

# Chapter 8

## Protecting Students' Sexual Identity in Private Schools

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### Introduction

As lesbian, gay, bisexual, and transgender (LGBT) people gain more social acceptance in the United States, the recognition of their identity as queer people is accompanied by legal victories that have expanded civil liberties for LGBT people. These legal victories guarantee LGBT people equal protection comparable to their straight counterparts in more areas than ever before in the history of the United States (see, for example, *Obergefell v. Hodges* 2015; *U.S. v. Windsor* 2012; *Romer v. Evans* 1996). However, despite the growing acceptance of homosexuality and gender variance, tension between civil rights for LGBT people and religious liberties remains strong. Often, children, whose parents have control over their education and religious formation, are caught in the tension between religions that view homosexuality as a sin and a culture that recognizes the natural existence of homosexuality among humans and the legitimacy of same-sex relationships.

While the government may be granting more rights to LGBT people, many institutions remain staunchly opposed to these changes. When a school is not run by the government, but by a private institution, it is the institution's values that largely dictate students' lives. In the United States, for instance, the Catholic Church has a great deal of influence over the education of children through the operation of Catholic schools. Catholic schools originated as a reaction to the Protestant influ-

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ence in state-sponsored schools and provided a place where Catholic parents could send their children to learn their religious traditions and beliefs (Moreau 1997). While Catholic schools are no longer as popular as they were in the 1960s, focus on the benefits of attending Catholic school in the 1970s and 1980s lead many parents, both Catholic and non-Catholic, to choose this private schooling option as a way to give their children an educational advantage (MacGregor 2013). With a Catholic education, however, comes Catholic teaching on many social issues, including issues of sexuality. Although this is not unique to Catholic schools, Catholic schools provide a compelling example of conflict between religion and the LGBT community.

At a Catholic school, where religious doctrine deems homosexuality a sin, being an openly gay student, or even a child of gay parents, can lead to discrimination (Baumann 2010). Often, LGBT students who have attended Catholic school report feeling disconnected from their family, peers, and religion during their teen years (Maher 2007). This is often a result of shame and fear surrounding their sexual or gender identity, whether they are open about this identity to others or not. While it is important to respect religious freedom and parents' rights to influence their child's religious formation, sexual minorities who are not yet 18 need special protections into secure their psychological and physical well-being.

Although many schools run by religious organizations may struggle with this issue, the conflict between gay students and Catholic schools should be given special consideration given the prevalence of Catholic schools. In the 2014–2015 school year, there were 1,359,969 students enrolled in Catholic elementary and middle schools in the United States and 579,605 students enrolled in Catholic high schools. These schools are not exclusive to students who are raised in the Catholic faith. In the 2014–2015 school year, non-Catholic students represented 16.9 % of the total enrollment in Catholic schools. There are many reasons that parents may choose to send their children to Catholic schools that may not be purely religious. Whatever the motivation that parents have, the influence that Catholic schools have in the United States is significant (McDonald and Shultz 2015). The issues are likely to become even more pronounced as states have adopted vouchers to enhance educational opportunities for students from failing schools; and these vouchers permit the use of governmental funds to attend religious schools.

To understand the reasons that the LGBT students at Catholic schools need special consideration, it is important, first, to understand the heightened risk that LGBT teens face in any school and the religious dogma that may make some Catholic schools especially resistant to providing support for LGBT students. Second, it is important to examine the legal implications for schools, administrators, and parents when LGBT teenagers or parents seek out special accommodations to protect their right to live openly and honestly as a sexual minority. Finally, this chapter will present possible legal reforms that may address some of the most pressing issues that currently face LGBT students attending Catholic schools.

