

PUBLIC SCHOOLS AS WORKPLACES: THE QUEER GAP BETWEEN “WORKPLACE EQUALITY” AND “SAFE SCHOOLS”

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Recent attempts by lesbian, gay, bisexual, and transgender (LGBT)¹ activists and our allies to expand protections to LGBT people have tended to focus on two specific institutional sites: (1) Public schools and the attendant climate and safety issues for LGBT students and; (2) workplace equality in the corporate and business world. However, these efforts have mostly ignored the lives of those who work in public schools, workers who constitute one of the most vulnerable and least protected groups of LGBT employees. In this article, we draw on emerging social science research related to public school workers to draw attention to this phenomenon and build on the Safe Schools Movement’s student-centered strategies, and the Workplace Equality Movement’s market-based efforts to create equality for all, regardless of sexual orientation or gender identity/expression. We ask how LGBT climate issues affect those whose school day is also their workday, and examine the socio-legal strategies school workers have used to address anti-LGBT bias and discrimination. We conclude with a call for scholars and advocates within the Workplace Equality and Safe Schools Movements to more fully recognize public schools as workplaces too.

Anti-LGBT bias and discrimination are built into the organizational structure of U.S. public schools.² This bias and discrimination can be observed in constituent components of

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¹ “LGBT” is an acronym used to refer to a diverse group of people. It signals the linkages among transphobic and heterosexist bias, discrimination and violence; it also signals the ongoing history of organizing for social change among sexual minorities and gender non-conforming persons. The term “LGBT” is commonly used within the Workplace Equality Movement. Within the Safe Schools Movement, particularly among youth, “LGBT” is joined by other terms including “queer” and “gender queer,” both of which point to the constructed and contested nature of sexual and gender identities, and the rejection of binary understandings of sexual orientation (gay or straight) and gender identity (masculine or feminine). The term “queer” is also a reclamation project involving a term that has been (and continues to be) deployed against LGBT people. In this article, we tuck between “LGBT” and “queer” to reflect local usage as much as possible, noting that the authors themselves make strategic decisions about terminology, depending upon context and purpose.

² Elvia R. Arriola, *The Penalties for Puppy Love: Institutionalized Violence Against Lesbian, Gay, Bisexual and Transgendered Youth*, 1 J. GENDER RACE & JUST. 429 (1998); STUART BIEGEL, *THE RIGHT TO BE OUT: SEXUAL ORIENTATION AND GENDER IDENTITY IN AMERICA’S PUBLIC SCHOOLS* (2010); JACKIE M. BLOUNT, *FIT TO TEACH: SAME-SEX DESIRE, GENDER, AND SCHOOL WORK IN THE TWENTIETH CENTURY* (2005); *HOMOPHOBIA: HOW WE ALL PAY THE PRICE* (Warren J. Blumenfeld ed., 1992); ARTHUR LIPKIN, *UNDERSTANDING HOMOSEXUALITY, CHANGING SCHOOLS* (1999) [hereinafter LIPKIN, *UNDERSTANDING HOMOSEXUALITY*]; ARTHUR LIPKIN, *BEYOND DIVERSITY DAY: A Q&A ON GAY AND LESBIAN ISSUES IN SCHOOLS* (2004); Catherine A. Lugg, *The Religious Right and Public Education: The Paranoid Politics of Homophobia*, 12 EDUC. POL’Y 267 (1998) [hereinafter Lugg, *Religious Right*]; Catherine A. Lugg, *Sissies, Faggots, Lezzies, and Dykes: Gender, Sexual Orientation, and a New Politics of Education?*, 39 EDUC. ADMIN. Q. 95 (2003) [hereinafter Lugg, *Sissies*]; Catherine A. Lugg, *Thinking about Sodomy: Public Schools, Legal Panopticons and Queers*, 20 EDUC. POL’Y 35 (2006) [hereinafter Lugg, *Thinking about Sodomy*]; TROUBLING

school life, including the academic curricula, co-curricular programming, employee recruitment and retention, and professional development. For example, most students participate in sexual health education classes where the diversity of human sexuality is either ignored or stigmatized³ and learn from textbooks that do not address LGBT people or their history.⁴ Students are often barred from bringing same-gender dates to the prom and from starting Gay/Straight Alliance student clubs.⁵ Anti-LGBT language is used to motivate or punish student athletes.⁶ Peer-to-peer anti-LGBT bias often goes uninterrupted by educators or is expressed by educators themselves.⁷ Meanwhile, LGBT parents are silenced or excluded from the school community,⁸ and educators are passed over for hire, or fired, for being open about their minority sexual orientation or gender identity, on or off school grounds.⁹ Even major anti-bullying and character education programs such as Olweus or Character Counts, which urge youth and adults alike to not tolerate name-calling, rarely name anti-LGBT bias as one of the most common forms of bullying or provide specific resources to address it. Most schools neither recognize nor address anti-LGBT bias and discrimination.

Despite this pervasive hostile school climate, until recently, little was known about anti-LGBT bias and discrimination in public schools. Few outside of the LGBT community

INTERSECTIONS OF RACE AND SEXUALITY: QUEER STUDENTS OF COLOR AND ANTI-OPPRESSIVE EDUCATION (Kevin K. Kumashiro ed., 2001); KEVIN KUMASHIRO, TROUBLING EDUCATION: QUEER ACTIVISM AND ANTI-OPPRESSIVE PEDAGOGY (2002); C.J. Pascoe, 'Dude, you're a fag': Adolescent Masculinity and the Fag Discourse, 8 SEXUALITIES 329 (2005); Laura Szalacha, *The Research Terrain: An Overview of the Research and Scholarship on LGBTQ Issues in Education*, 1 J. FOR GAY & LESBIAN ISSUES EDUC. 77 (2003); DAN WOO, SCHOOL'S OUT: THE IMPACT OF GAY AND LESBIAN ISSUES ON AMERICA'S SCHOOLS (1995).

³ KRISTIN LUKER, WHEN SEX GOES TO SCHOOL: WARRING VIEWS ON SEX – AND SEX EDUCATION – SINCE THE SIXTIES (2006); U.S. H.R., COMM. GOV'T REFORM MINORITY STAFF, THE CONTENT OF FEDERALLY FUNDED ABSTINENCE-ONLY EDUCATION PROGRAMS (2004), available at http://www.apha.org/apha/PDFs/HIV/The_Waxman_Report.pdf.

⁴ BECOMING VISIBLE: A READER IN GAY AND LESBIAN HISTORY FOR HIGH SCHOOL AND COLLEGE STUDENTS (Kevin Jennings ed., 1994); Ian K. MacGillivray & Todd Jennings, *A Content Analysis Exploring Lesbian, Gay, Bisexual, and Transgender Topics in Foundations of Education Textbooks*, 59 J. TCHR. EDUC. 170 (2008).

⁵ *Youth & Schools Work*, ACLU (Nov. 6, 2009), <http://www.aclu.org/lgbt-rights/youth-schools-work>; Kirk Johnson, *Utah Sets Rigorous Rules for School Clubs, and Gay Ones May be Target*, N.Y. TIMES (Mar. 17, 2007), <http://www.nytimes.com/2007/03/17/education/17utah.html?ex=1331784000&en=25a20fdf6f61b10b&ei=5090&partner=rssuserland&emc=rss>.

⁶ Pat Griffin, *Homophobia in Sport: Addressing the Needs of Lesbian and Gay High School Athletes*, 77 High Sch. J. (Special Issue) 80 (1993-1994); Pat Griffin, *Strong Women, Deep Closets: Lesbians and Homophobia in Sport* (Becky Lane et al. eds., 1998).

⁷ JOSEPH G. KOSCIW ET AL., THE 2009 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS (2010), available at <http://bullying.motivationalsmalltalk.org/wp-content/uploads/2011/01/GLSEN-2009-Natl-School-Climate-Survey.pdf>.

⁸ ABIGAIL GARNER, FAMILIES LIKE MINE: CHILDREN OF GAY PARENTS TELL IT LIKE IT IS (2004); JOSEPH G. KOSCIW & ELIZABETH M. DIAZ, INVOLVED, INVISIBLE, IGNORED: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PARENTS AND THEIR CHILDREN IN OUR NATION'S K-12 SCHOOLS (2008), available at http://www.familyequality.org/_asset/5n43xf/familiesandschools.pdf; Ruthann Robson, *Our Children: Kids of Queer Parents & Kids Who are Queer: Looking at Sexual Minority Rights from a Different Perspective*, 64 ALB. L. REV. 915 (2001).

⁹ BLOUNT, *supra* note 2; KAREN M. HARBECK, GAY AND LESBIAN EDUCATORS: PERSONAL FREEDOMS, PUBLIC CONSTRAINTS (1997).

were concerned with LGBT-related school climate issues. Indeed, even within the LGBT community, few organizations were willing or able to address LGBT-related school climate issues due to the persistent, albeit unwarranted, stigma regarding “recruitment” of youth by those expressing same-sex desire and/or gender non-conformity.¹⁰ Public schools in the U.S. constitute an institutional source of anti-LGBT bias and discrimination, but limited systematic attention has been paid to it.

