condom. Outside in the conference hall, the children could easily obtain as many condoms, vaginal condoms, and other contraceptive devices as they wished from various organizations which distribute such.*⁹

Other Health Risk Behaviors

PEDIATRICS, the Journal of the American Academy of Pediatrics reported on a Harvard study, published in May 1998 one of the most convincing studies identifying the association between health risk behaviors and sexual orientation. Results of the analysis revealed more than 30 risks positively associated with self-reported gay-lesbian-bisexual (GLB) orientation.¹⁰

The study by Harvard Medical School of 4,159 ninth to twelfth grade students found that "GLB youth report disproportionate risk for a variety of health risk and problem behaviors...engage(ing) in twice the mean number of risk behaviors as did the overall population." (emphasis added)

The health risks and problem behaviors specifically identified by the study included, but were not limited to, "an increased...use of cocaine (and other illegal drugs). GLB youth were more likely to report using tobacco, marijuana,

and cocaine before 13 years of age. Among sexual risk behaviors, sexual intercourse before 13 years of age, sexual intercourse with four or more partners...all were associated with GLB orientation.”

Homosexuals attempt to argue that the social stigma attached to homosexuality is what pushes GLB adolescents to engage in these high-risk behaviors. To the contrary, in the most tolerant communities in the world, including San Francisco and the Netherlands, the incidents of adolescents engaging in high risk behaviors is comparable.

Forewarned is Forearmed

Schools ignore the potential for legal liability when a child is encouraged to accept homosexuality as normal, healthy and natural. In the interest of protecting children from the aforementioned risks, many schools have adopted abstinence until marriage policies to avoid prematurely introducing children to sexual behaviors that will endanger their physical health.

ENDANGERING THE MENTAL HEALTH OF A CHILD

Compounding such physical consequences are the mental health problems associated with same-sex relationships. One particular study that confirms this is a government-sponsored look at 5,998 adults in the Netherlands ages 18 to 64 which was published in the January 2001 issue of the *Journal of the American Medical Association (JAMA)*. “The findings support the assumption that people with same-sex sexual behavior are at greater risk for psychiatric disorders.”¹¹ Specifically, the study found that –

Compared to heterosexual men, males who engage in homosexual behavior are:

- 727 percent more likely to have suffered bipolar disorders at some point in their lives, and 502 percent more likely in the last twelve months.
- 718 percent more likely to have suffered obsessive-compulsive disorder in the last twelve months, and 620 percent more likely at some point in their lives.
- 632 percent more likely to have suffered agoraphobia (fear of leaving home or being in public) in the last twelve months, and 454 percent more likely at some point in their lives.
- 421 percent more likely to have suffered "panic disorder," and 229 percent more likely to have suffered "social phobia" at some point in their lives.
- 375 percent more likely to have suffered simple phobia in the last twelve months, and 361 percent more likely at some point in their lives.
- 311 percent more likely to have suffered mood disorders at some point in their lives, and 293 percent more likely in the last twelve months.
- 261 percent more likely to have suffered anxiety disorders in the last twelve months, and 267 percent more likely over the course of their lifetimes.
- 270 percent more likely to have suffered two or more psychiatric disorders during their lifetime.
- 235 percent more likely to have suffered major depression at some point in their lives.

Compared to heterosexual women, females who engage in homosexual behavior are:

- 405 percent more likely to have suffered a substance use disorder.
- 241 percent more likely to have suffered mood disorders during their lifetimes.
- 209 percent more likely to have suffered two or more mental disorders during their lifetimes.

Again, most homosexual activists argue that such mental health problems are the result of societal nonacceptance and/or stigmatization of homosexual behavior. Such conclusions, however, are unlikely and still unproven in scientific circles, and schools should avoid basing policies on unestablished assumptions.

In any case, studies like the referenced one conducted in the Netherlands was done in a culture that is very open and accepting of homosexuality. As if anticipating homosexual activists' typical claim, the study notes that "the Dutch social climate toward homosexuality has long been and remains considerably more tolerant"¹² than in other countries. Yet the same mental health problems were found in homosexuals in that country as in homosexuals in the United States.

