

No. 15-2056

In the
United States Court of Appeals
for the
Fourth Circuit

G.G., by his next friend and mother, **DEIDRE GRIMM**,

Plaintiff - Appellant

– v. –

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant - Appellee

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA, NEWPORT NEWS DIVISION*

**AMICI CURIAE BRIEF OF SCHOOL ADMINISTRATORS FROM
CALIFORNIA, DISTRICT OF COLUMBIA, FLORIDA, ILLINOIS,
KENTUCKY, MASSACHUSETTS, MINNESOTA, NEW YORK, OREGON,
WASHINGTON, AND WISCONSIN
IN SUPPORT OF PLAINTIFF-APPELLANT**

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STATEMENT REGARDING PARTICIPATION BY PARTIES

No counsel for a party authored this brief, in whole or in part, and no person other than *amici curiae* and their counsel made any monetary contribution to fund the preparation or submission of this brief.

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE

Amici curiae are superintendents, principals, school board members, general counsel, social workers, and other officials from schools and school districts that have adopted, or are in the process of adopting, formal inclusive policies for their transgender students. They represent a broad cross-section of schools and districts from across the country, collectively responsible for the education of more than 1.2 million students annually. *Amici curiae* offer valuable perspectives on a number of the issues in this case, based on their broad collective experience with adopting, implementing, and enforcing such policies. Pillsbury and Lambda Legal, counsel for *amici*, conducted telephone interviews with individual *amici* in September and October 2015 to obtain their input for this brief, as cited herein. Synopses of all *amici* interviews are on file with Pillsbury.

Judy Chiasson, Ph.D., is the Program Coordinator for the Office of Human Relations, Diversity and Equity in the Los Angeles Unified School District (“LAUSD”), Los Angeles, California. LAUSD is the second-largest school district in the country, with more than 732,000 students in more than 1,200 schools,

spanning 745 square miles. Dr. Chiasson helped author LAUSD's guidance documents on transgender students, and has overseen the implementation of LAUSD's policy since it was adopted a decade ago. Dr. Chiasson has given legislative testimony based on LAUSD's approximately ten years of experience with its policies¹, and has consulted with other school administrators across the country on transgender and other diversity issues.

David Vannasdall has worked in the education field for twenty-two years, and been Superintendent for Arcadia Unified School District ("Arcadia") in Arcadia, California since July 2014, having previously served as Arcadia's Deputy Superintendent for two years and principal of Arcadia High School for eight years. He developed Arcadia's policy for supporting transgender students. Mr. Vannasdall has consulted with school officials nationally on the issues, and has presented on Arcadia's policy to other superintendents. Arcadia has approximately 10,000 students, and has two years of experience with inclusive policies for transgender students.

Diana K. Bruce is the Director of Health and Wellness for the District of Columbia Public Schools ("DCPS"), a district that educates approximately 46,500

¹ A video recording of Dr. Chiasson's June 12, 2013 testimony to the California Senate Education Committee ("2013 Chiasson Testimony") is available at: *LAUSD's Judy Chiasson's Testimony on AB 1266*, YouTube (Oct. 19, 2013), <https://www.youtube.com/watch?v=Xmq9dIQdsNE>. An unofficial transcript is on file with Pillsbury.

students across 111 schools. DCPS has provided transgender students access to facilities in accordance with their gender identity since 2006, and Ms. Bruce led the effort surrounding the school district's adoption of a policy providing in-depth guidance in June 2015. Ms. Bruce consults with administrators across the country about DC's nearly decade-long experience with inclusive policies for transgender students.

Denise Palazzo is an Instructional Facilitator and Diversity and LGBTQ² Coordinator for Broward County Public Schools ("BCPS"), where she previously taught for 14 years. BCPS is the sixth-largest public school system in the United States and the second-largest in the state of Florida, with more than 265,000 students. Ms. Palazzo has spearheaded BCPS's effort to adopt a formal policy allowing transgender students access to programs and facilities in accordance with gender identity, which is being finalized now. The new policy enhances the recommendations and guidance that BCPS adopted in 2012. Ms. Palazzo also advises officials throughout the country about inclusive policies for transgender students.

Jeremy Majeski is the Principal of Komensky Elementary School ("Komensky"), in Berwyn, Illinois. He has been an educator for 13 years and Komensky's principal for four years. Mr. Majeski directed the development and

² The acronym "LGBTQ" stands for lesbian, gay, bisexual, transgender, and questioning.

implementation of an inclusive policy at Komensky after a transgender student requested support, and is now helping to direct implementation of the policy throughout Berwyn South School District 100 (“Berwyn”). Berwyn includes six elementary and two middle schools, and educates approximately 4,000 students. Berwyn was recently honored by the Illinois Safe Schools Alliance as the Ally of the Year for 2015.

