

## Gay, Lesbian, Bisexual, and Transgender Persons

### GLBT EDUCATORS AND THE RIGHT TO WORK

Watch a movie, TV show, even the six o'clock news, and chances are good at least one gay person will grace the screen. GLBT characters and issues have become so ubiquitous in popular culture, being "in the closet" may seem like a quaint, old-school phenomenon that passed out of style with the 20<sup>th</sup> century. Statistics, however, paint a different picture: being out is still fraught with peril for millions of gay, lesbian, bisexual, and transgender people.

Many GLBT adults, especially school employees, live in fear of losing their livelihoods as the price for being themselves. Even in GLBT-friendly school districts, the situation for GLBT educators is "still very tough," reports Stuart Biegel, a UCLA professor renowned for his work in the education law and policy arena.

Although public attitudes are shifting, a significant number still oppose the idea of gay, lesbian—and especially transgender—educators teaching their children. Even in California, which has some of the strongest anti-discrimination legislation in the country, there is enormous pressure in some schools for GLBT educators to keep their identity to themselves. Some in the mainstream community believe that remaining silent is just the price GLBT educators pay for teaching in a K-12 school, but that decision isn't always left up to the educator. What if an educator is outed, inadvertently or deliberately, or even just suspected of being gay?

"Let's face it," says one lesbian middle school teacher, "there's no such thing as being totally 'in.' It's the nature of human beings to wonder, whisper, gossip, speculate—and make decisions accordingly." When Professor Biegel's doctoral student sat on a hiring committee for a school principal, a promising candidate was passed over because one committee member thought the candidate was "too gay." Yet at no time had the candidate revealed his sexual orientation.

Author of *The Right to Be Out: Sexual Orientation and Gender Identity in America's Schools*, Biegel uses the phrase "emerging

versus absolute right" to describe the current legal landscape for GLBT school employees, who have an emerging right under the Constitution's 14<sup>th</sup> Amendment (and in some circumstances Title VII legislation) to be free from discrimination on the basis of sexual orientation or gender identity.

Freedom from job discrimination just for being gay is not the same thing as having the liberty to disclose one's sexual orientation to students, cautions NEA Assistant General Counsel Michael Simpson, who explains that legal outcomes in such cases depend on a variety of factors, including state law, school district policies, and collective bargaining agreements. Still, the fact that "the law is evolving," notes Simpson, is a "wonderful and energizing change."

#### SINGING OUT

I've been a classroom teacher for over 28 years. I remember the first time I sang publicly as a gay man. I had joined a community chorus—a gay chorus. Not too long after, two students asked me and another faculty member to sell candy so the school drama club and chorus could take a field trip to New York City. I was coming up with excuses why I couldn't when one of the students said that maybe I could try to sell some of the candy to people in my chorus. That brought the conversation to a sudden and abrupt halt. I asked, "What chorus?" He said, "The one my father and his partner heard last weekend and saw you singing in. And by the way, they liked the Rodgers and Hammerstein medley." I remember a moment of panic. I also remember their grins. I decided it was probably time to talk to the principal...

—High school teacher, Massachusetts



As of August 2011, 21 states and the District of Columbia (and more than 175 cities and counties) have outlawed employment discrimination based on sexual orientation, while 15 states and D.C. (and 135 cities and counties) have banned discrimination based on gender identity. Whether these statutes cover school employees varies from state to state, however. Educators should familiarize themselves with the laws in their own home states. Until Congress passes a comprehensive federal ban on GLBT-related discrimination in the workplace (ENDA, the Employment Non-Discrimination Act supported by the Obama administration, would serve this purpose), GLBT educators will have to rely on other sources of job protection, from collective bargaining agreements to state law.

Being openly gay or lesbian is not just a moral or philosophical dilemma, but a pragmatic issue as well, say GLBT educators. Having to keep one's life and identity hidden while living in constant fear of reprisal, dodging the questions of colleagues and students (questions heterosexual educators have the privilege of answering without a second thought), and furtively hiding all traces of one's partner, can take an unhealthy toll.

What's more, there's a strong connection between the welfare of GLBT educators and GLBT students, who often face intense bullying and harassment. Twice as likely to consider dropping out of school, and four times as likely to commit suicide as their heterosexual peers, GLBT youth are in dire need of both gay role models and straight supporters at school.

### LEADING THE FIGHT FOR GLBT RIGHTS

For four decades, NEA has led the fight for the rights of the nation's GLBT students and educators. In 1972, NEA funded the very first case ever litigated on behalf of an openly gay K-12 teacher—a federal lawsuit against the Montgomery County (Maryland) Board of Education. In 1983, NEA filed an amicus brief challenging an Oklahoma law that empowered school districts to fire or refuse to hire any teacher who publically “advocated,” “encouraged,” or “promoted” homosexuality.

