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VIA FEDEX, ELECTRONIC MAIL, AND FACSIMILE

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Re: Pine-Richland School District's Policies and Practices Affecting Transgender Students Use and Access to Single-Sex Facilities

Dear Members of the School Board, Superintendent Miller, and Principal Bowman:

We write on behalf of several transgender students at Pine-Richland High School (the "High School"). We understand that the School Board of the Pine-Richland School District (the "School District") has received several communications concerning transgender students' access to restrooms and other single-sex school facilities at Pine-Richland High School. Specifically, the Alliance Defending Freedom ("ADF"), a conservative Christian non-profit organization, and parents of some students have recently sent letters or emails requesting that the School District enact a policy prohibiting transgender students from using restrooms and other single-sex facilities consistent with those students' gender identity.

We understand that the High School and School District currently permit transgender students to use restrooms and other sex-specific facilities consistent with their gender identity, and we urge the School District to continue respecting the gender identity of each of its students through inclusive, nondiscriminatory practices and policies. As set forth below, the High School's existing practice is commendable; it respects the gender identity of the School District's transgender students (we understand there are currently several transgender students at the High School), while

ensuring a safe and inclusive environment for all of the School District's students. Moreover, our understanding of the High School's practice is that it is consistent with state and federal law—indeed, as explained in this letter, prohibiting transgender students from being able to use sex-specific facilities appropriate to their gender identity would violate state and federal anti-discrimination laws, endanger the health and welfare of its students, and may expose the School District to potential liability.

As the nation's oldest and largest legal organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender (“LGBT”) people and people living with HIV, Lambda Legal has frequently been counsel of record or *amicus curiae* in cases addressing coverage of transgender people under sex discrimination law.¹ We write to correct any misapprehensions of fact and law that may have been provided to you by ADF, among others, and to provide you with accurate information about the law governing the use of restrooms and other single-sex facilities by transgender and gender-nonconforming students.

As discussed in detail below, one simple principle is abundantly clear:

The School District has a legal responsibility to respect the gender identity of all its students and to not discriminate against students on the basis of gender identity or expression. That includes permitting transgender students to access sex-specific restrooms and other facilities consistent with their gender identity.

Federal law prohibits discrimination against transgender students and requires that schools treat transgender students consistent with their gender identity.

The law is clear that **all** students, including transgender students,² are protected from sex-based discrimination under federal law. Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a) (“Title IX”), and its implementing regulations, 34 C.F.R. § 106.31 *et seq.*, prohibit discrimination on the basis of sex in federally financed education programs and activities. The Department of Education's Office of

¹ See, e.g., *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011) (counsel of record); *Kastl v. Maricopa Cnty. Cmty. Coll. Dist.*, 325 Fed. App'x 492 (9th Cir. 2009) (*amicus*); *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215 (10th Cir. 2007) (*amicus*); *Chavez v. Credit Nation Auto Sales, Inc.*, 2014 U.S. Dist. LEXIS 128762 (N.D. Ga. July 18, 2014) (*amicus*); *Lopez v. River Oaks Imaging & Diagnostic Grp., Inc.*, 542 F. Supp. 2d 653 (S.D. Texas 2008) (counsel); *Mitchell v. Axcan Scandipharm, Inc.*, 2006 U.S. Dist. LEXIS 6521 (W.D. Pa. Feb. 17, 2006) (*amicus*); *Jane ED v. Archuleta*, EEOC Case No. 510-2014-00364X (counsel); *John ED v. Archuleta*, EEOC Case No. 510-2014-00396X (counsel).

² “Transgender” is an umbrella term used to describe people whose gender identity—that is, one's inner sense of being male or female—differs from their assigned or presumed sex at birth.

