

## Legal Briefs

### Gay Bashing in the Schools

by Beth Robinson and Susan Murray

Although Vermont is better than most states with respect to gay issues in general, Vermont gay, lesbian, bisexual, and questioning youth are not immune from harassment and abuse at the hands of their classmates or school officials. The good news is that the law is on the side of g/l/b/t/q youth in public schools.

Depending on what, exactly, abusive classmates of such youth do, they may be liable for monetary damages and, in some cases, even criminally responsible for their misconduct.

More importantly, public schools have a legal responsibility to protect g/l/b/t/q youth from harassment and abuse. Vermont law requires schools to adopt harassment policies to deal with staff or students who engage in harassment on the basis of sexual orientation.

Harassment is verbal or physical conduct that interferes with a student's education or creates an intimidating or hostile environment. A school that fails to adopt or properly apply such a policy may be liable to a student who continues to be harassed after complaining to the school's authorities. An aggrieved student can then sue the school for monetary damages, or can file a complaint with the state's Human Rights Commission.

Thanks to a brave high school student in Wisconsin by the name of Jamie Nobozny, gay and lesbian youth have an even more powerful weapon against schools that fail to protect them: the United States Constitution (see story on page 6). After coming out in junior high school, Jamie endured years of abuse by his classmates in Ashland, Wisconsin. They called him names daily, urinated on him in the bathroom, wrestled him to the ground, and pretended to rape him in front of the class. On one occasion, they kicked him repeatedly in the stomach and sent him to the hospital with internal bleeding.

Both Jamie and his parents repeatedly complained to the school officials and asked them for protection. The school officials allegedly told Jamie that he had to expect that kind of treatment if he was going to be openly gay. They spent more time punishing Jamie (by placing him in special education classes to keep him away from the offending classmates, and by seating him in the young kids' section of the school bus for the same reason) than dealing with the abusive classmates. Not surprisingly, Jamie attempted suicide more than once, and ultimately, after nearly four years of continued abuse, dropped out of school.

Jamie sued the school officials who had failed to protect him, arguing that they had violated his Constitutional right to equal protection under the law. Although the trial court dismissed his case, a federal appeals court decided that he had a Consti-

tutional right to the same protection from abuse that other students had. That means that Jamie not only had a potential claim against the school under Wisconsin's anti-discrimination law, but that he could also sue the school officials themselves for violating his Constitutional rights.

Suing a school or school officials in court should be a last resort in most situations, but in dealing with an uncooperative school administration, Vermont's anti-discrimination law and the United States Constitution provide powerful negotiation tools. If you are the victim of harassment and discrimination in your school, here are some pointers:

1. *Safety First.* If you find yourself in a bad situation, before you do anything else, get yourself into a safe space, both physically and emotionally.

2. *Get an adult involved.* You shouldn't have to take on the school on your own. Involve your parents, a lawyer, or contact a youth-serving organization such as Outright Vermont at 800-GLB-CHAT. They can refer you to other resources in your area as well.

3. *Notify the right people.* It may not be enough to tell a trusted teacher or guidance counselor about the abuse. You should always go to the principal, and if you don't get the protection you're entitled to, move up to the superintendent or even the school board or Department of Education.

4. *Document, document, document.* You should always communicate your concerns in writing. When you have discussions with school officials, follow up with a letter confirming and summarizing your conversation. In the meantime, you should keep a careful list, including dates and times of abuse and who was involved, conversations with school officials, and other related events.

5. *Follow the right procedure.* Many schools have specific complaint procedures for you to follow. Find out whether your school has one and be sure to follow it.

6. *Insist that the school address the abusers, not just the victim.* Sometimes schools deal with gay bashing by switching the victim from one class to another, or suggesting that the youth avoid certain situations. You're not the problem, and you have every right to insist that the school punish the abusers and not you.

7. *Offer solutions.* Your relationship with the school does not have to be confrontational — at least unless and until the school fails to protect you after you've complained. Instead, your goal should be to work with the school to find a way to deal with the problem. Groups like Outright Vermont, Youth Aware, and the Vermont chapter of the Gay/Lesbian/Straight Teachers' Network can point you to resources such as videotapes and speakers that you could provide to your school to help educate teachers, administrators, and fellow students.

Junior high and high school are hard enough

times for everyone without the added stress of gay-baiting harassment by one's classmates. Vermont law recognizes that no gay, lesbian, bisexual, or questioning youth should have to put up with that. If you believe that your school is not protecting your rights, you should be aware that you can take legal action to improve the situation.

*Note: In a future column, we will highlight important new legal developments concerning protections for gay, lesbian, bisexual, and transgendered student organizations such as support and ally groups.*

*Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont whose practices include employment issues, family matters, estate planning, personal injury and worker's compensation cases, and general civil litigation. This column features timely information about legal issues of interest to our community. We hope to provide information about important laws and court cases that may affect our rights, as well as practical nuts and bolts advice for protecting ourselves and our families. If you'd like to see us cover a particular topic, please feel free to write OITM or call us at 388-6356. ▼*

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### Human Rights Campaign Gives High Grades to Vermont Congressmen

by Paul Olsen

WASHINGTON DC -- The Human Rights Campaign (HRC), a Washington D.C. based gay and lesbian rights lobbying group, recently released ratings of the 104th Congress. The HRC ratings are designed to measure how individual members of Congress vote on issues of concern to America's gay, lesbian, bisexual, and transgendered communities. Included in the ratings were Vermont Senators Patrick Leahy and James Jeffords, and Representative Bernie Sanders.

The HRC evaluated each U.S. Senator and Representative on nine different issues. Among the issues considered were positions and/or votes on the Defense of Marriage Act (DOMA), Employment Non-Discrimination Act (ENDA), discharge of HIV positive service members, AIDS education

and funding, and the voluntary adoption of a non-discrimination policy prohibiting discrimination on the basis of sexual orientation in congressional offices.

Having both voted in favor of the Defense of Marriage Act (DOMA) (which the HRC opposed), Democratic Senator Patrick Leahy and Republican Senator James Jeffords each received an 89% rating from the HRC. Having supported the HRC on all nine issues, Independent Representative Bernie Sanders received a 100% HRC rating.

Compared to other congressional delegations, Vermont's two Senators and lone Representative scored very high Human Rights Campaign scores. These ratings provide Vermont's gay, lesbian, and bisexual community with useful information as the 105th congress begins and the 1998 elections get closer. ▼

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