

February 12, 2019

School Board of Directors
Eastern Lancaster County School District
669 East Main Street
New Holland, PA 17557

Re: Rights of Transgender Students

Dear Board Members:

We write, as education advocates, to express our support for the Eastern Lancaster County School District's (Elanco's) current practice of allowing transgender students access to the facilities with which they identify. This practice is in line with state and national civil rights laws and allows all students to benefit from an inclusive learning environment that celebrates diversity and affirms students.

The Education Law Center is a non-profit legal advocacy organization dedicated to ensuring access to a quality public education for all children in Pennsylvania. For over 40 years, ELC has advocated on behalf of the most at-risk students — children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, lesbian, gay, bisexual, transgender, and/or queer (LGBTQ) students, and children experiencing homelessness.

As you know, the Pennsylvania Human Relations Act (PHRA), Title IX, and our state and federal constitutions protect the rights of transgender students to be free from discrimination and to be affirmed in their gender identities in public schools.¹ The Pennsylvania Human Relations Commission (PHRC) recently clarified that, while not specifically enumerated as a protected class, transgender status or gender identity are included within the PHRA's prohibition of sex discrimination.² Similarly, case law interpreting Title IX, the federal law prohibiting discrimination on the basis of sex, overwhelmingly affirms the rights of transgender students.³ Indeed, the Third Circuit recently upheld the legality of a trans-affirming policy similar to Elanco's current practices.⁴ The appellate court rejected arguments by six cisgender Boyertown students that the policy violates a legal right to privacy and affirmed an earlier ruling that Boyertown's transgender policy serves a compelling state interest in not discriminating against transgender students and "fosters an environment of inclusivity, acceptance, and tolerance."⁵ Together

¹ For a discussion of how transgender students are protected under the Constitution, see *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 287–88 (W.D. Pa. 2017); *A.H. by Handling v. Minersville Area Sch. Dist.*, 290 F. Supp. 3d 321, 331 (M.D. Pa. 2017). *But see Johnston v. Univ. of Pittsburgh of Com. Sys. of Higher Educ.*, 97 F. Supp. 3d 657, 672 (W.D. Pa. 2015), *appeal dismissed* (Mar. 30, 2016).

² See Pa. Human Relations Comm'n, Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act (Aug. 2, 2018).

³ See *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017), *cert. dismissed sub nom. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ. v. Whitaker ex rel. Whitaker*, 138 S. Ct. 1260, 200 L. Ed. 2d 415 (2018); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018); *Evancho*, 237 F. Supp. 3d 267; *A.H.*, 290 F. Supp. 3d 321.

⁴ See *Boyertown*, 897 F.3d 518, 524 (describing Boyertown's policy as permitting transgender students to use the multiuser facilities that aligned with their gender identities and making available single user facilities for any students who didn't feel comfortable using shared facilities).

⁵ *Id.* at 529.

with caselaw finding that preventing transgender students from using the facilities with which they identify is sex discrimination under Title IX,⁶ federal precedent weighs heavily in favor of supporting the rights of transgender students.

In addition to the legal obligations described above, we urge the committee to consider both the positive impact of affirming transgender students as well as the negative outcomes associated with adopting unsupportive policies or practices. When transgender youth are affirmed in their gender identities, their risk of suicide and depression lowers.⁷ Conversely, youth who attend schools where they are not affirmed are more likely to experience negative mental and physical health consequences. For example, transgender people who are denied access to public facilities consistent with their gender identity frequently experience adverse health problems related to avoiding the use of an inappropriate bathroom.⁸

Additionally, students who are discriminated against on the basis of their sexual orientation or gender identity are more likely to suffer academically. Students who are subjected to discrimination related to their status as LGBTQ are more likely to miss school than their straight, cisgender counterparts. Experiencing LGBTQ-related discrimination is also associated with students having lower GPAs, lower self-esteem, and higher rates of depression.⁹

We urge the school board to stand with transgender and gender-nonconforming students, some of whom are out and some of whom may be closeted for fear of having their private lives discussed at a school board meeting. Affirming the rights of LGBTQ students complies with governing federal and state civil rights laws and is the right thing to do—legally and ethically. Education Law Center remains available to discuss these important concerns at your convenience.

Sincerely,

Lizzy Wingfield, Esq., Stoneleigh Emerging Leader Fellow
Maura McNerney, Esq., Legal Director
EDUCATION LAW CENTER -PA
1315 Walnut Street, Fourth Floor
Philadelphia PA 19107
lwingfield@elc-pa.org
215-238-6970

Cc: Jeffrey Litts, Esq.

⁶ See *Whitaker*, 858 F.3d 1034 (7th Cir. 2017); *Evancho.*, 237 F. Supp. 3d 267; *A.H.*, 290 F. Supp. 3d 321.

⁷ See *Using Chosen Names Reduces Odds of Depression and Suicide in Transgender Youths*, UT NEWS (Mar. 20, 2018), <https://news.utexas.edu/2018/03/30/name-use-matters-for-transgender-youths-mental-health/> (reporting transgender youth whose pronouns and names are respected have depression and suicidality rates that are much lower than their peers who are consistently misgendered).

⁸ Among the transgender people who responded to one study about restroom access, 54% reported adverse health effects from trying to avoid using public restrooms, such as dehydration, kidney infections, and urinary tract infections; 10% of youth respondents who attended school in D.C. reported a negative impact on their education, including having excessive absences and dropping out of school due to issues related to restroom access; and 58% reported that they have avoided going out in public due to a lack of safe public restroom facilities. See Herman, Jody L., *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives*, The Williams Institute, UCLA Sch. Of Law (Jun. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Herman-Gendered-Restrooms-and-Minority-Stress-June-2013.pdf>.

⁹ GLSEN, 2017 NATIONAL SCHOOL CLIMATE SURVEY 46, 50–51 (2017).