## **LGBT Youth and the Psychological Consequences of Inequity**

### ***Prevalence of LGBT Youth***

Although they are minorities in regard to their sexual orientation and they may choose to keep their sexual identity private, lesbian, gay, and bisexual students can be found in most student bodies. Sexual orientation refers to both the emotional and physical arousal that a person experiences around people of the same sex, opposite sex, or both (Adolescent Sexual Orientation 2008). Although sexual orientation is about sexual attraction, it is not necessary for a person to be sexually active in order to have a sexual orientation and teenagers may identify as gay without ever having touched another person in a sexual manner (Adolescent Sexual Orientation 2008). Most LGB people begin to question their sexuality before entering secondary school. According to one study done by the Pew Research Center, the median age that LGB people reported first questioning their sexuality was at 12 years old and the median age they say they knew for sure that they were not completely heterosexual was 17 (Pew Research Center 2013). Even though LGB people first disclose their sexual orientation to another person at different times, many of them question their sexuality or identify as LGB before leaving high school. For this reason, it is important to consider the needs of LGBT youth before they reach the age of the majority. Although many people view sexual identity as an adult issue, many people who have not yet reached the age of majority grapple with issues surrounding their sexual identity.

Gender identity is an entirely separate issue from sexual orientation. Although transgender people may also identify as “queer”, they are a unique subset of the LGBT community. According to the American Psychological Association, transgender youth, “consistently, persistently, and insistently express a cross-gender identity and feel that their gender is different from their assigned sex” (Mizcock et al. 2015, p. 1). Although it is difficult to know certainly what percent of the population is comprised of transgender people, transgenderism among youths may be as high as 0.5 % and have been documented in various cultures throughout history. Transgender teens may choose express their gender identity in a myriad of different ways, may not identify as one gender at all, and have needs that are different from their cisgender peers (see Mizcock et al. 2015).

### ***Religious Schools and LGBT Students***

Catholic schools have always had, and will continue to have, LGBT students in their classrooms. Although some people might think that the easiest solution to resolve the conflict that exists between Catholic schools and LGBT people is for LGBT students or parents to choose a different school, extracting LGBT students or

attempting to send them all to schools that are LGBT-friendly will do little to protect LGBT students. First, there is no way for parents, administrators, or students themselves to definitively know who will grow up to identify as LGBT and who will not. Furthermore, it is, of course, unrealistic to think that a student could immediately change schools once he or she realizes that he or she has a sexual orientation that might conflict with official religious teaching. Even if this was possible, a student might be LGBT and still want to practice the faith that he or she has grown up with or may choose to remain celibate. Inevitably, there will be LGBT students at Catholic schools and those students will have different needs than their straight peers.

Finally, it is not mutually exclusive to be Catholic and either LGBT or an ally of the LGBT community. Within the Catholic Church, there is a history of dissention among congregants on the Church's teaching on homosexuality. While the Vatican may be quick to stifle these opinions, it has not stopped many Catholics from disagreeing with the Church's official teaching. This means that teachers, administrators, parents, and students may either identify as LGBT or be fervent allies, while still adhering to the Catholic faith (Callaghan 2008).

### ***Risks Associated with Being an LGBT Adolescent***

In any school, LGBT students are at a heightened risk for bullying and harassment. The 2011 National School Climate Survey found that 2 out of every 3 secondary LGBT students surveyed said they felt unsafe in school because of their sexual orientation and over half of them reported that they had heard homophobic remarks from school personnel (Marshall et al. 2015). A school environment can be a very hostile place for an LGBT student and can significantly hinder the learning process as well as pose long-term mental health problems for teenagers. These problems at school can affect almost every aspect of an LGBT teen's life and last beyond the four years that LGBT students spend in secondary school.

For instance, one of the biggest problems LGBT teens face in school is bullying. Bullying contains three main elements: First, there must be behavior that is meant to harm or disturb another person. Second, there must be repetition of the behavior and, finally, there must be a perceived power imbalance between the bully and the bullied (Waldman 2012). In instances of LGBT bullying, the straight actor is usually presumed to be more powerful within the social hierarchy of a high school, possibly because of a general acceptance that being LGBT is inherently worse than being straight or because one student is simply more popular than the other. This imbalance in power can be especially dangerous in schools where teachers, administrators, or other school leaders either implicitly or passively reinforce the belief that being straight is superior to being queer, and inadvertently underscore the power imbalance. Hence, schools, especially those with policies that are anti-LGBT, can unintentionally support bullying without meaning to do so.

