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September 8, 2025

Berwick Area School District
Board of Education
500 Line Street
Berwick, PA 18603
*Copy to: Robert Bull, Esq.*

Dear School Board Directors,

Education Law Center of Pennsylvania (ELC) provides this letter in response to concerns brought to our attention by parents and community members in Berwick Area School District (District) regarding proposed policies 216.2 Student Records and 719 Multi-User Privacy Facilities which discriminate against transgender and nonbinary students and open the District to litigation. We demand the Board and District uphold its nondiscrimination obligations under the law and reject these proposed policies.

## I. Federal and State Law Require Nondiscrimination Protections and Equitable Access For LGBTQ Students

First, the District's legal obligations to LGBTQ students do not arise from and are not limited to any federal executive action. Students' rights – and schools' liability – are identified in federal and state constitutions, statutes and regulations, and case law interpreting these. A presidential executive order does not have the force of law and cannot supersede federal and state statutes or case law.[1] Moreover, because executive orders do not have the force of law, they cannot preempt state law. For example, a federal district court judge in Pennsylvania noted in court on March 4, 2025 that an "executive order [about girls' sports] specifically says it does not change the law" as she rejected a cisgender student athlete's request for a broad temporary ban on transgender students playing sports.[2] The judge subsequently dismissed all of the claims brought to challenge a trans students' right to play.[3] Where federal executive actions overreach their authority and contradict federal or state law, they are subject to legal challenge. Many of President Trump's executive actions continue to be challenged through litigation across multiple issue areas, including the rights of students and legal obligations of schools. For an overview and

[1] *See, e.g.*, *Local 1498, Am. Fed'n Gov't Emps. v. Am. Fed'n Gov't Emps.*, 522 F.2d 486, 491 (3d Cir. 1975) (holding that an executive order "cannot attain the status as a 'law of the United States'" if it regulates "solely as a product of executive authority and not as a consequence of congressional law making").
[2] Order Denying Plaintiff's Motion for a Temporary Restraining Order, *Magalengo v. U.S. Dep't of Educ.*, No. 25-cv-00325, (E.D. Pa. Mar. 4, 2025). See Maddie Hanna, *A federal judge rejected a Quakertown student's motion to bar transgender athletes from girls' sports*, PHILA. INQUIRER (Mar. 4, 2025), https://www.inquirer.com/education/trans-athlete-quakertown-colonial-plymouth-whitemarsh-20250304.html
[3] *Magalengo v. PIAA et al*, No. 25-325, 2025 WL 2200916 (E.D.Pa. Aug. 1, 2025).

status of the many legal challenges, see Education Counsel's Summary and Analysis of Trump Administration Executive Actions Impacting Education.[4]

The U.S. Supreme Court and many federal courts have consistently affirmed that discrimination on the basis of sexual orientation, transgender status, gender identity, or gender expression is unlawful discrimination "on the basis of sex," and preventing LGBTQ+ students from accessing programs and facilities in schools violates Title IX and other civil rights laws.[5]

The Third Circuit – the controlling federal court in Pennsylvania – has recognized that school districts have a "compelling interest in protecting transgender students" and described:

> When a school promotes diversity and inclusion, "classroom discussion is livelier, more spirited, and simply more enlightening and interesting [because] the students have the greatest possible variety of backgrounds." Students in diverse learning environments have higher academic achievement leading to better outcomes for all students. Public education "must prepare pupils for citizenship in the Republic," and inclusive classrooms reduce prejudices and promote diverse relationships which later benefit students in the workplace and in their communities.[6]

The Third Circuit found that "[t]hese values serve an important educational function for both transgender and cisgender students."[7] Discrimination at school creates particularly severe risks for transgender students, the Court held, because "[m]istreatment of transgender students can exacerbate gender dysphoria, lead to negative educational outcomes, and precipitate self-injurious behavior."[8] In short, "[w]hen transgender students face discrimination in schools, the risk to their wellbeing cannot be overstated."[9]

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[4] Available at, https://educationcounsel.com/our_work/publications/2025-federal-executive-actions/educationcounsel-s-summary-and-analysis-of-trump-administration-executive-actions-impacting-education

