

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

GAVIN GRIMM,

Plaintiff,

v.

GLOUCESTER COUNTY SCHOOL
BOARD,

Defendant.

Civil No. 4:15-cv-00054-AWA-DEM

DECLARATION OF THOMAS ABERLI, Ed.D.

I, Thomas Aberli, declare as follows:

1. I earned a Bachelor of Arts in Education from the University of Kentucky in 1997, a Master of Science in Education from the University of Kentucky in 1998, and a Doctorate in Educational Leadership Studies from the University of Kentucky in 2010.
2. I am the Principal of J.M. Atherton High School, which educates approximately 1,500 students in Louisville, Kentucky. I became Atherton's Principal in 2010. Based on my success in that role, I was given a two-year (August 2016 to July 2018) assignment as the Interim Principal of Highland Middle School, a feeder school to Atherton, to establish a rigorous learning environment that would prepare Highland's students for success at Atherton. In July 2018, at the conclusion of that assignment, I returned to serving full time as Principal of Atherton.
3. In 2016, I was named Kentucky Administrator of the Year by the Kentucky Association of School Administrators ("KASA"). From 2010 to 2016, I served on the Principal's Advisory Committee to the Kentucky Commissioner of Education and was selected to

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serve on both the state Youth Bullying Prevention Task Force and the state School Curriculum Assessment and Accountability Council. I was also elected to the KASA Board of Directors, on which I currently serve as the representative for the Ohio Valley region.

4. During my tenure as Principal of Atherton, the school has moved from being ranked 74th in Kentucky based on the ACT, to being ranked in the top 12 schools in the state by *U.S. News & World Report* every year from 2013 to 2016—a distinction Atherton continued to hold in 2017-18, during my assignment at Highland Middle School. Atherton also received the Kentucky Department of Education's rating of School of Distinction in 2015, which is the state's highest possible rating under its school accountability system.
5. In June 2014, Atherton implemented a formal policy respecting students' gender identity, which includes access to sex-separated facilities like restrooms and locker rooms.
6. The policy came about because a specific Atherton student had identified herself as transgender to school administrators and wanted the school to treat her as a girl in all respects, including access to school restroom facilities. The student first raised the issue with the faculty liaison for Atherton's Gay-Straight Alliance, who then brought the matter to me. I was unfamiliar with the issue and had concerns about possible disruption or privacy issues. But I believed it was important to understand this issue both on a personal level as well as the school's legal obligations. I spent several of the following weeks educating myself about the legal landscape of this issue, what it means to be a transgender person, and how to better understand the perspective of a transgender student at Atherton. My efforts included meeting with the transgender student who had first raised the issue to better understand her perspective and experiences.

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7. In the approximately six-week span after my conversation with that student, but before a formal policy could be considered and adopted, I implemented a preliminary procedure at my own discretion as principal that permitted students to use bathroom and locker room facilities that corresponded with their gender identity. I did this after consultation with our district's general counsel and the district administration above me, and after reviewing the case law at the time which largely respected the rights of transgender individuals in accordance with their gender identity. During these weeks, we experienced no issues with the implementation or maintenance of this preliminary procedure.
8. No district-wide policy regarding this issue existed at the time. While I had the authority as principal to address the issue myself at Atherton, I wanted the benefit of a formal policy adopted through an informed decision-making process. I therefore facilitated and oversaw the adoption of this anti-discrimination policy through a thoughtful process that engaged the public, with the help of our School-Based Decision Making Council ("SBDM Council")—a twelve-member policy-making council consisting of parents, teachers, and administrators.
9. In the process of learning more about transgender people and developing this policy, the SBDM Council and I collaborated extensively with school administrators, teachers, and parents, and we considered the issue very carefully and thoughtfully. We took great pains to make this process as transparent as possible for the community by, for example, posting all of the evidence we reviewed on the school's website.¹
10. We considered three possible policies. One was presented by the Alliance Defending Freedom, which would have required students to use the facilities of their sex-assigned-at-birth. The second would have left the decision to the discretion of the school principal.

¹ See <https://schools.jefferson.kyschools.us/High/Atherton/SBDM.html>

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The third option was to adopt the policy based on gender identity that we have now, which is that the school shall not discriminate in the use of school facilities on the basis of gender identity nor gender expression. While the school maintains separate restroom and locker room facilities for males and females, students are permitted to use the facilities that correspond with their asserted gender identity. The school provides privacy accommodations for *any* student that requests them, for *any* reason—the school does not require the student to explain the reason for the privacy request. The school also makes single-stall restroom facilities available to any student who prefers to use them—again, for any reason—but no student is *required* to use those separate facilities.

