

September 7, 2010

The Honorable Arne Duncan
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

In re: *Secretary's Priorities for Discretionary Grant Programs*

Dear Secretary Duncan:

Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) respectfully submits these comments in support of the August 5, 2010 Notice of Proposed Priorities for future discretionary grant programs, Docket ID ED-OS-2010-0011, (the “Notice”).

Several of the Secretary’s priorities represent opportunities for improving the educational chances for the vulnerable population of students who are or who are perceived to be lesbian, gay, bisexual or transgender (“LGBT”)¹ who currently attend schools with poor learning environments, and who all too frequently are the targets of intimidation, harassment, and violence at school. Lambda Legal writes to offer the Department of Education (the “Department”) both (1) evidence that school environments and cultures that allow anti-LGBT bias, harassment, and abuse to flourish are both distressingly common and severely damaging, and (2) to offer specific recommendations for strengthening the impact the priorities can have on improving educational outcomes for LGBTQ students. We hope these accounts and statistics will encourage the Department of Education (“Department”) to take the steps we have outlined below.

Identifying the Need for Including LGBT Concerns in the Secretary’s Priorities

Lambda Legal is the oldest and largest national legal organization committed to achieving full recognition of the civil rights of LGBT people and those living with HIV through impact litigation, education and public policy work. Our work on behalf of LGBT and HIV-positive people has included path-breaking court victories and policy work to create safer schools for LGBTQ youth and their allies as well as the children of LGBT parents. Lambda Legal supports the Notice’s recognition that improving school culture and climate represents one of the nation’s areas of “greatest educational need”

¹ Young people who may be perceived to be LGBT include those who are not yet sure of their sexual orientation or gender identity. These youth are sometimes referred to as “questioning.” The broader acronym “LGBTQ” is used to include these students.

and we have much experience and insight into the enormous need that LGBTQ young people have in this area.

There is a compelling need for the Notice's priorities to include LGBTQ concerns where more and more youth are questioning and, in many cases, recognizing and accepting their sexual orientation or gender identity at earlier ages, which has led to tremendous growth in their presence in schools. Yet harassment of LGBTQ students remains a common problem across the country. According to a 2005 Gay Lesbian Straight Education Network ("GLSEN") survey, 75.4 percent of students heard derogatory remarks about lesbian or gay students at school. The same survey found that one-third of students experienced physical harassment at schools because of their sexual orientation, while one-fourth of students experienced physical harassment because of their gender expression. The average grade point average of LGBTQ students who experienced frequent physical harassment was a full point lower than students who experienced less harassment, according to the GLSEN survey. Indeed, mental health experts recognize that LGBT teens in U.S. schools are often subjected to such intense bullying that they are unable to receive an adequate education² and are more apt to skip school due to the fear, threats, and property vandalism directed at them,³ with twenty-eight percent of LGBT students reporting that they will drop out of school (more than three times the national average for heterosexual students).⁴ Sadly, four out of five gay and lesbian students say they don't know one supportive adult at school.⁵

Lambda Legal's work to create safe secondary school environments in which LGBTQ youth must be treated with equal dignity and respect goes back to the 1990s, when we secured the first-ever federal court ruling establishing that schools must provide lesbian, gay and bisexual ("LGB") students the same level of protection provided to

² See Mental Health America's "Factsheet: Bullying and Gay Youth," available at <<http://www.nmha.org/go/information/get-info/children-s-mental-health/bullying-and-gay-youth>> (citing Chase, Anthony, "Violent Reaction, What do Teen Killers have in Common?" In *These Times*, 9 July 2001:3). Mental Health America is the nation's largest and oldest community-based network dedicated to helping all Americans live mentally healthier lives.

³ *Id.* (citing Garofalo, R. Wolf, R.C., Kessel, S., Palfrey., J (1998) *Pediatrics*, 101 (5), 895-902 and noting that "[o]ne survey revealed that 22 percent of gay respondents had skipped school in the past month because they felt unsafe there").

⁴ *Id.* (citing Bart, M. Creating a safer school for gay students. *Counseling Today*, September 1998).