Schools Unequipped to be Mental Health Clinics; Preventing Negligent Referrals

In most instances it is assumed to be the responsibility of a child's parents to ensure that he or she grows mentally healthy. Helping a young person to understand the ethics of sexual behavior in an already confusing time of life is not an easy task.

However, the advancement of homosexuality education in public schools has forced teachers into the role of mental health professionals. Teachers are usually untrained and thus unqualified to assess – and then accurately address – the mental health needs of their students.

Furthermore, the lack of teacher qualifications for such endeavors sometimes leads them to lean too heavily on outside groups. Many of these groups' activities fall outside the authority and control of the school, even though students are referred to them. In general, they also support a broader political agenda that may not be supported by parents or public school officials.

Referring a student to a local homosexual organization as a legitimate conduit for confused or troubled children simply because one expects them to be able to handle the child's problems is not protection from legal liabilities should something go wrong. Instead, it well could be construed as negligence.

School boards must carefully consider how their policies and procedures contribute to the district's potential for liability should a child be harmed while in their care. Do the district's policies and procedures permit or fail to prevent school district personnel, employees, agents or volunteers from:

- Referring students to outside organizations regarding matters pertaining to sexuality or sexual education?
- If referrals to outside organizations are permitted, does the district assess the outside group's malpractice history, record of compliance with state law and the group's ability to financially compensate students harmed while under their care?
- If an outside organization is permitted by the district to be on campus, make school/class presentations or distribute information to students, or if a minor student is subsequently enticed to engage into a relationship with an adult as a direct or indirect result through involvement with a sanctioned curricular or extra-curricular club, what is the district's legal liability for consequential physical or psychological harm?

CONTRIBUTING TO THE DELINQUENCY OF A CHILD

All states have gone to great lengths to ensure the safety of children and to protect children from corruption by adults. Criminal laws that prohibit adults from contributing to the delinquency or corruption of minors often address areas of sexual behavior and carry harsh punishments.

The negligent failure to protect a child from known dangers when the child is in one's care can be cause for criminal action. And when students are on school property, or under the care of school agents, the authorities at the school have a legally recognized responsibility to protect students from harm.

Although GLSEN, PFLAG and similar organizations are quick to assert that neither they nor the school clubs associated with them encourage adolescent sexual behavior, parents have found a completely different story when researching the resources and activities of these organizations.

Some of the most disturbing evidence is found in the books and brochures distributed by these groups to young people and their parents. Having conducted a thorough analysis of these resources, Linda Harvey of *Mission: America* concludes,

*“Children are often encouraged to be self-indulgent and self-centered in every aspect of life. They are told to reject the wisdom of parents and other authorities if they wish, even at early ages. And most alarming, they are given the green light to engage in just about any sexual behavior imaginable.”*¹³

Schools Exposed to Civil Liability

Implied approval of child-adult sexual relationships is a frequent and usually positive theme in resources recommended by GLSEN and PFLAG. Beyond the fact that these liaisons can constitute criminal activity for which the adults could be prosecuted, the civil lawsuits schools could face are daunting.

One has only to look to the numerous claims recently made against the Catholic Church for its various roles in sexual abuse scandals involving priests to see the liability schools could face in similar situations. Out-of-court settlements paid for past offenses have totaled in the multiple millions of dollars thus far. It should be noted that a major component of this litigation has focused on the negligent failure of the church hierarchy to protect children from known risks.

It is difficult, if not impossible, for school officials to know whether the adults who want access to the children on their campuses have criminal intentions. But if those adults state their intentions in writing up front – in books and brochures approving of child-adult sex – school officials have a responsibility to keep them at a distance. Failure to do so when the school is aware of the potential danger will very likely result in culpability.

Based on the critical review of the resources provided to young people by groups like GLSEN and PFLAG, Harvey states,

*School officials should be aware that many homosexual support groups for teens and their parents believe that sex between a young person and an adult is just an expected part of the growing up process. Numerous stories and episodes of adult-teen homosexual sex are found within the resources of these groups. Incidents are treated at times in a neutral fashion, or too often, in a positive light, as if such abusive relationships are natural, normal, and even an advantageous ‘coming of age’ step in the lives of ‘gay, lesbian, bisexual and transgendered’ youth.*¹⁴

Recommended Reading for Children?