The consequences of the bullying and rejection for LGBT youth are often psychological damage and underperformance at schools. Adolescents who experience bullying are more likely to suffer from depression, anxiety, and low self-esteem than their non-bullied peers (Marshall et al. 2015). This can often lead to suicide and substance abuse. For instance, a study done by the Human Rights Campaign of 10,000 thirteen to seventeen year-olds who identify as LGBT found that LGBT youth are twice as likely as their straight-identified peers to experiment with drugs and alcohol (Human Rights Campaign 2014). The documented stress that LGBT students face often manifests itself in substance abuse problems.

Bullying and harassment also have documented academic effects and can lead to underperformance at school for some students. Peer victimization can induce higher levels of academic burnout and cause stress that lowers a student's ability to perform academically (Morin et al. 2015). This is true for LGBT students especially as evidenced by the fact that LGBT students often underperform academically relative to their straight peers and LGBT high school students have a much higher rate of truancy than straight high school students (Liboro et al. 2015). LGBT students are no less gifted or intelligent than their straight peers, but the stressors that they face at school increases the chances that they will avoid school and consistently underperform in academic settings.

Despite the dangers that students face, there are ways to mitigate the effects of bullying for LGBT youth. Research suggests that having supportive school administrators and personnel for LGBT youth can keep lessen the mental health impairments caused by bullying and can lessen bullied students risk for severe depression and suicide (Marshall et al. 2015). Connectedness with peers and supportive teachers can serve as a crucial protective factor against the negative side effects of bullying (Morin et al. 2015). However, connectedness and community support is limited in how much it can help victims of extreme bullying from internalizing peer victimization (Morin et al. 2015). Knowing how high the consequences of bullying can be, it is important for schools to have supportive teachers, administrators, and personnel that can help to ease some of the burden that students might face. At Catholic schools, where there are often explicit anti-LGBT policies, finding allies among adults might be especially difficult for students in need of support and connectedness.

## **Legal Issues LGBT Students and Catholic Schools**

### ***Catholic Schools and Religious Views on Homosexuality***

Although the Catholic Church has taken a definitive stance on homosexuality, Catholic Social Teaching has led to a wide variety of different attitudes among adherents in regard to LGBT issues, depending on the culture and norms of the followers. On one hand, Catholic Social Teaching emphasizes that its followers

should seek out the least among the human race and care for the poor and marginalized. However, Catholic schools are by nature exclusive in that they can admit or accept students for any number of reasons. This paradoxical acceptance and exclusion can be illustrated by the Catholic Elementary Schools of the 1960s, which had almost exclusively Catholic students, but had much diversity in terms of socioeconomic status and ethnic background. Although the schools were almost exclusively designed to benefit Catholic children, discrimination among immigrants or poor people was not prevalent. Catholic schools have a complicated legacy of service to others and exclusion, depending on the time and location of the school (Scanlan 2008).

This apparent contradiction can be explained by one of the most important tenants of the Catholic faith, the idea that humans are all made in the image of God. Catholic Social Teaching encourages its followers to recognize an inherent “sameness” between all people. That is, for better or worse, we are all equal in the eyes of God. This communion between all people encourages adherents to be inclusive of the poor and the marginalized. It is impressed upon Catholics to see the image of God in all others, despite whatever sins they might have committed or the disparate situations that they encounter (Keiser 2015).

However, this belief in a unifying “sameness” can also be very damaging for anyone who lives in a way that deviates from an expected social norm, such as being in a same-sex relationship or identifying as LGBT. When it comes to the LGBT community, the message of the Church is clear. The Church says:

Some families have members who have a homosexual tendency. In this regard, the synod fathers asked themselves what pastoral attention might be appropriate for them in accordance with Church teaching: “There are absolutely no grounds for considering homosexual unions to be in any way similar or even remotely analogous to God’s plan for marriage and family.” Nevertheless, men and women with a homosexual tendency ought to be received with respect and sensitivity (Synod of Bishops 2015, n. 130).

