

# **CURRICULUM VICTORY**



**In Montgomery County, Maryland**  
**A CASE STUDY AND HANDBOOK FOR**  
**ACTION By David S. Fishback**

**October 2015**

**(First presented at the PFLAG National Convention, October 18,**  
**2015) (Revised Edition, with Epilogue, June 2024)**

# CURRICULUM VICTORY IN MONTGOMERY COUNTY, MARYLAND: A CASE STUDY AND HANDBOOK FOR ACTION

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## INTRODUCTION

What schools do in their health education curricula and in their guidance offices can be vital. The deafening silence of our schools regarding matters of sexual orientation that was the near-universal approach in the recent past was never wise, and is certainly no longer viable. A number of public school systems are demonstrating that providing accurate information on sexual orientation is the appropriate way to proceed.

Yet, many school systems may be afraid to deal with these issues. School board members and school administrators are often leery of getting into the middle of the "culture wars" or seeming to promote some suspect "gay agenda." So in preparing to raise these issues with your local school system, you should be ready to define the "gay agenda" in education: It is simply to enable students to understand what our mainstream medical and mental health care professional associations have concluded -- specifically, that being gay is not an illness, that "reparative" or "conversion" therapies are dangerous and destructive, that LGBT people can live happy and healthy lives, and that children of LGBT parents do just fine.

We need to convey to school officials (and our communities at large) that these conclusions are not ideological positions, but are, rather, the collective wisdom of the mainstream scientific, medical, and mental health care community. In 2008, the American Psychological Association distributed to thousands of public school systems an excellent publication, [\*Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel\*](#), endorsed by a wide range of health care and school professional groups, including the American Academy of Pediatrics, the American School Counselor Association, the American School Health Association, the National Association of School Psychologists, and the National Association of Secondary School Principals.

It is essential that local boards of education and school administrators be aware of *Just the Facts*. It is vitally important to stress that the concepts set forth in *Just the Facts* follow the conclusions of every mainstream medical and mental health professional association, including the American Medical Association, which has come out foursquare in opposition to "reparative" or "conversion" therapies. See, also, the American Psychological Association's [\*Answers to Your Questions for a Better Understanding of Sexual Orientation and Homosexuality\*](#) and its [\*Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression\*](#).

This is particularly significant in light of the efforts by groups like Focus on the Family to oppose anti-bullying programs, which they argue are a way to press the "[gay agenda](#)." Indeed, Focus on the Family typically ignores the mainstream medical community conclusions, or pretends that "science is still out" on all these issues. Focus on the Family and similar groups

seek to create the impression that this is just a dispute among “interest groups.” What the right wing groups seek to do is to create a scientific dispute when, in fact, [no such dispute exists](#). This is related to the right wing’s reliance on statements from a group calling itself the ["American College of Pediatricians."](#) a tiny ideological fringe outfit which objects to the conclusions of the American Academy of Pediatrics (which is the mainstream professional association for pediatricians). It is essential to show school officials (and the public at large) that the dispute is not between contending "interest groups," but rather, between the mainstream medical community and theologically-driven groups like Focus on the Family.

The experience in Montgomery County, Maryland – a suburb of Washington, D.C. – provides a blueprint of how to make progress, as well as the game plan of those who would seek to derail such progress.

On June 17, 2014, the Montgomery County Board of Education unanimously gave final [approval](#) to a revised health education framework for secondary schools. This revised framework is based specifically on the longstanding findings of every mainstream American medical and mental health professional association regarding sexual orientation and gender identity, including the propositions that being gay is not an illness and that so-called “reparative” or “conversion” therapies are dangerous and ineffective. *See also* [here](#) and [here](#).

This action brought to a successful conclusion a dozen years of work by members of PFLAG Metro DC and others to bring the wisdom of the mainstream health care professionals into the middle and high school health education curriculum.

The Montgomery County experience may be useful for others around the country who seek to make schools not only safe for our LGBT children and children of LGBT families, but to help create a climate in which all of our children understand and appreciate each other. What follows is a comprehensive report on that experience.

We recommend that readers be aware, on the one hand, of the fact that this process took place in a relatively progressive community (which made it easier than it might have been elsewhere); but also, on the other hand, of the fact that the culture in America has moved significantly in the last dozen years (which means that the dozen years it took from the start of the process in 2002 to the 2014 culmination could well be far longer than future efforts in other places). We also note, however, that in some places, unlike in Maryland, state laws may limit what may be said in health education classes.

In some communities, there may be widespread opposition to change; in others, opposition may be limited to a very small group of people. In some communities, political leaders may be very supportive; in others, they may be antagonistic or reluctant to “make waves.” In some communities, there may be a pent-up desire to make the needed changes; in others, there may be a great fear of even talking about sexual orientation or gender identity. Within school bureaucracies, much may turn on the life experiences and hopes and fears of particular administrators. Every community is different, but there are common threads.

The two overarching themes are (1) that we are advocating not for abstractions, but for our children’s lives; and (2) that the policy dispute is not between pro-gay and anti-gay interest groups, but, rather, between the mainstream American medical and mental health community and those who, perhaps for theological or other reasons, are unable to come to terms with the proposition that being gay is just another way people are.

The report is based in part on a [September 2010 series](#) posted by the Human Rights Campaign and written by Metro DC PFLAG Advocacy Chair David S. Fishback. (And an

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enormous thank you to Teachthefacts.org President Jim Kennedy for archival material contained on the Teachthefacts.org Vigilance Blog [website](#) and on its Resources [page](#).<sup>1</sup>

## LESSONS LEARNED OVERVIEW

Before going through the actual events, it might be useful to discuss the lessons we learned. They might be worth thinking about as one goes through the nuts and bolts of the process.

**1. As more LGBT people come out, more straight people are willing to talk about their LGBT relatives, friends, co-workers, and acquaintances.** Once you begin real conversations about the challenges that society poses for gay people – whether with school officials, reporters or members of the general public – more people will begin to talk about their LGBT relatives, friends, co-workers, and acquaintances. As this happens, more LGBT people may be more likely to come out. Always be ready to tell your stories. Personal stories of real people, real pain, and real struggle often do as much or more than abstract academic conclusions to help people understand the importance of action. This openness breaks down the walls that have kept people from confronting the issues. Once those walls break down, progress can be swifter. **2. School officials – both elected and non-elected – need information, not just conclusions.** This is important because when being asked to take steps in directions previously not taken, and where there may be pushback from others living in the school district, officials need to know not just the general conclusions about sexual orientation, but also the fact that those conclusions are supported by the mainstream medical and mental health care community. This will assist those who already agree with us, and can bring along those who may not have thought about the issue enough to be ready to take the needed steps. And, in the context of the emerging understandings about sexual orientation and gender identity, such information may help bring along those who once had been in the opposition.

**3. Identify allies within school system.** There may well be many teachers, guidance counselors, administrators, and others who will be supportive of your efforts. They may be able to provide insights into the ins and out of your school system. But, depending on the nature of the bureaucratic culture of a particular school system, they may or may not be able to be public allies. Of course, if schools have Gay/Straight Alliances (now more popularly known as Gender and Sexuality Alliances (GSAs), the GSA sponsors, and the students themselves, may be great partners.

**4. Identify and work with allies outside the school system.** Don't think you have to go it alone. Find other groups – both governmental and non-governmental – who may be supportive. They may be part of the process of figuring out how best to proceed, including entrée to decision-makers. They may also be invaluable in creating an atmosphere of support in the community-at-large.

<sup>1</sup> **A note on citations:** Since many of the citations are no longer available on the web in their original form, we cite here to background material which have been preserved on the TeachtheFacts.org Vigilance website and on David Fishback's blog. For example, the local Montgomery County MD *Gazette*, which had been owned by the

*Washington Post*, [was shut down in 2015](#). It is difficult and sometimes impossible, at this writing, to retrieve *Gazette* articles through the web. We have endeavored to copy as many of the articles as possible into other formats, and they may be found throughout this report.

Much of what is in the hyperlinks can be instructive to those engaged in advocacy, whether in the public sphere or on a person-to-person basis.

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**5. The media needs to be well informed.** In the Montgomery County situation, advocates educated local reporters about the reality of where the mainstream health care professional associations stood, and why they held those positions. We did this not just at the time of the onset of a big story, but, whenever possible, in advance of such events. By sufficiently educating reporters in advance – just like we did for school officials and the public at large – the reporters were more able to present balanced articles, rather than simply writing on the fly. **6. Find forums in which to present your views and your evidence.** Letters to the editor, op-ed pieces, and presentations on broadcast media are important. Find those outlets and use them. Always be prepared to make the best case for your position. Do not limit your advocacy to matters specifically related to curriculum. We need to foster a general atmosphere of understanding; such an atmosphere helps not only school system efforts, but other advancements, as well.

**7. Personal relationships matter.** As in any community, personal relationships developed over the years are very useful. In Montgomery County, for example, a principal advocate had worked for years as a PTA volunteer, as a local PTA president, and as a member of a number of other advisory committees and community school advocacy committees. In those activities, he developed relationships and credibility that made it easier to be an advocate for potentially controversial issues, like this one.

