

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,

Defendants-Appellees.

On Appeal from the United States District Court for the
Eastern District of Virginia, Newport News Division

**BRIEF OF TRANSGENDER STUDENTS AND ALLIES AS
AMICI CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT**

JESSE RYAN LOFFLER
MARK SIEGMUND
JANICE MAC AVOY
**FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON LLP**
One New York Plaza
New York, NY 10004
Telephone: 212-859-8000

Counsel for Amici Curiae

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STATEMENT REGARDING PARTICIPATION BY PARTIES

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), *Amici Curiae* state that the parties in this case have consented to the filing of the brief, no counsel for a party has authored this brief, in whole or in part, and no person, other than *amici* or their counsel, has made a monetary contribution to the preparation or submission of this brief. A complete list of *amici* is included as Appendix A.

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE

Amici transgender students and their non-transgender classmates attend or recently attended primary and secondary schools across the territorial jurisdiction of the United States Court of Appeals for the Fourth Circuit. These students are directly impacted by their schools' policies regarding transgender students, and thus have a direct interest in the Court interpreting Title IX of the Education Amendments of 1972 to prohibit discrimination against transgender students.

As demonstrated by the personal histories of transgender *amici* related below, transgender students' ability to access educational opportunities depends on whether they are treated consistently with their gender identity in all respects. Transgender *amici* who attended schools with inclusive and supportive policies that respected their gender identity excelled academically, socially, and personally. In stark contrast, transgender *amici* who attended schools without supportive policies often suffered significant social, emotional, physical, and educational

harm. Thus, transgender *amici* are directly affected by the issues in this case, the outcome of which will have a significant effect on their lives.

Non-transgender *amici* also have an interest in the outcome of this case. Their stories demonstrate that, despite what Defendant-Appellee and Defendant-Appellee's *amici* may claim, non-transgender students are not harmed by sharing space with transgender students. To the contrary, all students benefit from nondiscriminatory policies that embrace transgender students and foster a culture of understanding, acceptance, and inclusivity. Thus, non-transgender *amici* have an interest in a supportive environment for their transgender classmates, which enhances their educational experience and prepares them to enter the diverse social and economic fabric of American civic life.

SUMMARY OF ARGUMENT

Transgender students routinely experience discrimination and harassment in their everyday lives. This discrimination causes significant harm to their educational, mental, and social development and well-being, and negatively affects their ability to participate fully in educational, civic, and economic life. While a significant number of schools across the country — including numerous schools in the Fourth Circuit — have elected to combat discrimination by adopting inclusive and supportive policies, some schools refuse to acknowledge transgender students' gender identity, including by prohibiting them from using restrooms and other sex-

specific facilities that match their gender identity. These exclusionary policies discriminate against transgender students by not only barring them from accessing vital school resources available to their peers but also by preventing them from living consistently with their gender identity, which is humiliating, stigmatizing, and disruptive of their education, social development, and medical and mental health care. The medical and scientific consensus is that such discrimination causes significant social and psychological distress for transgender people.

The ability to live consistently with one's gender identity, including when using restrooms and other sex-specific facilities, is a critical part of treatment for gender dysphoria — the medical diagnosis for those who experience clinically significant distress caused by “the incongruence between [their] experienced or expressed gender and [their] assigned gender.” Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders: Gender Dysphoria* 451 (5th ed. 2013); *see* World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* 9-10, 58 (7th ed. 2012) [“WPATH”] (living consistently with one's gender identity, including using sex-specific facilities, is among treatment options for gender dysphoria and criteria for certain surgical treatments). Recent research demonstrates that the distress associated with gender dysphoria is not because the person is transgender, but rather because of the hostility directed at them because they are transgender. *See*

Rebecca Robles et al., *Removing transgender identity from the classification of mental disorders: a Mexican field study for ICD-11*, 3 *Lancet Psychiatry* 850, 857 (2016) (distress is “more strongly predicted by experiences of social rejection and violence than by gender incongruence, consistent with the perspective that these reflect the result of stigmatization and maltreatment rather than integral aspects of transgender identity”); WPATH at 4 (anxiety and depression “are socially induced and are not inherent” to transgender status).

For transgender youth, this hostility, often encountered in schools where they spend much of their daily lives, can have long-lasting educational, mental, emotional, and social effects. See Lily Durwood et al., *Mental Health and Self-Worth in Socially Transitioned Transgender Youth*, 56(2) *J. Am. Acad. Child & Adolescent Psychiatry* 116, 120 (2017) (finding normal levels of depression in transgender children who had already socially transitioned as compared to a control group of non-transgender children, in contrast to previous studies’ findings of “markedly higher rates of anxiety and depression and lower self-worth” among “gender-nonconforming children who had not socially transitioned”). This significant harm is minimized or even eliminated when transgender youth are accepted in their true gender, including being given access to sex-specific facilities that accord with the gender they live every day. See WPATH at 4-5, 9-10.

