Twelve

Creating Schools That Value Sexual Diversity

Elizabeth J. Meyer

Sexuality. It's a hot topic, sure to spark controversy in any school community. Most teachers and administrators avoid the issue at all costs. Many parents also tend to avoid the issue. This absence of adult support leaves many young people without guidance and accurate information about relationships, physical development, sexual health, and important aspects of their identities. It also creates a hostile school environment for students who do not conform to its heterosexual social hierarchies. There can be a wide variety of reasons for this non-conformity: clothes, hairstyle, body size, makeup and accessories (too much, not enough, the “wrong” kind), and extra-curricular interests. These behaviors are often connected to perceptions of a student’s masculinity, femininity, or sexual orientation and often results in a student being excluded and/or targeted for bullying and harassment (California Safe Schools Coalition, 2004; Kosciw & Diaz, 2006; Meyer, 2006).

One of the most important things to remember when talking about sexuality is that everybody has one. Heterosexual, bisexual, gay, lesbian, queer, and asexual are some of the descriptors used for talking about sexuality and sexual diversity. Although some may argue that the absence of sexual attraction, or asexuality, is not a sexuality, there are advocacy groups and researchers who recognize it as a category of identity and orientation (see www.asexuality.org). A person’s sexuality and associated sexual identity intersect and interact with other identities we may have, such as gender, ethnic, class, dis/ability, racial, and linguistic. These various identities are important to all discussions and educational initiatives that address diversity.

This chapter will discuss important factors related to sexual diversity in schools. The first section will define sexual diversity and several related terms that are important for education professionals to understand. The second section will give a brief history of the stigma around sexualities in Western cultures and how this has been reflected in educational institutions. The
third section will explore contemporary youth sexualities and some of the various identities embraced by youth today. The fourth section will provide an overview of some of the legal issues that are important to be aware of when talking about sexuality in schools. The last section will conclude with specific recommendations for teachers, counselors, and administrators on how to make their schools more inclusive and supportive of all forms of sexual diversity.

What Is “Sexual Diversity”? 

Sexual diversity is a term that is used to refer to the wide variety of sexual identities and orientations that exist in modern society. It can also be used to describe the wide variety of sexual behaviors that humans choose to engage in, but that is not the focus of this chapter. Since this chapter is written for the current or future professional educator, it will focus on the everyday issues that are already present in schools. As many multicultural educators have argued, it can be unhealthy and alienating to ignore parts of our identities when we enter a school or a classroom (Delpit, 1993; Nieto, 1999; Paley, 1979). These identities, particularly in terms of gender and sexuality, are influenced by deeply embedded orientations. The distinctions between identity, orientation, and behavior are important to make, since most controversies surrounding school efforts to be more supportive of sexual diversity result from opponents’ mistakenly believing that explicit details on sexual behavior will be taught and discussed. This is generally not true. With the exception of some officially approved sexuality education programs, most initiatives on sexual diversity specifically address issues related to identity and orientation—not sexual behavior. Topics such as respect, physical and emotional safety, friendships, family dynamics, and the harmful impact of inaccurate myths, stereotypes, and discriminatory attitudes and behaviors are the main focus. There are four important terms that must be carefully explained to help educators understand the various elements related to sexual diversity: sexuality, sexual orientation, sexual behavior, and sexual identity.

Sexuality is a term that has different meanings depending on the context in which it is used. As mentioned, every person has a sexuality, which is often used to describe a range of internal identities and external behaviors. Many individuals struggle with their sexuality during and after puberty. However, individuals who are pan-/omni-/bisexual or homosexual may experience more stress and anxiety during this time as a result of the lack of adult role models and accessible information and support (Cass, 1979; Troiden, 1988). As a result, these students may be more aware of their sexualities. They may also experience social exclusion or discrimination as a result of the way their tendencies, predispositions, and desires (orientation) impact their sense of themselves (identity) and their interactions with others (behavior) (Blumenfeld, 1994; Savin-Williams, 1990). Each of these terms is explained in more detail.

Sexual orientation describes whom we are sexually attracted to and is generally determined at a very young age. The following are the four main categories of sexual orientation:

1. Asexuals—not sexually attracted to anyone
2. Pan-/omni-/bisexuals—attracted to some members of all/both sexes to varying degrees
3. Heterosexuals—primarily attracted to some members of a different sex
4. Homosexuals—primarily attracted to some persons of the same sex
Scholars disagree on whether sexual orientation is determined by biology, including genes and hormones, or sociology, that is, mostly influenced by upbringing and environment. However, most researchers acknowledge that it is the result of an interaction of the two (Lipkin, 1999, pp. 25–28). Regardless of which factor exerts a larger force on one’s sexual orientation, there is general agreement that sexual orientation is decided early in a child’s life and cannot be changed. For example, one study found that gay, lesbian, and bisexual (GLB) youth report first becoming aware of their sexual orientation at age ten (D’Augelli & Hershberger, 1993); another reported that gay adolescents report becoming aware of a distinct feeling of “being different” between the ages of five and seven (Leo & Yoakum, 1992). Although some medical professionals and religious groups claim to be able to change a person’s sexual orientation from homosexual to heterosexual, most professional organizations, including The American Academy of Pediatrics, The American Counseling Association, The American Psychiatric Association, The American Psychological Association, and The National Association of Social Workers do not endorse any type of counseling that is a form of “reparative therapy” (Franks et al., 1999). Since there is widespread professional agreement that one’s sexual orientation cannot be changed through counseling or religion, those who fear that the homosexual agenda in schools is to “recruit” or “convert” impressionable students may find some comfort in this information.