[5] *See, e.g., Bostock v. Clayton Cnty.*, 590 U.S. 644, 140 S.Ct. 1731 (2020) (holding that dismissal of an employee for being gay or transgender is sex-based discrimination under Title VII); *B.P.J. by Jackson v. W. Virginia State Bd. of Educ.,* 98 F.4th 542 (4th Cir. 2024); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), as amended (Aug. 28, 2020); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017) (Title IX); *Evancho v. Pine-Richland Sch. Dist*., 237 F. Supp. 3d 267, 288 (W.D. Pa. 2017); *M.A.B. v. Bd. of Educ. of Talbot Cnty.*, 286 F. Supp. 3d 704, 719 (D. Md. 2018) (Title IX). *See also Parents for Privacy v. Barr*, 949 F.3d 1210, 1239-40 (9th Cir. 2020) (Title IX); *Doe by & through Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 535 (3d Cir. 2018) (Title IX); *United States EEOC v. Scott Med. Health Ctr., P.C.*, 217 F. Supp. 3d 834, 841 (W.D. Pa. 2016) (gay male employee stated a claim of sex discrimination based on sex stereotyping that a person should conform to heterosexuality).

[6] *Doe v. Boyertown Area School Dist*., 897 F.3d at 529 (holding cisgender students could not establish likelihood of success on constitutional privacy claim and upholding school policy permitting transgender students to use bathroom facilities aligned with their gender identity).

[7] *Id.*

[8] *Id.* at 529.

[9] *Id.*

The Pennsylvania Constitution also prohibits discrimination based on sex.[10] Additionally, Pennsylvania's anti-discrimination statute, the Pennsylvania Human Relations Act (PHRA),[11] prohibits discrimination in schools on the basis of sex, including gender identity, sexual orientation, and other characteristics.[12] Effective Aug. 16, 2023, PHRA's regulations were amended to more explicitly identify conduct that constitutes illegal sex-based discrimination.[13] Importantly, the PHRA states that its prohibitions against discrimination "shall be construed liberally."[14] Students are protected against discrimination on the basis of sex, including "sex assigned at birth, gender identity or expression, affectional or sexual orientation, and differences in sex development."[15] PHRC guidance expansively protects gender identity, which is one's "innermost concept of self as male, female, a blend of both or neither."[16]

Gender expression is also broadly defined as the external "appearance of one's gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine."[17] All gender identities and expressions, including those held by transgender students, are protected by the PHRA.[18] This protection is also inclusive of the ways that students' understanding of these identities evolve over time.

Pennsylvania courts have held school districts responsible for discrimination against students based on gender identity under the PHRA. A Pennsylvania state court entered a $500,000 damages award and another $500,000 attorney fees charged against a school district for violating the Human Relations Act by failing to intervene and address the bullying and harassment a student experienced from other students due to her gender presentation and not conforming to gender stereotypes.[19]

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[10] *See* Pa. Constit. Art. I, § 28 ("Equal Rights Amendment"); see also *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Human Svs.*, 309 A.3d 808, 868-69, 869 n. 51 (Pa. 2024) (finding a sex-based distinction is presumptively unconstitutional and requires a compelling state interest).

[11] Pa. Human Relations Act, 43 PA. STAT. ANN. § 953.

[12] *Id.; id.* § 954(l).

[13] Protected Classes Under the PHRA and PFEOA, 16 PA. CODE §§ 41.201-41.207 (final regulations defining terms related to sex, sexual orientation, and gender identity used in the PHRA and PFEOA); Pennsylvania Human Relations Commission, Guidance on Discrimination on the Basis of Sex under the Pennsylvania Human Relations Act 2-3 (Mar. 3, 2021), https://www.phrc.pa.gov/AboutUs/Documents/APPROVED%20Sex%20Discrimination%20Guidance%20PHRA.pdf (delineating prohibitions in the PHRA against discrimination on the basis of sex, prohibit discrimination on the basis of sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression).

[14] 16 Pa. Code § 42.2.

[15] 16 Pa. Code § 41.206.

