

The background of the cover is a vertical stack of books, with the pages creating a rainbow gradient from light blue at the top to red at the bottom. The text is overlaid on this background.

The Right to Be **Out**

**Sexual Orientation
and Gender
Identity in America's
Public Schools**

Stuart Biegel

The Right to Be Out

Sexual Orientation and Gender Identity in America's Public Schools

by Stuart Biegel

Publication date: October 2010

University of Minnesota Press \$19.95 Paper ISBN 978-0-8166-7458-9 320 pages 6 1/8 X 9 1/4

Recognizing the right of LGBT students and educators to be out at school

Despite significant advances for gay and transgender persons in the United States, the public school environment remains daunting, even frightening, as evidenced by numerous high-profile incidents of discrimination, bullying, violence, and suicide. Yet efforts to protect the rights of lesbian, gay, bisexual, and transgender (LGBT) students and educators, or to enhance curricula to better reflect the experience of differing sexual orientations and gender identities, are bitterly opposed in the courtroom, at the ballot box, and especially in the schools themselves.

The Right to Be Out begins with a cogent history and analysis of the dramatic legal developments concerning the rights of LGBT persons since 1968. Stuart Biegel then turns to what K–12 schools should do—and in many cases have already done—to implement right-to-be-out policies. He examines recent legal and public policy changes that affect LGBT students and educators in the K–12 public school system.

Underlying all of these issues, he shows, is an implicit tension about the right to be out, a right that is seen as fundamental within LGBT communities today and, legally, draws on both the First Amendment right to express an identity and the Fourteenth Amendment right to be treated equally. Biegel addresses the implications of asserting and protecting this right within the hotly contested terrain of America's public schools.

This book is a valuable resource for K–12 school administrators, parents, teacher organizations, mental health professionals and school counselors, LGBT advocacy groups, and the legal community. A safe and supportive educational environment for all students is possible, Biegel concludes, if built on shared values and a belief in the strength of our pluralistic society.

Stuart Biegel is a member of the faculty in the School of Law and the Graduate School of Education and Information Studies at UCLA. He has served as Director of Teacher Education, Special Counsel for the California Department of Education, and the on-site federal court monitor for the San Francisco public schools. He is the author of the casebook *Education and the Law* and *Beyond Our Control? Confronting the Limits of Our Legal System in the Age of Cyberspace*.

Please consider a review or feature of *The Right to Be Out*, or an interview with the author. Please contact Heather Skinner, Publicist, at presspr@umn.edu with questions, requests, or comments.

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1. How would you characterize the LGBT-related problems in America's public schools?

Lesbian, gay, bisexual, and transgender (LGBT) students, teachers, and school administrators are at the eye of the proverbial storm as school communities confront rapidly changing realities in this area. Studies show that gay and gender non-conforming students feel disproportionately unsafe in school and that the mistreatment they face interferes with their ability to succeed. A recent study found that 44.1% of LGBT students were physically harassed (i.e. pushed or shoved) because of their actual or perceived orientation, and 22.1% were physically assaulted. 32.7% of the students polled stayed away from school because they felt unsafe, negatively impacting their GPAs. And the percentage of LGBTs who do *not* plan to pursue a postsecondary education is almost twice that of a national sample of students generally.

LGBT educators face more covert pressures, and they are often confronted with the message that they had better remain as closeted as possible. If they do not heed this message, they risk being negatively impacted by job placement and promotion decisions.

Not only is the mistreatment of LGBTs in school settings worse today than many might realize, but unacceptable complicity by school personnel exacerbates the problems. Research findings and court records document a complicity that includes looking the other way when mistreatment occurs, blaming victims for bringing it on themselves by either being openly gay or "acting" gay, and in some instances actually joining in the harassment and mistreatment by mocking, demeaning, or punishing victimized students for what has occurred. All told, the situation may be even more egregious in many places than it was even 5-10 years ago because of tensions that have arisen during this difficult transition period.

2. What do you mean by *the right to be out*? How does this right help both LGBTs in the schools and society as a whole?

The book puts *the right to be out* at the very heart of the legal case studies and policy analysis. Derived from basic constitutional guarantees under the First and Fourteenth Amendments, and strengthened by ongoing court decisions and legislative enactments, it is both a right to express fundamental aspects of identity and personhood and a right to be treated equally as a result of such expression.