Thomas A. Aberli, Ed.D., is the Principal of J.M. Atherton High School (“Atherton”), which educates approximately 1,300 students in Louisville, Kentucky. Atherton has had a formal policy of respecting students’ gender identity since June 2014. Dr. Aberli oversaw the adoption of this anti-discrimination policy through a thoughtful process that engaged the public, a 12-member decision-making council, and the superintendent. Dr. Aberli also recently testified about Atherton’s policy before the Kentucky Senate Education Committee.³

Robert Bourgeois is the Superintendent-Director of Greater Lowell Technical Regional School District, a single-school district that educates approximately 2,200 students in Massachusetts. Mr. Bourgeois has eight years of experience as a superintendent with schools that allow students to access facilities

³ A video excerpt from Dr. Aberli’s February 2015 testimony (2015 Aberli Testimony) is available at: KET – Kentucky Educational Television, *Principal Thomas Aberli on Transgender Student Policy Legislative Update KET*, YouTube (Feb. 20, 2015) <https://www.youtube.com/watch?v=QodplMWsEvQ>. An unofficial transcript is on file with Pillsbury.

and programs in accordance with their gender identity. Mr. Bourgeois serves by appointment of the governor on the Massachusetts Commission on LGBTQ Youth, for which he currently serves on the Safe Schools Committee. He also participates in school trainings through the Massachusetts Department of Education's Safe Schools Program, and has testified at state legislative hearings involving transgender youth issues.

Mary Doran is the chair of the Saint Paul Public Schools Board of Education. She has served on the Board of Education for four years, including the last two years as chair. She led the effort to craft, pass, and implement the Saint Paul Public Schools' ("SPPS") Gender Inclusion Policy, which passed with unanimous support from Board of Education members in March 2015 and was implemented at the start of the 2015-16 academic year. **Valeria Silva** has been the Superintendent of SPPS since 2010, after more than two decades as a teacher, principal, and administrator. SPPS is one of Minnesota's largest school districts, with more than 39,000 students, over 58 schools, and more than 5,300 full-time staff members, including over 3,100 teachers.

Rudy Rudolph is a longtime administrator for the Portland Public Schools ("PPS"), Portland, Oregon, the largest school district in the state with 85 schools and approximately 49,000 students within the district. Ms. Rudolph is currently a Project Manager for the Equity Department for PPS. She has spearheaded a group

of administrators and allies in the district to facilitate the full inclusion of LGBTQ students, and continues to work closely with schools throughout PPS in supporting the inclusion and success of all students, including transgender students. Ms. Rudolph is also involved in the ongoing development, implementation, and improvement of support for transgender students, staff, and families.

John O'Reilly is the Principal of the Academy of Arts and Letters, Public School/Middle School 492 ("A&L") in Brooklyn, New York. A&L educates students from kindergarten through the eighth grade, and adopted an inclusive policy for transgender students four years ago. After Mr. O'Reilly implemented A&L's policy, the New York City ("NYC") Department of Education issued similar guidelines requiring equal opportunity and access for transgender students. A&L is part of the NYC Department of Education, which is the largest school district in the nation, serving 1.1 million students in over 1,800 schools.

Lisa Love is the Manager of Health Education for Seattle Public Schools ("SPS"), a school district which educates approximately 53,000 students in 97 schools. Ms. Love's position with SPS includes providing technical assistance to families and staff seeking support for LGBT students, training staff on LGBT issues, and developing district policies and procedures. Ms. Love has been in the field of education for almost 20 years, and directed the efforts that led to SPS's adoption in 2012 of a formal superintendent procedure that respects students'

gender identity.

Dylan Pauly is General Counsel for Madison Metropolitan School District (“MMSD”) in Madison, Wisconsin, the second largest school district in the state with more than 27,000 students. Ms. Pauly drafted MMSD’s policy for transgender students, and has presented the policy to the Wisconsin Association of School Boards and the National School Boards Association. Ms. Pauly also supervises the district’s Title IX investigator. **Sherie Hohs** is a Social Worker with MMSD with twelve years of experience in the district. Her work focuses on supporting the needs of LGBTQ students, providing professional development trainings to staff, and working with parents and community partners. Ms. Pauly and Ms. Hohs both consult with administrators across the state and from other parts of the country about inclusive policies for transgender students.

