

# Weathering the Storm: Is California's Anti-Harassment Education Training the Life Preserver LGBTQ Youth Have Been Hoping for?

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## Introduction

JAMEL MYLES, A FOURTH-GRADER IN DENVER, COLORADO, hung himself as a result of bullying.<sup>1</sup> Jamel experienced bullying from classmates after coming out as a member of the lesbian, gay, bisexual, transgender, and queer (“LGBTQ”)<sup>2</sup> community.<sup>3</sup> For over a year,

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\* Natalie Purcell O’Dwyer, J.D. Candidate, 2022, University of San Francisco School of Law. Thank you to my wife Emily, my loving family, and the LGBTQ+ community for their endless support. This comment is dedicated to LGBTQ+ youth who deserve to be seen, heard, and uplifted throughout their journey. Additional thanks to the USF Law Review staff for their hard work and assistance with this publication.

1. Robert Sanchez, *Why Did Jamel Myles Die?*, 5280 MAGAZINE (Jan. 2019), <https://www.5280.com/2019/01/why-did-jamel-myles-die/> [<https://perma.cc/5L43-YXYL>].

2. Language is how we communicate our identities, and it is crucial to use precise language when describing the identities of specific groups. Ben Papadopoulos, *LGBTQIA2+: The Alphabet Soup of Sexuality (Back to Basics: Part Two)*, MEDIUM (Nov. 6, 2019), <https://bpapadopoulos.medium.com/lgbtqiap2-the-alphabet-soup-of-sexuality-back-to-basics-part-two-f3c5738b8857> [<https://perma.cc/ZA8L-CWFG>]. There are an estimated one-hundred to two-hundred identities used to describe sex, gender, sexuality, and romantic attraction. *The Alphabet Soup of Identity from LGBTIQAP to XYZ*, LGBTIQ.XYZ (Apr. 25, 2018), <http://www.lgbtiq.xyz/the-alphabet-soup-of-identity-from-lgbtqiap-to-xyz/> [<https://perma.cc/86Y7-6KGE>]. The letters LGBTQ do not cover all of the sexes, genders, or romantic attractions, and perhaps the most inclusive initialism of identities is LGBTQIA2S+, with each letter representing a gender identity or sexual orientation—lesbian, gay, bisexual, transgendered, queer/questioning, intersex, asexual, and two-spirit. Florence Ashley, *Queering Our Vocabulary — A (Not So) Short Introduction to LGBTQIA2S+ Language*, MEDIUM (Aug. 7, 2018), <https://medium.com/@florence.ashley/queering-our-vocabulary-a-not-so-short-introduction-to-lgbtqi2s-language-997ca6c8b657> [<https://perma.cc/P7J5-WFGP>]. The “+” symbol is “[n]ot just a mathematical symbol anymore, but a denotation of everything on the gender and sexuality spectrum that letters and words can’t yet describe.” Michael Gold, *The ABC’s of the L.G.B.T.Q.I.A.+*, N.Y. TIMES (June 7, 2019), <https://www.nytimes.com/2018/06/21/style/lgbtq-gender-language.html> [<https://perma.cc/252Y-X6QL>]. Although more inclusive initialisms exist, LGBTQ is used throughout this

both Jamel and his sister frequently reported instances of bullying by other students.<sup>4</sup> His mother was in constant contact with his elementary school due to the ongoing bullying.<sup>5</sup> Despite his mother's involvement with school officials, Jamel took his own life at nine years old, four days into the start of fourth grade.<sup>6</sup> Jamel's story highlights the evils of ignorance and hatred that fuel our nation's suicide epidemic.<sup>7</sup>

The suicide rate in the United States has seen a sharp increase in recent years.<sup>8</sup> As of 2018, "[m]iddle schoolers [were] just as likely to die from suicide as they [were] from traffic accidents,"<sup>9</sup> and suicide is now the second leading cause of death among people ages ten to twenty-four.<sup>10</sup> Lesbian, gay, and bisexual adolescents are particularly vulnerable to suicide due to school bullying and increased exposure to stigma, threats, and isolation.<sup>11</sup> Over forty percent of LGBTQ youth seriously considered suicide in the past year,<sup>12</sup> and lesbian, gay, bisexual, and queer individuals are eighty-eight percent more likely to attempt suicide.<sup>13</sup>

Research demonstrates that negative experiences resulting from LGBTQ stigma and discrimination contribute to emotional distress among LGBTQ adolescents.<sup>14</sup> Navigating hostile school climates often

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Comment because it is explicitly used in the section 218 of the California Education Code. CAL. EDUC. CODE § 218 (Deering 2019).

