

No. 15-2056

In the
United States Court of Appeals
for the
Fourth Circuit

G.G., BY HIS NEXT FRIEND AND MOTHER, DEIRDRE 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
THIRTY-THREE STATES AND THE DISTRICT OF COLUMBIA
IN SUPPORT OF PLAINTIFF-APPELLANT**

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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(name of party/amicus)

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6. Does this case arise out of a bankruptcy proceeding? YES NO
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Date: May 15, 2017

Counsel for: Amici Curiae School Administrators

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I certify that on May 16, 2017 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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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	7
ARGUMENT	8
I. Policies Respectful of Every Student’s Gender Identity Minimize Disruptions and Help Create a Safe, Welcoming, and Productive Learning Environment for All.	8
A. In Contrast to Adults’ Unfounded Fears, Students’ Experiences in Schools with Inclusive Policies Have Been Positive.....	10
B. Frequently-Raised, Hypothetical Concerns Have Not Materialized.....	17
1. Concerns about restrooms have not materialized.	17
2. Concerns about locker rooms have not materialized.....	18
3. Concerns about students “posing” as transgender to gain improper access to facilities have not materialized.	19
II. Schools Can and Should Fully Respect Both the Gender Identity and the Privacy Concerns of All Students.....	22
III. Gender-Segregated Spaces and Activities are Fully Consistent with School Policies Respecting Every Student’s Gender Identity.....	26
CONCLUSION.....	28

TABLE OF AUTHORITIES

Page(s)

Other Authorities

Arthur DiBenedetto Interview, November 29, 2016	24
Brian Schaffer Interview, June 1, 2016	21
Denise Palazzo Interview, October 3, 2015.....	16, 19
Diana Bruce Interview, October 5, 2015	passim
Dr. David Vannasdall Interview I, September 23, 2015.....	12, 13, 14, 19
Dr. David Vannasdall Interview II, September 9, 2016	11, 23, 24
Dr. Eldridge Greer Interview, October 14, 2016	11, 21
Dr. Judy Chiasson Interview, September 23, 2015	passim
Dr. Judy Chiasson Testimony to the California Senate Education Committee on A.B. 1266 (June 12, 2013), <i>available at</i> https://www.youtube.com/watch?v=Xmq9dIQdsNE	8, 9
Dr. Rachel Santa Interview, May 27, 2016.....	11, 16, 21
Dr. Thomas Aberli Interview, October 7, 2015	passim
Dr. Thomas Aberli Testimony before the Kentucky Senate Education Committee on S.B. 76 (Feb. 19, 2015), <i>video excerpt available at</i> https://www.youtube.com/watch?v=QodplMWsEvQ	15
Howard Colter Interview, June 6, 2016.....	10
http://schools.jefferson.kyschools.us/High/Atherton/SBDM.html	15
Interview with Dr. Pamela Retzlaff, November 17, 2016, https://www.genderspectrum.org/blog/gender-inclusive-leadership-in- action-episode-1/	18, 27
John O'Reilly Interview, September 20, 2015	27
Julie Bosman & Motoko Rich, As Transgender Students Make Gains, Schools Hesitate Over Bathroom Policies, N.Y. TIMES, Nov. 4, 2015, at A14, <i>available at</i> http://www.nytimes.com/2015/11/04/us/as-transgender- students-make-gains-schools-hesitate-at-bathrooms.html	14
Kathy Canavan, Transgender bathrooms already happening in Delaware, DELAWARE BUSINESS TIMES, May 13, 2016 <i>available at</i>	

http://www.delawarebusinesstimes.com/transgender-bathrooms-already-happening-delaware/	11, 16
Ken Kunin Interview, June 10, 2016	19, 25
Lauren Slager, Schools Take Steps to Address Needs of LGBTQ Students, mLIVE Michigan, April 21, 2016, http://www.mlive.com/news/ann-arbor/index.ssf/2016/04/schools_take_steps_to_address.html	24
Letter from DOJ and OCR to Arcadia School District, <i>available at</i> http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadialetter.pdf	13
Letter from Dr. Judy Chiasson to Dr. Thomas Aberli, May 29, 2014.....	20, 27
Mary Doran Interview, October 16, 2015.....	19
Matthew Haney Interview, June 6, 2016	23
Peyton Chapman Interview, May 27, 2016	16
Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Office of Civil Rights, OCR Case No. 09-12-1020/DOJ Case No. 09-12-1020 (July 24, 2013), <i>available at</i> http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagreement.pdf	13
Robert A. Motley Interview, October 11, 2016.....	9
Roger Bourgeois Interview, October 8, 2015	10, 20, 24, 27
Sherie Hohns Interview, October 15, 2015.....	11