INTRODUCTION TO ARGUMENT

*Students in schools just want to have an environment that is safe and affirming. They want to grow, and learn, and have fun. Research points to the fact that they must feel safe and affirmed to do that. If there’s bias in the school, it makes them less able to learn. But an affirming policy has a positive effect on other students as well. **If everyone is taken care of, students see that and they value that.***

Interview with Denise Palazzo, October 3, 2015 (“Palazzo Interview”)

(emphasis added).

Collectively, *amici* are responsible for the education, safety, and wellbeing of **more than 1.2 million students across the country**, and have extensive experience in the development, implementation, administration and enforcement of inclusive policies for transgender students in a school setting. Some, such as Dr. Chiasson, Ms. Bruce, and Mr. Bourgeois, have many years of experience applying inclusive policies in their schools; others, such as Mr. Majeski, Ms. Palazzo, and Ms. Doran are implementing such policies now to meet the needs of their schools' transgender students.

Many *amici* have, in their role as educators, supported students like G. in their process of gender transition. G. is in many ways typical of the thousands of transgender students who attend American schools every day, and who have come forward to request from their schools the same support and respect for their gender identity that all other students receive as a matter of course. In *amici*'s view, it is both the legal and professional obligation of all educators to provide that support and respect to *all* students.

While the legal arguments will be ably covered by G.'s counsel, and medical experts are better qualified to explain the treatment of Gender Dysphoria, *amici* have experiences that shed light on the hypothetical concerns raised here by the Appellee, Gloucester County School Board ("Board") – and credited by the district court – that respecting G.'s gender identity by allowing him to use the boys'

restroom would lead to general disruption in the school, violate the privacy and/or “comfort” of other students, and/or lead to the abolition of gender-segregated facilities such as restrooms and locker rooms. These same hypothetical concerns have also been raised in some *amici*’s schools. Although *amici* have addressed – and in some cases personally grappled with – many of the same fears and concerns the Board raises, in their experience, *none of those fears and concerns have materialized in the form of actual problems in their schools*. Instead, inclusive policies for transgender students have had the effect of not only fully supporting the humanity of their transgender students, but also fostering a safer and more welcoming learning environment for all students.

ARGUMENT

I. POLICIES RESPECTFUL OF EVERY STUDENT’S GENDER IDENTITY MINIMIZE DISRUPTIONS AND HELP CREATE A SAFE, WELCOMING, AND PRODUCTIVE LEARNING ENVIRONMENT FOR ALL

Our [gender identity] policy was both simple and profound: all students shall be able to attend school, learn, and participate in school activities, all the while having their gender identity affirmed and respected regardless of their assigned birth sex. . . . This was fairly straightforward. Our policy addresses sports, restrooms, locker rooms.

At first, we had our concerns -- would letting students participate in activities and facilities that were consistent with their gender identity create problems? What would happen? Ultimately, we decided that we as the adults needed to manage our fears, and give students the respect and dignity that they deserved.

And I'm pleased to say that none of our fears have been materialized.

2013 Chiasson Testimony (see fn.1) .

As educators who have devoted much of their lives to young people, *amici* recognize that all students deserve equal respect and treatment by their educators. For that reason, the schools and districts with which *amici* are associated have adopted, or are in the process of adopting or refining, formal policies that enable transgender students to have access to the same facilities and opportunities as other students. *Amici*'s collective experience is that adoption and enforcement of inclusive policies contributes to a learning environment that is safe and welcoming, which in turn enhances the educational experience for all students.

Despite their positive experiences, and similar experiences reported to *amici* by educators across the country, for some school districts, like the Appellee here, there is still great – albeit unfounded – fear of integrating transgender students into the school community and creating a safe, inclusive space for them to learn.

Although the district court credited the Board's fears, the policies in place in *amici*'s schools – some for a decade, or nearly so – simply have not resulted in the “hardship” for cisgender⁴ students that the district court imagined in its opinion.

See JA-162.

⁴ Cisgender is a term used to describe a person whose self-identity conforms with the sex he or she was assigned at birth – *i.e.*, someone who is not transgender.

Rather, *amici*'s experiences have been overwhelmingly positive. Far from being disruptive or potentially unsafe, as the Board has speculated without any support, such policies have *minimized* disruption and safety concerns.⁵ Respecting students' gender identity eliminates the disruption that results from singling out and stigmatizing transgender students, and avoids disrupting the normal social interactions involved in use of communal school bathrooms and other gendered spaces and activities. In *amici*'s experience, the only disruption is caused by a lack of clarity about how to support transgender students. Ms. Bruce, for example, observes that "[a] policy that requires equal treatment is not difficult to implement. Beyond sorting it out at the beginning, it's not an ongoing, lingering issue that requires additional levels of decision-making." Interview with Diana Bruce, October 5, 2015 ("Bruce Interview").

