

LGBTQ-INCLUSIVE SEX EDUCATION:  
LESSONS THE UNITED STATES CAN LEARN  
FROM THE UNITED KINGDOM

*Nicole D. Katapodis* \*

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\* J.D., University of Georgia School of Law, 2023; M.P.H. in Health Policy & Management, University of Georgia, 2019; B.S. in Human Biology, Health, & Society, Cornell University, 2015.

## I. INTRODUCTION

Proper sex education is important for all children and adolescents as sexuality is a fundamental component of growing up. Many adolescents spend the majority of their upbringing in school, making academic environments a critical space for learning and development. Formal sex education in schools “can be one of the few sources of reliable information on sexuality and sexual health for youth.”<sup>1</sup> “[S]tudies have shown that well-designed and well-implemented sex education can reduce risk behavior and support positive sexual health outcomes among teens, such as reducing teen pregnancy and sexually transmitted infection (STI) rates.”<sup>2</sup> However, school sex education in the United States (U.S.) is not delivered in an equal, uniform manner across public schools, as it falls under state law jurisdiction. By comparison, sex education is statutorily mandated in all schools in the United Kingdom (U.K.), although it is up to individual public schools on how to implement the national curriculum using governmental guidance.

In comparison to their heterosexual peers, lesbian, gay, bisexual, transgender, and queer (LGBTQ)<sup>3</sup> youth are more likely to experience disproportionately negative health and life outcomes.<sup>4</sup> “Young gay and bisexual males have disproportionately high rates of HIV, syphilis, and other sexually transmitted diseases (STDs); adolescent lesbian and bisexual females are more likely to have ever been pregnant than their heterosexual peers; and transgender youth are more likely to have attempted suicide than their cisgender peers.”<sup>5</sup> Furthermore, compared to their heterosexual peers, LGBTQ youth have a higher risk of suicide, depression, and substance use disorder.<sup>6</sup>

In particular, schools can be hostile environments for LGBTQ youth. According to a 2019 National School Climate Survey, 59.1% of LGBTQ students felt unsafe at school because of their sexual orientation and 32.7% of LGBTQ students missed at least one entire day of school in the month prior to the

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<sup>1</sup> HUM. RTS. CAMPAIGN, A CALL TO ACTION: LGBTQ+ YOUTH NEED INCLUSIVE SEX EDUCATION 1 (2021), <https://hrc-prod-requests.s3-us-west-2.amazonaws.com/Call-to-Action-LGBTQ-Sex-Ed-Report-2021.pdf?mtime=20210525122818&focal=none>.

<sup>2</sup> *Id.*

<sup>3</sup> LGBTQ is just one of the many terms used to describe LGBTQ sexual and gender identity. This Note uses LGBTQ to refer to students who identify with a sexual or gender identity other than heterosexual or cisgender. However, specific studies referenced in this Note may use a narrower acronym, consistent with the respective study’s population.

<sup>4</sup> *Health Considerations for LGBTQ Youth*, CTRS. FOR DISEASE CONTROL & PREVENTION (Dec. 20, 2019), <https://www.cdc.gov/healthyyouth/disparities/health-considerations-lgbtq-youth.htm>.

<sup>5</sup> *Id.*

<sup>6</sup> Stephanie Zaza et al., *Lesbian, Gay, and Bisexual Adolescents: Population Estimate and Prevalence of Health Behaviors*, 316 JAMA 2355 (2016).

survey because they felt unsafe or uncomfortable.<sup>7</sup> While the ramifications of these hostile environments can be significant, supportive academic environments can improve the quality of life for LGBTQ students.<sup>8</sup> LGBTQ-inclusive sex education can be used as a mechanism for creating supportive school environments as evidence shows these programs promote safer school climates and cultures for LGBTQ youth.<sup>9</sup> LGBTQ-inclusive sex education “programs are those that help young people understand gender identity and sexual orientation with age appropriate and medically accurate information; incorporate positive examples of LGBTQ individuals, romantic relationships and families; emphasize the need for protection during sex for people of all identities; and dispel common myths and stereotypes about behavior and identity.”<sup>10</sup> There is a growing need to provide LGBTQ-inclusive sex education in schools to give LGBTQ youth the necessary teachings and tools to live safe, healthy lives.

