



Contrary to the Spirit: Concern #2

The Impact of the ABR on Targets of Anti-LGBT Bullying: Increased Risk and Compromised Support for Some Students with Suggestions for Protecting LGBT Students & Targets of Anti-LGBT HIB

This paper is one in a series of papers examining a wide range of implementation issues with regard to the ABR

Summary: For some students, the current requirements of the Anti-Bullying Act, commonly known as the “Anti-Bullying Bill of Rights” or “ABR,” have made it more difficult for them to seek help when they are bullied or know someone who is bullied; the impact is particularly profound on students who are targets of anti-LGBT bullying, because they fear that the reporting and investigation process will “out” them to peers, school personnel, and their parents, and that their situation both in school and at home will be worsened rather than improved as a result. These students, therefore, have been placed at greater risk; whereas before the ABR, they could seek private support from a trusted adult in school, under the ABR many choose not to seek support at all. Specific and detailed school guidance will help schools implement the law in ways that promote, rather than endanger, the safety and welfare of these students.

Part I: Details of the Concern for the Safety of LGBT students, and others targeted by anti-LGBT bullying, under the ABR:

- **General Suppression of Reporting among Some Students Can be Addressed through Careful ABR Implementation.** Although the ABR requires school personnel to report cases of known or suspected HIB, in some cases the ABR has had the counterproductive effect of causing some students to be less willing to report incidents to school personnel. In the past, some students would tell adults about bullying incidents because they were looking for support or quiet resolutions. Under the ABR, they know that if they tell, the incident will become a matter of record involving an investigation, notifications, and possible discipline, so they hesitate to seek support or help if they do not want to “get someone in trouble,” “make a big deal out of” a minor incident, want to keep the matter quiet, or fear retaliation. The unintended negative consequence is that incidents go un-reported that would otherwise have been brought to the attention of at least one adult, thus pre-empting the provisions of the ABR that are designed to protect students. In large part, the general suppression of student reporting can be avoided through careful implementation of ABR requirements.¹
- **However, ABR reporting and notification requirements have had a unique, additional, and particularly damaging, impact on one particular group of students—LGBT students and others who are targets of anti-LGBT bullying.** Students who experience anti-LGBT bullying have a unique fear, i.e., that the process of reporting and investigating incidents of anti-LGBT bullying will “out” them, not only to their peers and school personnel, but also to their parents. This fear exists whether or not the victimized student is actually LGBT; if s/he is LGBT, then the fear is that peers, school personnel and their parents will find out that they are LGBT, and if they are not LGBT, then the fear is that the rumor that they are LGBT will spread throughout the school and to their parents. The fear is that prejudices among their peers and other adults will make their environment more, not less, hostile than it was before the incidents were reported.
- **Many LGBT and Questioning students are not “out” to their parents, and this is often for reasons of psychological, emotional, and physical safety.** Students who are LGBT might not be out to their parents for a number of reasons, including lack of psychological readiness, and fear of emotional or physical violence from parents who would not be accepting of this information. Rates of homelessness, suicidality, and drug use are higher among LGBT youth than non-LGBT youth, and these differences are highly correlated with parental rejection; the decision by a youth to withhold this information from a parent is a critical and personal decision involving safety concerns.

by Dr. Paula C. Rodriguez Rust, www.SpectrumDiversity.org, DrPaula@SpectrumDiversity.org