**8. Never underestimate the depths to which the opposition will go to impose their views.** This may seem harsh, but sadly it is a reflection of reality. The opposition, at least in our experience, does not simply reach conclusions by seeing the world through a different side of the prism. Rather – perhaps because their views are ideologically and theologically based – they often seem to take the view that the ends justify the means. We always need to be prepared for that, and to be prepared for the most outrageous attacks imaginable. Significantly, we need to be prepared to assist school systems in defending against lawsuits the opposition may bring in order to intimidate, and to be able to convince school systems that, if necessary, it is worthwhile to stand up to such intimidation.

**9. Be ready for wolves in sheeps' clothing.** More skillful members of the opposition may couch their arguments in terms of respect for all without condoning or encouraging what they view as immoral behavior, all the while focusing on the respect angle. We must always remember that generalized statements of civility are nice, but they do little good if they are coupled with policies that marginalize our LGBT children. Also, keep in mind that people may run for school boards, or other public offices, without revealing that they have an anti-gay agenda.

**10. Always be civil and dignified.** It will be tempting to lash out in public against outrageous attacks on ourselves and/or our children. But it is always more important to channel that passion into effective public presentations. Anger may create a good news story on some television stations, but it does not advance the ball. Over time, people of good will come to recognize the humanity of everyone, regardless of sexual orientation.

**11. Efforts to reform our public schools take hard work and dedication.** Activists who care about educating children on the realities of sexual orientation must be prepared to do the hard work of educating both school officials and the community-at-large. They also must carefully

cultivate allies, and develop a sense of when to push hard, and when to give people in power the space to act. It is also important to understand which players we can count on to be proactive – and how to help them be so.

#### **2002-04: MOVING OUT OF THE SHADOWS<sup>2</sup>**

In 2002, the elected Board of Education, on the recommendation of its Citizens Advisory Committee on Family Life and Human Development (CAC), instructed the Montgomery County Public Schools (MCPS) staff to develop revisions to the school system's 8th and 10th grade health education curriculum to provide accurate information on sexual orientation. Previously, teachers were forbidden to discuss the subject, unless asked a direct question, and then they could only provide vague answers and then move on. In order to facilitate the process, the Board appointed a group of new members to the CAC, which, by state law at that time, had to review any recommendations regarding sexuality education; those 25 members included a school nurse, a school health teacher, representatives from the PFLAG Metro DC and a Unitarian Church, as well as from the local Catholic Archdiocese and Parents and Friends of Ex-Gays (PFOX) – a group about which little was known in 2002. One of the new members was David S. Fishback, a relatively new PFLAG dad whose children had graduated from MCPS, and had been active in a variety of MCPS matters (including as a PTA Co-President) going back to 1984. Asked, in 2002, by a [local newspaper](#) about the statement by the then-chair of the Advisory Committee that the appointment of a PFOX representative was a “slap in the face,” Mr. Fishback commented that “[w]hen people of good will sit down together with . . . open mind[s], a lot more can be accomplished than some people think.”

In late 2002, the then-chair of the CAC retired from his position, and Mr. Fishback was elected chair. MCPS staff had decided to set up a working group of health teachers, guidance counselors, school psychologists, etc. to develop additions to the 8<sup>th</sup> and 10<sup>th</sup> Grade health curriculum on sexual orientation in the Summer of 2003, and asked the CAC Chair to appoint members of the CAC to join that working group. Mr. Fishback, seeking balance, appointed a conservative member, Henrietta Brown as well as a PFLAG representative to join the working group.

The working group developed a draft of the curriculum revisions, which included descriptions of the mainstream health professionals' consensus on sexual orientation. During the extensive deliberations Ms. Brown presented materials from the National Association for Research and Therapy of Homosexuality (NARTH), a group with which none of the other working group members were familiar; after examination of the NARTH materials, all the other members of the working group rejected NARTH's assertions, which were not supported by any valid data.

The staff recommendations were presented to the CAC in the autumn of 2003. Ms. Brown and the PFOX representative, along with Michelle Turner, an at-large representative, vigorously opposed the recommendations. They were given every opportunity to convince other members of the CAC that their views were valid. They presented hundreds of pages of materials from groups like NARTH at each meeting. Because the materials were so extensive, the CAC

<sup>2</sup> For more details on this and the next section, including examples of what went on during the CAC deliberations, see the



presentations made by Mr. Fishback to the National Coalition to Support Sexuality Education (2005), [here](#), and the Association of Gay and Lesbian Psychiatrists (2006), [here](#).

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imposed a rule that all such materials had to be presented in advance of the monthly meetings, so that other members would have the opportunity to examine them. Mr. Fishback did extensive research into those materials, and provided responses at the meetings.<sup>3</sup> What the other members of the CAC concluded was that the materials presented by Ms. Brown and the PFOX representative – which focused heavily on the propositions that no one or hardly anyone was really gay, or that if people identified themselves as gay that they could change their sexual orientation -- were filled with misrepresentations, and did not warrant inclusion in the curriculum.

In one instance, Ms. Brown characterized the research of a University of Pennsylvania medical school professor as concluding that gay men were generally pedophiles and that children were “turned gay” by contact with such men. Mr. Fishback read the entire study that was being cited, found that it did not say any such thing, and contacted the professor, who confirmed this assessment and authorized him to convey that to the CAC. Ms. Brown also cited “studies” done by allegedly objective researchers, but the CAC discovered that the authors were not qualified experts and were publishing in non-peer reviewed publications that were simply fronts for outfits like Focus on the Family. By thoroughly examining their allegations, the CAC was able to determine that all the attacks on the draft curriculum were bogus. Ms. Brown audio-taped every meeting, presumably to provide evidence of bias in the event that she was unsuccessful; Mr. Fishback then began taping the meetings, as well.

As the CAC was completing its work on the proposed revised curriculum in Spring 2004, Ms. Brown, Ms. Turner, and the PFOX representative wrote letters to the largest circulation local weekly newspaper (the *Gazette*) and the Board of Education accusing the CAC generally, and Mr. Fishback in particular, of unfair bias. However, even with every word of the meetings on tape, they were unable to cite any evidence to support their allegations. The letter to the *Gazette* contained such vitriolic attacks that the newspaper, rather than publishing it, contacted Mr. Fishback and other CAC members for interviews. Mr. Fishback sent Mr. Sedam [a point-by-point refutation](#) of the allegations, and the *Gazette* published a fair [description](#) of what had occurred. (The article also highlighted another tactic of the opposition: to endlessly debate everything, and to re-raise issues that had already been resolved. Since the CAC met for only for two hours, once a month, a failure to conclude the curriculum review by the end of the school year would have delayed any action, since, at that time, no action could be taken on sexuality education changes without the review and recommendations of the CAC, and the staff report on the recommendations was completed over the summer. One CAC member described it as “filibustering.”)

Over time, it became clear that the opposition’s attacks on any progress in this area would be rife with *ad hominem* attacks and unsupportable allegations. After many months of debate on the proposed staff revisions and some recommendations for improvement by the CAC, Mr. Fishback was assigned the responsibility of drafting the CAC report to the Board of Education,

recommending adoption. Mr. Fishback offered the dissenters on the CAC the opportunity to prepare a minority report. This offer was declined. The MCPS staff's recommendations, along with the CAC report, were presented to the Board in the autumn of 2004. *See* [here](#) at pp. 34-37.

There was no full-scale revamping of the curriculum. Rather, a few definitions of sexual orientations and gender identity were added, along with a few basic statements, which were summarized in Mr. Fishback's [testimony presenting the report](#):

<sup>3</sup> *See* p. 6 n. 2, *supra*.

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That "all major professional mental health organizations affirm that homosexuality is not a mental disorder", that "most experts in the field have concluded that sexual orientation is not a choice", that "different religions take different stands on sexual behaviors and there are even different views among people of the same religion", that "having homosexual parents/guardians does not predispose you to being homosexual", and that there are families in our community headed by same-sex couples.

At the Board's November 9, 2004 meeting, the Superintendent declared that these additions to the health education curriculum were "long overdue," and the Board unanimously adopted them. *See* [here](#), beginning at p. 32.

Immediately, there was an onslaught of criticism on right-wing talk radio shows and in other venues, attacking the recommendations as a "gay agenda" conspiracy and accusing the Board of developing it without any community notice or opportunity for the consideration of dissenting viewpoints, even though this accusation was demonstrably false. *See, e.g.,* [here](#) and [here](#).<sup>4</sup>

One of the dissenting members of the CAC, Michelle Turner, established a group first calling itself RecallMontgomerySchoolBoard.org, and later, after discovering that there was no legal mechanism for recall, calling itself Citizens for a Responsible Curriculum (CRC) to oppose the revisions. CRC held a community meeting at a local high school, where the rhetoric was so inflammatory that a group of parents (who previously had no association with LGBT issues) formed a rival group, TeachtheFacts.org. CRC [then grabbed the web domain name](#) Teachthefacts.com to redirect any searches to the CRC's website, which was named MCPSCurriculum.com; yet another indication of the underhanded approaches it would take to the public debate.