Despite shifts in societal attitudes towards LGBT people, the Church’s position on homosexuality has remained largely unchanged. Homosexuality is regarded as a sin. Acting on homosexual feelings, such as having a homosexual experience, or even having lustful thoughts about another of person of the same sex is something that should be confessed and repentance should be requested. In fact, the Church regards any sexual activity outside of marriage or sexual activity from which a child could not result as sinful activity. Although other people can confess and receive absolution for their sin, LGBT people who refuse to repudiate their relationship are living constantly in sin. However, absolute rejection of homosexual people is not an acceptable way of dealing with the “problem” of homosexuality and the Church affirms the dignity of LGBT people.

The Catholic Church in the United States will likely not change its teaching on homosexuality in the near future. Pope Francis famously said in July of 2013, “If someone is gay and searches for the Lord and has good will, who am I to judge?” (Hale 2015). Although Pope Francis, who was anointed Pope on March 13, 2013, is credited with taking a liberal stance on homosexuality and has been more open than

his predecessors to homosexuals in the Catholic Church (BBC News 2013), he still has firmly stated that he is against same-sex marriage and does not condone homosexual behavior (Ennis 2015). While this move from absolute condemnation is a positive step for LGBT people, it still does not encourage LGBT people to live lives that fully embrace their sexual identity, nor does it allow for the total dogmatic change that would be necessary for LGBT people to be fully accepted by the Church.

It is clear that the official view of homosexual activity as sinful has not changed in the hierarchy or law-making body of the Catholic Church, but that does not mean that all Catholics have static views that are consistent with the Vatican. In fact, what has changed quite a bit is the cultural acceptance of LGBT people in the United States, even among Catholics. According to a study done by the Pew Research Center, 46 % of religious Catholics and 62 % of cultural Catholics say that the Catholic Church should recognize same-sex marriages (Pew Research Center 2015). Acceptance of homosexuality and same-sex marriage is even more prevalent among young Catholics. In 2014, 85 % of Catholics aged 18–29 said that homosexuality should be accepted and 75 % said that they support same-sex marriage (Lipka 2014). It is apparent that identifying as a Catholic and supporting homosexuality are certainly not mutually exclusive for those practicing in the United States.

In the United States, people who identify as Catholic fall on a wide spectrum of beliefs about homosexuality. As religious liberty becomes a more contentious issue in Catholic schools, it is worth noting that, for Catholic young people, their religious beliefs may call them to be more inclusive than to condemn LGBT people and it is important to recognize the legitimacy of that viewpoint. When discussing religious liberty at Catholic schools, the views of the administration, faculty and parents are often given more weight or are seen as more important. However, high numbers of adolescents report having religious views and say that those views are very important to them (Levesque 2002). Simply because a person is under the age of 18 does not mean that they should not be allowed to practice their views the way that they choose.

The statistics on attitudes towards homosexuality among Catholics also suggest that views on homosexuality among Catholic Americans are more culturally than religiously motivated, since the Church's stance on homosexuality has remained largely unchanged, but society in the United States has experienced a dramatic shift in attitudes towards homosexuality, which is reflected in the attitudes of Catholic Americans towards homosexuality. Between 1973 and 2006, a study by the University of Chicago found that the percent of American adults who found homosexuality unacceptable had dropped from 88 to 40 % (Searcy 2011). There are many possible explanations for homosexuality's becoming socially acceptable in the United States than it was half a century ago, but it is clear that it has not been a religious renaissance that has brought about this change. Rather, cultural influences influence religious views on a variety of topics.

There is a strong argument that religious schools do promote a certain religious agenda. Attending religious schools have been shown to have a lasting effect on the

way that students incorporate religion later in their lives. However, it is important to consider that community values may be even more important than religious education in promoting a religion. Therefore, religious education is not a definitive factor in determining how a person will integrate religion in the rest of their lives. But, it is important to consider the consequences of religious education and the role that it plays in the United States (Levesque 2002).

### *Government Funding of Catholic Schools*

As such, how we support and fund Catholic schools is significant, both for its implications on policy and for its legal relevance. Despite generally having wide discretion on what rules they would like to impose on their students, private schools may forfeit some of their autonomy when they choose to accept public funds. Whether Catholic schools should receive public funds, and for what sorts of programs, has long been a source of debate in the United States. However, the Supreme Court has ruled that allocating some public money to Catholic schools is not a violation of the Establishment Clause of the First Amendment, so long as the money does not specifically promote one religion over another (*Zelman v. Simmons-Harris* 2002). However, should Catholic schools choose to receive public funds, they invite more governmental control over their operation (McCauliff 2005).