As with all school policies, "[o]ur goal is to make sure that *every* young person is as present, and as able to engage in academic work as possible. Promoting a safe and welcoming environment is a way to promote education." Bruce Interview (emphasis added). This has been a positive thing, not only for

⁵ For students who transition while remaining in the same school district, the administration's respect for their gender identity sets a critical example for their fellow students. For students who have transitioned elsewhere, treating them equally allows them to blend more seamlessly into the student body while protecting their privacy, and minimizes the chances that they will be singled out for harassment and bullying.

transgender students, but for all students, faculty, administrators, and communities as a whole.

A. *Amici*'s Schools and Students Have Thrived After Adoption of Respectful Policies for Transgender Students

In the professional experiences of *amici*, fears and concerns about inclusive policies are almost completely held by adults – administrators, teachers, parents, and community members.⁶ Many of the *amici* have themselves wrestled with the very same concerns in their own schools when awareness of the need for an inclusive policy first arose. The students, by contrast, have often set a leading example in respectful treatment of transgender students – using the appropriate name and pronouns, and recognizing their rightful place in school facilities that match their gender identity. Dr. Chiasson, based on her more than ten years' experience working with the inclusive policies in place at LAUSD, the second-largest school district in the country, recounts that:

Our experience has been that the fears of the adults are rarely played out. The students are very affirming and respectful of their classmates. Most of the reaction that I've ever encountered has been in response to people's fears, not the students' experiences. The students' experiences have been overwhelmingly positive.

⁶ *E.g.*, Interview with Sherie Hohs, October 15, 2015 (“This isn’t a kid issue. It’s an adult issue.”); Interview with Roger Bourgeois, October 8, 2015 (“Bourgeois Interview”) (“Most of the problem is with the adults; the students are pretty accepting of these issues.”).

I have yet to be called into a situation to respond to an actual incident; I've only had to respond to fears, and the fears are unfounded.

Interview with Dr. Judy Chiasson, September 23, 2015 (“Chiasson Interview”).

Some *amici* have faced those fears head-on, while others have traveled a more circuitous road. For example, Mr. Vannasdall recounts that his district's initial experience with a transgender student, much like the Board's here, resulted in litigation due to the concerns of administrators and others that respecting a transgender student's gender identity would be disruptive and burdensome.

Interview with David Vannasdall, September 23, 2015 (“Vannasdall Interview”).

But Mr. Vannasdall and his colleagues experienced a change of heart that began with a simple, open conversation between Arcadia's administrators and the student and his family. *Id.* Mr. Vannasdall recalls that it became “obvious that this student had no intentions of creating a disruption – he just wanted a home and a place to learn, and not worry about which restroom to use.” *Id.* Once administrators understood that the student was simply asking – like G. – to be treated like any other boy, their obligation as educators became clear:

What turned for us was getting away from the focus on [the litigation] and back to the idea that our job as educators is to help students learn – help students come to school ready to learn. If they're worrying about the restroom, they're not fully there to learn, but instead just trying to navigate their day. Give students the opportunity to just be a kid, to use the bathroom, and know that it's not a disruption, it just makes sense.

Vannasdall Interview. Ultimately, the Arcadia legal action was resolved by a voluntary resolution agreement with the U.S. Department of Justice⁷, which included adoption of a comprehensive policy respecting students' gender identity. The outcome has been "very positive for the school, the district, and the students," according to Mr. Vannasdall, who now regularly consults with educators across the country, giving informal advice and guidance on inclusive policies for transgender students. *Id.* The "game-changer" for Arcadia and for other districts he has consulted with, is when educators "remember what we are here to do." *Id.*

Dr. Aberli's first experience with transgender youth also arose out of a student request. Like Mr. Vannasdall, he was unfamiliar with this issue, and had concerns about possible disruptions or privacy issues. He tried to understand the student's request on both a personal level, and in terms of the legal obligations of the schools. Interview with Dr. Thomas Aberli, October 7, 2015 ("Aberli Interview"). Atherton's policy was developed through an extensive collaborative effort by Dr. Aberli and a panel of school administrators, teachers and parents, in which "[w]e considered the issue very carefully and thoughtfully, and posted all of

⁷ See U.S. Department of Justice, Office of Civil Rights Case No. 09-12-1020 (July 24, 2013), <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadialetter.pdf> (Resolution Letter); <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf> (Resolution Agreement).

the evidence we reviewed online⁸.” 2015 Aberli Testimony (*see* fn. 3); Aberli Interview. Atherton’s policy is based on LAUSD’s policy, which has worked well for a decade, without any complaints. *Id.* Although there were some comments to the effect that, if the people in his district wanted California policies, they would move to California, Dr. Aberli stated unequivocally that empathy and equality do not stop at state borders:

The value of human life is the same in Kentucky as it is anywhere else in this nation. And when we’re talking about an issue of civil rights, we’re talking about the value we put on human individuals.