Then a very interesting thing happened. Typically, people only write or call a government agency when they object to something the agency has done. In this instance the calls and letters to the Board ran something like 5 to 1 in favor of the proposed curriculum revisions (and the condom demonstration video). Some of this came from community mobilization, but much of it was purely spontaneous. And some of the support came from [groups](#) that the opposition liked to think were its natural allies.

## 2005: COUNTERATTACK FROM ANTI-GAY FORCES

Throughout the winter, local right-wing talk radio tried to drum up opposition, and our opponents were able to get items in the major local daily newspapers: the [Washington Post](#), the [Washington Times](#), [here](#) and [here](#); and the [Washington Examiner](#).



In January, PFOX rented a [billboard](#) near the MCPS headquarters touting “reparative therapy.” In February, [petitions were circulated](#) County opposing the curriculum revisions in Catholic Churches in the County opposing the curriculum revisions.<sup>5</sup>

<sup>4</sup> The attacks also included criticism of a proposed condom demonstration video, which the Board had ordered in November 2002 for use in the high school health education classes, which had, for many years, included general information on condoms; there was much concern about the dangers of unprotected sexual activity, including the unwanted pregnancies and transmission of sexually transmitted infections.

<sup>5</sup> For a useful response to the Archdiocese’s arguments against the curriculum, see Mr. Fishback’s [response](#) on the Teachthefacts.org blog.

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In March 2005, CRC sought to have a mass community meeting to oppose the revisions, but could not find a single local public official to attend as a speaker. Instead, they brought in officials from Focus on the Family-related groups like the Family Research Council, Take Back Maryland, and Concerned Women of America (whose representative, oddly, was a man), as well as a notoriously homophobic state delegate, Don Dwyer, from another part of Maryland. A CRC spokesman tried to distance the organization from many of the comments made by the speakers, even though it was clear in advance what the speakers would say. See [here](#) and [here](#). The speakers’ presentations can be found [here](#). See also, [here](#) and [here](#). (It is noteworthy that one of the speakers, Family Research Council executive Peter Sprigg, several years later, stated on national television that consensual adult same-sex activity should be criminalized and that the United States should “[export homosexuals](#).”

Through the winter and early spring of 2005, CRC argued that the Board of Education should negotiate with it about the revisions before any piloting (scheduled for May 2005) would start, and publicly stated that it would not try to use the courts to derail the process. Subsequently e-mails, that inadvertently were made public, revealed that CRC was surreptitiously planning litigation from the outset. See [here](#).

What happened next was a shocking setback.

Just days before the curriculum revisions were to be piloted in six county schools, CRC and PFOX, through Jerry Falwell’s Liberty Counsel, filed a 43-page [complaint](#) in the federal district court seeking a Temporary Restraining Order to halt the piloting. The complaint was rife with factual misrepresentations about the revisions and the applicable law. The complaint asserted that the curriculum included attacks on particular religious beliefs, even though this was demonstrably untrue: The only thing the curriculum said about religion was that “Different religions take different stands on sexual behaviors and there are even different views among people of the same religion”; while one of the background teacher resources provided by the MCPS staff – which teachers were instructed to not bring into the discussion – said some critical things about anti-gay theologies, it was clearly not part of the curriculum. See [8<sup>th</sup> Grade Pilot Curriculum](#) and [10th Grade Pilot Curriculum](#). More significantly, the complaint asserted that the plaintiffs’ First Amendment rights were abridged because their “side” of the “controversy” about sexual orientation was not presented.

With only a few days to respond, the Board of Education was caught flatfooted. The judge, who was also a Baptist minister, granted the requested [Temporary Restraining Order](#) on May 5, buying into not only the factual misrepresentations, but also the incorrect legal argument:

the unprecedented idea that the United States Constitution required all sides of any dispute to be presented in a public school curriculum -- a doctrine which had been specifically rejected a decade earlier by the United States Supreme Court. See [Rosenberger v. Trustees of the University of Virginia](#), 515 U.S. 819, 833 (1995), (“When [a public educational institution] determines the content of the education it provides, it is the [school] speaking, and we have permitted the government to regulate the content of what is or is not expressed if it is the speaker. . . . [W]hen the government along speaks, it need not remain neutral as to viewpoint.”)

Notwithstanding the clear errors made by the court, settlement talks between the Board and the plaintiffs proceeded. But within a week, rather than fight the lawsuit – which, given the judge's reputation for being very slow to issue final decisions that could be appealed, could have tied things up in expensive litigation for years – the Superintendent, on May 12, announced that MCPS was scrapping the revisions, while entering into further settlement discussions with CRC

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and PFOX. See [here](#), and [here](#). In the meantime, CRC sought (unsuccessfully) to intimidate opponents into [silence and misused PTA resources to seek to mislead parents](#).<sup>6</sup> Then, on May 23, the Board adopted the Superintendent's recommendation to discharge all members of the CAC and start the process over again. See [here](#) and [here](#). We then regrouped and worked to make certain that this would only be a temporary setback.

In late June, the Board entered into a settlement agreement, scrapping the curriculum revisions and agreeing to appoint members of CRC and PFOX to the new 15- member CAC (although there had already been members of PFOX and the CRC on the earlier 25-member CAC). In the settlement agreement, the Board reserved the right to make curriculum decisions.<sup>7</sup> See [here](#) and [here](#).

In the next several months, MCPS did nothing public, other than to pass a resolution establishing the framework for a new Citizens Advisory Committee (CAC) – a CAC which [could not, by rule, include any former members of the CAC](#). Throughout the summer of 2005, the opposition brought in a series of speakers to Board public comment periods to make presentations misstating what had been in the proposed revised curriculum, saying scurrilous things about gay people, presenting then-PFOX President Richard Cohen (who was subsequently exposed as such a fraud that he was expelled from the American Counseling Association (ACA) and later became such an embarrassment that PFOX removed him as its president) (see [here](#) and [here](#)), and presenting an alleged “ex-gay” (who we eventually discovered was imported from New Jersey, where he was a [paid ex-gay organizer](#)).

Mr. Fishback [responded](#) to the Board on July 27, pointing out that Richard Cohen had been expelled from the ACA, and presenting [all the specifics on what the mainstream medical and mental health professional associations say about sexual orientation](#).

He also took on a *Washington Times* editorial, which had mischaracterized the events in Montgomery County, and, [after some back and forth with the Times](#), the *Times* published [his letter in response](#).

The opposition sought to use a local cable access show to present a one-sided view of the controversy, including participation by Mr. Cohen, but when the line-up of speakers became public, the producers invited Mr. Fishback and State Delegate Anne Kaiser to balance the discussion. The opposition then backed out, and the taping was cancelled. See [here](#) and [here](#). The Teachthefacts.org Vigilance blog, written by Jim Kennedy, provided a continuous stream of

useful analyses, [posted](#) an article from [The Nation](#) on the controversy, and at the end of the year presented a useful [summary](#) of what had occurred since the controversy began.

In September 2005, Teachthefacts.org sponsored a well-attended [forum](#), at which all the issues were fully aired. Among the speakers were [Dr. Paul Wertsch](#), a PFLAG dad from Wisconsin, who spoke about the American Medical Association's important statements on sexual orientation; [Deborah Roffman](#), a prominent sexuality education expert; and [Robert Rigby, Jr.](#), a survivor of "reparative therapy." There was extensive media coverage of the forum (*see, e.g., this* from the *Washington Post*) which helped us to counter the messages sought to be pushed by the

<sup>6</sup> CRC's misuse of PTA resources continued to be a [problem](#) in the ensuing years.

<sup>7</sup>Item 9 of the Settlement Agreement provided that "Nothing contained in this Agreement shall be construed to diminish or enlarge the legal right of MCPS to develop, revise or implement curriculum, including curriculum that provides information on sexual variations and promotes tolerance of others regardless of sexual orientation."

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opposition, and also enabled us to keep the issues before the Board and the public. For the media coverage and other useful documents regarding the forum, *see* [here](#) and [here](#). Still, action from MCPS seemed, at least from the outside, to be slow, and it was not at all clear that the Superintendent was taking any actions to secure experts to consult on a new curriculum – something he had asserted publicly he would do. Finally, in late summer 2005, the former Vice Chair of the CAC, Dr. Lara Akinbami, a pediatrician, arranged to have the Maryland Chapter of the American Academy of Pediatrics offer its services as consultant to MCPS, and that offer was accepted.

Then, on October 24, the Board [announced](#) most of the membership of the new CAC. The CAC included, per the June settlement agreement, Peter Sprigg representing PFOX, but also included Emily Wurst from PFLAG Metro DC and Teachthefacts.org President Jim Kennedy. Dr. Carol Plotsky, a well-respected pediatrician (also trained in law) was designated as the Chair. CRC objected that the Board had turned down the nomination of Henrietta Brown, who previously had been on the CAC (and had been the practitioner of the "filibuster" noted by another CAC member in April 2004, *supra*, p. 8). The Board, as noted earlier, made it clear that it would not appoint past-members of the CAC. CRC [threatened](#) to sue, but finally relented and appointed another one of its members.