INTEREST OF *AMICI CURIAE*¹

Amici are school districts, 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, inclusive policies and practices for their transgender students.² Together, *amici* represent a broad cross-section of schools and districts from thirty-three States plus the District of Columbia, collectively responsible for educating approximately 2.1 million students annually. *Amici* 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 in their schools. Counsel for *amici* conducted interviews with certain individual *amici* in Fall 2015, Spring 2016, and Fall 2016 to obtain their input for this or earlier versions of this brief; synopses of *amici* interviews are on file with *amici*'s counsel Pillsbury Winthrop Shaw Pittman LLP.

¹ No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

² With the exception of *amici* San Diego Cooperative Charter Schools, San Diego Unified School District, San Francisco Unified School District, Achievement First Public Charter Schools, Washoe County School District, School District of South Orange and Maplewood, Las Cruces Public Schools, Arlington County School Board, Montpelier Public Schools, and Washington Central Supervisory Union, *amici* join this brief in their individual capacities based on their experiences as school administrators and not as representatives of their respective schools or districts.

Amici who were not interviewed or are not quoted in this brief have experiences consistent with those expressed herein.

Below is a list of *amici* and their background and relevant experience; the Addendum includes additional information for each *amicus*.

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³ The acronym “LGBTQ” stands for lesbian, gay, bisexual, transgender, and questioning.

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SUMMARY OF ARGUMENT

Thousands of transgender students attend American schools every day, many of whom – such as Plaintiff-Appellant Gavin Grimm – 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.

Amici's collective experiences refute the hypothetical concerns raised here by Defendant-Appellee Gloucester County School Board: that allowing all students to access sex-specific facilities and amenities that match their gender identity will lead to general disruption; will violate the privacy or "comfort" of other students; or will lead to the abolition of gender-segregated facilities and activities for all students. *Amici* have addressed and in some cases personally grappled with many of the same fears and concerns in their own schools and districts. However, in *amici*'s professional experience, none of those fears and concerns has materialized in the form of actual problems in their schools. Instead, inclusive policies not only fully support the reality of transgender students' circumstances, but also foster 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.

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 has materialized.

Dr. Judy Chiasson Testimony to the California Senate Education Committee on A.B. 1266 (June 12, 2013) (“Chiasson Testimony”), *available at* <https://www.youtube.com/watch?v=Xmq9dIQdsNE> (last visited Feb. 28, 2017).

As educators who have devoted much of their lives to young people, *amici* recognize that all students deserve equal respect of and equal treatment by their educators. *Amici*’s schools and districts allow transgender students access to the same facilities and opportunities as other students of the same sex. *Amici*’s collective experience is that inclusive policies are necessary for a learning environment that is accessible, safe, and welcoming, which in turn enhances the educational experience for all students. Respecting students’ gender identity eliminates the disruption that results from singling out, stigmatizing, and discriminating against transgender students, and avoids disrupting the normal social interactions involved in use of communal facilities. By contrast, refusing to respect a student’s gender identity is “toxic for the student – it says ‘you are not welcome,’ every day.” Robert Motley Interview, Oct. 11, 2016.

Defendant-Appellee is reacting to fears over the imagined consequences of fully integrating transgender students into the school community. *Amici*’s experiences reveal that these fears are unfounded. *Amici*’s experiences with the inclusive policies in place in their schools – some for more than a decade – have instead been overwhelmingly positive. Far from being disruptive or potentially

unsafe, inclusive policies have *minimized* disruption and safety concerns. The only disruption is caused by a lack of clarity about how to support transgender students. As Ms. Bruce of the District of Columbia observes, “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[.]” Diana Bruce Interview, Oct. 5, 2015 (“Bruce Interview”). As educators, “[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.” *Id.* The results have been overwhelmingly successful, not only for transgender students, but for all students, faculty, administrators, and communities as a whole.

