

September 12, 2022

USD 231 Gardner Edgerton District
School Board

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USD 231 Superintendent Dr. Brian Huff

Via email: huffb@usd231.com

Re: USD 231 New Proposed Name, Pronoun, and Facilities Policy

Superintendent Huff and Members of the USD 231 School Board:

Thank you for your correspondence after our last letter and for assuring us that the Board will not be voting tonight on the unconstitutional, harmful policy previously considered. However, we write again to express our continued concern over the revised policy that we understand the Board is currently considering.¹ While it appears that the Board made changes to address the most egregious parts of the prior draft, the amended policy still violates the rights of transgender students and places them at risk in your schools.

Once again, we remind you that entertaining and debating policies that do not wholly affirm transgender students' identities and protect their rights at school does nothing but harm the trans students in your district. In response to our last letter, Superintendent Huff informed us that the Board wants "to provide a safe and dignified educational environment for all [USD 231] students."² If the Board truly wants to live up to this statement, we strongly urge you reject the amended policy and instead adopt a comprehensive LGBTQ+ inclusive policy³ that protects the rights of transgender students and ensures additional harmful policies are not promulgated in the future.

¹ Gardner Edgerton Unified School District No. 231 Guidelines for Transgender Students at School, [https://go.boarddocs.com/ks/usd231/Board.nsf/files/CJ2TQF6E1452/\\$file/TG_Guidelines%20for%20School_9_7_22.pdf](https://go.boarddocs.com/ks/usd231/Board.nsf/files/CJ2TQF6E1452/$file/TG_Guidelines%20for%20School_9_7_22.pdf).

² E-mail from Brian Huff, Re: Letter from ACLU Kansas Concerning Proposed Policy (Sept. 8, 2022).

³ See, e.g., Model Local Education Agency Policy on Transgender and Nonbinary Students, GLSEN, <https://www.glsen.org/activity/model-local-education-agency-policy-on-transgender-nonbinary-students#d>.



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The revised policy, as currently written, still runs afoul of established law. In particular, the policy still illegally forces transgender students to use the restroom or locker room based off their sex assigned at birth and increases the likelihood that trans students will be forcibly outed or deadnamed and misgendered at school. As noted in our previous letter, it is settled law that restroom and facility policies like the one at issue in your district violate Title IX of the Education Amendments of 1972 and the United States Constitution.⁴ In fact, the United States Department of Education has made clear that public districts with facility policies that discriminate against transgender students may be putting their federal funding at risk.⁵

We are aware the Board has heard from parents and community members who expressed unfounded concerns about trans students' restroom or facility access.⁶ But courts have consistently rejected the argument that districts may restrict transgender students' restroom or facility access based on "community concerns" or other students or parents' preference to keep trans students out of these facilities.⁷ Discriminatory facility policies—like the amended policy at issue here—are rooted in prejudice and unfounded fears about transgender students. In fact, across the country there are thousands of transgender students using multi-use restrooms and facilities that align with their gender identity without any issues.⁸

⁴ See Gardner Edgerton USD 231 School Board Re: Name, Pronoun, and Facilities Policy, ACLU Kansas, <https://www.aclukansas.org/en/gardner-edgerton-usd-231-school-board-re-name-pronoun-and-facilities-policy>.

⁵ See Federal Register Notice of Proposed Rulemaking – Title IX of the Education Amendments of 1972, <https://www.govinfo.gov/content/pkg/FR-2022-07-12/pdf/2022-13734.pdf>; *Confronting Anti-LGBTQI+ Harassment in Schools: A Resource for Students and Families*, U.S. Dep'ts of Justice and Education (June 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>; En Banc Brief for the United States as Amicus Curiae, *Adams v. School Board of St. John's County*, Case No. 18-13592 (11th Cir. Nov. 26, 2021), <https://www.justice.gov/crt/case-document/file/1458461/download>.

⁶ See, e.g., Sarah Ritter, *Johnson County school board might ban trans students from using bathrooms they choose*, Kansas City Star (Sept. 12, 2022), <https://amp.kansascity.com/news/local/education/article265495366.html>.