3. Julie Turkewitz, *9-Year-Old Boy Killed Himself After Being Bullied, His Mom Says*, N.Y. TIMES (Aug. 28, 2018), <https://www.nytimes.com/2018/08/28/us/jamel-myles-suicide-denver.html> [<https://perma.cc/FM4T-7SPF>].

4. *Id.*

5. *Id.*

6. *Id.*

7. Sanchez, *supra* note 1.

8. *Even Before COVID-19 Pandemic, Youth Suicide Already at Record High*, UC DAVIS HEALTH (April 8, 2021), <https://health.ucdavis.edu/health-news/newsroom/even-before-covid-19-pandemic-youth-suicide-already-at-record-high/2021/04> [<https://perma.cc/PWS3-J2YM>].

9. Turkewitz, *supra* note 3.

10. Melonie Heron, *Deaths: Leading Causes for 2019*, NAT'L VITAL STAT. REPS., July 26, 2021, at 1, 14, <https://www.cdc.gov/nchs/data/nvsr/nvsr70/nvsr70-09-508.pdf> [<https://perma.cc/K45D-7DD5>].

11. John Carson, *Greater Suicide in LGBT Youth*, 2 NATURE HUM. BEHAV. 886, 886 (2018).

12. *National Survey on LGBTQ Youth Mental Health 2021*, THE TREVOR PROJECT (2021), <https://www.thetrevorproject.org/survey-2021/?section=Introduction> [<https://perma.cc/AQN7-GQ3N>].

13. *Suicide Prevention Month: A Summary of Data on LGBT Suicide*, THE WILLIAMS INSTIT. (Aug. 31, 2020), <https://williamsinstitute.law.ucla.edu/press/suicide-prevention-media-alert/> [<https://perma.cc/A7RM-AATU>].

14. Joanna Almeida et al., *Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation*, 38 J. YOUTH & ADOLESCENCE 1001, 1001-14 (2009).

leads LGBTQ youth to experience suicide, depression, anxiety, and a lower quality of life.<sup>15</sup> These high levels of emotional distress illustrate why it is important to educate teachers and other certificated employees<sup>16</sup> on how to create and foster a safe environment for LGBTQ students.<sup>17</sup>

It is vital for teachers and certificated employees to provide more support to LGBTQ students.<sup>18</sup> Doing so will help create safe educational spaces for vulnerable students and combat attitudes of discrimination, bias, and bullying in schools.<sup>19</sup> Expanding supportive policies and services in schools for LGBT adolescents can help counter the detrimental effects of discrimination.<sup>20</sup> Section 218, the 2019 amendment to the California Education Code, aims to do just that.<sup>21</sup>

Section 218 attempts to provide community support for LGBTQ students by requiring the California Department of Education (“CDE”) to develop or update existing resources for LGBTQ students and training strategies for teachers and certificated employees.<sup>22</sup> However, without providing an approved LGBTQ training curriculum, section 218 leaves the responsibility to implement and track training progress to each school.<sup>23</sup> While section 218 is a step in the right direction, it fails to fulfill its promise to LGBTQ students by placing the burden of training teachers and certificated employees on schools and not providing schools with an approved training curriculum.<sup>24</sup>

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15. Alan K. Goodboy & Matthew M. Martin, *LGBT Bullying in School: Perspectives on Prevention*, 67 COMM’N. EDUC. 513, 529 (2018).

16. Certificated employees are those “who are required by the state to hold some type of teaching credentials, including most administrators and full-time, part-time, substitute, and temporary teachers.” *Glossary: Certificated/Credentialed Employees*, EDSOURCE (2021), <https://edsources.org/glossary/certificated-credentialed-employees> [<https://perma.cc/RTH2-LMBL>]; See also CAL. EDUC. CODE § 22135(c)–(d) (Deering 2019) (noting the difference between a classroom teacher and certificated employee).

17. See Almeida et al., *supra* note 14, at 1011 (concluding that supportive policies and services in schools for LGBT adolescents can help deter the detrimental effects of discrimination).

18. See *Teachers: In-Service Training: Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning Pupil Resources: Hearing on AB 493 Before the Assemb. Comm. on Educ.*, 2019 Gen. Assemb., Reg. Sess. 2 (Cal. 2019) (discussing the negative effects that LGBTQ bias has on LGBTQ students in school) [hereinafter *Hearing on A.B. 493*].

19. *Id.* at 3 (highlighting research that “LGBTQ students with many supportive educators feel safer at school, skip fewer classes, earn higher grades, and have fewer school-related problems than those without supportive educators”).