Civil Rights (“OCR”) has clarified that “Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and [the Office of Civil Rights] accepts such complaints for investigation.”³ Likewise, the Department of Justice (“DOJ”) has explained that Title VII of the Civil Rights Act of 1964 (another federal statute interpreted similarly that, like Title IX, prohibits sex discrimination) “encompasses discrimination based on gender identity, including transgender status.”⁴

Moreover, contrary to what ADF states in its letter, the Department of Education’s OCR has explicitly addressed the issue of transgender students’ access to appropriate restrooms and other facilities, and has explained that, although schools are free to have separate restrooms and facilities for boys and girls, schools generally “must treat transgender students consistent with their gender identity.”⁵ In other words, the OCR has clarified that, under Title IX, schools must permit transgender students to access sex-specific facilities consistent with their gender identity. Likewise, the federal government has issued guidance requiring that transgender federal employees,

³ Dep’t of Educ., Office of Civil Rights, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), at 5, available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>. See also Dep’t of Educ., Office of Civil Rights, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities* (Dec. 1, 2014), at 25 (“Under Title IX, a recipient generally must treat transgender students consistent with their gender identity[.]”), available at <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

⁴ Memorandum from U.S. Attorney General to U.S. Attorneys, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (Dec. 15, 2014), <http://www.justice.gov/file/188671/download>.

⁵ U.S. Dep’t of Educ., *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities* (Dec. 1, 2014), Answer to Question 31, available at <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>; see also Letter from James A. Ferg-Cadima, Acting Deputy Asst. Sec’y of Policy, Office of Civil Rights, U.S. Dep’t of Educ. (Jan. 7, 2015) (attached as Exhibit B to Statement of Interest of the United States, *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-cv-0054 (E.D. Va. June 29, 2015), available at <http://www.justice.gov/sites/default/files/crt/legacy/2015/07/09/gloucestersoi.pdf>) (“The Department’s Title IX regulations permit schools to provide sex-segregated restrooms ... under certain circumstances. When a school elects to separate or treat students differently on the basis of sex in those situations, a school generally must treat transgender students consistent with their gender identity.”); see also *Doe v. Reg’l Sch. Unit 26*, 86 A.3d 600, 606 n.9 (Me. 2004) (fact that anti-discrimination law at issue permitted educational institution to “provide separate toilet, locker room and shower facilities on the basis of sex” offers “no guidance concerning use of sex-segregated facilities by transgender students” or “how gender identity relates to the use of sex-separated facilities”).

consistent with Title VII, be “allow[ed] access to restrooms and ... locker room facilities consistent with his or her gender identity.”⁶

Indeed, contrary to what ADF states in its letter, the federal government routinely enforces these nondiscrimination requirements with respect to access to single-sex facilities for transgender individuals. On multiple occasions, school districts, the Department of Education, and DOJ have entered into resolution agreements requiring that school districts allow transgender students to use the restrooms and other single-sex facilities that accord with their gender identity in order to resolve charges of discrimination on the basis of gender identity. For example, on July 24, 2013, DOJ entered into a settlement agreement with the Arcadia Unified School District in California after the school refused to allow a male student who is transgender to use the boys' restrooms and locker rooms.⁷ The agreement made clear that “[a]ll students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX.”⁸ Similarly, on October 14, 2014, OCR approved a resolution agreement with a girl who is transgender and had been subjected to discrimination and gender-based peer harassment in her school district.⁹ The agreement memorialized the student's ability to use sex-designated restrooms and other facilities in accordance with her gender identity.¹⁰

And in November of last year, OCR found a public school district to be in violation of Title IX for denying a transgender girl access to her high school's female locker rooms.¹¹ In so doing, OCR noted that denying the transgender student access to

⁶ U.S. Office of Pers. Mgmt., Guidance Regarding the Employment of Transgender Individuals in the Fed. Workplace, *available at* <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/>.

⁷ See Resolution Agreement Between the United States and Arcadia Unified Sch. Dist., DOJ Case No. DJ 169-12C-70, OCR Case No. 09-12-1020 (July 23, 2014), *available at* <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>.

⁸ Letter of Resolution, Arcadia Unified Sch. Dist., DOJ Case No. DJ 169-12C-70, OCR Case No. 09-12-1020 (July 24, 2013), at 2, *available at* <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadialetter.pdf>.

⁹ Resolution Agreement Between the United States and Downey Unified Sch. Dist., OCR Case No. 09-12-1095 (Oct. 14, 2014), *available at* <http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf>.