New public attention to anti-LGBT bias and discrimination in school can be traced to media coverage of anti-LGBT violence and the deaths by suicide of a number of youth, some of whom identified as LGBT.¹¹ Surviving peers and parents often linked the tragic loss of life to the anti-LGBT school climate. Persistent anti-LGBT bullying and harassment may have been a contributing factor or a precipitating event in the lives of these young people who died by suicide, although suicidality is a complex dynamic, and it is inaccurate to identify a direct, unmediated causal relationship between bullying and suicide.¹² Nonetheless, the stark narrative of youth lost due to an uninterrupted anti-LGBT school climate mobilized public investment into (mostly generic) bullying prevention programs and interventions. As a result, bullying, previously dismissed by adults as either a rite of passage or as endemic to youth culture but ultimately harmless, has now been recognized as a significant social problem with long-term implications by the U.S. Secret Service (2002), U.S. Department of Education (2010), U.S. Department of Health and Human Services (2012), and state legislatures, as harmful, pernicious, and worthy of legislative action.¹³ Such attention has increased public awareness of and debate regarding anti-LGBT bias and discrimination; students continue to report a hostile school environment.

I. Student perspectives on anti-LGBT bias and discrimination

Much of what is known today about anti-LGBT bias and discrimination in schools is based on students’ experiences of everyday harassment and its effect on individual academic achievement and well-being.¹⁴ In national surveys, LGBT students report being bullied and

¹⁰ ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* (1963); MORAL PANICS, SEX PANICS: FEAR AND THE FIGHT OVER SEXUAL RIGHTS (Gilbert Herdt ed., 2009); Nancy J. Knauer, *Homosexuality as Contagion: From the Well of Loneliness to the Boy Scouts*, 29 HOFSTRA L. REV. 401 (2000); Lugg, *Thinking about Sodomy*, *supra* note 2.

¹¹ Erik Eckholm, *Eight Suicides in Two Years at Anoka-Hennepin School District*, N.Y. TIMES (Sept. 13, 2011), <http://www.nytimes.com/2011/09/13/us/13bullysidebar.html?scp=3&sq=gay%20suicide&st=cse>; Anahad O’Connor, *Suicide Draws Attention to Gay Bullying*, N.Y. TIMES BLOG (Sept. 21, 2011, 4:23 P.M.), <http://well.blogs.nytimes.com/2011/09/21/suicide-of-gay-teenager-who-urged-hope/?scp=1&sq=gay%20suicide&st=cse>.

¹² GLAAD ET AL., *TALKING ABOUT SUICIDE & LGBT POPULATIONS* (Center for American Progress et al. eds., 2011), available at <http://www.lgbtmap.org/file/talking-about-suicide-and-lgbt-populations.pdf>.

¹³ U.S. DEP’T OF EDUC., *ANALYSIS OF STATE BULLYING LAWS AND POLICIES* (2011), available at <http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>.

¹⁴ MICHAEL BOCHENEK & A. WIDNEY BROWN, *HATRED IN THE HALLWAYS: VIOLENCE AND DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS IN U.S. SCHOOLS* (2001); A.R. D’Augelli, *Mental Health Problems Among Lesbian, Gay, and Bisexual Youths Ages 14-21*, 7 CLINICAL CHILD PSYCHOL. & PSYCHIATRY 433 (2002); Stacey S. Horn et al., *New Research on Lesbian, Gay, Bisexual and Transgender Youth: Studying Lives in Context*, 38 J. YOUTH & ADOLESCENCE (SPECIAL ISSUE) 863 (2009); JOSEPH G. KOSCIW & ELIZABETH M. DIAZ, *THE 2005 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH IN OUR NATION’S SCHOOLS* (2006), available at http://www.prideagenda.org/portals/0/pdfs/2005_Natl_School_Climate_Survey.pdf; JOSEPH G. KOSCIW ET AL.,

harassed at a higher rate than heterosexual students.¹⁵ The overwhelming majority of middle and high school students either sometimes or frequently hear anti-LGBT remarks at school.¹⁶ LGBT students report being verbally harassed because of their sexual orientation (84.6%) or gender expression (63.7%) and physically assaulted because of their sexual orientation (18.8%) or gender expression (12.5%).¹⁷ Overall, students' reports suggest that anti-LGBT bias and discrimination is the rule rather than the exception in school.

Not surprisingly, the level of anti-LGBT bias and discrimination in public schools negatively affects students' sense of safety and belonging at school, as well as school attendance, academic achievement, and personal well-being. Specifically, as the level of victimization increases, a student's sense of safety and belonging at school decreases, along with their school attendance and academic achievement.¹⁸ On the other hand, as victimization increases, emotional well-being decreases, indicated by elevated levels of depression and anxiety.¹⁹ Recent research suggests a need to probe for differential experiences and effects of anti-LGBT bias and discrimination based on students' age and grade, race/ethnicity, sexual orientation, gender expression, and region.²⁰ But, in short, a hostile school climate constitutes an unhealthy environment for school-age LGBT youth.²¹

Hewing closely to these new data on student experience, much of the institutional response to anti-LGBT bias and discrimination has focused on raising student and educator awareness of bullying and harassment, and reforming and implementing local, state, and federal non-discrimination and anti-bullying policies and laws. Anti-bullying policies range in term of their scope, but most provide the public school community with a definition of bullying and a procedural reporting mechanism and punitive response to peer-based bullying.²² Comprehensive anti-bullying policies, evaluated as the most effective type of

THE 2007 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH IN OUR NATION'S SCHOOLS (2008), available at <http://www.lgbt.ucla.edu/documents/2007NationalSchoolClimateSurvey.pdf> [hereinafter KOSCIW ET AL., 2007 NATIONAL SCHOOL CLIMATE SURVEY]; Joseph G. Kosciw et al., *Who, What, Where, When, and Why: Demographic and Ecological Factors contributing to Hostile School Climate for Lesbian, Gay, Bisexual, and Transgender Youth*, 38 J. YOUTH & ADOLESCENCE 976 (2009) [hereinafter Kosciw et al., *Who, What, Where*]; KOSCIW ET AL., *supra* note 7; J.K. McGuire et al., *School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses*, 39 J. YOUTH & ADOLESCENCE 1175 (2010); Andrea A. Nesmith et al., *Gay, Lesbian, and Bisexual Youth and Young Adults: Social Support in Their Own Words*, 37 J. HOMOSEXUALITY 95 (1999); Stephen T. Russell et al., *School Outcomes of Sexual Minority Youth in the United States: Evidence from a National Study*, 24 J. ADOLESCENCE 111 (2001).

¹⁵ KOSCIW ET AL., *Who, What, Where*, *supra* note 14.

¹⁶ KOSCIW & DIAZ, *supra* note 14; KOSCIW ET AL., 2007 NATIONAL SCHOOL CLIMATE SURVEY, *supra* note 14.

¹⁷ KOSCIW ET AL. 2007 NATIONAL SCHOOL CLIMATE SURVEY, *supra* note 14.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Horn et al., *supra* note 14; Kosciw et al., *Who, What, Where*, *supra* note 14; Lance T. McCready, *When Fitting In Isn't an Option, or, Why Black Queer Males at a California High School Stay Away from Project 10*, in TROUBLING INTERSECTIONS OF RACE AND SEXUALITY: QUEER STUDENTS OF COLOR AND ANTI-OPPRESSIVE EDUCATION 37 (Kevin K. Kumashiro ed., 2001); LANCE T. MCCREADY MAKING SPACE FOR DIVERSE MASCULINITIES: DIFFERENCE, INTERSECTIONALITY AND ENGAGEMENT IN AN URBAN HIGH SCHOOL (2010).

²¹ Joseph P. Robinson & Dorothy L. Espelage, *Inequities in Educational and Psychological Outcomes Between LGBTQ and Straight Students in Middle and High School*, 40 EDUC. RESEARCHER 315 (2011).

²² U.S. DEP'T OF EDUC., *supra* note 13.

anti-bullying policy,²³ include an enumerated definition or description of bullying, naming the categories upon which students are commonly targeted, including race/ethnicity, religion, and sexual orientation or gender identity/expression. As of this writing, thirteen states have enumerated policies for public schools. Some also mandate training, although few require explicit inclusion of anti-LGBT bias. Notably, this displacement of anti-harassment policies by anti-bullying policies has been swift if not necessarily smart.²⁴

School policy reform at the district, state and federal levels has been a key focus of the Safe Schools Movement.²⁵ Other efforts to improve the school climate include the establishment and growth of Gay/Straight Alliance students clubs, and development and delivery of LGBT-inclusive curricula. Underlying this range of safe schools strategies is the call to adults to be a visible and vocal affirming presence in schools. GLSEN, for example, argues that,

Though both straight and LGBT students will benefit from having openly LGBT educators, coaches and administrators, staff members need not be “out” or LGBT themselves in order to be good role models. By demonstrating respectful language, intervening during instances of anti-LGBT harassment, and bringing diverse images into the classroom in safe and affirming ways, all staff members can be model human beings for the students with whom they work.²⁶

Such student-centered protective and pro-active measures have merit and contribute to the long-term transformation of public schools from hostile to more inclusive and affirming environments. Included in this way, the attention paid to school staff within the Safe Schools Movement tends to focus on the role educators may play in either perpetuating or interrupting the anti-LGBT climate. Public school employees are viewed as either part of the problem or part of the solution, as demonstrated in the National Education Association’s recent report on LGBT students, referencing the effect of homophobia and heterosexism on school personnel:

GLBT school personnel face tremendous societal and legal pressures to stay “in the closet” at school, especially in front of students. This can lead to feelings of isolation and a diminished sense of safety or belonging, which in turn can hamper their efforts to teach and mentor students. “Many GLBT and even heterosexual school personnel don’t feel comfortable mentoring GLBT students because of their own personal risk.”²⁷

²³ *Model School Anti-Bullying and Harassment Policy*, GLSEN, http://www.massresistance.org/docs/.../GLSEN_School_Model_Policy.pdf (last visited Feb. 11, 2012).

