

QUEER DYNAMICS:  
THE POLICIES AND POLITICS OF LGBT-INCLUSIVE ANTI-BULLYING LAWS

by  
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## **ABSTRACT**

Elementary and secondary students who identify as lesbian, gay, bisexual, or transgender (LGBT) face hostile school climates in America's public schools because of their sexual orientation and gender identity. Existing research has found that these students are often the targets of bullying and harassment, consequently impacting their academic performance and social development. While there is no simple solution to eradicate bullying and harassment completely, policymakers have a significant role to play in addressing the issue.

This research explores the policies and politics of addressing anti-LGBT bullying and harassment through public policy. Which components of anti-bullying laws are most effective in attending to the needs of LGBT youth? What are the political boons and barriers to passing such policies through state legislatures? Is the issue best addressed on the state or the federal level? What is the outlook for passing an LGBT-inclusive anti-bullying law through Congress?

This research answers these questions using comparative analysis, interviews with legislators, and case studies. It concludes that there are several components of anti-bullying laws that are especially important to ensuring that LGBT youth are protected – notably an enumerated policy that includes sexual orientation and gender identity or expression. To pass such laws, legislators must contend with three political obstacles: public opinion, interest group pressure, and legislature dynamics. Finally, passage of inclusive federal legislation is essential to ensure that LGBT youth are protected nationwide, though such legislation faces significant barriers the current political climate.

The title of this work, *Queer Dynamics*, serves as a play on words. First, many LGBT youth today identify as ‘queer’ instead of more commonly used terms such as ‘lesbian’ or ‘gay’. Long seen as pejorative, their use of the word has effectively reclaimed ‘queer’ as a valid sexual and/or gender identity. Second, the title refers to the unique political dynamics, discussed at length in this work, which must be carefully navigated when crafting policy at the intersection of education and LGBT issues in the United States.

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I continue to be in awe of my colleagues at GLSEN for their ongoing work in addressing this critically important issue. Without their dedication, anti-LGBT bullying and harassment would be a largely unaddressed issue. Instead, it's a topic that has garnered academic study, media attention, and (most importantly) societal change.

Finally, I want to thank my husband, Justin Hartsell, who has continuously provided me with the emotional support, motivation, and encouragement to complete my degree. As he works toward his own Master's degree, I hope to be as strong an advocate for him as he has been for me.

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## INTRODUCTION

The committee hearing room was silent as Sirdeaner Lynn Walker testified before the House Early Childhood, Elementary and Secondary Education Subcommittee in July 2009. Walker was in Washington, DC to speak in favor of a federal anti-bullying bill called the Safe Schools Improvement Act. She told the committee that she was “an ordinary working mom,” focused on raising her family and doing the best she could as a parent.<sup>1</sup> Walker knew that her son, Carl, had faced a tremendous amount of bullying at his new secondary school. Though he was only 11, his peers told him that he was “acting gay” and relentlessly called him anti-gay slurs such as “faggot.” When Walker approached school administration, she was told that it “was just ordinary social interaction and would work itself out.” It did not. Not long after she spoke with her son’s principals, Carl’s bullies were making death threats.<sup>2</sup>

That all changed on the night of April 6, 2009. Walker testified: “That was the night I was cooking dinner when my son...went to his room where I imagined he’d be doing his homework or playing his videogames. Instead, I found him hanging by an extension cord tied around his neck.”<sup>3</sup> Carl Joseph Walker Hoover had committed suicide, at least in part, because of the hostile climate he was facing at school and the fear that it would not get better.

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<sup>1</sup> House Early Childhood, Elementary and Secondary Education Subcommittee, *Strengthening School Safety through Prevention of Bullying*, 111th Congress, First Session sess., 2009.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

The issue of school climate for lesbian, gay, bisexual, and transgender (LGBT)<sup>4</sup> youth came to the forefront in late 2010 when the media reported on a slew of recent suicides of LGBT students across the nation. The public interest in these cases spawned organizations such as the It Gets Better Project and prompted existing organizations, such as the Gay, Lesbian & Straight Education Network (GLSEN), to take new action to address bullying and harassment in schools. Each story was tragic and seemed preventable: students who had allegedly been driven to suicide because they were struggling with their sexual orientation or gender identity in a school environment that was not welcoming or safe. Each case involved bullying and harassment by other students, failure of school officials to intervene, and a devastated family that did not understand the enormity of the situation until it was too late.

In addition to Carl's, many other cases received national attention. Asher Brown was a 13-year-old Texas student who was bullied for his perceived sexual orientation, size, religion, and appearance. Asher's parents had complained to the school over the course of a year and a half prior to Asher's suicide.<sup>5</sup> Seth Walsh was a 13-year-old student in Tehachapi, California who was openly gay and tormented by bullies at his middle school because of his sexual orientation and gender expression. Despite a supportive family, Seth hanged himself from a tree in the family's backyard.<sup>6</sup> Justin Aaberg was a 15-year-old openly gay high school student who had been forced out of

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<sup>4</sup> As noted in the abstract, the title of this work serves as a double entendre, both reflecting the reclamation of the word 'queer' as a valid identity by sexual- and gender-minority youth, as well as referring to the unique political dynamics that must be navigated by policymakers when crafting anti-bullying legislation. For brevity, the author has chosen to use "LGBT" as an umbrella term throughout this research, though other identities (such as queer, questioning, intersex, pansexual, two-spirit, etc.) should be considered included.

<sup>5</sup> Peggy O'Hare, "Parents: Bullying Drove Cy-Fair 8th Grader to Suicide," *Houston Chronicle*. September 27, 2010.

<sup>6</sup> Bryan Alexander, "The Bullying of Seth Walsh: Requiem for a Small-Town Boy," *Time Magazine*, October 2, 2010.

the closet two years earlier at the age of 13 and was called names at school. Not long before his suicide, a classmate told him he was going to hell because he was gay. Justin was one of eight students to commit suicide in his Minnesota school district over the course of two years. Four of those students identified as gay or bisexual and had histories of being bullied in school.<sup>7</sup>

These were not isolated incidents. GLSEN produces the National School Climate Survey, a representative biennial survey of LGBT youth, which gauges school climate in the nation's K-12 schools. The survey, which is widely cited in literature on the subject, was collected online and participants were solicited through GLSEN's local chapters, social media, listservs, and other organizations serving LGBT-identified youth. The survey examines a variety of factors that make up LGBT students' experience, including hearing homophobic remarks, feeling unsafe because of their sexual orientation or gender identity, rates of absenteeism, the effect of school climate on academic achievement, and the experience of physical violence.<sup>8</sup>

According to GLSEN, over 80% of LGBT students were verbally harassed because of their sexual orientation, and over 60% because of their gender identity.<sup>9</sup> Additionally, 85% of LGBT students heard "gay" used in a negative way, and over 90% felt distressed because of the language. Over 70% heard other forms of homophobic remarks.<sup>10</sup> More than half reported hearing homophobic or disparaging comments about gender expression from their teachers or other school staff.<sup>11</sup>

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<sup>7</sup> Eric Eckholm, "Eight Suicides in Two Years at Anoka-Hennepin School District," *The New York Times*, September 13, 2011.

<sup>8</sup> Joseph G. Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools*. (ERIC, 2012) 15.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid., 16.

Regarding school safety, the survey found that 64% of LGBT students felt unsafe in school because of their sexual orientation and 44% felt unsafe because of the gender expression. Sexual orientation and gender expression were the characteristics most likely to cause students to feel unsafe, far more than religion (16%), gender (13%), race or ethnicity (8.1%), or disability (6.2%).<sup>12</sup>

Negative school environments can have enormous consequences for student academic achievement. Nearly 30% of LGBT youth reported skipping at least one entire day of school in the past month because they felt unsafe. Some (approximately 6%) missed an entire week.<sup>13</sup> Not surprisingly, feeling unsafe in school also had detrimental effects on students' academic performance. The survey found that students who faced high levels of victimization had lower grade point averages (GPAs), felt less of a sense of belonging, had lower self-esteem and higher rates of depression, and were less likely to go to college after graduating secondary school.<sup>14</sup>

Moreover, many LGBT students experienced physical harassment or assault as a result of their sexual orientation or gender identity. GLSEN found that almost half (44.7%) of LGBT students had experienced physical harassment, such as being pushed or shoved, in the past year.<sup>15</sup> Although physical assault was less common than verbal or physical harassment, rates were higher for LGBT youth than any other student demographic. Nearly 20% of LGBT youth reported being assaulted in school because of their sexual orientation, and 12% because of their gender expression.<sup>16</sup>

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<sup>12</sup> Ibid., 20.

<sup>13</sup> Ibid., 21.

<sup>14</sup> Ibid., 39.

<sup>15</sup> Ibid., 24.

<sup>16</sup> Ibid., 25.

LGBT youth experienced a variety of other forms of victimization in schools. Almost all reported that they felt intentionally excluded from social groups because of their sexual orientation or gender identity, a form of bullying known as relational aggression. Relational aggression can also take other forms, such as spreading rumors, and 84% reported that they had experienced lies spread about them at school. Nearly half reported that their property had been stolen or intentionally damaged by other students in the past year, and over half reported experiencing harassment via electronic means, such as social networking sites and text messages.<sup>17</sup> Known as cyberbullying, bullying via electronic means has increased steadily over the past few years as the popularity of social media has increased and smartphones have become ubiquitous among high school-aged youth.

Such daunting statistics make clear that there is no simple solution to end bullying and harassment in schools. The solution to creating safer schools is multi-faceted. Experts have found that student organizations such as Gay-Straight Alliances (GSAs) can empower youth to address bullying and harassment in their own schools<sup>18</sup> and have highlighted the importance of supportive school personnel, such as teachers; administrators; guidance counselors; nurses; and other education professionals, in improving the health and safety of LGBT youth in schools.<sup>19</sup>

This thesis seeks to build upon the literature on anti-LGBT bullying and harassment by exploring the various components of effective anti-bullying public policies

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<sup>17</sup> Ibid., 26.

<sup>18</sup> Stephen T. Russell et al., "Youth Empowerment and High School Gay-Straight Alliances," *Journal of Youth and Adolescence* 38, no. 7 (2009), 891-903.

<sup>19</sup> Corrine Munoz-Plaza, Sandra C. Quinn and Kathleen A. Rounds, "Lesbian, Gay, Bisexual and Transgender Students: Perceived Social Support in the High School Environment," *The High School Journal* 85, no. 4 (2002), 52-63.

as they impact LGBT youth, the political dynamics influencing the passage (or lack thereof) of such policies, and the current policy efforts underway in the states and in Congress.

As a relatively new topic in public policy, little literature exists on anti-bullying policies in the specific context of their impact on LGBT youth. While some lessons from existing literature on bullying and harassment more broadly certainly apply to LGBT youth, the subject deserves specific study. The experience of anti-LGBT harassment may differ from non-LGBT harassment in a variety of ways, and policymakers should consider these differences when crafting laws to address bullying and harassment. For example, many students who identify as LGBT may not have yet come out to their parents or peers and could view being called an anti-LGBT slur as a form of outing, compounding the psychological impact. In addition, teachers in some areas – particularly areas with policies prohibiting discussion of homosexuality in schools – may fear administrative or community repercussion if they intervene.

As the research will show, policymakers have an especially critical role to play in addressing anti-LGBT bullying and harassment. One of the most important components of creating safe schools for LGBT youth is the development and implementation of inclusive and comprehensive anti-bullying policies. Having an effective anti-bullying policy in place can have a tremendous impact on the experience of LGBT students and provide school personnel with the support and tools they need to effectively address bullying and harassment.

Chapter one explores the components of anti-bullying policies that are most relevant for LGBT youth. Cross-referencing analysis by the U.S. Department of

Education and literature on the subject, the chapter identifies seven major components of policy that are necessary for the effective coverage of LGBT youth. Specifically, those components are a statement of scope, a clear definition, state review of LEA policies, communication to the public, training for school personnel, allowing victims to seek legal recourse under other laws, and a list of enumerated characteristics making up students who are the most vulnerable for bullying and harassment.

The chapter goes on to explore its hypothesis through a comparative analysis of the anti-bullying laws in Maryland and Pennsylvania, two states that are similar in factors such as geographic location, political makeup, and cultural identity, but have enacted vastly different anti-bullying laws with varying effect. The chapter concludes that certain components, especially the enumeration of categories of students most vulnerable for bullying and harassment, are critical to protecting LGBT youth.

Chapter two explores the political elements that must be addressed by policymakers in order to pass comprehensive anti-bullying laws at the state level. Drawing upon literature about the policymaking process in general, the chapter hypothesizes that three primary factors must be addressed:

First, policymakers must consider public opinion. Public opinion on LGBT issues broadly has seen an enormous shift over the past decade, and the wave of media stories highlighting the consequences of bullying of LGBT youth detailed in the beginning of this introduction helped cast the issue into both the spotlight and public discourse. One

survey has also found that most parents support comprehensive policies to address bullying and harassment in the nation's schools.<sup>20</sup>

Second, policymakers must contend with the concerns of the myriad of interest groups involved in the issue – from LGBT organizations to organizations made up of vocal opponents. Navigating these interest groups is essential for the passage or failure of proposals that address bullying.

Finally, and most importantly according to this research, policymakers must navigate dynamics within the legislature itself. Examples of such internal obstacles may include the state's support of LGBT-inclusive policies generally, the role of the state in education policy, competition with other bills, and the political cost or reward for passing such a bill.

The theory I construct is largely consistent with John Kingdon's theory established in *Agendas, Alternatives, and Public Policies*, which analyzes "why participants [in the policy process] deal with certain issues and ignore others,"<sup>21</sup> and introduces the concept of process streams, consisting of problems, policies, and politics. The conjoining of these streams opens a policy window, a narrow frame of time in which proposals might pass. Kingdon also introduces the idea of a policy entrepreneur, or a key champion on a given policy issue, something that I also found to be extremely important.

To test the hypothesis that effective anti-bullying laws are only passed once the political dynamics above (public opinion, interest group pressure, and legislature dynamics) are addressed, chapter two uses interviews with state legislators who have an

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<sup>20</sup> "USA Network's New "United Or Divided" Poll shows Americans Believe Racial, Ethnic, Political Divisions are Worse than just a Year Ago." USA Networks, <http://www.charactersunite.com/about/news-and-info/announcements/united-or-divided-2> (accessed December 3, 2013).

<sup>21</sup> John W. Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd ed. (Addison-Wesley Educational Publishers Inc., 1995), 196.

interest in anti-bullying policies or education policy generally within their respective states. The chapter features interviews with Del. Luiz R. S. Simmons, who sponsored the successful effort to pass an enumerated anti-bullying law in Maryland; Rep. Dan Truitt, who is sponsoring the effort to improve Pennsylvania's current anti-bullying law; and Rep. Denise Driehaus, who speaks to the barriers to having an anti-bullying proposal introduced in the Ohio House of Representatives.

Chapters one and two are focused on state-level policies and draw upon examples from state legislatures, establishing theories about effective components of anti-bullying policies and the political landscape needed to pass them. Chapter three applies these findings to the federal level and analyzes the content and political landscape required to pass a comprehensive anti-bullying bill through Congress.

Specifically, chapter three analyzes the history, evolution, and trajectory of the Safe Schools Improvement Act, federal legislation that would require states and districts to develop enumerated anti-bullying policies that conform to requirements set forth in the legislation. The proposal has existed in Congress for over a decade, but has yet to pass either chamber. Chapter three delves into the components of the legislation and finds that despite public opinion supporting Congressional action on bullying and harassment,<sup>22</sup> and despite intense pressure from interest groups and advocacy organizations, legislature dynamics within Congress have held the proposal back.

This thesis seeks to build upon the literature examining anti-bullying policies by delving into the components most applicable to protecting LGBT youth to better inform policymakers working to craft effective public policy. Through expert interviews, it also documents the accounts of those who have worked or are working to pass such policies

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<sup>22</sup> Ibid.

on the state level, and establishes a testable theory about the political dynamics necessary to successfully pass a comprehensive anti-bullying policy. Finally, the thesis explores the issue in the context of federalism, applying its findings to federal anti-bullying legislation. The following analysis seeks to contribute to the literature on LGBT youth and school bullying, as well as to better inform both activists and elected officials working to pass legislation to address school bullying on the state and federal levels.

## **CHAPTER ONE: Elements of Effective Safe Schools Policies for LGBT Youth**

### **Introduction**

When U.S. Secretary of Education Arne Duncan spoke before a crowd of stakeholders at the first White House Summit on Bullying, he made clear the Obama Administration considered bullying to be a serious issue. Secretary Duncan noted:

You have heard all the excuses. You have heard the lineup of reasons to minimize the gravity of bullying and to dismiss the potential of effective programs to reduce it. 'What can you do,' people say, 'bullying has been going on forever. Kids are mean.' Or 'she just made a bad joke.' 'He didn't mean to hurt anyone.' 'It was just a one-time thing.' 'Bullying may be wrong. But it really isn't an educational issue.' At the heart of this minimization of bullying, is a core belief that bullying is an elusive concept that can't really be defined.

Every one of those myths and excuses I've just cited is flat-out wrong. Bullying is definable. It has a common definition and a legal definition in many states.... And bullying is very much an education priority that goes to the heart of school performance and school culture.<sup>23</sup>

Since Duncan's speech, the Obama Administration has been active on addressing the issue. In addition to the first-ever White House Bullying Prevention Summit, the Department of Education holds annual anti-bullying conferences and has established StopBullying.gov, the federal portal with resources for the public to address bullying and harassment in schools.<sup>24</sup> One of the primary features of StopBullying.gov is the site's compilation of state anti-bullying laws, including various components of those laws. The site provides a comprehensive state-by-state breakdown of laws within each state. From the site's emphasis on state law, it is clear that the U.S. Department of Education (ED)

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<sup>23</sup> "The Myths about Bullying: Secretary Arne Duncan's Remarks at the Bullying Prevention Summit." U.S. Department of Education, <http://www.ed.gov/news/speeches/myths-about-bullying-secretary-arne-duncans-remarks-bullying-prevention-summit> (accessed October 20, 2014).

<sup>24</sup> "Ending Bullying in our Schools & Communities." The White House, <http://www.whitehouse.gov/blog/2012/04/20/ending-bullying-our-schools-communities> (accessed August 13, 2014).

believes that policymakers have a significant role to play in creating safe and supportive schools by crafting anti-bullying policies that are effective at reducing bullying and creating feelings of safety among youth.

Often, students within specific demographics become the targets of bullying and harassment. One of the most commonly targeted demographics are students who identify as or are perceived to be LGBT, a demographic exposed to both physical and verbal harassment, leading many LGBT students to feel unsafe in school. Effective anti-bullying policies are critical to address anti-LGBT bullying, and this chapter will identify and explore the various components necessary to create an effective policy.

First, this chapter will explore key components that make up anti-bullying laws throughout the United States. Nearly every state has some form of anti-bullying law in the books, but the requirements established under the laws vary widely, impacting their effectiveness. ED has identified 11 key components of anti-bullying laws, but some components prove to be more relevant for protecting LGBT youth than others. This chapter will establish which components are most effective for LGBT youth using resources from advocacy organizations.

After determine the most relevant components for LGBT youth, the chapter will analyze case studies of anti-bullying laws in Maryland and Pennsylvania, two fairly similar states in terms of geography and political ideology. Despite the states' similarities, research has found that LGBT students in Maryland report feeling significantly safer in school than LGBT students in Pennsylvania. The chapter will analyze the laws currently in place in both states and seek to determine which elements are missing from Pennsylvania's law that could account for differing school experiences.

It will also determine which components, if any, could strengthen Maryland's law to enhance school climate for LGBT youth within the state.

### **Contributing to Safe Schools through Public Policy**

Since the beginning of the Obama Administration, ED's Office of Elementary and Secondary Education has taken an active role in analyzing anti-bullying policies and identifying key aspects of those policies. The Administration developed the Federal Partners in Bullying Prevention, an interagency task force headed by ED to "coordinate policy, research, and communications on bullying topics."<sup>25</sup> In addition to ED, the task force consists of the Federal Trade Commission, the White House Initiative on Asian Americans and Pacific Islanders, and the U.S. Departments of Agriculture, Defense, Health and Human Services, the Interior, and Justice. Together, the Task Force works to address bullying and harassment in schools.

The task force has identified 11 key components of state anti-bullying laws.<sup>26</sup>

These components are:

1. A clear purpose statement discussing the detrimental effects of bullying and harassment;
2. A statement of scope detailing where the policy applies (schools, buses, field trips, etc.);
3. Specification of prohibited conduct, providing a definition of bullying, including cyberbullying, that also includes examples of prohibited behaviors;
4. Enumerating the specific characteristics of the historically most vulnerable students;
5. Direction to Local Education Agencies (LEAs) on how to develop and implement policies;

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<sup>25</sup> "About Us | StopBullying.Gov." Federal Partners in Bullying Prevention, <http://www.stopbullying.gov/about-us/index.html> (accessed November 9, 2013).

<sup>26</sup> "Key Components in State Anti-Bullying Laws." Federal Partners in Bullying Prevention, <http://www.stopbullying.gov/laws/key-components/index.html> (accessed November 9, 2013).

6. Components of LEA policies, including the requirement that they be consistent with state law;
7. State review of LEA policies and implementation;
8. A communication plan to notify the public of the development and implementation of policies;
9. Training for school staff and bullying-prevention programs for students;
10. Transparency and monitoring of the policy, including reports to the state and the public;
11. Statement of rights to other legal recourse, allowing victims of bullying to seek legal remedies under other statutes.