As of July 2022, only nine U.S. states have laws or regulatory guidance requiring LGBTQ-inclusive sex education.<sup>11</sup> Conversely, as of September 2020, the United Kingdom statutorily mandates LGBTQ-inclusive sex education in all secondary schools.<sup>12</sup>

This Note will examine whether the U.S. or U.K.’s sex education laws and policies better serve LGBTQ youth. In its evaluation, this Note will discuss the LGBTQ sex education laws in three states (California, Iowa, and Texas) and compare them with the U.K.’s LGBTQ-inclusive sex education statutory mandate across all schools. Ultimately, this Note posits that the U.S. should look to the U.K. on how to implement LGBTQ-inclusive sex education to best serve LGBTQ youth.

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<sup>7</sup> GLSEN, THE 2019 NATIONAL SCHOOL CLIMATE SURVEY XIX–XX (2019), [https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web\\_0.pdf](https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf).

<sup>8</sup> Tiffany Pham, *Stepping Out of the Closet: Creating More Inclusive Sexual Education Instruction for Texas Public Schools*, 17 TEX. TECH ADMIN. L.J. 347, 348–49 (2016).

<sup>9</sup> Chelsea N. Proulx, *Effects of LGBTQ-Inclusive Sex Education on Mental Health and Experiences of Bullying Among U.S. High School Students* (2017) (Master’s thesis, Univ. of Pittsburgh), <http://d-scholarship.pitt.edu/31154>.

<sup>10</sup> HUM. RTS. CAMPAIGN, *supra* note 1.

<sup>11</sup> SEXUALITY INFO. & EDUC. COUNCIL OF THE U.S. (SIECUS), SEX ED STATE LAW AND POLICY CHART (2022), <https://siecus.org/wp-content/uploads/2021/09/2022-Sex-Ed-State-Law-and-Policy-Chart.pdf>.

<sup>12</sup> The Relationships Education, Relationships and Sex Education and Health Education Regulations 2019, SI 2019/924 (Eng.); Elizabeth Khur, *High Schools Must Teach LGBTQ-Inclusive Sex Education in England*, NBC NEWS (Sept. 8, 2020, 2:32 PM), <https://www.nbcnews.com/feature/nbc-out/high-schools-must-teach-lgbtq-inclusive-sex-education-england-n1239514>.

## II. BACKGROUND

### A. *History of Sex Education Laws in the U.S.*

The first government-funded sex education in the U.S. arose as a result of rapid urbanization and an increase in STDs that accompanied World War I.<sup>13</sup> In 1918, the federal government “passed the Chamberlin-Kahn Act, which allocated funds to educate soldiers about syphilis and gonorrhea.”<sup>14</sup> In the 1920s, the military’s sex education programs were soon followed by similar instruction in high schools, with 20–40% of U.S. school systems having programs focusing on social hygiene and sexuality.<sup>15</sup> In the 1930s, the U.S. Office of Education published sex education materials and began training teachers.<sup>16</sup> It was not until the 1960s and into the 1970s that sex education in schools became a political issue, with parents beginning to protest its offering in schools.<sup>17</sup> The 1980s brought HIV and AIDS to the forefront in the U.S., which strengthened the need for sex education. This rapid incidence of HIV/AIDS ultimately led every state to issue a mandate for AIDS education by the mid-1990s.<sup>18</sup> At the same time, political conservatives in the United States “launched a movement to rebrand sex education as ‘abstinence education,’” centering the national debate on comprehensive sex-education programs versus abstinence-only sex education programs.<sup>19</sup> The 1996 Welfare Reform Act marked the first time the federal government directed money to abstinence-only programs.<sup>20</sup> This debate still continues today, with decisions about sex-education made at the state and local level regarding whether to place an emphasis on abstinence-only sex education.<sup>21</sup> Sex education program funding is also left up to state governments, with some federal funding available for these programs.<sup>22</sup>

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<sup>13</sup> Johannah Cornblatt, *A Brief History of Sex Ed in America*, NEWSWEEK (Oct. 27, 2009, 8:00 PM), <https://www.newsweek.com/brief-history-sex-ed-america-81001>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Sex Education Laws and State Attacks*, PLANNED PARENTHOOD, <https://www.plannedparenthoodaction.org/issues/sex-education/sex-education-laws-and-state-attacks> (last visited Apr. 6, 2023).

<sup>22</sup> *How Sex Education Gets Funding*, PLANNED PARENTHOOD <https://www.plannedparenthoodaction.org/issues/sex-education/how-sex-education-funded> (last visited Apr. 6, 2023).