²⁴ Nan Stein, *Bullying or Sexual Harassment? The Missing Discourse of Rights in an Era of Zero Tolerance*, 45 ARIZ. L. REV. 783 (2003).

²⁵ *See Safe Schools Improvement Act and Student Non-Discrimination Act: Differences and Similarities*, GLSEN, http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1652-1.PDF (last visited Jan. 27, 2012).

²⁶ *Ten Things Educators Can Do...To Ensure that Their Classrooms are Safe Spaces for ALL Students*, GLSEN (May 1, 2005), <http://www.glsen.org/cgi-bin/iowa/all/library/record/1796.html>.

²⁷ ROBERT KIM ET AL., A REPORT ON THE STATUS OF GAY, LESBIAN, BISEXUAL AND TRANSGENDER PEOPLE IN EDUCATION: STEPPING OUT OF THE CLOSET, INTO THE LIGHT VIII, 33-39 (2009), available at <http://www.nea.org/assets/docs/HE/glbstatus09.pdf>.

Public school employees do intervene more frequently into anti-LGBT bullying when provided guidance by anti-bullying policies that explicitly include sexual orientation and gender identity/expression.²⁸ While students will achieve greater educational outcomes and secure a more positive sense of belonging and well-being as a result of affirmative school staff, we draw attention here to the related but separate concerns of public school employees when it comes to LGBT issues. What remains relatively unexamined and marginalized in terms of public attention and policy analysis, are the professional lives of thousands of adults who go to public schools every day in order to earn a living.

Building on the research and resources of LGBT-related public school climate issues for youth, and LGBT-related work climate issue for adults, here we harness the emerging social science literature on school workers' particular vulnerabilities to, and varied effects of, the anti-LGBT climate and identify how LGBT public school workers have navigated this uneven climate over time. We turn first to a brief overview of the need for, and the current shape of, workplace equality efforts.

II. Anti-LGBT bias and discrimination at work

In most of the United States, it is perfectly legal to discriminate against employees based on their actual or perceived sexual orientation and/or gender identity. Currently, twenty-nine states lack legal protections for employees based on sexual orientation, and thirty-four states lack legal protections for employees based on gender identity.²⁹ A mosaic of executive orders, state statutes, city and county ordinances, and district policies does provide legal protections for some public and private sector employees based on sexual orientation and/or gender identity.³⁰ Yet, no comprehensive federal law bars such discrimination.

Research on anti-LGBT bias and discrimination has been conducted across the country, reaching those who benefit from employment non-discrimination policies, as well as those who do not.³¹ Findings from these studies echo and build on social science research and critical legal scholarship on other forms of now-illegal employment discrimination, such as racism and sexism. Notably, many LGBT persons experience multiple forms of privilege and oppression at the same time. For example, sexual minority women of color can experience heterosexism, sexism and racism. As a result, anti-LGBT bias and

²⁸ KOSCIW ET AL., 2007 NATIONAL SCHOOL CLIMATE SURVEY, *supra* note 14.

²⁹ *Employment Non-Discrimination Laws*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/employment_non_discrimination_laws (last updated June 4, 2012).

³⁰ Tanya A. De Vos, *Tenth Annual Review of Gender and Sexuality Law: Employment Law Chapter: Sexuality and Transgender Issues in Employment Law*, 10 GEO. J. GENDER & L. 599 (2009); Toni Lester, *Queering the Office: Can Sexual Orientation Employment Discrimination Laws Transform Work Place Norms for LGBT Employees?*, 73 UMKC L. REV. 643 (2005); NAT'L EDUC. ASSOC., FOCUS ON: GAY, LESBIAN, BISEXUAL, AND TRANSGENDER PERSONS: GLBT EDUCATORS AND THE RIGHT TO WORK (2011); Brad Sears & Christy Mallory, *Documented Evidence of Employment Discrimination & Its Effects on LGBT People*, THE WILLIAMS INSTITUTE (2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Sears-Mallory-Discrimination-July-2011.pdf>.

³¹ M.V. Lee Badgett et al., *Bias in the Workplace: Consistent Evidence of Sexual Orientation and Gender Identity Discrimination*, THE WILLIAMS INSTITUTE (2007), available at <http://escholarship.org/uc/item/5h3731xr#page-13>; Brad Sears & Christy Mallory, *supra* note 30.

discrimination, and legal efforts to address it, do not necessarily affect all persons in the same way.³²

What is known about anti-LGBT bias and discrimination at work comes from a combination of national surveys of self-reported workplace experiences, wage comparisons between LGB and heterosexual employees, analyses of discrimination complaints filed with the Government Accountability Office, and scenario-driven experimental studies.³³ LGBT employees who are out at work experience (and fear) discrimination, while those who are not openly gay or transgender at work also fear the threat of being “outed” at work. Employees report being fired or denied employment because of their actual or perceived sexual orientation or gender identity/expression. They also report being denied promotion or being given negative performance evaluations due to anti-LGBT bias. Some LGBT employees have faced anti-LGBT verbal harassment and/or physical abuse, as well as vandalism at work. Gay men workers report unequal pay or benefits as well, although sexism seems to more adversely affect lesbian women’s pay and benefits more than heterosexism. In particular, transgender employees report significant levels of discrimination and unemployment.³⁴ Overall, the number of LGBT employees who report discrimination on the job decreased in the recent Out & Equal (2009) workplace equality survey, but the numbers remain high (44% in 2009 versus 56% in 2008), suggesting that a large number of LGBT individuals work within a hostile environment, where each must determine if, when, and how it is safe to “come out” and be their full selves at work or continue to “cover” their identities through social conformity and assimilation.³⁵ This is similar to the hostile public school environment reported by LGBT students, who also decide if, when, and how to disclose their sexual orientation or gender identity.

And, like the negative effects on education and well-being for students who face an unwelcoming or hostile school climate, LGBT workers report a range of negative consequences of an unwelcoming or hostile work site.³⁶ These consequences include diminished mental and physical well-being associated with stigma- and stress-related health disparities.³⁷ Not surprisingly, LGBT employees who experience anti-LGBT bias and

³² Darren L. Hutchinson, *Out Yet Unseen: A Racial Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561 (1997); Darren L. Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics*, 47 BUFF. L. REV. 1 (1999); Darren L. Hutchinson, “Gay Rights” for “Gay Whites”?: Race, Sexual Identity, and Equal Protection Discourse, 85 CORNELL L. REV. 1358 (2000); Darren L. Hutchinson, “Intersectionality,” “Multidimensionality,” and the Development of an Adequate Theory of Subordination, 6 MICH. J. RACE & L. 285 (2001); Francisco Valdes, *Queer Margins, Queer Ethics: a Call to Account for Race and Ethnicity in the Law, Theory, and Politics of “Sexual Orientation.”* 48 HASTINGS L.J. 1293 (1997); Francisco Valdes, *Beyond Sexual Orientation in Queer Legal Theory: Majoritarianism, Multidimensionality, and Responsibility in Social Justice Scholarship or Legal Scholars as Cultural Warriors*, 75 DENV. U. L. REV. 1409 (1998).

³³ Testimony on HR 2015, *The Employment Non-Discrimination Act of 2007: Hearings Before the Subcomm. on Health, Emp’t, Labor, & Pensions of the H. Comm. on Educ. & Labor*, 110th Cong. 4 (2007) (testimony of M.V. Lee Badgett), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Badgett-HR2015-testimony-Sept-2007.pdf>; Badgett et al., *supra* note 31; Sears & Mallory, *supra* note 30.

³⁴ PAISLEY CURRAH & SHANNON MINTER, *TRANSSEXUAL EQUALITY: A HANDBOOK FOR ACTIVISTS AND POLICYMAKERS* (2000).

³⁵ Kenji Yoshino, *Covering*, 111 YALE L.J. 769 (2002).

³⁶ Sears & Mallory, *supra* note 30.

³⁷ *Lesbian, Gay, Bisexual and Transgender Health: About LGBT Health*, CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/lgbthealth/about.htm> (last visited July 23, 2012); U.S. DEP’T OF HEALTH

discrimination also report lower levels of creativity and productivity and work, aligned with lower levels of job satisfaction. Hostile work environments can lead to employee burnout, as well as loss of human talent, when those who are able to do so leave the workplace.

Advocacy organizations in the United States that seek to create inclusive work environments free of discrimination against LGBT employees have focused their efforts primarily on the corporate and business world. Organizations such as Diversity Inc., Lambda Legal, Out & Equal Workplace Advocates, and Pride at Work provide employers and employees with a set of best practices and resources to help them create such “workplace equality”.³⁸ One commonly recommended workplace equality tool is the *Employee Resource Group* (ERG). In the corporate world, ERGs are often organized around identity affinities such as ethnicity, sexual orientation, religion, family status, or gender. ERGs organized around sexual orientation and gender identity/expression provide social support and professional mentoring for LGBT employees. ERGs commonly participate in community philanthropy, either financially or through in-kind donation of professional services to relevant non-profit organizations. For LGBT ERGs, this may translate into working with Gay/Straight Alliance student clubs in schools³⁹ or local (or national) LGBT organizations. Members of ERGs also may participate in corporate recruitment, mentoring and retention of employees by being visible and “out” representatives of their constituent group. ERG participation requires this level of visibility or willingness to be associated with the affinity group.