Each of these components of anti-bullying laws are important to create safe schools. It is worth noting that the list is meant to provide a broad overview of effective policy components and is not an exhaustive list of solutions. Modified or entirely different components may well be necessary for states or districts to implement in order to address specific instances of bullying occurring at the most local levels.

In addition, the components outlined by ED are not equal, and some components are more important for the protection of LGBT youth than others. Exactly which of these laws are most relevant for LGBT youth can be determined by cross-referencing the task force's list with GLSEN's model state anti-bullying legislation.<sup>27</sup> Laws that include a statement of scope, a clear definition, state review of LEA policies, communication to the public, train school personnel, allow victims to seek legal recourse under other laws, and list enumerated characteristics are the most important for LGBT youth to feel safe and supported in schools.<sup>28</sup>

Because LGBT students report feeling the most unsafe in specific areas, such as school locker rooms and bathrooms; gym class and athletic facilities; the cafeteria; and

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<sup>27</sup> "Model State Anti-Bullying and Harassment Legislation." GLSEN, <http://www.glsen.org/sites/default/files/GLSEN%20state%20model%20legislation.pdf> (accessed October 20, 2014).

<sup>28</sup> Ibid.

school buses,<sup>29</sup> it is critical that anti-bullying laws identify the scope of the policy within in the law. The scope of the policy exists to make clear exactly where the policy applies to ensure its enforcement. For example, Georgia’s anti-bullying law specifically prohibits bullying on school grounds, school buses and at bus stops, school-related functions, and on school computers.<sup>30</sup> Without a clear scope clause specifying that school buses are covered, bus drivers may not know they are responsible for preventing bullying and harassment on their bus.

Similarly, it is important for state anti-bullying laws to include clear definitions of bullying and harassment to avoid confusion over what sorts of behaviors are prohibited. Because of the rise of cyberbullying over the last decade, state laws should include cyberbullying in their definition. Kansas, for example, defines cyberbullying as “bullying by use of an electronic communication device through means including, but not limited to, e-mail, instant messaging, text messages, blogs mobile phones, pagers, online games and websites.”<sup>31</sup> Such a definition ensures that those enforcing the law understand what cyberbullying is and know that it is covered under the law.

State anti-bullying laws should ensure that local policies are consistent with what is defined under state law, that reporting procedures are streamlined across the state, that there is a clear protocol for investigating and responding to bullying, and that written records are kept of incidents of bullying. LGBT students who face bullying in one school district likely have peers in other school districts with similar experiences; therefore

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<sup>29</sup> Joseph G. Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools* (ERIC, 2012), 20.

<sup>30</sup> O.C.G.A. § 20-2-751.4 (2012).

<sup>31</sup> Kan. Stat. Ann. § 72-8256.C.2 (2009).

policies should be similar statewide, and states should review LEA policies on a regular basis to ensure they are in line with state law.

Effective communication plans should be in place so that both those enforcing the policy, such as faculty and staff, as well as students know that the policy exists and what it covers. Laws should require training of school personnel on signs of bullying and how to effectively intervene with evidence-based practices, as well as provide social competency training to personnel on working with LGBT youth.<sup>32</sup> And they should ensure that those youth and their families have the ability to seek legal recourse via other laws, if available. For example, Oregon’s anti-bullying law notes that the “statute may not be interpreted to prevent a victim of harassment, intimidation or bullying...from seeking redress under any other available law....”<sup>33</sup>

Most critically, a state anti-bullying law should specifically list out categories of students who are protected under the law that are historically the most vulnerable, including LGBT students. Such laws, known as enumerated anti-bullying laws, ensure that students are not left behind when the policy is implemented. Enumeration is an important component of safe schools laws in part because students report feeling safer in schools with enumerated policies compared to schools without them.<sup>34</sup> But in addition to providing increased feelings of safety, enumerated laws can alter school climate, even among non-LGBT students; provide a foundation upon which other safe schools laws are can be constructed; provide institutional backing for staff; and may even reduce the rate of suicide attempts.

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<sup>32</sup> Eric Rofes, "Opening Up the Classroom Closet: Responding to the Educational Needs of Gay and Lesbian Youth," *Harvard Educational Review* 59, no. 4 (1989), 444-454.

<sup>33</sup> Or. Rev. Stat. Ann. § 339.364 (2009).

<sup>34</sup> Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools*. ERIC, 2012. 53.

Student perception of school climate has a major impact on academic success. As noted in the introduction, students who feel unsafe in school have lower GPAs, are less likely to pursue higher education, and feel less connected to their school communities. The existence of LGBT-inclusive anti-bullying policies had a significant effect on students' perception of their school's acceptance of gender non-conforming students. When asked in a survey whether they felt their school was a safe place for boys who are not as masculine as other boys or girls who are not as feminine as other girls, students in schools with LGBT-inclusive policies responded 56% and 71% respectively that the school was safe for those students, compared to 27% and 42% respectively for schools with non-enumerated policies.<sup>35</sup> Enumerated policies may also reduce the rate of suicide attempts. One study found that the presence of enumerated anti-bullying policies had a "strong and significant negative association with suicide attempts, even when victimization and perceived support were taken into account."<sup>36</sup>

LGBT students are not the only students who benefit from enumerated anti-bullying policies. In addition to protecting other historically vulnerable groups covered under the law (such as students with disabilities, racial minorities, religious minorities, etc.), enumerated policies can increase tolerance and respect among all students. Research has found that heterosexual students in schools with enumerated anti-bullying policies find teasing and excluding their LGBT peers less acceptable than students in

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<sup>35</sup> Molly O'Shaughnessy et al., "Safe Place to Learn: Consequences of Harassment Based on Actual Or Perceived Sexual Orientation and Gender Non-Conformity and Steps for Making Schools Safer," San Francisco, CA: California Safe Schools Coalition (2004).

<sup>36</sup> Carol Goodenow, Laura Szalacha and Kim Westheimer, "School Support Groups, Other School Factors, and the Safety of Sexual Minority Adolescents," *Psychology in the Schools* 43, no. 5 (2006), 573-589.

schools without these policies, showing that enumerated policies do not affect only those explicitly covered, but the student population at large.<sup>37</sup>

Enumerated anti-bullying policies may be so effective in altering school climate because they provide school personnel, such as teachers and administrators, with the institutional support they need to address incidents of bullying and harassment that may otherwise go unaddressed.<sup>38</sup> This is particularly true for areas where homosexuality and gender variance is not widely accepted by the community.

Many different factors make up model safe schools laws, but we must look to case examples to determine just how effective these laws are in practice. A comparative analysis of state law in Maryland and Pennsylvania underscores the impact of anti-bullying policies on school climate for LGBT youth. While these states are otherwise fairly similar in characteristics such as geographic location (mid-Atlantic region), political makeup (both states have gone with the Democratic presidential candidate the past six presidential election cycles), and cultural identity (both have significant rural and urban centers), the states are vastly different in school climate as reported by LGBT students. According to the GLSEN School Climate Survey, 75% of LGBT students in Maryland reported verbal harassment due to their sexual orientation and 59% because of their gender expression.<sup>39</sup> In Pennsylvania, by contrast, 85% of LGBT students reported verbal harassment because of their sexual orientation and 68% because of their gender expression.<sup>40</sup> Similar differences were reported for harassment based on other

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<sup>37</sup> Stacey S. Horn and Laura A. Szalacha, "School Differences in Heterosexual Students' Attitudes about Homosexuality and Prejudice Based on Sexual Orientation," *International Journal of Developmental Science* 3, no. 1 (2009), 64-79.

<sup>38</sup> Stephen T. Russell et al., "Safe Schools Policy for LGBTQ Students," *Social Policy Report* 24, no. 3 (2010).

<sup>39</sup> Gay, Lesbian & Straight Education Network, *School Climate in Maryland (State Snapshot)* (2013a).

<sup>40</sup> Gay, Lesbian & Straight Education Network, *School Climate in Pennsylvania (State Snapshot)* (2013b).

characteristics, such as gender (47% vs. 43%) and disability (17% vs. 14%). These numbers are staggeringly high in both states (as well as in every other state that GLSEN surveyed), but the difference in school climate in Maryland compared to Pennsylvania is not insignificant. Anti-LGBT verbal harassment is ubiquitous in schools nationwide and may serve as a key indicator of school climate because it reflects the degree to which harassers understand the impact on LGBT youth. The remainder of this chapter will analyze the details and politics surrounding Maryland and Pennsylvania's respective state laws to discern which aspects of these policies might account for the differences in school experience.

## **Maryland**

The Maryland General Assembly passed Maryland's safe schools law in 2005. Del. Luiz R.S. Simmons introduced the legislation, known as the Safe Schools Reporting Act of 2005, in the beginning of the legislative session. The bill was referred to the House of Delegates' Committee on Ways and Means, which passed it with a favorable recommendation. It was then reported to the floor, where it passed with bipartisan support. In 2005, the Maryland House of Delegates consisted of 98 Democrats and 43 Republicans. The bill initially passed the House by a vote of 113-21.<sup>41</sup>

It faced a slightly tougher road in the state Senate, which had a makeup of 33 Democrats and 14 Republicans.<sup>42</sup> There, the bill faced eight amendments, six of which were rejected. The two passed amendments altered the legislation to strike extraneous language and added additional language to require reporting of the number of days

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<sup>41</sup> "Southern Legislative Conference | Serving the South." Southern Legislative Conference, [http://www.slatlanta.org/QoM/qom.php?post\\_id=90](http://www.slatlanta.org/QoM/qom.php?post_id=90) (accessed November 29, 2013).

<sup>42</sup> Ibid.

missed as a result of the incident. Both successful amendments passed by a voice vote.<sup>43</sup> The failed amendments would have expanded the enumerated list to include categories such as “chastity,” “political views,” and “bodily habitus and appearance,” and failed largely along party lines.<sup>44</sup> The state Senate ultimately passed the chamber by a vote of 31-16. It returned to the House, which passed the Senate-amended legislation the following day by another bipartisan vote of 109-27, similar to the vote of the House’s first passage.

Governor Bob Ehrlich, a Republican, signed the legislation into law nearly a month after its passage, on May 26, 2005. No official statement was issued upon signing, though the Maryland Department of Education created a website to provide technical assistance to school districts implementing the law.<sup>45</sup> The only advocacy organization to issue a statement on the bill was the National Center for Transgender Equality, which praised the bill for being transgender-inclusive.<sup>46</sup>

In terms of comprehensive anti-bullying policies, Maryland’s law is strong. The law creates a top-down approach to addressing bullying and harassment, establishing a state requirement for district policies rather than providing district with broad flexibility to craft their own policy. Such an approach establishes some degree of uniformity across districts’ policies while also ensuring that the policies include effective elements. Maryland’s law is broken into three subsections of the state’s general statutes, the first

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<sup>43</sup> "Bill Info--2005 Legislative Session--HB 407." General Assembly of Maryland, <http://mgaleg.maryland.gov/webmga/frmMain.aspx?ys=2005rs/billfile/hb0407.htm> (accessed November 29, 2013).

<sup>44</sup> Ibid.

<sup>45</sup> "Bullying Prevention." Maryland Department of Education, [http://www.marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student\\_services\\_alt/bullying/](http://www.marylandpublicschools.org/MSDE/divisions/studentschoolsvcs/student_services_alt/bullying/) (accessed November 29, 2013).

<sup>46</sup> "National Center for Transgender Equality." National Center for Transgender Equality, <http://transequality.org/news05.html> (accessed November 29, 2013).

outlining definitions and reporting requirements, the second requiring districts develop a model policy, and the third setting requirements and issuing recommendations for private schools to adopt similar policies. Of the requirements for effective anti-bullying policies noted above, Maryland's law has nearly all of them, with only a few technical exceptions.

The law begins with a clear definition of bullying, including enumeration. The Maryland definition of bullying includes harassment and intimidation and is defined to address student behavior that creates "a hostile educational environment by substantially interfering with a student's educational benefits, opportunities or performance, or with a student's physical or psychological well-being...."<sup>47</sup> Notably, the law also includes "electronic communication" in its definition of bullying and goes on to define "electronic communication" as any communication transmitted by an electronic device, citing a telephone, cellular phone, computer, and pager as examples. The law enumerates the characteristics of race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attributes, socioeconomic status, familial status, or physical or mental ability or disability. An important element missing from Maryland's law, however, is a clear statement that while the law includes those categories, it does not *limit* to them. By failing to include "not limited to" language, the law potentially opens the possibility that students who are being bullied, harassed, or intimidated for a reason not listed (e.g. military status) may not be covered. Bullying experts have recently begun to underscore the importance of including "not limited to" language in anti-bullying policies.<sup>48</sup>

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<sup>47</sup> Md. Code Ann., Com. Law § 7-424.

<sup>48</sup> Deborah Temkin, "The Three Words Missing from Many Anti-Bullying Policies," The Huffington Post, [http://www.huffingtonpost.com/deborah-temkin/the-three-words-missing-f\\_b\\_3480347.html](http://www.huffingtonpost.com/deborah-temkin/the-three-words-missing-f_b_3480347.html) (accessed November 25, 2013).

Maryland’s law includes a section identifying the scope of coverage. The law covers behavior that is committed on school property; at a “school activity or event” such as an after-school club, a football game, or prom; or on a school bus.<sup>49</sup> What is less clear, however, is whether bus stops are covered under the definition as a “school event,” or whether the law would not apply in that setting. Though the law specifically applies to behavior that would “substantially disrupt the orderly operation of a school,” the scope of the law (outside of the obvious) remains unclear.

Perhaps one of the most prescriptive and comprehensive sections of Maryland’s safe schools law relates to reporting. The law dictates the reporting procedure for both the individual reporting the bullying, as well as articulating what schools are required to do with that information. Under the law, the state’s Department of Education is instructed to develop a standardized report form for victims to complete. The law allows for a student, a close adult relative to the student, or a school staff member to complete the form, which collects a variety of information on the incident, including identifying the name and age of the victim and perpetrator, statements made by the perpetrator, and the location the incident took place. The law also requires that the form include whether there was any physical injury to the victim, whether the victim missed school as a result of the incident, and whether there had been a request for psychological care. Once completed, the complainant sends the form to a county board, which then distributes copies of the form to the public school within that board’s jurisdiction.<sup>50</sup>

While it may seem complex, the uniformity of the report form ensures that relevant information is documented for school officials when investigating incidents of

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

bullying. Through its form structure, the law also ensures that the county is aware of incidents involving bullying and harassment that occur within its purview. This local-level federalism aims to ensure accountability and decrease instances of schools ‘covering up’ or simply failing to respond to incidents of bullying and harassment.

Finally, the law expands reporting oversight from the local and county level to the state. It requires county boards to issue summaries of reports filed to the state Department of Education. The Department of Education, in turn, must then report a summary of incidents to committees within the state legislature overseeing education, specifically the Senate Education, Health, and Environmental Affairs Committee and the House Ways and Means Committee, ensuring legislative-branch oversight of the Department of Education’s implementation of the law.

In addition to the law requiring reporting, Maryland requires the development of model safe schools policies on the county board level. The model policies must include the same definitions of bullying, harassment, and intimidation defined under Maryland state law, and each county board is responsible for publicizing its policy through appropriate venues (such as student handbooks and the Internet) to ensure that the public is aware that the policies exist and what is covered. Under the law, counties are required to submit their model policies to the state superintendent to ensure they are complete.<sup>51</sup>

Maryland county boards are also required to develop educational programs to prevent bullying, harassment, and intimidation within Maryland schools that are appropriate for students, staff, volunteers, and parents, as well as establish a professional development program geared toward teachers and administrators on implementation of the policy. The law is specific that those who report bullying, harassment, or intimidation

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<sup>51</sup> Md. Code Ann., Com. Law § 7-424.1.

in accordance with the law are not limited in their legal rights to seek recourse for their victimization.

Maryland also addresses “nonpublic” schools within its safe schools law. Defined as “a nonpublic school that participates in State-funded educational programs,”<sup>52</sup> nonpublic schools are required to adopt a policy prohibiting bullying, harassment, and intimidation, but the law does not require nonpublic schools to include enumeration within their policies. The policies only need to include definitions, prohibitions, standard consequences, specific penalties, procedures for reporting and investigating, procedures for protecting victims, and information about services available to victims. The law goes on to encourage, though not require, nonpublic schools to publicize their policies and develop educational program similar to the programs required of the state’s public schools.

By the U.S. Department of Education’s criteria, Maryland’s safe schools law is among the most comprehensive in the nation. The law includes all 11 of the Department-identified key components and includes a model policy for school districts within the state to base their anti-bullying policies.<sup>53</sup> It includes a comprehensive enumerated list to ensure that all students are covered, though the enumerated list does not include important “but not limited to” language, which could lead to a narrow reading in which some students may not be covered. The legislature also rejected amendments to expand the enumerated list to include some legitimate categories, such as bodily appearance.

For LGBT youth specifically, the law is especially supportive, clearly defining bullying and harassment and including both sexual orientation and gender identity within

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<sup>52</sup> Md. Code Ann., Com. Law § 7-424.2.

<sup>53</sup> Victoria Stuart-Cassel, Ariana Bell and J. Fred Springer, "Analysis of State Bullying Laws and Policies." *Office of Planning, Evaluation and Policy Development, US Department of Education* (2011).

its enumerated categories. The law also includes a clear scope (providing clarity on where the law applies to ensure that spaces that LGBT youth often feel unsafe, such as the school bus, are explicitly covered). It includes strong reporting requirements to monitor the effectiveness of the law and to provide the Maryland Department of Education, as well as the general public, with a clear picture of what bullying and harassment look like in Maryland's public schools. It includes important requirements and recommendations for nonpublic schools, though those recommendations do not include the requirement that nonpublic schools adopt policies that include enumerated categories. And, importantly, the legislation includes oversight on all levels, requiring reporting to jurisdictions from local school boards to the state Department of Education in the executive branch and the state House Ways and Means Committee and the state Senate Education, Health and Environmental Affairs Committee in the legislative branch. Overall, the law is tightly constructed and may account for some portion of increased feelings of safety that LGBT students in Maryland report.

## **Pennsylvania**

Pennsylvania's anti-bullying law passed the Pennsylvania General Assembly as part of a broader education bill in 2008. The legislation, known simply as HB 1067, was sponsored by three Democrats and one Republican member of the Pennsylvania House. The anti-bullying provisions were not included until the final amendment process,<sup>54</sup> but nothing in the bill proved to be controversial on the floor of either chamber.

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<sup>54</sup> "House Bill 1067; Regular Session 2007-2008." Pennsylvania General Assembly, [http://www.legis.state.pa.us/cfdocs/billinfo/bill\\_history.cfm?year=2007&sind=0&body=H&type=B&bn=1067](http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2007&sind=0&body=H&type=B&bn=1067) (accessed December 2, 2013).

At the time of the bill's passage, the Pennsylvania legislature was split. Democrats controlled the state House of Representatives by just one seat, 102-101. Republicans controlled the state Senate by a slightly more comfortable margin of 29-21. Despite the split legislature, the bill passed relatively easily by a vote of 191-11 in the House and with unanimous support in the Senate.<sup>55</sup> The only statement made on the floor about the bullying provisions came in the state Senate, when Republican Senator Stewart Greenleaf noted that he had sponsored the anti-bullying legislation in the past and spoke briefly on the impact of bullying and harassment on student success.<sup>56</sup>

Unlike Maryland's safe schools law, which takes a top-down approach and is comprehensive by national standards, Pennsylvania's law gives individual school districts broad flexibility, and the actual mandates from the state to its LEAs are fairly sparse. The law requires districts to create anti-bullying policies or to modify existing policies to meet state requirements, though the requirements are by no means exhaustive. Printed, the "Policy Relating to Bullying" is less than one page in length; however, the law does include several important components that should be explored.

Pennsylvania's safe schools law includes a fairly comprehensive statement of scope, notably more comprehensive than Maryland's. The law covers activity that occurs "in the school, on school grounds, in school vehicles, at a designated bus stop, or at any activity sponsored, supervised or sanctioned by the school."<sup>57</sup> It also gives districts the ability to expand the scope, stating that nothing in the law prohibits a school district from defining bullying in a way that covers behavior outside the school setting, as long as the behavior is directed toward at least one other student; is severe, persistent, or pervasive;

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<sup>55</sup> Ibid.

<sup>56</sup> *Pennsylvania Senate Legislative Journal* (July 4, 2008a), 2428-2429.

<sup>57</sup> 24 Pa. Cons. Stat. § 13-1303.1.

and might interfere with the student's education, create a threatening environment, or disrupt the orderly operation of the school.<sup>58</sup>

In addition to a broad scope (with the opportunity for districts to make it broader), the Pennsylvania law includes a clear definition of bullying, using the same requirements listed above. By defining bullying so broadly, the law ensures that many acts could be considered bullying for disciplinary purposes, though the law itself leaves discipline-related measures up to each individual school district. It mandates that the policy must identify an appropriate school staff person to receive complaints.<sup>59</sup>

The Pennsylvania law also includes provisions to ensure that students and the public are aware of the policy. It requires the policy developed by the school district be posted on the Internet and in every classroom, as well as posted in prominent locations throughout the school building, such as the cafeteria or near the main entrance. To help students understand the details and coverage, the law requires that the school review the policy with students each school year.<sup>60</sup>

Several important safe schools provisions are notably missing. Pennsylvania's law does not include any provisions that require state oversight of the development or implementation of school district anti-bullying policies. The law does stipulate that districts provide the state Department of Education with a copy of their policies, but dictates no structure for ensuring the policies are developed in a coherent way. Unlike the Maryland law, it also does not require annual reporting to the legislature. It simply leaves the development and implementation of the policy to each individual school district.