A. In Contrast to Adults’ Unfounded Fears, Students’ Experiences in Schools with Inclusive Policies Have Been Positive.

In *amici*’s professional experience, fears and concerns about inclusive policies are almost exclusively held by adults, not students. Students often set a leading example recognizing transgender students’ rightful place in school facilities that match their gender identity. *E.g.*, Howard Colter Interview, June 6, 2016 (“As to the students, I am most impressed. They are very understanding and accepting of their classmates. It feels like the adult community is struggling with it more.”); Bruce Interview (“Young people are pretty savvy and comfortable, and can understand and empathize with someone who just wants to use the bathroom.”); Roger Bourgeois Interview, Oct. 8, 2015 (“Bourgeois Interview”)

(“Most of the problem is with the adults; the students are pretty accepting of these issues.”); Dr. Eldridge Greer Interview, Oct. 14, 2016 (“Greer Interview”)
 (“Students are much more resilient and forward-thinking than we as adults are.”);
 Dr. Rachel Santa Interview, May 27, 2016 (“Santa Interview”) (“Adults have more
 issues than the students do.”); Dr. David Vannasdall Interview, Sept. 9, 2016
 (“Vannasdall Interview II”) (“With the kids, there hasn’t been a problem at all.”);
 Kathy Canavan, *Transgender bathrooms already happening in Delaware*,
 DELAWARE BUSINESS TIMES, May 13, 2016 (“Meece Interview”) (quoting Gregory
 Meece) (“We had a few parents ask some questions, and we’ve had some express
 thoughts on it, but the students are 100% accepting.”)⁴; Sherie Hohs Interview,
 Oct. 15, 2015 (“This isn’t a kid issue. It’s an adult issue.”). Based on her more
 than ten years’ experience working with the inclusive policies in place at Los
 Angeles Unified School District (“LAUSD”), the second-largest school district in
 the country, Dr. Judy Chiasson recounts:

Our experience has been that the fears of the adults rarely play 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. 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.

⁴ Available at <http://www.delawarebusinesstimes.com/transgender-bathrooms-already-happening-delaware/> (last visited Feb. 28, 2017).

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

Several *amici* have themselves wrestled with many of the same concerns Defendant-Appellee has raised, when first faced with the need to adopt an inclusive policy. Indeed, Dr. Vannasdall’s district’s initial experience with a transgender student resulted in a complaint and investigation by the U.S. Department of Justice (“DOJ”) and the U.S. Department of Education, Office for Civil Rights (“OCR”). He well understands what it is like to grapple with the actual and anticipated negative reactions from some parents and community members. Administrators and others within the school district were concerned that respecting the transgender student’s gender identity by treating him like any other boy would be disruptive and burdensome. Dr. David Vannasdall Interview, Sept. 23, 2015 (“Vannasdall Interview I”).

A simple, open conversation between administrators and the student and his family revealed their concerns to be erroneous assumptions. *Id.* In that conversation, 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 the administrators understood that the student was simply asking to be treated like any other boy, their obligation as educators became clear: to help this student, and all of their students, “come to school ready to learn.” *Id.*

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.

Id.

Dr. Vannasdall's district reached a voluntary resolution agreement in 2013 with the DOJ and OCR. The resolution agreement included adopting a comprehensive policy respecting students' gender identity covering, among other things, equal access to sex-segregated restrooms and locker rooms consistent with gender identity.⁵ The outcome over the past three years has been "very positive for the school, the district, and the students." *Id.*

Dr. Vannasdall now regularly consults with educators across the country, giving informal advice and guidance on inclusive policies for transgender students.

Id. He understands what it is like to grapple with the actual and anticipated concerns from parents and the community, but when those are the primary concern, "you have people making decisions from the basis of fear and extremes,

⁵ See Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Office of Civil Rights, OCR Case No. 09-12-1020/DOJ Case No. 09-12-1020 (July 24, 2013), *available at* <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf> (last visited Feb. 28, 2017). See also Letter from DOJ and OCR to Arcadia School District (July 24, 2013), *available at* <http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadialetter.pdf> (last visited Feb. 28, 2017).

and that's never good for kids." Julie Bosman & Motoko Rich, *As Transgender Students Make Gains, Schools Hesitate Over Bathroom Policies*, N.Y. TIMES, Nov. 4, 2015, at A14 (quoting Dr. Vannasdall).⁶ The "game-changer" for Dr. Vannasdall's district and for other districts with which he has consulted is when educators "remember what we are here to do," *i.e.*, to help kids learn. Vannasdall Interview I. Dr. Vannasdall believes that generally school administrators new to dealing with transgender students are "overthinking this issue. This doesn't need to be as tough as some people make it. It can be a good experience for that student and other students as well." *Id.*