Today, only twenty-nine states and the District of Columbia even mandate sex education.<sup>23</sup> Thirteen states “do not require sex ed[ucation] or HIV/STI instruction to be any of the following: age-appropriate, medically accurate, culturally responsive, or evidence-based/evidence-informed.”<sup>24</sup> Furthermore, only nine states have policies that include affirming sexual orientation instruction on LGBTQ identities or discussion of sexual health for LGBTQ youth, and six states explicitly require instruction that discriminates against LGBTQ people.<sup>25</sup> Sex education in the U.S. is neither uniform nor inclusive among all states. Whether LGBTQ youth receive a quality sex education, ultimately affecting serious health and life outcomes, is entirely dependent on the state they live in and their specific school district.

*B. History of Sex Education Laws in the U.K.*

In 1943, the U.K. government issued its first official guidelines and statements on sex education and the teaching of sex education in schools.<sup>26</sup> The guidelines placed sex education programming in the hands of individual teachers, giving them the power to create their own unique version of sex education and deliver it to students.<sup>27</sup> In 1988, the New Government Act introduced a clause, Section 28, which stated “local authorities should not promote homosexuality or promote the teaching of the acceptability of homosexuality as a pretended family relationship.”<sup>28</sup> While this law did not apply directly to schools in the U.K., it caused confusion among teachers and was ultimately repealed in 2003.<sup>29</sup> The 1993 Education Act was the first time sex education was made compulsory for secondary schools in the U.K.<sup>30</sup> The Education Act stated “that only the biological basis of HIV, AIDS, STIs, and human sexual behavior could be included in the national curriculum.”<sup>31</sup> Additionally, parents were given the right to withdraw children from sex education at any time.<sup>32</sup> The 1996 Education Act advocated for more than just the biological aspects of sex education to be taught in both primary and secondary schools.<sup>33</sup>

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<sup>23</sup> SIECUS, *supra* note 11.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Ellie Simpson, *Sex Education: Looking to the Past to Inform the Present*, HIST. OF EDUC. SOC’Y (June 7, 2020), <https://historyofeducation.org.uk/sex-education-looking-to-the-past-to-inform-the-present-2>.

<sup>27</sup> *Id.*

<sup>28</sup> *Our History—30 Years of Campaigning*, SEX EDUC. F. (2021), <https://www.sexeducationforum.org.uk/about/our-history-30-years-campaigning>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

At the time, the sex education curriculum became known as the relationships and sex education (RSE) curriculum to acknowledge that more than the biological basis needed to be taught.<sup>34</sup> However, it was not until 2000 that the U.K. government published the first non-statutory RSE curriculum guidance for schools.<sup>35</sup> In 2017, The Children and Social Work Act was given royal assent, which made RSE mandatory in all secondary schools and relationships education mandatory in all primary schools.<sup>36</sup> However, the 2000 governmental RSE guidance needed to be updated. In March 2019, Parliament overwhelmingly approved the new governmental RSE guidance, which included a focus on LGBTQ-inclusive aspects of relationships education and the absence of the parental withdrawal option.<sup>37</sup> As of September 2020, all schools must follow this government guidance, with schools being given until the summer of 2021 to fully implement due to COVID-19 disruption.<sup>38</sup> To facilitate the rollout of this new guidance, the U.K. Department of Education has committed £6 million to schools for training on this guidance.<sup>39</sup>

### C. Current U.S. Sex Education Laws in California

California has some of the most comprehensive and LGBTQ-inclusive sex education laws in the United States. California Education Code §§ 51930–51939, also known as the California Healthy Youth Act, requires schools to provide all students in seventh through twelfth grade with comprehensive sex education and HIV/AIDS education in middle school and in high school.<sup>40</sup> The Act mandates that the curriculum be age appropriate, medically accurate and objective, and “appropriate for use with pupils of all races, genders, sexual orientations, and ethnic and cultural backgrounds; pupils with disabilities; and English learners.”<sup>41</sup> Furthermore, the Act mandates instruction and materials to teach students about gender, gender expression, gender identity, and gender stereotypes, including examples of same sex-relationships.<sup>42</sup> California also has an “opt-out” policy which allows parents or guardians to remove their children from sex-education instruction or STI/HIV education.<sup>43</sup> According

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> ROBERT LONG, RELATIONSHIP AND SEX EDUCATION IN SCHOOLS (ENGLAND), RESEARCH BRIEFING, 2021 HC 06103, 5, <https://researchbriefings.files.parliament.uk/documents/SN06103/SN06103.pdf>.

<sup>39</sup> *Id.* at 15.

<sup>40</sup> California Healthy Youth Act, CAL. EDUC. CODE §§ 51930–51939 (2021).

<sup>41</sup> *Id.* § 51933.