2015 Aberli Testimony. Understanding that the policy is about protecting students’ basic civil rights, rather than granting some esoteric request – as the district court seemed to believe here, JA162 – has helped the clarify the issue.

It also helped people to understand that this wasn’t about providing a special accommodation or “special rights”; this is about eliminating discrimination. When you tell a person you will do something that makes them stand out from everyone else, *that’s* when you start discriminating against them.

Historically we’ve had this discussion with regard to race, gender, and sexual orientation. And now this issue is extending to gender identity. I think that helped several of my colleagues who were having to deal with it, understanding that this wasn’t a special accommodation or perk, this was about eliminating discrimination.

Aberli Interview.

⁸ Available at www.jefferson.kyschools.us/schools/high/atherton/SBDMDocuments.html.

Dr. Aberli acknowledges that, at the outset, in addition to a number of adults in his district, a handful of students also questioned Atherton's new policy.

We had students that opposed the policy originally, and they're still with us. I respect that some people may disagree or even feel uncomfortable with the policy, because honestly, for many people – including myself until a few months ago – they simply weren't knowledgeable, or it wasn't a close enough personal issue in terms of interacting with openly LGBT people to have a comfort level.

I acknowledge and respect that. But I also am not going to use someone's discomfort as a means for discriminating against a protected population.

Id. Ultimately, despite the initial opposition he received from students and others, Dr. Aberli reports that in practice he has “received zero complaints regarding a specific incident of concern for a violation of privacy. The concerns raised by individuals have all been philosophical.” *Id.*

B. In *Amici's* Experience, Frequently Raised Areas of Concern, Such as Inappropriate Student Behavior in Restrooms and Locker Rooms, Have Not Been an Issue

There have not been any issues, regarding this policy in locker rooms or bathrooms. But it has brought greater awareness of how we can increase privacy for all students.

Aberli Interview.

As educators and administrators who have been at the forefront of responding to issues similar to those raised by the Appellee in the instant case, *amici* are well-situated to provide the Court with experience-based information about some of the hypothetical fears and concerns that are commonly raised when

schools integrate transgender students into gender-specific restrooms and locker rooms, including the fear that some individuals might use an inclusive policy to gain access to the facilities of another gender for an improper purpose. *Amici* have found such fears and concerns to be wholly unfounded in practice.

1. Restrooms

“Questions about bathrooms come up in every staff training, and it’s an important thing that school staff want to understand. I think there’s an assumption that there will be disruption around restrooms.” Bruce Interview. But, as Ms. Bruce observes, all schools routinely “deal[] with many more adolescent behavior issues than who’s using the bathroom based on gender identity,” and are very experienced with and adept at addressing them. *Id.* As with any behavior issue, “oftentimes disruption in our experience has been around inconsistency by staff – and that’s why clear guidance for schools is important; our staff tell us they want to know what they should do, and what they shouldn’t do. Our transgender students just want to use the restroom and be safe when they do it, and that’s all they’re trying to do.” *Id.*

Dr. Aberli similarly reports that Atherton has

multiple transgender individuals in our school, and restroom access has not been an issue. . . . [T]here has not been any issue at all with respect to the implementation. It’s not a big deal when you look at it from a standpoint of, we’re dealing with real people, we’re dealing with children. Even at the high school level we’re dealing with people who have had a hard

enough time as it is, and they're just looking for reasonable support from the school in a very challenging social context, or during a very difficult process, as it is for many of them.

Aberi Interview. In short,

[t]here's been no pandemonium. There are no transgender students who are sexual predators, or who are "switching gender" to peek at others. None of those irrational fears have been realized at all. I supervise our Title IX investigator, and there have been no issues with our policy there. I also supervise the general complaint process. Nothing has come through either of those two processes on this issue.

Interview with Dylan Pauly, October 15, 2015 ("Pauly Interview").