⁵ *Id.* (citing Sessions Stepp, Laura. "A Lesson in Cruelty: Anti-Gay Slurs Common at School; Some Say Insults Increase as Gays' Visibility Rises." *The Washington Post* 19 June 2001).

other students.⁶ The facts underlying that famous case, *Nabozny v. Podlesny*, reflect an all too familiar scenario. Jamie Nabozny, a gay student, was only 13 years old when his sexual orientation made him the target of merciless bullying and torment. The harassment against Jamie went on year after year while his pleas for protection went unheeded. As often happens when schools become battle zones, Jamie's despair led to two suicide attempts, the first of which was in seventh grade.⁷ Without appropriate protection and with blatantly unsafe and anti-gay hostility rampant in the school environment, Jamie withdrew in the eleventh grade.⁸

Although our lawsuit on Jamie's behalf established a precedent that now requires all school administrators to respond with equal and appropriate discipline when a gay student is assaulted and puts schools on notice that they are liable for anti-gay harassment that blocks a student's access to his or her education, lawsuits are not the answer. LGBTQ students should not have to endure abuse or seek remedies after they have been harassed out of an education. Yet the need for lawsuits continues as do Lambda Legal's attempts to bring attention to this continuing failure on the part of schools to acknowledge, protect and create safer and more education-focused school environments for LGBT students and their peers.

Just last year, we initiated a lawsuit against a school district and several of its employees in New York, asserting claims for illegal and unconstitutional discrimination, harassment and censorship. The facts of this case, *Pratt v. Indian River Central School Dist.*,⁹ are, again, reflective of the similar situation faced by LGBT students at schools across the country. Charlie Pratt endured years of harassment at school. Students attacked him relentlessly with antigay and sexist slurs, often in the presence of teachers who failed to intervene. Students also pushed him into walls, threatened him, spat on him and vandalized his locker with antigay slurs. Staff members at the high school mocked him with stereotypically effeminate gestures in front of other students. The high school principal refused to take appropriate action, instead telling Charlie to "tone it down" to avoid harassment. The principal also refused to have teachers trained to address antigay bullying, prohibited students from forming a gay-straight alliance and told Charlie's parents that he could not ensure their son's safety. Left with no other options, Charlie withdrew from school.¹⁰

⁶ *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996).

⁷ 92 F.3d at 452; *see also*, e.g., Report from the Secretary's Task Force on Youth Suicide (Paul Gibson, US Department of Health and Human Services), 1989 (finding LGB youth are two to three times more likely to attempt suicide than their heterosexual counterparts).

⁸ 92 F.3d at 452.

⁹ Case No.: 7:09-cv-411 (S.D. N.Y.)

¹⁰ The U.S. Department of Justice recently submitted an amicus brief in this case, urging the court to rule that harassment based on sex stereotyping is a legally cognizable claim

As revealed by numerous studies and surveys as well as our other litigation in this area,¹¹ Jamie’s and Charlie’s stories play out in schools across the nation every day. We regularly get calls detailing the deleterious effects of daily and unrestricted anti-gay comments in classrooms and harassment in hallways. The result is that these school climates are adversely interfering with children’s ability to learn. Indeed, the failure to respond appropriately to anti-gay verbal abuse hurts *all* students by creating a category of insults that go unpunished. For LGBTQ students who hear or are the target of such destructive language, the consequences are dire.

The facts of our cases, the statistics, and the consistent and heartbreaking requests for assistance that we get from parents and young people reveal and underscore the need for the Department to take affirmative steps to create safer and more education-friendly school climates, which the Notice provides an important opportunity to do. Lambda Legal encourages the Department to more clearly integrate school climate and culture into the following priorities included in the Notice. In particular, Lambda Legal believes that Priorities 2-6, 8 and 10 should be strengthened in the following ways.