20. See Almeida et al., *supra* note 14, at 1011.

21. CAL. EDUC. CODE § 218(a)(1) (Deering 2019).

22. *Id.*

23. See *id.* § 218.

24. See *id.*

Part I discusses the framework of the California Education Code, noting the Safe Place to Learn Act and Assembly Bill 2153. Part II dissects the statutory language and general propositions of section 218. Part III analyzes the proposed benefits of LGBTQ training for teachers and other certificated employees and the ramifications of section 218's failure to address teachers and certificated employees of grades kindergarten through six, parental involvement in training, and inclusivity of LGBTQ students. Lastly, Part III discusses proposed solutions to the law's shortcoming.

## I. Legal Background

The California Education Code provides the framework of laws and regulations for California schools.<sup>25</sup> The Code strives to afford all persons in public school equal rights and opportunities “regardless of their disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other [protected] characteristic . . . .”<sup>26</sup>

In 2007, the California Education Code was expanded to include the Safe Place to Learn Act (“SPLA”),<sup>27</sup> and in 2018, lawmakers attempted to pass AB 2153, which would have required schools to provide LGBTQ anti-bias and harassment training to teachers and other school employees.<sup>28</sup>

### A. The Safe Place to Learn Act

In 2011, an amended version of the SPLA was passed into law.<sup>29</sup> The SPLA requires the CDE to assess and monitor whether local educational agencies have adopted policies aimed at improving student safety in schools.<sup>30</sup> Such policies require local educational agencies to prohibit “discrimination, harassment, intimidation, and bullying” based on a student’s LGBTQ status<sup>31</sup> and provide certificated school site employees of grades seven through twelve with information on existing school site and community resources related to the support of LGBTQ students.<sup>32</sup>

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25. *See id.* §§ 1–101149.5.

26. *Id.* § 200 (1982) (amended 2011).

27. *Id.* § 234 (2007) (amended 2011).

28. *See* Assemb. B. 2153, 2018 Gen. Assemb., Reg. Sess. (Cal. 2018).

29. EDUC. § 234.

30. *Id.* § 234(b).

31. *Id.* § 234.1(a).

32. *Id.* § 234.1(d)(1).

The SPLA also institutes procedures for schools to process and investigate complaints of discrimination and harassment,<sup>33</sup> and it outlines the appeals process afforded to an alleged harasser.<sup>34</sup> To protect students from retaliation, the SPLA ensures that the identity of the student alleging discrimination or bullying will remain confidential.<sup>35</sup> Finally, the SPLA requires that information on LGBTQ community-based organizations and resources be available to students on school campuses.<sup>36</sup> LGBTQ community-based resources include mental health providers specializing in LGBTQ youth and nonprofit organizations providing support services to LGBTQ youth.<sup>37</sup>

## B. AB 2153

Introduced in 2018, AB 2153 attempted to institute a program requiring public schools to provide annual on-site LGBTQ anti-bias training to teachers of grades seven through twelve and other certificated employees.<sup>38</sup> This bill would have required the state to reimburse local agencies and school districts for costs related to LGBTQ training.<sup>39</sup> Governor Jerry Brown vetoed AB 2153, explaining, “[i]f local schools find that more training or resources on this topic is needed, they have the flexibility to use their resources as they see best.”<sup>40</sup>

## II. Section 218

In 2019, the California Education Code was amended to include section 218, which attempts to provide information and resources to teachers and other certificated employees of grades seven through twelve who may not be knowledgeable about LGBTQ vulnerabilities.<sup>41</sup> The statute encourages schools to provide teachers and certificated employees with information detailing community resources for LGBTQ youth, including mental health services that are outside the scope of the state’s educational institutions.<sup>42</sup> The statute also encour-

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33. *Id.* § 234.1(b).

34. *Id.* § 234.1(b)(3).

35. *Id.* § 234.1(g).

36. *Id.* § 234.1(d)(1).

37. *Id.* § 234.1(d)(2)(B).

38. Assemb. B. 2153, 2018 Gen. Assemb., Reg. Sess. (Cal. 2018).

39. *Id.*

40. Matthew S. Bajko, *In Rare Move, Brown Vetoes LGBT Bills*, BAY AREA REP. (Oct. 3, 2018), <https://www.ebar.com/news/news//266280> [<https://perma.cc/H9HF-KAJQ>].

