

**The Legal Liability  
Associated with  
Homosexuality Education  
in Kentucky Public Schools**

**An assessment of the risks and liabilities associated with  
policies and programs that normalize homosexual  
behavior in public schools**

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# The Legal Liability Associated with Homosexuality Education in Kentucky Public Schools

Since the early 1990s, homosexual activist organizations have been working for greater access to public schools with the stated purpose of making them a “safer” place for young people who have become involved in homosexual behavior.

One of the most active organizations on school campuses, the Gay Lesbian and Straight Education Network (GLSEN), insists that self-identified homosexual students are regularly harassed, threatened and abused, creating an environment in which they cannot learn. Also promoting this idea is Parents, Families and Friends of Lesbians and Gays (PFLAG), which is gaining a significant presence in many schools across the country. Other organizations exist solely at the local level and may or may not be affiliated with the largest of these national groups.

According to GLSEN and PFLAG, the reason schools are not safe for students involved in such behavior is the ignorance, prejudice and hatred of heterosexual classmates. They claim the only answer, then, is to teach everyone in the K-12 school system – administrators, teachers, and students – that homosexual behavior is normal, healthy, and natural. They believe this will stop so-called prejudice against homosexuality before it begins and will produce respect for, and encourage tolerance of, the perceived diversity that exists among the public school population.

## How They Frame the (Non) Issue

GLSEN’s Executive Director Kevin Jennings revealed in a speech in 1995 how he used “safety” to delude the Massachusetts legislature into adopting the pro-homosexual agenda for the schools in their state. The speech, “Winning the Culture War,” was given at a conference on March 5, 1995. Notice the “safety” Trojan horse:

In Massachusetts, the effective reframing of this issue was the key to the success of the Governor’s Commission on Gay and Lesbian Youth. We immediately seized upon the opponent’s calling card – safety – and explained how homophobia represents a threat to students’ safety by creating a climate where violence, name-calling, health problems, and suicide are common. Titling our report ‘Making Schools Safe for Gay and Lesbian Youth,’ we automatically threw our opponents onto the defensive and stole their best line of attack. This framing short-circuited their arguments and left them back-pedaling from day one.<sup>1</sup>

## Safety? Or Sex?

What is becoming increasingly clear, however, is that despite claims to the contrary, the “safe school” message of these organizations is nothing more than a deceptive ploy designed to preach safety but actually encourage sexual activities that are quite unsafe.

Exposure to and experimentation with homosexual behavior carries serious risks that school officials should be aware of in order to protect students. There is concern that by allowing access by homosexual activist organizations, and by establishing policies that have the effect of normalizing homosexual behavior, schools may have become responsible for physical and emotional harm to the students entrusted to their care.

In addition, because homosexual behavior has been proven to contribute to many harmful consequences for those who engage in it, school officials should be aware that it is possible that a legal liability exists for the tort of negligence if it is proven that homosexual activist organizations were granted access to students under the school’s responsibility and that students subsequently suffered physical or mental harm.

Liability for the tort of negligence generally rests on four elements:

1. A duty or obligation to protect another from unreasonable risk;
2. A failure to observe that duty;
3. A causal connection between the failure and the alleged injury; and
4. Actual loss or damage that resulted.

The purpose of this document is to inform school officials of those serious physical and mental health risks so that they might be able to fulfill their duty to protect the students in their schools and thus avoid a lawsuit related to the following elements, as well as other areas of criminal and constitutional law.

## **ENDANGERING THE PHYSICAL HEALTH OF A CHILD**

It is generally recognized by the majority of adults in our society, and backed up by many studies, that early participation in sexual activity by children is undesirable for many reasons. Serious endangerment of the physical health of the child is just one compelling reason.

When a child is encouraged to accept homosexuality as normal, healthy and natural, any such encouragement to engage in or experiment with homosexual behavior at a school-sanctioned club or event, has the potential for legal liability, should the child experience injury to his or her physical health through such experimentation.

