

A portrait of Cheryl Bachmann, a woman with long blonde hair, wearing a black pinstriped blazer over a red top. She is standing with her arms crossed in an office setting. A globe is visible on a desk to her left, and a black office chair is to her right. The background is a plain, light-colored wall.

Cheryl Bachmann is a teacher who tried to protect her students from antigay discrimination. Deputy Legal Director Hayley Gorenberg chronicles this fight.

# NOTES from the **FRONT LINE**

BY HAYLEY GORENBERG

PHOTO OF CHERYL BACHMANN (ABOVE) © LISA ROSS

They filled the folding chairs, jammed the stairway at the back of the gymnasium, and still the students and parents kept coming. It was a school board meeting in West Milford, New Jersey, on a Tuesday night in May. The audience usually consisted of a small handful of community die-hards. Tonight was different.

The main event on the agenda concerned the firing of Cheryl Bachmann, a 25-year-old high school history teacher who enforced a “zero-tolerance” policy for antigay harassment in her classroom. After three years of terrific reviews, her supervisor had recommended her for tenure. Soon afterward, two students used the word *faggot* in her class, and she duly sent them to school administrators for disciplinary action.

One of the students roamed the halls, shouting death threats. When alarmed teachers confronted the student, she flippantly offered to “just stab” Bachmann instead. Bachmann requested the student’s transfer to another class, and — despite half a dozen prior evaluations commending her teaching and “excellent classroom management skills” — promptly had her tenure recommendation revoked, the administration saying: “Due to recent incidents, we have serious concerns about [Bachmann’s] classroom management and ability to effectively control and tolerate unacceptable behavior.”

Never in union leaders’ memories had a teacher waived the right to hold a tenure revocation hearing behind closed doors — until that night in the gym. Bachmann wasn’t going to back down, and she was willing to show this determination in a public forum. The school board chose to enter an extensive executive session, delaying the start of the hearing until 10:30 p.m. on a school night. No one left.

As Bachmann’s counsel, I was there to defend her and drive home the

importance of teachers taking a stand for safe and respectful classrooms. I could feel that the night was highly charged, that the end result of the hearing would make a serious impact on the school and surrounding community. With Bachmann’s colleagues from the history department seated behind me, wearing red shirts and jackets to signal their support, I presented an extensive analysis of the facts and reviewed the federal and local laws that require teachers and school administrators to counter antigay harassment in schools. Careful scrutiny of the timeline of events, Bachmann’s glowing reviews and the schools’ hasty actions indicated that the purported reasons for firing were misleading and retaliatory. I asserted that a court case would bring this to light and end up favoring a teacher who did the right thing by seeking to protect her students.

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At the close of the hearing, the superintendent stuck to his decision to fire with a speech that dismissed further debate and offered no further justification. Some school board members who had not met my eyes during the hearing began to shift in their seats. The board members, generally on hand to ratify the superintendent’s decisions, were individually polled. When the five-to-four decision came down in our favor, the gym erupted in shouts, applause and tears. Bachmann’s challenge ended mere days after we agreed to take it on.

Cases such as these constitute a next wave of challenges for LGBT advocacy in schools. We are now building upon the backbone of our past successes in antiharassment cases, like Jamie

Nabozny’s federal lawsuit in 1995 against his Wisconsin high school for ignoring the vicious physical and mental antigay abuse he suffered by his classmates. We are readying ourselves for trial in Holmdel, New Jersey, representing Nancy Wadington — another victim of relentless abuse at her school and administrators’ neglect, and we have already begun to fight school officials’ appeal against Joey Ramelli and Megan Donovan, two students involved in a parallel case in San Diego. All of these LGBT students suffered torment and abuse at the hands of their peers, unabated by the actions of school officials.

But LGBT students’ allies, like Cheryl Bachmann, are raising their voices and evidently putting their careers on the line to enforce the law we’ve developed, making these legal wins count for the next generations of students. As we continue our battle to win safe and healthy learning environments for students, we are including more teachers and school officials in our outreach, advocacy and litigation.