Lambda Legal’s Recommendations

Priority 2 – Implementing Internationally Benchmarked, College- and Career-Ready Elementary and Secondary Academic Standards. Lambda Legal urges the Department to encourage discretionary grantee states, school districts, and schools to ensure that improved classroom management training and other positive school climate and culture practices are appropriately integrated into their standards implementation plans. Additionally, we suggest that the final priorities clarify the need for grantees to include school culture and climate training that includes LGBT-specific issues as part of any teacher and leader effectiveness strategies they implement.

under Title IX and the Equal Protection Clause, that such claims are not precluded by the presence of sexual orientation harassment as well, and that a hostile environment claim in primary and secondary schools can span classes, grades, and schools. A copy of the brief is available at <http://www.justice.gov/cit/edu/documents/prattamicus.pdf>.

¹¹ See, e.g., *Henkle v. Gregory* 50 F. Supp. 2d 1067 (D. Nev., Feb 28, 2001) (resulting in a settlement of \$451,000, the largest pre-trial payment of its kind in the nation, for the failure of school officials to end years of anti-gay verbal and physical abuse in three different Reno high schools directed at Derek Henkle). At his first high school, Derek was called names, shoved against lockers and spit on. A group of boys even threw a lasso around Derek’s neck and threatened to drag him behind their pick-up truck. He escaped, only to have a teacher laugh at him for being so upset. Although classified as a “gifted” student, Derek was transferred to a school for students with behavioral or academic problems where the principal warned Derek against “acting like a fag.” After Derek was transferred to yet a third high school, the harassment continued and school police officers stood by while a student repeatedly punched Derek in the face. He was ultimately forced to enroll in adult education classes where a high school diploma was not available.

Priority 3 – Improving the Effectiveness and Distribution of Teachers and

Principles: Lambda Legal urges the Department to strengthen the Notice’s definition of “effective principal” and “effective teacher” to place a greater emphasis on creating positive learning conditions, including by strengthening teachers’ classroom management skills. While the Notice’s principal effectiveness definition appropriately includes “evidence of providing supporting teaching and learning conditions...” as an example of a supplemental evaluation measure, the Department should also include a comparable evaluation measure as an example in the teacher effectiveness definition and improve the phrase to read “supporting teaching and learning conditions for all students, including LGBT and other student groups subject to high levels of bullying and harassment”¹² in order to send a strong signal that school level and classroom management skills are a critical aspect of teacher and leader effectiveness that will help states, districts and schools begin to successfully address this challenge.

Priority 4 – Turning Around Persistently Lowest Achieving Schools: Bullying and harassment are major contributors to poor school culture and climate, particularly for LGBTQ students. Evidence shows that bullying has serious academic consequences, including decreased interest in school, increased absences, and decreased concentration levels. This result is pronounced for LGBT students or students perceived to be LGBT.¹³ Lambda Legal believes that it is urgent to strengthen this priority by specifically encouraging future grantees to proactively address bullying and harassment as part of their strategy to improve low achieving schools’ culture and climate.

Priority 5 – Increasing Postsecondary Success: Improving school climate and culture will be critical to achieving the goal of restoring the United States to first in the world in the percentage of citizens holding college degrees or other postsecondary credentials. The nation must increase the number of students that complete high school ready for postsecondary success, including LGBT students who report missing school more often

¹² See *The Principal’s Perspective: School Safety, Bullying and Harassment*, Commissioned by GLSEN in collaboration with the National Association of Secondary School Principals (May 2008) (reporting that three in ten principals (29%) rate their teachers and staff as only fair or poor at being able to effectively deal with a student being bullied or harassed because they are or are perceived to be lesbian, gay or bisexual. Furthermore, only 4% of principals report that their school or district provided professional development for their staff on LGBT issues during the past year.).

¹³ See *The 2007 National School Climate Survey*, GLSEN, (2007), p.84 (reporting on research that, among other things, shows that students were twice as likely to have missed school in the past month if they had experienced high frequencies of verbal harassment related to their sexual orientation (48.3% versus 20.1%) or how they express their gender (51.7% versus 25.5%). Additionally, students who were frequently physically harassed because of their sexual orientation or gender expression reported lower grades than other students.).

than their peers because of bullying and harassment.¹⁴ Recurring absences hurts students' overall academic achievement and later opportunities. Additionally, students who experienced higher frequencies of physical harassment because of their sexual orientation or gender expression were less likely to say they would go on to college.¹⁵ Evidence shows that the postsecondary aspirations of LGBT students are significantly affected by being targets of harassment.¹⁶ Given this evidence and knowing from our experience in working with students that schools are filled with LGBT hostility, Lambda Legal urges the Department to highlight the importance of improving school climate and culture – including specifically recognizing and addressing harmful cultures that allow anti-LGBT language and harassment to flourish – as part of this priority and admirable national goal.