Similarly, Dr. Thomas Aberli of Louisville, Kentucky was unfamiliar with this issue when it first arose, and had concerns about possible disruptions or privacy issues. But Dr. Aberli tried to understand the student's request on both a personal level and in terms of the legal obligations of the schools. Dr. Thomas Aberli Interview, Oct. 7, 2015 ("Aberli Interview"). He then developed a policy through an extensive collaborative effort with a panel of school administrators, teachers and parents, in which "[w]e considered the issue very carefully and thoughtfully, and posted all of the evidence we reviewed online." Aberli

⁶ A version of this article is available online at: <http://www.nytimes.com/2015/11/04/us/as-transgender-students-make-gains-schools-hesitate-at-bathrooms.html> (last visited Feb. 28, 2017).

Interview.⁷ Some in the community expressed the view that inclusive policies might be fine for schools in Los Angeles, but not in their own community (Kentucky). As Dr. Aberli pointed out in his testimony to the Kentucky Senate Education Committee, however, 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.

Aberli Testimony. Understanding that the policy is about protecting students' basic civil rights helped clarify the issue.

It 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.

Aberli Interview. When the issue was unfamiliar to many in the community, adults and a handful of students questioned the new policy.

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

⁷ See also Dr. Thomas Aberli Testimony before the Kentucky Senate Education Committee on S.B. 76 (Feb. 19, 2015) ("Aberli Testimony"), video excerpt available at <https://www.youtube.com/watch?v=QodplMWsEvQ> (last visited Feb. 28, 2017). The materials Dr. Aberli references as having been posted online are available at <http://schools.jefferson.kyschools.us/High/Atherton/SBDM.html> (last visited Feb. 28, 2017).

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

Id. Despite the initial opposition, in practice Dr. Aberli “received zero complaints regarding a specific incident of concern for a violation of privacy. The concerns raised by individuals have all been philosophical.” *Id.*

Indeed, in *amici*'s experience, “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.” Denise Palazzo Interview, Oct. 3, 2015 (“Palazzo Interview”). “When kids see that you are respecting all students, then they know that they will be respected. We are showing them how to treat people respectfully and know they will be treated the same.” Santa Interview. As Principal Peyton Chapman of Oregon relates:

Students have high integrity radars – if some youth are made fun of, then they know it could happen to them. These fears keep all students in small boxes. They don't try things out, engage their creativity and figure out who they are and can be. If schools define “who” students need to be and how they should behave, then they are less free to explore themselves, cultures and communities.

Peyton Chapman Interview, May 27, 2016. A policy respectful of every student's gender identity, by contrast, fosters mutual respect and “creates open and innovative environments.” *Id.*; *see also* Meece Interview (“I'm really proud of the students who see a student as a human being before they see gender or disability or race.”)

B. Frequently-Raised, Hypothetical Concerns Have Not Materialized.

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.

No student should be denied access to any gender-specific facilities that are available to other students of the same gender identity solely because he or she is transgender. *Amici* have experience with the hypothetical fears and concerns commonly raised when schools integrate transgender students into gender-specific facilities, 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. Concerns about restrooms have not materialized.

“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 all schools routinely “deal[] with many more adolescent behavior issues than just who’s using the bathroom based on gender identity,” and are adept at addressing those issues. *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 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 of Kentucky 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.

Aberli Interview; *see also Gender Inclusive Leadership in Action*, Video Interview by Gender Spectrum with Dr. Pamela Retzlaff, Nov. 17, 2016 ("Retzlaff Interview")⁸ ("He's interested in using the toilet, that's it. Not looking at anybody's genitals. Not doing anything else in the bathroom. It's just using the toilet.").

2. Concerns about locker rooms have not materialized.

Although the present appeal focuses on restroom policies, *amici's* experiences with inclusive locker room policies have also been positive. Diana Bruce explains that "our transgender students are not interested in walking around the locker rooms and checking out anatomy. They're just trying to get through

⁸ Available at <https://www.genderspectrum.org/blog/gender-inclusive-leadership-in-action-episode-1/> (last visited Feb. 28, 2017).