¹⁰ *Id.* at 1.

¹¹ Letter from Adele Rapport, Regional Director, Office of Civil Rights, U.S. Dep't of Educ., OCR Case No. 05-14-1055 (Nov. 2, 2015), *available at* <https://assets.documentcloud.org/documents/2501220/letter-from-the-u-s-dept-of-education-to-daniel.pdf> (“OCR Letter”).

the locker rooms in accordance with her gender identity amounted to discrimination on the basis of sex, in violation of Title IX—a finding that not only exposes the school district in question to legal liability, but also to losing federal funds.

Numerous federal courts have also agreed that Title IX protects all students, including transgender students, from discrimination based on identity perceived failure to conform to gender stereotypes.¹² And in March 2015, a federal court held that Section 1557 of the Affordable Care Act, which incorporates Title IX's prohibition on sex-based discrimination, "protects plaintiffs . . . who allege discrimination based on 'gender identity.'"¹³ Such court decisions form part of an ever-growing consensus that discrimination on the basis of gender identity is a form of sex-based discrimination.¹⁴ Simply put, discrimination on the basis of gender identity is "*literally*" discrimination on the basis of sex.¹⁵

The adoption of a discriminatory policy, practice, or custom on the basis of gender identity by a public school district would not only violate Title IX, it may also violate constitutional guarantees of liberty and equality. In particular, courts have held that a public school violates the Equal Protection Clause's prohibition of sex-based discrimination when it discriminates against transgender students on the basis of their gender identity or gender-nonconformity.¹⁶ The U.S. Supreme Court also recognized last year that the "Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity."¹⁷

¹² See, e.g., *Pratt v. Indian River Cent. Sch. Dist.*, 803 F. Supp. 2d 135, 151-52 (N.D.N.Y. 2011); *ED v. Brimfield Grade Sch.*, 552 F. Supp. 2d 816, 823 (C.D. Ill. 2008); *Montgomery v. Independent Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1090 (D. Minn. 2000).

¹³ *Rumble v. Fairview Health Servs.*, No. 14-cv-2037, 2015 U.S. Dist. LEXIS 31591, at *28 (D. Minn. Mar. 16, 2015).

¹⁴ See, e.g., *Glenn*, 663 F.3d at 1317 ("[D]iscrimination against a transgender individual because of her gender-nonconformity is sex discrimination, whether it's described as being on the basis of sex or gender."); *Smith v. City of Salem*, 378 F.3d 566, 572-73 (6th Cir. 2004) (holding that transgender plaintiff sufficiently stated constitutional and Title VII sex discrimination claims based on his allegations that he was discriminated against because of his gender-nonconforming behavior and appearance); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-07 (D.D.C. 2008); *Macy v. Holder*, Appeal No. 0120120821 (EEOC Apr. 20, 2012).

¹⁵ *Schroer*, 577 F. Supp. 2d at 306-07.

¹⁶ Cf. *Glenn*, 663 F.3d at 1320 ("We conclude that a government agent violates the Equal Protection Clause's prohibition of sex-based discrimination when he or she fires a transgender or transsexual employee because of his or her gender non-conformity.").

¹⁷ *Obergefell v. Hodges*, 135 S. Ct. 2584, 2593 (2015). ADF's letter cites two recent cases, *Johnston v. University of Pittsburgh of Com. System of Higher Educ.*, 97 F. Supp. 3d 657 (W.D. Pa. 2015) and *G.G.*

Local law and Pennsylvania state law also prohibit discrimination against students based on gender identity.