Within LGBT communities, nothing is more central than the right to be out. Without such a right, an LGBT identity retains a secretive and shameful veneer, and LGBT persons continue to be viewed as second-class citizens, with an integral aspect of their personhood relegated to the isolation of the closet. With the strengthening of the right to be out, however, the prospects exist for an improved quality of life that will benefit everyone. In an optimistic, best-case scenario, not only will the openness that comes with the right help further understanding and an appreciation of differences, but it will help decrease tension, reduce loneliness, increase the amount of caring for other human beings, and help maximize human potential, in schools and beyond.

3. Given all the things that we are already asking schools to do, might the LGBT area be something best addressed by the larger community?

The larger community can certainly play a role, and indeed I identify important school-family-community partnerships. But in addition, there is a wide range of additional steps that school officials can take that would improve campus climate and maximize equal educational opportunity for all students. Such steps may include teacher education and administrator training (in credentialing programs), professional development within individual districts, and collaborative leadership by educators. Strategies do not always have to be LGBT-specific to be successful. In fact, broad, general approaches are often very effective ways to address relevant LGBT needs.

In addition, there are model programs with proven track records that explicitly target LGBT issues. Gay and lesbian educators can serve as valuable day-to-day resources in this context. In fact, within districts that have achieved success on this front, openly LGBT teachers, coaches, and school administrators have often played a central and highly positive role. It is not possible to address problems without being able to talk about them. To fully and effectively take on the LGBT-related issues that persist in the schools, all members of the school community must be able to discuss the topics openly and without fear of retribution.

4. How should school officials and policymakers address educators whose personal value systems reflect an aversion to LGBT people and topics?

A basic principle is the fact that educators are not required to change their personal values, compromise their religious beliefs, or support gay marriage. However, it should also be made clear that all students must be treated with equal dignity and equal respect by school officials, both under the law and as a matter of morality and common decency.

I recommend avoiding lectures and eschewing top-down approaches, but instead involving educators actively in decision-making strategies on this front. Dramatic changes in day-to-day operations are not necessary to improve a school climate. Indeed, the book identifies a menu of incremental changes. Even adopting only some of the changes can help make things better for everyone.

5. You identify anti-bullying programs as one of the many strategies that can make a difference. But isn't bullying something that everyone has to tolerate?

There is evidence that bullying is more prevalent and even more of a problem today than it has been in the past. Gender-nonconforming persons are often more likely to be bullied than members of other identifiable groups, but relevant research shows that bullying is a problem for everyone, gay and straight alike. Bullying can have a decidedly negative effect on the bully as well. In fact, a definite link has been identified between bullying and later delinquent and criminal behavior.

In addition, one of the most volatile and relatively unexplored aspects of the bullying problem in the K-12 schools is the potential for escalating violence. A single bullying event is often not an endpoint, but the beginning of a series of events that may have truly tragic consequences. Moreover, the aspect of bullying that very few appear willing to confront is that victims of bullying during this era may, as a result, turn on their tormentors and on many others around them, striking back in the most violent of ways. There is evidence, for example, that perpetrators of some of the worst school violence at the K-12 level over the past 10-15 years were not only victims of bullying, but that they were targeted with anti-gay epithets meant to degrade and alienate them by suggesting a failure to meet gender- and sexuality-based expectations of masculinity.

Given the overwhelming weight of the evidence, it is unacceptable for school officials not to be seeking to address this problem on multiple levels, especially given the existence of model programs with proven results.

6. What are the biggest challenges facing educators who want to make positive changes in their schools?

Among the biggest challenges are the barriers faced by those who seek to add LGBT-related content to the curriculum, change the culture of organized sports, and address the needs of transgender youth.

There is much that can be done in each of these categories to effect positive change. Indeed, in many ways, these may be among the most important categories for school officials to focus on. Yet the barriers are rooted in longstanding values, deep-seated emotion, and cultural norms that are strongly resistant to any departure from the status quo.

7. You highlight the importance of sensitivity to issues faced by LGBT persons of color. What is unique about this issue for people of color?