Public funding for private schools has changed dramatically in the past 100 years. In 1941, 46 state constitutions specifically prohibited the allocation of public funds for schools run by religious organizations. However, many states were still providing public funds for the operation of Catholic schools that would have otherwise been forced to shut their doors. In 1940, the Indiana Supreme Court, for instance, found that it was not a violation of the state constitution for public funds to pay for teachers' salaries at Catholic schools under the theory that the curriculum of Catholic schools was so similar as to make them essentially public schools (Yale Law Review 1941).

Since the 1980s, the Supreme Court has moved away from the prohibition of providing funds for religious schools (Laycock 2009). Some would argue that allocating public funds for Catholic schools runs contrary to the Establishment Clause of the United States Constitution which states that, "Congress shall make no law respecting an establishment of religion." (U.S. Const. Amend. I). At the time that this amendment was implemented, the Roman Catholic parochial school system was not in place, so it is impossible to know for sure what the intent of the drafters was in regards to Catholic secondary education, but it definitively did not refer to a prohibition on funding for Catholic schools. Proponents of "market-based separationism" argue that, if equal opportunities for funding are all available to all religions or secular institutions and that subsidies are formally neutral, there is no violation of the Establishment Clause (McCauliff 2005).



## *Students' Rights at Private Schools*

Courts have established, clearly, that LGBT students in public schools have many rights guaranteed to them by both federal and state laws. However, many of these rights have been established based on the fact that schools and public school administrators function as state actors who are paid with public money. Therefore, the question that remains is which rights can also be transferred to students who attend religious or private institutions. The fact that students, or more likely their parents, choose to enroll in Catholic schools makes it less likely that students will be guaranteed rights that are in conflict with a religious school's policy.

In general, courts give Catholic and other private schools wide discretion in their ability to make and enforce rules that their students must follow. Private schools can dictate a variety of rules that students agree to follow by enrolling in the school. For instance, in *Gorman v. St. Raphael Academy* (2014), "an exemplary student" at St. Raphael Academy was threatened with expulsion because he refused to cut his hair. Russell sued for breach of contract and sought injunctive relief which the Supreme Court of Rhode Island refused to grant. The court found that it was perfectly legal for a private school to enforce whatever rules it wanted so long as the rules did not violate any laws.

Catholic schools have been given similar discretion in Federal Court. In *Silva v. St. Anne Catholic School* (2009), three sixth-grade students and their parents alleged that St. Anne violated Section 1981 and Title VI by implementing an English-only rule at the school. Adam Silva, a student at St. Anne's, refused to sign an agreement saying that he would only speak English at school. The United States District Court of Kansas found that the school's English-only rule was not an adverse action and had a legitimate, nondiscriminatory basis. Private schools are given broad discretion over how they want to run their schools, what rules they want to implement, and who they would like to accept into their schools.

However, this discretion given to private schools is not absolute or without limitations. In *Runyon v. McCrary*, the United States Supreme Court held that it was a violation of federal law for private schools to deny admission to African-American students based solely on their race. Specifically, the Court found that private schools had violated 42 U.S.C. § 1981, which finds that all United States citizens have an equal right to enter into contracts, regardless of race. It is worth noting that the case also specifically stated that the case did not address whether private schools could selectively admit students based on sex or religious affiliation because there was no specific statute regarding these groups of people. However, private schools do not have complete freedom to discriminate and can be regulated by the state or federal government (*Runyon v. McCrary* 1976).

These cases illustrate that private schools have the legal space to be selective or discriminatory in selecting the students that they accept so long as they are not in violation of a state or federal law. For LGBT students, this is important because private schools may decide to not follow a code of conduct that protects homosexual activity; they can use it as a valid reason to prohibit a student from entering a

school or for expelling them. Without special protection, similar to that provided by 42 U.S.C § 1981 in regards to race, LGBT people are vulnerable to discrimination in Catholic schools.