### **Sexually Transmitted Diseases**

It is undeniable that the most serious physical harm that can come to someone engaging in homosexual behavior is the contraction of HIV. Even after many years of “safe-sex” education targeted at high-risk groups, particularly men having sex with men, according to HIV/AIDS Surveillance Report, a publication produced by the Centers for Disease Control and Prevention (CDC), this category continues to account for the largest number of people reported with AIDS each year.

Oxford University’s International Journal of Epidemiology indicates that gay and bisexual men involved in same-sex activity risk cutting years off their lives. One study showed

In a major Canadian centre, life expectancy at age 20 years for gay and bisexual men is 8 to 20 years less than for all men. If the same pattern of mortality were to continue, we estimate that nearly half of gay and bisexual men currently aged 20 years will not reach their 65th birthday. Under even the most liberal assumptions, gay and bisexual men in this urban centre are now experiencing a life expectancy similar to that experienced by all men in Canada in the year 1871. <sup>2</sup>

While HIV infection is very serious, same-sex sexual behavior exposes individuals to many other serious and life-threatening health risks. The Medical Institute for Sexual Health research reveals that:

Homosexual men are at significantly increased risk of HIV/AIDS, hepatitis, anal cancer, gonorrhea and gastrointestinal infections as a result of their sexual practices. Women who have sex with women are at significantly increased risk of bacterial vaginosis, breast cancer and ovarian cancer than are heterosexual women. <sup>3</sup>

### **Perils of the Human Papillomavirus**

Genital human papillomavirus (HPV) infections are sexually transmitted infections of increasing public health concern. The CDC has stated it is the most common STD in the U.S. and has no cure or vaccine. Known for years

as the cause of genital warts, there is a growing body of evidence demonstrating its association with a variety of anogenital cancers.

HPV is a collection of more than 70 types of viruses that tend to cause warts, or papillomas, on various parts of the body. Most HPV infections are subclinical or asymptomatic, while only one in a hundred people experience the symptoms of genital warts.<sup>4</sup>

According to the CDC, an estimated 5.5 million people become infected with HPV each year in the U. S., and an estimated 20 million are currently infected, accounting for 15% of Americans ages 15-49. A staggering estimated 75% of the reproductive-age population has been infected with sexually transmitted HPV.

## HPV - “Hard to Prevent Virus”

HPV no doubt has a one-two punch. First, because the person infected generally is not aware of the contagion, he or she passes it on without knowing it. Secondly, if someone is infected, it is virtually impossible to prevent transmission via sexual contact.

HPV differs from other STDs in its method of transmission; it is not spread from one person to another through the exchange of bodily fluids. Rather, it spreads through skin-to-skin contact. Since HPV is a regional, multicentric disease, it infects the entire genital area: the penis, scrotum, vulva, and surrounding areas. Condoms do not cover the scrotum, nor most of the other areas that can be infected with the virus.<sup>5</sup>

A CDC report dated July 20, 2001 entitled “Scientific Evidence on Condom Effectiveness for Sexually Transmitted Disease (STD) Prevention” has provided the latest evidence for the lack of protection condoms provide from HPV infection. The National Institute of Allergy and Infectious Diseases, National Institutes of Health, and the Department of Health and Human Services released the results of a workshop sponsored by a number of federal agencies assigned with the task of answering the following question: “What is the scientific evidence on the effectiveness of latex male condom-use to prevent STD transmission during vaginal intercourse?”

The report concluded that there is insufficient evidence that condoms prevent the spread of most STDs. “For HPV, the Panel concluded that there was no epidemiologic evidence that condom use reduced the risk of HPV infection, but study results did suggest that condom use might afford some protection in reducing the risk of HPV-associated diseases, including warts in men and cervical neoplasia in women.”<sup>6</sup> (emphasis added)

But the answer they received was not as outrageous as the manner in which the CDC handled it. Though the workshop was held in June 2000, the agencies sat on the controversial report for more than a year and released it only after the threat of a Freedom of Information Act request. The results were so alarming that one group of physicians charged the government with a medical cover-up and called for the resignation of the CDC director.

