

Dear California Legislators: *Stop Passing LGBT Anti-Bullying Laws and Start Enforcing Them!*

Karyl E. Ketchum Ph.D.

Associate professor, Women & Gender Studies, California State University, Fullerton, and Co-Chair [OCEC School Compliance Task Force](#)

Gialisa Gaffaney J.D.

Freelance editor and professor of law and political science topics, and Executive Board Member, [OCEC School Compliance Task Force](#)

Thirteen-year-old Tara (not her real name) had been bullied at school for years. Students consistently tormented and threatened her in the halls and in the classroom. School did not feel safe, so Tara’s family finally filed a complaint against her Orange County middle school. By this time, words like “faggot” had become commonplace on campus—though they continued to hurt her deeply; she had even considered taking her own life. When her school refused to address her bullying complaint, she filed an appeal with the California Department of Education Office of Equal Opportunity in Sacramento. That was May of 2013. More than one year later, Tara still awaits a response. Tara is not the only one.

The California Department of Education office of Equal Opportunity (CDE EO) is the last hope for lesbian, gay, bisexual, transgender and gender-non-conforming students in our state looking for relief from bullying at school. According to California’s Education Code, this office must investigate complaints of bullying and discrimination against schools and districts throughout the state and enforce California’s excellent safe schools laws and education codes. So, when a student or group of students in a California school are being bullied, harassed, or

otherwise discriminated against, and their school fails to protect them as required under the law, the CDE EO is their next and last stop—it is also a student’s last recourse outside of a lawsuit. This past April, my colleague and I paid a visit to the folks at the CDE EO. This was not a social visit, nor was it a professional colleague-to-colleague kind of visit, this was a visit borne of incredible frustration because of the CDE EO’s failure to investigate a single claim of discrimination as filed by, and on behalf of, students across the state—which is their very job description! We wanted to know why, even despite the mandate that the CDE EO respond to a complaint appeal within 60 days, we had not heard a single word from this office on any of our four complaint appeals in over nine months. We wanted to know how many additional days the brave students we represented would have to spend in schools where simply being themselves put them at tremendous personal risk. We wanted to know what was being done to investigate students’ complaints. We wanted to know why these kids were being ignored.

Our hope for answers from this meeting persisted in the days leading up to it, even despite our growing realization that the folks at CDE EO were not particularly thrilled to be meeting with us. In fact, our appointment was only confirmed days before it was to take place and only after two months of prodding emails and phone calls. Ultimately, it wasn’t until Richard Zeiger, Chief Deputy Superintendent to California State Superintendent of Public Instruction Tom Torlakson, stepped in that we were afforded a confirmed meeting time. Given what we discovered at that meeting, such reluctance now makes perfect sense.

In short, this is what we found out: *no one*—not a *single* person—in the California Department of Education Office of “Equal Opportunity” had or would be investigating the bullying complaint appeals of our brave students *or any other students in the entire state of*

California. In fact, about an hour into our meeting CDE EO Chief, Sharon Felix-Rochon, and Educational Administrator, Toni Valadez, confirmed our fears: in the entire history of the CDE EO there has never been a single actual investigation into the veracity of a student's complaint of bullying, harassment, or discrimination, nor had there ever been a single finding by that office in favor of a student. According to Rochon and Valadez, the CDE EO is only able to look into whether or not the allegedly offending school itself launched any type of purported investigatory procedure regarding the student's complaint; if the answer to this is yes, the case is closed. For the students we were there to represent—students in schools that were unwilling to protect them from the ongoing bullying and discrimination they were experiencing because of their perceived or actual sexual orientation, or perceived or actual gender identity—this is very much a case of the proverbial fox guarding the hen house. Additionally, Rochon and Valdez admitted that no one had consistently logged or tracked incoming complaints. Consequently, the CDE EO is unable to compile any reliable data at all on schools or districts, a fact discussed in the scathing California Auditor's Report filed against the CDE EO in August of 2013. (A summary of this report can be found here, <https://www.bsa.ca.gov/reports/summary/2012-108>.)