41. EDUC. § 218.

42. *Id.* § 218(c)(2).

ages schools to deliver on-site training to teachers and other certificated employees every two years using resources developed by the CDE.<sup>43</sup>

#### A. Section 218's Requirements for Resources and Training

Section 218 lays the groundwork to connect LGBTQ pupils, teachers, and other certificated employees to the greater LGBTQ community. Under the statute, the CDE creates a list of community resources and provides the list to schools.<sup>44</sup> LGBTQ community resources include physical and mental health providers who specialize in LGBTQ youth and community organizations that support LGBTQ youth issues.<sup>45</sup> The statute aims to provide school personnel and student bodies with direct access to experienced community-based social and psychological service providers.<sup>46</sup>

Section 218 also provides a list of school resources that should be available to LGBTQ students on campus. School-site resources include peer support groups, LGBTQ safe spaces, anti-bullying or harassment policies, and counseling services.<sup>47</sup> The section also introduces a list of LGBTQ topics that the teacher and certificated employee training may cover, which include antibias, suicide prevention, policies on school bathroom and locker room facilities, and other relevant materials to LGBTQ youth.<sup>48</sup> Section 218 aims to supply teachers and other certificated employees with the tools necessary to create and sustain positive school environments to combat discrimination and bullying.<sup>49</sup>

While the statute encourages schools to provide LGBTQ training, resources, and students with access to local community-based organizations and mental health providers, section 218 does not require schools to use these resources.<sup>50</sup>

### III. Analysis

In 1990, a group of teachers founded the Gay Lesbian and Straight Education Network (“GLSEN”).<sup>51</sup> GLSEN conducts extensive

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43. *Id.* § 218(a)(2).

44. *Id.* § 218(a)(1).

45. *Id.* § 218(c)(2).

46. *Id.*

47. *Id.* § 218(c)(1)(A)–(D).

48. *Id.* § 218(c)(1)(E)–(H).

49. *See id.* § 218(a)(1).

50. *Id.* § 218(a)(2).

51. *Creating a Better World for LGBTQ Students*, GLSEN (2021), <https://www.glsen.org/about-us> [<https://perma.cc/69ZE-R4GU>].

research to advocate for LGBTQ students and provide solutions to bullying, harassment, and discrimination.<sup>52</sup> In 2015, GLSEN suggested a multifaceted approach for schools to combat hostile school atmospheres, oppose bullying and harassment, and reduce suicide attempts of LGBTQ students.<sup>53</sup> The approach includes on-site school resources like Gay-Straight Alliances (“GSA”), designated safe spaces, and anti-bias policies.<sup>54</sup> GLSEN recommended that school staff and LGBTQ students also have access to additional community-based mental health and general LGBTQ support resources.<sup>55</sup> Section 218 attempts to implement a version of this approach but fails to address teachers and certificated employees of grades kindergarten through six, parental involvement in training, and inclusivity of LGBTQ students.<sup>56</sup>

Section A describes the constraints within section 218, limiting its scope to grades seven through twelve and failing to provide proper guidance and tracking of training. Section B expresses concern over section 218’s failure to address parental participation and engagement in LGBTQ anti-bias and harassment training. Section C highlights issues surrounding the language of inclusivity within section 218, specifically with the statute’s use of the initialism LGBTQ. Section D explores possible solutions to the issues unaddressed in the section.

#### **A. Section 218 Does Not Go Far Enough to Provide Essential Support to LGBTQ Youth**

Negative behaviors occurring in adolescence can have lifelong effects on educational attainment, employment, housing, and the overall quality of life of LGBTQ individuals; thus, it is vital that essential support is provided to LGBTQ youth.<sup>57</sup> “Schools have a unique and important role to play in addressing the health-related behaviors of [LGBTQ] students” and “. . . can help reduce stigma and discrimina-

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52. *Id.*

53. See JOSEPH G. KOSCIW ET AL., GLSEN, THE 2015 NATIONAL SCHOOL CLIMATE SURVEY: THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUEER YOUTH IN OUR NATION’S SCHOOLS (2016), <https://files.eric.ed.gov/fulltext/ED574780.pdf> [<https://perma.cc/KQ4A-HKQM>].

54. *Id.* at 54–60.

55. *Id.* at 128.

56. See CAL. EDUC. CODE § 218 (Deering 2019).

57. Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 — United States and Selected Sites, 2015*, 65 SURVEILLANCE SUMMARIES, Aug. 12, 2016, at 2, 79, <https://www.cdc.gov/mmwr/volumes/65/ss/pdfs/ss6509.pdf> [<https://perma.cc/JPY9-KJ5Y>].

tion by creating and sustaining positive school environments . . . .”<sup>58</sup> Positive school environments are those that provide designated “safe spaces” for LGBTQ students, which result in fewer suicide attempts and lower suicide ideation among LGBTQ students.<sup>59</sup> Further, research demonstrates that LGBTQ students with “supportive educators feel safer at school, skip fewer classes, earn higher grades, and have fewer school-related problems . . . .”<sup>60</sup> By limiting anti-bias training to teachers and certificated employees overseeing grades seven through twelve, section 218 fails to recognize the complexities of the various stages of adolescence and accurately address the problem of LGBTQ youth bullying.<sup>61</sup>