[16] Pennsylvania Human Relations Commission, *Guidance on Discrimination on the Basis of Sex Under the Pennsylvania Human Relations Act* 3 (Mar. 3, 2021), https://www.pa.gov/content/dam/copapwp-pagov/en/phrc/documents/Sex Discrimination Guidance PHRA-3-3-2021.pdf.

[17] *Id.*

[18] 16 Pa. Code § 41.204 (definition of gender identity); 16 Pa. Code § 41.206 (sex discrimination includes gender identity).

[19] *Wible v. School District of Philadelphia*, No. 15-043169, 1392 CD 2018 (Phila. Cty. Ct. of Comm. Pls. 2018)(judgment entered for student plaintiff in the amount of $500,000 damages and an additional $578,000 in attorney fees), https://www.berneylaw.com/wp-content/uploads/2017/10/Opinion-Rule-1925.pdf .

## I. Proposed Policy 719 (Multi-User Privacy Facilities) Violates the Law and Must Be Rejected

Multiple courts, including the highest federal court in Pennsylvania, have held that school districts cannot discriminate against transgender and nonbinary students by requiring them to use a bathroom or locker room that does not match their gender identity.[20] Schools may provide a gender-neutral/all-genders bathroom option for students who identify as nonbinary or gender-expansive and others who may feel safer using that option, but cannot require students to use only gender-neutral facilities.[21]

The Third Circuit, controlling for Pennsylvania schools, has affirmed transgender students' right to use school bathroom and locker room facilities aligned with their gender identity. In its 2018 decision in the *Boyertown* case, the Third Circuit held that there was no privacy violation in having transgender and cisgender students share facility space.[22] The U.S. Supreme Court declined to review this case, leaving the decision to stand.[23] All other federal courts in Pennsylvania have also affirmed the rights of transgender students to use school facilities.[24] This is clearly established law that school districts violate at significant risk of liability.

## II. Proposed Policy 216.2 (Student Records Name, Sex and Gender Identity) Violates the Law and Must Be Rejected

### *The District May Not Require the Provision of a Birth Certificate for Enrollment or Participation in School*

There is no legal basis for requiring a student to 'prove' their sex in order to participate in public school and the District cannot require provision of a birth certificate. Students' right to

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[20] The vast majority of other federal courts have also affirmed transgender students' right to use school facilities. *See Grimm*, 972 F.3d 586, *cert denied,* 141 S.Ct. 2878 (2021) (District court and Fourth Circuit held that school violated Title IX and Equal Protection Clause when they prohibited Grimm from using the same restrooms as other boys and forced him to use separate restrooms because of his transgender identity; US Supreme Court denied cert); *Whitaker*, 858 F.3d at 1055 (transgender student denied access to facilities that matched their gender identity was likely to succeed as claim of sex discrimination under Title IX).

[21] Notably, such cases that focus on the issue of transgender students and bathroom policies have found that the option for students to use a single-user, gender-neutral bathroom is not sufficient and not an appropriate remedy. A better policy example is to provide a gender-neutral bathroom in every school building, like the School District of Philadelphia. *See* Kristen Graham, *A gender-neutral restroom in every school: Philly plans changes to make transgender kids feel safe*, PHILA. INQUIRER, Jul. 12, 2021, https://www.inquirer.com/education/gender-neutral-bathrooms-philadelphia-schools-lgbtq-students-20210712.html.

[22] *See Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 521 (3d Cir. 2018) (finding that a school policy barring transgender students from restrooms that align with their gender identity would pose a potential Title IX violation).

[23] *Doe v. Boyertown Area Sch. Dist.*, 139 S. Ct. 2636 (2019).