Sexual behavior is the term used to describe the types of sexual activities in which an individual actually engages. People may engage in a wide array of sexual behaviors, depending on what arouses them physically and emotionally. The sex of one’s partner does not limit the types of sexual behaviors one can engage in. One can find as much diversity of sexual behaviors within a group of heterosexuals as among bisexuals and homosexuals. For example, in the late 1940s and early 1950s, Alfred Kinsey and his colleagues conducted a series of interviews with men and women about their sexual desires and behaviors. In this study, they found that the participants engaged in many types of sexual behaviors, regardless of the sex of their partners. He also noted that approximately 37% of adult males and 19% of adult females have had some same-sex erotic experience. In his report, he noted that this reported number was most likely artificially low due to reluctance of participants to report same-sex behaviors (Kinsey, Pomeroy, & Martin, 1948, p. 623; Kinsey, Pomeroy, Martin, & Gebhard, 1953, p. 453).

Sexual behavior is generally informed by one’s sexual orientation but not always. Since behavior can be chosen, people may choose to engage in certain behaviors and not others. These can also be influenced by one’s culture, social group, and romantic partners. It is not uncommon for people who feel attracted to members of the same sex to engage in heterosexual relationships to avoid the stigma and isolation from friends if they were to “come out” as gay or lesbian, nor is it uncommon for heterosexuals to engage in some same-sex behaviors. Orientation influences our behavior, it does not dictate it. However, when orientation and behavior are in conflict, it is difficult for an individual to develop a cohesive sexual identity, and a healthy sense of self (Cass, 1984; Troiden, 1988).

Sexual identity is how a person chooses to describe him or herself. One’s identity can be formed around many aspects of self, including race, culture, religion, language, family, career, and physical or mental dis/ability. The identity-formation process can be long and complex, and many theories exist that use stage-models to describe this process for individuals in Western cultures, including the works of Sigmund Freud, Erik Erikson, and Jean Piaget. More
recently, scholars have developed theories of identity development that seek to explain the shared experiences of youth who identify as gay, lesbian, queer, or same-sex attracted (Cass, 1979, 1984; Dube & Savin-Williams, 1999; Kumashiro, 2001; Troiden, 1988). Although these theories explain some of the commonalities individuals may experience, it is important to acknowledge that this process is shaped and influenced by factors such as friends, school, class, race, ethnicity, religion, and gender identity and expression (Rowen & Malcolm, 2002; Waldner-Haugrud & Magruder, 1996). Some of the more widely recognized sexual identities embraced by contemporary youth are discussed at greater length later in this chapter.

Unlearning the Stigmas Attached to Sexual Diversity

Historically, Western cultures have constructed homosexuality as an illness, a deviance, and a sin. This negative bias was created through psychological research, religious ideologies, and the political and financial privileging of heterosexual, monogamous family structures by the state through marriage; this bias has been disrupted and challenged by gay rights activists in movements that gained momentum in the 1960s and 1970s. Many authors have examined the social, historical, and political forces that have worked together to construct the idea of the homosexual and then demonize it (Bem, 1993; Foucault, 1980; Jagose, 1996; Sears, 1998; Weeks, 1985).

Heterosexism, compulsory heterosexuality (Rich, 1978/1993), the heterosexual matrix (Butler, 1990), and gender polarization (Bem, 1993) are all different terms that seek to explain the social construction of opposite-sex attraction and sexual behavior as dominant and "normal." The concept of homosexuality, and subsequently heterosexuality, is just over a century old (Jagose, 1996, p. 17). The resulting prejudice against those who deviate from the heterosexual social script has been carefully developed by institutional heterosexism through organized religion, medicine, sexology, psychiatry, and psychology (Bem, 1993, p. 81). Sandra Bem explains how the cultural lens of gender polarization works to reinforce heterosexuality by serving two major functions.

First, it defines mutually exclusive scripts for being male and female. Second, it defines any person or behavior that deviates from these scripts as problematic... taken together, the effect of these two processes is to construct and naturalize a gender-polarizing link between the sex of one's body and the character of one's psyche and one's sexuality. (81)

These powerful social discourses are generated through various institutions, including schools.

Educational structures wield extraordinary ideological power because of their role in teaching what the culture deems important and valuable to future generations. Ministries of Education, textbook publishers, and teachers determine what lessons are passed on to students and whose knowledge or "truth" is valued (Apple, 1990, 2000). Subsequently, schools are important sites that contribute to the normalization of heterosexual behavior. In Richard Friend's article, "Choices Not Closets," he exposes two processes through which such lessons are passed on in schools: systematic inclusion and systematic exclusion. Systematic inclusion is the way in which negative or false information about homosexuality is introduced into schools as a pathology or deviant behavior. Systematic exclusion is "the process whereby positive role models, messages, and images about lesbian, gay and bisexual people are publicly silenced in
schools" (Friend, 1993, p. 215). Ironically, schools make efforts to de-sexualize the experience of students while they simultaneously and subtly, yet clearly, affirm heterosexual behaviors and punish those who appear to deviate from them. Epstein and Johnson explain,

Schools go to great lengths to forbid expressions of sexuality by both children and teachers. This can be seen in a range of rules, particularly those about self-presentation. On the other hand, and perhaps in consequence, expressions of sexuality provide a major currency and resource in the everyday exchanges of school life. Second, the forms in which sexuality is present in schools and the terms on which sexual identities are produced are heavily determined by power relations between teachers and taught, the dynamics of control and resistance. (1998, p. 108)

These acts of surveillance are rooted in Foucault's (1975) concept of the panopticon—an all-seeing, yet completely invisible, source of power and control. This type of surveillance and control is particularly effective, because we all unknowingly contribute to it, unless we actively work to make it visible byquestioning and challenging it. This is one of the most powerful ways that schools reinforce heterosexism. Through the surveillance and policing of bodies and language, school structures mandate hyper-heterosexuality using the curriculum and extra-curricular activities.