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

Also absent from the Pennsylvania law is the requirement that school personnel be trained to ensure cultural competency and effective implementation. Other than requiring a designated school official to receive complaints, the law includes no provision related to school personnel whatsoever. Additionally, it does not include any provision allowing victims to seek legal recourse under any other law, does not mandate any written records of incidents of bullying or harassment, and does not include a procedure for investigating or responding to reports made by students. Presumably, each of these missing components are up to individual districts to develop and implement on their own.

The Pennsylvania law does not include enumeration. Each individual school district is free to add enumeration to their own policy (and some LEAs, such as the Philadelphia School District, have done so<sup>61</sup>), however state law does not mandate an enumerated list. By excluding enumeration from the law, LGBT students are at risk for being left out when district policies are implemented. In districts with non-enumerated policies, teachers intervene in incidents of bullying and harassment just half as often as in districts with enumerated policies that include sexual orientation and gender identity.<sup>62</sup> By not including enumeration, Pennsylvania's LGBT students may be unintentionally excluded from the protections afforded by the state's anti-bullying law, potentially leaving them vulnerable to continued bullying and harassment.

Legislation has been introduced more recently to strengthen Pennsylvania's anti-bullying law. For the past couple of sessions, State Rep. Dan Truitt, a Republican representing an area just west of Philadelphia, has introduced HB 156, the Pennsylvania Safe Schools (PASS) Act. The legislation would significantly update the state's anti-

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<sup>61</sup> School District of Philadelphia, "Bullying Prevention Policies and Procedures," (District Policy No. 248).

<sup>62</sup> Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools* (ERIC, 2012), 58.

bullying law. It would require training of school personnel on best practices to prevent and address bullying, harassment, and cyberbullying; require the development of a state-wide model policy and require districts to develop their own policies that meet the criteria set forth in the state's policy, or to simply adopt the state's policy; explicitly allow victims of bullying or harassment to seek legal recourse under other applicable laws; establish a reporting system for incidents of bullying and harassment, including submitting reports to the Pennsylvania Department of Education for administrative oversight; implement a process for investigations of alleged bullying and harassment incidents; and require that both students and parents be notified of the policy.<sup>63</sup>

The legislation would also redefine "bullying" in the state's code to include enumerated categories of vulnerable students. Unlike Maryland's law, proposed changes to the Pennsylvania law includes "not limited to" language. The bill would enumerate based on actual or perceived race; color; religion; national origin, ancestry or ethnicity; sexual orientation; physical, mental, emotional or learning disability; gender; gender identity or expression; financial status; or physical appearance. LGBT youth would be fully included under this definition.<sup>64</sup>

Pennsylvania's current safe schools law lacks a number of key components identified by the U.S. Department of Education, including implementation oversight by the state's Department of Education, training for school personnel, ensuring that victims can seek legal recourse under other laws, and enumeration, explicitly providing protection for LGBT youth. The current law, however, does include a clear statement of scope, a definition of bullying and harassment, and mechanisms to ensure that students

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<sup>63</sup> Pennsylvania House of Representatives. *Pennsylvania Safe Schools (PASS) Act*, HB 156, Sess. 2013-2014.

<sup>64</sup> Ibid.

are aware of the policy. The Pennsylvania model leaves most of the decisions regarding details of anti-bullying policies up to the state's individual school districts. Some districts, such as Philadelphia, have chosen to implement comprehensive policies that include explicit protections for LGBT students, but such provisions are not mandated by state law. Legislation has been introduced that would implement other important components into Pennsylvania's safe schools law, including state oversight, training for school personnel, and enumeration, protecting LGBT students. The legislation has a Republican sponsor and bipartisan support in the Pennsylvania House of Representatives. In the meantime, however, insufficient state law may account for at least part of the significantly different experiences faced by LGBT youth in Pennsylvania compared to their Maryland neighbors.

## **Conclusion**

Creating safe schools has become a critical issue for policymakers, largely because of the prevalence of bullying and harassment stories in the media. Unfortunate publicized cases of LGBT student suicides cast light on a sobering need: to ensure that schools are safe and supportive spaces for all students to learn and grow. Research has found that we are far from that ideal. Over 80% of LGBT youth report being verbally harassed in school because of their sexual orientation and over 60% because of their gender identity.<sup>65</sup> Sixty-four percent of LGBT youth felt unsafe in school because of their sexual orientation and 44% because of their gender identity,<sup>66</sup> and those feelings led to

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<sup>65</sup> Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools*, (ERIC, 2012), 15.

<sup>66</sup> *Ibid.*, 20.

more than 30% having skipped at least one day of school in the past month.<sup>67</sup> Feeling unsafe also had measurable effects on students' educational achievement and aspiration, as well as connectedness to their school communities.<sup>68</sup> Policymakers have a responsibility to ensure that schools are safe for all students.

Nearly every state has some form of anti-bullying law on the books, but the laws vary widely in both implementation and governing philosophy. In some states, anti-bullying laws are complex and thorough, providing a top-down approach in which the state sets the overall policy and districts are required to follow the state's lead. Under this scenario, anti-bullying laws across the state are uniform (or at least easily comparable) and data collected under these laws can be compared statewide. Other states take a more hands-off approach, in which the state sets a very basic framework and leaves it to the discretion of the individual school districts to develop policies. While this strategy respects the longstanding American tradition of local control over education, it makes it difficult to ensure widespread coverage or compare data. The public strongly supports comprehensive anti-harassment policies in schools,<sup>69</sup> but policymakers hold different philosophies regarding the best way to achieve them.

A comparative analysis of anti-bullying laws in Maryland and Pennsylvania provides an interesting juxtaposition on these different philosophies. Maryland, where 75% of LGBT youth report verbal harassment due to their sexual orientation and 59% because of their gender expression, takes the former approach, establishing a

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<sup>67</sup> Ibid., 21.

<sup>68</sup> Ibid., 39.

<sup>69</sup> "USA Network's New "United Or Divided" Poll shows Americans Believe Racial, Ethnic, Political Divisions are Worse than just a Year Ago." USA Networks, <http://www.charactersunite.com/about/news-and-info/announcements/united-or-divided-2> (accessed December 3, 2013).

comprehensive policy on the state level.<sup>70</sup> Maryland's law includes a clear scope and definitions, exceptionally strong reporting requirements that ensure effective oversight of the law's implementation, and even recommendations for nonpublic schools within the state. It includes a comprehensive list of enumerated categories, identifying students who are historically left behind in the implementation of anti-bullying laws. The Maryland law also mandates that the state's Department of Education establish a model policy, which must be adopted by the individual school districts. The legislation establishing the law passed the Maryland General Assembly with bipartisan support.

Pennsylvania, where 85% of LGBT students report verbal harassment because of their sexual orientation and 68% because of their gender expression (a full 10% more than in Maryland), takes the opposite approach in their anti-bullying law.<sup>71</sup> Unlike Maryland, which establishes a policy from the top-down, Pennsylvania's state-level mandate is fairly sparse. The law includes a clear scope and definition, and also requires that districts' anti-bullying policies be posted prominently throughout the school and online. However, Pennsylvania's state law does not include any provisions to ensure effective oversight of the law's implementation and does not require any annual reporting to the legislature. The state law also does not include provisions requiring professional development or training, does not require written records of incidents of bullying or harassment, and does not include enumeration. While individual school districts are free to (and in some cases have) implement these policies on their own, no requirement in the state law exists for them to do so. Pennsylvania's anti-bullying law simply establishes a bare-bones framework for districts to build their own policies. The Pennsylvania law

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<sup>70</sup> Gay, Lesbian & Straight Education Network, *School Climate in Maryland (State Snapshot)* (2013a).

<sup>71</sup> Gay, Lesbian & Straight Education Network, *School Climate in Pennsylvania (State Snapshot)* (2013b).

passed the Pennsylvania General Assembly in 2008 with nearly unanimous support in both the state House and Senate.

The U.S. Department of Education has identified 11 key components of safe schools laws, though a comparative analysis of anti-bullying laws in effect in Maryland and Pennsylvania show that each component is not equal.<sup>72</sup> Several components prove to be more critical for the safety and wellbeing of LGBT youth specifically than others. These components may account for the 10% difference in reported rates of harassment among Maryland and Pennsylvania's LGBT students. Clear scope and definitions are essential to any public policy, and LGBT youth certainly benefit from those components; however, as policymakers work to craft policies that bring the most benefit to LGBT students, they should prioritize several other components most critical for LGBT youth. Those components are the inclusion of accountability systems within anti-bullying laws that provide oversight of the law's implementation; clear communication to students and the public; training for school personnel on the policy to ensure effective implementation on the school-level; explicit language allowing victims to seek protection under other laws, if available; and, perhaps most importantly, an enumerated (though not exclusive) list of characteristics, including sexual orientation and gender identity, that highlight the most vulnerable students to ensure they are not left behind during the policy's implementation.

Despite their comparability for the purposes of social science, Maryland and Pennsylvania are two different states with different populations, operating under a different set of laws. The differences in the states inherently create a methodological flaw

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<sup>72</sup> Key Components in State Anti-Bullying Laws." Federal Partners in Bullying Prevention, <http://www.stopbullying.gov/laws/key-components/index.html> (accessed November 9, 2013).

in the research that should be acknowledged, as it may have an impact on the analysis. To concretely identify the impact of anti-bullying laws, one would need to compare two states with identical populations and laws, with the only difference being the states' anti-bullying laws. Alternatively, one could compare school climate data within a state prior to the passage of a law to data after passage. Unfortunately, no data exists on the experience of LGBT youth in Maryland prior to the law's passage in 2005.

Additional factors beyond the components of the states' anti-bullying laws may also play a role in school climate in the state. Further research may consider other factors proven to have an impact on school climate for LGBT youth, such as the prevalence of gay-straight alliance clubs, supportive educators, and inclusive curriculum. This research assumes the impact is largely the result of public policies, though additional factors may be at play.

Limitations aside, Maryland and Pennsylvania should each take steps to improve their state laws. In Maryland, legislators may choose to amend the law to include "not limited to" language to ensure that students not explicitly enumerated within the law are also covered. Pennsylvania legislators may choose to pass pending legislation that would significantly expand the state's law to a top-down approach and include such provisions as requiring the training of school personnel, implementing an enumerated list, and establishing clear systems of reporting incidents of bullying and harassment.

The American education system is highly valued among the general public, reflected in the fact that the United States spends more than \$500 billion on public education each year.<sup>73</sup> It is widely held that all students, regardless of their individual

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<sup>73</sup> "School Districts - People and Households - US Census Bureau." U.S. Census Bureau, <http://www.census.gov/did/www/schooldistricts/index.html> (accessed December 5, 2013).

unique characteristics, deserve quality access to education. Bullying and harassment of LGBT students detracts from the educational experience of those students, as well as of the bullies and bystanders. It is imperative that policymakers address the issue and enact and implement effective, comprehensive, and inclusive anti-bullying and harassment laws in every state. Failing to do so denies millions of students access to an education that is so highly prized across the nation.

The road to enacting comprehensive policies, however, is full of twists and turns. Several political factors must be addressed in order for LGBT-inclusive anti-bullying legislation to be passed into law. Chapter two will analyze the policies (or lack thereof) among several states to determine the primary political barriers to passing such bills into law.

## **CHAPTER TWO**

### **Bullying in the Statehouse: The Politics of Passing LGBT-inclusive Anti-Bullying Laws**

#### **Introduction**

September 10, 2010 was a slightly warmer night than usual on the George Washington Bridge, the connection between Fort Lee, New Jersey and New York City. While most in the region were either relaxing at home or preparing to go out for the evening, Tyler Clementi, an 18-year-old Rutgers University freshman, was distraught. Clementi was gay and his roommate had spied on his encounter with another gay man using a webcam, live streaming and Tweeting the encounter for his voyeuristic peers to watch. The following evening, after finding out about the incident and complaining to a resident assistant, Clementi made his way by train and subway to the George Washington Bridge, posted a status to Facebook (“Jumping off the gw bridge sorry”), climbed over the bridge’s guardrail, likely took one last look at the Manhattan skyline, and plummeted the 212 feet into the dark waters of the Hudson River below.<sup>74</sup>

The Clementi case quickly gained national attention. It occurred around the same time as a handful of other highly publicized suicides of students who identified as LGBT and who had all faced some form of bullying or harassment in school. The media quickly portrayed Clementi as a victim of cyberbullying, or bullying via electronic means such as text messages or the Internet, and identified the case as part of an ongoing epidemic of LGBT student suicides related to bullying.

The statistics around bullying and harassment, and their possible impact on suicide ideation among teenage LGBT youth, are grim. Nearly eight in ten LGBT-

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<sup>74</sup> Ian Parker, "The Story of a Suicide," *The New Yorker* 87 (2012), 36-51.

identified K-12 students report being verbally harassed because of their sexual orientation and six in ten because of their gender identity.<sup>75</sup> Most (over 90%) felt unsafe in school because of homophobic remarks,<sup>76</sup> leading many to report feeling less of a sense of community belonging, lower self-esteem, and higher rates of depression.<sup>77</sup> These factors likely contribute to suicide ideation and have been identified as risk factors for suicide among LGBT youth,<sup>78</sup> who are four times more likely to attempt suicide as their non-LGBT peers.<sup>79</sup>

For a short time that followed, the nation's attention turned to these issues. Documentaries such as *Bully* were produced and distributed, media personalities such as Anderson Cooper produced hour-long specials on the issue, and the press routinely interviewed families of affected students. Unsurprisingly, state legislators in many states across the nation felt compelled to act, and none acted with more legislative force than Clementi's home state of New Jersey.

The New Jersey Anti-Bullying Bill of Rights (ABR) was introduced in the state Assembly on November 8, 2011, just shy of two months after Clementi's suicide. The bill was incredibly strong. Among its many provisions, the ABR expanded the definition of "harassment" to include emotional harm, required training to address bullying, harassment, or intimidation for school personnel, established a reporting system to collect information about incidents of bullying or harassment, and developed an enumerated list that included students who are bullied on the basis of their race; color; religion; ancestry;

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<sup>75</sup> Joseph G. Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools* (ERIC, 2012), 15

<sup>76</sup> *Ibid.*, 16.

<sup>77</sup> *Ibid.*, 39.

<sup>78</sup> The Trevor Project, "Suicide Prevention Resources: Risk Factors," <http://www.thetrevorproject.org/pages/risk-factors> (accessed February, 17, 2014).

<sup>79</sup> D. K. Eaton et al., "Youth Risk Behavior Surveillance - United States, 2011," *Morbidity and Mortality Weekly Report. Surveillance Summaries* (Washington, D.C.: 2002) 61, no. 4 (Jun 8, 2012), 162.

national origin; gender; sexual orientation; gender identity and expression; mental, physical or sensory disability; or any other distinguishing characteristic.<sup>80</sup>

The ABR sped through the legislative process at an extraordinary pace. After its introduction and referral to the Education Committee, the bill received a markup and was reported to the full state Assembly just two weeks after its introduction, on November 22<sup>nd</sup>. The Assembly passed it with overwhelming support, by a vote of 73-1 with five Assembly members not voting. It was then rushed to the Senate, where it passed with unanimous support, 30-0, on the same day. Governor Chris Christie, a Republican, signed the legislation into law on January 5, 2011. The entire process, from introduction to enactment, was completed in less than two months. At the bill's signing, Christie stated, "This piece of legislation, while it probably isn't everything I would have wanted it to be, I also think it's important to send a very strong message regarding how we are supposed to be conducting ourselves regarding our interaction amongst children and students."<sup>81</sup> Garden State Equality Chairman Steven Goldstein, and LGBT leader in the state, underscored Clementi's suicide as the catalyst for the legislation, noting that "New Jersey would have passed some law, but it wouldn't have happened as quickly and it would have been nowhere as strong as the law that just passed."<sup>82</sup>

Undoubtedly, Goldstein's statement was correct: New Jersey's anti-bullying legislation was likely put on the fast-track due to Tyler Clementi's highly publicized suicide. But the state had already been considering anti-bullying legislation prior to the media frenzy, including legislation introduced months before Clementi's suicide that

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<sup>80</sup> New Jersey State Assembly, *Assembly Education Committee Statement to Assembly, no. 3466* (2011).

<sup>81</sup> Matt Friedman and Mary Jo Layton, "Christie Signs Ant-Bullying Legislation," *The Record (Bergen County, NJ)*, sec. News, January 7, 2011.

<sup>82</sup> *Ibid.*

would have established a pilot program through the New Jersey Department of Education to address school climate regarding bullying, harassment, and intimidation in the state's schools.<sup>83</sup> While the suicide of Tyler Clementi was responsible for the expeditious nature in which the issue was addressed, the incident alone was not the sole reason for the state's passage of anti-bullying legislation. Importantly, however, it may have resulted in the legislature's decision to pass an enumerated anti-bullying law specifically inclusive of LGBT students.

Enumeration, or the listing of specific categories of students within the law who are highly vulnerable to bullying and harassment, has been deemed a key component of anti-bullying laws by the U.S. Department of Education.<sup>84</sup> As discussed at length in the first chapter, enumeration ensures that students are not left behind when the law is implemented, empowers educators and other school personnel to address bullying and harassment when they see it, and ensures that students know they are covered under the law.<sup>85</sup> It may be especially important for LGBT youth, who still face higher rates of bullying and harassment while experiencing lower rates of staff intervention than many other groups.<sup>86</sup>

New Jersey is not the only state to have passed an anti-bullying law that specifically enumerates sexual orientation and gender identity. In fact, seventeen states and the District of Columbia have laws that do so, including Arkansas, California, Colorado, Connecticut, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New

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<sup>83</sup> *An Act Establishing an Anti-Bullying Pilot Program in the Department of Education*, AB 1563, 214th sess., (January 12, 2010).

<sup>84</sup> "Key Components in State Anti-Bullying Laws." Federal Partners in Bullying Prevention, <http://www.stopbullying.gov/laws/key-components/index.html> (accessed November 9, 2013).

<sup>85</sup> Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools* (ERIC, 2012), 68.

<sup>86</sup> *Ibid.*

York, North Carolina, Oregon, Rhode Island, Vermont, and Washington.<sup>87</sup> Despite being an essential component, the majority of states do not include enumeration within their state anti-bullying laws.<sup>88</sup>

Very little research has been conducted into the political process surrounding the development of LGBT-inclusive anti-bullying laws and policies on the state level. While it would be easy to write off the development of inclusive laws as solely the product of progressive state legislatures, the fact is that several states include LGBT students in their laws that are rarely considered progressive (such as North Carolina and Arkansas), while several other stereotypically progressive states (such as Wisconsin and Hawaii) do not include them.

LGBT-inclusive anti-bullying bills are politically treacherous territory for legislators because they combine two highly politicized components: education, which has been historically controlled at the local level and LGBT youth, which (despite civil rights advancements in the broader LGBT community) remains a controversial subject. As such, there are several important elements that must be considered by a legislature for a state to pass an LGBT-inclusive anti-bullying bill. These elements can be broken into three general areas: public opinion, interest group pressure, and legislature dynamics. The right combination of each element is necessary for a legislator to have the political backing to effectively navigate the legislative process and ultimately shepherd an LGBT-inclusive anti-bullying bill to passage.

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<sup>87</sup> Gay, Lesbian & Straight Education Network, "State Maps," <http://glsen.org/article/state-maps> (accessed February 23, 2014).

<sup>88</sup> Every state except for Montana has some form of anti-bullying law in place. Twenty of these laws are enumerated in some way (Florida and Virginia include an enumerated list but do not include LGBT students, while New Mexico includes sexual orientation but not gender identity), but only the 17 referenced in the text and D.C. include both sexual orientation and gender identity.

This chapter will show to what degree consideration of these political elements is necessary for the passage of LGBT-inclusive enumerated anti-bullying laws at the state level. It will analyze such factors as public opinion, pressure from education organization lobbyists and coalition work of activists, and party makeup of state legislatures. It will also draw upon news coverage and interviews with legislators who have significant experience on the subject to establish a theory about how states are able to pass fully enumerated anti-bullying laws and what political challenges such efforts face as they move through the legislative process. In order to understand how states may begin to approach this issue, however, it is important to understand why each of these factors play an important role in the policymaking process, and how they combine with the unique challenges of passing LGBT-inclusive anti-bullying laws.

### **Political Pressures of Passing Safe Schools Laws**

In his groundbreaking work *Agendas, Alternatives, and Public Policies*, John Kingdon determined three “process streams” that determine why participants in the governmental system deal with certain issues, while ignoring others. Kingdon identifies those streams at “problems” (including the means by which issues come to the attention of policymakers), “policies” (including the various ways to address issues), and “politics” (consisting of the political landscape that can help or hurt a policymaker’s attempt to address an issue).<sup>89</sup> Kingdon established a strong foundation for the analysis of passing public policies broadly, but the passage of LGBT anti-bullying policies is fraught with unique challenges. As such, it is worth analyzing independently. This section will build

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<sup>89</sup> John W. Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd ed. (Addison-Wesley Educational Publishers Inc., 1995), 196.

off of Kingdon's theory to hypothesize that in order for policymakers to pass anti-bullying policies in particular, they must place increased focus on addressing three major variables: public opinion, interest groups, and legislature dynamics.