<sup>42</sup> *Id.*

<sup>43</sup> *California State Profile*, SIECUS, [https://siecus.org/state\\_profile/california-state-profile](https://siecus.org/state_profile/california-state-profile) (May 21, 2021).

to the Center for Disease Control’s (CDC) 2018 School Health Profile Survey, “70.3% of California secondary schools provided students with curricula or supplementary materials that included HIV, STD, or pregnancy prevention information relevant to LGBTQ youth.”<sup>44</sup>

#### *D. Current U.S. Sex Education Laws in Iowa*

Iowa’s sex education laws purport to be neutral towards LGBTQ youth. Iowa Code § 256.11 requires that research-based, age-appropriate sex education be taught in grades K–12, with the code dictating the specific subjects to be taught in each grade.<sup>45</sup> In first through sixth grade, “the health curriculum shall include the characteristics of communicable diseases including acquired immune deficiency syndrome [AIDS].”<sup>46</sup> In seventh grade and eighth grade, health education must include “the characteristics of sexually transmitted diseases [STDs] . . . and [AIDS].”<sup>47</sup> In ninth through twelfth grade, students are required to take one unit of health instruction, which must include information on the “prevention and control of disease, including . . . [STDs] and [AIDS].”<sup>48</sup> However, sex education in Iowa is not required to be comprehensive; therefore, it is not required to be LGBTQ-inclusive.<sup>49</sup> Nevertheless, according to Iowa Code § 279.50, sex education information must be free from “racial, ethnic, sexual orientation, and gender biases.”<sup>50</sup> School districts may teach age-appropriate, science-based, sex education as part of the health curriculum, but they may also use abstinence-only materials.<sup>51</sup> Iowa also has an “opt-out” policy, allowing parents to remove their children from any part of sex education classes if the course conflicts with the student’s religious beliefs.<sup>52</sup> Furthermore, Iowa currently has a file being referred to the House Committee on Education, House File 376, which would require sex education to be inclusive of LGBTQ health practices.<sup>53</sup> According to CDC’s 2018 School Health Profile Survey, “45.9% of Iowa secondary schools provided students with curricula or supplementary materials that included HIV, STD, or pregnancy prevention information relevant to LGBTQ youth.”<sup>54</sup>

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<sup>44</sup> *Id.*

<sup>45</sup> IOWA CODE ANN. § 256.11 (2021); see also *Iowa State Profile*, SIECUS, [https://siecus.org/state\\_profile/iowa-fy21-state-profile](https://siecus.org/state_profile/iowa-fy21-state-profile) (Mar. 29, 2021).

<sup>46</sup> IOWA CODE ANN. § 256.11(3) (2021).

<sup>47</sup> *Id.* § 256.11(4).

<sup>48</sup> *Id.* § 256.11(5)(j)(1).

<sup>49</sup> *Iowa State Profile*, *supra* note 45.

<sup>50</sup> IOWA CODE ANN. § 279.50 (2021).

<sup>51</sup> *Iowa State Profile*, *supra* note 45.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

*E. Current U.S. Sex Education Laws in Texas*

Sex education laws in Texas are known to be particularly discriminatory towards LGBTQ youth, coined as “‘no promotion of homosexuality’ style laws.”<sup>55</sup> In Texas, sex education is not statutorily mandated.<sup>56</sup> However, the Texas Code does require the State Board of Education to adopt rules to carry out the curriculum authorized under § 28.002, which includes physical health.<sup>57</sup> Accordingly, Texas Education Code § 28.004 requires:

Any course materials and instruction relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus or acquired immune deficiency syndrome shall be selected by the board of trustees with the advice of the local school health advisory council and must: (1) present abstinence from sexual activity as the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age.<sup>58</sup>

Texas has an opt-out policy.<sup>59</sup> Texas Code also states that course material and instructions must expressly “state that homosexual conduct is not an acceptable lifestyle to the general public and is a criminal offense under Section 21.06, [Texas] Penal Code.”<sup>60</sup> The United States Supreme Court declared state laws criminalizing homosexual behavior to be unconstitutional in their decision in *Lawrence v. Texas* in 2003,<sup>61</sup> however, § 21.06 still remains in the Texas Code.<sup>62</sup> Since Texas does not permit LGBTQ-friendly course materials, Texas did not answer the CDC’s 2018 School Profiles Survey question regarding whether students were exposed to curricula or supplementary materials that included HIV, STD, or pregnancy prevention information relevant to LGBTQ youth.<sup>63</sup>

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<sup>55</sup> *Texas State Profile*, SIECUS, [https://siecus.org/state\\_profile/texas-state-profile](https://siecus.org/state_profile/texas-state-profile) (May 21, 2021). These laws are often colloquially known as “no promo homo” laws. GLSEN, LAWS THAT PROHIBIT THE “PROMOTION OF HOMOSEXUALITY”: IMPACTS AND IMPLICATIONS 1 (2018), [https://www.glsen.org/sites/default/files/2019-12/No\\_Promo\\_Homo\\_2018.pdf](https://www.glsen.org/sites/default/files/2019-12/No_Promo_Homo_2018.pdf).