In many places, LGBT concerns are still viewed by some as “white”. However, there is no evidence that any particular racial/ethnic group has higher percentages of LGBTs than others. And recent studies have shown that same-sex couples during this era are twice as likely to be in bi-racial or multi-racial relationships than their straight counterparts. On a personal note, the students who enroll in my LGBT classes at UCLA are overwhelmingly students of color, year after year.

Sensitivity to issues faced by LGBT persons of color includes recognition of the unique challenges that are often prevalent. In addition, it is essential that LGBT students not be viewed as separate and apart from other identifiable persons and groups, particularly since gay and gender non-conforming youth often have multiple identities, and may also be people of color, English language learners, students with disabilities, highly religious, dedicated athletes, etc.

8. Religion comes up often throughout the book. In what ways is religion important to your analysis?

I take a strong position on behalf of equal treatment for LGBTs. At the same time, I recognize that LGBT issues impact people of every sexual orientation, every gender identity, every religion, and every perspective on religion. Implicit in such an approach is a recognition that a safe and supportive educational environment can lead to a better world for everyone.

While some argue that you are either with the gays or with the religious and never the twain shall meet, this is not true for substantial and growing percentages of our population. Many LGBTs are very involved in religious activities and pursuits. Many branches and denominations of organized religion are increasingly welcoming to LGBTs, and the “freedom of religion” guarantees of the First Amendment are clearly there for everyone, gay or straight. Recognizing all these interrelated points can help us find a reasonable middle ground.

9. Is the issue of LGBT in schools as controversial as it often seems?

School officials – reacting to what may be the loudest voices – often approach LGBT issues with the perception that things are highly polarized. Yet, as the book demonstrates over and over again, there is great opportunity for progress here, identifying a reasonable middle ground that can be both palatable and inclusive for *all* members of school communities.

As stated in the Preface, I do not “presume for one moment that the task of effecting further change in K-12 education around these matters is an easy one. Even as the book notes how far we have come, it invariably recognizes how far we still have to go...But an optimistic best-case scenario is essential if further change is to occur. We may not get to a best-case scenario any time soon, but it is imperative that we continue working in that direction.”

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Stuart Biegel is a longtime member of the faculty at the UCLA Graduate School of Education & Information Studies and the UCLA School of Law. He is a recognized expert in the fields of Education Law and Technology Law, and is the author of *Education and the Law*, which includes major coverage of technology issues, privacy law issues, and disability rights.

Biegel has served as Director of Teacher Education at UCLA, Special Counsel for the California Department of Education, and the Independent State Monitor for the U.S. District Court in the expansive federal consent decree focusing on the San Francisco public schools.

Biegel began his career as a classroom teacher in Los Angeles, teaching both elementary and secondary classes in public and private schools. He then joined the teacher education faculty at the UCLA Graduate School of Education, where he served as assistant director of the teacher education program, director of the program, and a member of the leadership team that helped create Center X.

At UCLA, Biegel combined his background in education with his more recent legal training to develop an expertise in Education Law. Biegel has taught law and education courses to doctoral students at the UCLA Graduate School of Education & Information Studies since 1987, and to second and third-year law students at the UCLA School of Law since 1989. He has served as a consultant to the City of Baltimore in their successful school finance lawsuit against the State of Maryland (1995-1996), and has consulted more recently for the American Civil Liberties Union of Northern California (2006-2007) and the National Education Association (2008-2010) on issues relating to equal educational opportunity for marginalized and disenfranchised youth.

Biegel is a recognized pioneer in the area of technology law & policy. He was one of the first faculty members nationwide to identify the potential of the Internet for both the legal and the education communities. In the mid-1990s, he taught the first official "cyberspace law" courses ever offered on the UCLA campus. He has written extensively on Internet-related issues, and in 2001, Biegel published a book on cyberspace regulation with MIT Press entitled *Beyond Our Control? Confronting the Limits of Our Legal System in the Age of Cyberspace*.

Biegel has taught technology-related courses in both the law school and the information studies department on topics that range from online regulation and Internet Law generally to a focus on future technologies and an exploration of the ever-widening area of Privacy Law (online and offline). He is also a longtime member of UCLA's Advisory Board on Privacy & Data Protection.

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