### *Public Opinion*

Public opinion is an important component of passing any piece of legislation. However unreliable it may be, public opinion is often the motivator that drives policymakers to introduce legislation and provides either political coverage or political ammunition for legislators looking to support or oppose legislation. On the issues of education and LGBT rights, however, the role of public opinion in policymaking is particularly pronounced because both issues are contentious and often impact the public in an immediately personal way that many other issues do not.

Public education in the United States has a long history centered on the local level and heavily influenced by the community. As a result, many people feel that education issues are deeply personal and have a significant impact on their families.<sup>90</sup> The founders were silent on education, and for the first century after the nation's founding, most education decisions were entirely local. In the mid-1800s, Horace Mann, a public official in Massachusetts, propagated the idea that states should play a more significant role in education, leading to the adoption of amendments to every state constitution mandating the state provide a free and public education to every child.<sup>91</sup> Despite these state-level constitutional amendments, however, most decisions in education today are still made at the local and district level. For instance, decisions about district policies, busing, school

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<sup>90</sup> Kevin Carey, "Overview, History and Finance" (Lecture, Education Policy & Federalism, Johns Hopkins University, 2013).

<sup>91</sup> Ibid.

assignments, hiring and firing personnel, school construction, and, in many cases, curriculum are made by the host of local officials charged with overseeing a district's schools, including school boards and superintendents. While there is undoubtedly a state and federal role in education, the historical and evolutionary roots that have created the modern American education system leaves many Americans feeling closely connected to their school districts.

Unlike the issue of public education, the issue of LGBT rights (and particularly the rights of LGBT youth) is newer in the mind of the public. Public opinion on the LGBT population at large is quickly changing. A 2004 Pew Research Center poll found that under half of all Americans, 47%, believed that that homosexuality should be accepted by society.<sup>92</sup> When Pew asked the question again in 2013, 60% of Americans expressed the belief that homosexuality should be accepted by society.<sup>93</sup> Public opinion on homosexuality had shifted a dramatic 13 points in under a decade, but it is less clear that the shift translates into increased support for state-level LGBT-inclusive anti-bullying laws. There remains an active and vocal constituency vehemently opposed to references to homosexuality in the school setting, which has worked to fight LGBT-inclusive policies.<sup>94</sup>

Media coverage of high-profile events also has tremendous power to influence public opinion, especially in terms of setting the agenda. Research has found that issues categorized as "most important" by the public generally reflect headlines in the media

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<sup>92</sup> "Polls Face Growing Resistance, but Still Representative." The Pew Research Center for the People and the Press, <http://people-press.org/http://people-press.org/files/legacy-pdf/211.pdf> (accessed December 9, 2013).

<sup>93</sup> "May 2013 Political Survey." Pew Research Center for the People and the Press, <http://www.people-press.org/files/legacy-questionnaires/06-06-13%20LGBT%20public%20topline.pdf> (accessed December 9, 2013).

<sup>94</sup> Peter Sprigg, "Homosexuality in Your Child's School," Family Research Council, <http://www.frc.org/content/homosexuality-in-your-childs-school-4> (accessed March 8, 2014).

from the past two to four months.<sup>95</sup> In the New Jersey example, it's reasonable to deduce that the media's heavy coverage of Tyler Clementi's suicide led to a shift in public opinion on the issue and increased pressure for lawmakers to act.

Public opinion plays an important role in the political decision of policymakers to introduce, support, or oppose LGBT-inclusive anti-bullying policies and is influenced by the public's perception of education as a local versus state issue, public opinion on the social acceptability of homosexuality in general (or the more nuanced and politicized issue of homosexuality in schools), and the media's agenda-setting function, directing public opinion to a certain issue or case. But public opinion is not the only external force impacting a legislator's actions related to anti-bullying legislation. Also at play are the roles of interest groups, especially those who have a stake in education policy or LGBT rights.

### *Interest Groups*

While the public may view public education as being deeply rooted at the local level, interested stakeholders (such as teachers, administrators, etc.) are primarily represented by state and national-based organizations. Many of these interest groups have considerable influence over lawmakers, employing lobbyists to help legislators understand the organizations' positions. Interest groups with stakes in the issue may also band together to form coalitions, working in partnership to influence lawmakers and change public opinion. Coalitions working for the passage of enumerated anti-bullying laws on the state level are often comprised of education professional organizations (such

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<sup>95</sup> Maxwell McCombs, *Setting the Agenda: The Mass Media and Public Opinion* (John Wiley & Sons, 2013). 51-2.

as teachers unions, state chapters of the National Association of School Psychologists, Parent Teacher Associations, etc.) and other interested groups, such as suicide prevention, disability, and LGBT organizations.

Nonprofit organizations are the most likely to be involved in advocacy efforts either for or against the passage of anti-bullying laws on the state level, but these organizations often have small staffs and lack abundant capacity and resources. Among these organizations, coalition work is an especially important tool for advocacy because it allows organizations to voice their opinions on an issue without exhausting their limited resources. Coalitions can allow an organization to take real and impactful action such as signing onto a letter or a petition, joining in coalition-led lobby days, or serving on a committee.<sup>96</sup> Broadly speaking, 89% of nonprofit organizations (the most likely sector to be involved in supporting or opposing state-level anti-bullying laws) report belonging to a coalition, and 87% reported that the coalition participated in advocacy.<sup>97</sup> Whether through coalitions or on their own, organizations representing various interest groups play a significant role in a state's decision to pass or kill LGBT-inclusive anti-bullying legislation; however, even among interest groups representing the same constituency, opinions are not always united behind a legislative proposal or the strategy to pass it.

For example, organizations representing education professionals are not always united in their support for state-level anti-bullying legislation. Some may argue that a law is necessary because of the tremendous impact that bullying and harassment have on

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<sup>96</sup> Elizabeth Boris and Matthew Maronick, "Chapter 10: Civic Participation and Advocacy," in *The State of Nonprofit America*, ed. Lester M. Salamon, 2nd ed. (Washington, DC: Brookings Institution Press, 2012), 401.

<sup>97</sup> Lester M. Salamon and Stephanie Lessans Geller, *Nonprofit Advocacy: A Force for Democracy? Listening Post Project Communiqué no. 9* (Johns Hopkins University, Center for Civil Studies, [September 2008]).

youth, while others may argue that laws are overly prescriptive or place too much burden on school personnel. As noted above, New Jersey has one of the most stringent anti-bullying laws in the country, which has not come without criticism from some education organizations within the state. While some education professionals in New Jersey supported the law's passage, the New Jersey Association of School Administrators was quick to criticize the law, noting that while the intent of the law was good, it placed too heavy a burden on the state's administrators.<sup>98</sup>

But as one interest group may oppose a law, another may support it. The primary supporter of the New Jersey Anti-Bullying Bill of Rights was the state's largest LGBT advocacy organization, Garden State Equality (GSE), which assisted in writing the law with state legislators. GSE issued a statement upon the bill's passage that praised the legislature for its work on the bill. The organization's executive director, Steven Goldstein, added a personal aspect to the statement, noting "As someone brutally bullied in my own youth, I can't even begin to describe how the passage of this bill is a moment of deeply poignant, personal healing for me and thousands of others who have been bullied. The best revenge is to make the world a kinder place. This legislation will make our state a kinder, safer place for students for generations to come."<sup>99</sup> New Jersey's LGBT community unanimously praised the law's passage, even if the education community was divided.

Interest groups play a significant role in the passage of LGBT-inclusive anti-bullying legislation. In many cases, legislators want to ensure that the communities

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<sup>98</sup> Patricia Alex, "Two Districts Fighting Bullying Law," *The Record (Bergen County, NJ)*, sec. Local, January 13, 2012.

<sup>99</sup> Laura Farrell, "NJ Legislature Passes 'Anti-Bullying Bill of Rights' with Veto-Proof Majority," *The Examiner*, November 22, 2010.

affected by the laws they pass support the changes – in fact, they have a political interest to do so. But legislators have other concerns than the opinion of the communities affected by their actions. They also must navigate politics within the legislature itself and contend with philosophical differences among their colleagues.

### *Legislature Dynamics*

Legislature dynamics likely have the most significant impact on an LGBT-inclusive anti-bullying bill's chances of passage. Much of the policymaking process happens within the walls of the state legislature, whether through deal-making conversations in the legislature's halls or through public debate and recorded votes in committee or on the floor. The conversations are impacted, wherever they may occur, by the many political ideologies of the lawmakers, a factor often established by the political makeup of the legislative district the lawmaker represents. Reason tells us that a conservative area is likely represented by a conservative lawmaker and that a liberal area is likely represented by a liberal lawmaker. A conservative lawmaker in a liberal area and vice-versa risks being reelected the next cycle. It is in a lawmaker's interest to represent the political ideology of his or her district. There is a clear divide on some issues between those of opposition political ideologies. For example, on the issue of abortion, liberals and conservatives have drawn clear lines and rarely cross those lines. In other cases, the lines are less obvious.

LGBT-inclusive anti-bullying laws are not such a cut-and-dry issue. These bills often pass with bipartisan support, especially on the state level. As noted above, New Jersey's bill was signed into law by a Republican, and the sponsor of a bill to amend

Pennsylvania's anti-bullying law to be LGBT-inclusive is also a Republican.<sup>100</sup> Still, legislators must contend with a variety of internal pressures when considering these laws, including the state's support of LGBT-inclusive policies generally, the role of the state in education policy, competition with other bills in the legislature, and the political cost or reward for passing such a bill.

The state's commitment to its LGBT population more broadly must be taken into account when considering LGBT-inclusive anti-bullying legislation. While not every state that provides recognition or legal protections for LGBT people has an enumerated anti-bullying law, a strong correlation does exist. The Movement Advancement Project (MAP), a nonpartisan think tank that analyzes the LGBT movement, ranks states based on their various levels of LGBT equality. The organization ranks 21 states (including the District of Columbia) as being "high equality" states,<sup>101</sup> noting that 46% of the LGBT population lives within "high equality" states.<sup>102</sup> Of the 21 states identified as "high equality" by MAP, 14 have LGBT-inclusive safe schools laws. Only two states with such laws are not identified as "high equality" by MAP (Arkansas and North Carolina).<sup>103</sup>

States with broader LGBT-inclusive policies are more likely to have inclusive safe schools laws, and where a state stands on LGBT issues may impact legislators in various ways. For example, progressive legislators may feel pressure to pass inclusive anti-bullying laws to protect the state's LGBT youth, just as the LGBT population of a state is protected in other areas, while conservative legislators may feel that the state has

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<sup>100</sup> "House Bill 1067; Regular Session 2007-2008." Pennsylvania General Assembly, [http://www.legis.state.pa.us/cfdocs/billinfo/bill\\_history.cfm?year=2007&sind=0&body=H&type=B&bn=1067](http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2007&sind=0&body=H&type=B&bn=1067) (accessed December 2, 2013).

<sup>101</sup> "Snapshot: LGBT Legal Equality by State." Movement Advancement Project, [https://www.lgbtmap.org/equality-maps/legal\\_equality\\_by\\_state](https://www.lgbtmap.org/equality-maps/legal_equality_by_state) (accessed March 22, 2014).

<sup>102</sup> Ibid.

<sup>103</sup> Gay, Lesbian & Straight Education Network, "State Maps," <http://glsen.org/article/state-maps> (accessed February 23, 2014).

already extended LGBT protections so broadly that a new law protecting youth is a safe, fairly noncontroversial move. However, the opposite may also hold true: states without broader LGBT protections may be hesitant to pass inclusive anti-bullying laws out of fear of backlash from conservative communities.

Even if lawmakers are comfortable passing LGBT-inclusive anti-bullying laws in theory, they must also contend with their own philosophical views about the state's role in education. States and local governments provide roughly equal funding for education funding in the United States. The most recent data, from 2010, shows that states provided 43% of funding for education, local governments provided 44%, and the federal government provided just 13%.<sup>104</sup> Though local and state governments provide nearly equal shares of education funding today, this has not always been the case. Grade schools began to appear around the early 1900s, and local governments contributed 82% of funding, with the state just contributing 18%.<sup>105</sup> States began providing more funding when the Great Depression struck in the 1930s and have gradually increased funding over time.<sup>106</sup> The origin of the nation's education system as a purely local endeavor followed by the slow growth of state spending has led to a philosophical divide on the role that the state should play in education – a divide remains weaved into the debate over education today. To pass enumerated anti-bullying legislation on the state level at all, lawmakers must consider whether they believe it is the state's role to mandate such policies to local school districts. Lawmakers who support a strengthened state role in education likely will not oppose such legislation on these grounds, but lawmakers who hold fast to the belief

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<sup>104</sup> "School Finance: Federal, State, and Local K-12 School Finance Overview." New America Foundation, <http://febp.newamerica.net/background-analysis/school-finance> (accessed March 22, 2014).

<sup>105</sup> Joan Wodiska, "Education" (Lecture, Johns Hopkins University, Education Policy & Federalism, Spring 2013).

<sup>106</sup> Ibid.

that education should be left to communities may find themselves unable to support a detailed state anti-bullying law.

If legislators find themselves comfortable with passing an LGBT-inclusive education mandate on the state-level, anti-bullying laws may still become stalled within the legislature due to competition with other bills. Each year, legislators introduce thousands of bills and the procedure for handling these bills varies broadly among the states. In some states, such as Maryland, every bill introduced in the House of Delegates is entitled to a committee hearing.<sup>107</sup> This process ensures that each legislative proposal is heard and legislators increase their chances of having their bill reach the chamber floor. However no such provision exists in many other states, resulting in the death of many bills when sessions end. Such was the case in Minnesota in 2013, when the state Senate failed to take up a comprehensive anti-bullying bill prior to the end of the legislative session in May. Because the bill had passed the state House, Senate leaders promised to revive the bill in the 2014 session, which was ultimately successful.<sup>108</sup> Some legislative leaders are not so accommodating. In many states, such legislative proposals are never even brought into the spotlight because of the myriad of other business that must be addressed by the legislature, which is often in session for only part of the year. Despite the best efforts of proponents, many LGBT-inclusive anti-bullying bills never see legislative action.

Legislators must also consider the political costs and rewards of passing LGBT-inclusive anti-bullying policies. Depending on their constituencies, legislators may be

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<sup>107</sup> Brian Feldman, "State Politics & Policymaking" (Lecture, Johns Hopkins University, 2013).

<sup>108</sup> Sunnive Brydum, "Minnesota Antibullying Bill Dies in Senate," *The Advocate*, <http://www.advocate.com/politics/2013/05/20/minnesota-antibullying-bill-dies-senate> (accessed March 25, 2014).

enthusiastic or hesitant about publicly supporting such policies. For example, representatives from conservative areas may be less inclined to vote for an LGBT-inclusive bill out of fear of political backlash in their districts; however, such concerns could be assuaged if high-profile events have recently occurred. As noted in the introduction of this chapter, the highly publicized suicide of Tyler Clementi likely pushed many New Jersey conservatives to support the state's bill, which passed with overwhelming support. In other instances, legislators may find that supporting fully enumerated anti-bullying policies allows them to campaign on the issue of having made schools safer for students.

The dynamics within a state legislature are often complex and have significant impacts on a state's ability to pass potentially controversial legislation such as LGBT-inclusive anti-bullying bills or an individual legislator's ability to support those proposals when and if they reach a chamber's floor. A number of factors play into these dynamics. Legislators must consider the scope of LGBT-inclusive policies already enacted in the state and whether a comprehensive anti-bullying law may align. They must consider their own philosophical beliefs about the role of the state in education and the imposition of mandates on primarily locally controlled school districts. They must weigh the importance of passing an LGBT-inclusive anti-bullying bill against the other pressing and often time-sensitive needs of the state, especially given the legislature's finite session period. And finally, legislators must weigh the political costs and rewards of supporting such legislation. These internal legislative and political factors, coupled with the external pressures of public opinion and interest group lobbying, often set the stage for the passage or demise of LGBT-inclusive anti-bullying laws.

## Case Studies to Illustrate Political Dynamics

### *Passage in Maryland*

The State of Maryland has a strong anti-bullying policy that provides a clear definition of bullying and harassment, a clearly defined scope, and enumerates a wide range of categories of students, specifically including the characteristics of race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attributes, socioeconomic status, familial status, or physical or mental ability or disability.<sup>109</sup> The law also enacts a system for reporting incidents of bullying and harassment and expands oversight to the state. The law was passed as the Safe Schools Reporting Act of 2005 by wide margins. It was signed by Republican Governor Bob Ehrlich nearly a month after passage.<sup>110</sup>

The comprehensive nature of Maryland's law is notable because the state was the first to take action to address bullying and harassment in such a thorough way.<sup>111</sup> The bill's sponsor, Democratic Delegate Luiz R. S. Simmons, noted that he was moved to introduce legislation on behalf of his daughter, Rachel Simmons, who had written a book about bullying and harassment among teenage girls.<sup>112</sup> While no data exists regarding public opinion in Maryland at the time of the bill's introduction, Rachel Simmons' book, *Odd Girl Out: The Hidden Culture of Aggression in Girls*, had begun to gain media

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<sup>109</sup> Md. Code Ann., Com. Law § 7-424.

<sup>110</sup> "Bill Info--2005 Legislative Session--HB 407." General Assembly of Maryland, <http://mgaleg.maryland.gov/webmga/frmMain.aspx?ys=2005rs/billfile/hb0407.htm> (accessed November 29, 2013).

<sup>111</sup> Stand Against Bullying, "Map," <http://standagainstabullying.org/page/map> (accessed April 20, 2014).

<sup>112</sup> Simmons, Luiz R. S. Interview by author. Phone interview. Washington, D.C., March 25, 2014.

attention (including being featured on the “Oprah Winfrey Show”),<sup>113</sup> indicating a rising interest in the issue nationwide.

Though the law passed by wide margins in the legislature and was ultimately signed by a Republican governor, it was not met with unanimous support in the community. The state’s teachers associations were against the measure<sup>114</sup> and the state’s Board of Education Vice Chairman noted that she did not believe the legislature should pass the bill.<sup>115</sup> Others supported it. Montgomery County’s Safe and Drug-Free Schools Program Coordinator noted that the legislation would help “create an atmosphere of preventiveness,”<sup>116</sup> and after it was signed into law, the National Center for Transgender Equality released a statement praising its enactment.<sup>117</sup>

The dynamics within the Maryland statehouse were likely the most beneficial element to the law’s passage. The bill had a determined sponsor in the state’s education committee who made the bill a priority and educated his colleagues on the issue. Using Kingdon’s theory, it is safe to say that the Maryland legislation had a strong policy entrepreneur – a powerful advocate for the legislation, and a key component to passing a proposal.<sup>118</sup> Ultimately, the bill passed the legislature by a vote of 31-16 in the Senate and 109-27 in the House; however, the law’s passage was not without a few speed bumps. Prior to its passage in 2005, the legislature had tried to pass the bill the previous legislative session. The earlier bill passed the legislature by a vote of 133-2 in the House

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<sup>113</sup> Jon Ward, "Lawmaker Wants Schools to Track Incidents of Bullying," *The Washington Times*, sec. Metropolitan, March 30, 2005, 2005.

<sup>114</sup> Simmons, Luiz R. S. Interview by author. Phone interview. Washington, D.C., March 25, 2014.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> "National Center for Transgender Equality." National Center for Transgender Equality, <http://transequality.org/news05.html> (accessed November 29, 2013).

<sup>118</sup> John W. Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd ed. (Addison-Wesley Educational Publishers Inc., 1995), 204.

and 27-19 in the Senate, but was vetoed by the governor. Del. Simmons credits the will of the legislature as the key to having overcome opposition from education organizations, anti-LGBT rhetoric, and the governor's veto. When the legislature successfully passed the bill into law in 2005, it did so with a quick committee passage and with a veto-proof majority in both chambers, and the same governor ultimately signed it.

The Maryland anti-bullying law was the first of its kind in the country and was passed before the rise of nationwide attention to bullying and harassment. It was met with considerable opposition from education organizations within the state and had little support from national LGBT organizations; however, it had a strong backing from members of the Maryland legislature. It was this strong support that compensated for the lack of public opinion and interest group pressure and ultimately led to the bill's passage. Not every dynamic is the same, however, and a similar bill in neighboring Pennsylvania has yet to pass due to a different set of circumstances within the state.

### *Stalled in Pennsylvania*

Pennsylvania's existing anti-bullying law has significant strengths and weaknesses. The law includes a strong scope and provisions to ensure that the public is aware of its requirements and procedures. The law also largely provides flexibility to school districts within the state to set their own anti-bullying policies; however, in doing so, the law lacks several elements that have been shown to be critical. Among them are a system for state oversight, annual reporting, and enumeration.

Since Maryland became one of the first states to enumerate its anti-bullying law in 2005, 16 other states and the District of Columbia have followed suit. Pennsylvania,

which shares Maryland's entire northern border, is not among them. For the past several sessions, Pennsylvania State Representative Dan Truitt has introduced the Pennsylvania Safe Schools (PASS) Act. The bill would considerably alter the state's existing anti-bullying law by requiring additional training of school personnel, establishing a reporting system, and implementing an enumerated list that is inclusive of sexual orientation and gender identity.<sup>119</sup>

Media often sets the agenda in policymaking, and there is significantly more media coverage of bullying today than there was just a decade ago.<sup>120</sup> Over the past several years, Pennsylvania media outlets have covered stories of students within the state who have committed suicide after being bullied or harassed. As a result of the increase in public awareness on the issue, members of the Pennsylvania legislature may have felt increased pressure from the public to act.