<sup>56</sup> *Texas State Profile*, *supra* note 55.

<sup>57</sup> TEX. EDUC. CODE ANN. § 28.002 (2021).

<sup>58</sup> TEX. EDUC. CODE ANN. § 28.004 (2021).

<sup>59</sup> *Texas State Profile*, *supra* note 55.

<sup>60</sup> TEX. HEALTH & SAFETY CODE ANN. § 85.007 (2001).

<sup>61</sup> *Lawrence v. Texas*, 539 U.S. 558 (2003).

<sup>62</sup> *Texas State Profile*, *supra* note 55.

<sup>63</sup> See CTR. FOR DISEASE CONTROL & PREVENTION, SCHOOL HEALTH PROFILES: CHARACTERISTICS OF HEALTH PROGRAMS AMONG SECONDARY SCHOOLS 174 (2018).



*F. Current Sex Education Laws in the U.K.*

As of September 2020, “relationships education” is statutorily required in all primary schools in the U.K. and “relationships and sex education” (RSE) is required in all secondary schools in the U.K., including public and private schools.<sup>64</sup> Additionally, health education will be required in all schools.<sup>65</sup> The governmental

guidance states that schools are free to determine how they address LGBT specific content, but the [U.K.] Department [of Education] expects “all pupils to have been taught LGBT content at a timely point,” and that “[a]t the point at which schools consider it appropriate to teach their pupils about LGBT, they should ensure that this content is fully integrated into their programmes of study for this area of the curriculum rather than delivered as a standalone unit or lesson.”<sup>66</sup>

Schools must comply with relevant provisions of the Equality Act of 2010, which protects both sexual orientation and gender reassignment.<sup>67</sup> Furthermore, under the U.K.’s new statutory guidance, parents’ ability to withdraw their children from sex education is more limited.<sup>68</sup> There is no parental right to withdraw from relationships education at primary or secondary schools.<sup>69</sup> However, in secondary schools, parents can request that their child be withdrawn from sex education, “a request that head teachers would grant in all but exceptional circumstances.”<sup>70</sup> Nevertheless, when a student turns sixteen, it is their choice alone, and they can opt-in to sex education if they choose to do so, regardless of their parent’s beliefs, as the U.K. government

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<sup>64</sup> The Relationships Education, Relationships and Sex Education and Health Education Regulations 2019, SI 2019/924; *see also* Marc Polonsky, *A Conflict of Worldviews: Compulsory Sex Education*, THE CRITIC (Sept. 14, 2020), <https://thecritic.co.uk/a-conflict-of-worldviews-compulsory-sex-education>.

<sup>65</sup> The Relationships Education, Relationships and Sex Education and Health Education Regulations 2019, SI 2019/924.

<sup>66</sup> LONG, *supra* note 38, at 13 (quoting DEP’T OF EDUC., RELATIONSHIPS EDUCATION, RELATIONSHIPS AND SEX EDUCATION (RSE) AND HEALTH EDUCATION 15 (2019) (UK)).

<sup>67</sup> Equality Act 2010, c. 15 (UK), <https://www.legislation.gov.uk/ukpga/2010/15/contents>; *see also* Polonsky, *supra* note 64.

<sup>68</sup> LONG, *supra* note 38, at 15–16.

<sup>69</sup> Dep’t of Educ., *Relationships Education, Relationships and Sex Education (RSE) and Health Education: FAQs*, Gov.UK, <https://www.gov.uk/government/news/relationships-education-relationships-and-sex-education-rse-and-health-education-faqs> (July 9, 2020).

<sup>70</sup> LONG, *supra* note 38, at 15–16.

believes at age sixteen a child becomes competent to make the decision for themselves.<sup>71</sup>

### III. ANALYSIS

#### *A. Current Dilemma Facing U.S. States: How Federalism Impacts School Sex Education*

As noted above, sex education in the U.S. is delivered differently in each state.<sup>72</sup> Therefore, an LGBTQ student's school district alone could be determinative of what type of sex education they receive. The main reason this has come about is due to federalism and the clash between the U.S. federal government and state/local governments in regulating school sex education.