In terms of improving the work climate, ERG members and other workplace equality supports also advocate for positively recognizing LGBT employees and their families using internal and external communication strategies including marketing, inclusive non-discrimination and anti-harassment policies, company and health benefits, and LGBT-inclusive professional development or diversity education within the corporation.⁴⁰ In some corporations, employee-centered efforts are complemented by the management-centered work of a Chief Diversity Officer, and/or Diversity Council, whose responsibilities may include overseeing equitable talent development and advancement of employees, and diversification of the supply chain.⁴¹

According to recent metrics, workplace equality (and diversity management more broadly) has advanced significantly in U.S. companies, particularly within the top-earning corporations.⁴² For example, this year “all 100 firms on Fortune’s Best Companies to Work

& HUMAN SERVICES, HHS HEALTHBEAT, BULLYING, THEN AND NOW (2011), available at <http://www.hhs.gov/news/healthbeat/2011/08/20110809a.html>.

³⁸ See www.diversityinc.com; www.lambdalegal.com; www.outandequal.com; www.prideatwork.org.

³⁹ Dr. Eliza Byard, *Safe LGBT Spaces: What Schools Can Learn From Resource Groups*, DIVERSITY INC. <http://www.diversityinc.com/diversity-management/safe-lgbt-spaces-what-schools-can-learn-from-employee-resource-groups/> (last visited July 23, 2012).

⁴⁰ *Twenty Steps to an Out & Equal Workplace*, OUT & EQUAL WORKPLACE ADVOC., <http://www.outandequal.org/steps-to-equal-workplace> (last visited Jan. 27, 2012).

⁴¹ *Why Diversity Councils Move the Needle for Business Results*, DIVERSITYINC., <http://diversityincbestpractices.com/department/why-diversity-councils-move-the-needle-for-business-results/> (last visited July 23, 2012).

⁴² *The DiversityInc Top 50 Companies for Diversity*, DIVERSITYINC., <http://diversityinc.com/the-diversityinc-top-50-companies-for-diversity-2012/> (last visited July 23, 2012); *Decade of Progress in Workplace Equality Chronicled in HRC’s 2012 Corporate Equality Index*, HUM. RTS. CAMPAIGN (Dec. 8, 2011), <http://www.hrc.org/press-releases/entry/decade-of-progress-in-workplace-equality-chronicled-in-hrcs-2012-cei>.

For list . . . have non-discrimination policies that include sexual orientation”.⁴³ This success suggests that marketplace-driven arguments for workplace equality are persuasive, that is, companies will adopt LGBT-friendly policies, programs, and practices, if they make good business sense. Recent research in which scholars analyzed statements that corporations issued when adopting non-discrimination and/or domestic partner benefit policies, reinforces this common American capitalist axiom. In these statements, companies *explain* they are able to recruit and retain the best talent, attract and serve a diverse customer base, increase productivity among the workforce, secure business from public sector contracts that require diversity, and that a diverse workplace generates the best ideas and innovations.⁴⁴ These findings counter the corollary market-based argument that such changes would be unbearably costly and burdensome for business.

Allied organizations also enforce workplace equality protections afforded by non-discrimination policies to LGBT workers (e.g. American Civil Liberties Union, Lambda Legal, National Center for Lesbian Rights, National Center for Transgender Equality), while other organizations, such as the Human Rights Campaign (HRC)’s Corporate Equality Index (www.hrc.org), and the National Gay and Lesbian Chamber of Commerce (www.nglcc.org), help drive consumers to LGBT-owned or LGBT-friendly corporations and businesses across the country, that is, those with inclusive policies that support LGBT employees and their families.

Overall, Badgett and others argue that workplace equality has socio-political and economic consequences not only for those who are directly protected by new initiatives such as anti-discrimination policies or who are covered by inclusive domestic partner benefits (i.e. LGBT employees, spouses and partners, and children).⁴⁵ Workplace equality matters each time when it is achieved in a non-profit or government agency, business, or corporation because of its potential affirming effects on the majority of people who work on site or do business with the company or agency: heterosexual and gender conforming co-workers and customers, that is, individuals who do not consider themselves queer. These non-queer co-workers and customers at job sites that successfully support workplace equality have the opportunity to knowingly work alongside people who are out at work. Research indicates that heterosexuals who personally know someone LGBT are more likely to have positive attitudes and support at least some LGBT rights.⁴⁶ Attitudinal research indicates a positive shift in this direction, particularly for those who have close friends or family members who are out.⁴⁷ Despite this shift in public opinion, “it remains the case that substantial

⁴³ James O’Toole, *Best Companies List Hits Gay Rights Milestone*, CNN MONEY (Jan. 20, 2012), http://www.money.cnn.com/2012/01/20/pf/jobs/best_companies_gay_rights/.

⁴⁴ Brad Sears & Christy Mallory, *Economic Motives for Adopting LGBT-Related Workplace Policies*, THE WILLIAMS INSTITUTE (2011), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Corp-Statements-Oct2011.pdf>.

⁴⁵ M.V. Lee Badgett, *Thinking Homo/Economically*, in OVERCOMING HETEROSEXISM AND HOMOPHOBIA: STRATEGIES THAT WORK 380 (James T. Sears & Walter L. Williams eds., 1997).

⁴⁶ Gregory M. Herek, *Why Tell if You’re Not Asked? Self-Disclosure, Intergroup Contact, and Heterosexuals’ Attitudes Toward Lesbians and Gay Men*, in OUT IN FORCE: SEXUAL ORIENTATION AND THE MILITARY 197 (G.M. Herek et al. eds., 1996).

⁴⁷ A. Avery et al., *America’s Changing Attitudes Toward Homosexuality, Civil Unions, and Same-Gender Marriage: 1977-2004*, 52 SOC. WORK 71 (2007); *Most Say Homosexuality Should be Accepted by Society*, PEW RES. CENTER PUBLICATIONS (May 13, 2011), <http://www.people-press.org/2011/05/13/most-say-homosexuality-should-be-accepted-by-society/>; BIEGEL, *supra* note 2 (quoting Shawn Neidorf & Richard Morin, *Four-in-Ten Americans Have Close Friends or Relatives Who Are Gay*, PEW RES. CENTER

percentages of people – particularly in certain regions and in rural areas – continue to oppose the idea that LGBT educators even be hired to teach their children”.⁴⁸ Indeed, this perspective has been incorporated into efforts to curb the federal Employment Non-Discrimination Act (ENDA).⁴⁹ Workplace equality can be considered a long-term strategy for creating cultural and legal transformations, but the market-based successes of the Workplace Equality Movement have not been felt as strongly in the education world.

III. Public Schools as workplaces for LGBT employees⁵⁰

The perspectives of LGBT public school employees add to our understanding of the school community for all of its members, youth and adults alike, while also drawing attention to the particular vulnerability of LGBT school employees within the wider workplace equality struggle. LGBT school workers can be considered both the canary in the coalmine –some of the first workers on the front line targeted with homophobia – and some of the last coal miners to fight their way out of the transphobic and heterosexist-poisoned mine. This is due to a combination of historical and contemporary factors.

As Jackie Blount argues in her study of U.S. public school workers, “Among the women and men in this country who have founded schools, inspired their students, administered their districts, and otherwise sustained these institutions of promise, there always have been those who have desired others of the same-sex or wish to transgress traditional gender bounds.”⁵¹ Yet their stories have rarely been told. As a result of the work by Blount and others, the existence and contributions of those with same-sex desire and/or gender non-conforming expression who worked in schools are just now beginning to be revealed. These narratives of life as a gay, lesbian, bisexual, and/or transgender school worker contain tropes of strength and resilience along with stories of institutionalized invisibility, silence, oppression, and violence. LGBT school workers have had to simultaneously navigate, resist, and transform the hostile work environments in which they are employed. As LGBT visibility in society has increased, so too has the backlash against the suitable employability of LGBT persons in schools. This was true for school workers in the late nineteenth and early twentieth centuries, when the very category of the gender variant “homosexual” was first being formed, and school personnel were increasingly forced to demonstrate their gender conformity and heterosexuality⁵² as it is in the late twentieth century and today, when contemporary forms of criminalization and surveillance regulate LGBT people in schools.⁵³

The intimate lives of Americans have historically been subjected to all manner of government scrutiny, and the regulation of “homosexuality” and gender non-conformity among public employees specifically has been at the center of this enterprise.⁵⁴ Laws

PUBLICATIONS (May 23, 2007), <http://pewresearch.org/pubs/485/friends-who-are-gay>.

⁴⁸ BIEGEL, *supra* note 2, at 49.

⁴⁹ JANNA M. JACKSON, UNMASKING IDENTITIES: AN EXPLORATION OF THE LIVES OF GAY AND LESBIAN TEACHERS 4 (2007) (quoting Lipkin, UNDERSTANDING HOMOSEXUALITY, *supra* note 2).