Unlike Maryland's law, support for the PASS Act is largely driven by interest groups. According to Rep. Truitt, advocacy for the bill comes mostly from the Pennsylvania Student Equality Coalition (PSEC), a statewide nonprofit representing LGBT youth.<sup>121</sup> Rep. Truitt noted that PSEC initially approached him with a draft of the legislation and asked him to introduce it. They have also been instrumental in promoting the legislation. Because he has a small staff, Rep. Truitt noted that he finds their advocacy particularly helpful.<sup>122</sup> PSEC also leads a coalition of other organizations in support of the bill, which includes local chapters of the American Foundation for Suicide Prevention as well as a number of education organizations, including the School

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<sup>119</sup> *Pennsylvania Safe Schools (PASS) Act*, HB 156, Sess. 2013-2014.

<sup>120</sup> See Appendix 1.

<sup>121</sup> Truitt, Dan. Interview by author. Phone interview. Washington, D.C., April 4, 2014.

<sup>122</sup> *Ibid.*

Psychologists of Pennsylvania, Pennsylvania PTA, Pennsylvania School Librarians Association, Pennsylvania State Education Association, and Pennsylvania Association of Rural and Small Schools.<sup>123</sup> Unlike the opposition faced in Maryland, Rep. Truitt noted that there has been little pushback from education organizations within the state because the bill was intentionally drafted in a way that minimizes burden on school staff.

The PASS Act's largest obstacle seems to be within the state legislature itself. Initially, the inclusion of sexual orientation and gender identity within the bill was not well received by Rep. Truitt's colleagues, and he believes that if the bill did not include those categories, it may have already become law. He also noted that, despite the bill enjoying more than half the House in cosponsor support, the chair of the chamber's education committee refuses to let it advance. Supporters of the bill are considering their options for moving it forward, including simply waiting until the next legislative session when the committee will have a different chair. Rep. Truitt also noted that he's concerned that when the bill does eventually reach the House floor, it will be too controversial for some members and House leaders will decide to not bring it to a vote.<sup>124</sup> For now, it does not appear that the PASS Act will be moving forward in the near future.

The PASS Act would amend Pennsylvania's current anti-bullying law to explicitly include LGBT students, and seems to have the support it needs from the public and interest groups to pass into law. One interest group, PSEC, has emerged as the primary driver behind the bill; however, the dynamics within the state legislature – specifically the opposition from a key committee chairman and concern about the

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<sup>123</sup> Pennsylvania Safe Schools Partnership, <http://pasafeschoolsact.com/pass-supporters/the-pass-partnership/> (accessed April 20, 2014, 2014).

<sup>124</sup> Truitt, Dan. Interview by author. Phone interview. Washington, D.C., April 4, 2014.

potential controversial nature of the bill – are holding it back. The legislation will likely be reintroduced next session, where it may have a better chance of passing.<sup>125</sup>

### *Challenges in Ohio*

Like Pennsylvania, Ohio has an anti-bullying law on the books that pushes the burden of crafting policy to the state’s individual school districts. State law simply requires that each district develop an anti-bullying policy that includes, among several provisions, a prohibition on bullying; a definition; a procedure for reporting, documenting, and investigating; and a requirement that the district publish the policy on its website and in student handbooks.<sup>126</sup> The law does not set state minimums for many of these policy requirements, nor does it mandate reporting to the state or to enumerate any specific categories of students.<sup>127</sup>

Public opinion seems to be the primary barrier to having an LGBT-inclusive anti-bullying bill introduced and passed in Ohio. Rep. Denise Driehaus, a Democrat on the state House’s education committee, noted that there is a widespread misunderstanding among the public on LGBT issues, and that until that improves, LGBT-inclusive legislation is unlikely to pass.<sup>128</sup> Her assumption is supported by other policies within Ohio, which received a “Low Equality” score on the Movement Advancement Project’s rating scale.<sup>129</sup> Rep. Driehaus noted that a public education campaign on LGBT issues

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<sup>125</sup> Ibid.

<sup>126</sup> Ohio Rev. Code Ann. § 3313.667

<sup>127</sup> Ibid.

<sup>128</sup> Driehaus, Denise. Interview by author. Phone interview. Washington, D.C., April 11, 2014.

<sup>129</sup> Movement Advancement Project, "State Profile - Ohio," [http://www.lgbtmap.org/equality\\_maps/profile\\_state/36](http://www.lgbtmap.org/equality_maps/profile_state/36) (accessed April 26, 2014).

generally is needed in Ohio, but she thinks that public understanding and acceptance are slowly improving.<sup>130</sup>

Interest groups in Ohio have not heavily engaged on the issue of bullying and harassment within the state. Rep. Driehaus commented that the state's education organizations are heavily consumed in conversations around teacher evaluations, Common Core, and curriculum and may feel overwhelmed by the volume of education policy changes currently underway. Other advocacy organizations, such as those in the LGBT community, are similarly not focused on the issue. Rep. Driehaus noted that Equality Ohio and other LGBT groups in the state are heavily involved in efforts to educate the public generally before they feel ready to move forward with anti-bullying initiatives.<sup>131</sup>

Dynamics within the legislature also contribute to lack of movement within the state on the issue. Last session, Rep. Michael Stinziano introduced a bill similar to the PASS Act in Pennsylvania, which would have amended Ohio's existing anti-bullying statute to include sexual orientation and gender identity in an enumerated list. The bill never gained many cosponsors and died at the end of the session without receiving a hearing. Rep. Driehaus points to the makeup of the legislature as part of the problem. She notes that the Republican majority has made economic development a cornerstone of their policy agenda and that they do not see how changes to anti-bullying policy fit in.<sup>132</sup> From her perspective, however, young people want to live somewhere with fair policies,

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<sup>130</sup> Driehaus, Denise. Interview by author. Phone interview. Washington, D.C., April 11, 2014.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

and by not acting on the issue, Ohio legislators may be deterring young people from moving to the state.<sup>133</sup>

Ohio's current anti-bullying law is a basic policy that pushes the major decision-making back to the districts and no bill currently exists in the legislature to amend it. Interest group attention is focused on other issues and the legislature is focused on economic development, not education. The primary hold-up in the state, however, may be public opinion, which has not yet caught up with more progressive states on the issues of LGBT equality or bullying and harassment.

## **Conclusion**

Over the past decade, many legislators have felt compelled to introduce and support state-level enumerated anti-bullying legislation, partially as a result of increased media attention on the issue and pressure to act. Eighteen of these efforts have succeeded to date, while many others have failed.<sup>134</sup> A close analysis shows that several factors influence the success or failure of these bills. Among them are public opinion driving legislators to address the issue, interest groups exerting influence to either support or oppose proposed measures, and a whole host of issues I have deemed "legislature dynamics." There is no set formula for success in passing an LGBT-inclusive anti-bullying law, but the interplay of these three factors largely determines the outcome.

Of the three factors, public opinion is the easiest for a legislator to address. While public opinion may drive policymakers' decision-making on a number of other issues, including same-sex marriage or abortion access, it seems to be a minor factor in decisions

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<sup>133</sup> Ibid.

<sup>134</sup> Gay, Lesbian & Straight Education Network, "State Maps," <http://glsen.org/article/state-maps> (accessed February 23, 2014).

on anti-bullying policy. Very few surveys exist seeking public opinion on the issue, and none of the lawmakers interviewed cited public opinion on anti-bullying policies specifically as a driving motivation for their work. Instead, public opinion more broadly may serve as an oppositional force on anti-bullying legislation. In Ohio, where Rep. Denise Driehaus serves on the state House's education committee, public opinion on LGBT equality overall seems to be slowing the progress of passing an anti-bullying bill. Rep. Driehaus noted in her interview that organizations such as Equality Ohio are busy working to educate the public on a number of other issues, such as employment discrimination, and have not given significant attention to bullying and harassment, which they see as a longer-term strategy.<sup>135</sup> As a result of this lack of understanding among the public (forcing interest groups to divert their attention and placing no pressure on lawmakers), legislation introduced last session in the Ohio legislature died upon the end of the session, and no lawmaker has felt compelled to reintroduce the bill in the current session.

Pressures on lawmakers coming from interest groups have a more significant impact on the success or failure of anti-bullying legislation than public opinion. Many LGBT advocacy organizations have been involved in the push for LGBT-inclusive anti-bullying legislation around the country and have swayed lawmakers in their direction. An example of this is currently underway in Pennsylvania, where PSEC is leading the effort to pass the Pennsylvania Safe Schools Act. PSEC not only lobbies on the bill, but also wrote it and sought out the bill's current sponsor, Rep. Dan Truitt, to introduce it.<sup>136</sup> PSEC has established and led a coalition in support of the bill, consisting of many other

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<sup>135</sup> Driehaus, Denise. Interview by author. Phone interview. Washington, D.C., April 11, 2014.

<sup>136</sup> Truitt, Dan. Interview by author. Phone interview. Washington, D.C., April 4, 2014.

interest groups, including many education organizations. Not all interest groups agree, however – even interest groups within the same field. Education organizations have been conflicted on their support for LGBT-inclusive anti-bullying bills at the state level, with groups like the School Psychologists supporting such legislation and school board associations largely opposing it. Legislators must grapple with conflict among various interest groups as they decide whether to introduce, support, or oppose various anti-bullying proposals.

In Pennsylvania specifically, interest groups' heavy influence on the PASS Act raises the question of whether a change in lobbying tactics might be beneficial on moving the bill forward. Literature on lobbying has indicated that early planning is essential to a bill's passage. For example, when launching an effort, lobbyists should ask "which chamber [of the legislature] and which committee is the best venue in which to launch [an] effort?"<sup>137</sup> Interest groups in Pennsylvania may want to consider whether the state House is the best chamber in which to pass the bill, or whether the state Senate may be a better venue.

Additionally, lobbyists advocating for the bill may consider meeting with members simply to discuss strategy on passing legislation. In *The Art of Lobbying: Building Trust and Selling Policy*, author Bertram Levine notes, "Smart lobbyists will go to the source: the members themselves. Even offices that cannot or will not support their cause may welcome an opportunity to engage in some unrecorded legislative behavior by giving a piece of insider's advice. And, of course, there is always the chance of co-opting a potential ally." As interest groups advocate for passage in Pennsylvania, they may

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<sup>137</sup> Bertram J. Levine, *The Art of Lobbying: Building Trust and Selling Policy* (Washington, DC: CQ Press, 2009), 230-231.

consider stepping outside of their comfort zone to discuss the legislation with unlikely allies in the legislature.

The most critical factors in the political dynamics of anti-bullying policies are found within the state legislature and include such components as party makeup of legislative chambers and governor's office, individual legislators' commitment to LGBT equality and their philosophical view of the role of the state in education, relationships with House and Senate leadership and whether those leaders support the proposal, competition with other bills before the legislature, and the political costs and benefits of supporting such bills. The power of dynamics within the state legislature on the passage of anti-bullying laws can be seen in Maryland's history. The original bill to strengthen anti-bullying measures in the state was introduced in the 2003-2004 legislative session, before any other state had considered similar laws. It was ultimately passed in 2005 by the legislature at a time when bullying and harassment were issues rarely discussed in the media (resulting in little public opinion) and not yet on the radar of most interest groups. It was the force of positive dynamics within the legislature that led to the bill's ultimate passage.

This research establishes a theory that legislators working to pass LGBT-inclusive anti-bullying laws must address the three primary variables outlined above in order to be successful. The research was conducted with a specific lens on anti-bullying policy, and interviews with state legislators were conducted within that context; however, the theory established may well apply to other policy areas. Future research may test the theory against other policy issues to determine whether it applies more broadly outside of the context of anti-bullying proposals. In addition, this research may serve as a starting point

for future research to expand upon its findings by studying the passage of anti-bullying laws in additional states to test the hypothesis on a larger scale.

States are continuing to pass LGBT-inclusive anti-bullying laws. In April 2014, governors in both Massachusetts and Minnesota signed new laws on the subject. However, while the issue of bullying and harassment of LGBT students remains prominent in the media, it does not enjoy the same level of coverage it did several years ago, raising the question of whether the issue will continue to be of importance to state legislatures in the future. Very little literature exists on the political dynamics of passing LGBT-inclusive anti-bullying policies into law and further research is needed on the subject; however, the factors outlined above serve as a starting point for future research on the essential areas that must be considered by legislators working to pass comprehensive safe schools legislation.

## **CHAPTER THREE**

### **Capitol Hill and the Classroom: The Federal Response to Bullying and Harassment**

#### **Introduction**

Eliza Byard, executive director of the Gay, Lesbian & Straight Education Network, sat at a table before the United States Commission on Civil Rights in the spring of 2011. It was the first time her organization had been invited to speak before the Commission, and she was there to deliver remarks about the impact of bullying and harassment on LGBT students in the United States. Byard opened with remarks about a student named Joey, an average teenager from Pennsylvania who, according to Byard, “works at McDonald’s, listens to Lady Gaga and spends way too much time on Facebook.”<sup>138</sup>

Joey’s school experience changed dramatically after he came out as gay. He was harassed by fellow peers and threatened with violence. Joey approached a school administrator about the incidents, but the administrator’s only suggestion was that Joey should act “less gay.” As a result, Joey’s academic performance suffered, he became socially isolated, and he considered suicide. In the end, Joey’s school experience became too much for him and his family to tolerate. As Byard told members of the Commission, “Bullying forced him and his family to move across state lines to find a school where he would be treated with the same respect as every other student. Fortunately for Joey, his family had the means and inclination to find that safe school. Many parents don’t. Indeed, no parent should have to make that choice.”<sup>139</sup>

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<sup>138</sup> U.S. Commission on Civil Rights, *Testimony of Eliza Byard, Ph.D.* 2011.

<sup>139</sup> *Ibid.*

In her testimony, Byard went on to give a brief overview of the current state of anti-bullying policy around the country, noting that, at the time, there were only 11 states with enumerated anti-bullying laws that included sexual orientation and gender identity. She then got to the core of her argument before the Commission: the need for a federal role in addressing bullying and harassment in the nation's public schools. She noted, "As a baseline matter of safety, we need federal leadership to establish a national floor of protection that fills in the gaps that do not extend protections for all students, upon which states and districts may build."<sup>140</sup>

Byard's testimony provided a powerful argument for why the federal government needed to play a role in education policy pertaining to bullying and harassment, but it paled in comparison to when Joey's own mother, Joyce Mundy, spoke at a Congressional briefing in March of 2014. Mundy, a superintendent at Centennial School District in Pennsylvania, told the Congressional staffers at the briefing that her son's experience became so severe that she pulled him out of his school in the suburbs of Philadelphia and enrolled him in a school across the state line in New Jersey.<sup>141</sup>

Mundy was able to speak to the issue from multiple vantage points: both as the parent of a student who had faced significant bullying and harassment and as a school administrator who was working to change the climate within her own school district. Her request reflected that of Byard's request to the Commission. Pennsylvania does not currently have an enumerated anti-bullying law that includes sexual orientation and gender identity, and Mundy noted that if the federal government had established a floor

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<sup>140</sup> Ibid.

<sup>141</sup> Byard, Eliza. Interview by author. Washington, D.C., April 20, 2014.

policy upon which states could build, she likely would not have had to pull her son out of school.<sup>142</sup>

Joey's experience in school is not unique among LGBT students. Research has found that 80% of LGBT students report verbal harassment because of their sexual orientation and 60% because of their gender identity.<sup>143</sup> Additionally, over a third reported physical harassment because of their sexual orientation or gender identity.<sup>144</sup> Joey's academic and social response to being bullied was also not unique. Research has found that students who face higher rates of victimization in school report feeling less connected to their school community, have lower grade point averages, and are less likely to hold high academic aspirations than those who experience little to no victimization.<sup>145</sup>

Quite a few states have acknowledged the research highlighting the need for enumerated anti-bullying policies and passed laws that require their school districts to either adopt a state-wide anti-bullying plan, or to develop one that meets criteria outlined by the state. To date, 17 states (including Arkansas, California, Colorado, Connecticut, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington) and the District of Columbia have enumerated anti-bullying laws in place that include sexual orientation and gender identity among their enumerated categories.<sup>146</sup> Many of these states also include provisions addressing cyberbullying, relational aggression, and other nontraditional forms of bullying and harassment.

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<sup>142</sup> Ibid.

<sup>143</sup> Joseph G. Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools*, (ERIC, 2012), 15.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> Gay, Lesbian & Straight Education Network, "State Maps," <http://glsen.org/article/state-maps> (accessed February 23, 2014).

Despite 17 states having made progress in passing enumerated anti-bullying laws, the majority of states continue to have simple generic policies in place. To date, every state but Montana has passed a law banning bullying and harassment, but the majority are simply broad statements against the practice. They provide districts with a wide range of discretion on crafting a policy and establish very little (if any) state oversight to ensure that districts are implementing the law. For example, Virginia currently addresses bullying with only the following broad statute: “Each school board shall implement, by July 1, 2014, policies and procedures to educate school board employees about bullying, as defined in § 22.1-276.01, and the need to create a bully-free environment.”<sup>147</sup> Research has found that generic, non-enumerated anti-bullying policies are no more effective than having no policy in place at all.<sup>148</sup>

Several states are working to expand their state laws to either implement enumerated lists, or expand the lists already in place to include sexual orientation or gender identity; however, such efforts are slow going. Lawmakers looking to amend state law must navigate a political landscape that includes public opinion, interest group pressure, and legislature dynamics. These criteria, which are essential for legislators to address to successfully pass enumerated anti-bullying laws, are discussed at length in the second chapter of this thesis and will be reviewed again later in this paper to analyze the federal effort to pass such a law.

While no enumerated federal anti-bullying law currently exists, the federal government has taken an interest in the issue over the past few years. In particular, the

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<sup>147</sup> VA Code Ann. § 8.01-220.1.2.

<sup>148</sup> Joseph G. Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools*. (ERIC, 2012), 68.

Obama Administration has treated bullying and harassment as a serious educational issue and has taken steps to address it, especially in the administration's first term.

On March 10, 2010, the Administration held the first-ever White House Conference on Bullying Prevention.<sup>149</sup> The day-long conference was intended to "bring together communities from across the nation that have been affected by bullying as well as those who are taking action to address it," and the Administration invited participants to speak about the effects of bullying, as well as the work underway by parents, students, and advocates. The event also included remarks by the President and First Lady and featured breakout sessions on school policies, school programs, community-based programs, cyberbullying, and campus-based programs.<sup>150</sup>

The Conference on Bullying Prevention kicked off the Administration's ongoing efforts to draw attention to and address bullying and harassment in the nation's schools. In conjunction with the summit, the Administration launched StopBullying.gov, a website that "provides information from various government agencies on what bullying is, what cyberbullying is, who is at risk, and how you can prevent and respond to bullying."<sup>151</sup> The site also includes links to each state's anti-bullying law and a detailed chart mapping out the various components of state laws.

Also in 2010, the Department of Education released guidance to states, which clarified that civil rights laws already in place also applied to bullying and harassment.<sup>152</sup>

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<sup>149</sup> "Background on White House Conference on Bullying Prevention." The White House, <http://www.whitehouse.gov/the-press-office/2011/03/10/background-white-house-conference-bullying-prevention> (accessed August 8, 2014).

<sup>150</sup> Ibid.

<sup>151</sup> "About Us | StopBullying.Gov." Federal Partners in Bullying Prevention, <http://www.stopbullying.gov/about-us/index.html> (accessed November 9, 2013).

<sup>152</sup> "Dear Colleague Letter from Assistant Secretary for Civil Rights Russlyn Ali." U.S. Department of Education, <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html> (accessed August 8, 2014).

The guidance noted that under Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1973, and Title II of the Americans with Disabilities Act, school districts were required to protect students from bullying; however, the guidance is more focused on harassment based on civil rights categories enforced under the law by the Department of Education's Office of Civil Rights (which consists of race, color, national origin, sex, and disability), and not on sexual orientation or gender identity.<sup>153</sup>

Most importantly, the White House used the Conference on Bullying Prevention to kick off annual Bullying Prevention Summits hosted by the Department of Education. The 2014 Summit, which was held on August 15<sup>th</sup>, included a focus on social and emotional learning, lessons learned regarding addressing bullying from the field, and a break-out session on state and federal laws.<sup>154</sup>

Despite the work of the Obama Administration and the 17 states that have passed legislation to address bullying and harassment of LGBT youth, Congress has yet to pass a law addressing the issue. Federal legislation is critically needed. Many states are unlikely to overcome the political barriers to passing legislation on their own, leaving LGBT students in those states uncovered. Several pieces of legislation have been introduced at the federal level aimed at addressing bullying and harassment, though the one with the most support (with nearly half the House and the Senate signed on as cosponsors) is the Safe Schools Improvement Act. This bill has existed in Congress in various forms for the past decade. It has a long and complex history and more support than ever before, but seems to be stalled in its path to become law.

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<sup>153</sup> Ibid.

<sup>154</sup> "2014 Federal Bullying Prevention Summit." Federal Partners in Bullying Prevention, [http://www.wciconferences.com/BullyingSummit-Inperson/documents/2014-Federal-Bullying-Prevention-Summit\\_At-A-Glance-Agenda.pdf](http://www.wciconferences.com/BullyingSummit-Inperson/documents/2014-Federal-Bullying-Prevention-Summit_At-A-Glance-Agenda.pdf).