2. Locker Rooms

Although G. has not requested to use the boys' locker room, no student should be denied access to any gender-specific facilities that are available to other students of the same gender identity solely because of their transgender status. As with restrooms, *amici* have not experienced issues with locker rooms due to transgender-inclusive policies. Such policies generally allow students access to locker rooms in accordance with gender identity, and in *amici*'s experience, have not resulted in student attempts to exploit the policy or to break the rules in any way. Ms. Bruce explains that "[o]ur transgender students are not interested in walking around the locker rooms and checking out anatomy. They're just trying to get through P.E. safely." Bruce Interview. Ms. Doran concurs. "[W]hen the *coaches* tell me 'this [transgender policy] isn't an issue, isn't a big deal,' that really says something." Interview with Mary Doran, October 16, 2015.

Indeed, in the rare instances that *amici* have needed to address locker room issues, it has been to ensure the safety of the transgender students. And even there, “[l]ocker rooms aren’t a [special] concern because we are already accustomed to dealing with students who have unique or special needs in the locker room context. This is just one more type of student that may need additional support in that space.” Palazzo Interview.

3. Concerns About Possible Nefarious Purposes, and/or Inconsistency on the Part of the Transgender Student in Gaining Access to Restrooms and Locker Rooms

Amici have also frequently addressed the concern that transgender students might just be “confused,” or are likely to change their minds often about their gender identity, and/or might be falsely claiming to be transgender for some nefarious purpose. None of these concerns have materialized for *amici*. Moreover, *amici*’s policies allow schools to make reasonable assessments of individual requests for accommodation. As Dr. Chiasson explained in a letter to Dr. Aberli,

[i]t is reasonable to expect that a student will exercise consistency with respect to their identity and access to facilities. Students cannot switch their identity arbitrarily or opportunistically. For example, a student cannot be transgender only during physical education.

If the school strongly suspects that the request is not legitimate, they should provide accommodation for the student while continuing the conversation to better understand the student’s motivation for the request. Being transgender is a deeply rooted identity different from one’s natal sex. It is not subject to arbitrary whims.

Chiasson Letter to Aberli dated May 29, 2014 (“Chiasson Letter”), on file with Pillsbury⁹. Similarly, Mr. Bourgeois explains that

[a] student can’t just show up on our doorstep and say, “I’m a male, but I want to start using the girls’ locker room today.” People worry some football player will show up and want to get into the girls locker room, but that’s not what we would allow. There’s a process we go through to work with them and their families, and verify their identity. Far from being disruptive, our experience has been that those students just want to blend in; they don’t want anyone to notice they’re there.

Bourgeois Interview.

All *amici*’s schools follow a similar policy, and as a general matter, it is easy to identify genuine requests.

Some people fear someone will masquerade people as transgender to be predatory. But being transgender is persistent and consistent throughout the day: all classes; all relationships; in and out of the classroom. That’s what I say to assuage students’ fears. And, I’ve never had that happen, where someone has pretended to be transgender for nefarious reasons. It’s just plain silly to think that [a male student] is going to come to school for months on end, wear female attire, present as female to all of his friends and teachers, just so he can go into the female locker room. It’s just silly to think that anyone would do that.

Chiasson Interview. Indeed, schools are “very adept” at dealing with instances of misbehavior in restrooms and locker rooms precisely because it is not particularly

⁹ A copy of Dr. Chiasson’s letter to Dr. Aberli is also included among the materials posted by Atherton, as referenced at footnote 8. See <http://www.jefferson.kyschools.us/schools/high/atherton/SBDMDocuments/Letter%20from%20LA%20Unified%20School%20District%20Asst%20Supt.pdf>.

difficult for a student to gain access to another gender's facilities.

Adolescents can be impulsive, and we have had boys and girls dart into the other bathroom. We find them and deal with them. They certainly don't need to masquerade as transgender to engage in that conduct.

Id. While parents, teachers and administrators alike are always looking out for the safety of all students, a policy respecting transgender students is more likely to thwart misbehavior in these spaces than be a cause of it.

II. SCHOOL POLICIES THAT RESPECT THE GENDER IDENTITY OF ALL STUDENTS RESPECT THE PRIVACY CONCERNS OF ALL STUDENTS

Many of the concerns that have been raised with inclusive policies for transgender students involve perceived threats to the privacy or "comfort" of other students. The Board argues that granting a preliminary injunction here "would endanger the safety and privacy of other students." *See* JA-158. The district court credited those (purely hypothetical) concerns, *see* JA-163, and characterized G.'s request as a "hardship" to other students that would result in "any number of students us[ing] the unisex restrooms . . . while this Court resolves his novel constitutional challenge." JA-162. The court also refused to credit G.'s uncontested testimony regarding his distress at being barred from the boys' restrooms. JA-163. These conclusions are completely at odds with *amici's* experience as educators.

