



# KNOW YOUR RIGHTS!

## THE LEGAL RIGHTS OF LGBTQ HIGH SCHOOL STUDENTS

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# THE FIRST AMENDMENT

- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the *freedom of speech*, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”
- The Supreme Court has found that students have First Amendment rights to free speech, even when at school.
  - *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503 (1969).



# THE EQUAL ACCESS ACT

- “It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.”

– 20 USC § 4071



# PRIVACY: RIGHT NOT TO BE OUTED

- A school cannot out a student to their parents or another person without the student's permission.
  - The Supreme Court has held that the Right to Privacy protects an individual's right to control how personal information about themselves is released.
    - *Whalen v. Roe*, 429 U.S. 589 (1977) (concerning New York state statute on medical information).
  - This includes a student's right to remain "in the closet" if they so chose.
- Even if a student is open about his/her orientation and/or gender identity at school, he/she still has the right to control who knows.
  - *C.N. v. Wolf*, 410 F. 2d Supp. 894 (C.D. Cal. 2005).



# CENSORSHIP: FREE SPEECH

- First Amendment Right to Free Speech at School.
  - LGBTQ students, like everyone else, have First Amendment rights to free speech, even when at school.
    - *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503 (1969).
  - This includes the freedom to talk about LGBTQ issues.
- Restrictions by Schools:
  - Schools can restrict speech if it is obscene, threatening, lewd, or vulgar.
  - Additionally, speech can be restricted if it causes a significant disruption to class.
    - Just don't stand on your desk and yell inappropriate things about being gay during the middle of a lecture.



# CENSORSHIP: INTERNET ACCESS

- Software filters that censor websites advocating the fair treatment of LGBTQ persons may violate the First Amendment and the Equal Access Act.
  - Schools cannot use software to block websites just because school officials disagree with the point of view.
    - *Board of Educ. v. Pico*, 457 U.S. 853 (1982) (banning books in school libraries violates the First Amendment).
  - Filters that impose limitations on GSA's that are not imposed on other student clubs are in violation of the Equal Access Act.
    - *Boyd County GSA v. Board of Edu.*, 258 F. Supp. 2d 667 (E.D. Ky. 2003).



# PROM: WHO YOU CAN TAKE

- Students have a First Amendment right of free expression to take a same-sex date to a school dance.
  - *Fricke v. Lynche*, 491 F. Supp. 381 (D.R.I. 1980).
    - In 1980, Aaron Fricke wanted to go to senior prom with Paul Guilbert. The Principal, fearing other students would be offended, told Aaron that he and Paul could not do this.
    - The Federal Court in Rhode Island ruled that the school must allow the two to attend as a couple. In addition the court required that there must be security on hand to ensure the boy's safety.



# PROM: WHO YOU CAN TAKE

- A school may be in violation of a student's First Amendment Rights by threatening to cancel prom if he/she brings a same-sex date.
  - *McMillen v. Itawamba School Dist.*, 702 F. Supp. 2d 699 (N.D. Miss. 2010).
    - In 2010, Constance McMillen asked school officials if she could bring her girlfriend as her date to prom. The school said no, and after a letter from the ACLU on the matter, the school announced it would cancel prom.
    - The Northern District of Mississippi ruled that the school violated Constance's First Amendment right of free expression.



# CENSORSHIP: LGBTQ CLOTHING

- Students have a First Amendment Right to Free Speech at School. This includes wearing a t-shirt or accessory expressing support for LGBTQ people.
  - *Tinker v. Des Moines Sch. Dist.*, 393 U.S. 503 (1969).
  - A school can prevent students from wearing anything that will disrupt class.
    - HOWEVER, fear of disruption must be based on facts. If the reason is a fear that other students will react badly, the school is not permitted to censor speech.
    - *Gillman v. School Board*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008).
  - EXCEPTION: A school can have a dress code, as long as it is enforced equally among all students.



## CENSORSHIP: CLOTHING AND GENDER

- Girls and Transgender Males have Free Speech Rights to wear tuxedos to school dances.
  - *McMillen v. Itawamba School Dist.*, 702 F. Supp. 2d 699 (N.D. Miss. 2010).
- Boys and Transgender Females have Free Speech Rights to wear dresses to school dances.
  - *Logan v. Gary Cmty. Sch. Corp.*, 2008 U.S. Dist. LEXIS 79390 (N.D. Ind. 2008).
    - Logan, a trans girl, wore a dress to prom. The principal physically barred her from entering the dance, and as a result was never allowed to attend prom.
    - As a result of the suit, the school district enacted non-discrimination policies protecting LGBTQ students.



## CENSORSHIP: CLOTHING AND GENDER

- If a school threatens to punish a student for wearing clothing that does not conform to their gender assigned at birth, the school may be violating the student's Freedom of Expression.
  - *Doe v. Yuntis*, No. 00-1060-A (Mass. Super Ct. 2000).
    - A trans middle school student was repeatedly punished for wearing non-gender conforming clothing to school.
    - A Massachusetts state court ruled that the student had a free speech right to express gender identity through clothing, so long as the clothing was not disruptive.



# GAY-STRAIGHT ALLIANCE CLUBS

- Under the Federal Equal Access Act, if a public school permits non-curricular clubs, then it must allow students to form a GSA.
  - Non-curricular clubs include any club that does not directly relate to classes taught at the school.
    - E.g. Chess and comic book clubs. Key clubs and honor societies have been found to be non-curricular as well.
- Additionally, a school may not treat some non-curricular clubs differently than others.
  - If other clubs meet on school property, a GSA must be allowed to as well.
  - If other clubs hang posters, a GSA must be allowed to as well.



# GAY-STRAIGHT ALLIANCE CLUBS

- A school cannot require the removal of the word “gay” from your group’s name, or force you to adopt a name such as “Tolerance Club.”
  - *Colin v. Orang School Dist.*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000); *GSA of Yulee High v. School Bd.*, 602 F. Supp. 2d 1233 (M.D. Fla. 2009).
- GSAs must comply with the rules their individual schools set up for clubs, including requirements that clubs have faculty sponsors, or require parental permission to join.
  - If additional rules are required for GSAs the school has violated the Equal Access Act.



# BULLYING: SCHOOL OBLIGATIONS

- Schools that become aware of harassment or bullying – both verbal and physical – must take action to investigate and ensure that it stops.
  - Public schools that have failed to do so for LGBTQ students have paid damages or settlements as high as \$1.1 million.
    - *Flores v. Morgan Hill Sch. Dist.*, 324 F.3d 1130 (9<sup>th</sup> Cir. 2003) (\$1.1 million)
    - *Nabozny v. Podlesny*, 92 F.3d 446 (7<sup>th</sup> Cir. 1996) (\$962,000 in damages).



# BULLYING IN PA: THE PASS ACT

- State bullying laws are in flux across the nation.
  - In PA, bullying law is decided on a district-by-district basis.
    - Note: There are 501 school districts in PA, which means there is a potential for 501 different bullying policies.
- The General Assembly is currently considering HB 156 (The PA Safe Schools Act) that would set up state-wide minimums for bullying policies.
  - The act enumerates several classes, including sexual orientation, gender identity, and gender expression, which must be protected.



## LEGAL RESOURCES FOR LGBTQ STUDENTS

- If your school has violated your rights as an LGBTQ student, there are legal resources available to you.
- The ACLU of Pennsylvania:
  - Philadelphia Office: 1-877-745-2259
  - Pittsburgh Office: 1-877-744-2258
- The Southern Poverty Law Center
  - Montgomery, AL: 334-956-8200