

Legal Q&A

with **Michael McGonigle**
Director of Legal Services



You ask, we answer

Is discrimination on the basis of gender stereotyping illegal?

Under *Title VII of the Civil Rights Act of 1964*, discrimination on the basis of gender stereotyping is illegal. We've pulled together several examples of cases

More than 20 years ago, in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989), the United States Supreme Court heard the case of Ann Hopkins, a hard-charging and aggressive manager denied partnership despite outperforming all other candidates in her year. Hopkins was told by her employer that future success at the firm would depend upon her learning to “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.” The United States Supreme Court ultimately ruled in Hopkins' favor

In 2010, an Eighth Circuit Court of Appeals ruling reversed a trial judge's decision and ordered the case *Lewis v. Heartland Inns of America* (Jan. 2010) to trial. In that case, Brenna Lewis was a front desk clerk at Heartland Inns in Ankeny, Iowa. She was promoted to the day shift, sight unseen, after enthusiastic recommendation from previous managers. Once on the job, Lewis' loose-fitting clothing and unisex appearance caused Director of Operations to express reservations about whether she was a “good fit.” Lewis wore short hair, no make-up and sported what they referred to as an “Ellen DeGeneres look.”

In the 2000 case of *E.E.O.C. v. Joe's Stone Crab, Inc.*, the 11th Circuit Court of Appeals (Georgia, Florida, Alabama) held that Title VII prohibits “the entire spectrum of disparate treatment of men and women resulting from sex stereotypes...even where the stereotypes are benign or not grounded in group animus.” Therefore, if Joe's Stone Crab deliberately and systematically excluded women from food server positions based on a sexual stereotype which simply associated “fine-dining ambience” with all-male food service, it then could be found liable under Title VII for intentional discrimination regardless of whether it also was motivated by ill-will or malice toward women.

As you can see, every case is unique. As always, should you have questions or concerns about any legal matter, you should contact your local GAE UniServ Director immediately. Your GAE UD can help you find the answers you need—and when necessary—get you the legal assistance you require.

Did you KNOW?

The National Education Association offers a new training program to address safety, bias, and gay, lesbian, bisexual, and transgender (GLBT) issues. The workshops, which run 90-120 minutes each, are especially designed for people who are not gay, lesbian, bisexual, or transgender, and who are interested in addressing bias regarding sexual orientation and gender identity.

Taking a Stand: Creating Safe Schools for ALL Students is an introductory workshop designed for all school personnel. It uses video clips and activities to examine the obvious and subtle ways that bias plays out in schools, and offers resources for creating schools that are safe for all students, regardless of sexual orientation and gender identity.

Walking the Talk: Classroom Resources for Addressing Bias is an advanced workshop designed for K-12 classroom instructors. It examines various approaches to designing and integrating activities into the classroom that raise awareness of bias and empower students to advocate for change, especially around anti-GLBT bias.

More than 30 certified trainers in all regions are now available to deliver these workshops at schools and affiliates. **For more information or to schedule a training, please contact NEA Human and Civil Rights, 202-822-7700, <mailto:hcrinfo@nea.org>**

This training is a program of the National Education Association, in collaboration with the American Federation of Teachers, the NEA Health Information Network, and the Respect for All Project, and is made possible in part by the generous financial contributions of the Gill Foundation, the Liberty Education Fund, and the National Gay and Lesbian Task Force.

Legal Wins

A GAE member and high school football coach broke up a fight during practice between two sizeable players. While the fight was broken up, one of the students believed that he was kicked in the head. The student was wearing a helmet and did not see who kicked him. Based on an investigation, the school district removed the member from coaching and reassigned him to another school. The incident was referred to the Professional Standards Commission, which recommended a 90-day suspension. After hearing all of the evidence, an Administrative Law Judge determined that the PSC did not meet its burden of proof that the coach had intentionally kicked the student in the head. *GAE Network Attorney Ted Frankel provided legal representation.*

A local teacher and GAE member employed by a charter school contacted legal services with a concern that he had been sent home from school and was told never to return because he had been “terminated.” The member’s employment contract stipulated that it cannot be terminated by except as provided for in any law of the State of Georgia...pertaining to the employment, retention, demotion and/or dismissal of employees of local boards of education. When the school district refused to provide a due process hearing for this member, GAE legal services authorized a lawsuit against the school district and the charter school. Shortly after the lawsuit had been filed in superior court, a settlement in the amount of \$15,000 was successfully negotiated for this member. *GAE Network Attorney Ted Frankel provided legal representation.*

The Georgia Association of Educators (GAE) funds more than \$600,000 per year in legal defense fees and funding for member cases. A typical school board or PSC hearing costs between \$4,000 to \$12,000.

Do you have a legal question for our resident expert?

Email your question to know@gae.org. Please include your name, contact information, and GAE membership number. We’ll get back to you as soon as possible. For urgent matters, call GAE at 800-282-7142 or contact your UniServ Director.

Need Help? Contact GAE Immediately.

Your GAE UniServ Director (UD) is trained to provide you with the assistance you need. Your UD can put you in contact with our attorneys—specialists in educator defense. **Find contact info for your UD at www.gae.org**

The information provided is intended only as a general guide to employment rights of Georgia educators and is neither complete nor intended to provide legal advice on a particular problem.

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