Consider the following sample of materials – clearly only the tip of the iceberg – often recommended and distributed by pro-homosexual youth organizations that are often intertwined with the establishment of many school clubs.

Two Teenagers in Twenty, acquiring its title from the myth that ten percent of teens are homosexual, is recommended by PFLAG and formerly by GLSEN. The book is a compilation of true first-person “coming out” stories, ostensibly written by teenagers. One 15-year-old recorded in his memoir:

*...I met this guy named Reggie, who was twenty-three. I met him hanging out in the subway station...He spent the night with me a few times...*¹⁵

Later in the book, another boy positively recounts his relationship with an older man:

*Last summer, I finally came to grips with the fact that I was gay. I had been having sex with a man since I was fourteen, but I thought it was just a phase...*¹⁶

Another book recommended for youth on GLSEN's website and by PFLAG in its brochure, "*Be Yourself*" is **Revolutionary Voices**. One radical and extremely dangerous voice is that of Minal, a young man who is a cross-dresser and works as a prostitute specializing in sado-masochism:

*I've been doing drag for about ten years, on and off...my fantasies were all about whipping. I started reading up on S/M, and it was making me interested in sex for the first time...I realized that, for what I was doing, I could be getting good money.*¹⁷

In the novel **Rainbow Boys**, three 17-year-old boys explore their homosexual attractions. Frequent themes include obtaining pornographic magazines¹⁸ and movies¹⁹, as well as graphic descriptions of masturbation²⁰. The book features a scene where one of the teen boys has anal intercourse without a condom with a 29-year-old man he has just met via the Internet²¹. This boy's mother is an officer in the local PFLAG chapter, and comes and goes to meetings throughout the book. In accepting the book's apparent endorsement, PFLAG highly recommends **Rainbow Boys** in its brochure for youth, "*Be Yourself*." It is also available on GLSEN's website.

Growing Up Gay/Growing Up Lesbian: A Literary Anthology – recommended reading by PFLAG in its brochure for parents "Our Daughters & Sons," and available for purchase on GLSEN's website – records a man's reminiscence of his youth:

*From a convenience store in a town thirty miles away that sold liquor to underage customers as well as porn paperbacks, I acquired a copy of a novel called *Pretty Boys Must Die*. It satisfied my curiosity about what homosexuals did...I was excited out of my mind...I also knew that somewhere out there, beyond Amethyst, someone had to be doing something remotely like what leather hustler Riley Jacks did to naïve young David [the "Pretty Boy"]...I was ready...But I had to wait...I gorged on new porn when I could get it...I was content to read for hours, and masturbate for hours...*²²

Later in the book, a young man named Elliot, raised by two homosexual men, describes his first experience of anal intercourse:

*My first experience was with a much older man, a friend of Derek's [his dad]...When I was fifteen, he must have been twenty-nine, thirty...I seduced him...It was a wild night. We did everything.*²³

Meeting with other homosexual or questioning youth, usually without parental knowledge, is also a frequent theme in recommended materials. At these community meetings, children as young as 13 come in contact with college-age youth and adults who are often seeking sexual liaisons with other attendees.

In Your Face: Stories from the Lives of Queer Youth, recommended by PFLAG in both its youth and parent brochures and recommended for purchase on GLSEN's website, records a story of one youth, Todd Fay-Long (17):

*...I joined this youth group called *Positive Images*; it's the Sonoma County gay/lesbian/bisexual youth group. I got a boyfriend instantly; he picked me up right away, right when I joined the group. He was older; he was twenty-five, I was sixteen...*²⁴

He shortly began a different relationship with a 27-year-old man, a friend of the first partner.

Not only do the resources recommended by these organizations, but often their sponsored meetings, cross the line in the promotion of irresponsible, dangerous and all too often illegal behavior. And alarmingly, these types of organizations are becoming increasingly bolder, particularly when they can get students to leave school grounds.