While the CAC's new mandate limited its involvement to responding to MCPS staff suggestions, the broad [membership of the Committee](#) assured that all issues would be fully aired, and, over the next year, they were. Mr. Fishback attended, as an observer, all of the new CAC's meetings, sharing his experiences from the previous years, including the earlier materials PFOX presented and the rebuttals, providing insights to allies as to the tactics employed by the opposition, and providing the resources he had amassed over the preceding two years.

CRC continued to attack our efforts. *See* [here](#). We continued to respond to correct the record. *See, e.g.,* [here](#).

## 2006-08: THE ROAD BACK – PROGRESS, INCOMPLETE

Throughout 2006 and beyond, all letters to the editor in local papers from CRC and PFOX were responded to immediately with letters rebutting their assertions (*see, e.g., [here](#), [here](#), and [here](#)*), and Mr. Fishback appeared in a number of radio and television show debates, made presentations on local and national programs supporting the reform efforts. Mr. Kennedy made similar media appearances and provided a stream of analysis on the Teachthefacts.org Vigilance Blog, helping to keep the wider community informed. In September 2007, *Bethesda Magazine* [published a long article](#) about the health education controversy.

Having concluded that a major mistake in 2005 was the failure to anticipate a lawsuit filled with factual and legal misrepresentations, PFLAG Metro DC – working with Teachthefacts.org, PFLAG National, Hayley Gorenberg of [Lambda Legal](#), and a team of attorneys from the law firm of [WilmerHale](#) led by Jonathan Frankel (now managing partner of [Frankel PLLC](#)) began to develop a comprehensive defense and established a working relationship with the school system attorneys. Key to the defense was the [decision](#) in *Child Evangelism Fellowship* in the U.S. Court of Appeals for the Fourth Circuit (which includes Maryland), which confirmed that public educational institutions are entitled to speak for themselves in matters of curriculum, without having to present “all sides,” however absurd certain sides might be. *See [here](#)*.

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In October 2006, the MCPS staff presented to the CAC its [proposed new revisions](#) for the 8<sup>th</sup> and 10<sup>th</sup> Grade Health classes. The upside of the new revisions was that, rather than simply including a few basic statements about sexual orientation as had been done in 2005, they now covered two entire classroom periods and went into great depth on the challenges faced by LGBT students, brought in useful material on transgender people, and drew on statements from the American Psychological Association and a textbook developed for the Los Angeles County School District. **This was a major step forward.**

The downsides were that -- apparently to protect the school system from another lawsuit -- the lessons were tightly scripted: teachers were instructed to follow a specific script and not engage in discussion that might lead to saying anything that was not in the script. And the specific statements set forth in the 2005 revisions – notably, that being gay is not an illness and that reparative therapy has been rejected as dangerous by mainstream medical professionals – were absent from what was permitted to be said, again presumably to stave off a lawsuit.

In the autumn of 2006, Teachthefacts.org held a Board of Education candidates forum, at which all candidates were asked whether they believed that the 2005 statements should be in the new curriculum. Four seats were up for election, and all the winners, incumbents Patricia O’Neill and Nancy Navarro and open seat candidates Shirley Brandman and Judy Docca, announced their [support](#) for inclusion of the statements.

In November 2006, the overwhelming majority of CAC members voted to recommend inclusion of most of those specific statements from the 2005 version (precisely what the winning Board of Education candidates favored and what we understood that all but one of the carryover members favored). Mr. Fishback [wrote to the Board](#) supporting the CAC recommendations, explaining why they made sense and why there was no legal impediment to their inclusion. But

the Superintendent rejected the recommendations, presenting his proposals without any of those recommended changes and inexplicably telling the Board that the statements did “not align with the target objectives of the lessons.” See, also, [here](#).

This difference created significant controversy. See [here](#) and [here](#). During public comments at the Board’s January 9, 2007 meeting, Mr. Fishback, now a member of the PFLAG Metro DC Board, [vigorously urged inclusion of the CAC recommendations](#), again explaining why there was no legal impediment. In response, Board member Steve Abrams, one of the carryover members, threatened to vote against the proposal if any of the CAC statements were added, thus depriving the Board of unanimity that Mr. Abrams asserted was needed to resist another lawsuit. Board member Patricia O’Neill moved to include the statement that being gay is not an illness. The motion failed on a 4-4 vote, although some of those voting “No” said they would revisit it in June 2007, following piloting of the classes in a few schools. The Board then voted unanimously to pilot the new revisions. See [here](#), [here](#), [here](#), [here](#), and [here](#).

The debate continued through the winter and spring, and it continued to be the subject of media attention. See [here](#), [here](#), and [here](#). One illustration of the intensity of the discussion was a locally-televised debate between Mr. Fishback and the head of CRC, John Garza. See [here](#) and

[here](#).<sup>8</sup> Another was reflected in an opposition March 2007 letter to the *Washington Post*, and CAC Chair Dr. Plotsky’s response. See both letters [here](#).

There continued to be concerns about the inadequacy of the proposed curriculum, for while the new revisions went farther and deeper in many respects than the 2005 version (and this was a very good thing), it omitted key information, and the tight scripting was problematic, to say the least, in terms of effective teaching and learning. See [here](#) and [here](#).

Through the month of May 2007 and into early June, Mr. Fishback engaged in vigorous private discussions with all the Board members except for Mr. Abrams (who clearly was not going to budge) and other opinion leaders in the community, including officials of the Montgomery County Teachers Association (MCEA, the teachers’ union, which had developed a very cooperative relationship with the Board and the Superintendent, and was supportive), urging inclusion of the 2006 CAC recommendations. Following the [piloting](#) and comments from stakeholders in the Spring of 2007, the Superintendent still did not make any changes, presenting his proposal to the CAC only a short time before it was to be presented to the Board. The CAC reiterated its 2006 recommended additions, but, once again, the Superintendent declined to incorporate them into the curriculum he submitted to the Board for its June 12 meeting. See [here](#).

The night before the June 12 meeting, however -- following individual discussions by Board members with the Superintendent and a June 7 *Washington Post* article on the Superintendent’s disagreement with the CAC (cited immediately above) -- the Superintendent finally agreed to propose an “extension” to the curriculum, in which, if a student asked if being gay were an illness, the teacher should say that it is not – that the American Psychiatric Association says it



is not. See [here](#) and [here](#). This was a useful, albeit not sufficient, step.

The June 12 meeting was contentious. Board member Abrams accused the Superintendent of going back on an agreement to make no changes in the curriculum, and the Superintendent [passionately responded](#) that the school system owed students this answer. The Board [passed](#) the revised curriculum with only Mr. Abrams dissenting. See also the Board's [June 12, 2007 minutes](#) at pp. 33-35; and [here](#).

PFLAG Metro DC [supported](#) the revisions, but made it clear that they were still inadequate, and urged reassessment after the first year of implementation. And PFLAG Metro DC [continued to support](#) the Board's action against attacks from those opposing any LGBT-affirming curriculum.

Unfortunately, the Superintendent made it clear, through his staff, that he had no intention of dealing again with the curriculum during his term of office, which extended through the end of the 2010-11 school year. Our assumption was that he was still afraid of a lawsuit, even though we had demonstrated that the law and, importantly, the 2007-08 litigation (discussed below) eliminated any danger of significant litigation, because the legal issue was now settled. The tightly-scripted nature of the curriculum (unlike the rest of the curriculum, which did not have such strictures) and the gaping absence of key information about being gay as an illness (many students would be too afraid to ask, and others needed to have that information even if they themselves were not gay) and total silence on reparative therapies made these deficiencies quite

<sup>8</sup> A statewide public television news program, *State Circle* asked Mr. Garza to come on its broadcast that summer, but he dropped out after learning that Mr. Fishback also would be there. See [here](#). *State Circle* rescheduled for Sept. 7, 2007. This time Peter Sprigg debated Mr. Fishback. Something similar occurred in the summer of 2005, when other CRC and PFOX leaders dropped out of a debate when they learned who they would be debating. See [here](#).

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serious. The “charge” to the new CAC made it clear that it was barred from proactively suggesting anything, so any action to improve or alter in any way the health education curriculum would have to be initiated by the Superintendent, who simply refused to do so. Even though all members of the Board of Education agreed with PFLAG substantively (Mr. Abrams was defeated in his reelection bid in 2008), they did not want to challenge the Superintendent. And they, too, may have been concerned about the expense of another round of litigation.

As is described below, PFLAG found ways to keep the issue alive during this period of “benign neglect.”

## **2007-08 LITIGATION: LAYING TO REST ANY DOUBTS AS TO THE LEGALITY OF HEALTH EDUCATION CURRICULUM BASED ON WISDOM OF MAINSTREAM MEDICAL AND MENTAL HEALTH CARE PROFESSIONALS**

In February 2007 (shortly after the Board approved the second revised health education curriculum for piloting), CRC, PFOX and a group calling itself the [Family Leader Network](#) (FLN) [asked the state superintendent](#) of education to block the piloting as the federal judge had done in 2005.