P.E. safely.” Bruce Interview. Similarly, transgender students often have their own sense of modesty, particularly about differences in their bodies that do not match their gender identity. As Dr. Vannasdall explains, “Transgender [s]tudents dealing with this are very discreet. . . . The student’s goal is just not to stand out.” Vannasdall Interview I. Mary Doran of Minnesota concurs: “[W]hen the *coaches* tell me ‘this [transgender policy] isn’t an issue, isn’t a big deal,’ that really says something.” Mary Doran Interview, Oct. 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. “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; *see also* Ken Kunin Interview, June 10, 2016 (“Kunin Interview”) (“The real risk is to people who identify as transgender, or gay, or just ‘other.’”). 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 students “posing” as transgender to gain improper access to facilities have not materialized.

Amici have also frequently addressed the concern that transgender students might just be “confused” or likely to change their minds often about their gender

identity, or that non-transgender students might falsely claim to be transgender for some nefarious purpose. Those concerns have not materialized either. 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:

It 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. [. . .]

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. . . . It is not subject to arbitrary whims.

Letter from Dr. Judy Chiasson to Dr. Thomas Aberli, May 29, 2014 ("Chiasson Letter").⁹ Similarly, Mr. Bourgeois explains that at his school in Massachusetts,

A student can't just show up 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 we would not allow that. There's a process we go through to work with them and their families, and verify their identity.

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 . . . as transgender to be predatory. . . . 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

⁹ A copy of Dr. Chiasson's letter to Dr. Aberli is included among the materials posted by Atherton. See footnote 7, *supra*.

end, wear female attire, present as female to all of his friends and teachers, just so he can go into the female locker room.

Chiasson Interview; *see also* Santa Interview (“The hysteria is from misunderstanding. The concern is that the policy will allow a typical high school boy to say he is transgender so he can go peek at girls in the bathroom. I haven’t seen it[.]”). Indeed, schools are very adept at dealing with instances of misbehavior in restrooms and locker rooms precisely because it is not particularly 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 misconduct.

Id.; *see also* Greer Interview (“There are easier ways to get into the girls’ bathroom [than posing as transgender] – and we have policies and consequences to address that.”).

In other words, schools routinely deal with all sorts of behavioral problems – and *amici* “would have a problem” with any student actively violating another student’s privacy, and would deal with that misconduct as it arises. Brian Schaffer Interview, June 1, 2016. Parents, teachers, and administrators alike are always looking out for the safety of all students. A policy respecting transgender students is far more likely to thwart misbehavior in these spaces than to cause it.

II. Schools Can and Should Fully Respect Both the Gender Identity and the Privacy Concerns of All Students.

Many concerns raised with regard to inclusive policies for transgender students involve perceived threats to the “privacy” or “comfort” of other students. As educators, *amici* are respectful of the needs and concerns of all of their students. But *amici* strongly disagree that a school should discriminate against transgender students in order to accommodate complaints that *other* students are “uncomfortable” with sharing a restroom with a transgender person. That is simply not how educators deal with students’ discomfort with others or with themselves. 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 other students’ rights to equal treatment.

One simple solution is to offer private facilities to the student who does not want to use the same facilities as a transgender student. Most of *amici*’s schools offer private facilities that may be used by persons of either gender, in addition to gender-segregated facilities. Ms. Bruce recounts that, in her schools,

[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.

Bruce Interview. Indeed, some students may prefer to use these private facilities for any number of reasons, and are permitted to do so without the need to provide an explanation – including in the rare circumstance that a student might not want to use the same facility as a transgender student.

[A]ny student who, for whatever reason, feels uncomfortable in a communal setting – whether because of weight, personal comfort, body image, social anxiety, or other reasons – we will accommodate that without the need for explanation, and they can use a private setting such as a nurse’s room.

Chiasson Interview. Likewise, Dr. Aberli’s school allows any student who wants to use a private restroom to do so.

What I have clearly communicated in public is 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.

When separate facilities are not available or practical to meet student requests for additional privacy, there are other means of providing extra privacy to students when needed, such as using a curtain to create a separate area, or allowing a student to use the locker room before or after other students. Matthew Haney Interview, June 6, 2016. Accommodating individual students’ needs is “something educators do every day,” and educators have proven themselves “very flexible and adaptable in adopting new policies for their students” in order to meet their needs.