The heterosexism of the curriculum is invisible to many due to its unquestioned dominance in schools and communities. Some examples include the exclusive study of heterosexual romantic literature, the presentation of the 'nuclear' heterosexual two-parent family as the norm and ideal, and the teaching of only the reproductive aspects of sex or abstinence-only sex education. Other forms of relationships and the concept of desire, or eros, are completely omitted from the official curriculum (Britzman, 2000; Fine, 1993; Pinar, 1998). Extra-curricular functions that also teach this compulsory heterosexuality include Valentine's Day gift exchanges, kissing booths at school fairs, and prom rituals that include highly gendered formal attire (tuxedos and gowns) and the election of a "king" and a "queen." This prom ritual has begun to be subverted by alternative proms often organized by gay-straight alliances or community youth groups. At these events, there may be two kings (a male king and female "drag king"), and two queens (a female queen and a male "drag queen").

Art Lipkin's (1999) groundbreaking work, Understanding Homosexuality, Changing Schools, provides in-depth accounts of the discrimination experienced by gay, lesbian, and bisexual educators, as well as the painful and enduring stories of students who were emotionally and physically harassed for their perceived or actual non-heterosexual, non-gender conforming performance of identity. In other words, schools are not safe for "guys who aren't as masculine as other guys" or "girls who aren't as feminine as other girls" (California Safe Schools Coalition, 2004). Although the people in control of the school do not directly harass and inflict harm on the non-conforming students (in most cases), it is their lack of effective intervention in cases of homophobic and sexual harassment (California Safe Schools Coalition, 2004; Harris Interactive, 2001; Kosciw & Diaz, 2006; NMHA, 2002) that, along with the invisible scripts that are reinforced by the school through surveillance and discipline, sends the message that these identities are not valued or welcomed.

Heterosexism and its more overt partner, homophobia, are clearly linked to cultural gender boundaries and are informed by sexism and misogyny (Francis & Skelton, 2001; Friend, 1993; Meyer, 2006; Mills, 2004). Misogyny is the hatred or devaluing of all that is female or 'feminine.' For example, the most effective challenge to any boy's masculinity is to call him
'gay,' 'homo,' 'fag,' or 'queer' (Epstein & Johnson, 1998; Mac an Ghaill, 1995; Martino & Pallotta-Chiarolli, 2003). What is being challenged is his masculinity—his gender code—but it is being done by accusing him of being gay, which is equated with being ‘feminine.’ Girls are subject to similar kinds of policing (Brown, 2003; Duncan, 2004), but research shows that it is much more prevalent among male students (Harris Interactive, 2001; California Safe Schools Coalition, 2004). The harmful harassment and violence that result from the policing of heterosexual masculinity and femininity is why some activists and educators are pushing for a deconstruction of gender codes and de-labeling of sexual orientations. As long as we continue to live within the narrow boundaries of language and behavior, the hierarchical binaries of male-female and straight-gay remain unchallenged. This work of dismantling socially invented categories is necessary to create educational spaces that liberate and create opportunities, as opposed to limiting and closing down the diversity of human experiences. We must move towards understanding identities and experiences as falling on a continuum of gender expressions and sexual orientations. Fortunately, many youth are leading the way in exploring diverse sexual identities that break away from the traditional binary of gay and straight and the notion that one’s identity is permanent and fixed.

Understanding Diverse Sexual Identities

In conversations about sexual diversity, the realities and experiences of heterosexual-identified, or straight, individuals are often ignored. This is a common error in diversity work where the focus is on the marginalized ‘other’ rather than on understanding the perspective and experiences of those in the dominant group. It is important to discuss heterosexuality, especially in terms of heterosexual privilege and how it works to make some people’s relationships and experiences more valued than others. One valuable pedagogical tool available to help students explore heterosexual privilege is, “The Heterosexual Questionnaire.” This activity was created by Martin Rochlin, Ph.D., in 1977 and has been adapted for use in anti-homophobia training around the world. Sample questions from this activity include the following:

1. What do you think caused your heterosexuality?
2. When and how did you first decide you were heterosexual?
3. Is it possible that your heterosexuality is just a phase you may grow out of?
4. If heterosexuality is normal, why are so many mental patients heterosexual?
5. The great majority of child molesters are heterosexual males. Do you consider it safe to expose your children to heterosexual teachers?
6. Would you want your children to be heterosexual, knowing the problems they would face, such as heartbreak, disease, and divorce? (Advocates for Youth, 2005)

These questions are intended to stimulate the reader to reflect on social assumptions about heterosexuality and the related stereotypes and stigmas attached to homosexuality. Although there can be controversy if this tool is not used in the proper context or if the conversations are not well facilitated (Rasmussen, Mitchell, & Harwood, 2007), it often leads to a greater awareness on the part of heterosexuals with regards to how heterosexism and heterosexual privilege function.
The terms ‘gay’ and ‘lesbian’ are preferred when speaking about people who identify as homosexual. Although the term ‘homosexual’ is widely used in the medical and psychological professional communities, it has a very specific history and meaning. When using the term homosexual, these professional organizations generally refer to individuals who engage exclusively in same-sex sexual behaviors. This does not necessarily mean that these individuals choose to identify as gay or lesbian. The term ‘gay’ came into wider use to describe men who engage in homosexual relationships during the gay liberation movement that erupted after the famous police raid at The Stonewall Inn on June 27, 1969, in New York City (Jagose, 1996). Although the word ‘gay’ can also be used to describe women, many women prefer the term ‘lesbian.’ This word also has a political history attached to the women’s liberation movement of the 1960s and 70s, and is often associated with the concept of lesbian-feminists. Some of these activists considered themselves separatists and chose to live and work independently from men (Jagose, 1996). It is no mistake that these terms both gained wider use during this era of important political changes. The concept of identity politics asserted that “coming out” and publicly identifying as gay or lesbian was an important step towards achieving public visibility, reducing negative stereotypes, and securing greater social equality (Weeks, 1985). Because of the historical specificity and cultural stereotypes that have grown up around these terms, many individuals who engage in same-sex behaviors and relationships may choose to use different words to identify themselves.

