

December 7, 2015

Dear Principal or Superintendent,

You have been presented with this letter because at least one 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 even to a student's parents or other school administrators.

The 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). 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 Constitution from unwarranted government intrusion, such as contraception, abortion, marriage, family life, and sexual associations. *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 sexual identity."); *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."); *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.").

This right to informational 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. Even when students appears to be open about their sexual orientation or gender identity at school, it remains the 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) ("[T]he 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.").

School officials may think they are doing the right thing by revealing students' sexual orientation or gender identity to their parents. But doing so

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can have dramatic and unforeseen consequences. In one particularly tragic case, a teenager committed suicide after a police officer threatened to disclose his sexual orientation to his family. *Sterling*, 232 F.3d at 196. Depending on the circumstances, disclosing students' sexual orientation or gender identity to their parents could also lead to physical abuse or homelessness. See Mass. Dep't of Educ, *Guidance on Notifying Parents When a Student Has Been Bullied Based on Sexual Orientation or Gender Identity/Expression* (Jan. 2011), <http://www.doe.mass.edu/bullying/PNguidance.html>.

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 at 212-549-2673.

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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.