NO. A19-1944

State of Minnesota

In Court of Appeals

N.H.,

Respondent,

and

Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights, Plaintiff-Intervenor,

Respondent,

vs.

Anoka-Hennepin School District No. 11,

Appellant.

BRIEF OF AMICI CURIAE GLBTQ LEGAL ADVOCATES & DEFENDERS, AND NATIONAL CENTER FOR LESBIAN RIGHTS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

GLBTQ Legal Advocates & Defenders. Through strategic litigation, public policy advocacy, and education, GLBTQ Legal Advocates & Defenders (GLAD) works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation. GLAD has litigated in state and federal courts to counter myths and stereotypes about transgender people, including in cases advocating on behalf of transgender students. Representative cases include where a transgender student in circumstances analogous to this one was excluded from using the commonly used student restroom facility, *Doe v. Reg'l Sch. Unit 26*, 86 A.3d 600 (Me. 2014), and where a student was regularly sent home by a school principal for not meeting the school's imposed gender norms. *Doe v. Yunits*, 15 Mass. L. Rep. 278 (2001).

The **National Center for Lesbian Rights** (NCLR) is a national non-profit legal organization dedicated to protecting and advancing the civil rights of lesbian, gay, bisexual, transgender, and queer people and their families through litigation, public policy advocacy, and public education. Since its founding in 1977, NCLR has

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[1] Counsel for the parties have not authored this brief in whole or in part. The parties and counsel for the parties have not contributed money that was intended to fund preparing or submitting the brief. No person other than the amici curiae and their counsel contributed money that was intended to fund preparing or submitting the brief.

played a leading role in securing fair and equal treatment for LGBTQ people and their families in cases across the country involving constitutional and civil rights. NCLR has a particular interest in ensuring equal opportunity for LGBTQ students in schools and has represented LGBTQ young people in Minnesota, including in *Doe v. Anoka-Hennepin School District No. 11*, Case No. 11-cv-1999 and 11-cv-2282 (D. Minn. 2012), and in courts throughout the country addressing issues similar to this case, including *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep't of Educ.*, (S.D. Ohio 2016) and *Doe v. Volusia Cty. Sch. Bd.*, Case No. 18-cv-102 (M.D. Fla. 2018).

INTRODUCTION

Separate is not equal. The School District built a separate locker room facility that it forced a transgender student to use, on threat of discipline. It treated the transgender student differently from all the other students by segregating that student based on his transgender status. The School District's forced segregation violated the Minnesota Human Rights Act, which bars discrimination in any manner in the full utilization of or benefit from any educational institution.

Amici are in full agreement with the arguments of N.H. and the Minnesota Department of Human Rights. The District Court's conclusion that Respondents alleged viable claims under the Minnesota Human Rights Act is fully consistent with the text and purpose of the statute, and with the conclusions of numerous state and

federal courts interpreting civil rights statues to prohibit schools from forcing transgender students to use separate facilities from their peers. Such separation from shared spaced imposes severe and lasting harms on transgender youth at a point in their lives where acceptance and social bonding with other students is critically important to their health and well-being.

ARGUMENT

I. THE DISTRICT COURT'S CONCLUSION THAT *GOINS* DOES NOT BAR N.H.'S CLAIM UNDER THE MINNESOTA HUMAN RIGHTS ACT IS CONSISTENT WITH THE TEXT AND BROAD REMEDIAL PURPOSE OF THAT STATUTE AND THE DECISIONS OF STATE AND FEDERAL COURTS IN SIMILAR CASES ACROSS THE COUNTRY.

In *Goins v. West Group*, 635 N.W.2d 717 (Minn. 2001), the Minnesota Supreme Court, interpreting the employment discrimination provisions of the MHRA, ruled that "absent more express guidance from the legislature . . . an employer's designation of employee restroom use based on biological gender is not sexual orientation discrimination . . . ." *Id.* at 723. The School District argues that *Goins* controls and requires dismissal of the MHRA claims in this case. The District Court disagreed, concluding that the MHRA provisions prohibiting discrimination in education are "distinct from the statute under which the Plaintiff in *Goins* sued his employer," and in particular bar discrimination "'in any manner in the full

utilization of or benefit from any educational institution.'" (Add. 15 (quoting Minn. Stat. § 363A.13, Subd. 1).)

The District Court's analysis was correct. Both the text and the broad remedial purpose of the MHRA's education provisions support the conclusion that the MHRA does not permit school districts to require a transgender boy to use separate locker room facilities from other boys. Such a conclusion is also in line with the decisions of numerous state and federal courts over the nearly 20 years since *Goins* was decided. These more recent decisions have, with near unanimity, concluded that forcing a transgender student to use separate facilities from his or her non-transgender peers unlawfully discriminates against that student, depriving the student of full and equal use of the institution's educational resources.