Local law and Pennsylvania state law also prohibit discrimination against students based on gender identity or expression. In 2009, Allegheny County adopted an ordinance banning discrimination in public accommodations, as well as employment and housing, on the basis of a person's gender identity, gender expression, and other protected traits.¹⁸ In addition, the Pennsylvania Human Relations Act ("PHRA") prohibits discrimination on the basis of sex in connection with public accommodations.¹⁹ The PHRA's prohibition of sex discrimination has been held to include a prohibition on gender discrimination,²⁰ and courts have held that the PHRA should be interpreted "in accord with its federal counterparts," including Title

ex rel. Grimm v. Gloucester Cty. Sch. Bd., No. 4:15CV54, 2015 WL 5560190 (E.D. Va. Sept. 17, 2015), in which courts rejected claims that school restroom policies violated federal laws. These cases were wrongly decided and are in conflict with other recent decisions, as well as the interpretive guidance from the DOJ and Department of Education cited above, that have recognized that transgender students should be permitted to use restrooms and other facilities consistent with their gender identity. *See, e.g., Mitchell v. Axcan Scandipharm, Inc.*, 2006 WL 456173, at *2 (W.D. Pa. Feb. 17, 2006) (transgender plaintiff sufficiently pleaded claims of gender discrimination based on transgender status under Title VII and Pennsylvania law, where plaintiff alleged, *inter alia*, that he was forced to use a separate bathroom); *Lusardi v. McHugh*, Appeal No. 0120133395, 2015 WL 1607756, at *9 (EEOC Apr. 1, 2015) (transgender employee forbidden from using common female restroom held to state claim for sex discrimination under Title VII). These cases also did not concern local laws that, as here, explicitly prohibit discrimination on the basis of gender identity. Moreover, those cases are not binding on the School District, and nothing in those cases prohibits this School District (or any other, for that matter) from pursuing policies and practices that are inclusive of transgender students and that respect their right to use facilities consistent with their gender identity.

¹⁸ *See* Allegheny County Code of Ordinance, Div. 2, Art. V, § 215.35, *available at* <http://ecode360.com/13705121>; *see also id.* § 215-31 (defining "Gender Identity or Expression" as the "Self-perception, or perception by others whether accurate or not, as male or female, including a person's appearance, behavior, or physical characteristics, that may be in accord with, or opposed to, one's physical anatomy, chromosomal sex, or sex assigned at birth.").

¹⁹ *See* 43 PA. CONS. STAT. ANN. § 955(a).

²⁰ *See Mitchell*, 2006 WL 456173, at *2 (holding that transgender plaintiff sufficiently pleaded claims of gender discrimination based on transgender status under PHRA as well as Title VII); *see also* Brief Amicus Curiae of the Pennsylvania Human Relations Commission in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss, *Stacy v. LSI Corp.*, No. 5:10-CV-04693-ER, 2011 WL 10773442, at *2 (E.D. Pa. Jan. 3, 2011) ("[T]here is no basis of statutory construction that supports the conclusion that Gender Identity Disorder is categorically excluded from the PHRA.").

VII.²¹ Similarly, the Pennsylvania Fair Educational Opportunities Act provides that “all persons shall have equal opportunities for education regardless of their race, religion, color, ancestry, national origin, sex, handicap or disability.”²² And Pennsylvania state law requires that educators treat students equitably, respect the civil rights of all and not discriminate on the basis of sex.²³

Other state courts and agencies across the country have held that single-sex facilities in public schools must respect students' gender identity.

Other school districts throughout the country have recognized that they need to respect their students' gender identity, particularly within the context of using single-sex facilities. In a Maine case involving a young fourth-grade transgender girl named Susan, the Maine Supreme Court held that a school's decision to bar the student from the girls' bathroom constituted discrimination on the basis of gender identity because “[s]he was treated differently from other students solely because of her status as a transgender girl.”²⁴ In Susan's case, the school initially “determined that Susan should use the girls' bathroom” and “provided her with the same access to public facilities that it provided other girls.” But then, as a result of “others' complaints,” the school later made the decision to “ban Susan from the girls' bathroom.” The Maine Supreme Court found that the school's decision to ban Susan from the girl's bathroom constituted discrimination on the basis of gender identity.

Similarly, Colorado's Division of Civil Rights found that a school's decision to ban a six-year-old transgender girl from the girls' bathroom constituted discrimination and

²¹ *Kelly v. Drexel Univ.*, 94 F.3d 102, 105 (3d Cir. 1996) (internal citation omitted); *see also Atkinson v. Lafayette College*, 460 F.3d 447, 454 n.6 (3d Cir. 2006) (“Claims under the PHRA are interpreted coextensively with Title VII claims.”); *Barb v. Miles, Inc.*, 861 F. Supp. 356, 359 n.1 (W.D. Pa. 1994) (“The courts have uniformly held that the PHRA should be interpreted consistent with Title VII.”).