### ***Protection from Harassment and Discrimination Based on Sexual Orientation or Gender Identity***

Aside from access to Catholic schools, there is a wide array of other ways that LGBT students are unequal as compared to their straight peers in Catholic schools. This includes everything from sex education, school dress codes, and who to take to prom. However, the implications of facing harassment and abuse pose a serious barrier to equality for LGBT students. The grounds on which LGBT students can seek remedies for harassment in private schools may vary based on how the school is funded and the degree of harassment that the school is facing.

Federal courts have often recognized a cause of action for students who have experienced harassment and discrimination based on sexual orientation as a violation of a student's 14th Amendment right to Equal Protection under the law. For instance, in *Nabozny v. Podlesny*, a high school boy from Wisconsin sued his school district under 42 U.S.C. § 1983, alleging that his rights of equal protection and due process had been violated. The boy, Nabozny, was routinely physically abused and assaulted by his classmates because of his sexual orientation and was largely ignored when he reached out to administrators for help. Although the Court held that his Due Process Rights were not violated, the Seventh Circuit ultimately held that Nabozny's Equal Protection rights were violated on both the basis of his gender and his sexual orientation.

Instead of merely finding that Nabozny was treated differently than his female peers, and thus was discriminated against just based on his gender, the Court specifically found that Nabozny was treated differently based on his sexual orientation. The Court said:

Our discussion of equal protection analysis thus far has revealed a well established principle: the Constitution prohibits intentional invidious discrimination between otherwise similarly situated persons based on one's membership in a definable minority, absent at least a rational basis for the discrimination. There can be little doubt that homosexuals are an identifiable minority (*Nabozny v. Podlesny* 1996, p. 457).

The seventh circuit clearly recognized that school administrators could be held accountable for treating students differently based on their sexual orientation and that the school's failure to implement their anti-harassment policy for a gay student violated his constitutional rights. Although the Supreme Court has never ruled that a peer harassment based on sexual orientation violate the Equal Protection Clause, this ruling is generally applied by other Federal Courts. (See, for example, *Flores v. Morgan Hill Unified School District* 2003; *Gay-Straight Alliance v. Visalia* 2001; *Montgomery v. Indiana School District*, 2000). Whether this same ruling could be

applied to private schools depends on whether the school receives federal funds or whether they were independent of government funding.

### ***Protection for LGBT Students from Being “Outed” Without Consent***

Another crucial issue that is unique to LGBT students is whether their sexual orientation should be exposed to others, including their parents. The Human Rights Campaign defines outing as, “Exposing someone’s lesbian, gay, bisexual or transgender identity to others without their permission. Outing someone can have serious repercussions on employment, economic stability, personal safety or religious or family situations” (Human Rights Campaign 2015, p. 1). It is important to note that “outing” is not simply exposing someone’s sexuality, but doing it without their consent. This can be especially dangerous for children of religious parents who may react very negatively. In some instances, teens who are outed may even be at risk for being thrown of their homes by their families. Because so many LGBT children experience violence, rejection, or disapproval from religious family members, they are more likely to hide their sexuality or to attempt suicide (Maher 2007). Whether a school, administrator, or a teacher has the right to out a student is critical.

### ***Parental Rights of Children of LGBT Students***

Attitudes of Catholic parents with LGBT children can vary drastically. For instance, there are organized groups of Catholic parents who advocate for their queer children actively speak out against the Church’s treatment of LGBT children. They are proud of their queer children and want to see a space carved out for them in the Catholic Church. However, these groups only seem to underscore the rejection that the Church has exhibited to LGBT teens and their allies (Fortunate Families 2015).

### **Reforming Legal Responses**

There are so many different issues facing gay youth in Catholic schools that it is impossible to say that there is just one solution that could put gay youth on equal footing to their straight peers or to ensure that they have the exact same rights as their straight peers. For this reason, a multi-faceted approach, addressing some of the most important issues, such as harassment, discrimination, and need for supportive communities is most crucial. Other issues, such as taking same-sex dates to

prom, sex education, and teaching LGBT history, are also important. However, the most important issues are addressed below.