As a result of the study, HHS Secretary Tommy Thompson was also called on to enforce the federal law requiring all federal agencies to provide “medically accurate information regarding the effectiveness or lack of effectiveness of condoms.” The law’s author now believes “that when condom use is discussed it is no longer medically accurate - or legal for the CDC - to refer to sex as ‘safe’ or ‘protected.’”<sup>7</sup>

Public schools may not be considered a ‘federal agency’ but most certainly are ethically, and probably legally, required to insure that medically accurate information is given to students if the school is directly or indirectly involved in the distribution of condoms.

The facts are plain: it is not reasonable to think that condoms will protect students, or anyone for that matter, from HPV or most STDs.

## HPV and homosexual behavior

A report in *Tracking the Hidden Epidemics 2000* by the CDC, noted a study with an extremely high prevalence of HPV infection among gay and bisexual men – 60% of those HIV-negative and almost universal infection among HIV-positive individuals. Similarly, a six-city study among high risk and HIV-infected women found that 26% of HIV-negative women were infected with HPV, but 70% of HIV-positive women with severely compromised immune systems were infected with HPV.

Gay Health claims that HPV causes most anal cancers in men who have sex with men (MSM), and that it is the only cancer with a greater prevalence among MSM than in the general population. The risk of anal cancer soars by nearly 4,000% for MSM and doubles if he is HIV-positive.

## Pro-Homosexual Groups Promote Unsafe Sex

Pro-homosexual youth organizations often claim to encourage only ‘safe sex’ to students, including the use of condoms, which is now known to be a virtual impossibility. In practice, condom use is far from safe.

Conference workshops on sexual-related topics no doubt place students at serious health risks. For example, on the weekend of March 25, 2000, GLSEN/BOSTON & Project 10 East held their tenth annual “Teach Out!” conference at Tufts University. One particular workshop, “What They Didn’t Tell You About Queer Sex & Sexuality in Health Class,” was described in conference materials as follows:

This workshop for youth addresses what is different for glbt (gay, lesbian, bisexual, transgender, transsexual) youth when it comes to sex, dating, relationships, HIV etc. Come and discuss the questions you couldn’t or didn’t ask in health class. What’s it like to be young, queer and beginning to date? Are lesbians at risk for HIV? What does it mean to identify as queer and still be sexually active with the opposite sex? Who can you talk to about these things? And, why aren’t queer issues addressed in Sex Ed classes? We will address the information you want about queer sexuality and some of the politics that prevent us from getting our needs met. <sup>8</sup>

Scott T. Whiteman, a concerned parent from Boston, attended the GLSEN workshop and noted the workshop’s discussion on condoms:

As often as we hear that there is an aggressive HIV/AIDS prevention campaign, the session ran 55 minutes before the first mention of “protection” and safer sex came. In the context of the “safer sex” discussion, however, it was pointed out that these children could make an informed decision not to use a condom. Outside in the conference hall, the children could easily obtain as many condoms, vaginal condoms, and other contraceptive devices as they wished from various organizations which distribute such. <sup>9</sup>

## Other Health Risk Behaviors

PEDIATRICS, the Journal of the American Academy of Pediatrics, published in May 1998 one of the most convincing studies identifying the association between health risk behaviors and sexual orientation. Results of the analysis revealed greater than 30 risks positively associated with self-reported gay-lesbian-bisexual (GLB) orientation.<sup>10</sup>

The study by Harvard Medical School of 4,159 9<sup>th</sup>- to 12<sup>th</sup>-grade students found that “GLB youth report disproportionate risk for a variety of health risk and problem behaviors...engage(ing) in twice the mean number of risk behaviors as did the overall population.” (emphasis added)

The health risks and problem behaviors specifically identified by the study included, but were not limited to, “an increased...use of cocaine (and other illegal drugs). GLB youth were more likely to report using tobacco, marijuana,

and cocaine before 13 years of age. Among sexual risk behaviors, sexual intercourse before 13 years of age, sexual intercourse with four or more partners...all were associated with GLB orientation." (emphasis added)

Homosexuals attempt to argue that the social stigmas regarding homosexuality are what place GLB adolescents at risk of engaging in these high-risk behaviors. To the contrary, high-risk behavior is commonplace in the most pro-homosexual communities in the world, including San Francisco and the Netherlands.