²² Pennsylvania Fair Educational Opportunities Act, Act of July 17, 1961, P.L. 776, as amended, at § 2(a).

²³ *See* 22 PA. CODE § 235.4(b)(4) (“Professional educators shall exhibit consistent and equitable treatment of students, fellow educators and parents. They shall respect the civil rights of all and not discriminate on the basis of race, national or ethnic origin, culture, religion, sex or sexual orientation, marital status, age, political beliefs, socioeconomic status, disabling condition or vocational interest. This list of bases of[f] discrimination is not all-inclusive.”); *see also id.* § 235.8(1) (“The professional educator may not . . . Discriminate on the basis of race, National or ethnic origin, culture, religion, sex or sexual orientation, marital status, age, political beliefs, socioeconomic status; disabling condition or vocational interest against a student or fellow professional. This list of bases of discrimination is not all-inclusive.”); *id.* § 12.4 (students may not be denied access to public education or subject to disciplinary action on account of sex or other traits).

²⁴ *Doe v. Reg'l Sch. Unit 26*, 86 A.3d 600, 606 (Me. 2014).

was “objectively and subjectively hostile, intimidating or offensive.”²⁵ In its determination, the agency found “that the restroom restriction [] created an exclusionary environment, which tended to ostracize the [student], in effect producing an environment in which the [student] was forced to disengage from her group of friends” and that “also deprived her of the social interaction and bonding that commonly occurs in girls’ restrooms during these formative years.”²⁶

Adoption of a discriminatory policy on the basis of gender identity would be harmful to the health and well-being of transgender students.

Adopting policies that discriminate on the basis of gender identity would harm the health and well-being of the transgender students within the School District. And requiring transgender students to use a single-user restroom or other facility separate from other students, or a faculty or nurse’s restroom, does not solve these problems, but rather exacerbates them by singling out the student for restrictions based on gender identity. Indeed, discriminatory restroom policies single out transgender students as different and send a clear message to their peers that there is something wrong with them or inferior about them. Transgender students already face high rates of physical and verbal harassment in schools,²⁷ and discriminatory restroom policies invite further harassment by inviting peers as well as school staff to question transgender students about their bodies—questions that would universally be considered inappropriate and harassing if they were directed toward non-transgender children—and would cause transgender students to be “outed” without their permission or consent if forced to use separate facilities that are not used by other students (such as single-user restrooms or faculty restrooms), or if forced to use restrooms and other facilities that do not match their gender identity.

²⁵ *Coy Mathis v. Fountain-Fort Carson School District 8*, Colo. Civil Rights Div., Charge No. P20130034X (June 17, 2013), at 12, available at <http://www.transgenderlegal.org/media/uploads/doc529.pdf>.

²⁶ *Id.* at 11.

²⁷ See G. Kosciw et al., GLSEN, *The 2013 National School Climate Survey 23* (2014), available at http://www.glsen.org/sites/default/files/2013%20National%20School%20Climate%20Survey%20Full%20Report_o.pdf; Jaime M. Grant, Lisa A. Mottet & Justin Tanis, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey 3* (2011), available at http://www.thetaskforce.org/static/html/downloads/reports/reports/ntds_full.pdf (“Those who expressed a transgender identity or gender non-conformity while in grades K-12 reported alarming rates of harassment (78%), physical assault (35%) and sexual violence (12%); harassment was so severe that it led almost one-sixth (15%) to leave a school in K-12 settings or in higher education.”); Pub. Health Agency of Can., *Gender Identity in Schools: Questions and Answers 4* (2010) (“Studies suggest that in the school setting, as many as 96% of gender variant youth are verbally harassed and as many as 83% physically harassed. As a result, as many as three-quarters of gender variant youth report not feeling safe in school and three out of four report dropping out.”).