Consistent with this scientific and medical consensus, many educators have

adopted policies that protect transgender students from discrimination. For example, in 2016 the National Education Association (the “NEA”) declared:

It is essential to the health and well-being of transgender people for them to be able to live in accordance with their internal gender identity in all aspects of life and restroom usage is a necessary part of that experience. When transgender students seek to use private separate facilities, schools should grant access to such private facilities but transgender students should not be required to use these separate facilities.

Nat’l Educ. Ass’n, *Legal Guidance on Transgender Students’ Rights* 24 (June 2016), available at https://www.nea.org/assets/docs/20184_Transgender%20Guide_v4.pdf [“NEA Guide”].

Indeed, the NEA, American Federation of Teachers, AFL-CIO, National Association of Secondary School Principals, and the School Social Work Association of America — collectively representing millions of educators, counselors, and education support professionals — filed an *amici curiae* brief before the Supreme Court in this case reaffirming that “school-based discrimination against transgender students harms them profoundly, by stigmatizing them and denying them equal educational opportunities.” Brief for the National Education Association et al. at 3, *Gloucester Cnty. Sch. Bd. v. G.G.*, No. 16-273 (U.S. Mar. 2, 2017) [“Educators Amicus”]. These educators have recognized that an accepting and supportive environment is a necessity for all young people, including transgender youth, and that access to sex-specific facilities consistent with a student’s gender identity is a critical component of that support

and acceptance. *See id.*; WPATH at 12; NEA Guide at 24.¹

Some schools and educators, however, maintain discriminatory practices by refusing to treat transgender students in accordance with their gender identity in all respects. Transgender students at such schools typically have overwhelmingly negative experiences, which — as studies have found — are “correlated with a variety of poor outcomes, such as higher rates of attempted suicide, homelessness, and serious psychological distress.” S. E. James et al., *The Report of the 2015 U.S. Transgender Survey* at 137, National Center for Transgender Equality (2015), available at <http://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.²

¹ See Jenifer K. McGuire et al., *School Climate for Transgender Youth: A Mixed Method Investigation of Student Experiences and School Responses*, 39 *J. Youth & Adolescence* 1175, 1177, 1186 (2010) (identifying need for “a variety of strategies to increase comfort specifically for transgender youth,” including “accommodation of gender identity in dances, sports, physical education, locker room environments, and acknowledgement of name and pronoun preferences by faculty and on school records and identification” and finding “important associations between the actions schools take and the well-being of transgender youth”).

² See J. G. Kosciw et al., *The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation’s Schools* 85, GLSEN (2016), available at [https://www.glsen.org/sites/default/files/2015 National GLSEN 2015 National School Climate Survey \(NSCS\) - Full Report.pdf](https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20(NSCS)%20-%20Full%20Report.pdf) (75% of transgender student respondents reported feeling “unsafe” because of their gender identity, 64.5% reported verbal harassment, 24.9% reported physical harassment, and 12% reported physical assault).

Amici's experiences are wholly consistent with these educational, social, and medical outcomes and demonstrate how critical it is to transgender students' development and well-being to attend a school free of discrimination that allows them to live consistently with their gender identity, including accessing sex-specific restrooms and other facilities. Several *amici* reported positive experiences in school after coming out as transgender. For these students, their schools and educators supported them, allowed them to use facilities consistent with their gender identity, and, consequently, fostered an environment in which transgender students thrived socially and educationally. Following the lead of these educators, other students embraced their transgender peers for who they are.

Other students, however, were forbidden from using facilities consistent with their gender identity and were often forced to use separate restroom facilities, segregating them from their classmates, or were forced to use facilities inconsistent with their gender identity and appearance. Such policies involuntarily "outed" these students as transgender (*i.e.*, revealed their transgender status) to fellow students, who in some cases were not even aware that these students were transgender, and subjected them to increasing levels of harassment and violence. To avoid embarrassment and stigma, students forced to endure these hostile school environments often avoided using restrooms during school, leading to discomfort and harmful medical consequences such as urinary tract infections and severe

dehydration.³ Some students missed classes or avoided attending school altogether, suffering academically and socially. Some students developed severe anxiety, depression, feelings of worthlessness and suicidal ideation, and engaged in self-harm. These negative outcomes are common among transgender individuals who live, work, and study in such discriminatory environments.

