



December 18, 2014

Educational Opportunities Section
U.S. Department of Justice Civil Rights Division
950 Pennsylvania Avenue, N.W.
Educational Opportunities Section, PHB
Washington, D.C. 20530

To Whom it May Concern:

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
VIRGINIA
701 E. FRANKLIN ST.
SUITE 1412
RICHMOND, VA 23219
T/804.644.8080
WWW.ACLUVA.ORG

LESBIAN GAY BISEXUAL
TRANSGENDER AND
AIDS PROJECT
AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
125 BROAD ST., 18TH FL.
NEW YORK, NY 10004
T/212.549.2600
WWW.ACLU.ORG/LGBT

We write to file a complaint against Gloucester County Public Schools ("GCPS") on behalf of Gavin Grimm. On December 9, 2014, the Gloucester County Public School Board (the "School Board") adopted a policy stating that the use of boys' and girls' restroom and locker rooms "shall be limited to the corresponding biological genders, and students with sincere gender identity issues shall be provided an alternative private facility." Gavin, who is a tenth-grade student at Gloucester High School and a transgender boy, had been using the boys' restroom facilities at school without any complaints from peers, prior to the adoption of this policy. GCPS adopted its "biological gender" policy in direct response to Gavin in order to prevent him from continuing to use boys' facilities. The "biological gender" policy on its face and as applied to Gavin discriminates against Gavin on the basis of his sex in violation of Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681(a) ("Title IX").

If the Educational Opportunities Section declines to pursue this complaint, we respectfully request that this complaint be referred to the Department of Education, Office of Civil Rights.

I. Contact Information for the Parties

Gavin Grimm and his mother, Deirdre Grimm, may be contacted through undersigned counsel.

This complaint is against Gloucester County Public Schools, 6099 T.C. Walker Road, Gloucester, VA 23061. It is represented by Edwin Wilmot, County Attorney.

II. Facts

Gavin is a sophomore at Gloucester High School. He is also a transgender boy with a diagnosis of gender dysphoria. Consistent with recognized standards of care for teens with gender dysphoria, Gavin's medical and mental health providers have determined that living in accordance with his gender identity in every possible respect, including using the appropriate restroom, is essential for his treatment for gender dysphoria.

Since the beginning of this school year, Gavin has been open about his gender identity with Gloucester High School's administration, teachers, and students. At first, Gavin exclusively used unisex restroom facilities in the nurse's office, but found that experience to be stigmatizing and isolating. Beginning on approximately October 20, 2014, Gavin has been allowed to use the boys' restrooms on campus. Gavin's use of the restroom appropriate to his gender identity has caused no disruption of any kind at the school during the ensuing month. To our knowledge, not a single student complained to school officials or expressed discomfort with Gavin using the boys' restrooms on campus.

In response to complaints from parents, GCPS adopted the following policy at a School Board meeting on December 9, 2014:

Whereas the GCPS recognizes that some students question their gender identities, and

Whereas the GCPS encourages such students to seek support and advice from parents, professionals and other trusted adults, and

Whereas the GCPS seeks to provide a safe learning environment for all students and to protect the privacy of all students, therefore

It shall be the practice of the GCPS to provide male and female restroom and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with sincere gender identity issues shall be provided an alternative private facility.

According to news reports, at least one student at Gloucester High School, a freshman boy who is not transgender, said that some students are uncomfortable using the same restroom as a transgender boy but did not report any concerns to the administration for fear of being labeled as bullies or intolerant.¹ Some parents expressed concern that "transgender students would be looking at other people's private parts, especially in boys' bathrooms."² During the School Board meeting, Gavin was referred to by some speakers as "a girl" and as "a freak."³

The School Board adopted the policy by a vote of 6-1, despite the objections of the dissenting school board member that the proposed policy violated Title IX and exposed GCPS to the risk of losing federal funding.

According to news reports, GCPS stated in a news release that it plans to increase privacy in restrooms by "adding or expanding partitions between urinals in male restrooms, and

¹Frances Hubbard, *Gloucester School Board OKs policy restricting transgender students from using boys' restroom*, The Daily Press, Dec. 9, 2014, <http://www.dailypress.com/news/gloucester-county/dp-nws-mid-transgender-policy-decision-20141209-story.html>.