⁵⁰ This section draws on Lugg & Adelman, forthcoming. CATHERINE LUGG & MADELAINE ADELMAN, LEGAL, POLITICAL AND POLICY CONTEXT OF LGBT ISSUES IN EDUCATION RESEARCH (K. Graves et al. eds., forthcoming).

⁵¹ BLOUNT, *supra* note 2, at 1.

⁵² *Id.* at 79.

⁵³ Lugg, *Religious Right*, *supra* note 2.; Lugg, *Thinking about Sodomy*, *supra* note 2.

⁵⁴ MARGOT CANADAY, THE STRAIGHT STATE: SEXUALITY AND CITIZENSHIP IN TWENTIETH-CENTURY

governing consensual sexual behavior and sexuality vary; what is permissible in one state can be forbidden or tightly constrained in another.⁵⁵ Many laws regulating sexual behavior have been selectively enforced.⁵⁶ Consequently, all laws regulating consensual sexual behavior have a strong surveillance aspect to them: One never knows where, when, or if these laws might be put into play.⁵⁷ These laws also have the power to stigmatize because regulations concerning sexuality have always carried strong social penalties and sanctions, including public humiliation. Mere mention of one's sexual status invites stigmatization, thus reducing an individual's political and civil (including parental and employment) rights in some instances.⁵⁸

In particular, sodomy laws have played a part of a three-legged stool of oppression and stigmatization that specifically target queer people. This stool asserts that we are: (1) heretical; (2) medically pathological; and (3) criminal.⁵⁹ The first and still remaining leg of this stool asserts that queers are heretical, that is, our mere existence violates traditional Biblical norms regarding same-sex sexual behavior.⁶⁰ Like other heresies, queerness is portrayed as highly contagious and disgusting, and it should be either minimized or eliminated.⁶¹

The second rationale of the 3-legged stool is that queers are medically pathological.⁶² Queers had been pathologized for over 50 years by various medical communities, and these professionals stressed that this "pathogen" was highly contagious.⁶³ This reason began crumbling in the late 1940s with the publication of the first Kinsey study⁶⁴ and was officially dismantled in 1973, when the American Psychiatric Association withdrew "homosexuality" and "bisexuality" from its list of mental disorders (Diagnostic and

AMERICA (William Chafe et al. eds., 2009); WILLIAM N. ESKRIDGE, JR., *GAYLAW: CHALLENGING THE APARTHEID OF THE CLOSET* (1999); DAVID K. JOHNSON, *THE LAVENDER SCARE: THE COLD WAR PERSECUTION OF GAYS AND LESBIANS IN THE FEDERAL GOVERNMENT* (2004).

⁵⁵ William N. Eskridge, Jr., *Hardwick and Historiography*, 1999 U. ILL. L. REV. 631, 634-35 (1999).

⁵⁶ GEORGE CHAUNCEY, *GAY NEW YORK: GENDER, URBAN CULTURE, AND THE MAKING OF THE GAY MALE WORLD, 1890-1940* (1994); JOHN D'EMILIO, *SEXUAL POLITICS, SEXUAL COMMUNITIES: THE MAKING OF A HOMOSEXUAL MINORITY IN THE UNITED STATES, 1940-1970* (1983); ESKRIDGE, *supra* note 54; Christopher R. Leslie, *Creating Criminals: The Injuries Inflicted by "Unenforced" Sodomy Laws*, 35 HARV. C.R.-C.L. L. REV. 103 (2000) [hereinafter Leslie, *Creating Criminals*]; Christopher R. Leslie, *The Importance of Lawrence in the Context of the Supreme Court's Historical Treatment of Gay Litigants*, 11 WIDENER L. REV. 189 (2005) [hereinafter Leslie, *Lawrence*]; Lugg, *Sissies*, *supra* note 2.

⁵⁷ CARLOS A. BALL, *THE MORALITY OF GAY RIGHTS: AN EXPLORATION IN POLITICAL PHILOSOPHY* 200 (2003); Ryan Goodman, *Beyond the Enforcement Principle: Sodomy Laws, Social Norms, and Social Panoptics*, 89 CALIF. L. REV. 643 (2001).

⁵⁸ See GOFFMAN, *supra* note 10.

⁵⁹ See Catherine A. Lugg, *A Shifting Rationale: U.S. law, Public Schooling, and Queer Educators*, Presentation at the History of Education Society Annual Convention (Oct. 2006).

⁶⁰ William N. Eskridge, Jr., *Body Politics: Lawrence v. Texas and the Constitution of Disgust and Contagion*, 57 FLA. L. REV. 1011 (2005).

⁶¹ *Id.*; Knauer, *supra* note 10.

⁶² D.B. Cruz, *Controlling Desires: Sexual Orientation Conversion and the Limits of Knowledge and Law*, 72 S. CAL. L. REV. 1297 (1999); JENNIFER TERRY, *AN AMERICAN OBSESSION: SCIENCE, MEDICINE, AND HOMOSEXUALITY IN MODERN SOCIETY* (1999).

⁶³ See JACKIE M. BLOUNT, *DESTINED TO RULE THE SCHOOLS: WOMEN AND THE SUPERINTENDENCY 1873-1995* 100 (1998); Eskridge, *supra* note 60; Knauer, *supra* note 10.

⁶⁴ D'EMILIO, *supra* note 56, at 35-36; TERRY, *supra* note 62, at 298-314.

Statistical Manual of Mental Disorders).⁶⁵ Nevertheless, ex-gay movement claims regarding the malleability of sexual orientation persist.⁶⁶

The final leg on the “stool of oppression” asserts that we are intrinsically criminals. While male-on-male sodomy (specifically anal sex) had long been criminalized in the U.S., most other same-sex consensual sexual behavior was not criminalized until the 1920s.⁶⁷ Furthermore, only beginning in the 1920s does queer identity become synonymous with queer behavior and vice-versa.⁶⁸ U.S. sodomy laws were subsequently revised and expanded in the hopes of rooting out suspected “perverts and deviants” from all manner of public employment and public life.⁶⁹ By the early 1920s, every U.S. state had criminalized queer sex.⁷⁰ Penalties upon conviction were varied, depending upon the state in which the offense was committed: from a few weeks in jail, to forced institutionalization in a mental hospital where treatments included electro-shock and lobotomy, to possible castration for male offenders, to life in prison.⁷¹

Sodomy laws, in conjunction with morality clauses in public educators’ employment contracts, have been used to keep queer educators either closeted, their identities hidden, or to fire them if revealed or “outed”.⁷² During the 1950s and 1960s, when most of the anti-queer witch-hunts shaped the culture of public schooling in the U.S., queer students and employees fell under each leg of the stool of oppression (heretical, pathological, and criminal). Consequently, both took great care in covering their identities—if they could.⁷³

Public school workers have had to be particularly careful with sexual orientation and gender identity management. Based on her study of Florida’s purge of gay and lesbian teachers, education scholar Karen Graves has argued that:

[A]spects of the teaching profession distinguish it from other types of public employment..., leaving teachers especially vulnerable to homophobic

⁶⁵ Cruz, *supra* note 62, at 312; D’EMILIO, *supra* note 56, at 238.

⁶⁶ TANYA ERZEN, *STRAIGHT TO JESUS: SEXUAL AND CHRISTIAN CONVERSIONS IN THE EX-GAY MOVEMENT* (2006).

⁶⁷ William N. Eskridge, Jr., *Democracy, Kulturkampf, and the Apartheid of the Closet*, 50 VAND. L. REV. 419 (1997) [hereinafter Eskridge, *Democracy*]; ESKRIDGE, *supra* note 54; Eskridge, *supra* note 55; William N. Eskridge, Jr., *The Relationship Between Obligations and the Rights of Citizens*, 69 FORDHAM L. REV. 1721 (2001).

⁶⁸ ESKRIDGE, *supra* note 54; Leslie, *Creating Criminals*, *supra* note 56; STEVEN SEIDMAN, *THE SOCIAL CONSTRUCTION OF SEXUALITY* (2003).

⁶⁹ CANADAY, *supra* note 54; Eskridge, *Democracy*, *supra* note 67; Eskridge, *supra* note 54; KAREN L. GRAVES, *AND THEY WERE WONDERFUL TEACHERS: FLORIDA’S PURGE OF GAY AND LESBIAN TEACHERS* (Joan Catapano & Breanne Ertmer eds., 2009); JOHNSON, *supra* note 54; Leslie, *Creating Criminals*, *supra* note 56; Leslie, *Lawrence*, *supra* note 56; TERRY, *supra* note 62.

⁷⁰ Eskridge, *Democracy*, *supra* note 67; ESKRIDGE, *supra* note 54; SEIDMAN, *supra* note 68.

⁷¹ EDWARD ALWOOD, *STRAIGHT NEWS: GAYS, LESBIANS, AND THE NEWS MEDIA* (1996); Cruz, *supra* note 62; Eskridge, *Democracy*, *supra* note 67; ESKRIDGE, *supra* note 54; TERRY, *supra* note 62.

⁷² Eva DuBuisson, Comment, *Teaching from the Closet: Freedom of Expression and Out-Speech by Public School Teachers*, 85 N.C. L. REV. 301 (2006); Suzanne E. Eckes & Martha M. McCarthy, *GLBT Teachers: The Evolving Legal Protections*, 45 AM. EDUC. RES. J. 530 (2008); GRAVES, *supra* note 69; HARBECK, *supra* note 9; Lugg, *Thinking about Sodomy*, *supra* note 2.