Certainly, no one can assert that many institutions in our highly sexualized culture, including many public schools, have not been affirming of a child's 'right' to engage in sex. We have handed out condoms freely and encouraged students to have fun, but be careful.

The purported social stigma attached to homosexuality is not what pushes these young people to engage in risky behavior in view of the fact that the same risks are taken by heterosexual youth who are sexually active.

## **ENDANGERING THE MENTAL HEALTH OF A CHILD**

Compounding such physical consequences are the mental health problems associated with same-sex relationships. One of the most recent studies that confirms this is a government-sponsored study of 5,998 adults in the Netherlands ages 18 to 64 which was published in the January 2001 issue of the Journal of the American Medical Association. "The findings support the assumption that people with same-sex sexual behavior are at greater risk for psychiatric disorders."<sup>11</sup> Specifically, the study found that -

Compared to heterosexual men, males who engage in homosexual behavior are:

- 727 percent more likely to have suffered bipolar disorders at some point in their lives, and 502 percent more likely in the last twelve months.
- 718 percent more likely to have suffered obsessive-compulsive disorder in the last twelve months, and 620 percent more likely at some point in their lives.
- 632 percent more likely to have suffered agoraphobia (fear of leaving home or being in public) in the last twelve months, and 454 percent more likely at some point in their lives.
- 421 percent more likely to have suffered "panic disorder," and 229 percent more likely to have suffered "social phobia" at some point in their lives.
- 375 percent more likely to have suffered simple phobia in the last twelve months, and 361 percent more likely at some point in their lives.
- 311 percent more likely to have suffered mood disorders at some point in their lives, and 293 percent more likely in the last twelve months.
- 261 percent more likely to have suffered anxiety disorders in the last twelve months, and 267 percent more likely over the course of their lifetimes.
- 270 percent more likely to have suffered two or more psychiatric disorders during their lifetime.
- 235 percent more likely to have suffered major depression at some point in their lives.

Compared to heterosexual women, females who engage in homosexual behavior are:

- 405 percent more likely to have suffered a substance use disorder.
- 241 percent more likely to have suffered mood disorders during their lifetimes.

- 209 percent more likely to have suffered two or more mental disorders during their lifetimes.

Again, most homosexual activists argue that such mental health problems are the result of societal nonacceptance and/or stigmatization of homosexual behavior. Such conclusions, however, are unlikely and still unproven in scientific circles, and schools should avoid basing policies on unestablished assumptions.

In any case, studies like the one conducted in the Netherlands were not done in a culture that is antagonistic or even ambivalent toward homosexuality. As if anticipating homosexual activists' typical claim, the study notes that "the Dutch social climate toward homosexuality has long been and remains considerably more tolerant"<sup>12</sup> than in other countries. Yet the same tendencies towards mental health problems were found in homosexuals in that country as in homosexuals in the United States.

## **Schools are unequipped to be mental health clinics**

In most instances it is assumed to be the responsibility of a child's parents to ensure that he or she grows mentally healthy. Helping a young person to understand the ethics of sexual behavior in an already confusing time of life is not an easy task.

However, the advancement of homosexuality education in public schools has forced teachers into the role of mental health professionals. Teachers are usually untrained and thus unqualified to assess – and then accurately address – the mental health needs of their students.

Furthermore, the lack of teacher qualifications for such endeavors sometimes leads them to lean too heavily on outside groups. Many of these groups' activities fall outside the authority and control of the school, even though students are referred to them. In general, they also support a broader political agenda that may not be supported by parents or public school students.