Vannasdall Interview II. Providing transgender students what they need to thrive in school is no different. Lauren Slager, *Schools Take Steps to Address Needs of LGBTQ Students*, mLIVE Michigan, Apr. 21, 2016 (quoting Craig McCalla) (“We make accommodations for all kids in all different ways. We always have, and there’s no reason not to for a specific group of people.”).¹⁰

Even in the rare case where a student might express discomfort with sharing facilities with a transgender student, the solution is not to deny access to the transgender student. Any student expressing such discomfort should be offered alternative facilities or arrangements to address their concerns. As Mr. Bourgeois explains:

[W]e’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; *see also* Arthur DiBenedetto Interview, Nov. 29, 2016 (“The outcry will be similar to the arguments put forth by those who were faced with black students in white schools when desegregation became the law.”). Mr. Kunin of Maine agrees that “being uncomfortable doesn’t overrule someone’s rights,” but he also emphasizes that “there are also ways to support the person who is

¹⁰ Available at http://www.mlive.com/news/ann-arbor/index.ssf/2016/04/schools_take_steps_to_address.html (last visited Feb. 28, 2017).

uncomfortable – we would want that person to feel safe and participate, too.”

Kunin Interview. Although schools should accommodate requests for extra privacy from any student, no transgender student should ever be *forced* to use separate facilities in order to accommodate the actual or anticipated discomfort of other students.

Particularly in the educational context, policies like that of Gloucester County School Board single out and create a serious dilemma for transgender students like Gavin – requiring him either to use a separate restroom simply because he is transgender, or to use facilities that are patently inconsistent with his gender. Having to navigate this problem daily seriously interferes with transgender students’ education, impairs their ability to learn and socialize, and results in real physical and emotional harm. Ms. Bruce explains that when transgender students “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.” Bruce Interview.

We don’t want them preoccupied with trying not to use the bathroom when they’re supposed to pay attention to trigonometry. . . . 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.

Id.; see also Kunin Interview (“A school day is too long a time to wait to use the restroom because one is uncomfortable with the options.”). Although, as noted above, *amici* routinely offer separate facilities to any student requesting additional

privacy for any reason (including but certainly not limited to transgender students), no student should ever be forced to use a separate facility simply because they are transgender. Dr. Aberli agrees that “making transgender students use the nurse’s room” is no answer at all:

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?

Aberli Interview. Instead, in *amici*’s experience, all students’ needs are best served when educators can treat all students equally.

III. Gender-Segregated Spaces and Activities Are Fully Consistent with School Policies Respecting Every Student’s Gender Identity.

Amici have also addressed the lurking hypothetical concern that permitting individuals to use facilities consistent with their gender identity will lead to the abolition of gender-specific facilities. Contrary to that “slippery slope” argument, however, all *amici* continue to maintain gender-segregated facilities in their schools. In fact, respecting the gender identity of transgender students *reinforces* the concept of separate facilities for girls and boys; requiring a girl who is transgender to use the boys’ restroom or a boy who is transgender to use the girls’ restroom *undermines* the notion of gender-specific spaces.

Dr. Chiasson offers an example from her own district, in which a new male student who was transgender had been using the female facilities, incorrectly assuming that, because he was assigned a female sex at birth,

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 (emphasis added); *see also* Retzlaff Interview (“[H]is classmates were also somewhat relieved because they knew, too, something’s not right [about a boy who is transgender being forced to use the girls’ restroom].”). 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.” John O’Reilly Interview, Sept. 20, 2015.

Transgender students (like Gavin here) have not sought to eliminate gender-specific facilities – they merely want to use the facilities that correspond with their gender identity. “Far from being disruptive, our experience has been that those students just want to blend in.” Bourgeois Interview. “Transgender-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

Defendant-Appellee assumes that policies respectful of an individual’s gender identity are disruptive and impinge upon the rights and well-being of non-transgender individuals. *Amici’s* experience as school administrators has proven otherwise: showing respect for each 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 protect the safety and privacy of all youth. *Amici* respectfully request that the dismissal of Plaintiff-Appellant’s Title IX claim be reversed, and that the Court hold that Plaintiff-Appellant is entitled to a preliminary injunction.

Respectfully submitted,

Dated: May 15, 2017

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Fed. R. App. P. 29(d) and Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,706 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman style, with 14-point font.

DATED: May 15, 2017

/s/ Cynthia Cook Robertson

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CERTIFICATE OF SERVICE

I hereby certify that, on May 15, 2017, I filed the foregoing *Amici Curiae* Brief of School Administrators from Thirty-Three States and the District of Columbia 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.

/s/ Cynthia Cook Robertson

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