⁷³ Jackie M. Blount, *Homosexuality and School Superintendents: A Brief History*, 13 J. SCH. LEADERSHIP 7 (2003); BLOUNT, *supra* note 2; DuBuisson, *supra* note 72; Karen L. Graves, *Storming a “Refuge for Practicing Homosexuals”*: Before the Movement, Presentation at the History of Education’s Annual Convention (Oct. 2006); GRAVES, *supra* note 69; RONNIE L. SANLO, *UNHEARD VOICES: THE EFFECTS OF SILENCE ON LESBIAN AND GAY EDUCATORS* (1991).

persecution. For instance, the expectation that educators act as exemplars for students has led to intense public scrutiny of teachers' personal lives and restricted professional autonomy. The fact that schoolteachers work with children opened the door to homophobic fears – unsubstantiated but persistent – that gay and lesbian teachers would ‘recruit’ students; this fear reinforced demands that teachers act in accordance with a narrow standard of normative behavior.... Public perceptions of schoolteachers as guardians of the dominant ideology along with restrictive professional structures, such as contracts that forbade specific personal behavior engendered conservative thought and demeanor.... Historically, teacher organizations have not supported colleagues who transgressed social norms and, thus, teachers have been easy targets for state suppression of gay and lesbian people.⁷⁴

Indeed, over time, public school administrators have taken great care in how they hired and fired school personnel, routing out the “odd” or “peculiar” female spinsters and male bachelors, while searching for those who fulfilled social expectations for gender-conforming heterosexuality, including marriage for both men and women.⁷⁵ In the postwar economy, women were pushed out of administrative positions, and pulled toward elementary education and home economics; men returning from military service were placed into administrative positions and rewarded for their “manly” physical prowess.⁷⁶ Extending the purge of suspected homosexuals from the military and other government positions, to secure the nation from so-called “sex perverts” during the Cold War era,⁷⁷ new fears about the purported corrupting influence of homosexuals over children had school boards across the country screening school personnel for any possible “homosexual contagion.” Systematic McCarthy-style investigations took place of those suspected to be gay or lesbian educators.⁷⁸

Ironically, in the midst of the terrifying 1950s, the American Law Institute recommended that all non-commercial, consensual, private sexual behavior be decriminalized.⁷⁹ What this meant for queer people, was that their legal status should be decriminalized and laws criminalizing same-sex sexual behavior should be repealed. By the 1970s, bolstered in part by the nascent “gay rights movement,” as well as the APA’s reformed stance on homosexuality, twenty-one states decriminalized same-sex consensual sexual behavior.⁸⁰ However, the 1970s also saw the rise of backlash against gay rights and the homophobic targeting of “militant homosexual teachers” by Anita Bryant, John Briggs, and others across the country, who portrayed gay men and lesbians who worked in schools as dangerous pedophiles, intent on turning their children into homosexuals.⁸¹ This became a politically and financially effective rallying cry for the emerging Protestant Right. During the 1980s, the movement to legislatively repeal sodomy laws became entangled with the purity politics of the growing Protestant Right, which also focused on the danger of “homosexual teachers” to public schoolchildren.⁸²

⁷⁴ GRAVES, *supra* note 69, at 120-21.

⁷⁵ BLOUNT, *supra* note 63; BLOUNT, *supra* note 73; BLOUNT, *supra* note 2.

⁷⁶ BLOUNT, *supra* note 2, at 81-85.

⁷⁷ JOHNSON, *supra* note 54.

⁷⁸ BLOUNT, *supra* note 2; GRAVES, *supra* note 69; HARBECK, *supra* note 9; Lugg, *supra* note 59.

⁷⁹ Erik Luna, *Principled Enforcement of Penal Codes*, 4 BUFF. CRIM. L. REV. 515, 518 (2000).

⁸⁰ Lugg, *Thinking about Sodomy*, *supra* note 2.

⁸¹ BLOUNT, *supra* note 2; GRAVES, *supra* note 69; Lugg, *Religious Right*, *supra* note 2.

⁸² BLOUNT, *supra* note 2; Eskridge, *supra* note 60; Lugg, *Religious Right*, *supra* note 2.

At the same time, the movement to de-criminalize queer sex also received a crippling “one-two” punch. The first was the emergence of AIDS, which struck down a generation of gay men who were well-versed in political action, and brought with it a rabid anti-queer hysteria.⁸³ The second blow came in the 1986 U.S. Supreme Court’s 5-4 decision in *Bowers v. Hardwick*, which ruled that the Georgia statute banning consensual sodomy was constitutional.⁸⁴ In upholding the law, the court stated that there was no constitutional right to “homosexual sodomy.”⁸⁵ Nor did LGBT people have a right to privacy if “homosexual conduct occurs in the privacy of the home.”⁸⁶ During this period of conservative political retrenchment, reformers shifted their focus to the judiciary and sued under both the Federal and various state constitutions.

While the movement to de-criminalize queer identity did progress into the 1990s, the devastating *Hardwick* decision enabled individual states, and the U.S. military, to maintain both criminal bars as well as other policies that stigmatized queer Americans. Furthermore, a growing Protestant Right made the repression of U.S. queers a central focus of their political action.⁸⁷ By the dawn of the 21st century, we remain criminals and heretics in many parts of the United States. Most queer public school teachers remain closeted,⁸⁸ while queer public school administrators were and are *deeply* closeted.⁸⁹

Some of this fear is a legacy of the Cold-War era witch-hunts that began in the early 1950s and crashed over public schools in successive waves.⁹⁰ This did not abate until the early 1990s.⁹¹ But since the 1970s, the Protestant Right, and others wishing to counter LGBT rights, have consistently and insistently argued that openly queer educators present a unique moral and physical threat to the impressionable youth of America.⁹² Their objections center on the heretical and contagious nature (in their world-view) presented by “open homosexuality.”⁹³ Supreme Court Justice Antonin Scalia succinctly expressed this worldview when he wrote in his dissent in *Lawrence v. Texas*, joined by Chief Justice Rehnquist and Justice Thomas, that:

Many Americans do not want persons who openly engage in homosexual conduct as partners in their business, as scoutmasters for their children, *as teachers in their children's schools*, or as boarders in their home. They view

⁸³ RANDY SHILTS, *AND THE BAND PLAYED ON: POLITICS, PEOPLE, AND THE AIDS EPIDEMIC* (1987).

⁸⁴ *Bowers v. Hardwick*, 478 U.S. 186 (1986).

⁸⁵ *Id.*

⁸⁶ *Id.* at 195-96.

⁸⁷ BLOUNT, *supra* note 2; Eskridge, *supra* note 60; Lugg, *Religious Right*, *supra* note 2.

⁸⁸ DuBuisson, *supra* note 72; JACKSON, *supra* note 49.

⁸⁹ Donald J. Fraynd & Colleen A. Capper, “Do You Have Any Idea Who You Just Hired?!?” *A Study of Open and Closeted Sexual Minority K-12 Administrators*, 13 J. SCH. LEADERSHIP 86 (2003); Autumn Tooms, *The Right Kind of Queer: “Fit” and the Politics of School Leadership*, 17 J. SCH. LEADERSHIP 601 (2007).

⁹⁰ Eskridge, *Democracy*, *supra* note 67; Eskridge, *supra* note 60; JOHNSON, *supra* note 54.

⁹¹ Lugg, *Thinking about Sodomy*, *supra* note 2.

⁹² DuBuisson, *supra* note 72; William N. Eskridge, Jr., *No Promo Homo: The Sedimentation of Antigay Discourse and the Channeling Effect of Judicial Review*, 75 N.Y.U. L. REV. 1327 (2000); Eskridge, *supra* note 60.

⁹³ DuBuisson, *supra* note 72; Eskridge, *supra* note 92; Eskridge, *supra* note 60; Knauer, *supra* note 10; Lugg, *Religious Right*, *supra* note 2.

this as protecting themselves and their families from a lifestyle that they believe to be immoral and destructive.⁹⁴

As a result of this worldview within the education community, since the 1990s, there have been several high profile cases of teachers being harassed by students, parents, and co-workers, threatened with dismissal, and actually dismissed for being publicly out about their queer status.⁹⁵ Most others have been subject to differential treatment and a hostile work environment, types of discrimination often “difficult to address legally.”⁹⁶ Countless others continue to manage their identities and carefully monitor their activities on and off campus in an effort to thwart suspicion.

Public school workers’ vulnerability to anti-LGBT bias and discrimination is not limited to direct surveillance of their individual identity or comportment, that is, who and how they are, but also indirectly based on what they are allowed to teach or discuss. This is because, in contrast to those who work in the business world, the public education workplace itself is a recognized battle site within the ongoing religious culture war.⁹⁷ Who gets to say what about sexuality in U.S. public schools remains one of its keenest fights.⁹⁸ When school-based struggles over sexuality-related content erupt in some form -- whether over comprehensive and medically accurate sexual health education,⁹⁹ enumerated anti-bullying policies,¹⁰⁰ or LGBT-inclusive social studies textbooks¹⁰¹ — the suitability and scrutiny of LGBT people emerges along with it, and public school workers become potential collateral damage. This occurs even when the issue at hand is not school-related, such as the protracted dispute over same-sex marriage in California,¹⁰² when opponents used the specter of innocent school children being forced to learn about gay people as the political key to their campaign. Workplace equality in the education world has to engage this additional layer of vulnerability, along with the lack of legal protections afforded by current non-discrimination policies.¹⁰³

⁹⁴ *Lawrence v. Texas*, 539 U.S. 558, 602 (2003) (emphasis added).