This chapter will provide an account of the history and contents of the Safe Schools Improvement Act and analyze the political barriers to its passage by applying the theoretical framework established in chapter two of this thesis to the federal level. It will conclude with recommendations on how to best overcome those barriers given the political context of the 114<sup>th</sup> Congress.

### **Overview and History of the Safe Schools Improvement Act**

The Safe Schools Improvement Act (SSIA) is federal legislation sponsored by Rep. Linda Sanchez (D-CA) in the House and Senator Bob Casey (D-PA) in the Senate. At its core, the legislation would require states to develop enumerated, comprehensive anti-bullying laws that cover all students, specifically enumerating those who are bullied or harassed because of their race, color, national origin, sex, sexual orientation, gender identity, disability, or religion.<sup>155</sup> In addition, the legislation would require that states collect data about various incidents of bullying and harassment, as well as the frequency of incidents, and report that information to the U.S. Department of Education. If the bill were to become law, the Secretary of Education would be required to issue a report to Congress on the progress of implementation of SSIA, as well as the effectiveness of other anti-bullying measures, on a biennial basis.<sup>156</sup>

The legislation has a tremendous amount of support in Congress. As of the end of the 113<sup>th</sup> Congress, it had over 200 cosponsors in the House and over 45 cosponsors in the Senate, making it the most supported LGBT-inclusive bill in Congress.<sup>157</sup> It also has

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<sup>155</sup> *Safe Schools Improvement Act of 2013*, H.R. 1648, U.S. House of Representatives, 113<sup>th</sup> Congress, 1<sup>st</sup> sess.

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*

support on both sides of the aisle. While the bill has overwhelming support among Democrats, it also includes 10 Republican cosponsors in the House and two Republican cosponsors in the Senate. This may not seem like strong bipartisanship by the standards of Washington outsiders, but it is notable given that the majority of LGBT-inclusive bills have little to no bipartisan cosponsors. By comparison, both the Student Non-Discrimination Act (which would provide non-discrimination protections to LGBT students) and the Respect for Marriage Act (which would repeal the Defense of Marriage Act) have two Republican House cosponsors and no Republican Senate cosponsors.

The legislation also has support outside of Congress. On April 20, 2012, the Obama Administration released a statement in which it explicitly called on Congress to pass the bill. Delivered by Valerie Jarrett, a senior adviser to the President, the White House's statement read: "[The Safe Schools Improvement Act and the Student Non-Discrimination Act] are critically important to addressing bullying in our schools and safeguarding our most vulnerable students... All of our students have the same right to go to school in an environment free of discrimination and harassment, and that's why the President supports these two important pieces of legislation and wants to work with Congress as they move forward in the process."<sup>158</sup> The U.S. Department of Education also released a similar statement in support of the legislation and acknowledged Rep. Sanchez for her "commitment to putting an end to bullying, discrimination and harassment in our nation's schools."<sup>159</sup>

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<sup>158</sup> "Ending Bullying in our Schools & Communities." The White House, <http://www.whitehouse.gov/blog/2012/04/20/ending-bullying-our-schools-communities> (accessed August 13, 2014).

<sup>159</sup> "Statement from U.S. Education Secretary Arne Duncan on the Student Non-Discrimination Act and the Safe Schools Improvement Act." U.S. Department of Education, <http://www.ed.gov/news/press-releases/statement-us-education-secretary-arne-duncan-student-non-discrimination-act-and-> (accessed August 13, 2014).

Such strong support for the Safe School Improvement Act did not arise overnight. The legislation has existed in some form for more than a decade and has an interesting legislative history. It was first introduced in the 108<sup>th</sup> Congress (2003-2004), which was controlled by Republicans at a period when a Republican, George W. Bush, was in the White House. Because Congress had just reauthorized ESEA in 2001, the original bill, H.R. 4776, was designed to amend the Safe and Drug-Free Schools and Communities Act, rather than to modify ESEA as a whole. Republican Congressman John Shimkus of Illinois was the bill's original sponsor, and when asked about his proposal in 2005, he told a local newspaper that he was "addressing a need," noting that there was "no federal law specifically preventing bullying in schools."<sup>160</sup>

Following the Democratic takeover of the House in 2006, the bill's primary sponsor switched to Congresswoman Linda Sanchez of California, who had been a cosponsor of Shimkus's bill. Since that time, cosponsor support has increased dramatically. The legislation ended each successive Congress with significantly more support than it had the previous Congress.<sup>161</sup> Each session, the legislation has been referred to the House Education & the Workforce Committee (or Education & Labor in Democratic Houses) and the Senate Health, Education, Labor, and Pensions Committee. While some bills prove ambiguous toward committee assignment, the Safe Schools Improvement Act is designed to amend education law and clearly belongs to the

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<sup>160</sup> Pete Sherman, "Shimkus would Help Schools Fight Bullies; Congressman Wants to Expand Program President Wants to End," *The State Journal-Register (Springfield, IL)*, sec. News, April 26, 2005.

<sup>161</sup> See Appendix 2.

education committees. These committees, however, are policy committees, which tend to be highly partisan and may create problems for the legislation's potential passage.<sup>162</sup>

Furthermore, the legislation has tremendous support outside of government. A coalition around the legislation has been formed and consists of 119 national organizations.<sup>163</sup> The coalition, known as the National Safe Schools Partnership, includes not only LGBT advocacy organizations (such as the Human Rights Campaign, PFLAG, and the National Gay and Lesbian Task Force), but also a mix of other non-LGBT stakeholder groups, such as the National Education Association, the American Federation of Teachers, the National Disability Rights Network, and the National Association of School Psychologists.<sup>164</sup> In total, the coalition has representation from education, health, youth development, civil rights, and religious groups.<sup>165</sup> The varied support behind the legislation likely played a role in the increased cosponsor support the legislation received. As various stakeholder organizations signed on in support of the legislation, they brought with them Members of Congress sensitive to their issues. For example, a Member who may be passionate about disability rights may not have signed on in support of the legislation until American Association of People with Disabilities indicated their support of the bill.

With such strong support in Congress and from a large coalition of national organizations, it may seem perplexing that the Safe Schools Improvement Act has not yet become law. Chapter two of this thesis explored state-level anti-bullying laws and found

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<sup>162</sup> David King, *Turf Wars: How Congressional Committees Claim Jurisdiction* (University of Chicago Press, 1997), 42.

<sup>163</sup> "National Safe Schools Partnership." GLSEN, <http://glsen.org/policy/federal/national-safe-schools-partnership> (accessed August 11, 2014).

<sup>164</sup> *Ibid.*

<sup>165</sup> See Appendix 3.

that three obstacles must be overcome in order for proposed bills to pass into law. First, they must have the support of public opinion. Second, they must have the support of interest groups, and arguments of interest groups who oppose the legislation must be addressed so that legislators feel comfortable moving forward. And finally, they must compete with politics and the various other moving parts within the legislature, termed ‘legislature dynamics,’ which may consist of the position of committee leadership, movement of legislative vehicles, and competition with other bills. The remainder of this chapter will use that framework to explore the political context in which the Safe Schools Improvement Act is currently situated and discuss its chances of passing over the course of the next Congress.

### **Public Opinion and SSIA**

No poll has been conducted on whether the public supports the Safe Schools Improvement Act itself; however, several survey questions have been asked regarding whether the public would support federal efforts to address bullying and harassment. In addition, public opinion on LGBT issues more generally has shifted dramatically over the past decade, jumping from 47% of Americans who believed that homosexuality should be accepted in 2003<sup>166</sup> to 60% who believed it should be accepted in 2013.<sup>167</sup> The shift in public opinion has promoted increased dialogue on how to best address LGBT issues and

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<sup>166</sup> "Polls Face Growing Resistance, but Still Representative." The Pew Research Center for the People and the Press, <http://people-press.org/http://people-press.org/files/legacy-pdf/211.pdf> (accessed December 9, 2013).

<sup>167</sup> "May 2013 Political Survey." Pew Research Center for the People and the Press, <http://www.people-press.org/files/legacy-questionnaires/06-06-13%20LGBT%20public%20topline.pdf> (accessed December 9, 2013).

sparked conversations about LGBT issues in education that would have been taboo to address in previous eras.

While very little research exists on the question of whether the federal government should pass legislation addressing bullying and harassment in the nation's schools, USA Network conducted a nationally representative poll entitled "United or Divided" in 2010 that found that the vast majority – 85% – support Congress passing a law that would require schools to enforce specific rules to address bullying.<sup>168</sup> The poll also found that 89% of Americans surveyed believe that bullying is a serious problem, but more than half of those surveyed believed that the country was below average on preventing bullying of kids by other kids, and would give the country a D or F letter grade on the issue.<sup>169</sup>

The "United or Divided" poll is the only survey of its kind to assess public opinion on federal action to address bullying and harassment; however, additional research has been conducted to assess public opinion on the role of public policy to address the issue on the state level. One survey, which sampled 301 representative participants in Illinois, found that the majority of parents of students (89%) believe that schools should create safe learning environments for lesbian, gay, and bisexual youth, and 84% believe that schools should create safe learning environments for transgender youth.<sup>170</sup> Additionally, the overwhelming majority (92%) believes that schools should

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<sup>168</sup> "USA Network's New "United Or Divided" Poll shows Americans Believe Racial, Ethnic, Political Divisions are Worse than just a Year Ago." USA Networks, <http://www.charactersunite.com/about/news-and-info/announcements/united-or-divided-2> (accessed December 3, 2013).

<sup>169</sup> Ibid.

<sup>170</sup> Timothy B. Tasker, Christina R. Peter and Stacey S. Horn, "Parents' Attitudes about Safe Schools Policies and Practices: Repositioning Parents as Youth Allies through a Rights-Based Framework," *Sexuality Research and Social Policy* (2014), 1-11.

have policies in place prohibiting bullying, discrimination, and harassment based on sexual orientation and gender identity or expression.<sup>171</sup>

Illinois is a politically moderate state that consists of both major urban centers, as well as rural farming towns. The state has gone for the Democratic presidential candidate every election cycle since 1992, and its U.S. House of Representatives makeup consists of 12 Democrats and 6 Republicans. In the Senate, the state's delegation is split with representation from Senator Dick Durbin (D) and Senator Mark Kirk (R).<sup>172</sup> While the state clearly leans Democratic and cannot be seen as an exact microcosm of the rest of the nation, it does contain a formidable Republican base. The overwhelming numbers of Illinois citizens supporting policies specifically addressing bullying and harassment based on sexual orientation and gender identity likely indicate that the majority of Americans would also support such policies.

Americans have been shown to largely support federal efforts to address bullying and harassment, and the overwhelming majority of residents of Illinois – a slightly left-leaning state with both an urban and rural geography – support anti-bullying policies that are inclusive of LGBT youth.<sup>173</sup> From these factors, we can conclude that public opinion is not currently a significant barrier to passing the Safe Schools Improvement Act in Congress, and that the majority of Americans would support its passage.

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<sup>171</sup> Ibid.

<sup>172</sup> "United States Congressional Delegations from Illinois." Wikipedia, [http://en.wikipedia.org/wiki/United\\_States\\_congressional\\_delegations\\_from\\_Illinois](http://en.wikipedia.org/wiki/United_States_congressional_delegations_from_Illinois) (accessed August 16, 2014).

<sup>173</sup> Ibid.

## **Interest Group Pressure For and Against SSIA**

As evidenced by the strong coalition support, the advocacy surrounding the Safe Schools Improvement Act relies heavily on pressure from interest groups, which likely accounts for the broad cosponsor support the legislation has in Congress. The bill has support from a wide array of stakeholders, from LGBT organizations, to religious and education organizations. These stakeholder groups have come together to form the National Safe Schools Partnership, which exists solely to support passage of the bill.

The Gay, Lesbian & Straight Education Network (GLSEN) is the organization leading the National Safe Schools Partnership.<sup>174</sup> GLSEN has been a long-time champion of the legislation and views itself as the lead organization supporting the bill. GLSEN worked closely with Rep. Shimkus's office to help draft the initial bill and has continued to work closely with staff in Rep. Linda Sanchez's office to modify the bill as needed.<sup>175</sup> The Safe Schools Improvement Act is GLSEN's top legislative priority, and modifications in the legislation often come as a result of findings in the organization's biennial National School Climate Survey, which analyzes school climate for LGBT youth nationwide.<sup>176</sup> For example, enumeration, which is a key component of the legislation, was found to increase a sense of safety for LGBT youth, so the legislation mandates anti-bullying laws with enumerated categories.

While GLSEN may be the leading organization supporting the bill, it also has the support of a variety of other stakeholders. Many religious organizations are signed on in support, including the Religious Action Center for Reform Judaism, the Association of

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<sup>174</sup> " National Safe Schools Partnership." GLSEN, <http://glsen.org/policy/federal/national-safe-schools-partnership> (accessed August 11, 2014).

<sup>175</sup> Byard, Eliza. Interview by author. Washington, D.C., April 20, 2014.

<sup>176</sup> Ibid.

Welcoming and Affirming Baptists, the Unitarian Universalist Association, and both the Sikh Coalition and the Sikh American Legal Defense and Education Fund (SALDEF). Bullying and harassment is of particular concern to the Sikh community, whose faith requires them to wear a turban. As a result, Sikhs are commonly confused with Muslims and are often targeted in anti-Muslim sentiment. The U.S. Commission on Civil Rights found that half to three-quarters of Sikh children are bullied.<sup>177</sup> Additionally, Sikh children are not even immune from harassment in major metropolitan areas. Nearly 70% reported being harassed in San Francisco in 2010 and just over 60% reported harassment in New York City in 2007.<sup>178</sup>

Perhaps the most notable support for the Safe Schools Improvement Act comes not from LGBT or religious organizations, but from the education community that would be charged with implementing the bill should it become law. One of the bill's well-known supporters is the National Education Association (NEA), the nation's largest union, which represents over three million elementary and secondary teachers, faculty, support professionals, school administrators, retired educators, and students preparing to become teachers.<sup>179</sup> In a statement released when the bill was reintroduced in the Senate in 2011, then-NEA President Dennis Van Roekel said, "Every child has a right to a safe place to learn. NEA strongly supports the Safe Schools Improvement Act and ridding schools of bullying and harassment. Our children are America's greatest resource. And as

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<sup>177</sup> "Bullying." Sikh Coalition, <http://www.sikhcoalition.org/our-programs/advocacy/bullying> (accessed August 16, 2014).

<sup>178</sup> Ibid.

<sup>179</sup> "HRC & NEA Applaud Senate Reintroduction of Safe Schools Improvement Act." National Education Association, <http://www.nea.org/home/42753.htm> (accessed August 16, 2014).

educators, we want nothing more than to create a climate of civility and respect for all students, including LGBT students, in every public school.”<sup>180</sup>

In addition to the NEA, the Safe Schools Improvement Act is supported by several other education organizations, including the American Federation of Teachers, the National Association of Elementary School Principals, the National Association of Secondary School Principals, the National Association of School Psychologists, and the American School Counselor Association.<sup>181</sup> However, not every education organization is on board. No statement of support or opposition could be found for the National School Boards Association or the Council of Chief State School Officers, which are the leading organizations representing elected education officials across the United States, and while the American Association of School Administrators (AASA), which represents superintendents, once supported the bill,<sup>182</sup> SSIA was included in the organization’s list of bills they opposed in 2012. AASA only stated that they opposed the bill because “no additional federal funding would be available to schools to comply with these new requirements.”<sup>183</sup> AASA has not released a statement of support or opposition regarding SSIA since 2012, and the organization has essentially taken a neutral stance. There is currently no organized vocal opposition within the policy debate on the bill.

The Safe Schools Improvement Act has a significant level of support from a variety of interest groups. Not only does it have the support of nearly every major LGBT organization, but it also has the support of major religious and education organizations

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<sup>180</sup> Ibid.

<sup>181</sup> "National Safe Schools Partnership." GLSEN, <http://glsen.org/policy/federal/national-safe-schools-partnership> (accessed August 11, 2014).

<sup>182</sup> Byard, Eliza. Interview by author. Washington, D.C., April 20, 2014.

<sup>183</sup> "Bills AASA Opposes." American Association of School Administrators, [http://www.aasa.org/uploadedFiles/Policy\\_and\\_Advocacy/files/AASA2012TalkPoints.doc](http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/files/AASA2012TalkPoints.doc) (accessed August 16, 2014).

and associations. The support of the latter has likely been invaluable in advocacy efforts surrounding the legislation and account for a significant portion of the cosponsor support the bill has. One major national education association (AASA) has come out in opposition to SSIA in the 112<sup>th</sup> Congress, but no organized opposition was found for the bill in the 113<sup>th</sup> Congress. Interest group pressure does not appear to be playing a major role in hindering SSIA's passage.

### **Legislature Dynamics and SSIA**

With strong support for SSIA among the public and many stakeholder interest groups, we find that it is the dynamics within the United States Congress itself that stand alone as the primary reason that the Safe Schools Improvement Act has failed to move forward since its initial introduction 12 years ago. These dynamics have consisted primarily of the political make-up of the current Congress; the reauthorization of the Elementary and Secondary Education Act (ESEA); and broader philosophical concerns within Congress regarding the federal role in education.

The political makeup of the 112<sup>th</sup> and 113<sup>th</sup> Congresses accounts for one primary reason that SSIA has failed to move forward in recent years. In 2010, Senate Republican Leader Mitch McConnell set the tone of the session by telling the National Journal, "The single most important thing we want to achieve is for President Obama to be a one-term President."<sup>184</sup> Following Obama's reelection in 2012, Republican opposition (particularly in the House of Representatives) to Democratic initiatives coming out of the Senate has

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<sup>184</sup> Glenn Kessler, "When did McConnell Say He Wanted to make Obama a 'One-Term President'?" The Washington Post, [http://www.washingtonpost.com/blogs/fact-checker/post/when-did-mcconnell-say-he-wanted-to-make-obama-a-one-term-president/2012/09/24/79fd5cd8-0696-11e2-afff-d6c7f20a83bf\\_blog.html](http://www.washingtonpost.com/blogs/fact-checker/post/when-did-mcconnell-say-he-wanted-to-make-obama-a-one-term-president/2012/09/24/79fd5cd8-0696-11e2-afff-d6c7f20a83bf_blog.html) (accessed August 18, 2014).

not relented. The divided government between the House and Senate has resulted in near stalemate on many major pieces of legislation – a trend reflected since the 1960s, and especially prominent in recent years, as a result of increased partisan polarization.<sup>185</sup>

The current Congress has achieved very few major successes due to the political climate. In fact, the 113<sup>th</sup> Congress is on track to become the least productive Congress in recent history. As of the end of July 2014, the 113<sup>th</sup> Congress had passed only 142 laws, which, according to Pew, is “the fewest of any Congress in the past two decades over an equivalent timespan. And only 108 of those enactments were substantive pieces of legislation, under [Pew’s] deliberately broad criteria (no post-office renamings, anniversary commemorations or other purely ceremonial laws).”<sup>186</sup> The passage of such few laws is the result of divided government and constant tension between the parties.

One of the major pieces of legislation that Congress has yet to reauthorize is the Elementary and Secondary Education Act (ESEA), which is the federal law that governs the nation’s school system. ESEA reauthorization has long been seen as the primary vehicle for the Safe Schools Improvement Act and the bill was included in Senate Health, Education, Labor and Pensions Committee (HELP) Chairman Tom Harkin’s (D-IA) attempt to reauthorize ESEA in both the 112<sup>th</sup> and 113<sup>th</sup> Congresses.<sup>187</sup>

In the nearly 50 years since its passage, ESEA has morphed from a piece of legislation designed for the sole purpose of addressing educational disparities resulting from income inequality to a law allowing for federal oversight and control over various

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<sup>185</sup> Barbara Sinclair, *Party Wars: Polarization and the Politics of National Policy Making* (University of Oklahoma Press, 2006), 355.

<sup>186</sup> Drew Desilver, "Congress Continues its Streak of Passing Few Significant Laws," Pew Research Center, <http://www.pewresearch.org/fact-tank/2014/07/congress-continues-its-streak-of-passing-few-significant-laws/> (accessed August 18, 2014, 2014).

<sup>187</sup> Chris Johnson, "Senate Panel Approves LGBT-Inclusive Education Bill," *The Washington Blade*, <http://www.washingtonblade.com/2013/06/13/senate-panel-approves-lgbt-inclusive-education-bill/> (accessed August 18, 2014).

aspects of the nation's education system.<sup>188</sup> Prior to its introduction, the federal role in education was extremely limited. Education was (and to a large degree still is) primarily seen as a local issue to be controlled by local school boards and state legislatures; however, ESEA was successfully reauthorized every three years during the first fifteen years after being signed into law in 1965, and each reauthorization brought with it stricter federal requirements for local educational agencies. While not reauthorized with quite as much regularity, the law continued to be updated intermittently under the Reagan, Bush, and Clinton Administrations.

George W. Bush wanted to make education a priority after his election in 2000. After September 11<sup>th</sup>, Congress finalized ESEA negotiations that had been underway for most of 2001, and in January 2002, President Bush signed No Child Left Behind (NCLB), the most recent iteration of ESEA, into law. The law established a multi-tiered federalism approach, which left states to set standards and testing, while the federal government set the definition for accountability. Under the law, states were required to bring 100% of students up to proficiency on state tests by the fall of 2013 – a requirement that no state was ultimately able to meet.<sup>189</sup>

In the 13 years since No Child Left Behind was passed and signed into law, Congress has attempted multiple times to restructure ESEA so that states are able to return to compliance. The House Education & Labor Committee, then chaired by Rep. George Miller (D-CA), released a discussion draft of legislation as a first step in 2007 (which included language from SSIA), and the Committee held a hearing on the proposal

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<sup>188</sup> George Farkas et al., "Can Title I Attain its Goal?" *Brookings Papers on Education Policy*, no. 3 (2000), 123.