The Massachusetts Model

One presenter at the previously mentioned GLSEN *Teach Out!* conference at Tufts University in Boston, Margot E. Ables, Coordinator, HIV/AIDS Program, Massachusetts Department of Education and a self-proclaimed lesbian, acknowledged,

*We always feel like we are fighting against people who say publicly, who say privately, that being queer is not at all about sex... We believe otherwise. We think that sex is central to every single one of us, and particularly queer youth.*²⁵

This conference gave children as young as 12 explicit “how to” instructions about homosexual sex.²⁶ When the tapes of several workshops were made public, there was a flurry of controversy and outrage by parents. Not only were tax dollars used for this event, but children were bused to Tufts using public school buses, and teachers were given ongoing education credits from the state for attending.

In the session previously referred to entitled “What They Didn't Tell You About Queer Sex & Sexuality in Health Class,” three self-avowed homosexual panelists gave advice to the teens on a myriad of topics. The instructions included a discussion and demonstration of extremely dangerous sex practices.

After attending several workshops that clearly crossed the line of what is appropriate and legal for children, Mr. Whiteman subsequently called on the local District Attorney to investigate the individuals involved in the conference and the state’s entanglement with it to determine whether minors had been corrupted.

Vermont

A similar dispute erupted in Vermont when a group called Outright Vermont pushed their agenda much further than it promised it would – also at taxpayer expense. With grants over a three-year period from the Vermont Department of Health worth \$121,575, Outright targeted students who were in middle through high school grades. Kathy Hoyt, Secretary of Administration, proudly asserted that Outright Vermont “developed a training program for public schools that was designed to support diversity and safe schools for Vermont’s gay, lesbian, bisexual, transgender and questioning youth.”

As in Massachusetts, however, “safety” shifted to “sex.” According to its own documents, Outright Vermont used taxpayer money to provide “safer sex activities” and “parties” for teens. These events included “demonstrations, guided practice & skill evaluation” for the use of prophylactics, and the distribution of free condoms, lubricants for sexual intercourse between males, “dental dams” for oral sex between females, and latex gloves for mutual masturbation. The number of such items requested by Outright for distribution to teens was: 5,000 condoms, 750 dental dams, 750 latex gloves, and 2,000 packets of lubricant.

Outright also spent monies on youth retreats, including the “recruitment of youth participants,” which utilized mailing lists and youth-related meetings to stir interest in the gatherings. Students who expressed an interest in attending were transported – again using state money – to the retreat site, where youth and adult staff taught kids how to engage in homosexual sex. Outright’s quarterly report stated, “All retreat participants practiced & were evaluated on their (prophylactic) barrier use skills & were given a variety of barriers to take home. Participants joined in role plays.”

Other social events for youth paid for by Outright included dances, movie nights, bowling, picnics, etc. At one such event, the Emerald City Ball, Outright says it distributed prophylactics and lubricants to participants “at the door & in the bathroom.” Approximately 60 teens and 80 adults attended the event.

In a virtual minefield of legal liability, consider the very real possibility that a student attending that Ball, surrounded by free condoms and lubricants, having been told that sex is safe, wound up having a sexual relationship with one of the adults who also attended. There is growing consensus that schools could be held legally culpable, since the organization running the dance has the full support and recommendation of the school system.

Safety in Seattle?

According to Ed Vitagliano, Director of Research for AFA, an all-too-familiar scenario was documented in Seattle, Washington by Eleanor Durham of Parents and Teachers for Responsible Schools. The Sexual Minority Advocacy Council (SMAC) was created “to help ensure that [the Seattle public schools] are providing a safe environment for everyone who learns, works or interacts,” according to school superintendent John H. Stanford. (emphasis added)

But with the student safety concern out in front, the purpose of SMAC then seeped over into other areas. A SMAC pamphlet produced by the Seattle Education Association and made available to all students included a list of resources that amounts to a Seattle same-sex smorgasbord for curious teens, complete with phone numbers of the Lesbian Resource Center; Gay, Lesbian, Bisexual, Transgender Youth Information Line; Lambert House Gay, Lesbian, Bisexual and Transgender Youth Drop-In Center; and the Gay Lesbian and Straight Education Network (GLSEN).