This time our side was ready (*see, supra*, p. 13), and, on March 1, PFLAG Metro DC [filed](#) effective, comprehensive arguments in opposition to the CRC/PFOX/FLN request. In



March 2007, the state superintendent [denied](#) the request. CRC/PFOX/FLN appealed to the State Board of Education, using the same arguments they made in 2005. PFLAG Metro DC, on March 29, again filed papers [opposing](#) the request, making the same arguments it made in the letter to the State Superintendent.

Following the County Board's June approval of the revised curriculum, CRC/PFOX/FLN [reasserted their request](#) to the State Board of Education to block the curriculum. Later that month, the State Board of Education rejected the CRC/PFOX/FLN request without a single dissenting vote. See [here](#) and [here](#).

CRD/PFOX/FLN [threatened](#) to take the matter to court, as was done in 2005. Now represented by the [Thomas More Legal Center](#), they brought suit in Montgomery County Circuit Court. See [here](#) and [here](#). Hayley Gorenberg of Lambda Legal and the attorneys from WilmerHale led by Jon Frankel represented Metro DC PFLAG as an *amicus curiae*, filing the PFLAG March 29 letter [in lieu of a brief](#), and Mr. Frankel [ably presented oral argument](#) before the Court. On January 31, 2008, the Court resoundingly [dismissed](#) the claims (*see also* [here](#)), and there was [no appeal](#). See also [here](#).

This was a major victory, because it confirmed the very basic proposition that MCPS could decide to use material from mainstream medical and mental health professional associations as the basis for its health curriculum, without having to include PFOX-supported material.

Teachthefacts.org was [honored](#) at PFLAG Metro DC's annual gala in March 2008. CRC and PFOX continued to try to make its case in the media, and PFLAG Metro DC continued to [rebut it](#). And, on local television, PFLAG Metro DC continued to debate the "reparative therapy" advocates. See [here](#).

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### INTERLUDE: 2010 BOARD OF EDUCATION ELECTION

The opposition continued to fail to gain any traction in the court of public opinion in Montgomery County. They did, however, take a run at getting one of its members elected to the Board of Education, through a stealth campaign in 2010.

In Montgomery County, all Board positions are voted on "at-large," even though most candidates must reside in different districts. In May 2009, the District 5 member resigned when she was elected to the County Council in a special election, and the Board appointed a recently-retired high school principal, Michael Durso, to complete her term. Mr. Durso was a supporter of our position on health education. But he had never run for political office and had no "organization" of supporters (although he was very popular and well-respected among those who knew him). Mr. Durso decided to stand for election, and a number of others also signed up to run. In the first round of voting, the *Washington Post* endorsed one of the challengers, making Mr. Durso potentially vulnerable. That challenger did not make it through the first round of voting. The two remaining candidates were Mr. Durso and a former high school PTSA President named Martha Schaerr. Ms. Schaerr had a very professionally-constructed website, saying nothing "controversial," and campaigning as a "fresh face."

Mr. Fishback recognized her, recalling a conversation he had had with her after a Board of Education meeting several years earlier, and then recalled that she had been the PTSA

President who, in 2007, had sought to have a “forum” on the health education revisions at her high school by inviting – and only inviting – the CRC representative on the CAC to speak. Jim Kennedy of Teachthefacts.org, who was then a member of the CAC, was alerted to this event, and arranged to have other CAC members, including the Chair, to attend, as well, thus diffusing a one-sided [attempt to subvert the revisions](#).

Mr. Fishback also discovered that Ms. Schaerr was a [board member](#) of the Family Leader Network, which had been part of the 2007-08 litigation against MCPS (*supra*, p. 16), and that her husband was board chair of the Family Leader Network. (In 2014, Mr. Schaerr [left his partnership](#) at a major Washington, DC law firm to go to Utah to head up Utah’s defense of its unequal marriage statute.

Mr. Fishback publicized these connections – which were not disclosed in any of Ms. Schaerr’s campaign literature or statements. He responded to discussions of the election on community blogs and on local on-line local newspapers that had not pointed out (and likely were not aware of) her history (*see, e.g.,* [here](#)), wrote a [letter](#) to the local *Gazette*, which it published; brought up Ms. Schaerr’s history at a key [campaign forum](#); enabled the local teachers’ union to [inform](#) the teachers about Ms. Schaerr; and presented the facts to reporters, leading to accurate articles in the *Washington Post* (and *see* [here](#)), the *Gazette*, and the on-line version of the local ABC outlet.

On October 26, 2010, the *Washington Post*, which earlier had endorsed one of Mr. Durso’s opponents, now endorsed Mr. Durso, noting that it was “troubled by [Ms. Schaerr’s] involvement in a group hostile to gay rights. She is also a member of the board of the Family Leader Network, one of the groups that sued Montgomery school officials in an unsuccessful effort to block a new sexual education curriculum that dealt forthrightly with sexual orientation.” *See* [here](#).

Mr. Durso defeated Ms. Schaerr [overwhelmingly](#), and the other incumbents who were supportive of LGBT-affirming curriculum were also [reelected overwhelmingly](#).

## **2008-11: GUIDANCE OFFICES, FLYERS, AND EFFORTS TO HAVE THE CURRICULUM REVISITED AND IMPROVED**

While the Board was not prepared to challenge the Superintendent on the curriculum, we did find an avenue to improve the MCPS climate. We had heard [reports](#) that the Department of Student Services (DSS, the guidance counselors and school psychologists) had removed useful resources on sexual orientation in 2006, following complaints from the CRC/PFOX people, and that now there was significant [confusion](#) as to what the guidance counselors could use. So in the summer of 2008 (once it became clear that the Superintendent was not going to revisit the curriculum), we began working with a strong Board ally to assure that the DSS could use mainstream medical and mental health resources. In particular, we suggested the American Psychological Association’s [Just the Facts About Sexual Orientation and Youth](#), the publication from the American Psychological Association discussed at the beginning of this report, be a principal resource along with other materials, including the excellent American Academy of Pediatrics (AAP) [Guidance for the Clinician on Sexual Orientation](#). This effort was successful, and we were able [to inform all the high school GSA sponsors](#) of this development in April 2009.

In addition to this important step in making MCPS a safe and comfortable place for LGBT students, the information provided by the DSS also established that the DSS side of the

MCPS house officially accepted the mainstream wisdom, thus heightening the disconnect with the gaps in the curriculum. In 2012, when concerns were raised that pupil personnel workers were not aware of the resources or insufficiently trained, DSS hired an excellent trainer, Sue Garner, a retired school psychologist from Howard County MD, who is also active in the PFLAG Columbia/Howard County Chapter, to provide training.

Still, the problems with the curriculum's silence (or near silence) on key issues was heightened by periodic [distributions of PFOX flyers](#) touting "reparative therapy" notions in some high schools, starting in October 2006 and nearly every year for the next six years. PFOX was entitled to do such distributions because, in another context, the United States Court of Appeals for the Fourth Circuit had ruled in the [Child Evangelism Fellowship](#) case that MCPS could not discriminate based on viewpoint with respect to flyer distributions by outside non-profit groups.<sup>9</sup>

Initially, the flyers were quite specific in their advocacy of such notions; later, they became more veiled, but the purpose was still unmistakable. At first, media coverage was only in minor weekly newspapers, which noted how upset people were about the distributions. *See, e.g. here*. There was always grave concern from schools about the PFOX flyers, and many students made a point of throwing them out; in some schools, [trash cans](#) were set up for that purpose. Mr. Fishback [explained](#) in public forums that the Board of Education appeared to be bound by the Fourth Circuit decision, unless the distribution program were eliminated; he also explained that those distributions made it all the more important that the CAC recommendations about illness and reparative therapy be included in the health curriculum.

Understanding that the absence of an MCPS substantive response to the flyers created a potentially grave and harmful situation, Metro DC PFLAG distributed flyers of its own, rebutting the PFOX notions. In 2006, 2007, 2008, 2009, and 2010, PFLAG Metro DC, working with Teachthfacts.org and a number of GSA faculty sponsors and later the [Rainbow Youth Alliance](#), countered the PFOX flyers (which had been distributed at a handful of high schools) by distributing flyers at all MCPS high schools. Indeed, each time such "flyer wars" took place,

<sup>9</sup>Interestingly, this ruling also had language which definitively demonstrated that the school system had the right to choose the curriculum which had been the subject of the earlier litigation. *See, supra*, p. 13.