Schools play a key role in addressing the behaviors and experiences of LGBTQ students.<sup>62</sup> While grades seven through twelve are the most impactful years of an adolescent’s development,<sup>63</sup> students in kindergarten through twelfth grade play a significant role in opposing LGBT bullying.<sup>64</sup> Increased support of LGBTQ students in *all* grades can help counter the detrimental effects of discrimination.<sup>65</sup>

Section 218 focuses specifically on encouraging training for teachers and certificated employees of grades seven through twelve.<sup>66</sup> By exempting kindergarten through sixth grade, section 218 fails to address the seriousness of suicide prevention in LGBTQ youth. School-based suicide prevention policies have historically focused on middle and high school students,<sup>67</sup> however, current data shows an increase in the suicide rate for younger children.<sup>68</sup> Jamel Myles was only nine years old when he took his own life after continuous bully-

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58. *Id.* at 79.

59. *Id.*

60. *Hearing on A.B. 493*, *supra* note 18, at 3.

61. *See generally* *Adolescence*, PSYCH. TODAY, <https://www.psychologytoday.com/us/basics/adolescence> [<https://perma.cc/F273-Q7YN>] (discussing the physical and psychological changes that occur during adolescence).

62. Kann et al., *supra* note 57, at 79.

63. *See generally* *Adolescence*, *supra*, note 61 (explaining that the purpose of adolescence is for a child to psychologically and socially transform into a young adult).

64. Goodboy & Martin, *supra* note 15, at 516 (While this Comment uses the initialism LGBTQ, this source limited its research to LGBT; thus, we did not include “Q” in its initialism.).

65. Almeida et al., *supra* note 14, at 1011 (emphasis added).

66. CAL. EDUC. CODE § 218(a)(2) (Deering 2019).

67. CHRISTINE MOUTIER ET AL., AM. FOUND. FOR SUICIDE PREVENTION, MODEL SCHOOL DISTRICT POLICY ON SUICIDE PREVENTION: MODEL LANGUAGE, COMMENTARY, AND RESOURCES 1 (2019), <https://afsp.org/model-school-policy-on-suicide-prevention> [<https://perma.cc/RHP9-F6DK>].

68. *Id.*

ing from classmates.<sup>69</sup> Promoting a culture of wellness and inclusion which incorporates social well-being, mental health, and community support is imperative for primary school students as well.<sup>70</sup>

Section 218 also declines to consult knowledgeable LGBTQ community organizations on how to provide guidance for creating an interactive curriculum.<sup>71</sup> While the CDE creates a list of resources for use in the training, it does not give further detail on who or how the resources will be developed.<sup>72</sup> Community organizations have the cultural competency to help design such a curriculum, yet the law does not directly name non-profit LGBTQ organizations that are capable of providing knowledge and guidance on the topics.<sup>73</sup> While section 218 encourages schools to participate in training and provide LGBTQ resources to its students, it does not connect students to the greater LGBTQ community or non-profit organizations.<sup>74</sup> This loophole runs counter to the premise and fundamental need for the statute, to provide vulnerable at-risk youth safety and support.<sup>75</sup> Section 218 should require the CDE to work directly with LGBTQ non-profits and mental health providers to coordinate and develop a training program and provide a detailed list of counseling agencies and LGBTQ non-profits to schools.

Further, section 218 does not require or establish any mechanism for the CDE to track the completion of training.<sup>76</sup> By not holding teachers and certificated employees accountable for completing the training, section 218 falls short in fulfilling its purpose of providing support to LGBTQ students. Schools should be required to implement the training and keep a record of each staff member's completion and progress in comprehending LGBTQ issues. As a result, section 218 does not ensure that vulnerable LGBTQ students receive the support and protection they deserve.

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69. Turkewitz, *supra* note 3.

70. See MOUTIER ET AL., *supra* note 67, at 17 (discussing effective suicide prevention policies and recommendations in schools).

71. See EDUC. § 218.

72. See *id.*

73. See *id.*

74. See *id.*

75. *Id.* § 218(a)(1).