In the U.S., unlike the U.K., there is not one single agency or department that offers regulatory guidance regarding school sex education curriculums. Instead, as indicated by the Tenth Amendment,<sup>73</sup> education is left up to each individual state and local school district.<sup>74</sup> Therefore, the federal government plays a more limited role in school sex education and has never enacted federal statutory guidance. However, federal agencies often shape school sex education through funding grants.<sup>75</sup> In the U.S., sex education is funded by the U.S. Department of Health and Human Services.<sup>76</sup> In the last two decades, the U.S. has spent over \$2 billion on promoting abstinence-only programming, which has been found to be ineffective as it withholds comprehensive information on how to reduce sexual risk.<sup>77</sup> However, since the Obama Administration, federal funding for school sex education has been supplemented with

<sup>71</sup> *Id.*

<sup>72</sup> See discussion *supra* Part II(A).

<sup>73</sup> See U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

<sup>74</sup> Dustin Hornbeck, *Federal Role in Education Has a Long History*, THE CONVERSATION (Apr. 26, 2017, 9:51 PM), <https://theconversation.com/federal-role-in-education-has-a-long-history-74807>.

<sup>75</sup> 2022 STATE OF SEX EDUCATION LEGISLATIVE LOOK-AHEAD, SIECUS 10 (2022), <https://siecus.org/wp-content/uploads/2022/01/2022-State-of-Sex-Education-Legislative-Look-Ahead.pdf>; see also *Who Decides?*, WHY SEX ED?: EDUCATING AM. ABOUT SEX SINCE 2017 (Apr. 6, 2017), <https://sites.psu.edu/youhaveissues/2017/04/06/who-decides>.

<sup>76</sup> See *About the Teen Pregnancy Prevention Program*, OFF. OF POPULATION AFFS., <https://opa.hhs.gov/grant-programs/teen-pregnancy-prevention-program/about-tpp> (last visited Apr. 6, 2023).

<sup>77</sup> Megan Donovan, *The Looming Threat to Sex Education: A Resurgence of Federal Funding for Abstinence-Only Programs?*, GUTTMACHER INST. (Mar. 30, 2017), <https://www.guttmacher.org/gpr/2017/03/looming-threat-sex-education-resurgence-federal-funding-abstinence-only-programs>.

more comprehensive sex education program funding through the Personal Responsibility Education Program (PREP) and the President's Teen Pregnancy Prevention Initiative (TPPI), which provide grant funding to schools that "implement medically-accurate, evidence-based programs that cover both abstinence and contraception."<sup>78</sup> Nevertheless, there is no current federal funding specifically available for LGBTQ youth and LGBTQ-inclusive sex education programs. This is in direct contrast to the U.K., whose federal government has offered over £6 million in funding to implement the new governmental statutory guidance inclusive of LGBTQ youth.

There is hope for some progress in the United States. In May 2021, the Real Education and Access for Healthy Youth Act (REAHYA) was introduced to Congress.<sup>79</sup> This Act would provide the first ever federal grant funding for teacher training on comprehensive, LGBTQ-inclusive sex education and provide grants to public and private entities that focus on adolescent health and sex education training.<sup>80</sup> Furthermore, "REAHYA would require . . . inclusiveness of LGBTQ youth in the funded sex education programs and would prohibit federal funding of programs that are insensitive and unresponsive to the needs of LGBTQ youth."<sup>81</sup> While this funding encourages more schools to provide comprehensive sex education, it cannot solve the problem of varying sex education programming at schools, which is determined at the state and local school board level as set by the Constitution.<sup>82</sup>

*B. Why the U.S. Should Implement LGBTQ-Inclusive Sex Education: Theory & Evidence*

First, LGBTQ-inclusive sex education can promote positive physical and mental health outcomes among LGBTQ youth. There is ample evidence that LGBTQ-inclusive "sex education is effective at reducing high-risk sexual behaviors, promoting safer sex practices, and preventing pregnancy and sexually transmitted infections."<sup>83</sup> Furthermore, evidence has shown that LGBTQ-inclusive sex education programming can impact LGBTQ's youth mental health outcomes, lowering the odds of LGBTQ students reporting suicidal

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<sup>78</sup> *Who Decides?*, *supra* note 75.

<sup>79</sup> *Real Education and Access for Healthy Youth Act*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/real-education-for-healthy-youth-act> (Oct. 8, 2021).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Hornbeck, *supra* note 74; U.S. CONST. amend. X.

