

April 12, 2012

Dear School Administrator,

One or more of your schools may be violating the constitutional privacy rights of its students. You are legally obligated to prevent and stop such violations. Specifically, without full and voluntary consent by the student, it is against the law to disclose a student's sexual orientation or gender identity, or compel a student to disclose his or her sexual orientation or gender identity, even to a student's parents or other school administrators.

The United States Supreme Court has long recognized that the federal constitutional right to privacy not only protects an individual's right to bodily autonomy but also the right to control the nature and extent of highly personal information released about that individual. *Whalen v. Roe*, 429 U.S. 589, 599- 600 (1977) (holding that the constitutional right to privacy respects not only an individual's autonomy in intimate matters, but also an individual's interest in avoiding divulgence of highly personal information). This right to informational privacy restricts the government's ability to disclose information about an individual's personal matters, especially those matters that are protected by the federal Constitution from unwarranted government intrusion, such as contraception, abortion, marriage, family life, and sexual associations. *Thorne v. El Segundo*, 726 F.2d 459, 468 (9th Cir. 1983); *see also Doe v. Luzerne Cnty.*, 660 F.3d 169 (3d Cir. 2011); *Bloch v. Ribar*, 156 F.3d 673, 685 (6th Cir. 1998) ("Publicly revealing information [about sexuality] exposes an aspect of our lives that we regard as highly personal and private.").

This right to privacy extends to students in a school setting. Students have the constitutional right to share or withhold information about their sexual orientation or gender identity from their parents, teachers, and other parties, and it is against the law for school officials to disclose, or compel students to disclose, that information. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *Sterling v. Borough of Minersville*, 232 F.3d 190, 196 (3d Cir. 2000) ("It is difficult to imagine a more private matter than one's sexuality and a less likely probability that the government would have a legitimate interest in disclosure of

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sexual identity."); *Eastwood v. Dep't of Corr.*, 846 F.2d 627, 631 (10th Cir. 1988) (right to privacy "is implicated when an individual is forced to disclose information regarding sexual matters.").

Even when a student appears to be open about his or her sexual orientation or gender identity at school, it is that student's right to limit the extent to which, and with whom, the information is shared. *C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005) ("the fact that an event is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of that information to others") (quoting *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 770 (1989)). Courts have long recognized that an individual's privacy interest in this matter is particularly compelling because of the undeniable stigma attached to homosexuality. *See, e.g., Varnum v. Brien*, 763 N.W.2d 862, 889-90 (Iowa 2009) and *Snetsinger v. Montana Univ. Sys.*, 325 Mont. 148, 161-65 (2004) (recounting widespread societal discrimination against gays and lesbians).

School officials may think they are doing the right thing by revealing a student's sexual orientation or gender identity to his or her parents. However, doing so not only violates the student's privacy rights, but can negatively impact a young person's life. Young people whose schools have "outed" them to their families often report subsequent rejection and/or abuse at home.

Experts on homelessness have determined that family conflict over a young person's sexual orientation or gender identity is a significant factor leading to youth homelessness. *See, e.g., Hyde, J., "From Home to Street: Understanding Young People's Transitions Into Homelessness," 28 J. of Adolescence 171, 175 (2005); Clatts, M.J., et al., "Correlates and Distribution of HIV Risk Behaviors Among Homeless Youth in New York City," 77 Child Welfare 195 (1998).* At least one study indicates that approximately half of all gay teens experienced a negative reaction from their parents when they "came out" and over a quarter of teens have been kicked out of their homes after sharing this information with their parents. *See National Gay and Lesbian Task Force Policy Institute and National Coalition for the Homeless, Lesbian Gay Bisexual and Transgender Youth: An Epidemic of Homelessness (2006).*

As a school administrator, you have a legal obligation to implement policies and procedures that maintain the privacy and safety of your students, including those who are lesbian, gay, bisexual or transgender. 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 via email at [lgbthiv@aclu.org](mailto:lgbthiv@aclu.org).

Sincerely,

A handwritten signature in black ink that reads "James D. Esseks". The signature is written in a cursive, flowing style.

James D. Esseks  
Director

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A handwritten signature in black ink that reads "James D. Esseks". The signature is written in a cursive, flowing style, identical to the one above.