PFLAG Metro DC informed the Board that the Board's decision to continue the flyer distribution program made it incumbent on MCPS to cure the deficiencies in the curriculum. The *Washington Post* [covered](#) the PFOX flyer distributions for the first time in February 2010. Resentment in the schools increased as more and more schools were targeted by PFOX, and later that month Mr. Fishback for PFLAG Metro DC and Stephanie Kreps (another PFLAG parent) for the Rainbow Youth Alliance [wrote a letter to the Board](#) explaining the full nature of the potential harm caused by the flyers. In April 2010, Mr. Fishback wrote to, and testified before, the Board [stating](#) that because "MCPS has chosen to continue the flyer distribution program, we believe that it has a heightened responsibility to deal with the PFOX misrepresentations," and urging that the Board add the CAC 2006 recommendations to the health education curriculum. As noted above, it had become clear that the Superintendent would not act, and that the Board would not challenge him. But it was also becoming clear that the Superintendent would not likely be continuing at the end of his contract in 2011, so it was imperative to keep the issues before the Board – all of whose members were in agreement with us on the substance.

In August 2010, the Superintendent announced that [he would not seek renewal of his contract](#).

The next month, at the urging of Mr. Fishback and Dr. Akinbami, the Superintendent's own

advisors the Maryland Chapter of the American Academy of Pediatrics (AAP) wrote to the Superintendent and the Board [urging inclusion of the CAC 2007 recommendations](#), thus giving the Superintendent an opportunity to revisit the curriculum. But the letter was ignored.

In April 2011, with a new Superintendent scheduled to arrive in June, Mr. Fishback worked with CAC members to reiterate their 2006 and 2007 recommendations, in order to have those recommendations on the record for the transition. This was a difficult process, since the rules imposed on the CAC theoretically prevented it from taking any proactive steps – it could only respond to the Superintendent’s staff. After some resistance from the staff, the CAC Chair, Dr. Plotsky, firmly asserted the CAC’s right to recommend, and the staff did not prevent the CAC from making an affirmative recommendation. *See* [here](#). Peter Sprigg of PFOX and the Family Research Council (who was still a member of the CAC) made veiled threats of more lawsuits if such changes were made, but the full CAC overwhelmingly approved the recommendation. PFOX then [accused](#) the CAC of acting in an abusive and discriminatory manner, and particularly singled out Mr. Fishback for harsh criticism, and concluded by urging that its views about “ex-gays” should be included in the curriculum.

Mr. Fishback [reported](#) the CAC’s recommendations to the Board, since there was no official mechanism for the staff to provide it until the following autumn, and it was unlikely that the out-going Superintendent was going to pass the recommendation along before he left.

## **JUNE 2011 TO NOVEMBER 2012: PROGRESS AND DETOUR – FLYER WARS**

In the spring of 2011, the Board announced the appointment of [Joshua Starr](#), the young superintendent of the Stamford, Connecticut public school system, to be the new Montgomery County superintendent. Mr. Fishback contacted Stamford PFLAGers, who were very positive about him. PFLAG Metro DC provided [background materials](#) to Dr. Starr May 2011, but received no response. Taking over a large bureaucracy like that at MCPS was clearly a big job, with lots of issues other than health education policy, so we initially bided our time. We were assured by a strong ally on the Board that this issue would be raised with him in early 2012.

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Very quickly, there appeared to be challenges stemming from holdovers from the previous administration who shared the former Superintendent’s fear of making any changes to the curriculum. At the first meeting of the CAC in Autumn 2012, a top holdover administrator, in briefing the new members of the CAC (Dr. Plotsky had stepped down after nearly six years of service), boasted of how tightly scripted the *Respect for Differences in Human Sexuality* units were. And it took considerable effort to find a copy of the annual report from the staff to the Board, which included the 2010-11 CAC’s work. In the past, CAC recommendations were presented to the Board, but the [September 13, 2011](#) report was so vague that it was impossible to determine on its face what was being reported. Indeed, allies on the Board, having received it, reported to Mr. Fishback that they were not aware that the staff had hidden the CAC suggestions. It seemed very possible that the key holdover staff was simply not presenting the issue to Dr. Starr.

Then PFOX came back into the picture. The Board declined to appoint Peter Sprigg to another term on the CAC, and he received, as did other outgoing members, a form thank you

letter signed by Dr. Starr. PFOX then, in a website post (later taken down), characterized the form letter as an endorsement by Dr. Starr of Mr. Sprigg's views (and also misrepresented an action of the CAC). When this was brought to Dr. Starr's attention, his chief of staff wrote to PFOX's executive director as [follows](#):

We have received a number of emails from people who are concerned about information you posted on your blog regarding the standard letter that Dr. Starr sent to Mr. Peter Sprigg thanking him for his service on the Citizens Advisory Committee on Family Life and Human Development. Some are concerned that Dr. Starr's letter is singling out Mr. Sprigg for praise and is being misinterpreted as an endorsement of PFOX and its beliefs and issues.

Let me be clear, Mr. Sprigg received the same thank you that Dr. Starr sent to all members of the committee who completed their service this spring. Dr. Starr was in no way singling out Mr. Sprigg for special recognition. Any effort on your part to portray this simple thank you as an endorsement of PFOX or its perspective is misguided and should cease.

Dr. Starr does not endorse nor agree with the views represented by PFOX.

On February 4, 2012, the Montgomery County Office of Human Rights' Committee on Hate Violence, held an [event](#) entitled *Bullying in Schools: A Community Symposium on Prevention and Intervention Strategies*, with Dr. Starr, other MCPS officials, and a [high school GSA leader](#) on the symposium's panel. PFLAG Metro DC attended with a table with information (including a [flyer](#) explaining the need for curriculum improvements and raising the issue during the questions and answer period (although Dr. Starr left before that period). In post-event discussions, it became clear that MCPS Department of Student Services (DSS) leaders agreed with us.

Then, before members of the Board were able to urge prompt action on health education curriculum changes, a new round of PFOX flyers – and Dr. Starr's public response to PFOX –

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dominated the discussion. Around the first of February 2012, [PFOX distributed flyers](#) in several high schools, and there were a number of parent and student complaints. Then, a few days after the distributions, Dr. Starr was asked about the flyers by a student [during a televised forum at Wootton High School](#), and responded as follows:

I find the actions of PFOX to be reprehensible and deplorable, but we are bound by law to enable non-profits to distribute fliers four times per year. We can't really do much about it unless we cut off all flier distribution. This group has figured out a way to use that law to spread what I find to be a really disgusting message.

(In addition to local Montgomery County coverage, this was also reported by the [Washington Post](#). See [here](#).)



The story quickly hit the national media. See [here](#) and [here](#).

The Board of Education immediately decided [to consider whether to cut off the flyer distribution program](#) and then [decided to investigate](#) how much the program was used before making a decision. See [here](#).

PFLAG Metro DC used the opportunity to point out that there was, in fact, something that MCPS could do other than end all flyer distributions: On PFLAG Metro DC's [blog](#) and in e-blasts, in Mr. Fishback's Letter to the Editor in the [Gazette](#), and in his [letters and testimony](#) to the Board of Education, PFLAG Metro DC explained that MCPS could and should add material to the health education curriculum that would rebut the PFOX message. The *Gazette* published a [letter](#) from another PFLAG Metro DC Board Member explaining why the PFOX message was so dangerous.

PFOX, of course, attacked Dr. Starr in a letter to the [Gazette](#). As did Peter Sprigg in an op-ed in the [Washington Times](#).

On March 15, a local television program, *News Talk*, had Mr. Fishback and Mr. Sprigg discuss the issues surrounding the PFOX flyer and message. In a spirited half-hour [debate](#) (which was then covered in some [local media](#)), the arguments of both sides were clearly set forth. A shorter version of the debate was illustrated in Letters to the Editor of the *Washington Post* by [Mr. Sprigg](#) and [Mr. Fishback](#), also in mid-March.

Through March and April, PFLAG Metro DC took the lead in working with the Southern Poverty Law Center (SPLC), the Equality Maryland (EQMD) Foundation, The Trevor Project, Rainbow Youth Alliance (RYA, the Rockville Open House to develop, produce, and [then distribute nearly 50,000 flyers in all 25 of Montgomery County's high schools](#). The considerable cost for printing of the flyers was defrayed by SPLC, EQMD Foundation, and PFLAG National. The distribution was done by a team of Montgomery County residents, including PFLAGers, Teachthefacts.org members, RYA members, and GSA sponsors. This effort received positive media coverage in the *Washington Post* (see [here](#) and [here](#)), and in the [Gazette](#). (Note that the

[PFLAG flyer](#) set forth the basic information that advocates can use in efforts in their own communities.)

A Board of Education committee did a survey of the MCPS schools, and discovered that the flyer program, while used widely in the elementary schools, was used only sparsely in the secondary schools. As a result of that survey, it decided, in June 2012, [to eliminate the flyer distribution program in the secondary schools](#). See also [here](#) and [here](#).

In May, PFOX continued its harassment of Superintendent Starr, filing a [complaint](#) against him with the Board of Education, alleging that he had violated the MCPS non-discrimination rules by his statements about PFOX that February. The frivolous complaint



was dismissed. And in December 2013, PFOX filed [similar complaints](#) with the federal Departments of Justice and Education; those complaints went nowhere.