[24] See *Evancho*, 237 F. Supp. 3d at 288 (school board resolution limiting transgender students' access to bathrooms was found likely to succeed on Equal Protection claim); *A.H.*, 290 F.Supp.3d 321 (transgender student prohibited from using girls' bathroom stated a claim for violation of Title IX and Equal Protection Clause).

enroll and participate in school may not be conditioned on the provision of documents other than those showing proof of child's age, residence and immunizations as required by law.[25] Other documents, including a birth certificate, may not be required as a condition of enrollment.[26] Even for these required items, the Pennsylvania Department of Education is clear that "a school district can never demand only one kind of document."[27]

### *A Policy Permitting or Promoting the Misgendering and Deadnaming of Students is Harmful and Constitutes Discrimination Under Title IX and the PA Human Relations Act*

If a student who is transgender, gender-nonconforming, or nonbinary identifies a chosen name and pronouns, school staff must use that name and pronoun for all interactions (written, digital, and verbal) except where required by law to use a child's legal name.[28] The weight of legal authority on this issue does not support a requirement that a school must obtain parent consent before upholding their nondiscrimination obligation and affirming students' gender identity in school.[29] Affirming a student's request for supportive gender identity policies is distinguished in case law from allegations that "school officials ... proactively coerce students."[30]

Federal courts have already addressed the issue of respecting a person's identified name and pronoun directly, and clearly held that intentionally and persistently misgendering a person constitutes sex-based harassment and creates a hostile environment.[31] A federal court here in

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[25] See 22 Pa. Code. 11.11.
[26] See Pa. Dep't of Educ., Basic Education Circular: Enrollment of Students, https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/EnrollmentStudents.aspx; Basic Education Circular: Student Enrollment FAQ, https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/EnrollmentStudentsFAQ.aspx
[27] PDE, Basic Education Circular: Student Enrollment FAQ, https://www.education.pa.gov/Policy-Funding/BECS/Purdons/Pages/EnrollmentStudentsFAQ.aspx
[28] See e.g., *Vesely v. Illinois Sch. Dis*t. 45, 669 F. Supp. 3d 706 (N.D.Ill. 2023) (rejecting parent's objection to a school district's policy allowing students to socially transition to a different gender identity at school without one parent's consent; finding that the district's policy had a reasonable relation to its legitimate interest in protecting transgender students); *Short v. N.J. Dep't of Educ*., 2024 U.S. Dist. LEXIS 125340 (dismissing claims against the New Jersey Department of Education regarding guidelines for transgender students; The court found that the plaintiffs lacked standing as the guidelines did not impose any affirmative duty on school districts to notify parents of a student's gender identity). *See* 20 U.S.C.A. § 1232g (FERPA forbids schools from disclosing a student's private information). FERPA requires parental consent to a change in the official school record of a student. *See* U.S. Dep't. of Educ., *A Parent Guide to the Family Educational Rights and Privacy Act (FERPA)* (July 2021) (describing the rights of parents/guardians and students under FERPA).
[29] *See e.g., Regino v. Staley*, 2023 WL 4464845 (E.D.Cal. Jul 11, 2023) (school policy to follow student request for name and pronoun and not tell parents without student consent was reactive and did not violate parental substantive due process rights); *Littlejohn v. Sch. Bd. Of Leon Cty Florida*, 647 F.Supp.3d 1271, 1282-83 (N.D.Fla. 2022) (school's gender identity support plan requested by student did not violate liberty interests in familial privacy and upbringing of child); *Willey v. Sweetwater Cty Sch. Dist. No.1 Bd of Trustees*, 2023 WL 4297186, *12-16 (D.Wy. Jun. 30, 2023) (school addressing child by requested name and pronoun did not amount to 'treatment' interfering with parent right to make medical decisions); *Vesely v. Illinois Sch. Dist. 45*, 669 F. Supp. 3d 706 (N.D.Ill. Apr. 18, 2023) (school's support of child's gender identity did not violate parental rights under federal and state constitution).
[30] See *Delaware Valley Regional*, 2024 WL 706797 at *9-10 (reviewing cases).
[31] *See Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 633 (1999) (recognizing claims of indirect discrimination under Title IX where school had actual notice of harassment between students but failed to address it); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* 858 F.3d 1034 (7th Cir. 2017) (applying Title IX to discrimination based on transgender status).