⁹⁵ See Stuart Biegel, *Unfinished Business: The Employment Non-Discrimination Act (ENDA) and the K-12 Education Community*, 14 N.Y.U. J. LEGIS. & PUB. POL’Y 357 (2011); DuBuisson, *supra* note 72; Eckes & McCarthy, *supra* note 72; Lugg, *Sissies*, *supra* note 2.

⁹⁶ Eckes & McCarthy, *supra* note 72, at 538; see Tiffany E. Wright, *LGBT Educators’ Perceptions of School Climate*, 91 PHI DELTA KAPPAN 49 (2010).

⁹⁷ JAMES W. FRASER, *BETWEEN CHURCH AND STATE: RELIGION AND PUBLIC EDUCATION IN A MULTICULTURAL AMERICA* (1999); *THE INSTITUTIONS OF AMERICAN DEMOCRACY: THE PUBLIC SCHOOLS* (Susan Fuhrman & Marvin Lazerson eds., 2005); Russell et al., *supra* note 14; *THE ROLE OF RELIGION IN 21ST-CENTURY PUBLIC SCHOOLS* (Steven P. Jones & Eric C. Sheffield eds., 2009).

⁹⁸ KEVIN K. KUMASHIRO, *THE SEDUCTION OF COMMON SENSE: HOW THE RIGHT HAS FRAMED THE DEBATE ON AMERICA’S SCHOOLS* (Bill Ayers & Therese Quinn eds., 2008); see *SPLC Sues Minnesota School District to Protect LGBT Students from Harassment, Hostile Environment*, S. POVERTY L. CENTER (July 21, 2011), <http://www.splcenter.org/get-informed/news/splc-sues-minnesota-school-district-to-protect-lgbt-students-from-harassment-hosti>.

⁹⁹ JESSICA FIELDS, *RISKY LESSONS: SEX EDUCATION AND SOCIAL INEQUALITY* (2008).

¹⁰⁰ *Do Anti-Bullying Laws Push Gay Agenda?*, ANDERSON COOPER 360 (Sept. 2, 2010), <http://www.cnn.com/video/#/video/us/2010/09/02/ac.school.bully.cnn>.

¹⁰¹ *Help Stop Passage of California Bill (SB 48) Requiring Promotion of Homosexuality in Grades K-12*, PROTECT KIDS FOUND. (Feb. 28, 2011), http://www.protectkidsfoundation.org/?page_id=1356.

¹⁰² *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010), *aff’d sub nom. Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012).

¹⁰³ NAT’L EDUC. ASSOC., *supra* note 30.

IV. Public School workers navigating anti-LGBT bias and discrimination

Systematic purges, whispered rumor campaigns, public denials, silent resignations, and self-censorship characterized the intimidation and discipline endured for decades by school personnel who possessed same-sex desire and non-conforming gender expression. However, growing patterns of individual resistance and collective action can be found as well. Inspired by the rising civil rights movement, and the nascent sexual liberation, feminist and gay liberation movements, LGBT public school workers began to take a stand against ambiguous morality clauses and the wholesale assumption that being a gay educator was pathological, criminal and/or sinful.¹⁰⁴ Individual employees began to fight LGBT-related discrimination in court, groups of public school personnel offered support to each other, and organizational infrastructure grew to create institutional changes in workplace policies that could protect public school workers.¹⁰⁵

According to education and legal scholar Stuart Biegel, individual school workers have relied primarily on the Fourteenth Amendment Equal Protection Clause to pursue justice in anti-LGBT workplace discrimination cases.¹⁰⁶ Several of these cases stand out as early turning points, even when plaintiffs received negative or mixed outcomes, because they indicate a growing lack of willingness to accept the assumption that the public knowledge of one's sexual orientation constitutes a sufficient rationale for legal termination of a career in public education.¹⁰⁷ Overall, he suggests that *California's Morrison v. State Board of Education* decision in 1969 was foundational for LGBT school employees because it determined a narrow means by which morality clauses found in most educator contracts should be interpreted by public school districts.¹⁰⁸ Biegel argues that later cases, where the courts rejected anti-LGBT employment discrimination indicate a legal trend toward accepting gay people¹⁰⁹ and transgender people (e.g. the Dana Rivers settlement) as suitable public school employees.¹¹⁰ Notwithstanding the positive trend, he states that:

Disclosure of a person's sexual orientation or gender identity in many K-12 institutions can still lead to the loss of employment opportunities and the discrediting of one's professional and personal standing. All too often, LGBT educators today are confronted with the message that they had better remain as closeted as possible.¹¹¹ For some public school workers, this is an unacceptable message, and they have organized collectively to change it.

Drawing on skills and networks from gay liberation organizations, in the mid-to-late 1970s, LGBT public school teachers began to collectively organize, while individual court cases were pursued with the support of newly identified colleagues and the backing of newly

¹⁰⁴ BLOUNT, *supra* note 2.

¹⁰⁵ *Id.*; BIEGEL, *supra* note 2; Biegel, *supra* note 95; COMING OUT OF THE CLASSROOM CLOSET: GAY AND LESBIAN STUDENTS, TEACHERS AND CURRICULA (Karen M. Harbeck ed., 1992); HARBECK, *supra* note 9; Lugg, *Religious Right*, *supra* note 2; Catherine A. Lugg, *One Nation Under God? Religion and the Politics of Education in a Post-9/11 America*, 18 EDUC. POL'Y 169 (2004).

¹⁰⁶ BIEGEL, *supra* note 2; Biegel, *supra* note 95.

¹⁰⁷ *See, e.g.*, *Acanfora v. Bd. of Educ.*, 491 F.2d 498 (4th Cir. 1974); *Gish v. Bd. of Educ.*, 366 A.2d 1337 (N.J. Super. Ct. App. Div. 1976).

¹⁰⁸ BIEGEL, *supra* note 2, at 57.

¹⁰⁹ *E.g.*, *Glover v. Williamsburg Local Sch. Dist.*, 20 F. Supp. 2d 1160 (S.D. Ohio 1998).

¹¹⁰ BIEGEL, *supra* note 2, at 53-54.

¹¹¹ Biegel, *supra* note 95, at 397.

formed organizations. In New York City, for example, educators gathered to establish the Gay Teachers Association, which broke the social isolation experienced by closeted teachers while still ensuring them the secrecy they desired to protect their job status. The GTA advertised meeting dates and times along with the assurance that “closet rights” would be “respected.”¹¹² GTA and other teacher association groups around the country went on to pursue policy changes to protect the rights of LGBT school employees through inclusion of “sexual orientation” in non-discrimination policies and in mainstream resolutions. Early political, financial, and legal support for LGBT educators from the National Education Association (NEA) and other groups such as the Gay Rights National Lobby, which later merged with the Human Rights Campaign,¹¹³ helped to shore up the effectiveness of such groups.

The NEA is the closest education system equivalent to other business-focused workplace equality organizations. Although its regional counterparts (e.g. Florida Education Association) have not all been supportive of LGBT employees, the national association has been a bold and early leader in the recognition of LGBT issues in education. As early as 1972, the NEA “funded the very first case ever litigated on behalf of an openly gay K-12 teacher – a federal lawsuit against the Montgomery County (Maryland) Board of Education.”¹¹⁴ The NEA has hosted a Gay Caucus since 1972,¹¹⁵ joined by an “ex-gay” caucus as well.¹¹⁶ In 1999, they published *Strengthening the learning environment: A school employee’s guide to gay, lesbian, bisexual, and transgender issues*,¹¹⁷ and in collaboration with partner organizations including GLSEN, designed training modules addressing student climate issues for its members.¹¹⁸ Additional NEA publications help educators understand their still precarious patchwork of legal rights as employees.¹¹⁹ Without a comprehensive non-discrimination employment policy at the federal level, or stronger state-level statutes, however, adults who work in schools will remain in a marginalized position within the struggle for workplace equality. Full equality, regardless of workplace, will be achievable when adults who work in K-12 public schools have the legally protected right to be out, and those who experience anti-LGBT bias and discrimination have the backing of effective legislation, policies, and bargaining agreements.¹²⁰

¹¹² BLOUNT, *supra* note 2, at 125.

¹¹³ GAY RIGHTS NATIONAL LOBBY, *A LOOK AT GAY TEACHERS* (1981), available at http://rnc.library.cornell.edu/HRC/exhibition/changingissues/changingissues_13.html.

¹¹⁴ NAT’L EDUC. ASSOC., *supra* note 30.

¹¹⁵ BLOUNT, *supra* note 2, at 1.

¹¹⁶ Jeralee Smith, *Ex-Gay Teachers form National Education Association Caucus*, NEA EX-GAY EDUCATORS’ CAUCUS (Feb. 17, 2004, 8:05 PM), <http://nea-exgay.org/2004/02/17/caucus-forme/>.

¹¹⁷ NAT’L EDUC. ASSOC., *STRENGTHENING THE LEARNING ENVIRONMENT: A SCHOOL EMPLOYEE’S GUIDE TO GAY, LESBIAN, BISEXUAL, AND TRANSGENDER ISSUES* (1999); NAT’L EDUC. ASSOC., *STRENGTHENING THE LEARNING ENVIRONMENT: A SCHOOL EMPLOYEE’S GUIDE TO GAY, LESBIAN, BISEXUAL, AND TRANSGENDER ISSUES* (2nd ed. 2006).