We had hoped that this discussion about PFOX would help stimulate the school system to finally grapple with the curriculum. In addition to our continued advocacy, including a May 10, 2012 [package](#) to the Board President and the Superintendent, the Montgomery County Commission on Children and Youth, after conducting a symposium on the problems faced by LGBT youth in the County, invited Mr. Fishback and Ms. Kreps of the Rainbow Youth Alliance to address it. *See* [here](#). At the end of the meeting with Mr. Fishback and Ms. Kreps, the Commission [sent a letter to MCPS urging the curriculum improvements](#).

But the staff responses were variations of the responses made under the previous Superintendent, essentially declining to make or consider any changes. *See* [here](#).

What we discovered later was that the flyer dispute essentially absorbed all the oxygen, and that holdover bureaucrats from the ancient regime were still controlling the message. Our challenge was to figure out how to proceed.

One Board member privately explained that it would be easier to deal with the issue once the Maryland marriage equality referendum, which was up for a vote that November, had been won. Indeed, PFLAG Metro DC was part of the statewide coalition working on the referendum, and Mr. Fishback gave us visibility in a [WUSA television debate](#) with a conservative talk show host on the day that President Obama announced the completion of his evolution (for the video, *see* [here](#)), and in [rebutting](#) a prominent *Gazette* columnist.<sup>10</sup>

<sup>10</sup>Indeed, through this entire period, PFLAG Metro DC took advantage of opportunities to use local media to advocate on other LGBT issues and to foster a general atmosphere of understanding. *See*, for example, letters to the editor on [local candidates' support for civil marriage equality](#), [Fairfax County VA library decisions](#); testimony on [Montgomery County government contracting rules](#); and television appearances on ["reparative therapy"](#), [civil marriage equality](#), Exodus International Apps on Apple (*see* [here](#), [here](#), and [here](#) for the video), and [a local sports figure's statements about the sexual orientation of another sports figure](#).

So we focused our efforts on the Marriage Equality Referendum until the November 2012 [victory in Maryland](#). (In [Montgomery County](#), 66% of the voters approved Question 6, Civil Marriage Equality.)

We also attended a Board of Education candidate general election forum, and received confirmation from all the candidates (not only the two incumbents who won, and the winner of an open seat, but also the losers) that they substantively agreed with us.

It seemed clear that Superintendent Starr also substantively agreed with us, but we did not know

whether, with so much on his plate, that he had made sufficient progress in placing like-minded people in key administrative positions, thus removing bureaucratic impediments, to take the next steps; or whether, if there were still holdovers who shared the mind-set of the former Superintendent, Dr. Starr was ready to expend internal political capital to act.

## **JANUARY 2013 TO JUNE 2014: THE FINAL PUSH AND VICTORY**

So, after years of pressing for an adequate curriculum, getting close, and then being stymied, we approached 2013 with a combination of anticipation and trepidation. The question was whether this would be a priority for the Board and the Superintendent, and what kind of pressure, if any, would be needed to get movement.

Our friends at MCEA, who likely were better plugged into the internal MCPS dynamics, featured LGBT issues at its January 5, 2013, "Legislative Breakfast," attended by County politicians in advance of the upcoming General Assembly session in Annapolis. MCEA invited Mr. Fishback to attend. The Breakfast included an award to the Blake High School GSA for its "Allie the Ally" program, and the GSA sponsor mentioned the need for curriculum improvement in her presentation. There was ample opportunity for networking. Mr. Fishback brought up the curriculum issue with the new Board of Education President. And Mr. Fishback spoke at length with MCEA officials, following up with a [comprehensive e-mail to the MCEA executive director](#), laying out the history of the curriculum struggles, and noting the following:

At present, health teachers may address the [the question of whether being gay is an illness] only if asked, and they may not say anything regarding ["reparative therapy"], since the curriculum is so tightly scripted. As [a teacher from one of the high schools] pointed out to me at the Legislative Breakfast, we now have a bizarre situation in which guidance counselors and school psychologists may discuss these matters with students (as may individual teachers who students might speak with – like GSA sponsors), but the health teachers are severely limited in class.

From the discussions I have had over the years with the elected Board members, I am confident that every one of them agrees with the substance of the CAC/AAP/Commission recommendations. It may well be that key people in the MCPS administration -- all of whom, I believe, also agree with the substance -- are still scarred by the 2005 litigation and would prefer not to deal with the issue again. They may not fully understand that any

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possible legal impediments to further action were swept away by the 2008 decision of the Montgomery Circuit Court, affirming the right of MCPS to place information from mainstream medical professional associations in the health education curriculum.

I believe it is time for Board members and MCEA leadership to speak with Dr. Starr.

At a subsequent meeting with the new Board of Education President Chris Barclay, who had

been supportive, but not, as far as we could tell, been an activist within the Board on the issue, Mr. Fishback made it clear, as gently as he could, that he had gone out of his way to be supportive of the Board for many years, even when it did not take the steps that it knew were right – and that his patience was about to run out if action was not taken soon. The Board President told Mr. Fishback that he planned to bring the issue up with his fellow Board members and with the Superintendent in the near future. *See* the follow-up email to Mr. Barclay [here](#).

Mr. Fishback continued to speak with other community leaders, including Bonnie Cullison, a former MCEA President who was now a member of the Maryland House of Delegates, conveying the need for prompt action and suggesting that he would go public with his concerns in a very vigorous way if no action was forthcoming.

Fortunately, we began to see movement for the first time since 2007. In late April 2013, an MCEA staffer asked Mr. Fishback for a summary paper on why action could be taken now, [which Mr. Fishback provided](#). Soon thereafter, Mr. Fishback was advised by Board insiders that a resolution to our liking was in the offing.

On May 14, 2013, Board Vice President Patricia O’Neill, who had been a vocal supporter from the beginning of the effort in 2002, introduced Resolution 247-13, providing that

the superintendent and his staff perform a comprehensive review of the Grade 8 and Grade 10 Health Education Curriculum, benchmarking with other districts, reconsider the requirement for the scripted lessons and the recommendations from the Citizens Advisory Committee on Family Life and Human Development [CAC] report, and bring to the Board of Education proposed changes so that they may be in place no later than Fall 2014.

The resolution passed unanimously. *See* [here](#).

A year later, on May 13, 2014, the Superintendent presented his [new health education framework](#). That [framework](#) wisely moved up the first discussions of LGBT matters to 7<sup>th</sup> Grade, eliminated the tight scripting, and specifically noted at p. 6 the usefulness of the “[American Psychological Association’s Answers to Your Questions for a Better Understanding of Sexual Orientation & Homosexuality](#),” which referenced the longstanding findings of every mainstream American medical and mental health professional association regarding sexual orientation and gender identity, including the propositions that being gay is not an illness and that so-called “reparative” or “conversion” therapies are dangerous and ineffective. PFLAG Metro DC gave the new framework its [full support](#).

The Board [unanimously decided](#) to begin a 30-day public comment period, and scheduled a final vote for June 17. PFLAG Metro DC alerted supporters to the comment period. The overwhelming percentage of the comments were positive. *See* Appendix B, pp. 48-53 of the Superintendent’s [final report](#).

What apparently had occurred was that the Superintendent and Board members reached a consensus that the best way to proceed was to have the Board send a clear message to the Administration that the Board wanted a revised approach to health education classes and sexual orientation and gender identity, eliminating the strait jacket of tight scripting and including the CAC substantive recommendations. This portended a complete victory.<sup>11</sup>

In the ensuing months, the relevant curriculum staffers did all the right things. They consulted with the new community advisory committee (made up of members of the most recent CAC) and took into account the background resources used by the Department of Student Services and background resources Mr. Fishback provided to a member of the new community advisory committee. They engaged in discussions with students and health teachers, who uniformly criticized the scripting as pedagogically unsound.

At the Board's [June 17, 2014 meeting](#), Mr. Fishback [presented](#) PFLAG Metro DC's support and thanks, while Peter Sprigg of PFOX and the Family Research Council presented a [statement in opposition](#). The Board then voted unanimously to give final [approval](#). The changes went into effect in September 2014 – this time without any legal challenge.<sup>12</sup>

This action brought to a successful conclusion a dozen years of work by members of PFLAG Metro DC and others to bring this wisdom into the middle and high school health education curriculum.<sup>13</sup>

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PFLAG Metro DC is happy to assist anyone in developing their own strategies and tactics. Advocacy Chair David Fishback may be reached at [fishbackpflag@gmail.com](mailto:fishbackpflag@gmail.com).

<sup>11</sup> What factors led to this action, after so many years of failure to make improvements after June 2007? One may well be that the recalcitrant holdovers from the previous administration had retired or had moved to different positions, so no longer presented an internal bureaucratic problem. We never had the sense that any of these people opposed the substance of what we proposed, but, rather, that they were so afraid of another lawsuit that they felt it was best not to take up the issue again. For them, and perhaps for members of the Board, as well, “the time was just not right.” And it may well be that the Montgomery County results in the Civil Marriage Equality referendum assured them that now it was safer to act. There is a school of thought that suggests that failure to take any steps to improve the curriculum between 2007 and 2013 was driven by resource allocation issues – *i.e.*, the reluctance to risk going to the expense of litigation a third time. While, from the outside, it is hard to see how that litigation concern would be any less in 2013 than following MCPS's resounding court victory five years earlier in 2008, that was how some saw it.