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- **Parental notification poses difficulties and possible dangers for students targeted by anti-LGBT bullying, thereby reducing rather than enhancing student safety.** Under the ABR, a school must notify the parents of a student involved in a suspected incident of HIB. Targets of anti-LGBT bullying fear that this notice will either inform their parents of the distinguishing characteristic (being LGBT, or perceived to be LGBT) that qualifies their experience as an incident of HIB or, if the notice does not contain this information, they fear that questions from their parents will force them to reveal this information. Therefore, for LGBT students who are not already out to their parents, parental notification of an HIB incident based on perceived or actual LGBT status carries the high probability that the student will be forced to choose between lying to their parents about the details of the incident, or coming out to their parents before they are psychologically ready to do so or before it is safe for them to do so. In other words, the parental notification requirement of the ABR carries the strong potential that the impact will be to *endanger*, rather than *protect*, students who are targets of anti-LGBT bullying.
- **The ABR has compromised the “safety net” used in the past by many targets of anti-LGBT bullying.** In the past, students who were targets of anti-LGBT bullying often survived school by finding an adult in school—often a teacher or SAC—with whom they could talk privately for support. Under the ABR, many hesitate to seek private support for fear that the legal requirements on the adult (to report the incident) will cause their victimization at school to intensify, and out them to their parents before they or their parents are ready to handle this information.
- **The ABR has placed GSA advisors in a difficult position, and curtailed the potential for GSAs to serve as sources of support for LGBT students.** The purpose of GSAs (Gay-Straight Alliances) are multiple. One purpose is to provide an arena in which students can support each other in a school environment that might or might not be hostile to them. A GSA advisor who is present during GSA meetings might be required to report some of the incidents that students mention in an effort to seek support and ideas from each other; knowing that the adult is required to report such things can severely inhibit student discussion during GSA meetings, and limit students’ ability to benefit from membership in the GSA, compromising one of the few sources of support that LGBT students have in a high school environment.
- **General procedures for protecting targets of HIB might be inadequate; the specific impact on LGBT students must be considered in the development of ABR implementations. For example, standard HIB reporting forms might compromise LGBT student safety because of parental rights of access under FERPA.** School personnel are becoming increasingly educated about issues of sexual orientation and gender identity diversity, and in many schools in New Jersey, the general climate among school personnel with regard to LGBT students is very positive. However, even in these schools, unless the specific impact of HIB procedures on LGBT students is considered, general procedures put into place to protect students who are HIB targets might not succeed in protecting LGBT students. For example, standard HIB-reporting forms collect information that can be used to assess whether or not the incident meets the criteria for legal HIB; in the case of anti-LGBT bullying, the form would therefore document the fact that the distinguishing characteristic was perceived or actual sexual orientation. Under FERPA, a parent is entitled to access to student records pertaining to their own child; this might include HIB documents, in which information about other students, but not about their own child, would be redacted. If a student is targeted for racial or religious reasons, informing a parent about the motivation for the harassment does not reveal confidential information that the parent does not already have—e.g., the parent is typically already aware of their child’s racial, religious, or ethnic identities; unlike LGBT identity, these identities do not usually involve a “coming out” process. Unless school personnel have considered the specific impact of their reporting, documentation, and notification procedures on students who are targets of anti-LGBT bullying, these procedures might not provide the safeguards needed by these students.
- **Even in schools in which school personnel are well educated about LGBT issues, and procedures have been developed to safeguard students who are targets of anti-HIB bullying, students will still fear that reporting anti-LGBT bullying will out them to their parents, and make them less, rather than more, safe in the school environment, unless they *know* how school personnel plan to protect them if they report.** Therefore, it is important that schools not only develop procedures to protect targets of anti-LGBT bullying, but that they also inform students of the safeguards they have put into place, and of their sensitivity to the concerns of students regarding the protection of information about

those who are targets of anti-LGBT bullying. This reassurance must be provided to all students, not only those who are already known to the school as targets of anti-LGBT bullying, because it must reach those students who have kept their victimization a secret from school personnel.

Part II: Suggestions for Protecting Students Targeted by Anti-LGBT Bullying under The ABR

Dr. Rodríguez Rust is not an attorney, and these suggestions do not constitute legal advice. Consult an attorney to ensure that efforts to protect students are also compliant with state and federal laws.

- Professional development training for all school personnel on LGBTQI issues, so that school personnel understand the issues, are comfortable with and responsive to the concerns of LGBTQI students, recognize the sensitive nature of information about a student's actual or perceived LGBTQI status, and able to recognize and respond appropriately to anti-LGBT HIB.
- The student who was the target of an incident of possible HIB involving actual or perceived sexual orientation, gender identity, or gender expression, should have an opportunity to meet with the ABS so that the ABS can explain to the student exactly what the process of reporting and investigating the incident will entail, including the procedures that will be used to safeguard information about the motivating characteristic involved in the incident. This meeting should take place prior to any other interviews that might be conducted as part of the HIB investigation into the incident.
- Notification letters to parents should not disclose the distinguishing characteristic upon which an incident of possible or affirmed HIB was based.
- Prior to parental notification, the student should be told exactly when their parents will be notified, and exactly what information will be given to their parents. For example, any letter that will be sent home to the parents should be shown to the student first, so that the student will know exactly what information is to be shared with the parents and can prepare for the parents' responses to that information.
- The student should meet with a qualified counselor to discuss the possible responses their parents might have upon notification, so that the student can prepare to handle each possible response. For example, if the parental notification letter does not name the distinguishing characteristic, the parents might ask "why did they pick on you?" or "what did they say to you?" and the student needs to plan a response to this question. The student might have to choose between lying to their parents in order to remain physically safe, vs. revealing their sexual orientation or gender identity to their parents at the risk of not only their physical safety, but also their psychological well-being if they were not ready to share that information with their parents. The student needs guidance to think through the range of possible responses a parent might have if the student's sexual orientation or gender identity is revealed to or surmised by the parents, including acceptance, fear, denial, religious condemnation, shaming, and physical violence. The student might need to think about whether or not there is a safe home s/he can go to, at least temporarily, if their parents react violently.
- Information about a student's perceived or actual sexual orientation, gender identity, or gender expression should be considered confidential information belonging to the student, to the extent allowed by law. No assumption should be made that a parent is already aware of this information, and this information should not be disclosed to the parent without the consent of the student or, if disclosure is legally unavoidable, without the prior knowledge and preparation of the student.
- When an investigation is conducted into an incident of anti-LGBT HIB, information about a student's actual or perceived sexual orientation, gender identity should not be shared with students and staff who are interviewed as part of the investigation.
- To avoid the active implication that a student who is victimized by anti-LGBT HIB is *actually* LGBT, in documents requiring the specification of the motivating characteristic, the distinguishing characteristic can be described as "actual or perceived," or as simply "perceived," even in cases where it is known that the student's LGBT status is *actual*. In cases in which the targeted student is actually LGBT, it is nevertheless the offender's *perception* of the target's LGBT status that is the motivation for the HIB, so in all cases, the descriptor "perceived" would be accurate.
- Guidance should be developed to help schools protect students when parents request copies of HIB documents pertaining to their child. Under FERPA, a parent might be entitled to access to HIB reporting