So, for example, it is not possible for educators, students or their families to know whether there are particular schools or districts that consistently have complaint appeals filed against them; it is not possible to find out the types of discrimination and bullying that goes unchecked at the local levels of California's education system; there is no data on the duration of the discrimination complaint and appeals process; nor is it possible to track the progress of a particular complaint. In fact, when discussing the CDE EO's organizational system for complaint appeals, both Felix-Rochon and Valdez routinely gestured toward the seemingly endless,

teetering stacks of multi-colored files poised on desktops throughout their cluttered, windowless, cubicled and claustrophobic office. By the end of our meeting, we understood these pervasive, teetering piles to be the only consistent form of “organization” employed by the CDE EO and, as we left that day and I looked back at those ridiculous multi-colored haphazard stacks, I couldn’t help but think about the brave students and families back in Orange County that awaited the results of our meeting that day. How could we tell them that the office tasked with protecting their legal right to a safe education was a powerless sham?

We on the OCEC California School Compliance Task Force believe that it is time, right now!, for California’s legislators to stop passing anti-bullying laws and to start enforcing them. As long as California’s politicians continue to beat their anti-bullying legislative drums, reliably generating endorsements and money from LGBT advocacy groups while ignoring the alarm sounded by way of that 2013 State Auditor’s report, these excellent state laws keeping our legislators so busy might just as well not exist at all. And, most importantly, as long as the focus remains on generating laws rather than the far more difficult—and far less financially lucrative—task of enforcing existing laws, we will no doubt continue to hear mind-numbing stories of bullying and harassment that end in lesbian, gay, bisexual, transgender, and gender-creative kids taking their own lives rather than facing another day in a hostile school culture. This situation constitutes a state of emergency for our children. We need a response from the California Department of Education that measures up to the size and scope of this emergency, including an allocation of funds sufficient to address the backlog of cases and the deployment of personnel to adequately enforce the LGBT anti-bullying protections enacted into California law.

California lawmakers and State Superintendent, Tom Torlakson, we ask you to put some money where your mouth is. You have written anti-discrimination laws that are not being followed. In the name of the brave LGBT students who face down bullying and discrimination in California's schools every day, we demand the following action:

1. Mandate that the California Department of Education office of Equal Opportunity (CDE EO) immediately comply with, and implement, all of the California State Auditor's recommendations as detailed in their August 2013 report. If necessary, release funds from the state's emergency coffers in order to ensure this happens now. Students' very lives are at stake. (The California Auditor's Office recommendations are here, <https://www.bsa.ca.gov/reports/recommendations/2012-108>.)
2. Immediately implement an online computerized logging and tracking system for complaints of bullying, harassment, and discrimination in California's schools with an oversight mechanism. This system should include the ability for anyone who files a complaint to also track its progress through the California Department of Education office of Equal Opportunity by way of an electronic case number.
3. Make historical complaint data about problem schools and districts available publicly and easily through this same website.
4. Mandate that all California university teacher education programs include at least one full-unit course focused on understanding sexual orientation, perceived sexual orientation, gender identity, and perceived gender identity as this pertains to students, teachers, and staff. (California State University, Fullerton has developed just such a course that provides an excellent model for this. Information on it is here, <http://extension.fullerton.edu/professionaldevelopment/bullying>.)

- **POST SCRIPT:** *As we revise this on November 3, 2014, we still have not received any correspondence from CDE EO about our four appeals filed in 2013. On October 6, 2014, the law firm of Irell and Manella LLP filed legal action on our behalf and on the behalf of LGBT students in California against the California Department of Education, Office of Equal Opportunity. A copy of this document is here: <http://www.ocequality.org/#!/cde-eo-demands-for-reform/ckfd>*

The students represented by our appeals have now been schools where they do not feel safe for well over a year and, now that this article has been published, these schools will know that no one at the state level cares about whether schools follow the law. Who in California will help these students?