What did students find when they accessed the groups provided as resources by the pamphlet? When Ms. Durham checked the GLSEN web site, for example, she was shocked by what she found. GLSEN’s home page was an Internet doorway into every sort of pro-homosexual venue imaginable. One link was to a website that welcomed young people “who are searching out their sexual orientation.” It asked young visitors, “Do you feel that you might be bisexual, gay, or lesbian? This is the place for you.”

What important information was provided to these young people? Information such as pictures of naked same-sex teenagers embracing, a homosexual dating service where gay youth could find “partners or friends of the same sexual orientation,” and chat rooms where homosexual youth could meet others were all available through the site.

Durham said other perversions accessible from GLSEN’s web page included homosexual pornography, stories that included same-sex incestuous acts between fathers and sons, videos on sadomasochism, and listings for phone sex and live sex shows. Also available were free images showing naked men, genitalia, and oral sex acts. When she complained, the links to the web sites were removed although the damage to curious young people may have already been done.

Forewarned is Forearmed

Young people who may truly be confused about their sexuality or simply curious are literally funneled from schools through supposedly protective activist groups into the world of the homosexual lifestyle. And once there, susceptible children can be lured into homosexual pornography, same-sex relationships and, ultimately, participation in homosexual activity.

School officials should be aware that by granting homosexual organizations access to students on their campus, they could be in violation of state laws that prohibit corrupting or endangering children. Particular note should be taken that some laws cover those serving “in loco parentis of a child.” Allowing a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support could create civil or criminal liability for school officials.

Some states go so far as to prosecute those involved in “aiding, abetting, causing, encouraging, or contributing to a child becoming unruly or delinquent,” defined as one who behaves in a manner as to injure or endanger the child’s own health or morals or the health or morals of others. Clearly, the health and morals of a child are endangered when they become involved in the activities recommended and sponsored by the aforementioned groups.

UNCONSTITUTIONAL RESTRAINT OF FIRST AMENDMENT RIGHTS THROUGH RESTRICTIVE STUDENT SPEECH OR ANTI-HARASSMENT CODES

Aggressive efforts by homosexual activist organizations to make schools a “safer” place have resulted in over-restrictive speech or anti-harassment codes that have infringed upon students’ free speech rights under the First Amendment of the Constitution. These unconstitutional policies are now exposing schools to legal action.

Censorship is not the Solution

Censorship is government suppression of individual speech and it comes in many forms. In years past, government censors banned certain books and movies. Today, there is a new and growing form of censorship called “political correctness.”

Political correctness is a kind of “secular” moral code that takes sides on many controversial issues such as abortion, evolution, or homosexuality, and then declares its views to be morally right and the opposing views to be morally wrong.

Political correctness may assert itself in the public school in the form of discouraging opposing views on these controversial issues. It may even go so far as to define disapproval of some issues as disordered.

For example, disapproval of homosexuality is often termed ‘homophobic,’ ‘bigoted’ or ‘hate mongering.’ This robs students of the opportunity to hear all points of view and make informed choices in conjunction with their own moral or religious code. This is clearly the antithesis of the freedom of speech and the Supreme Court has already ruled that students do not shed that freedom at the schoolhouse door.

The First Amendment Prohibits Government Censorship

The Third U.S. Circuit Court of Appeals recently overturned a public school system’s controversial policy that forbade students from expressing sincerely held beliefs, secular and religious, about homosexuality.

Concerned parents argued that the school code was being used to suppress the freedom of speech of students who out of a sincere religious belief and sense of compassion and care for their fellow students attempted to warn others about the severe mental and physical health hazards medically and scientifically associated with such behavior. The case serves as a warning to schools that would consider unconstitutionally restricting the free speech rights of students in an effort to promote the acceptance of homosexuality.

The controversy began when David Saxe, Ph.D., and two students in the State College Area School District (SCASD) challenged the constitutionality of a “hate speech” code. The school district dubbed the speech code an “anti-harassment policy” supposedly meant to protect students who identify themselves as GLBT from verbal harassment.