For people who do not identify as heterosexual, the terms gay and lesbian are not the only ones they may identify with. Many adolescents and young adults prefer terms such as: bi-curious, fluid, hetero- or homo-flexible, open, omni- or pan-sexual, polyamorous, questioning, or queer (Driver, 2007, pp. 42-43; Meyer, 2008). Although the meaning of “queer” changed over the years from “odd or strange” to an insult for gays and lesbians, it is now being reclaimed as a powerful political term by some members of the gay, lesbian, bisexual, and transgender community (Jagose, 1996; Meyer, 2007a). Although there is much debate over the use and meaning of the term “queer” within the LGBTQ community, when used as a source of pride and with a sense of inclusivity, “queer” can be a very empowering term. Some also argue that queer is an exclusively white identifier, whereas Ian Barnard, in his book Queer Race, explains that “queer theory already has a racial politics,” and that “particular racializations are and can be queer, . . . [and] queerness can be racialized” (Barnard, 2004, pp. 6, 18). As Driver explains in her book Queer Girls and Popular Culture, “queer as a strategically chosen term works against the foreclosure of desires and the imposition of controlling assumptions; it is deployed by girls as a way of enabling possibilities rather than guaranteeing identity or knowledge about identity” (Driver, 2007, p. 43). Even with this postmodern re-appropriation of ‘queer,’ if it is used to insult and exclude, it still has the power to deeply wound. Even with all these emerging identities, there are many individuals who reject static labels, choosing not to identify their sexuality in any way. This demonstrates a move away from the identity politics of the gay and lesbian rights movement and the tendency for young people to create new identities and communities that more authentically represent their experiences.

The identity categories transgender, transsexual, and two-spirit are often included in conversations of sexual diversity. This is usually because the trans- and two-spirit communities have been active contributors to equality projects taken on by the gay, lesbian, and bisexual community. In the acronym GLBT, the “T” may represent one, two, or all three of these
groups. I have chosen to include them here to clarify the links these communities have to the topic of sexual diversity. It is important to understand that transgender, two-spirit, and transsexual people have strong ties to the gay, lesbian, and bisexual community because of shared experiences, discrimination, and exclusion from mainstream culture that are connected to their public challenging of traditional sex and gender role expectations of dress and behavior. However, their experiences are not tied directly to their sexual orientation; rather, they are connected to their gender identity and expression. There is not sufficient room in this chapter to explore these concepts fully, but I have included a brief definition of each of these terms below.

The word transgender entered the English language in the 1980s from the transsexual and transvestite communities (Cromwell, 1997, p. 134) to describe individuals whose gender identity is different from the sex that they were assigned at birth. There are many myths and misconceptions about transgender individuals, and there are as many masculinities and femininities (gender expressions) within the transgender community as there are in non-trans men and women. Some transgender people strongly embrace traditional notions of gender and proudly live as highly feminine or highly masculine people. Other transgender people choose to challenge and disrupt the categories of masculinity and femininity, embracing varying degrees of each (Bornstein, 1998; Feinberg, 1998; Wilchins, 2004). The word transgender is often used as an umbrella term to describe a wide variety of people who challenge traditional notions of sex and gender, including transsexuals, two-spirited people, cross-dressers, and individuals who identify as genderqueer (Nestlé, Howell, & Wilchins, 2002).

Transsexuals are individuals who were born as genetic females (XX) or genetic males (XY) and developed the associated physical traits of their genetic sex. However, transsexual people have a gender identity, or an internal sense of themselves, that does not align with their physical characteristics. This conflict between physical and psychological traits has been termed gender dysphoria by the medical profession. Transsexuals are usually assigned the clinical label “gender identity disorder” (GID) from the Diagnostic and Statistical Manual of Mental Disorders (DSM IV) of the American Psychiatric Association, although activists have been trying to get this condition removed from the DSM. As the lead character in the film Transamerica so eloquently argued, “If it can be fixed with plastic surgery, is it really a mental disorder?” (Tucker, 2005). Transsexual men and women choose to undergo a series of medical treatments to realign their physical characteristics with their internal identity. These treatments generally include hormone injections and surgery (GIRES, 2006b, p. 29). According to some research, only 23% of children who experience tension between their assigned sex at birth (and thus, their gender of rearing), and their own gender identity, are transsexuals who choose to undergo physical transformations (GIRES, 2006a). Some won’t have surgery and hormone treatments because of the expense and challenge in securing approval, and others may not because they are uncomfortable with the risks and limitations of surgery, and still others are happy with their bodies as they are.

Two-spirit or two-spirited are terms used to describe people who are alternatively gendered and are members of Native American (also known as Amerindian, First Nations, Inuit, and Métis) communities. It replaces the earlier term, “berdache,” used by anthropologists who studied these cultures (Lang, 1997, p. 100). Early anthropologists often misunderstood the spiritual element of the two-spirited individual and described it as a form of institutionalized
male homosexuality. As more recent authors have pointed out, becoming a “berdache” was related more to occupational preferences and social roles than to sexual behavior (p. 101). The term two-spirit is an attempt to create an English-language term to describe a cultural concept of gender that is different from, but refers to, the male/female Western binary. Although the concept of two-spirit emerges from many traditional aboriginal cultures, these communities have been subject to Western colonizing influences and now share many of the heterosexist and homophobic beliefs created by Western European ideologies.