Those who oppose allowing transgender students to participate in school consistent with their gender identity often claim that transgender students' use of sex-specific facilities appropriate to their gender identity violates the privacy of non-transgender students. But the accounts of *amici* conclusively demonstrate that it is only when transgender students are forced to use facilities inconsistent with their gender identity and appearance, or forced into separate spaces apart from their peers, that any issues arise. Allowing transgender students to use facilities consistent with their gender identity and appearance provides transgender and non-transgender students alike an atmosphere most conducive to the educational experience of all students. Moreover, hypothetical privacy concerns starkly

³ Experiences like these are unfortunately well documented among transgender people. See, e.g., Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives*, 19 J. Pub. Mgmt. & Soc. Pol'y 65, 75 (2013) (54% of transgender respondents reported medical conditions related to restroom usage, including dehydration, urinary tract infections, and kidney infections); Mark A. Schuster et al., *Beyond Bathrooms — Meeting the Health Needs of Transgender People*, 375(2) New Eng. J. Med. 101, 101 (2016) (discussing health issues caused by “[d]elayed bathroom use”).

contrast with the very real and lasting harm that exclusionary policies inflict upon transgender students, and which contribute to bullying and harassment, and deprive them of the right to participate fully in all aspects of school life.

ARGUMENT

The consensus of the medical and scientific community and many educators is that it is necessary to the health and well-being of transgender people for them to live and be treated consistently with their gender identity in all respects, including when accessing sex-specific facilities in schools. *See* Educators Amicus; NEA Guide at 24. The experiences of *amici* recounted below, which are based on interviews with each individual, bear this out.

I. SUPPORTIVE POLICIES AND SCHOOL ADMINISTRATIONS DRAMATICALLY IMPROVE TRANSGENDER STUDENTS' LIVES AND EDUCATIONAL EXPERIENCES

The following transgender *amici* from states within the Fourth Circuit reported that their schools were fully supportive and treated them in accordance with their gender identity in all respects. These students attended schools that adopted inclusive policies, updated official school records to accurately reflect their name and gender, and permitted them to access facilities consistent with their gender identity. The support they received fostered an environment that enabled them to succeed at school and promoted their social and mental well-being.

Evie Priestman, Arlington, Virginia

Evie Priestman, pictured below, is an 18-year-old young man in twelfth grade.



Evie came out as transgender his second week of high school by standing up “in front of each class” and declaring: “My name is Evie. I happen to be transgender, and I would like to be addressed by male pronouns.” Evie says he “was supported 100%, both by peers and by teachers.” Although Evie received some questions on what it meant to be transgender and how the school and his classmates could support him, he makes clear that “I was very open around it ... [a]nd from then on, I was supported by my peers and teachers.”

When Evie came out, his school did not have a policy addressing the use of restrooms and locker rooms by transgender students, and the administration initially required Evie to use a nurse’s restroom far from classes that had to be

unlocked by a staff member each time he needed to use it. This forced Evie to “go out of [his] way just to use the restroom while there was a restroom maybe five feet away” from him, took “time away from [him] being in class” due to the restroom’s distance, and isolated him from his classmates. Evie was also required to change for gym class in a separate teachers’ restroom that needed to be unlocked for him before and after every class.

Evie and his family advocated for Evie’s right to be treated like his peers, which resulted in Evie’s high school establishing policies allowing transgender students to use restrooms and locker rooms consistent with their gender identity during his sophomore year. Evie stated that since that time:

I feel more confident with myself knowing that I could just ... use the restroom ... without walking the three flights down the stairs to the nurse’s bathroom. ... I am also able to connect with peers in the hallway more frequently now and ask maybe some homework questions and maybe just catch up on what’s happening in their lives that day.

Evie also observed that the policy change allows other transgender students at his high school to come out at school on their own timeline “without having to be ‘outed’ as trans by going into [a separate] restroom and having people see.”

According to Evie, there are no issues with his use of boys’ locker rooms:

You go in, change, you get out. There’s not much talking. ... [O]bviously there are stalls for people when they have to go to the bathroom. People were able to change in those stalls and close the stall door. ... [B]ut from my experience no one actually pays attention to who changes or who changes outside of the stall and I feel like the

community I'm in definitely, they respect each other's body and how they feel about their body and if someone needs to change in the stall and they don't feel comfortable with people seeing their body then it's okay. ... No negative feedback.