¹¹⁸ NAT’L EDUC. ASSOC., *NATIONAL TRAINING PROGRAM ON SAFETY, BIAS, AND GLBT ISSUES* (2010), available at http://www.nea.org/assets/docs/GLBT_TrainingFlyer2009-2010.pdf.

¹¹⁹ NAT’L EDUC. ASSOC., *KNOW YOUR RIGHTS: LEGAL PROTECTION FOR GAY, LESBIAN, BISEXUAL, AND TRANSGENDERED EDUCATION EMPLOYEES* (2002); NAT’L EDUC. ASSOC., *SEXUAL ORIENTATION AND GENDER IDENTIFICATION: ISSUES FOR BARGAINING AND ADVOCACY* (2006); NAT’L EDUC. ASSOC., *supra* note 30.

¹²⁰ BIEGEL, *supra* note 2; Biegel, *supra* note 95; Eckes & McCarthy, *supra* note 72.

Meanwhile, the infrastructure continues to grow to transform the teaching and learning climate in K-12 schools through the efforts of organizations such as the Gay, Lesbian and Straight Education Network (GLSEN). However, these advocacy organizations must balance the politically powerful need for educators to come out and be counted as legitimate and valued employees in order to garner support for socio-legal change, with the fears school workers continue to have because they lack the legal protections to do so. LGBT public school employees face this tension on a daily basis: the desire to be out, and the assumption that doing so could likely lead to harassment, if not possible firing. Still, individual public school workers have found the courage to be their full selves on the job,¹²¹ and this has brought them significant personal and professional satisfaction. Janna Jackson, for example, found in her analysis of gay and lesbian teachers' stories that eventually "just as confidence in teaching made participants more likely to come out, coming out created more confidence in teaching."¹²² Personal stories such as those analyzed in Jackson's 2007 study offer pragmatic and inspiring models to others employed by the public school system, one of the most vulnerable worksites for individuals who reject transphobic and heterosexist values.¹²³ Fortunately, two related LGBT equality movements have the knowledge, resources, networks, and access to address this queer gap.

V. The queer gap between "workplace equality" and "safe schools"

The Workplace Equality Movement has exhibited signs of great success, with leading corporations rejecting transphobic and heterosexist values by affirming, at least in their stated policies, the personal and professional lives of their employees, regardless of sexual orientation or gender identity. A review of Diversity Inc.'s top 50 and the Human Rights Campaign's Corporate Equality Index demonstrate this success. This success could be the result of business leaders wishing to have their pro-LGBT values reflected in their business plan, but it is safe to say for at least some of the corporations on the list, diversity management in general and LGBT equality in particular is linked to their competitive bottom line. Hiring and retaining the best employees translates in the long run into higher profits. This competitive bottom line has been shaped in part by government contract policies, which demand documentation of a diverse workforce and supply chain, along with effective marketing campaigns that reward businesses for embracing the LGBT workforce. Business has been pushed toward workplace equality, but the successful institutionalization of the Workplace Equality Movement means that employers are now being pulled toward it.

The Safe Schools Movement has also surged forward, buoyed by public attention to the tragic loss of young lives within the context of schools hostile to sexual minorities and gender non-conforming youth. Research indicates that the current learning environment in

¹²¹ PARKER J. PALMER, *THE COURAGE TO TEACH: EXPLORING THE INNER LANDSCAPE OF A TEACHER'S LIFE* (1998).

¹²² JACKSON, *supra* note 49, at 107.

¹²³ COMING OUT OF THE CLASSROOM CLOSET: GAY AND LESBIAN STUDENTS, TEACHERS AND CURRICULA, *supra* note 105; JACKSON, *supra* note 49; BECOMING VISIBLE: A READER IN GAY AND LESBIAN HISTORY FOR HIGH SCHOOL AND COLLEGE STUDENTS, *supra* note 4; Didi Khayatt, *Sex and the Teacher: Should We Come Out in Class?*, 67 HARV. EDUC. REV. 126 (1997); QUEERING ELEMENTARY EDUCATION: ADVANCING THE DIALOGUE ABOUT SEXUALITIES AND SCHOOLING (William J. Letts IV & James T. Sears eds., 1999); Linda McCarthy, *Wearing My Identity: A Transgender Teacher in the Classroom*, 36 EQUITY & EXCELLENCE IN EDUC. 170 (2003); WOOG, *supra* note 2.

K-12 schools is an unhealthy one for youth, with queer students being taught that they do not belong in their school community.¹²⁴ At the same time, non-queer students are taught to conform or be subjected to bias and discrimination, and that it is acceptable to denigrate and devalue members of minority groups. The public has begun to rally behind the need to transform our school culture, and tools and resources to do so are now available. Most Americans, regardless of their religious, political, or philosophical orientation, agree that students should not be targeted with anti-LGBT harassment and violence.¹²⁵ The pathway to achieve a harassment- and violence-free school is less clear, as is the level of support for an affirming school, where students are encouraged to be and become themselves by inclusive textbooks, co-curricular programming, and educators alike. Despite the empirical data that documents the need for students to have supportive adults employed by schools,¹²⁶ the American public remains deeply divided in terms of the suitability of ‘out’ school workers.¹²⁷ Limited attention within the Safe Schools Movement to the rights and well-being of public school workers reflects this ambivalence.

As a result of the Workplace Equality Movement’s focus on the business world, and the Safe Schools Movement’s focus on student safety and well-being, public school workers constitute a queer gap, left widely unprotected against anti-LGBT bias and discrimination. A range of solutions is available. First, a promising engagement between workplace equality and safe schools can be found within the unions, such as the National Education Association and the American Federation of Teachers (AFT). The AFT is affiliated with the AFL-CIO, whose constituent organization, Pride at Work, trains members how to secure LGBT-inclusive union contract language and supports the passage of a federal employment non-discrimination act. Union organizers are experts at securing worker rights; their motto, “An injury to one is an injury to all”, represents the spirit of worker solidarity and points directly to the need to protect everyone at work, regardless of sexual orientation or gender identity.¹²⁸ Unfortunately, we have observed the increasing political marginalization of unions, particularly of public employee unions — at the very moment when workers’ economic stability has reached a low point.¹²⁹ A coalition between the LGBT Workplace Equality Movement and the union movement could strengthen both.

Second, the Workplace Equality Movement could expand to include the public school system. Public schools are expected to operate like businesses (e.g. identify efficiencies in order to teach more students with fewer resources, reward employees with performance-based outcomes); the burgeoning charter school movement means that many schools now constitute businesses, and the privatization of school services such as food services and facilities management translates into many on-site employees already being employed by corporations, which may very well support workplace equality, such as Sodexo, one of the largest private school service providers. Perhaps workplace equality in public schools will

¹²⁴ KOSCIW ET AL., *supra* note 7.

¹²⁵ *Do Anti-Bullying Laws Push Gay Agenda?*, *supra* note 100.

¹²⁶ KIM ET AL., *supra* note 27; Kosciw et al., *Who, What, Where*, *supra* note 14.

¹²⁷ BIEGEL, *supra* note 2.

¹²⁸ *About Us*, PRIDE@WORK, <http://www.prideatwork.org/about-us.html> (last visited Jan. 27, 2012).

¹²⁹ Joseph A. McCartin, Editorial, *Public Unions: What’s the Big Deal?*, L.A. TIMES (Jan. 17, 2012), <http://articles.latimes.com/2012/jan/17/opinion/la-oe-mccartin-unions-20120117>; Yvonne Wingett Sanchez, *Arizona Bill Targets Public Employee Unions*, ARIZ. REPUBLIC (Feb. 1, 2012), <http://www.azcentral.com/news/politics/articles/2012/02/01/20120201arizona-bill-targets-public-employee-unions.html>.

emerge as an unintended consequence of the businessification and privatization of public schools.

Third, the Safe Schools Movement could turn more of its attention to the workers within public schools, beyond the investment it already makes to persuade educators to stand up for LGBT youth and others targeted with anti-LGBT bias and discrimination. The Safe Schools Movement is positioned well to make this shift, given the high number of public school workers already engaged in efforts to address the anti-LGBT school climate. Indeed, the leading Safe Schools Movement organization, GLSEN, was founded by teachers and has continued to attract significant number of teachers, counselors, and others who work in schools on the front lines with students, and who use its resources and programming. This additional focus on school employees as workers, not simply as either part of the problem or solution to safe schools, would require an increase in financial resources and a payment of political capital. Both requirements may be too risky for this nascent movement premised primarily on securing buy-in by a public newly convinced of the movement's legitimacy. However, the gains garnered by the Safe Schools Movement cannot be fully implemented without a fully empowered and protected workforce.

In the meantime, school workers, those who labor in classrooms and cafeterias, school buses and sport teams, and playgrounds and principal's offices will continue to embody the queer gap as they struggle for dignity at work. Their dignity may be achieved personally, by relying on the discretionary power of one's colleagues and supervisor, or it may be achieved collectively, by drawing on the institutional power of a federal employment non-discrimination policy and an inclusive union contract. Either way, public school workers could be part of, and benefit from, a joining together of the Workplace Equality and Safe Schools Movements.