Referring a student to a local homosexual organization as a legitimate conduit for confused or troubled children simply because one expects them to be able to handle the child's problems is not protection from legal liabilities should something go wrong. Instead, it well could be construed as negligence.

## **CONTRIBUTING TO THE DELINQUENCY OF A CHILD**

The State of Kentucky has gone to great lengths to ensure the safety of children and to protect them from corruption by adults. Several applicable statutes that could expose your school to legal action are worth noting:

Kentucky Revised Statute Chapter 530.060 – A person legally charged with the care or custody of a minor [potentially schools serving "in loco parentis of a child"] is guilty of endangering the welfare of a minor when he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming delinquent.

Kentucky Revised Statute Chapter 530.064 – A person is guilty of unlawful transaction with a minor in the first degree when he knowingly induces, assists, or causes a minor to engage in illegal sexual activity. Please be aware that "deviate sexual intercourse" – sodomy – is still against the law in Kentucky. Due to the high risks of homosexual behavior previously documented in this report, note that if the minor incurs physical injury the penalty is increased to a Class A felony.

Kentucky Revised Statute Chapter 530.070 – A person is guilty of unlawful transaction with a minor in the third degree when he persistently and knowingly induces, assists or causes a minor to disobey his parent or guardian.

Although GLSEN, PFLAG and similar organizations are quick to assert that neither they nor the school clubs associated with them “promote sex” or “foster adolescent sexuality,” parents have found a completely different story when researching their activities. And unfortunately, these types of organizations are becoming increasingly bolder, particularly when they can get students to leave school grounds.

## **The Massachusetts Model**

One presenter at the previously mentioned GLSEN Teach Out! conference at Tufts University in Boston, Margot E. Ables, Coordinator, HIV/AIDS Program, Massachusetts Department of Education and a self-proclaimed lesbian, acknowledged,

We always feel like we are fighting against people who say publicly, who say privately, that being queer is not at all about sex... We believe otherwise. We think that sex is central to every single one of us, and particularly queer youth.<sup>13</sup>

This conference gave children as young as 12 explicit “how to” instructions about homosexual sex.<sup>14</sup> When the tapes of several workshops were made public, there was a flurry of controversy. Not only were tax dollars used for this event, but children were bused to Tufts using public school buses, and teachers were given ongoing education credits from the state for attending.

In the session previously referred to entitled “What They Didn't Tell You About Queer Sex & Sexuality in Health Class,” three self-avowed homosexual panelists gave advice to the teens on a myriad of topics. The instructions included a discussion on extremely dangerous sex practices.

After attending several workshops that clearly crossed the line of what is appropriate and legal for children, Mr. Whiteman subsequently called on the local District Attorney to investigate the individuals involved in the conference and the state’s entanglement with it to determine whether minors had been corrupted.

## **Vermont**

A similar dispute erupted in Vermont when a group called Outright Vermont pushed their agenda much further than it promised it would – also at taxpayer expense. With grants over a three-year period from the Vermont Department of Health worth \$121,575, Outright targeted students who were in middle through high school grades. Kathy Hoyt, Secretary of Administration, proudly asserted that Outright Vermont “developed a training program for public schools that was designed to support diversity and safe schools for Vermont’s gay, lesbian, bisexual, transgender and questioning youth.”

As in Massachusetts, however, “safety” shifted to “sex.” According to its own documents, Outright Vermont used taxpayer money to provide “safer sex activities” and “parties” for teens. These events included “demonstrations, guided practice & skill evaluation” for the use of prophylactics, and the distribution of free condoms, lubricants for sexual intercourse between males, “dental dams” for oral sex between females, and latex gloves for mutual masturbation. The number of such items requested by Outright for distribution to teens was: 5,000 condoms, 750 dental dams, 750 latex gloves, and 2,000 packets of lubricant.