Evie's experience demonstrates how inclusive policies can transform the well-being of transgender students, without burdening others. Evie's support both at home and at school has allowed him to thrive. He is applying to college and is interested in "continuing [his] activism work within the college campus [environment] ... and rais[ing] awareness of trans individuals and reduc[ing] the stigma" that transgender people face in their everyday lives.

Siddy Greenstein, Bethesda, Maryland

Sydney "Siddy" Greenstein, pictured below, is a 13-year-old boy in seventh grade.



Siddy came out as transgender to his classmates when he was 12 years old by standing in front of the entire class and explaining that he was transgender and would be using male pronouns going forward. Siddy's family, friends, and classmates were all "very supportive" and "no one said anything negative at all." Siddy's middle school allows him to use the boys' restrooms and locker rooms like all other boys. The administration "showed [him] the male bathrooms and locker rooms and took the time to make sure that [he] was okay." Siddy notes that "none of the other students have had any problems" with this policy and "nobody really notices it ... and if they do notice it, they don't try to make anything out of it." Siddy reports that the level of support has been "very incredible."

Before Siddy came out at school, he felt anxious when using the girls' restroom because he was a "guy going into the girls' bathroom." Using the girls' restroom "shattered [his] self-image" and made him think, "you're wrong about everything." As a result, Siddy limited his restroom usage as much as possible. This caused him to "zone out" in class and imagine "a world where ... everything [he] didn't like about [him]self was gone." Siddy described this period as a "horrible thing to go through."

Siddy says using facilities consistent with his gender identity has "felt like this weight of years and years of pretending and acting like someone [he] wasn't was gone."

Kate Brown, Alexandria, Virginia

Kate Brown, pictured below, is a 16-year-old girl in eleventh grade.



Kate came out as transgender between ninth and tenth grade. Before coming out, Kate suffered from horrible depression and was “kind of going day by day not really knowing if I was going to live to see the next.” Kate explained that she “didn’t fully realize the gravity of the situation I was in and how severely I felt until after Leelah Alcorn’s suicide,” at which point Kate believed “[she] had to come out or else [she] would die.”⁴

⁴ Leelah Alcorn, a transgender woman who committed suicide in 2014 at age 17, arranged for a suicide note to be posted online. Her death was covered widely in the media. See Gillian Mohny, *Leelah Alcorn: Transgender Teen’s Reported Suicide Note Makes Dramatic Appeal*, ABC News (Dec. 31, 2014), available at <http://abcnews.go.com/US/leelah-alcorn-transgender-teens-reported-suicide-note-makes/story?id=27912326>.

Kate came out to her school's administration prior to participating in a two-week summer band camp. During that camp, the school required Kate to use a faculty restroom. However, the faculty restroom required a key and was much further away from her band activities at the camp than the restrooms that everyone else used, which caused her to miss parts of the program every time she had to go to the restroom. The stigma — both internally and from her peers — was immediate. Kate stated that being forced to use a separate facility because she was transgender made her feel “dehumanized” because “all I had to do was pee, but then I had to get a key and it made a two minute process become a seven minute process.” Kate believed that the fact she was singled out and isolated from her peers made other students see Kate “as something different and it really, really ostracized me from my own band . . . [and] kind of alienated me from my friends.”

Since this arrangement was untenable, Kate and her parents demanded that her school allow her to use the facilities that accord with her gender identity before she started tenth grade. While the administration initially voiced concerns that “other girls and their parents would be uncomfortable,” they recognized that the right approach — for Kate and for everyone else — was to treat Kate the same as all the other girls, including with respect to restroom and locker room use. Kate says that there have been “no issues whatsoever” and that her ability to use these facilities has been instrumental for her transition and mental health:

Once I started [living as the girl I am] full time, I started to feel way better about myself. ... I was allowed to feel pretty. And it was kind of an eye opening experience that felt like a fog had lifted in a sense. Just because I wasn't feeling crushed 24/7 by heavy, heavy depression.

Kate's classmates have likewise grown to accept her for the girl that she is, including in the locker room. Kate notes that, although she is often "not very comfortable changing in front of other people [and] so just [goes] to the stall" to change, "even when [she] change[s] out in the open, no one sa[ys] anything; there [are] no odd looks." Kate explains that, often, people do not "know[] I'm trans[gender] unless they ask me" and a contrary policy of "forc[ing] [her] into a [boys'] bathroom that isn't even appropriate for [her]" because of her gender identity and female appearance would cause issues where now there are none.

Kate is now excelling at school, and she credits her school's inclusive policies with the dramatic improvement in her mental health.

Maxwell Platt, Arlington, Virginia

Maxwell Platt, pictured below, is a 12-year-old boy in sixth grade.