In a strongly worded opinion, the Third Circuit reinforced the constitutional protections afforded student speech – especially speech addressing values and religion. The SCASD policy, the court said, was “both unconstitutionally overbroad and vague.”

The appellate court overturned a lower court ruling that had said that speech which can be characterized as “harassment” is not protected under the First Amendment. Such a view of speech, said the Third Circuit, “is without precedent in the decisions of the Supreme Court or this Court, and it belies the very real tension between anti-harassment laws and the Constitution’s guarantee of freedom of speech.”

The ruling also said that the clauses in the SCASD speech code that sought to prohibit “disparaging speech directed at a person’s ‘values’” struck at the very “heart of moral and political discourse – the lifeblood of constitutional self-government (and democratic education) and the core concern of the First Amendment.”

To the contrary, courts have gone so far as to say that student expressive rights exist even if some find the student speech offensive. (*Tinker v. Des Moines Independent School District*, 393 U.S. 508-509 (1969)).

Attorneys involved in the Saxe case believe this decision will, in fact, “result in the striking down of hate speech codes the nation over, even well beyond the context of the public schools.”

The Correct Response

The solution to this problem is obviously to prohibit verbal and physical harassment of any kind, upholding policies that most schools already have in place, without legitimizing behavior that poses such a dramatic threat to the health of young people. No doubt a student's right to free speech can be protected while at school without giving him or her the freedom to materially and substantially disrupt school discipline.

One view is that schools already engage, as do all educational institutions, in a kind of legitimate "censorship." That is, they pick and choose, based on the constraints of time, money and the values of the community, what the curriculum will contain, and what it will not.

Within this view, it is easy to make a solid case that any issue that may expose children to harm is unethical, absorbs valuable time and money, and may simply be more trouble than it's worth. If they choose to communicate only protective and enabling messages about homosexuality, schools are opening themselves up to costly litigation on issues regarding free speech as well as for harm suffered by students to their physical and emotional health.

An attempt to silence non-politically-correct views is bad enough when it comes from other students. But when it comes from school officials, it is a violation of students' and parents' constitutional rights.

In order for schools to avoid legal action in this area, policies should reflect the principles that:

1. Students, parents and teachers have the right to speak their opinions and engage in persuasive argument about any responsible issue in schools without fear of discrimination, retaliation or punishment.
2. Students have the right to disagree with, question, and to dispute political correctness in textbooks, classroom instruction, and official school policies.
3. Students have the right to invite speakers into their school to present their side of the issues to the same extent as students with politically correct views. One particular example is worth noting. Schools attempting to promote "diversity" have held events wherein only one viewpoint was permitted to be expressed. Such was the case involving the Pioneer High School and Ann Arbor Public Schools.²⁷ Ruling against the school district's heavy handed tactics the court observed:

This case presents the ironic, and unfortunate, paradox of a public high school celebrating "diversity" by refusing to permit the presentation to students of an "unwelcomed" viewpoint on the topic of homosexuality and religion, while actively promoting the competing view. ...

All of this, of course, raises the question, among others presented here, of what "diversity" means and whether a school may promote one view of "diversity" over another. Even accepting that the term "diversity" has evolved in recent years to mean, at least colloquially, something more than the dictionary definition, the notion of sponsorship of one viewpoint to the exclusion of another hardly seems to further the school's purported objective of "celebrating diversity."

Before moving to an analysis of the case, it remains only to make clear not only what this case is about, but what it is not about. It is not about intolerance towards homosexuality or the appropriateness, religiously or otherwise, of different lifestyles. The case is, however, about tolerance of different, perhaps "politically incorrect," viewpoints in the public schools.²⁸

Ann Arbor Public schools, chastised by the federal court, amended its unconstitutional policies and procedures and paid the plaintiff's attorneys fees, which exceeded \$100,000.00.

4. Students have the right to be protected while in the school setting from any policy or program that could lead to harm to their physical or emotional health.