<sup>189</sup> "Research Center: No Child Left Behind." Education Week, <http://www.edweek.org/ew/issues/no-child-left-behind/> (accessed March 9, 2013).

on September 10, 2007,<sup>190</sup> but the proposal went nowhere. After conversation around the 2007 discussion draft dwindled, another good-faith effort to reauthorize ESEA was not put forward until four years later by Senate HELP Committee Chairman Tom Harkin. The reauthorization legislation was modeled after Harkin's own Successful, Safe and Healthy Students Act and also included SSIA in its language. Harkin negotiated for months with Ranking Member Mike Enzi throughout the process to ensure the legislation would pass the HELP Committee with bipartisan support,<sup>191</sup> however, the House of Representatives, now under Republican control and with Rep. John Kline (R-MN) at the helm of the Education & the Workforce Committee, chose to take a piecemeal approach to reauthorization and passed two authorizing bills. Neither of the House's bills included SSIA language. No conference committee was established, and ESEA reauthorization was dead in the 112<sup>th</sup> Congress.<sup>192</sup>

SSIA did not fare much better in the 113<sup>th</sup> Congress. The Senate passed a Democratic-only ESEA reauthorization bill out of the HELP Committee,<sup>193</sup> and the Republican-controlled House of Representatives passed their own partisan bill out of the whole House, with no Democratic support.<sup>194</sup> Like the 112<sup>th</sup> Congress, no conference committee developed, and many education community leaders believe that Congress is

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<sup>190</sup> Committee on Education and Labor, *Reauthorization of the Elementary and Secondary Education Act of 1965*, 110th Congress, 1<sup>st</sup> Sess.

<sup>191</sup> Alyson Klein, "ESEA Bill Clears Panel in Senate," *Education Week* 31, no. 9 (10/26, 2011), 1-21.

<sup>192</sup> Dylan Scott, "ESEA Reauthorization Passes House Committee," *Governing Magazine*, February 29, 2012.

<sup>193</sup> Amanda Karhuse, "Senate Committee Approves ESEA Reauthorization Bill," National Association of Secondary School Principals, <http://nasspblogs.org/principalspolicy/2013/06/senate-committee-approves-esea-reauthorization-bill/> (accessed August 18, 2014).

<sup>194</sup> Jacki Ball, "ESEA Reauthorization Bill Passes the House of Representatives," National Association of Secondary School Principals, <http://nasspblogs.org/principalspolicy/2013/07/esea-reauthorization-bill-passes-the-house-of-representatives/> (accessed August 18, 2014).

unlikely to reauthorize ESEA until at least December 2015.<sup>195</sup> As the primary vehicle for SSIA, this forecast does not bode well for the bill's chances of passage.

One of the primary reasons that Congress has failed to pass reauthorization of ESEA, and consequently, the Safe Schools Improvement Act, is that there is a fundamental and philosophical divide between the parties on the appropriate role of the federal government in education. This divide has led to a stalemate between the parties on education issues. Unlike political issues in which the parties may strategically decide to disagree, stalemates, according to John Gilmour, "are not the result of strategic disagreement, but of real disagreement...."<sup>196</sup>

Until ESEA was first signed into law in 1965, the federal government's role was extremely limited, and most educational decisions occurred at the local and state levels. Even in the early years after its passage, ESEA existed primarily to ensure that low-income students were afforded a fair education through funds within Title I of the law.<sup>197</sup> Subsequent reauthorizations strengthened the federal role, and Democratic efforts to reauthorize the law today include a strengthened federal role, especially in such areas as student performance standards and school accountability.<sup>198</sup> Meanwhile, Republican efforts to reauthorize ESEA have consisted largely of a diminished federal role, primarily providing block grants to states to administer their education programs with little federal oversight or involvement.

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<sup>195</sup> Lauren Camera, "Slim Hope for ESEA Reauthorization," Education Week, [http://blogs.edweek.org/edweek/campaign-k-12/2014/08/little\\_hope\\_for\\_esea\\_reauthori.html](http://blogs.edweek.org/edweek/campaign-k-12/2014/08/little_hope_for_esea_reauthori.html) (accessed August 18, 2014).

<sup>196</sup> John B. Gilmour, *Strategic Disagreement: Stalemate in American Politics* (University of Pittsburgh Press, 1995).

<sup>197</sup> "Part I: Title I in Perspective." National School Boards Association, <http://www.nsba.org/bookreports/title1/PartI.htm> (accessed March 8, 2013).

<sup>198</sup> Motoko Rich, "Debate Over Federal Role in Public School Policy," *The New York Times*, sec. Education, February 9, 2013.

This philosophical divide became especially apparent during a Senate HELP Committee hearing in February of 2013, when Ranking Member Lamar Alexander (R-TN) addressed a question to New York State Education Commissioner John King. Alexander stated, “We only give you 10 percent of your money. Why do I have to come from the mountains of Tennessee to tell New York what’s good for you?” Dr. King replied that it was the federal government’s role to set parameters to protect students, especially those who are most vulnerable.<sup>199</sup>

Statistics on the 113<sup>th</sup> Congress have shown that divided government has made it difficult for Congress to pass many major pieces of legislation over the past couple of years, and with such a strong philosophical divide regarding the role of education among Republicans and Democrats, it has become nearly impossible to reach compromise and pass reauthorization of ESEA. As the primary vehicle for moving SSIA in Congress, SSIA has also suffered under the stalemate. It is worth noting that hang-ups on ESEA reauthorization are not centered on SSIA’s specific provisions, but rather the broader question of the federal government’s role in education, including questions surrounding mandatory testing, federally required state standards, and federal accountability measures. The dynamics within the contemporary Congress have made it difficult to reach consensus on these broader issues, and under the circumstances, have weakened SSIA’s chances of passing in the near future.

## **Conclusion**

As an issue demanding a public policy solution, bullying and harassment has moved from an afterthought in conversations around school safety to a major issue in

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<sup>199</sup> Ibid.

creating overall safe and healthy school climates over the last decade. The movement to address the issue has been largely spurred by research finding that LGBT youth in particular face tremendous rates of bullying in their schools.<sup>200</sup> Once placed into the spotlight by the national media, it becomes difficult to ignore these trends and compelling for policymakers to find solutions to remedy them. Most of the policy solutions have thus far occurred at the state level, with 17 states and the District of Columbia having passed enumerated anti-bullying laws specifically listing LGBT students within their provisions.

Legislation at the federal level has been slower to move, and much of the federal response to bullying thus far has done occurred through the executive branch. The Obama Administration has been particularly assiduous in addressing bullying and harassment. The administration is the first to draw attention to the issue through programs such as the White House Conference on Bullying Prevention, the launch of StopBullying.gov, and the endorsement of federal legislation.

In addition to action from the White House, the U.S. Department of Education has also made efforts to address the issue, serving as a convener for organizations and the federal government to explore various avenues to address bullying and harassment through annual Bullying Prevention Summits, as well as through formal policy change, such as the Department's release of guidance clarifying that civil rights laws applied to incidents of bullying and harassment. It has become clear, however, that the Department of Education is unable to fully address the issue through conversations and guidance alone and is limited in its power to take administrative action. It falls on Congress to address the issue by federal legislation, and the Safe Schools Improvement Act has the

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<sup>200</sup> Joseph G. Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools* (ERIC, 2012), 15.

most support, both inside and outside of Congress, to do that.

While no polls have been conducted on whether the public supports the Safe Schools Improvement Act itself, it is clear that the public does support a Congressional effort to address bullying and harassment, as well as public policy initiatives to address it.<sup>201</sup> The public's perception on the acceptability of LGBT people has also shifted dramatically over the past decade (and even more dramatically when compared to the decades prior).<sup>202</sup> This shift indicates that public opinion would also be amenable to include LGBT students within enumerated lists in anti-bullying laws. Public opinion is firmly on the side of passage of the Safe Schools Improvement Act.

In addition to public opinion, interest groups who have weighed in have done so nearly unanimously in support. The National Safe Schools Partnership consists not only of LGBT organizations, but also of major health; youth development; civil rights; and (most notably) education organizations, the latter of which would be primarily responsible for the bill's implementation at the most basic level.<sup>203</sup> To date, the only interest group to publicly weigh in against the bill was the American Association of School Administrators, which listed the bill on a handout of bills it opposed in 2012.<sup>204</sup> It has not taken a stance on the legislation since then. Vocal interest groups have overwhelmingly supported the bill's passage.

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<sup>201</sup> "USA Network's New "United Or Divided" Poll shows Americans Believe Racial, Ethnic, Political Divisions are Worse than just a Year Ago." USA Networks, <http://www.charactersunite.com/about/news-and-info/announcements/united-or-divided-2> (accessed December 3, 2013).

<sup>202</sup> "May 2013 Political Survey." Pew Research Center for the People and the Press, <http://www.peoplepress.org/files/legacy-questionnaires/06-06-13%20LGBT%20public%20topline.pdf> (accessed December 9, 2013).

<sup>203</sup> "National Safe Schools Partnership." GLSEN, <http://glsen.org/policy/federal/national-safe-schools-partnership> (accessed August 11, 2014).

<sup>204</sup> "Bills AASA Opposes." American Association of School Administrators, [http://www.aasa.org/uploadedFiles/Policy\\_and\\_Advocacy/files/AASA2012TalkPoints.doc](http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/files/AASA2012TalkPoints.doc) (accessed August 16, 2014).

With these two categories addressed, we are left to deduce that it is dynamics within the Congress that have stalled passage of the Safe Schools Improvement Act. The legislation faces several major roadblocks within Congress that must be resolved before the bill can move forward.

The current political climate is not amenable to passing many bills. The 113<sup>th</sup> Congress has been the least productive in modern history, passing only 108 substantive pieces of legislation prior to the August recess of the second session.<sup>205</sup> Republican-crafted bills drafted and passed in the House of Representatives have died in the Senate, and Democrat-crafted bills drafted and passed in the Senate have died in the House. Bills managed by minority party members are not likely to be brought up in either chamber, which makes the bill – handled by Rep. Linda Sanchez (D-CA) – unlikely to be considered in the House. In his work *Agendas, Alternatives, and Public Policies*, John Kingdon discusses the importance of an effective policy entrepreneur, or the primary champion pushing a policy proposal.<sup>206</sup> Given the Republican control of the U.S. House in the 113<sup>th</sup> Congress, and both chambers in the 114<sup>th</sup>, supporters of SSIA should examine the current sponsors and closely. Democratic sponsors in a Republican legislature may not be the best policy entrepreneurs of the bill, and a change in sponsor could greatly enhance the bill's passage over the next session.

The bill could be rolled into an update of the Elementary and Secondary Education Act, however reauthorization of the federal law governing the nation's school

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<sup>205</sup> Drew Desilver, "Congress Continues its Streak of Passing Few Significant Laws," Pew Research Center, <http://www.pewresearch.org/fact-tank/2014/07/congress-continues-its-streak-of-passing-few-significant-laws/> (accessed August 18, 2014, 2014).

<sup>206</sup> John W. Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd ed. (Addison-Wesley Educational Publishers Inc., 1995), 204.

system has fallen victim to the partisan politics affecting the rest of Congress. Multiple efforts to reauthorize ESEA in both chambers have failed. The Senate has continually passed reauthorization efforts that expand the federal role in education, while the House has taken a state-strengthening piecemeal approach. Efforts have died in each chamber and education policy observers believe that ESEA reauthorization is unlikely until at least December 2015.<sup>207</sup>

The 112<sup>th</sup> and 113<sup>th</sup> Congresses were split, with Republicans controlling the U.S. House and Democrats controlling the Senate. The 114<sup>th</sup> Congress offers a change in that dynamic, with Republicans controlling both chambers of Congress. The stalemate on ESEA reauthorization may be coming to an end, as Republicans now have an opportunity to advance reauthorizing legislation through Congress. SSIA has not been included in Republican proposals to reauthorize ESEA in the past, so it is essential that policy entrepreneurs work across party lines to negotiate the components into any Republican-controlled ESEA reauthorization effort if the legislation has any chance of succeeding in the 114<sup>th</sup> Congress.

The political debate surrounding the reauthorization of ESEA is reflective of a broader philosophical debate on the federal role in education. Until the mid-20<sup>th</sup> century, the federal government's role was extremely limited and education was, by and large, an issue controlled at the local and state levels. Even when the federal government initially delved into education, it did so only to ensure that low-income students were afforded equal educational opportunities. Since then, to the chagrin of political conservatives, the federal role has strengthened. Many who believe the federal role should be limited

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<sup>207</sup> Lauren Camera, "Slim Hope for ESEA Reauthorization," Education Week, [http://blogs.edweek.org/edweek/campaign-k-12/2014/08/little\\_hope\\_for\\_esea\\_reauthori.html](http://blogs.edweek.org/edweek/campaign-k-12/2014/08/little_hope_for_esea_reauthori.html) (accessed August 18, 2014).

oppose a federal anti-bullying law, even if that law is crafted in a way that sets a floor from which states are required to build, as the Safe Schools Improvement Act does. Until public opinion or interest groups persuade those lawmakers otherwise, the Safe Schools Improvement Act is unlikely to pass.

To date only 17 states and the District of Columbia have passed enumerated anti-bullying laws that specifically cover students based on their sexual orientation and gender identity, despite a multitude of research showing the impact of such laws on school climate. Many other states have simple, generic anti-bullying laws in place, which research has found to be nearly as ineffective as having no policy whatsoever. It is clear that the only way for every student to be covered under an enumerated anti-bullying policy is for the federal government to mandate that states have such policies in place. The Safe Schools Improvement Act seems poised to become that mandate; however, given the current political climate and multiple barriers within Congress, just when the bill will become law is impossible to pinpoint.

## CONCLUSION

Sirdeaner Walker was moved to do something about bullying and harassment after her son, Carl Joseph Walker Hoover, committed suicide in 2009. Shortly after the story received media attention, Sirdeaner received a call from Eliza Byard, executive director of GLSEN. Hearing how passionately Sirdeaner spoke about bullying and harassment in Carl's school, Byard invited her to join GLSEN's board of directors.<sup>208</sup> This created the bully pulpit Sirdeaner needed to help advance her cause and push for safe schools, both through in-school programs, as well as through public policy.

A couple of years after Carl's suicide, Sirdeaner received another surprise. She was a single mother with several children, and though it was difficult for her to continue living in the house where her son committed suicide, she simply did not have the resources to move her family into a new home; however, their story had drawn national attention, and in 2011, they were featured on ABC's *Extreme Makeover: Home Edition*. The Walkers' house was completely reconstructed, and – importantly for Sirdeaner – they were able to use the television segment to draw further national attention to the issue of anti-LGBT bullying and harassment in the nation's schools.<sup>209</sup> In the episode, Sirdeaner was specifically able to make a national call for safe schools legislation and encourage viewers to contact their representatives to advocate for their support.

Similar to the Walker family, the Clementi family took up the cause of anti-LGBT bullying after the suicide of their son, Tyler. They began the Tyler Clementi Foundation, a nonprofit and advocacy organization, which “promotes safe, inclusive and respectful

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<sup>208</sup> Byard, Eliza. Interview by author. Washington, D.C., April 20, 2014.

<sup>209</sup> "Walker Family." ABC, <http://abc.go.com/shows/extreme-makeover-home-edition/episode-guide/episode-910-walker-family> (accessed November 2, 2014).

social environments in homes, schools, campuses, churches, and the digital world for vulnerable youth, LGBT youth and their families.”<sup>210</sup> In addition, the foundation has partnered with Rutgers University to create the Tyler Clementi Center at Rutgers. According to the foundation’s website, “The Center... will draw from academic disciplines across the university and throughout the nation to create new programs and approaches to address issues that confront young people – specifically vulnerable youth making the transition from home to college.”<sup>211</sup>

Clementi’s suicide served as a catalyst for New Jersey’s anti-bullying bill, one of the strongest in the country, which was passed by a Democratic legislature and signed into law by Gov. Chris Christie, a Republican. It also garnered national attention and led to the introduction of the Tyler Clementi Higher Education Anti-Harassment Act in Congress. Originally sponsored by Rep. Rush Holt (D-NJ) in the House and Sen. Frank Lautenberg (D-NJ) in the Senate,<sup>212</sup> the Tyler Clementi Act would require higher education institutions to adapt their student conduct policies to cover cyberbullying, as well as specifically enumerate protections for a variety of student demographics, including LGBT youth. The bill has little support, however, with only 38 cosponsors in the House and eight cosponsors in the Senate in the final weeks of the 113<sup>th</sup> Congress.

Eliza Byard continues to serve as the executive director of the Gay, Lesbian & Straight Education Network (GLSEN). After her testimony before the U.S. Commission on Civil Rights calling on the federal government to take action on school bullying and

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<sup>210</sup> "The Tyler Clementi Foundation: Mission and Vision." The Tyler Clementi Foundation, <http://www.tylerclementi.org/about/mission-and-vision> (accessed November 2, 2014).

<sup>211</sup> "Rutgers University and Tyler Clementi Foundation Create Center Dedicated to Serving Vulnerable Youth." The Tyler Clementi Foundation, <http://www.tylerclementi.org/about/rutgers-university/> (accessed November 2, 2014).

<sup>212</sup> Sen. Patty Murray (D-WA) currently sponsors the bill in the Senate. She took up sponsorship of the bill following Sen. Frank Lautenberg’s death in June 2013.

harassment, Byard strengthened her call for federal legislation to address bullying and harassment. Her organization remains the primary interest group advocating for passage of the Safe Schools Improvement Act continues to lead the National Safe Schools Partnership in support of the legislation.<sup>213</sup>

Despite legislative progress on the state level and progress within the administration on the federal level, bullying and harassment remains a significant barrier in the effort to create safe and inclusive environments in the nation's K-12 public schools. LGBT youth in particular report extraordinarily high levels of bullying, with eight in ten reporting verbal harassment because of their sexual orientation and six in ten because of their gender identity or expression. LGBT youth report feeling unsafe in and around the school building, including in gym class, athletic facilities, cafeterias, on the school bus, in the school's hallways, and in school parking lots.<sup>214</sup> As a result, 30% of LGBT youth report skipping an entire day of school at least once in the past month.<sup>215</sup> Higher levels of victimization were also found to result in lower grade point averages, less of a sense of community belonging, lower self-esteem, higher rates of depression, and lower academic aspirations.<sup>216</sup>

This thesis builds upon the current literature examining bullying and harassment in the nation's schools, with particular attention paid to the needs of LGBT youth. The research identifies public policies that address the issue and the components that are most effective in creating safe learning environments for LGBT students, and compares and contrasts various policy proposals to illustrate their efficacy. It aims to help

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<sup>213</sup> "National Safe Schools Partnership." GLSEN, <http://glsen.org/policy/federal/national-safe-schools-partnership> (accessed August 11, 2014).

<sup>214</sup> Joseph G. Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools* (ERIC, 2012), 20.

<sup>215</sup> Ibid.

<sup>216</sup> Ibid.

policymakers, researchers, and advocates change school climate for LGBT youth and create environments in which all youth, including those who are LGBT, will feel safe and supported. Only when youth feel safe in school are they able to focus on the lessons presented in the classroom and grow in their academic aspirations.

## **Conclusions and Recommendations**

Chapter one established which components of anti-bullying policies are most effective for LGBT youth. The chapter drew heavily from the U.S. government's 11 key components of effective anti-bullying policies<sup>217</sup> and cross-referenced those components with elements identified within GLSEN's model state legislation.<sup>218</sup> In doing so, the chapter found that, while each of the government's identified components are relevant and necessary for anti-bullying laws to be effective, several are especially important for LGBT youth. Policymakers working to craft such policies should aim to include these components in their efforts. Specifically, legislation should include: A statement of scope that identifies where the law applies (e.g., whether or not it applies at a bus stop or only on school grounds); a specification of prohibited conduct, including a definition of bullying and cyberbullying, that includes examples of prohibited behavior; a mechanism for state review of local education agency (LEA) policies; a communication plan to notify the public of the development and implementation of policies; training for school personnel, particularly to ensure cultural competency in working with LGBT youth; and a statement allowing victims of bullying to seek recourse under other laws. Perhaps most

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<sup>217</sup> "Key Components in State Anti-Bullying Laws." Federal Partners in Bullying Prevention, <http://www.stopbullying.gov/laws/key-components/index.html> (accessed November 9, 2013).

<sup>218</sup> "Model State Anti-Bullying and Harassment Legislation." The Gay, Lesbian and Straight Education Network (GLSEN), <http://www.glsen.org/sites/default/files/GLSEN%20state%20model%20legislation.pdf> (accessed October 20, 2014).

importantly, the chapter reinforces existing research finding that enumeration – or a specific list of student demographics covered under the policy – is critically important to ensuring that LGBT youth are covered under the law. Youth in schools with enumerated policies report feeling significantly safer than youth in schools without them.<sup>219</sup>

Very little research currently exists on the political barriers to passing LGBT-inclusive anti-bullying proposals into law, and chapter two of this thesis addresses that gap in the literature. Building upon the work of John Kingdon, who established the concept of process streams (consisting of problems, policy, and politics) and hypothesized that the confluence of these streams opens a policy window (an ideal time to pass a given policy proposal) the chapter establishes a theory that policymakers must address three barriers in order to pass their proposals into law: public opinion, interest group pressure, and legislature dynamics.