All of these identity categories are complicated and formed over an individual’s lifetime. Although some people argue that it is inappropriate to discuss sexuality with younger children, their lives are also impacted by sexual diversity. In addition to their own developing sense of themselves, they are shaped by the lives of the adults around them. Many educators who work in early childhood and elementary education believe that discussions of sexual diversity have no place in their schools. However, most families in Western cultures are based on relationships created out of romantic love, thus children’s home lives and family structures tend to reflect the sexualities of their parents and caregivers. Recent studies on the experiences of children of gay and lesbian parents indicate that they experience increased harassment at school, and their parents were often excluded from school life (Kosciw & Diaz, 2008; Ray & Gregory, 2001). For these reasons it is important for educators to address diverse family structures and to include sexual diversity when addressing diversity issues with students of all ages. It’s Elementary: Talking About Gay Issues in School is an excellent film that provides models of how to do this appropriately and effectively with younger students (Chasnoff, 1996). In addition to developing a better understanding of sexual diversity and how it impacts individual lives, it is important for educators to be aware of the various legal issues involved that relate to the topic of sexual diversity in schools.

Sexual Diversity and the Law

U.S.A. There are currently no federal protections that explicitly protect gay, lesbian, and bisexual (glb) people from discrimination in the United States. However, sexual minorities are entitled to the same protection as any other identifiable group. Consequently, a variety of courts across the country have begun holding school districts accountable for violating the rights of students who are being harassed or who have requested the right to form extra-curricular groups that address their needs and interests. The main existing legal protections that are relevant in these cases include: Equal Protection, Title IX, state non-discrimination laws, and The Equal Access Act.

The Equal Protection Clause of the Fourteenth Amendment guarantees equal application of a law to all people in the United States (Macgillivray, 2007). An equal protection claim requires the student to show that school officials (1) did not fairly and consistently apply policies when dealing with the student, (2) were deliberately indifferent to the student’s complaints, or (3) that the student was treated in a manner that is clearly unreasonable. The first example of this argument being successfully applied to a case of homophobic harassment in schools was in the case Nabozny v. Podlesny in Wisconsin. In this case, Jamie Nabozny was subjected to violent and persistent anti-gay harassment over several years in his school. As a result of this harassment, he had been hospitalized, dropped out of school, and attempted suicide (Lipkin, 1999). The federal appeals court for that region of the United States, the Seventh Circuit,
decided in favor of the student. In their decision, the judges wrote that "...we are unable to garner any rational basis for permitting one student to assault another based on the victim's sexual orientation..." and the school district settled with Nabozny for $900,000 (Bochenek & Brown, 2001). More recently in a case in California, *Flores v. Morgan Hill* (2003), the court found sufficient evidence of deliberate indifference to the ongoing sexual orientation harassment of six students in this California School District, which resulted in a $1,100,000 settlement with the students (ACLU, 2004), and the requirement that the school district implement a training and education program for its administrators, faculty, and students (Dignan, 2004).

Title IX is another federal protection that exists to address issues of homophobic harassment in schools. It provides statutory protection for student-on-student sexual harassment under the following conditions: (1) school personnel have actual knowledge of the harassment, (2) school officials demonstrate deliberate indifference or take actions that are clearly unreasonable, and (3) the harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victim(s) of access to the educational opportunities or benefits provided by the school (*Davis v. Monroe*, 1999). Several cases have successfully made the argument that Title IX protects students from peer sexual orientation harassment. For example, a California Federal District Court concluded,

> the Court finds no material difference between the instance in which a female student is subject to unwelcome sexual comments and advances due to her harasser's perception that she is a sex object, and the instance in which a male student is insulted and abused due to his harasser's perception that he is a homosexual, and therefore a subject of prey. In both instances, the conduct is a heinous response to the harasser's perception of the victim's sexuality, and is not distinguishable to this court. (*Ray v. Antioch Unified School District*, 2006)

In 2000, two important cases were decided that applied Title IX to incidences of homophobic harassment: *Ray v. Antioch Unified School District* (2000), and *Montgomery v. Independent School District* (2000). In both of these cases, separate courts decided that schools could be held liable under Title IX for acting with "deliberate indifference" towards students who have reported persistent and severe homophobic harassment at school. These decisions established important precedents for the cases that followed.

A few years later, a Kansas federal district court considered that the gender stereotyping and related anti-gay harassment of a student who did not identify as gay was actionable under Title IX (*Theno v. Tonganoxie*, 2005). The court wrote that "the plaintiff was harassed because he failed to satisfy his peers’ stereotyped expectations for his gender because the primary objective of plaintiff’s harassers appears to have been to disparage his perceived lack of masculinity." Therefore, they concluded that the harassment of Dylan Theno was so "severe, pervasive, and objectively offensive that it effectively denied (him) an education in the Tonganoxie school district" (*Theno v. Tonganoxie*, 2005). The district settled with Dylan for a total of $440,000 (Trowbridge, 2005).