Pennsylvania held in 2020 that "in addition to being misgendered," calling a transgender woman by her prior name ("deadnaming") "was sufficiently severe or pervasive to support her [hostile work environment] claim."[32]

A policy permitting or promoting the misgendering or deadnaming of students would also violate the Pennsylvania Human Relations Act. As mentioned above, school districts are held liable in Pennsylvania court for discrimination against students based on gender identity under the PHRA. In 2018, a Pennsylvania state court entered a $500,000 damages award against a school district for violating the Human Relations Act by failing to intervene and address the bullying and harassment a student experienced from other students due to her gender presentation and not conforming to gender stereotypes.[33]

Furthermore, the Pennsylvania Department of Education plainly anticipates students' right to change their name and gender identification with instructions how to do so in their PIMS Manual.[34]

***Students Have a Right to Privacy in their Gender Identity and the District is Not Required to Notify Parents of a Student's Preferred Name or Pronoun***

Courts recognize that sexual orientation and transgender status are intimately private and have found that it is a violation of a person's right to privacy to disclose this information absent a legitimate interest.[35] Pennsylvania educators have a "primary professional obligation…to the students they serve" and "shall respect a student's right to privacy…"[36] Additionally, schools have a "compelling interest in protecting the physical and psychological well-being of their minor students."[37] The Third Circuit has expressly recognized that "transgender students face

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[32] *Doe v. Triangle Doughnuts, LLC*., 472 F. Supp. 3d 115 (E.D. Pa. 2020) (citing *Bostock v. Clayton County*, 140 S.Ct. 1731 (2020) (applying *Bostock*, the court held that, "in addition to being misgendered," an employer deadnaming a transgender woman "was sufficiently severe or pervasive to support her [hostile work environment] claim").

[33] *Wible v. School District of Philadelphia*, No. 15-043169, 1392 CD 2018 (Phila. Cty. Ct. of Comm. Pls. 2018)(judgment entered for student plaintiff in the amount of $500,000 damages and an additional $578,000 in attorney fees), https://www.berneylaw.com/wp-content/uploads/2017/10/Opinion-Rule-1925.pdf .

[34] See PDE, PIMS Manual at page 15, 138 (reporting student gender), https://www.education.pa.gov/Documents/Teachers-Administrators/PIMS/PIMS%20Manuals/2024-2025%20PIMS%20Manual%20Vol%201.pdf

[35] *See, e.g., Sterling v. Borough of Minersville*, 232 F.3d 190 (3d Cir. 2000)(police officer's threat to out a teenage arrestee as gay to the teen's grandfather violated the teen's constitutional right to privacy); *Doe v. Pennsylvania Dep't of Corrections,* 2019 WL 5683437 (M.D.Pa. Nov. 1, 2019) (stating courts have long recognized that the harms arising from disclosing a person's transgender status are among those that make protection by pseudonym appropriate); *Nguon v. Wolf*, 517 F. Supp. 2d 1177, 1192-95 (C.D. Cal. 2007) (student had a reasonable expectation of privacy about her sexual orientation, and even though she was out at school, she had protected interest in not being outed to her parents by school officials).

[36] 22 Pa. Code § 235.5a (PA Code of Professional Practice and Conduct for Educators).

[37] *See Doe v. Boyertown Area School Dist*., 897 F.3d 518, 528-29 (3d Cir. 2018)(explaining risks to transgender students' well-being when mistreated).

extraordinary social, psychological and medical risks and the school district clearly had a compelling state interest in shielding them from discrimination."[38]

While FERPA gives parents the right to view the school records of their minor children, it does not require schools to proactively contact parents about any content in or changes to student records. Nor does FERPA require a school to document a student's use of a new name or pronoun in the official school record. There is simply no requirement in law that a school notify parents if a student requests to be called by another name or pronoun. In fact, courts have approved school policies that identify the goal of collaborating with student and their family about a student's gender identity, while acknowledging that "in some cases, transgender and gender nonconforming students may not openly express their gender identity at home because of safety concerns or lack of acceptance."[39] A school policy must "carefully balance the interests of both the parents and students, encouraging parental input when the student consents, but avoiding it when the student expresses concern that parents would not be supportive, or that disclosing their gender identity to their parents may put them in harm's way."[40]

A comprehensive policy that provides for individualized assessments can properly balance the rights of students and parents, and the obligations of the school district to ensure a safe, inclusive and nondiscriminatory learning environment. A policy that requires parental notification without such assessment can have severe negative effects on students who are already at greater risk of self-harm.