Outright also spent monies on youth retreats, including the “recruitment of youth participants,” which utilized mailing lists and youth-related meetings to stir interest in the gatherings. Students who expressed an interest in attending were transported – again using state money – to the retreat site, where youth and adult staff taught kids how to engage in homosexual sex. Outright’s quarterly report stated, “All retreat participants practiced & were evaluated on their (prophylactic) barrier use skills & were given a variety of barriers to take home. Participants joined in role plays.”

Other social events for youth paid for by Outright included dances, movie nights, bowling, picnics, etc. At one such event, the Emerald City Ball, Outright says it distributed prophylactics and lubricants to participants “at the door & in the bathroom.” Approximately 60 teens and 80 adults attended the event.

In a virtual minefield of legal liability, consider the very real possibility that a student attending that Ball, surrounded by free condoms and lubricants, having been told that sex is safe, wound up having a sexual relationship with one of the adults who also attended. There is growing legal opinion that schools could be held legally culpable, since the organization running the dance has the full support and recommendation of the school system.

## **Seattle**

An all-too-familiar scenario was documented in Seattle by Eleanor Durham of Parents and Teachers for Responsible Schools. The Sexual Minority Advocacy Council (SMAC) was created “to help ensure that [the Seattle public schools] are providing a safe environment for everyone who learns, works or interacts,” according to school superintendent John H. Stanford.

But with the student-safety concern out in front, the purpose of SMAC then seeped over into other areas. A SMAC pamphlet produced by the Seattle Education Association and made available to all students included a list of resources that amounts to a Seattle same-sex smorgasbord for curious teens, complete with phone numbers of the Lesbian Resource Center; Gay, Lesbian, Bisexual Transgender Youth Information Line; Lambert House Gay, Lesbian, Bisexual and Transgender Youth Drop-In Center; and Gay/Lesbian Straight Education Network (GLSEN).

What did students find when they accessed the groups provided as resources by the pamphlet? When Ms. Durham checked the GLSEN web site, for example, she was shocked by what she found. GLSEN’s home page was an Internet doorway into every sort of pro-homosexual venue imaginable. One link was to a website that welcomed young people “who are searching out their sexual orientation.” It asked young visitors, “Do you feel that you might be bisexual, gay, or lesbian? This is the place for you.”

What important information was provided to these young people? Information such as pictures of naked same-sex teenagers embracing, a homosexual dating service where gay youth could find “partners or friends of the same sexual orientation,” and chat rooms where homosexual youth could meet others was all available through the site.

Durham said other perversions accessible from GLSEN’s web page included homosexual pornography, stories that included same-sex incestuous acts between fathers and sons, videos on sadomasochism, and listings for phone sex and live sex shows. Also available were free images showing naked men, genitalia, and oral sex acts. When she complained, the links to the web sites were removed although the damage to curious young people may have already been done.

In conclusion, young people who may truly be confused about their sexuality or simply curious are literally funneled from schools through supposedly protective activist groups into the world of the homosexual lifestyle. And once there, susceptible children can be lured into homosexual pornography, same-sex relationships and, ultimately, participation in homosexual activity. School officials should be aware that by granting homosexual organizations access to students on their campus, they may be in violation of Ohio Revised Code 2919.22 or 2919.22.

## **UNCONSTITUTIONAL RESTRAINT OF FIRST AMENDMENT RIGHTS THROUGH RESTRICTIVE STUDENT SPEECH OR ANTI-HARASSMENT CODES**

Aggressive efforts by homosexual activist organizations to make schools a “safer” place have resulted in over-restrictive speech or anti-harassment codes that have infringed upon students’ free speech rights under the First Amendment of the Constitution. These unconstitutional policies are now exposing schools to legal action.

## **Censorship is not the Solution**

Censorship is government suppression of individual speech and it comes in many forms. In years past, government censors banned certain books and movies. Today, there is a new and growing form of censorship called “political correctness.”