<sup>12</sup> In anticipation of a possible legal challenge like the ones in 2005 and 2007, Lambda Legal and Jon Frankel again agreed to represent PFLAG Metro DC if needed, and we arranged with the Board's new General Counsel Josh Civin to assist in the defense of any new lawsuit. Fortunately, that was not necessary.

<sup>13</sup> The baseline resources now being used by the Montgomery County Public Schools for the secondary school health curriculum on LGBT matters are the American Psychological Association's *Answers to Your Questions For a Better Understanding of Sexual Orientation & Homosexuality* <https://www.apa.org/topics/lgbtq/orientation.pdf> and its *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* <https://www.apa.org/topics/lgbtq/transgender.pdf>

## EPILOGUE – JUNE 2024

### MCPS

The successful resolution of the secondary school health education curriculum was a breakthrough in how MCPS dealt with matters of sexual orientation and gender identity.

In May 2015, Mr. Fishback approached MCPS regarding issues of gender identity, and found that the school system was in the process of drafting guidelines for the school system. Not only were they on the right track, but when they were given feedback on their draft from stakeholders, they incorporated nearly all of the suggestions. While initially the Guidelines were only contained in an email to principals, Metro DC PFLAG was able to use the Guidelines to assist families in dealing with their local schools. The Guidelines were further buttressed in 2016, when the [Obama Administration](#) issued useful guidance to schools nationwide, and the [Maryland State Board of Education](#) issued useful guidelines (which were incorporated into future iterations of the MCPS Guidelines, as well) – and we successfully urged MCPS to post the Guidelines on its website. That easy availability made it infinitely easier for families to get the support they needed. The 2024 version of the Guidelines may be found [here](#). By all accounts, the Guidelines are working well. See, e.g., [here](#). (A challenge to the portion of the Guidelines that assured student privacy was challenged in federal district court. The district court rejected the challenge, an appeal to the U.S. Court of Appeals for the Fourth Circuit was dismissed, and, on May 20, 2024, the U.S. Supreme Court [denied plaintiffs’ petition for a writ of certiorari](#), thus ending the litigative challenged. See more below under **LITIGATION**.)

The growth of Gender & Sexuality Alliances (the names used for such havens for LGBTQ+ students changed over time) was very significant. Many GSAs were initially organized by two PFLAG moms, Stephanie Kreps and Candice Haaga. By the start of the 2022/2023 school year, MCPS reported that all 65 of its secondary schools had some form of a GSA or LGBTQ-oriented Club.

In 2018, the Board of Education named a new elementary school after civil rights pioneer and openly gay man Bayard Rustin. See [here](#). (The parent who led the successful campaign, Mark Eckstein, became Metro DC PFLAG Co-Chair for Maryland Advocacy.)

In 2019, MCPS held its first Pride Town Hall, which has now become an annual event. See [here](#).

MCPS Pride was founded in 2019 as an on-line “place for different groups and individuals doing LGBTQ outreach at MCPS to interact with each other to provide central sources of support and information.”

In 2020, MCPS announced that it was developing a high school elective in LGBTQ history. See [here](#) and [here](#). The course was offered in twelve of its high schools in the 2021-22 school year, with more expected in the future. See [here](#).<sup>[1]</sup>

In 2022, MCPS, using a rigorous review process, approved added six LGBTQ-inclusive books to

its supplemental curriculum for pre-K through fifth grade, with one new book for each grade level. (In 2023, three parents sought a federal preliminary injunction barring implementation of the MCPS policy to not allow parents to opt-out their children for religious reasons; a federal district court denied the preliminary injunction, and the U.S. Court of Appeals for the Fourth Circuit [dismissed the appeal](#) on May 15, 2024. See more below under **LITIGATION**.)

In short, MCPS policies have become a model for the nation. Readers can find details on the MCPS website page [For Students and Staff: LGBTQ+ INFORMATION](#).

**IMPORTANT NOTE ON SOURCE MATERIAL: Some of the hyperlinks to iterations of MCPS documents in links cited in this Handbook may no longer work, but updated versions of those documents may be found at [www.mcpsmd.org](http://www.mcpsmd.org).**

This progress took place in the shadow of the anti-LGBTQ+ policies of the Trump Administration and politicians across the nation – although not, fortunately for us, in Maryland. Still, particularly in the months after the 2016 presidential election, many in our Montgomery County community were afraid. Metro DC PFLAG and other groups worked hard to assure the community that the progress we had made would not be turned back. See [here](#), [here](#), [here](#), [here](#), and [here](#). And we continue to assist resisting efforts to undo the progress that has been made.

## **BOARD OF EDUCATION ELECTIONS**

Since 2018, Metro DC PFLAG has sent questionnaires to all candidates for the Montgomery County Board of Education in advance of the primary elections. These questions and responses (linked [here](#)) helped to educate candidates, to find out which candidates were allies, and to identify which candidates did not support the advances we had achieved. See, for example, [here](#), [here](#), and [here](#).

In every election, the ultimate winners in the November general election were allies. (In the May 14, 2024, primary election, in which there were separate three seats up for election, all of the top vote getters are allies, and all but one of those who made it to the general election are allies. In the three 2024 primary contests, an average of 75% of the vote went to allies.)

## **LITIGATION**

Metro DC PFLAG also used its experience in litigation brought against progressive actions taken by other school systems. In 2017, the Frederick County Public Schools (FCPS) in Frederick County (just north of Montgomery County) enacted Gender Identity Guidelines patterned after the MCPS Guidelines. See [here](#). A lawsuit was brought by a local right-wing politician named Dan Cox on behalf of an anonymous plaintiff seeking the repeal of the Guidelines. Metro DC PFLAG offered to help FCPS, and we were referred to FCPS private counsel. Once again, Jonathan Frankel stepped up and he and David Fishback worked with the private counsel to fashion a motion to dismiss, which led Mr. Cox [to drop the lawsuit rather than respond](#). Five years later, Mr. Cox secured the Republican nomination for Governor, but was overwhelmingly defeated by his Democratic opponent, Wes Moore, who is a staunch ally.



In late 2020, a lawsuit was brought against MCPS challenging the portion of the Gender Identity Guidelines which allowed students to withhold their gender identity status from their parents or guardians. Metro DC PFLAG, represented *pro bono* by Cooley LLP, Lambda Legal, and the National Center for Lesbian Rights, filed an *amicus* brief in federal district court, setting forth the importance of the challenged provision for the health and safety of many students. In the summer of 2022, the district court dismissed the case, relying heavily on the PFLAG *amicus* brief. See [here](#) and [here](#).<sup>[2]</sup> Plaintiffs appealed, and PFLAG filed a similar *amicus* brief in the United States Court of Appeals for the Fourth Circuit. The appeal was dismissed by the Fourth Circuit, and on May 20, 2024, the United States Supreme Court [denied plaintiffs’ petition for a writ of certiorari](#), thus ending the litigative challenged.

As noted above, in 2023 three parents brought suit against MCPS, arguing that they should be permitted to opt their children out of reading lessons that included books that included LGBTQ+ characters. See [We Can’t Opt-Out of Diversity in Our Schools and Communities](#), published in *Maryland Matters*. The parents, represented by a national anti-LGBTQ+ legal organization, sought a preliminary injunction to block MCPS from not allowing such opt-outs. In August 2023, the federal district court [denied the injunction](#). When the plaintiffs appealed the denial of the injunction, Metro DC PFLAG worked with PFLAG National, Lambda Legal and Cooley LLP to secure [the filing of an amicus brief supporting MCPS](#). On May 15, 2024, the Fourth Circuit [affirmed](#) the district court.

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As strong as political and popular support has been in Montgomery County – or maybe because of it – one of our elementary schools has been subjected to serious threats arising from a Twitter campaign by an anti-LGBTQ+ group. See [here](#). And homophobia and transphobia are by no means a thing of the past. See [here](#). So our work defending LGBTQ+ students (and staff) must continue. We hope our experience will be helpful to others.<sup>[3]</sup>

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<sup>[1]</sup> Before publication on the website, we (Metro DC PFLAG) discovered instances where a principal was not aware of the Guidelines, and thus was resistant to requests from families. We forwarded the Guidelines to families, who then presented the Guidelines to principals – who then were cooperative. Once the Guidelines were on the website, they could be easily-accessed by families and staff. This, we discovered, made implementation much easier.

<sup>[2]</sup> This *amicus* brief was similar to one developed for PFLAG (at the best of Metro DC PFLAG) by the same counsel in support of the Commonwealth of Virginia, defending against a suit challenging protections at school for transgender students. That suit was [dismissed](#) in the summer of 2021.

[3] We thank Metro DC PFLAG Board Member Kira Prin for her assistance in getting this update of the 2015 Handbook published on the Metro DC PFLAG website, [www.pflagdc.org](http://www.pflagdc.org) And we again thank Jim Kennedy of TeachtheFacts.org for documenting so much vital information on the TTF Vigilance Blog and Resource pages – as well as his superb advocacy.