²Dominic Holden, *Virginia School Board Bans Trans Students From Using Restrooms Based On Gender Identity*, BuzzFeed, Dec. 10, 2014, <http://www.buzzfeed.com/dominicholden/virginia-school-board-bans-trans-students-from-bathrooms-of>.

³Barbara J. King, *In Transgender Teen's Fight, Echos of Others*, NPR: 13.7: Cosmos & Culture, <http://www.npr.org/blogs/13.7/2014/12/11/370042635/in-transgender-teens-fight-echoes-of-others>

adding privacy strips to the doors of stalls in all restrooms.” The news release also stated that “[t]he district also plans to designate single-stall, unisex restrooms, similar to what’s in many other public spaces, to give all students the option for even greater privacy.”

The “biological gender” restroom and locker room policy, and the experience of having his use of the bathroom be the subject of public debate, has made school an unwelcoming place for Gavin. Beginning on December 10, 2014, school officials have prevented Gavin from using the boys’ restroom and required him to travel to a unisex restroom in the nurse’s office instead. As a result, Gavin is once again stigmatized and isolated from his peers whenever he has to use the restroom. The additional unisex restrooms mentioned in the GCPS news release have not yet been installed. Gavin has a history of depression and anxiety, which have been exacerbated by the new policy. Even if more unisex bathrooms were installed in convenient locations at school, Gavin finds the restroom exclusion, which singles out transgender students by requiring them to use separate facilities, to be inherently stigmatizing and demeaning.

III. Legal Discussion

The “biological gender” restroom policy adopted by GCPS violates the rights of Gavin and other transgender students under Title IX, which provides that no student “on the basis of sex may “be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a).

Federal courts have made clear that the protections in Title IX from discrimination based on “sex” include discrimination based on gender identity or transgender status. *See, e.g., Pratt v. Indian River Cent.Sch.Dist.*, 803 F. Supp. 2d 135, 150-52 (N.D.N.Y. 2011); *Doe 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); *cf. Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011). The Department of Justice and the Department of Education have similarly made clear that “Title IX’s sex discrimination prohibition extends to claims of discrimination based on gender identity.”⁴ Indeed, discrimination based on a person’s transgender status is *per se* discrimination based on that person’s “sex.” *Macy v. Holder*, Appeal No. 0120120821, 2012 WL 1435995, at *8 (E.E.O.C. Apr. 20, 2012).

Courts and administrative tribunals have held that preventing a transgender person from using the restroom in accordance with that person’s gender identity may constitute

⁴Dep’t of Educ., Office of Civil Rights, *Questions & Answers on Title IX & Sexual Violence*, at 5 (Apr. 29, 2014), <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>. *See also* Letter of Resolution, Arcadia Unified School District, DOJ Case No. DJ 169-12C-70, OCR Case No. 09-12-10120, at 2 (July 24, 2013) (“All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX.”). *Cf.* 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), <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf> (“Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes.”)

discrimination based on “sex.” See *Hart v. Lew*, 973 F.Supp.2d 561(D. Md. 2013) (evidence of sex discrimination under Title VII included allegation that “supervisors repeatedly denied her access to the women’s restroom, and in doing so referred to her ‘male genitalia’”); *Mathis v. Fountain Fort Carson Sch. Dist.* 8, No. P20130034X (Colo. Div. of Civil Rights June 17, 2013) available online at http://www.transgenderlegal.org/media/uploads/doc_529.pdf (treating transgender girl differently than other girls by excluding her from using girls’ restroom violates Colorado law against sex discrimination in education). The Department of Justice and the Department of Education have also entered into binding settlement agreements requiring school districts to allow transgender students to use restrooms and other sex-segregated facilities that correspond to their gender identity instead of unisex restrooms.⁵

The “biological gender” policy at GCPS singles out transgender students for disparate treatment based on their transgender status. Every other boy is free to choose whether to use the boys’ restroom or a unisex restroom. Every other girl is free to choose whether to use the girls’ restroom or a unisex restroom. But transgender students – and only transgender students – are banned from using the same restrooms as their peers and instead are limited to separate unisex facilities.

As a practical matter, the “biological gender” policy at GCPS significantly interferes with the ability of Gavin and other transgender students to fully participate in daily school activities because it singles out transgender students for different treatment and forces them to travel to separate facilities – which are often further away and inconveniently located – whenever they have to use the restroom. As the Colorado Civil Rights Division explained in a decision finding that such restrictions constitute sex discrimination:

The evidence suggests that the restroom restriction also 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. . . . An additional problematic issue with this solution is the possibility that the [Student] may be in an area where she does not have easy access to approved restrooms. As a result . . . the [Student] is tasked with the burden of having to plan her restroom visits to ensure that she has sufficient time to get to one of the approved restrooms.