Additionally, the proposed policy's requirement that a student substantiate their request for gender identity to be 'accommodated' by "consistently, persistently, and insistently express[ing] the name identity" sets an unreasonable standard. Any sincerity standard must be consistent with Title IX's religious exemption criterion as the sincerity of a student's gender identity, like one's religious belief, is "generally not in dispute"[41] and is "generally presumed or easily established."[42]

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[38] *Doe v. Boyertown Area School Dist*., 897 F.3d at 528.

[39] *See e.g., Regino v. Staley*, 2023 WL 4464845 (E.D.Cal. Jul 11, 2023) (school policy to follow student request for name and pronoun and not tell parents without student consent was reactive and did not violate parental substantive due process rights); *Littlejohn v. Sch. Bd. Of Leon Cty Florida*, 647 F.Supp.3d 1271, 1282-83 (N.D.Fla. 2022) (school's gender identity support plan requested by student did not violate liberty interests in familial privacy and upbringing of child); *Willey v. Sweetwater Cty Sch. Dist. No.1 Bd of Trustees*, 2023 WL 4297186, *12-16 (D.Wy. Jun. 30, 2023) (school addressing child by requested name and pronoun did not amount to 'treatment' interfering with parent right to make medical decisions); *Vesely v. Illinois Sch. Dist. 45*, 669 F. Supp. 3d 706 (N.D.Ill. Apr. 18, 2023) (school's support of child's gender identity did not violate parental rights under federal and state constitution); *John & Jane Parents 1 v. Montgomery Cty. Bd. of Educ.*, No. 8:20-3552-PWG, 2022 WL 3544256 (D. Md. Aug. 18, 2022).

[40] *John & Jane Parents 1 v. Montgomery Cty. Bd. of Educ.*, No. 8:20-3552-PWG, 2022 WL 3544256 at *6.

[41] *Moussazadeh v. Tx. Dep't of Crim. Just.*, 703 F.3d 781, 790 (5th Cir. 2012) (applying Religious Land Use and Institutionalized Persons Act (RLUIPA)).

[42] Equal Employment Opportunity Comm'n, Compliance Manual Section 12: Religious Discrimination, https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination

Students must not be required to disclose a gender dysphoria diagnosis or statement from a medical provider; other methods of establishing a student's gender identity must be accepted.[43]

Moreover, imposing such unreasonable standards violates Pennsylvania's School Code which prohibits governing school boards from adopting rules and policies which are "*arbitrary*, *capricious*, discriminatory or outside their grant of authority from the General Assembly.[44]

## III. Enacting the Proposed Policies Will Make the District Liable for a Hostile Environment that Harms Students

Using correct pronouns or providing equitable access to affirming facilities could be the difference between life and death for transgender and nonbinary youth, who are more vulnerable to suicidal ideations and self-harm. More than half of transgender youth contemplated suicide in the past year, and over 60% of transgender and nonbinary youth engaged in self-harm.[45] The National Education Association (NEA) has explained that using pronouns consistent with a student's gender identity is "critical to the health and well-being of transgender and gender-diverse people."[46] It also makes our classrooms safer while empowering LGBTQ students.

Numerous courts have recognized that a school's policy or actions that treat gay, lesbian, non-binary or transgender students differently from other students can cause serious harm.[47]

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[43] *See, e.g.*, Mass. G.L. c. 4, § 7 ("Gender-related identity may be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held as part of a person's core identity; provided, however, that gender-related identity shall not be asserted for any improper purpose."); California Dep't of Educ., School Success and Opportunity Act (AB 1266) FAQ, https://www.cde.ca.gov/re/di/eo/faqs.asp ("Gender identity is a deeply rooted element of a person's identity. Therefore, school districts should accept and respect a student's assertion of their gender identity where the student expresses that identity at school or where there is other evidence that this is a sincerely held part of the student's core identity. Some examples of evidence that the student's asserted gender identity is sincerely held could include letters from family members or healthcare providers, photographs of the student at public events or family gatherings, or letters from community members such as clergy.").

