LGBTQ Legal Issues in Schools: An Overview

Schools and school employees have a legal duty to take reasonable action to address harassment and discrimination, and to preserve the safety and educational opportunities of all students.

Federal Law

- Applies to institutions receiving federal funding, as well as employees of those institutions
- Under federal law, schools and employees can be held liable for failing to adequately address anti-LGBTQ harassment and discrimination

Sources of Federal protections for LGBTQ students, families, and staff:

- U.S. Constitution:
  - Equal Protection Clause of the 14th Amendment (schools must not address anti-LGBTQ harassment and discrimination less adequately than other forms of harassment and discrimination)
  - 1st Amendment (free speech and assembly rights attach to situations involving issues of sexual orientation and/or gender identity/expression)
- Title IX (prohibits sexual harassment by students and employees, regardless of the sex of the parties involved)
- Equal Access Act (requires schools to provide equal access to school facilities for the purpose of holding student activities; for example, students must not prohibit Gay-Straight Alliances from meeting during lunch on campus if other student groups are allowed to meet then)

Basic standards:

- Schools must address harassment and/or discrimination of which it has “actual knowledge” (such as from direct observation or report). If one or more members of the school staff have actual knowledge of anti-LGBTQ harassment and/or discrimination at the school, that knowledge is often imputed to the entire school
- Schools and school employees must not be “deliberately indifferent” to harassment &/or discrimination in the school
- All forms of harassment and discrimination must be addressed with equal effectiveness
- Liability will attach for failure to address “severe, pervasive, objectively offensive” behavior; this can be a relatively easy threshold for a plaintiff to overcome