

December 7, 2015

Dear Principal or Superintendent,

You have been presented with this letter because at least one of your schools may be disciplining lesbian, gay, bisexual, and transgender (“LGBT”) students for displays of affection more often or more severely than it disciplines heterosexual students for similar behavior. Such unequal treatment violates your students’ rights under the Constitution and Title IX.

Unequal discipline of LGBT students for displays of affection violates the Fourteenth Amendment of the U.S. Constitution. Treating students unequally based on their sexual orientation triggers “heightened scrutiny” under the Fourteenth Amendment and is presumptively unconstitutional. *See Baskin v. Bogan*, 766 F.3d 648, 671 (7th Cir. 2014); *SmithKline Beecham Corp. v. Abbott Labs.*, 740 F.3d 471, 481 (9th Cir. 2014); *Windsor v. United States*, 699 F.3d 169, 181 (2d Cir. 2012). Similarly, the intimate relationships of LGBT individuals must be treated with equal dignity as the intimate relationships of heterosexuals. *See Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

Unequal discipline of LGBT students also violates Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. § 1681. Title IX’s implementing regulations prohibit schools from “subject[ing] any person to separate or different rules of behavior, sanctions, or other treatment” on the basis of sex. 34 C.F.R. § 106.31(b)(4). Title IX’s protections from discrimination based on a student’s “sex” include protections from discrimination based on sexual orientation, gender identity, and other types of gender non-conformity. *See Videckis v. Pepperdine Univ.*, No. CV 15-00298 DDP JCX, 2015 WL 1735191, at *7 (C.D. Cal. Apr. 16, 2015); U.S. Department of Education Office for Civil Rights, *Questions & Answers on Title IX and Sexual Violence*, at 5 (Apr. 29, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

As a school administrator, you have a legal obligation to implement policies and procedures to ensure that LGBT students and heterosexual students are treated equally when engaging in the same conduct. 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 print and copy to use this letter as an advocacy tool in your own school.

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