⁷ See, e.g., *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518 (3d Cir. 2018), cert. denied, 139 S. Ct. 2636 (2019) (No. 18-658) (holding board policy honoring rights of transgender students to use restrooms corresponding with their gender identity did not violate Title IX); *Parents for Privacy v. Barr*, 949 F.3d 1210 (9th Cir. 2020), cert. denied 141 S. Ct. 894 (2020) (No. 20-62) (holding board policy honoring rights of transgender students to use restrooms corresponding with their gender identity did not violate Title IX, Due Process Clause of 14th Amendment to U.S. Constitution, or Oregon law).

⁸ See, e.g., Brief of Amici Curiae School Administrators from Thirty-One States and the District of Columbia at 7, *Gloucester Cnty. Sch. Bd. v. G.G.*, 136 S. Ct. 2442 (2017) (No. 16-273), http://www.scotusblog.com/wp-content/uploads/2017/03/16-273_bsac_school_of_administrators_from_thirty-one_states_and_the_dis.pdf (describing numerous examples in which transgender students have been able to use multi-user bathrooms without problems).



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Additionally, although the revised policy allows trans students to be called by their chosen name and pronouns with parental consent—a drastic and important change from the prior draft we reviewed—it does not provide sufficient guidance for teachers and staff regarding how to handle circumstances where a trans student does not want their trans identity revealed to their parents or guardians. As written, the revised policy provides only a vague carve out from parental notification where “it is determined by the district, after consultation with the district’s attorney, that notification of the parent/guardian is not required.”⁹

It is vital that the Board take the time to get this right. USD 231 should not give in to community fearmongering at the expense of the health and well-being of trans students in the district. When discriminatory facility policies like the one proposed in USD 231 are adopted, one in three transgender students report attempting suicide in the year following that policy decision.¹⁰ And revealing a students’ sexual orientation or gender identity to their parents can lead to those students experiencing physical abuse or being kicked out of their homes.¹¹

These outcomes do not need to become a reality for USD 231 students. Instead, the Board should adopt a policy allowing transgender students to use the facilities that correspond with their gender identity and issue clear guidance that teachers and staff must honor students’ requests regarding name and pronoun usage without requiring forced outings or parental approval. Not only would this help the Board live up to its desire to provide a safe and dignified environment for all its students, it would also help the district avoid potential costly litigation—like the \$1.3 million in legal fees the Gloucester County School Board had to pay for enforcing a policy similar to the amended policy at issue in USD 231.¹²

⁹ Gardner Edgerton Unified School District No. 231 Guidelines for Transgender Students at School, [https://go.boarddocs.com/ks/usd231/Board.nsf/files/CJ2TQF6E1452/\\$file/TG_Guidelines%20for%20School_9_7_22.pdf](https://go.boarddocs.com/ks/usd231/Board.nsf/files/CJ2TQF6E1452/$file/TG_Guidelines%20for%20School_9_7_22.pdf).

¹⁰ See Myesha Price-Feeney, et al., *Impact of Bathroom Discrimination on Mental Health of Transgender and Non-Binary Youth*, *Journal of Adolescent Health* (Dec. 4, 2020), [https://www.jahonline.org/article/S1054-139X\(20\)30653-4/fulltext](https://www.jahonline.org/article/S1054-139X(20)30653-4/fulltext).

¹¹ See Mass. Dep’t of Educ., *Guidance on Notifying Parents When a Student Has Been Bullied Based on Sexual Orientation or Gender Identity/Expression* (Jan. 2011), <http://www.doe.mass.edu/sfs/bullying/PNguidance.html>.

¹² See Liam Reilly, *School board to pay \$1.3 million in legal fees to ACLU in trans student case*, CNN (Aug. 27, 2021), <https://www.cnn.com/2021/08/27/us/gavin-grimmtrans-student-legal-fees/index.html>.

Thank you for your prompt attention to this matter. Should you wish to discuss this or any other related issues, please do not hesitate to contact me at dhiebert@aclukansas.org.



Kind regards,

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