Maxwell came out to his teachers and some of his peers starting in the fourth grade. He requested that the school refer to him as Maxwell or Max, use male pronouns, and permit him to use the same facilities that all the other boys in the school used. While his elementary school recognized Maxwell's name and pronoun change, they initially asked him if he would use staff restrooms. However, that request only "made [him] feel more segregated, uncomfortable, and isolated." Because the school would not allow him to use the boys' restrooms and using the staff restroom stigmatized and ostracized him, he continued to use the girls' restrooms. However, given his male gender identity and typically male appearance, the school's policy swiftly became untenable; Maxwell was "constantly nervous about having to use the bathrooms or change for activities" because he did not feel comfortable or that it was appropriate for him to use the

girls' facilities and using either the girls' facilities or the staff restrooms served to out him to those who were not aware that he was transgender. Maxwell explained that this dilemma caused him, "either way, [to] still get made fun of" and, consequently, he was "missing a lot of school" trying to avoid the restroom or find times when he could avoid his peers. The isolation and ostracization resulting from these policies alienated him from his peers, who started treating him differently; Maxwell recalls some students began to "purposefully call[] me by the wrong pronouns and incorrect name." The school recognized the negative effects their policy was having on Maxwell (and the other students), however, and allowed Maxwell to use the restroom consistent with his male identity when he was in the fifth grade.

Maxwell's middle school has been "very supportive," and adopted a written policy allowing transgender students to use facilities matching their gender identity. Maxwell stated that being able to use the boys' facilities like all other boys is "amazing," and makes him feel a lot safer. These policies have also allowed Maxwell to engage with his classmates without requiring him to out himself or feel different. Maxwell also noticed a new climate of "change and acceptance" among his classmates who began treating him more respectfully than they had in elementary school. They began to see him as just one of the boys. As

a result of the school's supportive policies, Maxwell's grades improved and he participated in extracurricular activities that he had previously avoided.

Ironically, and contrary to the privacy-related claims of Defendant and Defendant's *amici*, the only time issues have arisen for Maxwell was when he was forced to use the girls' restrooms (before being allowed to use the boys' restrooms). When Maxwell used restrooms consistent with the gender assigned to him at birth, rather than his male gender identity: "girls would say that [he was] not supposed to be in here" or would tell him that "this is the girls' bathroom."

* * * * *

These accounts make plain that transgender students thrive academically, socially, and personally under inclusive and nondiscriminatory school policies, and are able to live their lives without navigating the shame and stigma of being isolated from their peers when they perform the most basic, everyday functions. Supportive school administrations also improve transgender students' mental and emotional health, and allow students to focus on their schoolwork rather than worry about how they may be perceived by other students.

II. DISCRIMINATORY POLICIES SIGNIFICANTLY IMPAIR TRANSGENDER STUDENTS' EDUCATIONAL EXPERIENCES AND MENTAL AND SOCIAL HEALTH

In stark contrast, other *amici* reported that they faced discriminatory school policies that barred them from using the restrooms and other facilities that their

peers used. Although these students come from different backgrounds, their stories are remarkably similar and demonstrate that unsupportive school policies damage transgender students' personal, mental, and social well-being, impair their educational development, and deprive them of core educational benefits. Even when some of the students later moved on to supportive schools, they nonetheless suffered lasting harms as a result of the previous discriminatory treatment.

Kayden Ortiz, Fairfax, Virginia

Kayden Ortiz, pictured below, is a 19-year-old young man who recently graduated from a high school in Virginia.



Kayden realized he was transgender in second grade but “pushed it to the back of [his] mind,” fearing the consequences of coming out. Eventually, unable to continue living as a girl, in eighth grade he explained to his family, close

friends, and the school administration that he is a boy, changed his appearance, cut his hair, and began to dress exclusively in typical boys' clothing. Even though he was finally living consistently with his true identity, Kayden unfortunately faced a hostile school environment with no support from the administration and constant bullying from his peers. The school did nothing in response to the bullying, causing Kayden to fear even raising with administrators the potential of accessing the same sex-specific facilities that all the other boys used. Instead, Kayden avoided using the restroom altogether, "holding it in" and limiting food and liquid intake, putting his physical health at risk.

When Kayden entered high school, his guidance counselor informed him that he could use only facilities that matched the sex assigned to him at birth. Because of his male gender identity and appearance, Kayden was left without options; he continued to "hold it in," which caused him to suffer from urinary tract infections. The high school even forced Kayden to use the girls' dressing room during drama class in his freshman year. This made Kayden "depressed and uncomfortable." Kayden grew increasingly worried about what his female classmates would think of him because he was a boy that the school was forcing to use girls' facilities. Kayden avoided contact with his peers whenever he was put in this untenable situation; he "ke[pt] [his] head down and change[d] away from everyone" as much as possible.