<sup>83</sup> Hannah Slater, *LGBT-Inclusive Sex Education Means Healthier Youth and Safer Schools*, CTR. FOR AM. PROGRESS (June 21, 2013, 9:10 AM), <https://www.americanprogress.org/issues/lgbtq-rights/news/2013/06/21/67411/lgbt-inclusive-sex-education-means-healthier-youth-and-safer-schools>.

thoughts in the last 12 months and bisexual youth reporting fewer depressive symptoms.<sup>84</sup>

Secondly, LGBTQ-inclusive sex education can create safer school environments for all students. Homophobic school environments have been linked to increased victimization among LGBTQ students in both the U.K. and the U.S.<sup>85</sup> In the U.K., nearly 45% LGBTQ youth are bullied for their sexual orientation; almost half of these students never tell anyone they are bullied.<sup>86</sup> Furthermore, 52% of LGBTQ students hear homophobic language frequently in school.<sup>87</sup> In the U.S., 59.1% of LGBTQ students felt unsafe at school because of their sexual orientation, with 68.7% of LGBTQ students experiencing verbal harassment and 25.7% of LGBTQ students experiencing physical harassment.<sup>88</sup> Integration of LGBTQ-inclusive sex education into a school's curriculum can help promote a positive and accurate discussion of LGBTQ people and their respective physical, mental, and emotional health needs, with hopes of ultimately decreasing the negative harms experienced by LGBTQ students in various school environments.<sup>89</sup> In fact, evidence has shown that students in states that teach LGBTQ-inclusive sex education have lower odds of experiencing school-based victimization and adverse mental health outcomes.<sup>90</sup>

*C. Why the U.S. Should Implement LGBTQ-Inclusive Sex Education: Lessons Learned from the U.K.*

*i. LGBTQ Youth as a Protected Class*

In 2019, the U.K. Department of Education enacted its latest statutory guidance regarding LGBTQ-inclusive sex education.<sup>91</sup> The Department did so with a stance that these topics are essential for modern youth and that

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<sup>84</sup> Proulx, *supra* note 9, at 30.

<sup>85</sup> BRADLOW ET AL., STONEWALL, SCHOOL REPORT 2017: THE EXPERIENCES OF LESBIAN GAY, BI AND TRANS YOUNG PEOPLE IN BRITAIN'S SCHOOLS IN 2017 (2017), [https://www.stonewall.org.uk/system/files/the\\_school\\_report\\_2017.pdf](https://www.stonewall.org.uk/system/files/the_school_report_2017.pdf); GLSEN, *supra* note 7, at 16–19.

<sup>86</sup> BRADLOW ET AL., *supra* note 85, at 6.

<sup>87</sup> *Id.*

<sup>88</sup> GLSEN, *supra* note 7, at xviii–xix.

<sup>89</sup> Slater, *supra* note 83.

<sup>90</sup> Chelsea N. Proulx et al., *Associations of LGBTQ-Inclusive Sex Education with Mental Health Outcomes and School-Based Victimization in U.S. High School Students*, 64 J. ADOLESCENT HEALTH 608 (2019).

<sup>91</sup> See Dep't of Educ., *Statutory Guidance: Relationships and Sex Education (RSE) and Health Education*, GOV.UK, <https://www.gov.uk/government/publications/relationships-education-relationships-and-sex-education-rse-and-health-education> (Sept. 13, 2021).

schools must actively promote respect and value for all protected classes under the 2010 Equality Act, which includes sexual orientation and gender reassignment as “protected characteristics.”<sup>92</sup> Therefore, the U.K. emphasizes equal protection of LGBTQ youth and prevents discrimination of LGBTQ youth at school as a protected class under the Act through the use of LGBTQ-inclusive sex education.

This Note offers that the U.S. should follow in the U.K.’s footsteps and mandate LGBTQ-inclusive sex education at the federal level to protect LGBTQ youth as a protected class in all states, especially states with discriminatory anti-LGBTQ curriculum laws (often referred to as “no promo homo” laws<sup>93</sup>). Currently, these anti-LGBTQ curriculum laws exist in Louisiana, Mississippi, Oklahoma, and Texas.<sup>94</sup> Many have argued the unconstitutionality of these laws, but federal and state officials still have the legal authority to enforce these laws because no court has stopped them.<sup>95</sup> However, this may shortly change due to the U.S. Department of Education’s recent notice of interpretation stating it will enforce Title IX’s discrimination on the basis of sex to include discrimination based on sexual orientation or gender identity, rooted in the Supreme Court’s recent decision in *Bostock v. Clayton County*<sup>96</sup>: “Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any education program or activity offered by a recipient of federal financial assistance.”<sup>97</sup> LGBTQ students in the U.S. deserve the opportunity to learn in schools free from discrimination with a sex-education curriculum that is also free from homophobia and bias.