and investigation documents, in which information about other students, but not about their own child, would be redacted. Guidance is needed to help schools protect students in situations in which the release of these documents to a student's parent would reveal to the parent the nature of the distinguishing characteristic (i.e., perceived or actual LGBT status) for which their child was targeted.

- The State of Massachusetts has a law similar to New Jersey's ABR, which requires parental notification when an instance of bullying occurs. In January 2011, the Massachusetts Department of Elementary and Secondary Education issued the document *Guidance on Notifying Parents when a Student Has Been Bullied Based on Sexual Orientation or Gender Identity/Expression*. This guidance document cites concerns similar to those described above, and recommends:ⁱⁱ
 - Designation of a staff person "proficient" in LGBT issues
 - "Design an appropriate parental notification process for these situations"
 - "The notification process should include development of a notification plan in consultation with the student, guidance staff, and the above-mentioned designated person. . . . The plan should include a discussion of the content and process for notifying the student's parents, informed by an assessment of the student's safety, along with relevant research and resources that may be offered to support the student and his or her family. As much as possible, if a parent is unaware of an LGBT student's sexual orientation or gender identity/expression, the student should be supported in his or her decision to disclose his or her sexual orientation or gender identity/expression to family members on his or her own terms. . . . As in any case when particularly sensitive information is shared, the Department strongly recommends that school officials discuss details of the bullying incident with parents in person. School officials should use their discretion in discussing the incident and avoid sharing information that might endanger the mental or physical health and safety of the student. Where the student has not disclosed his or her sexual orientation or gender identity/expression to his or her parents and the student believes he or she may be at risk if it is disclosed, to the extent possible, discussion should focus on facts regarding the student's involvement as a target or aggressor and on safety planning, not on information that reveals the actual or perceived gender identity or sexual orientation of the student."
 - "Sexual orientation and homophobic bullying can have distinct cultural meanings for different racial/ethnic/immigrant groups. For example, in some cultures, the concept of identifying as LGBT or experiencing homophobic victimization may be difficult to translate or describe. Attitudes toward sexual orientation, gender identity, and gender expression are heavily influenced by cultural and social norms. In situations involving these issues, it is even more important that the notification process be conducted with forethought and discretion." "School officials should not ask students to serve in the role of interpreter with their parents or in situations involving family members such as siblings and cousins. Schools and districts should identify school employees and independent interpreters as needed, who may be trained in all aspects of this guidance and confidentiality requirements, to provide this service."

ⁱ Implementation designed to reduce hesitance on the part of students to report HIB incidents includes: strategies for maintaining the anonymity of student reporters; utilizing remedial responses when appropriate and avoiding the excessive use of discipline; handling reporting/investigation/response procedures as a process of guidance and learning rather than a punitive process; appropriate coordination of code of conduct vs. HIB consequences (see "Contrary to the Spirit" Concern #5); active rather than passive follow-up; communication procedures that involve notification of all school personnel with supervisory responsibilities over the students involved in a reported incident to increase vigilance and reduce repetition and retaliation; etc.

ⁱⁱ The guidance issued on this point by the Massachusetts Department of Elementary and Secondary Education can be found at: <http://www.doe.mass.edu/bullying/PNguidance.html>