Political correctness is a kind of “secular” moral code that takes sides on many controversial issues such as abortion, evolution, or homosexuality, and then declares its views to be morally right and the opposing views to be morally wrong.

Political correctness may assert itself in the public school in the form of discouraging opposing views on these controversial issues. It may even go so far as to define disapproval of some issues as disordered.

For example, disapproval of homosexuality is often termed ‘homophobic,’ ‘bigoted’ or ‘hate mongering.’ This robs students from the opportunity to hear all points of view and make informed choices in conjunction with their own moral or religious code. This is clearly the antithesis of the freedom of speech and the Supreme Court has already ruled that students do not shed that freedom at the schoolhouse door.

## **The First Amendment Prohibits Government Censorship**

The Third U.S. Circuit Court of Appeals recently overturned a public school system’s controversial policy that forbade students from expressing sincerely held beliefs, secular and religious, about homosexuality.

Concerned parents argued that the code was being used to suppress the freedom of speech of students who out of a sincere sense of compassion and care for their fellow students attempted to warn others about the severe mental and physical health hazards medically and scientifically associated with such behavior. The case is expected to influence the way schools across the nation attempt to promote acceptance of homosexuality.

The controversy began when David Saxe, Ph.D., and two students in the State College Area School District (SCASD) challenged the constitutionality of a “hate speech” code. The school district dubbed the speech code an “anti-harassment policy,” supposedly meant to protect students who engage in homosexual behavior from verbal harassment.

In a strongly worded opinion, the Third Circuit reinforced the constitutional protections afforded student speech – especially speech addressing values and religion. The SCASD policy, the court said, was “both unconstitutionally overbroad and vague.” The appellate court overturned a lower court ruling that had said that speech which can be characterized as “harassment” is not protected under the First Amendment. Such a view of speech, said the Third Circuit, “is without precedent in the decisions of the Supreme Court or this Court, and it belies the very real tension between anti-harassment laws and the Constitution’s guarantee of freedom of speech.”

The ruling also said that the clauses in the SCASD speech code which sought to prohibit “disparaging speech directed at a person’s ‘values’” struck at the very “heart of moral and political discourse – the lifeblood of constitutional self-government (and democratic education) and the core concern of the First Amendment.”

To the contrary, courts have gone so far as to say that student expressive rights exist even if some find the student speech offensive. (*Tinker v. Des Moines Independent School District*, 393 U.S. 508-509 (1969)).

Attorneys involved in the Saxe case believe this decision will, in fact, “result in the striking down of hate speech codes the nation over, even well beyond the context of the public schools.”

## **The Correct Response**

The solution to this problem is obviously to prohibit verbal and physical harassment of any kind, upholding policies that most schools already have in place, without legitimizing morally suspect behavior that poses such a dramatic threat to the health of young people. No doubt a student's right to free speech can be protected while at school without giving him or her the freedom to materially and substantially disrupt school discipline.

One view is that schools already engage, as do all educational institutions, in a kind of legitimate "censorship." That is, they pick and choose, based on the constraints of time, money and the values of the community, what the curriculum will contain, and what it will not.

On this view, it is easy to make a solid case that any issue that may expose children to harm is unethical, absorbs valuable time and money, and may simply be more trouble than it's worth. Schools may well be opening themselves up to costly litigation both on a free speech issue combined with a health consequences front, if they choose to communicate only protective and enabling messages about homosexuality.

An attempt to silence non-politically-correct views is bad enough when it comes from other students. But when it comes from school officials, it may very well be a violation of students' and parents' constitutional rights.

In order for your school to avoid legal action in this area, your school policies should reflect the principles that:

1. Students, parents and teachers have the right to speak their opinions and engage in persuasive argument about any responsible issue in schools without fear of discrimination, retaliation or punishment.
2. Students have the right to disagree with, question, and to dispute political correctness in textbooks, classroom instruction, and official school policies.
3. Students have the right to invite speakers into their school to present their side of the issues to the same extent as students with politically correct views.
4. Schools, subject to constitutional principles, have the responsibility to determine whether a given issue may introduce harmful messages to children, and the right to determine not to deal with it at all. This should apply to establishment of "gay" clubs, which may expose children to homosexual practices without parental knowledge.
5. Students have the right to be protected while in the school setting from any policy or program that could allow harm to their physical or emotional health.

