

## WHAT DOES THE LAW SAY?

- 1. The implications of the Equal Protection Clause of the 14th amendment and Title IX for school officials are clear: school districts are responsible to ensure that their schools are free of sexual harassment, which can include same-sex harassment, peer harassment, and sometimes harassment based on real or perceived differences in sexual orientation. Schools that choose to ignore the harassment of gay, lesbian, bisexual and transgender youth, while taking steps to deal with other kinds of harassment, can be liable for violating the federal constitutional rights of the students affected, regardless of that school or school district's stated harassment policies or lack thereof.**
  
- 2. In *Nabozny v. Podlesny* (1996), the U.S. Court of Appeals, 7th Circuit, concluded that the Ashland Public School System, the principals of the middle and high schools, and the high school's assistant principal violated Nabozny's 14th amendment equal protection rights by discriminating against him based on his gender or sexual orientation; they failed to protect him against anti-gay harassment, despite the school's policy of investigating and punishing student-on-student battery and sexual harassment.<sup>26</sup> Once the jury found school officials were found liable for not protecting Nabozny, an out of court settlement precluded the damages phase and resulted in a payment of over \$900,000 in damages to him.**

**Prevention is the key. A combination of adopting and strictly enforcing non-discrimination and harassment policies that are inclusive of sexual orientation and offering educational workshops on issues facing gay, lesbian, bisexual and transgender youth to faculty, staff, students and parents, schools can show that they are making every effort of ensure the safety of the entire school community.**