One case had a very different outcome. In *Doe v. Bellefonte Area School District* (2004), the court decided for the school district. It determined that campus administrators took Doe's complaints seriously, instituted a series of steps in response to complaints, and escalated punishment when necessary. Therefore, the district was not deliberately indifferent to the harassment of Doe. In addition to federal protections that exist, some states have non-discrimination laws that can offer students some relief.
State non-discrimination laws that protect individuals based on sexual orientation, and/or gender identity, only exist in twenty states and the District of Columbia (National Gay and Lesbian Task Force, 2007). However, according to a study published in 2006, only nine states (California, Connecticut, Maine, Massachusetts, Minnesota, New Jersey, Vermont, Washington, and Wisconsin) and the District of Columbia have statutes specifically protecting students in schools from discrimination on the basis of sexual orientation and/or gender identity (Kosciw & Diaz, 2006). Students in these states experienced significantly lower rates of verbal harassment than their peers. Since this report, several states (including Nebraska, Iowa, Kentucky, and Wyoming) legislatures have at least considered bills either expanding or limiting the rights of sexual-minority students (Buchanan, 2006). There are also seven states that have legislation that prohibit the positive portrayal of homosexuality (Alabama, Arizona, Mississippi, Oklahoma, South Carolina, Texas, and Utah), and students in these states reported being verbally harassed at a higher frequency than students from states without such legislation (47.6% versus 37.2%) (Kosciw & Diaz, 2006, p. 86).

A recent case in New Jersey extended the protections offered by state anti-discrimination laws to cover students in schools. As a result of the case brought by a student who had suffered persistent homophobic harassment, *L.W. v. Toms River Regional Schools Board of Education* (2007), the New Jersey Supreme Court decided that schools may be held liable under the Law Against Discrimination for permitting student-on-student bias-based harassment (American Civil Liberties Union-New Jersey, 2007). This decision established state-wide protections for students in New Jersey.

The Equal Access Act (EAA) is another legal protection that is being used successfully to advance education around sexual diversity in schools through extra-curricular diversity clubs. Peer support groups, commonly known as gay-straight alliances (GSAs), have become increasingly common in schools (Cloud, 2005; Fischer & Kosciw, 2006). Very little research is available on the efficacy of GSAs, but Fischer and Kosciw (2006) found that the presence of a GSA directly predicted greater school belonging, and indirectly predicted greater academic achievement for sexual-minority youth. Also Szlacha (2003) found in her evaluation of the Massachusetts Safe Schools Program that the presence of a GSA is the aspect “most strongly associated with positive sexual diversity climates” (73). This finding makes intuitive sense when considering the importance of supportive heterosexual peers to a positive experience for sexual-minority youth. However, GSAs are not always met with open-mindedness from students, teachers, administrators, parents, community members, and school boards. Since the late 1990s, there have been several cases of schools trying to exclude these groups from meeting on schools grounds. Courts have consistently found that school districts have violated the EAA when banning GSA groups from meeting. *Straights and Gays for Equity v. Osseo Area Schools* (2006) and *White County High School Peers in Diverse Education v. White County School District* (2006) serve as two recent examples. Due to the time and courage put forth by the students who work to initiate these GSAs, there are now over 3,000 such groups in schools, and at least one in every state in the United States (Macgillivray, 2007). Whereas students in the United States have had to search for various forms of protection against discrimination based on sexual orientation, Canada has clearly worded provincial and federal human rights codes that offer such protections.
The current progressive political climate in Canada was achieved through a long and slow process of legislative reform that culminated in the adoption of the *Canadian Charter of Rights and Freedoms*. This important document was entrenched into the Canadian constitution by the Constitution Act in 1982 (Watkinson, 1999, p. 22). As part of the supreme law of Canada, this document superseded all existing laws, and for the first time the rights of all persons to be treated equally were given constitutional status. Although public education is governed by provincial statutes, all publicly funded institutions must abide by the spirit and letter of the *Charter* (Watkinson, 1999). This new constitution guaranteed protections for many historically marginalized groups. Sexual orientation, however, was not initially included as a protected class for equality rights under section 15 of the *Canadian Charter of Rights and Freedoms*. The original language of this section reads as follows:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (*Canadian Charter of Rights and Freedoms* (s. 15), 1982)

Although the federal government wasn't willing to explicitly include the phrase, "sexual orientation" in the *Charter*, other provinces had already established human rights codes that included this language. In 1977, the Province of Quebec led the way in the equality movement for sexual minorities by adding "sexual orientation" to its *Charter of Human Rights and Freedoms*. Ontario followed suit nine years later. These were the first legal protections that clearly included sexual orientation as a protected class (Hurley, 2005). Although equality rights supported by the *Charter* were enforced starting in 1985, sexual minorities were not recognized as a protected class until thirteen years later, following a unanimous decision of the Supreme Court of Canada in the landmark case of *Egan v. Canada* (1995). Although this case was not about discrimination in schools, it addressed the issue of access to public services. The ruling provided that discrimination based on sexual orientation was prohibited by s. 15 of the *Charter*, and the justices observed: "Sexual orientation is a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs, and so falls within the ambit of s. 15 protection as being analogous to the enumerated grounds" (*Egan v. Canada*, 1995, para. 5).

This case established the precedent to include sexual orientation as a protected class and had "sexual orientation" read into the *Charter*. Every Canadian was guaranteed equal protection from discrimination based on sexual orientation. Although some provinces were slow to add the term "sexual orientation" to their individual human rights codes, this protection was federally guaranteed as a result of this important ruling.