Kayden stated that his high school's discriminatory restroom policy repeatedly "outed" him to those unaware that he is transgender every time he needed to use the restroom. Other students began increasingly bullying Kayden, which Kayden believes was "definitely more rampant because of the school's lack of support." Indeed, Kayden suffered, and reported, threats of physical violence, even threats of being raped, with largely no response from the administration. The bullying Kayden faced was so severe that he feigned illness to avoid school and "pretended to throw up because [he] had so much anxiety about attending school," all of which "really ramped up [his] gender dysphoria."

Despite the high school administration's lack of support, there have been bright spots in Kayden's high school experience. Kayden's band director permitted Kayden to wear boys' band uniforms and intervened when Kayden was bullied. Some of Kayden's classmates also rallied behind him, demanding that he be allowed to access the restrooms and locker rooms that all the other boys used. Kayden persevered, lived openly and consistently with his male gender identity, and has become an inspiration to other transgender students in his school.

The school finally permitted Kayden to use facilities for boys, but only after he officially changed his name and underwent gender confirmation surgery during his senior year. Kayden now attends Orange Coast College in Costa Mesa, California, and hopes to pursue a career in film music composition.

Dylan Kleiman, Alexandria, Virginia

Dylan Kleiman, pictured below, is a 14-year-old boy in ninth grade.



Dylan came out as transgender to his parents and close friends when he was in eighth grade. Shortly thereafter, he informed the administration at his middle school of his gender identity. The school responded by prohibiting him from using the boys' restroom, and refusing to use male pronouns or even his name when referring to him. Dylan and his parents had numerous conversations with the school that year, offering to sponsor trainings with the faculty and staff, but the administration would have “none of it.”

The school provided Dylan no alternative options, and required him to use the girls' restroom at school despite his typically male appearance, speculating that other students might otherwise feel “uncomfortable” and parents of other students

would “complain” if they discovered that a boy who is transgender was using boys’ restrooms. Ironically (and unsurprisingly), the only “complaint” came when Dylan was confronted by the parent of another student in the *girls’ restroom* (which the school required him to use) who protested there was a “man in the girls’ bathroom” and filed a formal complaint with the school. When Dylan and his parents approached the administration to address this issue, the administration “denied it had ever happened” and “didn’t do anything.”

Following this incident, Dylan began avoiding using the restroom entirely, which “really affected [his] academic performance,” caused his grades to drop, and resulted in significant depression and anxiety. Dylan was also consistently bullied, and the administration “would do nothing” about it. The school’s lack of support and failure to take any action in response to the extensive bullying made Dylan feel “shut down, distraught, and completely unaccepted in that environment.” As a result, Dylan began to blame himself for his treatment: “I thought I deserved it because I was not good enough, not passable. I thought it was my fault for not having an ideal male physique.” Dylan’s gender dysphoria significantly worsened and Dylan “started self-harming” because he “didn’t know what else to do.”

Fortunately, Dylan now attends ninth grade at a school that recognizes Dylan as the boy that he is in all respects. Dylan says there is an “enormous amount of student support at his high school” and that his peers only ask him about

being transgender if they are trying to share “positive reinforcement or they are trying to educate themselves.” Dylan remarks that “there is a real switch when you have a more open and understanding society within school” and — although Dylan still suffers the long-lasting mental and emotional consequences of his discriminatory middle school experience — the symptoms of Dylan’s gender dysphoria have dramatically improved in his new school.

Rowan Wooldridge, McLean, Virginia

Rowan Wooldridge, pictured below with his parents, is an 18-year-old young man in twelfth grade.



Rowan came out as transgender in his junior year of high school, but his school forced him to continue using the girls’ restroom. Consistent with his male gender identity, Rowan dressed and acted as a typical boy. Thus, when he was forced to use the girls’ restroom under his school’s policy, he was repeatedly outed as transgender to anyone who did not know him, subjecting him to increased incidents of bullying.

Eventually, it became clear to the administration that it would be inappropriate for Rowan to continue using the girls' restroom. Instead, the administration forced Rowan to use a single-user restroom in a secluded corner of his high school that no one else was forced to use. This treatment stigmatized Rowan and signaled to other students that he was different from them. In addition to refusing to allow Rowan to use the appropriate facilities, the school refused to discipline the students who bullied Rowan and the bullying escalated. Students, and even a teacher, would intentionally lock Rowan out of the single-user restroom that he was being forced to use, leaving him without access to any restroom at all. In practice, Rowan found that the door was almost "always locked."