Priority 6 – Improving the Achievement and High School Graduation Rates of Rural and High Need Students: The problems facing LGBT students in rural areas are often pronounced and sometimes further amplified by the lack of supportive resources in small towns and less populated areas.¹⁷ Lambda Legal agrees that improving school climate and culture should be a core part of the Department's strategy to increase high school graduation rates, including the Department's approach to rural schools, and urges the Department to encourage grantees to include rural specific strategies for improving school climate and culture for LGBTQ students.

Priority 8 – Promoting Diversity: Lambda Legal strongly supports the appropriately high priority placed on promoting student-body diversity as well as inclusion of this priority in the final rule. We agree with the Department that diverse learning

¹⁴ School Climate Survey, p.14 (showing that, e.g., 32.7% of LGBT students missed a day of school because of feeling unsafe, compared to only 4.5% of a national sample of secondary school students).

¹⁵ *Ibid.*, p. 104.

¹⁶ Educational Longitudinal Study: 2002/04 Data Files and Electronic Codebook System. (First follow-up) [ECB/CD-ROM Public Use]. (2005). Washington, DC: National Center for Education Statistics, U.S. Department of Education, Institute of Education Services (reporting that the percentage of LGBT students who did not plan to pursue any type of post-secondary education (obtaining a high school diploma only or not finishing high school) was almost twice that of a national sample of students (12.4% versus 6.6%)).

¹⁷ School Climate Survey, p.92 (showing that students in schools in small towns or rural areas experienced higher levels of victimization related to their sexual orientation and were less likely to benefit from staff intervention. For example, students in urban areas were more likely to report staff intervention with homophobic remarks — 21.7% of students in urban areas said that school staff intervened most of the time or always when hearing homophobic remarks, compared to 15.2% of students in small towns or rural areas and 16.3% of students in suburban areas).

environments can provide substantial educational benefits for all students. We urge the Department to expand the examples cited in the Notice to include a specific reference to LGBTQ students. LGBT students were much more likely to report feeling unsafe in school because of a personal characteristic than a national sample of the general population of students.¹⁸ As the continuing need for litigation, and the sustained requests for assistance of LGBT youth and their parents show, this problem is often not address by school personnel.¹⁹ In short, without specific enumeration of LGBT students in this priority, some districts, schools, and teachers may not be willing to affirmatively recognize the specific needs and circumstances of these students.

Priority 10 – Enabling More Data-Based Decision-Making: Lambda Legal supports the Notice’s recognition of the importance of collecting, analyzing and using data to promote and enable effective educational decisions so that all students have an opportunity to succeed. We strongly encourage the Department to include demographic information about sexual orientation and gender identity in order to best support LGBTQ students. Without this critical demographic data, educators will not be able to evaluate the effectiveness and impact of educational initiatives on LGBTQ students and fully understand the culture and climate of schools.

Conclusion

The Secretary’s Priorities provide an opportunity to strengthening school climates to protect all students. Providing a safe, harassment-free school environment is essential to improving educational outcomes for LGBTQ students. Lambda Legal appreciates having the opportunity to weigh in on these regulations. Thank you for considering our comments and please feel free to contact us if we can be of further assistance.

Sincerely,



Jon W. Davidson
Legal Director

¹⁸ School Climate Survey, p.37 (showing that more than two-thirds of LGBT students felt unsafe at school compared to less than a fifth of the general population of students).

¹⁹ *Id.*, p.20 (showing that less than a fifth of the students reported that school personnel frequently intervened (“most of the time” or “always”) when homophobic remarks and negative remarks about gender expression were made in their presence (17.6% and 14.6%, respectively)).