### BARGAINING AN INCLUSIVE CONTRACT

Take the following steps when bargaining a contract to better protect GLBT employees and attain a more just workplace for all NEA members. Model and sample contract language is available from the NEA Department of Collective Bargaining and Member Advocacy.

**Contract language** should “prohibit discrimination and harassment on the basis of actual or perceived sexual orientation, gender identification, and gender expression” and pertain to all conditions of employment. Some contracts include “personal life” clauses, which protect employees from job consequences for off-duty personal behavior.

**Definitions of family**, spouse, partner, parents, in-laws, and children should be inclusive of all types of families.

**Health insurance plans** should provide domestic partner benefits.

**Family and medical leave and bereavement leave** should cover GLBT employees who need to care for a domestic partner or take time off after the death of a domestic partner.

An understanding teacher can make all the difference, agrees Graeme Taylor, a 15-year old gay student who made national news when he spoke with great eloquence and passion at a school board meeting on behalf of a teacher suspended from school for putting a student making anti-gay slurs on a one-day class suspension. “When I was younger, I felt I was alone,” explains Taylor. “When you know there are people around to help you, people like yourself, it brings a whole new world of hope. When I first heard Dr. King’s speech, when he said one day he hoped his grandchildren would be judged not by the color of their skin but by the content of their character, I hoped that one day we, too, would be judged by the content of our character rather than who we love.”

Students like Taylor, say educators, will help that day come sooner.

## WHAT ARE THE RIGHTS OF GLBT EDUCATORS?

Full civil rights for GLBT employees is an ongoing struggle. Whether you're a GLBT educator, supportive heterosexual colleague, friend, or family, knowing what the law says is the first line of defense.

### **Q: What are the legal rights of GLBT educators?**

**A:** Congress has yet to enact a comprehensive ban on sexual orientation and gender identity discrimination in the workplace, but there are other sources of job protection: the 14th Amendment (equal protection clause) of the U.S. Constitution, Title VII (under certain circumstances), a nondiscrimination clause or "just cause" provision in the collective bargaining agreement, state tenure or continuing contract law, school board policy, and state or local anti-discrimination law. GLBT school employees should contact their Association's UniServ representative immediately if they are discriminated against because of their sexual orientation or gender identity.

### **Q: What should GLBT educators do if harassed by students or coworkers?**

**A:** They should treat it like any other form of harassment. With the assistance of their UniServ rep, notify their supervisor and insist that action is taken to make the harassment stop. It may be possible to file a complaint under the school's anti-harassment policy or file a grievance.

### **Q: Do GLBT educators have a right to "come out" to their students?**

**A:** On one hand, it's unlikely they have the right under the First Amendment to make such a statement in the classroom. Educators' free speech rights are strongest when speaking off-duty about matters of public concern and weakest when speaking in the classroom about purely personal matters. Several recent academic freedom cases suggest that when speaking in the classroom, teachers are not speaking as private individuals but as representatives of the school district and virtually have no free

speech rights. On the other hand, if a school employee is tenured or has "just cause" protection under a collective bargaining agreement, then a strong argument can be made that the simple act of disclosing his or her sexual orientation does not constitute just cause for discharge or discipline.

### **Q: Can a GLBT educator respond honestly if a student asks directly if he or she is gay?**

**A:** It depends on the particular case. While such a private conversation is probably not protected under the First Amendment, a tenure law or collective bargaining agreement may preclude discipline. Any educator who is considering coming out to his or her students should first consult a UniServ rep and assess what legal protections, if any, are available.

### **Q: Does a GLBT educator have the right to play a supportive role to GLBT students?**

**A:** Numerous GLBT and non-GLBT educators want to be supportive of GLBT and questioning students. If you and your colleagues would like to develop an educator support system, NEA recommends you follow established protocol. You or your Association should approach your school administration or school board to get buy-in to your proposal before proceeding. This will assure you're being supported while you assist those students in need of support and guidance. An ideal program to present to your administration to begin establishing your support system is NEA's National Training Program of Safety, Bias, and GLBT Issues at [nea.org/home/NEABullyFreeSchools.html](http://nea.org/home/NEABullyFreeSchools.html).

(Q&A contains modified excerpts from NEA's *Know Your Rights: Legal Protection for Gay, Lesbian, Bisexual, and Transgendered Education Employees*.)



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