## **Responsible Action Required**

It is hoped that the school officials who have been entrusted with the education and care of children will carefully consider the numerous negative physical, mental and emotional consequences directly related to homosexual behavior.

Examination should be made of the relationship schools in their district have with homosexual activist organizations such as GLSEN, PFLAG, or other local groups.

And, an honest answer must be given to the tough question: Have the programs and policies put in place as a result of the encouragement or threats of these organizations, and the student alliances or clubs encouraged and/or supported by these organizations, directly or indirectly exposed students to dangerous behavior?

If the answer to the question is yes, then it is hoped that whatever action is necessary will be taken to reverse the influence that these organizations have established in schools and on the formative minds of students.

Beyond the moral obligation that it is believed schools have to protect children from the negative consequences associated with homosexual behavior, an obligation exists to inform school officials that by allowing homosexual activist organizations to implement their agenda in schools, a serious legal liability may also have been created, as detailed in this report.

School officials should also be advised that an education effort is underway to inform the parents and students in their district of the contents of this report.

Students will be advised that their First Amendment free speech rights may have been restricted by policies disguised as promoting “safety” or “diversity.”

Parents will be advised that, with the approval of school officials, organizations such as GLSEN and PFLAG have been allowed to sponsor clubs, programs and activities through which students are being exposed to a behavior that threatens their physical, mental and emotional well-being.

## **Legal Assistance Available**

This report has documented the concern that the health of students in many schools across the country may have been compromised and their First Amendment rights may have been denied. Attorneys have affirmed that any of these situations may constitute grounds for legal action. Accordingly, they have agreed to consider any case pertaining to harm done to students by any school-sanctioned activist organization.

## **Endnotes**

<sup>1</sup> The Massachusetts News, ”Governor’s Commission for Gay Youth’ Retreats to ‘Safety’ and ‘Suicide,’ December 2000.

<sup>2</sup> Hogg, R. S., et. al., “Modelling the impact of HIV disease on mortality in gay and bisexual men,” International Journal of Epidemiology, Vol. 26, 657-661, 1997.

<sup>3</sup> Medical Institute for Sexual Health, “Executive Summary: Health Implications Associated with Homosexuality,” 1999.

<sup>4</sup> “The Human Papillomavirus (HPV) Epidemic: Condoms Don’t Work,” Insight (Family Research Council) 1999.

<sup>5</sup> Ibid.

<sup>6</sup> National Institute of Allergy and Infectious Diseases, et. al., “Workshop Summary: Scientific Evidence on Condom Effectiveness for Sexually Transmitted Disease (STD) Prevention,” June 12-13, 2000.

<sup>7</sup> Ceci Connolly, “Report Questions Condom’ Disease Prevention Ability,” Washington Post, July 20, 2001, p. A01.

<sup>8</sup> Scott T. Whiteman, Peabody, Massachusetts, Affidavit re: GLSEN/BOSTON conference, April 18, 2000.

<sup>9</sup> Ibid.

<sup>10</sup> Garofalo, Robert, et. al., “The Association Between Health Risk Behaviors and Sexual Orientation Among a School-based Sample of Adolescents,” PEDIATRICS, Vol. 101, No. 5, May 1998: 895-902.

<sup>11</sup> Sandfort, Theo G.M, et. al., “Same-Sex Sexual Behavior and Psychiatric Disorders,” Archives of General Psychiatry (Journal of the American Medical Association), Vol. 58, No. 1, January 2001.

<sup>12</sup> Ibid.

<sup>13</sup> Whiteman.

<sup>14</sup> Ibid.