Rowan explains that his school's refusal to allow him to use the boys' restrooms "took a huge toll on [his] mental health and therefore [his] school work." It also disrupted Rowan's studies, requiring him to walk ten minutes to and from the restroom before classes, if he was able to use it at all. Last year, Rowan "miss[ed] several days of school because [he] wasn't mentally healthy enough" to attend, due to the ongoing discrimination he faced. Even when Rowan returned to school, he "refuse[d] to drink water for a very long time so that [he] could avoid using the bathroom at all ... [and] was very dehydrated for a very long time, which made it harder to keep up [his] grades."

Rowan has persevered despite this discriminatory treatment, largely because of the support he receives from his family. He has now been accepted to Virginia Tech and looks forward to the future. He states that he and other transgender students “just want and deserve to use the restroom like everyone else.”

* * * * *

The experiences of these *amici* are all too common. They demonstrate that discriminatory and exclusionary school policies stigmatize, humiliate, and out transgender students to their classmates, and significantly impair their ability to receive an education. They prevent transgender students from accessing vital school resources on equal terms as their peers and, in some cases, literally bar them from access altogether. These policies lead to medical complications such as urinary tract infections and dehydration when students stop drinking water or avoid restrooms altogether, and cause some students to skip school entirely to avoid these humiliating and painful experiences. Discriminatory policies and administrations also increase instances of bullying, harassment, and even physical violence, communicating an official message that discrimination against transgender students is acceptable. *Amici's* experiences also reveal that policies forcing transgender students to use facilities inconsistent with their gender identity and appearance can and do lead to confrontation with non-transgender students or parents who are unaware that the student is transgender.

III. NON-TRANSGENDER STUDENTS ARE NOT HARMED BY SHARING SPACES WITH TRANSGENDER STUDENTS AND IN FACT BENEFIT FROM INCLUSIVE AND NONDISCRIMINATORY POLICIES

Permitting students who are transgender access to school facilities on equal terms as their peers neither harms non-transgender students nor violates their privacy. To the contrary, all students benefit from inclusive and nondiscriminatory policies that embrace the differences among students and promote a culture of understanding, acceptance, and inclusivity.

Several *amici* are non-transgender students who have transgender friends and classmates. They attend the same classes, socialize and eat lunch together, and use the same restrooms and locker rooms. These *amici* explained that policies regarding restroom access affect how transgender students are treated by their classmates. These *amici* also explained that excluding their transgender peers could not be justified based on concerns about privacy or for any other reason.

For example, Sarah Lore, a 16-year-old non-transgender high school student in Alexandria, Virginia — and a friend and classmate of fellow *amicus* Dylan Kleiman — explains that there are no issues with fully including transgender students in the school environment, including allowing them access to the restrooms and locker rooms that match who they are. Sarah also highlights the fact that the school did not want Dylan to use the boys' restroom, consistent with his male gender identity and appearance, but he could not use the girls' restrooms

because other students “felt uncomfortable with him using the girls’ bathroom.” Sarah remarks that this impossible situation “really invalidate[d]” Dylan’s gender identity in both cases. Sarah has noted that, since Dylan moved to a new school where he has access to all facilities consistent with his gender identity, he “seems a lot happier” and “everyone is a lot more accepting of him ... and his mental health seems better.” Essentially, students using restrooms that match their gender identity and appearance is what provides students — transgender and non-transgender — with an atmosphere most conducive to all students’ educational experience and attainment.

Sarah also rejects any speculative problems arising merely from sharing restrooms and locker rooms with transgender students. She is friends with another girl at her high school who is transgender, with whom she has shared restrooms and a locker room for over a year. Sarah feels that the fact that the school allows her friend to access the restrooms and locker rooms on the same terms as all the other girls actually improves her relationships with her friends and to treat her transgender friends like she would any other student.

Similarly, Carter Brown, the brother of *amica* Kate Brown, is a 12-year-old non-transgender boy who attends middle school in Alexandria, Virginia. One of Carter’s very close friends, a classmate in the advanced placement program, is a boy who is transgender. Carter’s friend came out as transgender late in their

seventh grade year, but was forced to use the girls' facilities throughout eighth grade despite his typical male appearance and identity. Carter noted that he was unaware of any student raising issues with his friend using the boys' facilities. To the contrary, the only issues Carter knew of arose because non-transgender female students did not understand why a male student would be using the girls' facilities. Carter recalls how "uncomfortable" the situation was for his friend and pointed out that by forcing his friend, who is a boy, into the girls' restrooms, the school forcibly and publicly revealed his transgender status to the entire school each time he went to the restroom. Carter is incredulous when asked if his friend's presence in the boys' dressing room ever violated his privacy. He stated, "[my friend is] a boy, so he should be allowed to be with the boys when he's in the dressing room. He is a male. I don't know what more I can say." Carter sees no issue with sharing spaces with transgender students, and views the lack of support from the school as the root cause of other students' negative behavior towards their transgender peers.