11. The policy we chose to implement at Atherton is modeled after a similar policy that the Los Angeles Unified School District has used for over fifteen years. At the time, some members of the community expressed that inclusive policies might be fine for schools in California, but not in Kentucky. I disagreed with that argument. As I testified before the Kentucky State Education Committee in February 2015, the value of human life is the same in Kentucky as it is anywhere else.²
12. Of course, implementing this policy required a lot of understanding, reflection, and development among our administrators, faculty, and staff. But fundamentally, we kept returning to the global picture: how do we want to treat all our children? How do we respect all children? We all have a gender identity, so how do we treat all children equally with regard to their gender identity?
13. With this policy, we tried to apply common sense to what was a new issue for Atherton. I believe that Atherton took the correct approach. Not only does our policy apply a

² A video excerpt from my testimony is available online at: KET – Kentucky Educational Television, *Principal Thomas Aberli on Transgender Student Policy Legislative Update KET*, YouTube (Feb. 19, 2015) <https://www.youtube.com/watch?v=QodplMWsEvQ> (last visited February 7, 2019).

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student's right to privacy equally to transgender children as well as cisgender children, but our experience has been that privacy has increased for all students as a result of this policy.

14. Ultimately, we chose this policy for Atherton because we came to understand the important distinction between accommodation and discrimination. Atherton's policy does not cause a student to be singled out from everyone else, just because their presence makes another student feel uncomfortable—because that would be discrimination. Instead, our policy treats our transgender students and cisgender students the same—everyone can use facilities that match their gender identity, and everyone has the option of using a private facility if they prefer not to use common facilities for any reason. The policy applies equally to all children, thereby accommodating everyone's differences without discriminating against any individual.
15. Despite the initial opposition from some concerned members of the community, I have received zero complaints regarding specific incidents involving privacy issues since implementing the policy. The concerns that certain individuals raised have all been philosophical. If anything, implementing the policy has made me and my fellow administrators at Atherton more aware of how we can increase privacy for all our students.
16. As far as students are concerned, Atherton has had no issues at all with respect to implementation of the policy. There are multiple transgender students in our school, and their use of restrooms or locker rooms has not been an issue.

17. In June 2016, the PBS News Hour aired a segment filmed at Atherton regarding its policy for transgender students, for which I provided a brief interview.³ I also asked students participating in a health class while the PBS camera crew was on campus for volunteers to share their thoughts and experiences regarding the policy. I did not ask these students in advance to share their thoughts with me, though I did ask their parents' consent for their children to appear on camera. In the words of one of these students, "It's just going to the bathroom. You go do your business, then you wash your hands, and then you leave. It's just simple. And when people make a big deal about it, it just kind of gets blown out of proportion." Another related that: "Coming from, like, a religious background, like, I am Christian, and people don't necessarily agree with that type of stuff. But I have been going to this school for two years, and it's just routine. Like, everyone gets to the restroom, everyone gets out. It's nothing, nothing. It's not a big deal."

18. These students' comments are consistent with my experience as Atherton's Principal. The privacy and security concerns that some members of the community raised during our development of the policy have not come to pass. For example, we have never had any reports of students exposing themselves in these facilities, or of cisgender students pretending to be transgender to access a particular restroom.

19. However, if any student came to me to express discomfort—if they were uncomfortable changing in a communal locker room or using a communal bathroom for any reason—then the school would make accommodations for them to use a private facility under the policy. This would be the case for any student, regardless of their gender identity or the

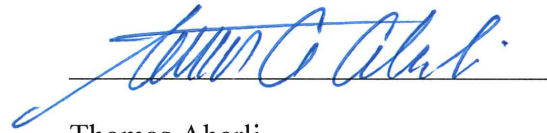
³ This segment is available to view on PBS' website – *As Transgender Teens Struggle, Here's How One Kentucky School Leads the Way*, PBS News Hour (June 7, 2016), <https://www.pbs.org/newshour/show/as-transgender-teens-struggle-heres-how-one-kentucky-school-leads-the-way> (last visited February 11, 2019). The website also provides a transcript of the episode.

reason they seek greater privacy. For example, we have communicated in public that any student may use a single-occupant restroom in the school's front office if they choose. We don't ask why. There are a thousand reasons that a student could need privacy—such as shyness, or trauma—so it is our responsibility to accommodate any student in that respect.

20. But we do not compel any student to be singled out for different treatment because some other student feels uncomfortable around them. Making transgender students use a separate restroom from their peers is not the answer—compelling someone to use a separate facility as an accommodation of another student's discomfort rather than allowing them to use the facilities that corresponds with their gender identity completely negates the original determination that the SBDM Council made: that gender identity is real, and that transgender boys and girls should be allowed to use the same facilities used by other boys and girls. Once you recognize that gender identity is a genuine characteristic that everyone possesses, it becomes easy to recognize that schools have the obligation to respect the gender identity of all individuals.
21. Since Atherton implemented its policy, our transgender students have thrived, and we have observed students' greater willingness to come forward and identify themselves as transgender, knowing that our school supports them. In fact, the overwhelming reaction from our students has been both supportive and understanding.
22. I make this declaration from my own knowledge of the facts and circumstances set forth above. If necessary, I could and would testify to these facts and circumstances.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATE: March 18, 2019



Thomas Aberli
Principal
Atherton High School