Mathis, No. P20130034X at 11-12.⁶

GCPS has stated that it intends to install more convenient unisex restroom facilities at some point in the future but even more conveniently located unisex restrooms would not

⁵Resolution Agreement, Downey Unified School District, OCR Case No. 09-12-1095, at 1 (Nov. 8, 2014), <http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf> (requiring that transgender student be allowed to use the sex-segregated facilities consistent with student’s gender identity); Resolution Agreement, Arcadia Unified School District, DOJ Case No. DJ 169-12C-70, OCR Case No. 09-12-10120, at 2 (July 24, 2013), http://www.nclrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf (same)

⁶Available online at http://www.transgenderlegal.org/media/uploads/doc_529.pdf

change the stigmatizing and harmful effects of its policy. Indeed, the stigmatizing policy breeds or fosters gender-stereotype-based hostility toward Gavin from his peers, which GCPS has an obligation to protect him from instead of encouraging. *See Pratt*, 803 F. Supp. 2d at 151-52. Forcing Gavin to use a separate bathroom from his peers “overtly demonstrate[s]h[is] separateness from the other students” and fosters “an environment rife with harassment and inapposite to a nurturing school atmosphere.” *Mathis*, No. P20130034X at 11. The real potential for such harassment is reflected in some of the public comments at the School Board meeting labeling Gavin as a “girl” and a “freak.”

The GCPS school board apparently adopted the policy in order to protect the privacy rights of boys who are not transgender and guard against the possibility that transgender boys would look at other boys’ “private parts.” If any student – whether transgender or not – violates another student’s privacy in the restroom GCPS can and should take appropriate action. But there has not been any complaint that Gavin has engaged in any misconduct, and stated privacy concerns appear to be nothing more than irrational prejudice or stigma against transgender people. *Cf. Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”). Indeed, when similar concerns were raised about students sharing restrooms and locker rooms with lesbian, gay, and bisexual peers, those arguments were rightly rejected. *See, e.g., Massey v. Banning Unified Sch. Dist.*, 256 F.Supp.2d 1090 (C.D. Cal. 2003). The School Board’s “assertions of emotional discomfort about sharing facilities with transgender individuals are no different than similar claims of discomfort in the presence of [other] minority group[s].” *Dep’t of Fair Employment & Housing vs. Am. Pac. Corp.* No. 4-2013-015153-CU-CR-GDS, at 4 (Cal. Super. Ct. Mar. 13, 2014), available online at <http://www.dfeh.ca.gov/res/docs/Announcements/Lozano%20final%20order.pdf>.

GCPS can take appropriate measures to respect all students’ privacy, but it cannot do so by singling out transgender students for different treatment. The concerns of any students who do not want to use a communal restroom – because the restroom is shared with transgender students or for any other reason – can be addressed by the GCPS plans to install more dividers in boys’ restrooms and to make unisex restrooms available. The burden, however, may not be discriminatorily placed on transgender students to use separate restroom facilities to address other students’ alleged discomfort. *Cf. Cruzan v. Special Sch. Dist, No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (noting that non-transgender employee who did not want to use the same restroom as a transgender employee was free to use unisex restroom instead); *Doe v. Regional Sch. Unit 26*, 86 A.3d 600 (Me. 2014) (holding that transgender girls could not be banned from using girls’ restroom based on complaints from other students’ parents).

IV. Conclusion

For all these reasons, as a result of the new “biological gender” restroom and locker room policy adopted by GCPS, Gavin has been “excluded from participation in,” “denied the benefits of,” and “subjected to discrimination” because of his sex in an education program receiving funding, in violation of Title IX. 20 U.S.C. § 1681(a).

Respectfully submitted,

Joshua A. Block/RKG

Joshua A. Block
Staff Attorney
LGBT and AIDS Project
American Civil Liberties Union
125 Broad St., New York, NY 10004
(212) 549-2593
jblock@aclu.org



Rebecca K. Glenberg
Legal Director
ACLU of Virginia
701 E. Franklin St., Ste. 1412
Richmond, VA 23219
(804) 523-2152
rglenberg@acluva.org