[44] 22 Pa. Code § 12.3 (emphasis in original).

[45] The Trevor Project, 2022 National Survey on LGBTQ Youth Mental Health, https://www.thetrevorproject.org/survey-2022/assets/static/trevor01_2022survey_final.pdf ; see also Johns MM, Lowry R, Andrzejewski J, et al. Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017. MMWR Morb Mortal Wkly Rep 2019;68:67–71. DOI: http://dx.doi.org/10.15585/mmwr.mm6803a3

[46] *See Why Pronouns Matter* available at https://www.nea.org/advocating-for-change/new-from-nea/why-pronouns-matter.

[47] *See, e.g., Grimm,* 972 F.3d at 617-18 (describing injuries to a transgender boy's physical and emotional health as a result of denial of equal treatment), as amended (Aug. 28, 2020), reh'g en banc denied, 976 F.3d 399 (4th Cir. 2020), cert. denied, 2021 WL 2637992 (June 28, 2021); *Adams*, 968 F.3d at 1306–07 (describing ''emotional damage, stigmatization and shame'' experienced by a transgender boy as a result of being subjected to differential treatment); *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ*., 858 F.3d 1034, 1044–46, 1049–50 (7th Cir. 2017) (describing physical and emotional harm to a transgender boy who was denied equal treatment); *Dodds v. U.S. Dep't of Educ*., 845 F.3d 217, 221–22 (6th Cir. 2016) (describing ''substantial and

Federal courts have found against school districts where students experience "emotional damage, stigmatization and shame" as a result of being subjected to differential treatment and have struck policies that cause "substantial and immediate adverse effects on the daily life and well-being" of transgender students.[48]

It doesn't have to be this way. Affirming school environments are associated with reduced suicide risk among LGBTQ youth. LGBTQ youth who reported having at least one LGBTQ-affirming space had 35% reduced odds of reporting a suicide attempt in the past year.[49] A recent study documented that respecting transgender students' names and pronouns was associated with a 56 percent decrease in suicide attempts and a 29 percent decrease in suicidal thoughts.[50]

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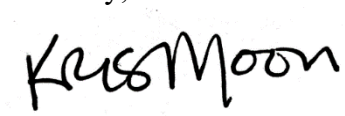
Courts have upheld the rights of LGBTQ students relating to multiple other school-based issues beyond those enumerated here, and I'm happy to provide additional information to assist the District and Board in these matters. I frequently provide presentations about these issues to Pennsylvania audiences, and you can find a recording and slides online.

Education Law Center urges the District and Board members to comply with their clear legal obligations under federal and state law and reject any misleading suggestion that federal executive actions compel contrary action.

Sincerely,



Kristina Moon, Esq.
EDUCATION LAW CENTER - PENNSYLVANIA

Cc: Robert Bull, Esq.

immediate adverse effects on the daily life and well-being of an eleven year-old'' transgender girl from denial of equal treatment); *Doe v. Univ. of Scranton*, 2020 WL 5993766 (M.D.Pa. Oct. 9, 2020), at **1–3 (describing harassment and physical targeting of a gay college student that interfered with the student's educational opportunity); *Harrington ex rel. Harrington v. City of Attleboro*, No. 15–CV–12769–DJC, 2018 WL 475000, at **6–7 (D. Mass. Jan. 17, 2018) (describing "'wide-spread peer harassment' and physical assault [of a lesbian high school student] because of stereotyping animus focused on [the student's] sex, appearance, and perceived or actual sexual orientation").

[48] *See e.g.*, *Adams*, 968 F.3d at 1306–07; *Dodds*, 845 F.3d at 221–22.

[49] *See LGBTQ & Gender-Affirming Spaces,* The Trevor Project(Dec. 3, 2020) https://www.thetrevorproject.org/research-briefs/lgbtq-gender-affirming-spaces/.

[50] *See* Stephen T. Russell et al., Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation and Suicidal Behavior among Transgender Youth, 63 J. Adolescent Health 503, 505 (2018).