#### NEW OPENNESS, NEW OPPOSITION

The support from these allies is timely. Even as LGBT students begin coming out at earlier ages, and their heterosexual peers become more welcoming, LGBT-related controversies have frequently erupted at schools, particularly as our opponents have attempted to shut down LGBT-friendly clubs, curricula and events.

We believe the ramped-up opposition stems from the general recognition that young people are America’s next wave of political, business and family leaders. A recent survey by CIRCLE, the Center for Information & Research on Civic Learning & Engagement, showed that young people are “the most tolerant group, with 60 percent believing society should accept homosexuality ... [and when] youth know someone who is gay, they are more likely to support rights” for

all gay people, leading to the conclusion that “it seems like exposure to difference encourages tolerance.” If familiarity supports equality and respect, then LGBT people who come out at earlier ages are helping to propel civil rights.

But these sorts of advances have triggered a backlash from antigay groups such as Liberty Counsel, which often funds lawsuits opposing gay rights, including many of Lambda Legal’s efforts. Last year Liberty Counsel and the group Parents and Friends of Ex-Gays and Gays (PFOX) announced the launch of their “Change is Possible Campaign,” which promotes the discredited idea that gays and lesbians can be “converted” to heterosexuality. The nation’s leading medical and therapeutic organizations, including the American Academy of Pediatrics, the American Counseling Association and the American Psychiatric Association, to name a few, have concluded that being gay is not a mental disorder and thus needs no “cure” — much less so-called reparative therapy to change sexual orientation, which is not only ineffective but downright dangerous. More and more frequently, we find ourselves advising student groups, as well as parents, teachers and school officials. Students may seek to form gay-straight alliances (GSAs), and supportive authority figures look to build accurate and inclusive health curricula and create and enforce policies that protect against peer harassment. Countering the opposition they face often requires legal analyses and advocacy. And that’s where we come in.

For instance, our litigation and advocacy to support GSAs taps the federal Equal Access Act, which generally requires that noncurricular clubs have equal opportunities for sponsorship, meeting space and other school support, regardless of their point of view. This doesn’t mean, however, that the Montgomery County public school system in Maryland needs to give in to demands that its new health curriculum include plugs by “ex-gays” for

reparative therapy to change sexual orientation. A First Amendment free speech or “equal access” argument shouldn’t derail a school’s selected curriculum. The proper legal analysis shows that schools may “speak” in the curricular sense without opening up a forum for all views.

And of course inclusive and accurate curricula are particularly important to help counteract the government-funded,

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multimillion-dollar wave of “abstinence until marriage” programs that effectively erase LGBT students’ and parents’ identity — or acknowledge gay people only in discussions of HIV, thus equating being gay with being “diseased” and misleading all students about the facts of HIV. On this front, Lambda Legal’s efforts have run the gamut from formal presentations with legal peers, such as my talk last fall at Legal Momentum’s Harvard University colloquium on the harms of abstinence-only programming, to informing courts through friend-of-the-court briefs that urge judges to respect the importance of both student speech and antiharassment measures. Our Community Education teams are also involved on local levels in all of our regions, packaging our work and our message in thorough yet accessible ways.

As legal and policy debates about freedom of speech in schools and the responsibilities of educators continue, I am spurred on by the young people who

motivate our mission, who inspire teachers and others to step forward. I think back to the public comments before the hearing in that gymnasium this spring, and recall the brave words from supportive students. One student, a roiling mixture of supremely uncomfortable but grimly determined, voiced her support for teachers who commit to providing a safe learning environment. “I was supposed to have a gymnastics thing tonight,” she explained. “But, like...I think this is more important.” Another student, a self-assured young debater, reminded the crowd that they had opened the meeting with the Pledge of Allegiance and urged the superintendent and board to show that “liberty and justice for all” would prevail. In the struggle to advance civil rights for LGBT students into the next era, these students give voice to the vision and idealism we need. **L**



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