5. Schools, subject to constitutional principals, have the responsibility to determine whether a given issue may introduce harmful messages to children and their right to determine not to deal with it at all. This should apply to the establishment of “gay” clubs, which may encourage children to experiment with homosexual behavior without parental knowledge.

In 2003, the Lubbock (TX) Independent School District, reacting to parental concerns and complying with its own policies regarding abstinence education limiting the inappropriate discussion of topics relating to sexuality, banned the formation of a Gay Straight Alliance. The federal judge, agreeing with the school district, found that while federal law permitted the formation of extra-curricular clubs, it did not prohibit a school district from protecting the welfare of its students. The judge ruled that a club predicated upon the discussion of homosexuality could be banned because:

- Student’s First Amendment rights within the context of an educational setting are not equal to rights possessed by adults considering the vulnerability of children, their immaturity and the importance of parents in child rearing. The district’s decision to restrict the topics discussed related to the subject matter of sexuality to abstinence only was found to be reasonable in light of the purpose served by the forum.
- The federal law requiring access for extracurricular clubs, the Equal Access Act (EAA), did not prohibit schools from placing content neutral restrictions on all clubs nor did federal law prohibit a school district from acting to avoid disruption by maintaining order and discipline in promoting educational activities. The Court noted that Defendants relied upon exceptions to the EAA’s coverage:

Nothing in this subchapter shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary. 20 U.S.C. § 4071(f)

- And, cited as the school district’s “most compelling argument” the court found that the school had a compelling interest in protecting their student’s mental and physical health and well-being by protecting students from teen pregnancy, sexually transmitted diseases and the associated harms when minors involve themselves with sexual activity. The discussion of sexual activity by the proposed Gay Straight Alliance the court stated would lead, “to the logical conclusion that minors would be exposed to subject matter that is detrimental to their physical, mental and emotional well-being.”²⁹

RESPONSIBLE ACTION REQUIRED

It is expected that the school officials who have been entrusted with the education and care of children will carefully consider the numerous negative physical, mental and emotional consequences directly related to homosexual behavior.

Examination should be made of the relationship schools in their district have with homosexual activist organizations such as GLSEN, PFLAG, or other local groups. And, an honest answer must be given to the tough questions:

1. **Have the programs and policies put in place - as a result of the encouragement or threats of these organizations, and the student alliances or clubs encouraged and/or supported by these organizations -**
 - a. **Directly or indirectly exposed students to unreasonable risk?**
 - b. **Unconstitutionally restrained students’ rights of free expression and freedom of conscience?**
2. **Have school officials properly assessed the liability that could result from these programs and policies?**

If the answer to any of these questions is YES, then schools must take whatever action is necessary to reverse the influence that these organizations have established in schools and on the formative minds of students.

Beyond the legal and moral obligation that schools have to protect children from the negative consequences associated with homosexual behavior, school officials should be aware that by allowing homosexual activist organizations to implement their agenda in schools, a serious legal liability may also have been created as detailed in this report.

Schools seeking to minimize this liability while seeking to protect children under their care may take action in a variety of ways:

1. **Abstinence Education** - Abstinence education represents the only true and effective manner in which to prevent early childhood sexual involvement, teen pregnancy and the transmission of sexually transmitted diseases. Abstinence education also represents a school district taking responsible control of its sexual education curriculum and all matters pertaining to sexuality. A school with a comprehensive abstinence based curriculum controls the manner and content of all subject matter pertaining to sexuality and therefore 'pre-empts' irresponsible, unsupervised discussion of sexual behavior, including clubs, based on sexual activity such as a GSA.
2. **Character Education** - In misguided attempts to appease the demands for 'tolerance' and promote 'diversity,' schools have often engaged in unconstitutional means to silence divergent opinions regarding the acceptability of homosexual behavior. Character education enables schools to avoid the imposition of restrictive speech codes while instilling in their students essential character qualities each of them throughout life. Schools imposing a concept of 'one-sided tolerance' miss a greater opportunity of introducing students to true respect for the dignity of all individuals while at the same time providing students with the tools to disagree with another's viewpoint in a civil manner.
3. **Parental Notification/Consent** - School districts seeking the support and participation of parents in a cooperative educational model must necessarily provide parents with all information concerning the activities in which their child chooses to become involved. Parental notification/consent through a parental permission opt-in policy for extracurricular or co-curricular activities is the primary factor in allowing parents to determine the benefits and/or detriments an activity or club presents to their child's academic success.
4. **Non-Referral Policies** - A school district should carefully consider its obligations to students and to the parent's of students in terms of safeguarding the health and well being of minor children. A school district invites litigation when it permits its volunteers, employees or other servants to refer students to unaccountable third parties or organizations to address student's emotional or physical well being. The implementation and adherence to a district-wide non-referral policy can significantly reduce a district's liability due to the actions of unaffiliated third parties.