Since the Supreme Court's 1995 decision in *Egan v. Canada*, various cases have tested the interpretation and application of the equality rights extended in that case. In the first case in an educational institution after Egan was decided (*Vriend v. Alberta*, 1998), a university employee was fired from his position as a lab coordinator, solely because of his homosexuality. He initially brought forward a human rights complaint; however, it was dismissed because the province of Alberta did not have sexual orientation listed as a protected class in its human rights legislation. In this case, the Supreme Court stated that not protecting individuals from discrimination based on sexual orientation was an "unjustified violation of s. 15 of the *Canadian Charter of Rights and Freedoms*," and ordered that the words "sexual orientation" be read

The next test came in May 2001 when the Supreme Court of Canada heard a case from Trinity Western University (TWU), a private, religious institution filed against the British Columbia College of Teachers (BCCT). In this instance, the B.C. professional teachers' organization had responded to a request from TWU to be fully responsible for its teacher training program, which it shared with Simon Fraser University. Trinity Western University wanted more autonomy in the program in order to reflect its Christian worldview. The BCCT chose not to accredit this institution because it believed the institution was discriminating on the basis of sexual orientation in its demands on its students. Trinity Western University required its students to sign a statement that asserted they would "refrain from practices that are biblically condemned," including homosexuality (*Trinity Western University v. British Columbia College of Teachers*, 2001, para. 4).

In its decision, the British Columbia Supreme Court found in favor of TWU, stating that teachers could hold “sexist, racist or homophobic beliefs” (para. 36). However, the Court also made the following distinction:

> Acting on those beliefs, however, is a very different matter. If a teacher in the public school system engages in discriminatory conduct, that teacher can be subject to disciplinary proceedings. Discriminatory conduct by a public school teacher when on duty should always be subject to disciplinary proceedings [and] disciplinary measures can still be taken when discriminatory off-duty conduct poisons the school environment. (*Trinity Western University v. British Columbia College of Teachers*, 2001, at para. 37)

Although this majority opinion sided with TWU and allowed them to continue mandating anti-gay beliefs in their future teachers, the judges made the important distinction between discriminatory behaviors and beliefs, which is common in cases regarding religious freedom. The decision clearly states that teachers may not discriminate overtly against their students but does not address the issue of the subtle and persistent homophobic behaviors that homophobic attitudes engender and the impact they have on a classroom or school community.

This position was reinforced in the case of a teacher who was suspended for making public statements that were understood as anti-gay in nature. In February 2004, a B.C. teacher, Chris Kempling, was suspended for one month for "conduct unbecoming" a teacher because he had published articles that were considered to be defaming of homosexuals in a local newspaper (*Kempling v. British Columbia College of Teachers*, 2004, para. 1). The Christian teacher appealed this decision to the B.C. Supreme Court, but the court held that the BCCT was within its jurisdiction to suspend him. The court's rationale for its decision was based on the "wrongful public linking of his professional position to the off-duty expression of personally held discriminatory views in order to lend credibility to those views" (*Kempling v. British Columbia College of Teachers*, 2004, para. 2). These cases have established a clear responsibility on the part of schools in Canada to create learning environments that are free from discrimination. The final case discussed here demonstrates what happened when a school failed to provide such an environment.

Azmi Jubran, a student in Vancouver, was repeatedly called ‘gay,’ ‘faggot,’ and ‘homo’ by his peers in secondary school. In addition to these verbal taunts, he was spit upon, shoved in class and the hallways, and even had his shirt burned. Jubran and his parents made repeated complaints to the school, and, after receiving no satisfactory response, they filed a human
rights complaint in November 1996. In April 2002, the Human Rights Tribunal of British Columbia found that the school board in Vancouver had contravened the Human Rights Code, “by failing to provide a learning environment free of discriminatory harassment” (School District No. 44 v. Jubran, 2005, para. 2). This was an important decision because it affirmed the school’s responsibility to protect students from discriminatory behavior and to respond effectively and consistently to incidents of homophobic harassment. After a series of appeals, the fate of this case was decided on October 20, 2005, when the Supreme Court refused to hear a final appeal, and effectively upheld the lower court’s decision. This was an important decision. The court acknowledged that the school had made some effort to discipline the students who had targeted Jubran individually but said that it had not done enough. The court stated that the school needed to have communicated its code of conduct to students and provided teachers with resources and training on how to deal with homophobia (CLE Staff, 2005; Meyer, 2007b). This case sent a clear message to educators that they must mobilize multiple resources and be proactive when addressing issues of school climate and student safety that relate directly to human rights protections.

As the above listed cases demonstrate, there are legal precedents that exist to protect students from discriminatory behavior in schools. However, many school boards and educators are ignorant of their legal responsibilities and fail to effectively implement policies, programs, and curricular materials that support full inclusion of sexual diversity in school communities.

Creating Schools That Value Sexual Diversity

While overt acts of discrimination are difficult for schools to ignore, daily acts of covert discrimination persist and impact students’ lives in ways that many teachers and administrators fail to acknowledge. When bias against an identifiable social group is present throughout an institution, the entire school is implicated, and the culture must shift. In order to transform ignorance of, and intolerance for, forms of sexual diversity, all stakeholders in the community must be involved in the process: students, families, teachers, administrators, and school board personnel. The tone must be set by the leadership, but everyone must be engaged in changing the culture of the institution. In order to better identify what steps can be taken at each level, recommendations are provided for the following: administrators and school boards, teachers and support staff, students, parents, and community members.

Administrators and School Boards

At the school leadership level, important changes must be made in three areas to set the tone for a positive and supportive school environment. These are policy, education, and resources and support. Without the institutional support provided by the following examples, the isolated efforts of overworked teachers, frustrated parents, and targeted young people will only have a small, short-term impact on the experiences of the students in the school community. In order to have a larger, more lasting effect on the school culture, systemic changes must be made.

Policy: When drafting policies that address issues of bullying and harassment in schools, a whole-school policy that includes clear, definite guidelines on actions against bullying, including response protocols and implementation strategies, is essential (Arora, 1994; Cartwright, 1995; Sharp & Smith, 1991; Whitney & Smith, 1993). Language must also be clear, consistent,
and include specific protections against harassment, violence, and discrimination based on sexual orientation and gender identity or expression (Goldstein, Collins, & Halder, 2005).