First, G.'s restroom dilemma, recounted in his testimony, is a common experience for transgender students. JA-32-33 (describing female students' confusion and distress when G. tried to use the female restroom that the school suggests is appropriate for him, and G.'s feelings of stigmatization and isolation associated with the separate, single-stall restrooms). Having to navigate this problem daily seriously interferes with transgender students' education. Ms. Bruce, for example, explains that when transgender students like G.

have reported worrying about whether they can use the restroom that matches their gender identity, they have said they just don't go to the bathroom at school. That can't possibly help them learn. We don't want them preoccupied with trying not to use the bathroom, when they're supposed to pay attention to trigonometry. That can't possibly advance their education.

We want them to know where they can use the restroom, so they can feel more like anyone else in their school and not like an outsider. We want to make sure that all of our students have an opportunity to participate in everything a school has to offer, including social opportunities that happen throughout the campus. When transgender students don't use the restroom at all, they're missing an opportunity to socialize with their peers.

Bruce Interview. So, while the district court found no special hardship to G. in forcing him to use a segregated facility (or alternatively, to make himself and female students equally uncomfortable by using the girls' restroom), the fact is that such a discriminatory policy singles students out and invades their privacy by requiring transgender students to use a different restroom simply because they are

transgender¹⁰, or puts them at risk of harassment or bullying by forcing them to use facilities patently mismatched with their gender, as occurred when G. had to use the girls' restroom.

Moreover, *amici* strongly disagree that a school may discriminate against transgender students in order to accommodate complaints that other students are “uncomfortable” with sharing a restroom with a transgender person (although in *amici*'s experience those are rare or nonexistent). Over and above the fact that the law prohibits such discrimination, that is simply not how educators deal with students' discomfort with others or with themselves. Rather, to the extent that a student has concerns about sharing facilities with transgender students, schools must help the student deal with that discomfort in a way that does not impinge upon others' civil rights.

One solution is to offer private facilities to the student who does not want to use the same facilities as a transgender student, and most of the schools *amici* work within offer private facilities that may be used by persons of either gender, in addition to gender-segregated restrooms. Indeed, some students prefer to use these private facilities for any number of reasons, and are permitted to do so without the

¹⁰ See JA-32 at ¶ 27 (“[T]he separate single-stall restrooms . . . make me feel even more stigmatized and isolated than when I use the restroom in the nurse's office. They designate me as some type of ‘other’ or ‘third’ sex that is treated differently than everyone else. Everyone knows that they were installed for me in particular so that other boys would not have to share the same restroom as me.”).

need to provide any explanation – including in the rare circumstance that a student might not want to use the same facility as a transgender student. Dr. Chiasson, for example, explains that in LAUSD,

any student who, for whatever reason, feels uncomfortable in a communal setting – whether because of weight or other reasons – we will accommodate that without the need for explanation, and they can use private setting such as a nurse’s room. The sad truth is that our transgender children are significantly more likely to be the targets of student misconduct, rather than the perpetrators of it.

Chiasson Interview. Ms. Bruce similarly recounts that in DCPS,

[a]ccording to our policy guidance, if a student has a problem, we can make another bathroom available to that student. I haven’t heard from our schools, however, of students that have asked to use a different restroom in that circumstance. When I train our school staff, some want to ask hypotheticals, but in our experience, this has not been an issue. Young people are pretty savvy and comfortable, and can understand and empathize with someone who just wants to use the bathroom.

Bruce Interview. While the district court accepted the Board’s framing that the offer of private facilities to any students uncomfortable with G.’s presence in the boys’ room is a “hardship” to them (and presumed that it is *not* a hardship for G. to be excluded), *amici* point out that the solution cannot be to segregate the transgender students:

It’s our goal to have every student comfortable in their learning environment. [But if] we had a student with a health condition that wasn’t comfortable changing in a locker room with everyone else, we wouldn’t have a “health condition locker room” and a “non-health condition locker room.” This is the

same thing. This allows us to offer the same accommodation to every student to allow them to be comfortable.

Pauly Interview. Dr. Aberli agrees that “making transgender students use the nurse’s room” is no answer:

Tell me what we would say to that child – that there’s something so freakish about you, and so many people are uncomfortable with you, that you have to use a completely separate restroom than the one you feel like you should be using?

Instead, the school allows any student who wants to use a private restroom to do so. What I have clearly communicated in public, was that any student may use the front office restroom. We don’t ask why. There’s a thousand reasons that a student needs privacy, so it’s our responsibility to accommodate any student for any reason. It could be shyness, or trauma.

Aberli Interview. In other words, although the schools should accommodate requests for extra privacy when they can, no student should ever be *forced* to use separate facilities – as the Board is effectively forcing G. to do here – to accommodate the anticipated discomfort of other students.