These discriminatory restroom policies stigmatize and ostracize transgender students and can contribute to lower self-esteem and serious mental health conditions, such as depression and suicidal inclinations.²⁸ Discriminatory restroom policies can inflict physical harm by causing transgender students to fast, dehydrate themselves, or refrain from using restroom facilities at all.²⁹ Exclusionary policies also interfere with medically necessary treatment for gender dysphoria, the medical diagnosis for “discomfort or distress that is caused by a discrepancy between a person’s gender identity and that person’s sex assigned at birth.”³⁰ Treating gender dysphoria typically involves social role transition, wherein transgender people come to live all aspects of their lives consistently with their gender identity—including accessing restrooms and other facilities consistent with one’s gender identity.

Discriminatory restroom policies and the stigma they impose upon transgender students also impair the academic success of transgender students by affecting their attendance, causing a decline in their grades, and driving some transgender students to drop out of school altogether.³¹

The School District cannot accept private biases or generalized and speculative privacy concerns as a basis for discriminatory policies.

We understand that some have expressed the view that permitting transgender students to use restrooms and locker rooms consistent with their gender identity infringes on the privacy of non-transgender students. But the School District cannot accept the private biases or preferences of others, or generalized or speculative privacy

²⁸ See Pub. Health Agency of Can., *Gender Identity in Schools: Questions and Answers* 4-5 (2010), available at <http://www.education.gov.sk.ca/Q-and-A-gender-identity>; Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 *Developmental Psychol.* 1580, 1581 (2010).

²⁹ See Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People’s Lives*, 19 *J. Pub. Mgmt. & Soc. Pol’y* 66 (2013).

³⁰ Eli Coleman et al., World Prof’l Ass’n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* 5, 8-10 (7th ed. 2012).

³¹ See Herman, *supra*, at 74-75; Mark L. Hatzenbuehler, *How Does Minority Stigma “Get Under the Skin”? A Psychological Mediation Framework*, 135 *Psychol. Bull.* 707, 714 (2009), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2789474/>; Catherine Good, Joshua Aronson & Michael Inzlicht, *Improving Adolescents’ Standardized Test Performance: An Intervention to Reduce the Effects of Stereotype Threat*, 24 *Applied Developmental Psychol.* 645, 647 (2003) (“[Stigma] can undermine the academic performance of females in math, students from low socioeconomic backgrounds and, in fact, any group that contends with negative stereotypes about their intellectual abilities.”); Kathryn R. Wentzel & Kathryn Caldwell, *Friendships, Peer Acceptance, and Group Membership: Relations to Academic Achievement in Middle School*, 68 *Child Dev.* 1198, 1199 (1997).

concerns, to justify a discriminatory policy that would prevent a transgender student from using the same restrooms and single-sex facilities as those of the same gender. Indeed, the DOJ has explicitly recognized that, with respect to transgender individuals' access to restrooms in accordance with gender identity, "generalized assertions of safety and privacy cannot override Title IX's guarantee of equal educational opportunity."³²

Courts, too, have recognized that a person's discomfort with sharing public spaces with transgender individuals is not a legitimate basis to exclude transgender individuals from accessing restrooms and other spaces where people are separated based on sex. For example, in *Dept. of Fair Employment and Housing v. American Pac. Corp.*, 2014 WL 2178570, *4 (Cal. Super. Ct. Mar. 13, 2014), the court held that an employer could not defend its policy prohibiting a transgender man from using a men's locker room by appealing to employees' supposed discomfort in sharing the restroom with transgender individuals, because such "hypothetical assertions of emotional discomfort" were "no different than similar claims of discomfort in the presence of a minority group, which formed the basis for decades of racial segregation in housing, education, and access to public facilities like restrooms, locker rooms, swimming pools, eating facilities, and drinking fountains." Similarly, the court in *Cruzan v. Special Sch. Dist. # 1*, 294 F.3d 981 (8th Cir. 2002) rejected the discrimination claims of a female teacher who objected to sharing a workplace restroom with a female transgender co-worker, finding plaintiff had alleged no harm beyond the "[m]ere inconvenience" of having to share a space with a transgender person. *Id.* at 984. The court also found that the objecting teacher was free to use other restrooms, noting that "[s]ingle-stall, unisex bathrooms are also available." *Id.*³³

Finally, there is a simple means of addressing any privacy concerns that does not involve discrimination against transgender students. Should a student find the presence of a transgender student in a restroom or other single-sex space disconcerting, it is the objecting student who should be invited to use a single-user restroom or other separate facility, not transgender students—who seek nothing more than to live their lives consistent with their gender identity and with the respect and dignity they deserve.³⁴

³² Br. for the United States, *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056 (4th Cir. Oct. 28, 2015), available at <http://www.justice.gov/crt/file/788971/download>.