Policy entrepreneurs (to draw upon another theory from Kingdon) must consider and address these barriers in order to successfully pass their proposals into law. Public opinion on LGBT issues may stall proposals, particularly because LGBT issues in K-12 education frequently draws controversy. Conversely, as shown in New Jersey, public opinion may compel policymakers to act expeditiously. The research also finds that interest groups play an important role crafting and advocating for a piece of legislation, but opposition from other interest groups (such as education organizations) may hamper a bill's chances of passage.

The chapter finds that the most important barrier to address, however, is dynamics within the legislature. Opposition from majority party leaders, competition with other

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<sup>219</sup> Kosciw et al., *The 2011 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual and Transgender Youth in our Nation's Schools* (ERIC, 2012), 58.

bills, and philosophical views among legislators on the role of the state in education policy has a significant impact on an LGBT-inclusive anti-bullying proposal's chance of passage. More so than public opinion or pressure from outside interest groups, legislature dynamics often determines the success or failure of anti-bullying bills at the state level.

The same can be said of current efforts to pass such efforts at the federal level. In exploring the Safe Schools Improvement Act (federal legislation that would require states to develop enumerated anti-bullying policies that include sexual orientation and gender identity, as well as establish a reporting system), chapter three finds significant barriers. First, the chapter establishes that public opinion is not a significant barrier to the bill, as limited research finds that the public generally approves of the concept of the law. Pressure from interest groups is also not hindering the bill's chances, with over 100 national organizations supporting it and no organized opposition to the legislation. The chapter finds that the legislation is stalled, however, due to dynamics within Congress and to broader conversations centered on reauthorization of the Elementary and Secondary Education Act (ESEA), the federal law governing the nation's school system. ESEA reauthorization has long been seen as the primary legislative vehicle for SSIA, and with no reauthorization since 2001, the bill has not advanced.

The upcoming 114<sup>th</sup> Congress presents new barriers to passage. In previous Congresses, the legislation was championed in Democratic proposals to reauthorize ESEA; however, Republicans, who have never included SSIA components in their ESEA reauthorization drafts, will control both chambers in the 114<sup>th</sup> Congress. ESEA reauthorization negotiations collapsed under the divided 112<sup>th</sup> and 113<sup>th</sup> Congresses, but chances of a reauthorization passing both chambers during the 114<sup>th</sup> Congress are

significantly heightened as a result of one-party control. Given this, Members of Congress and interest groups working to pass the legislation should explore alternative strategies to increase the legislation's chances of inclusion in a Republican reauthorization bill. Specifically, advocates should consider changing the legislation's primary sponsor in the House and Senate (currently both Democrats). John Kingdon found that the joining of the policy streams "depends heavily on the right [policy] entrepreneur at the right time."<sup>220</sup> One key characteristic of an effective policy entrepreneur is membership within a ruling party. Effective entrepreneurs must have standing to push for a committee hearing, work political connections, and remain persistent<sup>221</sup> – all of which is easier for members of the majority party. Advocates may also benefit by downplaying the legislation's LGBT inclusion and focusing on other aspects of the bill that may be more palatable to conservative Members of Congress, such as its support from disability rights organizations.

Ultimately, federal legislation is critically important. Many states are simply unable to overcome the political barriers that hinder the passage of anti-bullying laws with the components necessary to ensure the protection of LGBT youth. Without the passage of federal legislation, LGBT youth in some states will continue to experience higher levels of victimization through verbal and physical harassment than students in other states, impacting educational equity and academic success for LGBT students nationwide.

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<sup>220</sup>John W. Kingdon, *Agendas, Alternatives, and Public Policies*, 2nd ed. (Addison-Wesley Educational Publishers Inc., 1995), 205.

<sup>221</sup> *Ibid.*

## **Limitations and Recommended Research**

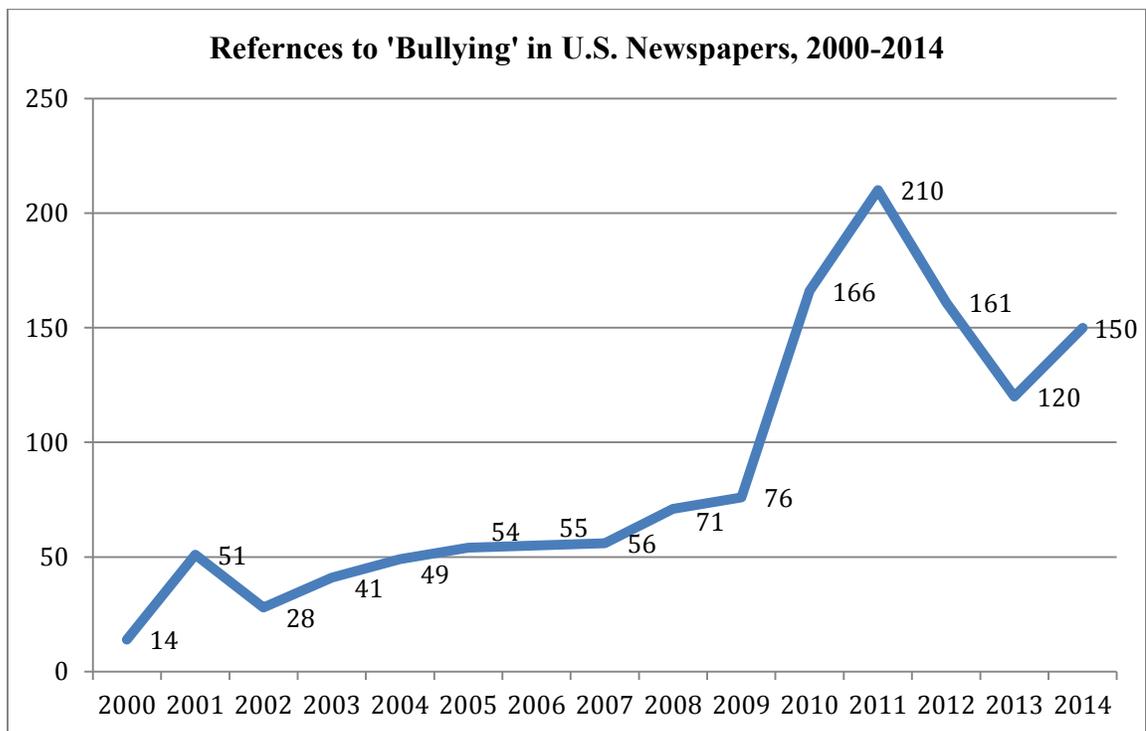
This research has a couple of notable limitations. First, it assumes the Federal Partners in Bullying Prevention's 11 key components of anti-bullying policies are a comprehensive list, and does not independently test the necessity of those components in policy (nor does it identify additional components). Similarly, it assumes the components identified in GLSEN's model policy are the best policy components for addressing the needs of LGBT youth, and does not conduct independent research to test the elements identified there. Second, the research relies on relatively few case studies and interviews to test its hypotheses. By relying on a comparative analysis of two similar states and three interviews with legislators, the research is limited in its scope and findings.

Future research might analyze every state's anti-bullying law compared with school climate in the respective states to further test the findings of this thesis. In addition, this research would be supplemented by additional research on the impact of state or federal action on local and state anti-bullying laws. For instance, would movement of SSIA on the federal level spur state-level action to address bullying? Does passage of state-level anti-bullying laws spur action on the local level to address the issue beyond the requirements set forth in state law? Conversely, would additional action at the local and state level have an impact on federal efforts to pass SSIA? Research to address these or similar questions would shed additional light on the political landscape surrounding passage of LGBT-inclusive anti-bullying laws. It is the author's hope that this thesis will serve as a beginning point for further research on the subject and will better facilitate the crafting of policies that establish safe and supportive educational environments for LGBT youth in America's K-12 schools.

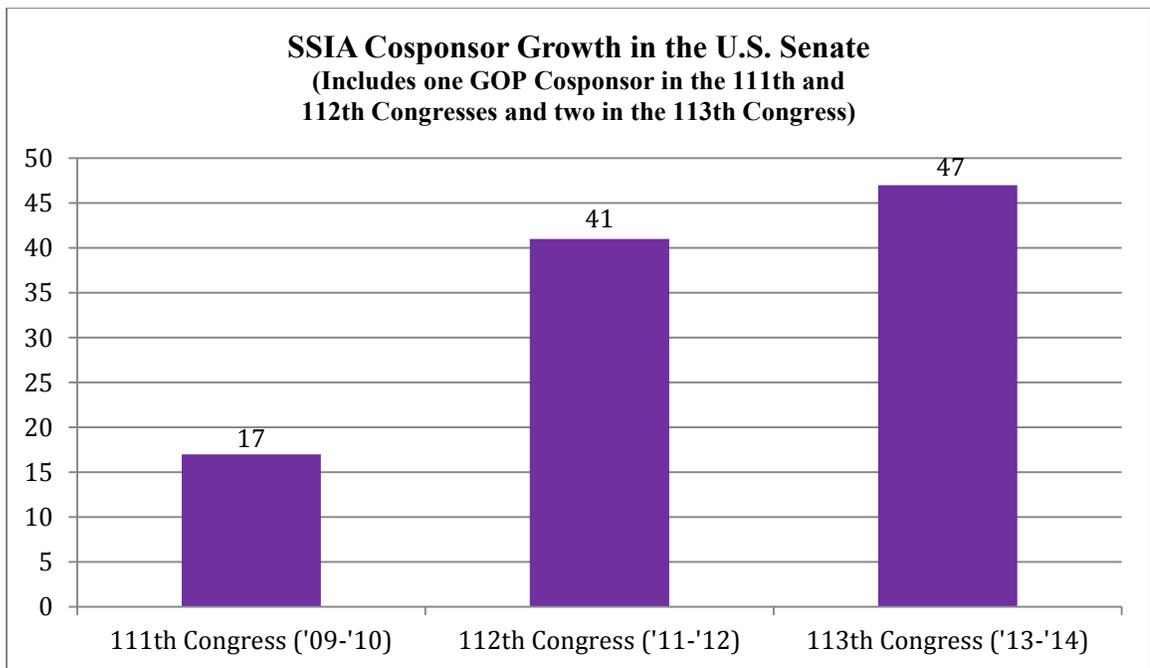
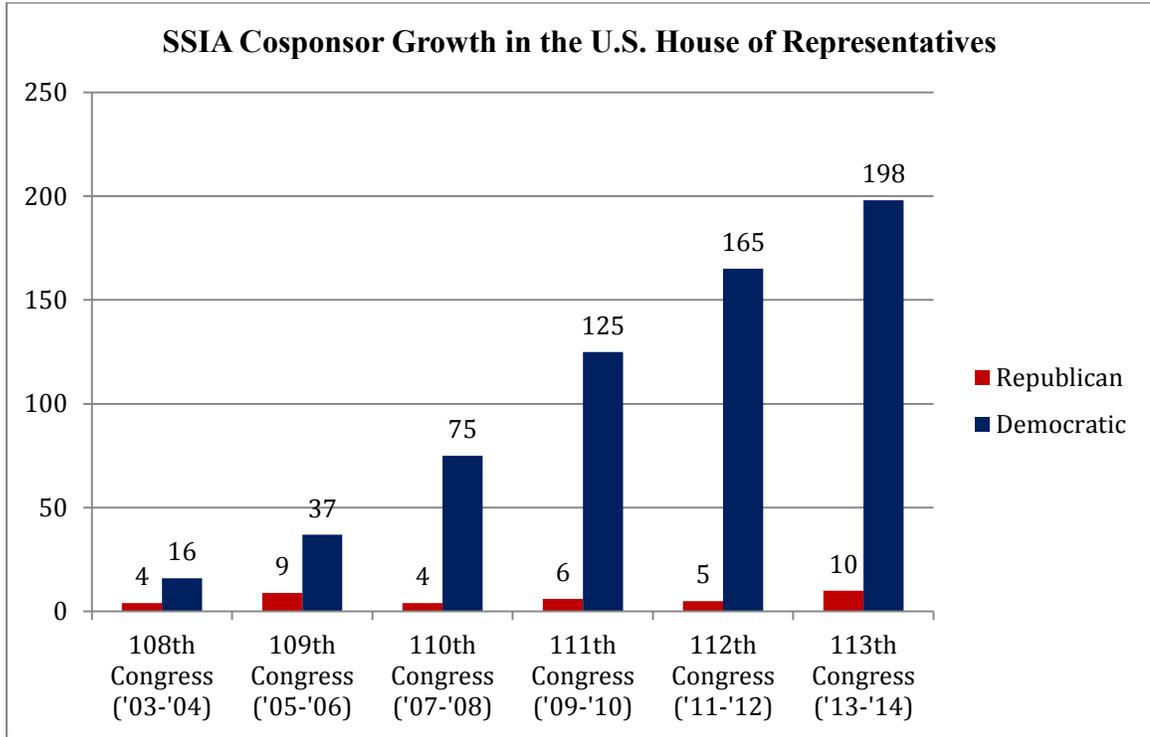
## APPENDICES

### Appendix 1 – References to ‘Bullying’ in U.S. Newspapers

The chart below reflects the number of articles containing the term ‘bullying’ in major U.S. newspapers between January 1, 2000 and October 5, 2014. The data was collected using LexisNexis Academic and shows a significant growth in articles covering the subject over time, peaking in 2011.



**Appendix 2 – Cosponsor Growth of the Safe Schools Improvement Act**



### Appendix 3 – Member Organizations of the National Safe Schools Partnership

<b>Organization Name</b>	<b>Organization Type</b>
Families United Against Hate	Anti-Violence Organization
Futures Without Violence	Anti-Violence Organization
Ignitus Worldwide	Anti-Violence Organization
National Center for Victims of Crime	Anti-Violence Organization
American Association of University Women	Civil Rights
American-Arab Antidiscrimination Committee	Civil Rights
Asian American Justice Center	Civil Rights
Japanese American Citizens League	Civil Rights
League of United Latin American Citizens	Civil Rights
National Council of La Raza	Civil Rights
National Indian Education Association	Civil Rights
National Network for Arab American Communities	Civil Rights
National Urban League	Civil Rights
National Women's Law Center	Civil Rights
OCA - Asian Pacific American Advocates	Civil Rights
South Asian Americans Leading Together (SAALT)	Civil Rights
Southeast Asia Resource Action Center	Civil Rights
Southern Poverty Law Center	Civil Rights/Anti-Hate Organization
National Alliance of Black School Educators (NABSE)	Civil Rights/Education
Women's Sports Foundation	Civil Rights/Health
National Black Justice Coalition	Civil Rights/LGBT Rights
National Queer Asian Pacific Islander Alliance (NQAPIA)	Civil Rights/LGBT Rights
Anti-Defamation League	Civil Rights/Religious
Alexander Graham Bell Association for the Deaf and Hard of Hearing	Disability Rights
American Association of People with Disabilities	Disability Rights
National Council on Independent Living	Disability Rights
National Down Syndrome Society	Disability Rights
National Disability Rights Network	Disability Rights

PACER	Disability Rights
TASH	Disability Rights
The Arc of the US	Disability Rights
United Cerebral Palsy	Disability Rights
American Association of School Librarians	Education
American Federation of School Administrators	Education
American Federation of Teachers	Education
American Library Association	Education
Center for Inquiry	Education
Communities in Schools	Education
Coalition for Community Schools	Education
International Bullying Prevention Association	Education
National Association for Multicultural Education	Education
National Association for Pupil Transportation	Education
National Association for the Education of Homeless Children and Youth	Education
National Association of Elementary School Principals	Education
National Association of Secondary School Principals	Education
National Association of State Directors of Special Education	Education
National Education Association	Education
National PTA	Education
The Rural School and Community Trust	Education
STOMP Out Bullying	Education
Council for Children with Behavioral Disorders	Education/Disability Rights
Learning Disabilities Association of America	Education/Disability Rights
National Center for Learning Disabilities	Education/Disability Rights
American School Health Association	Education/Health
National Association of School Nurses	Education/Health
National Association of School Psychologists	Education/Health

School Social Work Association of America	Education/Health
Sexuality Information and Education Council of the U.S. (SIECUS)	Education/Health
Gay, Lesbian & Straight Education Network (GLSEN)	Education/LGBT Rights
Gay-Straight Alliance Network	Education/LGBT Rights
Committee for Children	Education/Youth Development
The Bully Project	Education/Youth Development
American Academy of Pediatrics	Health
American Counseling Association	Health
American Foundation for Suicide Prevention	Health
American Psychological Association	Health
Bazelon Center for Mental Health Law	Health
GLMA: Health Professionals Advancing LGBT Equality	Health/LGBT Rights
The Trevor Project	Health/LGBT Rights
Immigration Equality	Immigration/LGBT Rights
CenterLink: The Community of LGBT Centers	LGBT Rights
COLAGE	LGBT Rights
Equality Federation	LGBT Rights
Family Equality Council	LGBT Rights
Freedom to Marry	LGBT Rights
Human Rights Campaign	LGBT Rights
Lambda Legal	LGBT Rights
National Center for Lesbian Rights	LGBT Rights
National Center for Transgender Equality	LGBT Rights
National LGBTQ Task Force	LGBT Rights
PFLAG National	LGBT Rights
Pride at Work	LGBT Rights
Transgender Law Center	LGBT Rights
National League of Cities	Nonpartisan Advocacy Organization
Log Cabin Republicans	Political/LGBT Rights
National Stonewall Democrats	Political/LGBT Rights
Courage Campaign	Progressive Advocacy Organization
Center for American Progress Action Fund	Progressive Think Tank
People For the American Way	Progressive Think Tank

Robert F. Kennedy Center for Justice & Human Rights	Progressive Think Tank
African American Ministers in Action	Religious
Association of Welcoming & Affirming Baptists	Religious
Believe Out Loud	Religious
Friends Committee on National Legislation	Religious
Interfaith Alliance	Religious
Jewish Council for Public Affairs	Religious
Metropolitan Community Churches	Religious
National Council of Jewish Women	Religious
Religious Action Center for Reform Judaism	Religious
Religious Institute	Religious
Sikh American Legal Defense and Education Fund (SALDEF)	Religious
Sikh Coalition	Religious
Unitarian Universalist Association of Congregations	Religious
United Sikhs	Religious
Keshet	Religious/LGBT Rights
Advocates for Youth	Youth Development
Big Brothers Big Sisters of America	Youth Development
Boy Scouts of America	Youth Development
Break the Cycle	Youth Development
Character Education Partnership	Youth Development
Frist Focus Campaign for Children	Youth Development
Girls Inc.	Youth Development
Healthy Teen Network	Youth Development
National Collaboration for Youth	Youth Development
National Network for Youth	Youth Development
ReachOut USA	Youth Development

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**EDUCATION**

The Johns Hopkins University *December 2014*  
Master of Arts in Government

Appalachian State University *May 2009*  
Bachelor of Science in Political Science *Magna Cum Laude*

**EXPERIENCE**

The Gay, Lesbian & Straight Education Network (GLSEN)

*Public Policy Manager* *October 2013-present*

- Manage the public policy department in the absence of a Director, including serving as the primary staff contact for the development of a new public policy platform;
- Represent the organization at high-level meetings;
- Assist with development of the departmental budget;
- Ensure compliance with the Lobbying Disclosure Act;
- Identify and onboard temporary staff in addition to continuing to manage the tasks outlined below.

*Public Policy Associate* *August 2011-October 2013*

- Served as GLSEN's primary federal lobbyist to advance the organization's legislative priorities and shape legislative strategy;
- Managed a coalition of nearly 120 leading national organizations in support of federal anti-bullying legislation;
- Established and maintained working relationships with key contacts in the executive branch;
- Engaged partners, constituents, and the public to further GLSEN's public policy goals.

Office of U.S. Representative Anna G. Eshoo (CA-14)

*Legislative Correspondent* *June 2010-August 2011*

- Handled a diverse legislative portfolio consisting of LGBT issues, civil rights, arts and humanities, women's issues, postal issues, and commemorative bills;
- Managed a demanding constituent mail program;
- Crafted and sent legislative responses to all incoming correspondence.

*Staff Assistant* *September 2009-June 2010*

- Worked with the Congresswoman to manage a competitive Congressional internship program;
- Drafted personal correspondence;

- Handled constituent tour requests of the U.S. Capitol, White House, and federal agencies;
- Facilitated communication between constituents and the member.

Office of U.S. Representative Heath Shuler (NC-11)

*Legislative Fellow*

*May-September 2009*

- Worked closely with legislative staff to assist with various administrative and legislative duties, including intensive legislative research;
- Met with constituents and advocates;
- Managed interns;
- Drafted memos, record statements, and constituent correspondence;
- Guided VIP tours of the U.S. Capitol.

*Intern*

*May-August, 2008*

- Assisted Congressional staff with administrative duties, including answering phones and directing calls;
- Guided tours of the U.S. Capitol;
- Crafted constituent correspondence.

Office of North Carolina State Senator Steve Goss (45<sup>th</sup> District)

*Intern*

*May-August 2007*

- Staffed the Senator at daily Senate sessions and committee meetings;
- Researched legislative proposals;
- Fielded calls and visits from constituents.

**RELEVANT INVOLVEMENT & HONORS**

Recognized by the White House as an LGBT Emerging Leader  
 Q Street Association of LGBT Lobbyists, Member  
 LGBT Congressional Staff Association, Former Member