With regard to specific concerns about “privacy,” Mr. Bourgeois points out that in his eight-year tenure at Lowell, no one has *ever* raised a specific “privacy” concern related to the school’s transgender policy. Rather,

[i]f folks raise concerns, it’s more about whether others will be “comfortable.” When they raise it as a comfort issue, we say that there are alternative facilities where your child can go. But we’re not going to tell the transgender student they can’t go where they’re comfortable.

I can still remember the remnants of white people being uncomfortable with black people being in same locker rooms and restrooms, so it's not about whether everyone is "comfortable." Just because some people were uncomfortable didn't mean you treated people as second-class citizens.

Bourgeois Interview.¹¹

III. GENDER-SEGREGATED SPACES AND ACTIVITIES ARE FULLY CONSISTENT WITH SCHOOL POLICIES RESPECTING EVERY STUDENT'S GENDER IDENTITY

Another argument Appellee has made is that permitting G. to use the boys' restroom at school could lead to the abolition of gendered restrooms and locker rooms. Contrary to that "slippery slope" argument, however, all *amici* continue to maintain gender-segregated restroom and locker room facilities. And in fact, respecting the gender identity of transgender students equally reinforces, rather than undermines, the concept of separate facilities for girls and boys. By contrast, requiring a transgender boy like G. to use the girl's restroom undermines the notion of gender-specific spaces.

¹¹ This follows Massachusetts state guidance that student discomfort with a transgender student using the same gender-segregated restroom, locker room or changing facility "is not a reason to deny access to the transgender student." Massachusetts Department of Elementary and Secondary Education, *Guidance for Massachusetts Public Schools – Creating A Safe and Supportive School Environment: Nondiscrimination on the Basis of Gender Identity*. Available at <http://www.doe.mass.edu/ssce/GenderIdentity.pdf>.

Echoing G.'s testimony that female students reacted negatively when he tried using the girls' restroom, JA-32 at ¶ 25, Dr. Chiasson offers an example from her own district:

We had a new student who was a transgender male. He was using the female facilities, incorrectly assuming that because he was a natal female, that he would be required to do so. *It was equally uncomfortable for him to use the girls' facilities as it was for the girls themselves.* When the administration learned of the situation, they told the young man that he could use the boys' facilities. Everyone was relieved.

Chiasson Letter. Mr. O'Reilly similarly commented that, until he considered the effect of forcing a transgender student to use a restroom inconsistent with gender identity, he "hadn't really understood the literal meaning of the word 'misfit.'" When forced to use the restroom for the gender they do not associate with, a student literally becomes a *misfit*: someone being forced into a place they don't belong." Interview with John O'Reilly, September 20, 2015. Notably, transgender students like G. have not sought to eliminate gender-specific facilities, but instead merely want to use the facilities that correspond with their gender identity.

Because respecting transgender students' gender identity solves the "misfit" problem in gender-segregated spaces, "[t]ransgender-affirming policies solve problems, not create them. Even if the law allowed it, forcing a transgender boy to use the female facilities would be extremely uncomfortable for all parties involved." Chiasson Interview.

CONCLUSION

Although Appellees and their proponents will argue that policies respectful of all students' gender identity are disruptive and impinge upon the rights and well-being of cisgender students, our experience as school administrators has shown otherwise: respect for a transgender student's gender identity supports the dignity and worth of all students by affording them equal opportunities to participate and learn. Moreover, such policies have not been disruptive – either to the academic climate or to the maintenance of gender-specific facilities, and instead foster the safety and privacy of all youth.

While *amici* agree with Appellant that the District's position is contrary to the law, on a more fundamental level it is contrary to the District's duty as educators, and is simply bad public policy. All students inhabit a world – both inside and outside of school – that includes transgender individuals. Pretending that this is not so for the sake of concerns that – in *amici*'s extensive experience, and in the experience of other school districts around the country with similarly inclusive policies – have been shown to be entirely unfounded, is harmful to transgender students like G., to his fellow students, and to the community at large.

Based on the foregoing, *amici* urge this Court to reverse the District Court's decision.

Dated: October 28, 2015

Respectfully submitted,
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DATED: October 28, 2015

/s/ Cynthia Cook Robertson

Cynthia Cook Robertson

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I hereby certify that, on October 28, 2015, I filed the foregoing *Amici Curiae* Brief of School Administrators from California, District of Columbia, Florida, Illinois, Kentucky, Massachusetts, Minnesota, New York, Oregon, Washington, and Wisconsin in Support of Plaintiff-Appellant with the Clerk of the Court using the CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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I certify that on October 28, 2015 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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