### *Supporting Gay-Straight Alliances*

Deciding how to ensure that safe spaces are being provided for LGBT students while honoring the religious views of the Catholic Church and remaining loyal to the First Amendment is not any easy proposition. Teachers, administrators, and other school personnel should not be forced to violate their own values. However, just as the beliefs of the faculty and staff of schools should be honored, so should the values of the students who attend the schools. As has been shown above, young people are increasingly accepting of LGBT people and often view it as consistent with their own religion. One set of values should not be held as superior to another simply because one set of values is held by minors and others are held by adults. Therefore, the United States should try to find a policy that protects both sets of values.

The United States can look to other countries for guidance on the best ways to handle this issue. For instance, Ontario, Canada passed legislation in 2012 that required all publicly funded schools to support Gay-Straight Alliances for students at their school, including publicly funded Catholic schools (Liboro et al. 2015). This legislation was specifically designed to address the rights of gay students at Catholic schools. After a number of Catholic high schools in Ontario refused to allow students to form Gay-Straight Alliances, the *Accepting Schools Act* required all schools in Ontario to support the groups if the students requested them (LaPointe and Kassen 2015). The schools were required only to honor to requests of students, but this can be a huge advancement for LGBT students and allies of LGBT students who previously had no voice on their campus.

As would be anticipated, this legislation was met with some resistance from Catholic schools. The *Accepting Schools Act* has still been met with opposition from administrators at Catholic Schools who have homosexual views and allows them to regulate the content that is generated by GSAs and to ensure that nothing is indecent. However, providing a space that is LGBT-positive and allows students to express their own views on homosexuality or gender variance is important (LaPointe and Kassen 2015).

Although Gay-Straight Alliances alone are not enough to equalize the school climate for LGBT students, Canadian Catholic schools that implemented support systems and programs similar to those in American secular schools saw positive outcomes for LGBT students (Liboro et al. 2015). Similar proposals could work in the United States, not by forcing schools to adopt specific religious voice points, but by creating a community where LGBT students are able to express themselves without fear of rejection.

## ***The Student Non-discrimination Act***

On February 10, 2015, Al Franken introduced a bill to the United States Senate called the Student Non-Discrimination Act, which would prohibit discrimination and harassment of students based on their real or perceived gender identity or sexual orientation. The Bill finds that although the discrimination that LGBT youths face has led to a high rate of suicide and other mental health problems, there is no federal protection specifically for sexual orientation. The Bill, using definitions from the Civil Rights Act of 1964, extends the protection of LGBT students to any private school that receives federal funds (Student Non-DISCRIMINATION Act 2015). Currently, there are more than 80 organizations in the United States that currently support this bill (Gay, Lesbian, and Straight Education Network 2015).

While this would be a legal help for anyone attending a private school that receives federal funds, it would be limited in its scope or ability to help LGBT students who attend private schools that are privately funded. It is clear that in order to reach these students, a federal statute, similar to 42 U.S.C § 1981, but that specifically applies to sexual orientation instead of race, would be necessary in order to reach those students. Given that there is not a similar provision that protects against private discrimination based on sex or religious affiliation, it seems unlikely that this would be enacted anytime soon. Still, the proposed statute does the important work of raising issues and providing a starting point.

## **Conclusion**

There is considerable evidence that LGBT youth face substantial risks, discrimination, harassment, and other inequities in school. These dangers have severe long-term consequences for the mental health and overall stability of LGBT teenagers, who are more likely to commit suicide, experiment with drugs, and under-achieve academically relative to their straight peers. At public schools, where the First Amendment prohibits schools from taking a religious approach to homosexuality, gay students are protected against discrimination, harassment, and being “outed” against their will. However, there are almost no protections at private schools that assert religious reasons for discriminating against LGBT youths.

Given the risks associated with the amount of bullying and harassment that LGBT youth face, LGBT students should be allowed to live openly without fear of retribution from the private organizations that might seek to inhibit their ability to live openly or to share information about their sexual identity. Although there are many different structures that these laws could follow, it is clear that it will require a specific statute to ensure that LGBT youths can live without being harassed or discriminated against. Anti-discrimination measures can be respectful of religious beliefs while still protecting students.

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