76. See *id.*

## B. Section 218 Fails to Promote Parent Engagement in LGBTQ Educational Outreach Programs

Teachers can “serve as inclusive role models for their students and can deter LGBT[Q] bullying by receiving [training] . . . .”<sup>77</sup> Relying on teachers alone, however, is insufficient; rather parents and guardians need to be aware of and pay attention to the factors that contribute to suicides among LGBTQ youth.<sup>78</sup>

While some parents perpetuate bullying behavior by teaching their children to adopt attitudes and behaviors that reflect their own ignorance and hate,<sup>79</sup> education is a successful way to eliminate LGBTQ bullying in schools.<sup>80</sup> For example, LGBTQ youth “in communities with lower adult educational attainment often experience more hostile school climates.”<sup>81</sup> Because of this, teachers and other certificated employees should help educate parents on how to provide support to LGBTQ students who experience bullying and discrimination.<sup>82</sup> Section 218 neglects to address parental involvement or participation in LGBTQ anti-bias and harassment training.<sup>83</sup> The statute may embolden teachers and other certificated employees to obtain training, but it falls flat in encouraging parent participation in LGBTQ antibullying and harassment education.<sup>84</sup>

## C. Section 218 Understates the Value of Community

LGBTQ youth face unique challenges at school due to their sexuality and gender identity.<sup>85</sup> The implementation of safe spaces and support for students on school campuses and within the surrounding community is essential for LGBTQ students.<sup>86</sup> But the power to build safe spaces and an inclusive environment cannot rest solely with teach-

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77. Goodboy & Martin, *supra* note 15, at 515.

78. Reuters, *One in Four Pre-Teen Suicides May Be LGBTQ Youth*, NBC NEWS (Feb. 22, 2019, 11:30 AM), <https://www.nbcnews.com/feature/nbc-out/one-four-pre-teen-suicides-may-be-lgbtq-youth-n974481> [<https://perma.cc/XMC5-QZLA>].

79. See Goodboy & Martin, *supra* note 15, at 514.

80. See *id.*

81. Dorothy L. Espelage, *Bullying and K-12 Students*, in *LGBTQ ISSUES IN EDUCATION: ADVANCING A RESEARCH AGENDA* 107 (George L. Wimberly ed., 2015).

82. See Goodboy & Martin, *supra* note 15, at 514.

83. See CAL. EDUC. CODE § 218 (Deering 2019).

84. *Id.*

85. *Resources for Improving LGBTQ+ Inclusivity in the Classroom*, AM. U. SCH. EDUC. (July 11, 2019), <https://soeonline.american.edu/blog/lgbtq-inclusivity> [<https://perma.cc/X59L-ELLR>].

86. Kann et al., *supra* note 57, at 79.

ers.<sup>87</sup> Students can welcome their LGBTQ classmates and show them they are in a safe space.<sup>88</sup> Section 218 reinforces the power of inclusivity by including peer affinity organizations on the list of topics covered in training.<sup>89</sup>

Establishing affinity organizations better enables students and teachers to continue to encourage safe spaces for LGBTQ students.<sup>90</sup> One way students can create an inclusive environment is by forming or joining a GSA. GSAs are student-run organizations that unite LGBTQ students and allies to build community and create opportunities to organize around issues impacting LGBTQ students and allies in their schools.<sup>91</sup> LGBTQ students in schools with GSAs report lower levels of victimization, are more likely to report incidents of harassment, and are less likely to miss school because of safety concerns.<sup>92</sup> GSAs can provide opportunities for all students to connect socially, support organizations for LGBTQ students facing challenges, and can help form activist groups aiming to raise awareness about LGBTQ issues.<sup>93</sup> However, only thirty-nine percent of schools in California have GSA clubs.<sup>94</sup>

By including peer support and affinity clubs and organizations in the list of training topics, section 218 promotes the use of organizations like GSAs and educates teachers and certificated professionals on their importance.<sup>95</sup> The statute, however, falters in its execution by not ensuring peer support and affinity clubs and organizations on the list of topics covered in training are inclusive.<sup>96</sup> Section 218 only includes the first five letters in the LGBTQIA2S+ initialism, deliberately leaving out many queer, genderqueer, and ally identities within the broader queer spectrum.<sup>97</sup> Section 218 lacks a fundamental understanding of the diverse LGBTQ student community it intends to serve because it does not acknowledge the entire LGBTQIA2S+ spectrum.<sup>98</sup> By erasing the inclusivity of queer, genderqueer, and queer ally identi-

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87. *Resources for Improving LGBTQ+ Inclusivity in the Classroom*, *supra* note 85.

88. *Id.*

89. CAL. EDUC. CODE § 218(a)(2)(A) (Deering 2019).

90. *See Resources for Improving LGBTQ+ Inclusivity in the Classroom*, *supra* note 85.

91. *Id.*

92. *Hearing on A.B. 493*, *supra* note 18, at 3.