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<sup>92</sup> Polonsky, *supra* note 64.

<sup>93</sup> GLSEN, *supra* note 55.

<sup>94</sup> *Inclusive Curricular Standards*, GLSEN, <https://www.glsen.org/activity/no-promo-homo-laws> (last visited Apr. 7, 2023).

<sup>95</sup> Clifford J. Rosky, *Anti-Gay Curriculum Laws*, 117 COLUM. L. REV. 1461 (2017); Ashley E. McGovern, Note, *When Schools Refuse to “Say Gay”*: *The Constitutionality of Anti-LGBTQ “No-Promo-Homo” Public School Policies in the United States*, 22 CORNELL J.L. & PUB. POL’Y 465 (2012).

<sup>96</sup> Press Release, U.S. Dep’t of Educ., U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity (June 16, 2021), <https://www.ed.gov/news/press-releases/us-department-education-confirms-title-ix-protects-students-discrimination-based-sexual-orientation-and-gender-identity>. In *Bostock*, the Supreme Court held that “it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1741 (2020).

<sup>97</sup> U.S. Dep’t of Educ., *supra* note 96; *see also* Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681.

ii. *Sex Education as a Fundamental International Human Right*

By statutorily mandating LGBTQ-inclusive sex education, the U.K. is reaffirming its commitment to sex education as an international human right. Many international treaties including the International Covenant on Economic, Social, and Cultural Rights; the Convention of Discrimination Against Women; and the Convention on the Rights of Child all recognize comprehensive sex education as a human right.<sup>98</sup> These important treaties require governments to protect individual rights to life, health, non-discrimination, education, and information and have been interpreted to require sex education in schools by United Nations treaty-monitoring bodies.<sup>99</sup> Without proper, comprehensive, LGBTQ-inclusive sex-education for all students, governments cannot guarantee these rights nor can these rights be fully realized or enjoyed by students.<sup>100</sup> “A comprehensive understanding of sexual and reproductive health is imperative to an individual’s inability to protect his or her health and make informed decisions about sexuality and reproduction.”<sup>101</sup> Other legal scholars have argued these essential international human rights laws should also protect U.S. youth from federal funding of abstinence-only education, yet abstinence-only education continues to be funded by the U.S. government.<sup>102</sup>

#### IV. CONCLUSION

LGBTQ youth often face poor health and life outcomes in comparison to their heterosexual peers. There is a growing need to provide LGBTQ-inclusive sex education in schools to give LGBTQ youth the necessary education to live safe, healthy lives and provide for safer school environments. However, sex-education in the U.S. is governed by state law. Some states, like California, mandate LGBTQ-inclusive sex education be provided in all schools. Other states, like Iowa, take a more neutral approach to LGBTQ-inclusive sex education. Some states, like Texas, are hostile to LGBTQ-

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<sup>98</sup> See International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, 1249 U.N.T.S. 13; Convention on the Rights of the Child, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3; see also *Is Sex-Education a Human Right?*, ACTION CAN. FOR SEXUAL HEALTH & RTS., <https://www.actioncanadashr.org/resources/sexual-health-info/sex-ed/sex-ed-human-right> (May 10, 2019); CTR. FOR REPROD. RTS., AN INTERNATIONAL HUMAN RIGHT: SEXUALITY EDUCATION FOR ADOLESCENTS IN SCHOOLS (2008).

<sup>99</sup> See CTR. FOR REPROD. RTS., *supra* note 98.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Leah J. Tulin, Note, *Can International Human Rights Law Countenance Federal Funding of Abstinence-Only Education?*, 95 GEO. L.J. 1979, 1983 (2007).

inclusive sex education. This ultimately leads to fragmented, unequal sex-education for LGBTQ youth, solely determined by the school district in which they live. The LGBTQ youth in this country deserve more from their school districts and it is time for the federal government to step in and begin to remedy this unfair situation.

The U.S. government should look to the U.K. for guidance, as the U.K. mandates all schools provide LGBTQ-inclusive sex education, with the option for parents to opt-out until their children reach age sixteen. A federal mandate providing LGBTQ-inclusive sex education would be beneficial to LGBTQ youth as it promotes better health outcomes, safer school environments, more statutory protection, and an unalienable fundamental liberty interest and international human right.