CONCLUSION

Amici's accounts demonstrate that school policies regarding restroom access have very real and lasting consequences for transgender students. When schools' policies are unsupportive and discriminatory, transgender students struggle socially, medically, psychologically, and educationally. But when schools treat

transgender students consistently with their gender identity in all respects — including allowing them to use sex-specific facilities such as restrooms and locker rooms that match who they are — they thrive. Schools that foster a nondiscriminatory environment that supports transgender students not only enable them to succeed educationally and personally but also facilitate social, mental, and educational well-being for all students.

For these reasons, *amici* respectfully urge this Court to hold — as it previously did in *G.G. v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709 (4th Cir. 2016) — that Title IX prohibits discrimination against transgender students.

Dated: May 15, 2017

Respectfully submitted,

s/ Jesse Ryan Loffler

JESSE RYAN LOFFLER
MARK SIEGMUND
JANICE MAC AVOY
**FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON LLP**
One New York Plaza
New York, NY 10004
Telephone: 212-859-8000

Counsel for Amici Curiae

Of counsel:

JENNIFER L. COLYER
AMANDA GIGLIO
SHANNON DOHERTY
JEREMY GREEN⁵
**FRIED, FRANK, HARRIS,
SHRIVER & JACOBSON LLP**
One New York Plaza
New York, NY 10004
Telephone: 212-859-8000

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⁵ Jeremy M. Green, a law clerk whose admission to the bar of the State of New York is pending, assisted in the preparation of this brief, supervised by counsel from Fried, Frank, Harris, Shriver & Jacobson LLP admitted to practice in this Court.

APPENDIX A

**LIST OF AMICI CURIAE
TRANSGENDER STUDENTS AND ALLIES**

Carter Brown,
Non-transgender male, age 12
Alexandria, Virginia

* * *

Kate Brown
Transgender female, age 16
Alexandria, Virginia

* * *

Sydney “Siddy” Greenstein
Transgender male, age 13
Bethesda, Maryland

* * *

Dylan Kleiman
Transgender male, age 14
Alexandria, Virginia

* * *

Sarah Lore
Non-transgender female, age 16
Alexandria, Virginia

* * *

Kayden Ortiz
Transgender male, age 19
Fairfax, Virginia

Maxwell Platt
Transgender male, age 12
Arlington, Virginia

* * *

Evie Priestman
Transgender male, age 17
Arlington, Virginia

* * *

Rowan Wooldridge
Transgender male, age 17
McLean, Virginia

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because this brief contains 6,484 words, excluding 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 2013 in Times New Roman style, with 14-point font.

DATED: May 15, 2017

s/ Jesse Ryan Loffler
Jesse Ryan Loffler
Counsel for Amici Curiae

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Jesse Ryan Loffler

Date: May 15, 2017

Counsel for: Amici Curiae

CERTIFICATE OF SERVICE

I certify that on May 15, 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:

Victoria Lill
U.S. Department of Justice
Ed Opportunities
950 Pennsylvania Avenue, NW
Washington, DC 20530
Email: victoria.lill@usdoj.gov

Clare Patricia Wuerker
Office of the United States Attorney
Suite 8000
8000 World Trade Center
101 West Main Street
Norfolk, VA 23510-1624
Email: clare.wuerker@usdoj.gov

s/ Jesse Ryan Loffler
(signature)

May 15, 2017
(date)

CERTIFICATE OF SERVICE

I hereby certify that, on May 15, 2017, I filed the foregoing Brief of Transgender Students and Allies as *Amici Curiae* 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, and served a true and correct copy of the same at the addresses listed below:

Victoria Lill
U.S. Department of Justice
Ed Opportunities
950 Pennsylvania Avenue, NW
Washington, DC 20530
Email: victoria.lill@usdoj.gov

Clare Patricia Wuerker
Office of the United States Attorney
Suite 8000
8000 World Trade Center
101 West Main Street
Norfolk, VA 23510-1624
Email: clare.wuerker@usdoj.gov

s/ Jesse Ryan Loffler

Jesse Ryan Loffler
Counsel for Amici Curiae