Legal Assistance Available

This report is part of an integrated strategy to inform and educate parents, students and school officials across the nation of its contents and of their respective rights and duties. It has documented the concern that the health of students in many schools across the country may have been compromised and their First Amendment rights may have been denied.

Attorneys have affirmed that any of these situations may constitute grounds for legal action. Accordingly, they have agreed to consider any case pertaining to harm done to students by any school-sanctioned activist organization in order to secure the health, safety, welfare and constitutional rights of parents and students.

Endnotes

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- ³ “Health Implications Associated with Homosexuality,” A Monograph by The Medical Institute for Sexual Health, 1999.
- ⁴ “The Human Papillomavirus (HPV) Epidemic: Condoms Don’t Work,” Insight, Family Research Council, 1999.
- ⁵ *Ibid.*
- ⁶ “Workshop Summary: Scientific Evidence on Condom Effectiveness for Sexually Transmitted Disease (STD) Prevention,” National Institute of Allergy and Infectious Diseases, et. al., June 12-13, 2000.
- ⁷ Ceci Connolly, “Report Questions Condom’ Disease Prevention Ability,” Washington Post, July 20, 2001, p. A01.
- ⁸ Scott T. Whiteman, Peabody, Massachusetts, Affidavit re: GLSEN/BOSTON conference, April 18, 2000.
- ⁹ *Ibid.*
- ¹⁰ Robert Garofalo, et. al., “The Association Between Health Risk Behaviors and Sexual Orientation Among a School-based Sample of Adolescents,” PEDIATRICS, Vol. 101, No. 5, May 1998: 895-902.
- ¹¹ Theo G.M Sandfort, et. al., “Same-Sex Sexual Behavior and Psychiatric Disorders,” Archives of General Psychiatry (Journal of the American Medical Association), Vol. 58, No. 1, January 2001.
- ¹² *Ibid.*
- ¹³ Linda Harvey, “The World According to PFLAG,” Mission: America, www.missionamerica.com, 2002.
- ¹⁴ *Ibid.*
- ¹⁵ Ed. Ann Heron, Two Teenagers in Twenty (Alyson Books, 1994), p. 81.
- ¹⁶ *Ibid.*, p. 134.
- ¹⁷ Ed. Amy Sonnie, Revolutionary Voices (Alyson Books, 2000), pp. 171-172.
- ¹⁸ Alex Sanchez, Rainbow Boys (Simon & Schuster, 2001), p. 51.
- ¹⁹ *Ibid.*, p. 88.
- ²⁰ *Ibid.*, pp. 51-52, 70, 89.
- ²¹ *Ibid.*, p. 148.
- ²² Ed. Bennett L. Singer, Growing Up Gay/Growing Up Lesbian: A Literary Anthology (New Press, 1994), p. 53.
- ²³ *Ibid.*, p. 111.
- ²⁴ Ellen Bass & Kate Kaufman, In Your Face: Stories from the Lives of Queer Youth (HarperPerennial, 1996), p. 58-59, 141
- ²⁵ Whiteman.
- ²⁶ *Ibid.*
- ²⁷ Hansen v. Ann Arbor Public Schools, 293 F Supp 2d 780 (2003)
- ²⁸ Hansen v. Ann Arbor Public Schools, 293 F Supp 2d at 783 (2003)
- ²⁹ Caudillo v. Lubbock Independent School District, 2004 US Dist Lexis 3166, 51