³³ See also *California Education Committee, LLC v. O'Connell*, No. 34-2008-00026507-CU-CR-GDS, slip op. (Cal. Super. Ct. June 1, 2009) (student's privacy rights not violated by having to share locker room with transgender student); *Crosby v. Reynolds*, 763 F. Supp. 666, 669 (D. Me. 1991) (sharing housing with "a preoperative transsexual" did not "violate[] a clearly established constitutional right" to privacy); *Lusardi*, 2015 WL 1607756, at *9 ("[a]llowing the preference of co-workers to determine whether sex discrimination is valid reinforces the very stereotypes and prejudices" the law is meant to overcome).

³⁴ See also Note 12, OCR Letter, *supra*, at 12 ("Those female students wishing to protect their own private bodies from exposure to being observed in a state of undress by other girls in the locker rooms, including transgender girls, could change behind a privacy curtain.").

The School District would potentially be subject to liability and a loss of funding if it were to discriminate against transgender students.

ADF has claimed in its letter to the School District that permitting transgender students to access facilities appropriate to their gender identity amounts to “inappropriate exposure to the opposite sex in intimate settings” and supposedly forces students into “vulnerable interactions with opposite-sex students.” ADF has also claimed that the School District could be subject to tort liability if it does not change its policy so as to prohibit transgender students from accessing facilities that do not correspond to their “biological” or “anatomical” sex. That is a mischaracterization of the High School’s policy and a misstatement of the law. Pine-Richland High School’s policy does not permit sex-specific facilities to be used by “members of the opposite sex”; it merely permits transgender students to use restrooms and other facilities appropriate to their gender, like other students. And there is no basis for ADF to suggest that any transgender students in the School District have engaged in any harassing or offensive behavior, or what ADF refers to as “vulnerable interactions.”

Moreover, ADF’s letter cites no legal authority—and we are not aware of any—that stands for the proposition that a school will be exposed to liability based on a policy permitting transgender students to live their lives consistently with their gender identity. To the contrary, as explained above, the law prohibits discrimination against transgender students and requires that those students be treated consistently with their gender identity, and the School District would potentially be subject to liability, and a loss of Title IX funding, were it to discriminate against its transgender students.

* * *

At the end of the day, transgender and gender-nonconforming students seek nothing more than to be treated like all other students and with dignity and respect. A practice or policy that would force transgender students to use restrooms and other facilities that are not appropriate to their gender identity, or that would require them to use a separate, single-user restroom or locker room, would not be consistent with notions of fairness, equality and dignity and would run afoul of the School District’s obligations under local, state and federal anti-discrimination law.

To assist transgender and gender-nonconforming students as well as school districts across the country, we have prepared several resources you may find useful. For more information, you can visit our “Know Your Rights: Transgender” hub at <http://www.lambdalegal.org/know-your-rights/transgender>, where we provide guidance on matters such as restroom access rights and the updating and maintenance of school records. You may also access our “Transgender Rights Toolkit: Equal Access to Public Restrooms” at http://www.lambdalegal.org/publications/trt_equal-access-to-public-restrooms.

We hope that the School District continues to respect the gender identity of all students and act in compliance with its obligations under local, state and federal law.³⁵ Should you have any questions or need further information, please do not hesitate to contact us at 212-809-8585.

Very truly yours,

**LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.**



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³⁵ This letter is not intended to set forth a complete statement of all of the legal rights or remedies of the students we represent, nor all of the relevant facts, nor the legal or equitable bases on which the students' rights and remedies rest, nor to waive or compromise them in any way.