93. *Resources for Improving LGBTQ+ Inclusivity in the Classroom*, *supra* note 85.

94. *Hearing on A.B. 493*, *supra* note 18, at 3.

95. CAL. EDUC. CODE § 218(a)(2)(A) (Deering 2019).

96. *See id.*

97. *Id.* § 218(a)(1).

98. *See id.* (The statute directs school to provide training and resources to “LGBTQ pupils” and does not reference the broader LGBTQIA2S+ spectrum.).

ties that fall within the “IA2S+,” lawmakers stopped short of recognizing the full LGBTQ student body. Section 218 attempts to equip teachers and other certificated employees with the means to combat LGBTQ bias, school bullying, and discrimination, however, the very statute lacks acknowledgment and representation of the spectrum of diverse and intersectional LGBTQIA2S+ identities.

#### D. Proposed Solutions to Issues Unaddressed Within Section 218

Teachers can serve as role models for students.<sup>99</sup> However, this is not always the case. One study reported that up to twenty-five percent of students in kindergarten through twelfth grade who experienced homophobic bullying had been bullied by a teacher because of their perceived identity.<sup>100</sup> The same study also found that students did not report homophobic bullying to staff members when school culture seemed unsupportive of LGBTQ students.<sup>101</sup> Such data demonstrates the need for educational training on cultural sensitivity, sexuality, and gender identity for teachers and other certificated employees regardless of grade.<sup>102</sup> Lawmakers should expand section 218 to mandate training for teachers and certificated employees serving students in kindergarten through twelfth grade.

Homophobic name-calling begins at early ages<sup>103</sup> and is a common form of bullying.<sup>104</sup> It is important to allow LGBTQ students, teachers, and certificated employees to have open conversations about how LGBTQ allies on campus can provide better support.<sup>105</sup> Adolescents typically become aware of their sexual attraction and explore their sexual and gender identity during middle school years,<sup>106</sup> and many LGBTQ youths are coming out during middle school.<sup>107</sup> Bullying starts to integrate gendered and sexual content as youth enter adolescence and puberty during fifth to eighth grade.<sup>108</sup> One study

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99. Goodboy & Martin, *supra* note 15, at 515.

100. *Id.* at 515.

101. *Id.*

102. *See id.* at 514–15.

103. Dorothy L. Espelage et al., *A Longitudinal Examination of Homophobic Name-Calling in Middle School: Bullying, Traditional Masculinity, and Sexual Harassment as Predictors*, 8 PSYCH. VIOLENCE 57, 58 (2018).

104. *Id.*

105. *See* MOUTIER ET AL., *supra*, note 67, at 20 (explaining that it is “important that school staff be trained to support at-risk LGBTQ youth with sensitivity, cultural competency, and affirming practices”).

106. Espelage et al., *supra* note 102, at 58.

107. Espelage, *supra* note 81, at 108.

108. *Id.* at 109.

reported that bullying was a predictor of homophobic name-calling among middle schoolers.<sup>109</sup> Additionally, youth who were bullies in middle school were more likely to use homophobic epithets towards their peers in high school.<sup>110</sup> Because homophobic bullying does not only occur in grades seven through twelve, section 218 would be more effective if it was expanded to include teachers and other certificated employees of kindergarten through twelfth grade.

Teachers and certificated employees have the power to shape the culture of their classrooms and schools.<sup>111</sup> By educating students on perspectives of inclusion and respect for LGBTQ students, teachers and certificated employees can counter miseducation outside of the classroom.<sup>112</sup> Data shows that LGBTQ suicide is not caused by the victim's LGBTQ identity, instead, it is caused by the world's reaction to their LGBTQ identity.<sup>113</sup> Teachers and other certificated employees have an opportunity to better inform and support LGBTQ students to help relieve tensions with parents and peers.<sup>114</sup> Lawmakers should expand section 218 to include parental participation in LGBTQ anti-bias and harassment training. By encouraging parental involvement in LGBTQ community resources and anti-discrimination practices, section 218 would directly aid LGBTQ youth both in and out of the classroom.

While school officials should encourage parents to be actively involved in better understanding LGBTQ identities and antibias, parental involvement must be balanced against the student's safety.<sup>115</sup> Any information related to sexual orientation or gender expression should be kept confidential.<sup>116</sup> Disclosing this information to parents, guardians, or third parties should only occur with the student's permission.<sup>117</sup> It is particularly necessary to maintain confidentiality if a student has not already disclosed their gender or sexual identity to the parent or guardian.<sup>118</sup> Disclosing a student's gender or sexual orienta-

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109. Espelage et al., *supra* note 102, at 62.

