

May 1, 2023  
VIA EMAIL

Dear Smithfield School Committee Members:

The ACLU of Rhode Island has followed with both interest and deep concern the recent discussions at your school committee meetings regarding the school district's "Transgender, Gender Non[con]forming, and Transitioning Students Policy," specifically with respect to parental notification. As you know, the district's current policy is based directly on the R.I. Department of Education's long-standing guidance on this topic, and we are concerned about possible plans by the school committee to amend it to more broadly authorize school officials to notify parents, and possibly others, of a student's transgender status over the wishes of the student.

Although the policy is not on tonight's school committee agenda, we offer the comments below in the hope that the committee will recognize the inadvisability of reviving that discussion at any future meeting. That is because we believe that any revisions along the lines of past discussions are problematic both as a matter of policy and of law, and should be rejected.

While school officials may sincerely think they are doing the right thing by revealing students' sexual orientation or gender identity to their parents, "outing" LGBTQ students can cause them to suffer significant harmful consequences at school or at home. Transgender youth face a real risk of rejection by their families, and are much more likely to be abused by their immediate family based on their gender identity.<sup>1</sup> These high risks of abuse and family rejection mean trans youth are overrepresented in foster care homes, juvenile detention centers, and homeless shelters, and are at dramatically increased risks of suicidality, substance abuse, and depression.<sup>2</sup> In short, not every child can be their true selves at home without risking their physical or emotional well-being.

Requiring schools and teachers to disclose this personal information without regard to potential harm to the student can also damage the trust that students have with teachers and other adults at school. For transgender youth, especially those who cannot be safe at home, school may be one of the few places they can be themselves. In addition, many supportive parents may want their children to be able to safely explore their identity without worrying that this information will be disclosed against their will, especially to other students or parents.

In addition to these policy reasons for respecting a student's right to keep their gender identity confidential, it is critical to emphasize that students maintain an independent constitutional right to privacy with respect to information about their sexual orientation or gender identity, and it violates that right to disclose that information without consent, even to a student's parents or other school administrators. Even when students may appear to be open about their sexual orientation or gender

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<sup>1</sup> Alexis Pellek, *Transgender Individuals and Intimate Partner Violence* (Feb. 22, 2022), <https://pro.psychom.net/assessment-diagnosis-adherence/transgender-individuals-and-intimate-partner-violence>.

<sup>2</sup> For a particularly tragic example of the dramatic and unforeseen consequences that can flow from such an action, see *Sterling v. Borough of Minersville*, 232 F.3d 190 (3d Cir. 2000), a lawsuit involving a teenager who died by suicide after a police officer threatened to disclose his sexual orientation to his family.

identity at school, it remains the student’s right to limit the extent to which, and with whom, the information is shared. *See, e.g., C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005).<sup>3</sup>

Further, courts have found that parents’ rights to direct the upbringing of their children do not trump their children’s own privacy rights, and have done so specifically in the context of gender identity. For example, a court recently held that parents do not have a fundamental constitutional right “to be promptly informed of their child’s gender identity, when it differs from that usually associated with their sex assigned at birth, regardless of their child’s wishes or any concerns regarding the detrimental effect the disclosure may have on that child.” *John & Jane Parents I v. Montgomery Cnty. Bd. of Educ.*, 2022 WL 3544256, at \*7 (D. Md. Aug. 18, 2022).

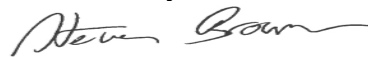
Even more recently, in *Vesely v. Illinois Sch. Dist. 45*, 2023 WL 2988833 (N.D. Ill. Apr. 18, 2023), a court rejected a parent’s claim of a constitutional right to “dictate [his child’s] social treatment,” and instead held that the school district had a legitimate interest in protecting and maintaining a non-discriminatory environment for transgender students, and safeguarding their privacy, mental well-being, and physical safety. I would be happy to share more detailed legal authority on these constitutional issues with the school committee’s attorney.

The federal Family Educational Rights and Privacy Act (“FERPA”) also protects students against the disclosure of personally identifiable information. In that regard, the National Association of Secondary School Principals has recognized that students’ “transgender status, legal name or sex assigned at birth is ... considered ‘personally identifiable information’” under FERPA and that “[d]isclosure of that information to other school staff or parents could violate the school’s obligations under FERPA or constitutional privacy protections.”<sup>4</sup>

Finally, since much of the school committee’s discussion has centered around school restrooms, I would emphasize that both RIDE and the U.S. Department of Justice’s guidance are clear on the subject: as a matter of non-discrimination, students have a right to use restrooms that correspond to their gender identity and cannot be treated any differently in that context from other students. As a result, “outing” them or otherwise singling them out for exercising this right is also improper.

In sum, we believe that the Smithfield School Department has a legal obligation to maintain the privacy and safety of its students, including those who are lesbian, gay, bisexual, transgender, queer, or questioning. In addition, strong policy considerations dictate against violating the wishes of students who seek to keep their gender identity private. We urge you to retain RIDE’s well-considered policy and avoid harming the students in your school with a policy that fails to abide by those guidelines. Thank you in advance for considering our views.

Sincerely,



Steven Brown  
Executive Director

cc: Supt. Dawn Bartz  
Sean Clough

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<sup>3</sup> In *C.N.*, the court refused to dismiss a lawsuit brought by a 17-year-old student against her high school after the principal disciplined her for hugging and kissing her girlfriend and revealed her sexual orientation to her parents without her knowledge or consent.

<sup>4</sup> NASSP, Position Statement on Transgender Students (2016), <https://www.nassp.org/policyadvocacy-center/nassp-position-statements/transgender-students/>.