**Education:** A policy will not be effective unless those expected to enforce it are made aware of their obligations and community members are informed of the changes. Examples of such efforts include discussing the new policy in staff meetings; inviting a law expert to present a workshop on the definitions of harassment and the school's duty to prevent it; creating study circles with the staff to examine the new policy and discuss implementation strategies; publishing information in school newsletters; and distributing brochures, including information about the new policy.

**Resources and support:** The school district needs to allocate resources: time, money, and materials to ensure that these shifts in school climate can occur. Instead of hiring a one-time speaker, some school boards have created full-time positions in order to ensure that the expertise and knowledge will be readily available to support the efforts being made in individual schools. In the state of Massachusetts (Perrotti & Westheimer, 2001) and on the Toronto District School Board, several positions were created that were integral to the success of their programs, such as human-sexuality program workers, equity-department instructional leaders, and student-program workers (Goldstein et al., 2005). The institutional support offered by these various initiatives gives credibility and value to the daily efforts of individuals on the front line.

**Teachers and support staff** Teachers and support staff, such as bus drivers, cafeteria personnel, and lunchroom monitors, have the greatest opportunity to observe and intervene in incidents of discrimination and harassment in schools. Teachers and support staff can focus development in the following areas: understanding of school policies, sharing and practicing intervention tools for incidents of discrimination and harassment, and finding and using appropriate curricular materials and programs that are inclusive of sexual diversity. These expectations mean that teachers and support staff will need to attend workshops and courses, and take some responsibility for their own professional development, in addition to participating in the educational opportunities provided by the school administration. There are many resources available for these pursuits, some of which are listed in the reference list at the end of this chapter. Examples of curricular interventions that can address some of the underlying issues of homophobia and heterosexism include the following:

1. A campaign against name-calling that includes education about what words mean, and why certain insults are inappropriate and discriminatory.
2. Curricular inclusion of contributions by gays, lesbians, bisexuals, and transgendered people to history, art, science, literature, politics, and sports.
4. Conducting critical media literacy activities that analyze gender stereotypes and heterosexism in popular culture.

Although teachers and support staff have a significant impact on the school climate, without the participation of the student body, a true shift in culture and behavior cannot take place.
Students Students make up the largest percentage of a school community and are the trend-setters for what is valued in school. Without the support and investment of student leaders, there will continue to be student-only spaces where incidents of discrimination and harassment take place, such as locker areas, washrooms, and areas on playgrounds and athletics fields. Schools that successfully engage student leaders, such as athletics team captains, student council members, peer mediators and others, can have a much broader and deeper impact on the lives of all students in school. Ways that this can be done include conducting summer leadership retreats, student discussion groups, or weekend workshops that educate students about sexual diversity, and solicit their help and support in challenging homophobia, heterosexism, and other forms of bias in the school. In addition to engaging prominent students in the school population, all students should be informed of the school’s policies on harassment and discrimination by posting a code of conduct in each classroom, having students sign a behavior contract, and/or by having home-room discussions about the policy, what it means, and how it might affect them.

Families and Community Members Finally, no school community is complete without the input and influence of families and community members. The parents’ association and other community groups should be invited and encouraged to become actively involved in developing the school policy and educational strategies. By developing these partnerships early on, schools can anticipate any resistance or potential backlash, and work through these issues before they grow into negative publicity for the school. To be a supportive and inclusive school, it is important to reach out to same-sex parented families to let them know that their input and involvement is welcomed. Gay and lesbian parents may stay closeted or separate from the school community if they are not given any positive indicators that their family is valued and will be included in that community. Most families are deeply invested in the education and development of their children and therefore should be included in such initiatives. Although there may be some resistance to addressing sexual diversity, schools can create a lasting network that will potentially expand their efforts to reduce such bias in the community at large by building strong ties with parent groups and other community organizations.

Sexual diversity is all around us, although it is often invisible and silenced. Schools cannot make the controversies surrounding sexual diversity disappear by ignoring them. In many of the legal cases mentioned earlier, ignoring the issues exacerbated and escalated the problems. As educators who are responsible for supporting and teaching the next generation, it is our responsibility to create schools and classrooms that value and teach about the diversity that is already present in our communities. Teachers and administrators also have the legal obligation to create safe learning environments that are equitable and free of discrimination. By unlearning the harmful messages from old stereotypes and misinformation, educators have the potential to create and teach more contemporary messages of equality, inclusiveness, and diversity.

Notes
1. The use of the term “racial” here is in the critical multicultural sense of acknowledging the social constructedness of race while simultaneously addressing the very real impacts of racism in society. See (Kincheloe & Steinberg, 1997, pp. 215–216) for more on this.
2. There is not sufficient space in this chapter to explore the notion that there more than two sexes. For more information on this assertion please see (Fausto-Sterling, 2000).

References


Duncan, N. (2004). It's important to be nice, but it's nicer to be important: Girls, popularity and sexual competition. *Sex Education, 4*(2), 137–152.


*Flores v Morgan Hill Unified School District*, No. 02-15128 (9th Cir. 2003).


*Kemping v British Columbia College of Teachers* (B.C.D. Civ. 2004).


School District No. 44 (North Vancouver) v. Jubran, 2005 BCCA 201 (BCSC 6.05).


Straights and Gays for Equity (SAGE) v. Osseo Area Schools District No. 279. (8th Cir. 2006).


Trinity Western University v. British Columbia College of Teachers (S.C.R. 772, 2001).