110. *Id.*

111. Goodboy & Martin, *supra* note 15, at 514.

112. *Id.*

113. Reuters, *supra* note 78.

114. *Hearing on A.B. 493*, *supra* note 18, at 3.

115. See MOUTIER ET AL., *supra* note 67, at 16 (discussing the importance of parental involvement in LGBTQ youth suicide prevention).

116. *Id.*

117. *Id.*

118. *Id.*

tion without their explicit consent can endanger the student and promote distrust of medical and school officials.<sup>119</sup>

Section 218 encourages schools to provide LGBTQ students with access to community-based organizations and local mental health providers with experience in treating LGBTQ youth.<sup>120</sup> In addition to connecting LGBTQ students to community mental health providers, these students should also have access to on-site counselors.<sup>121</sup> Only fifty percent of California schools facilitate LGBTQ student access to on-site community health resources.<sup>122</sup> Psychologists may assist LGBTQ students in evaluating themselves with greater honesty and provide more sensitive care.<sup>123</sup> Access to school-employed mental health professionals directly improves safety, academic performance, academic learning, and emotional development for LGBTQ students.<sup>124</sup> Although section 218 aims to connect LGBTQ students to community mental health services, it fails to address the need for on-site mental health professionals.<sup>125</sup>

The expertise counselors and psychologists have regarding issues related to multicultural intersectionality, gender identity, and sexual orientation places them at the forefront to address homophobic victimization and discrimination.<sup>126</sup> Section 218 should not only connect LGBTQ students to local mental health providers but ensure that on-site counselors and psychologists collaborate with community providers to meet clinical needs.

## Conclusion

To fully combat the nation's suicide epidemic, lawmakers must focus resources on those who are most vulnerable, including LGBTQ youth. Increased anti-bias and harassment training for *all* teachers and

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119. *Id.*

120. CAL. EDUC. CODE § 218(c)(2) (Deering 2019).

121. *See* MOUTIER ET AL., *supra* note 67, at 17 (“Access to school-employed mental health resources and access to school-based mental health supports directly improves students’ physical and psychological safety, academic performance, cognitive performance and learning, and social/emotional development.”).

122. *Hearing on A.B. 493*, *supra* note 18, at 3.

123. *Practice Guidelines for LGB Clients*, AM. PSYCH. ASS’N (Sept. 2021), <https://www.apa.org/pi/lgbt/resources/guidelines> [<https://perma.cc/FGG6-22YB>].

124. *See* MOUTIER ET AL., *supra* note 67, at 17.

125. *See* EDUC. § 218(c)(2).

126. V. Paul Poteat, Ethan H. Mereish, Brian W. Koenig & Craig D. DiGiovanni, *The Effects of General and Homophobic Victimization on Adolescents’ Psychosocial and Educational Concerns: The Importance of Intersecting Identities and Parent Support*, 58 J. COUNSELING PSYCH. 597, 607 (2011).

certificated employees will benefit LGBTQ students and the overall student body. Supporting LGBTQ students by creating safe educational spaces is critical to combat attitudes of discrimination, bias, and bullying in schools. While section 218 is a steppingstone in the right direction, it lacks the teeth necessary to enforce compliance because it does not require that all teachers and other certificated employees of grades kindergarten through twelve complete the training nor does it provide a mechanism to hold teachers, certificated employees, or schools accountable for failing to complete, track, or require the training.

The broader LGBTQIA2S+ youth community must have the same educational protections as their heterosexual, cisgender, and LGBTQ counterparts. LGBTQ students need more from our legislators to ensure school districts throughout the state are not simply encouraged but compliant with mandated LGBTQ anti-bias and harassment training. Legislators must consult with the greater LGBTQ community and non-profit agencies to design an interactive curriculum and provide resources for suicide prevention and counseling services to schools.

Understandably, teachers and other certificated employees may not be completely aware of the various issues that LGBTQ students face. By only *encouraging* teachers and certificated employees to complete training on diversity, gender inclusiveness, and bias-based bullying, lawmakers are not recognizing the multicultural continuum of students. Unless lawmakers require training, not simply encourage it, mistreatment of LGBTQ students will continue to embitter younger generations. If teachers and certificated employees do not receive the essential training they need, society cannot expect them to know how to serve our youth in an inclusive way. Section 218 is a step towards combating hostile atmospheres for LGBTQ youth, however, lawmakers should better develop and amplify section 218 to ensure it embraces the diverse student body it aims to protect. Section 218 sets a floor for the state to give schools a participation medal by meeting the minimum training required for teachers and certificated employees. Our LGBTQIA2S+ youth deserve more than symbolic gestures; their very lives depend on it.