As the District Court correctly observed, the education discrimination provisions are distinct from the employment provisions and prohibit an educational institution from discriminating "*in any manner* in the *full utilization of or benefit* from any educational institution, or the services rendered thereby to any person because of . . . sexual orientation . . . ." Minn. Stat. § 363A.13, Subd. 1 (emphasis added). This broad prohibition is unqualified and on its face requires schools to provide full and equal utilization of all educational programs, resources, and facilities, without discrimination based on "sexual orientation," which includes "having or being perceived as having a self-image or identity not traditionally

associated with one's biological maleness or femaleness." Minn. Stat. § 363A.13, Subd. 44. Discrimination in access to educational resources or services "includes segregat[ion] or separat[ion] . . ." Minn. Stat. § 363A.03, Subd. 13. Accordingly, the District Court's conclusion is fully supported by both the text of the MHRA and its broad goal of preventing any form of segregation or denial of full and equal opportunity for students to participate in the educational opportunities and services offered by an educational institution.

In the nearly two decades since *Goins* was decided, other jurisdictions have not followed its approach in cases involving access to facilities by transgender students. To understand the inapplicability of *Goins* to this issue, some historical background is useful. In 1993, Minnesota became the first state to add language expressly protecting transgender people to its nondiscrimination law. *See* 1993 Minn. Laws Ch. 22. It was not until almost a decade later—the same year that *Goins* was decided—that a second state, Rhode Island, added similar protections to its law. *See* 2001 R.I. Pub. Laws Ch. 340. Since that time, 19 more states plus the District of Columbia and two United States territories have added laws to protect transgender citizens from discrimination in employment and other areas. *See* Movement Advancement Project, *Nondiscrimination Laws,* https://www.lgbtmap.org/equality-maps/non_discrimination_laws (last visited Feb. 24, 2020). In the years since *Goins*,

much has been learned about the needs and concerns of transgender persons and the way to ensure that laws intended to protect them can realize those goals.

Jurisdictions with more recently adopted law protecting transgender people have rejected the *Goins* outcome and, while affirming that schools may continue to provide sex-separated facilities, have assured nondiscriminatory access to those facilities for transgender persons. Some states have done so by the adoption of statutes or regulations implementing state antidiscrimination laws.[2] Other states have done so by the issuance of school guidance.[3]

Furthermore, even in the absence of specific policies and regulations, state and federal courts have repeatedly rejected the *Goins* approach and held

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[2] *See, e.g.,* Cal. Educ. Code § 221.5(f) (2020) ("A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records."); 3 Colo. Code Regs. § 708-1:81.9 (2020) ("All covered entities shall allow individuals the use of gender-segregated facilities that are consistent with their gender identity."); D.C. Mun. Regs. Tit. 4, § 802.1 (2020) ("All entities covered under the Act, as amended, shall allow individuals the right to use gender-specific restrooms and other gender-specific facilities such as dressing rooms, homeless shelters, and group homes that are consistent with their gender identity or expression.").

[3] *See, e.g.,* Connecticut State Department of Education, *Guidance on Civil Rights Protections and Supports for Transgender Students* 6 (2017), *available at* https://portal.ct.gov/-/media/SDE/Title-IX/transgender_guidance.pdf?la=en (last visited Feb. 26, 2020) ("While a school may provide single-sex restroom and locker facilities, transgender students must be allowed to access those facilities consistent with their gender identity. Under no circumstances should a school require transgender students to use facilities inconsistent with their gender identity or use

antidiscrimination laws forbid school districts from forcing transgender students to use separate facilities and require schools to permit those students to use sex-separated facilities that correspond to their gender identity.

For example, in *Doe v. Regional Sch. Unit 26,* 86 A.3d 600 (Me. 2014), the Supreme Judicial Court of Maine held that a school district violated the Maine

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individual-user facilities when other students are not required to do so … ."); Massachusetts Department of Elementary & Secondary Education, *Guidance for Massachusetts Public Schools Creating a Safe and Supportive School Environment: Nondiscrimination on the Basis of Gender Identity*, *available at* http://www.doe.mass.edu/sfs/lgbtq/GenderIdentity.html (last visited Feb. 26, 2020) ("In all cases . . . the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity."); New Jersey Department of Education, *Transgender Student Guidance for School Districts*, *available at* https://nj.gov/education/students/safety/sandp/transgender/Guidance.pdf (last visited Feb. 26, 2020) ("School districts shall allow a transgender student to use a restroom or locker room based on the student's gender identity."); Rhode Island Department of Education, *Guidance for Rhode Island Schools on Transgender and Gender Nonconforming Students* 8-9 (2016), *available at* http://www.thriveri.org/documents/Guidance.for.RhodeIsland.Schools.on.Transgender.and.Gender.Nonconforming.Students-2016.pdf (last visited Feb 26, 2020) ("[T]he student may access the restroom, locker room, and changing facility that correspond to the student's gender identity. … [R]equiring a transgender or gender non-conforming student to use a separate, nonintegrated space should not be done unless requested by the student and or family."); Washington Office of Superintendent of Public Instruction, *Prohibiting Discrimination in Washington Public Schools: Guidelines for school districts to implement Chapter 28A.640 and 28A.642 RCW and Chapter 392-190 WAC* 30 (2012), *available at* https://www.k12.wa.us/sites/default/files/public/equity/pubdocs/Prohibiting_Discrimination_in_Washington_Public_Schools_February2012%28RevisedSep.2019Disclaimer%29.pdf (last visited Feb. 26. 2020) ("[T]ransgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.").

Human Rights Act's prohibition on discrimination—which, like Minnesota's law, defined sexual orientation to include transgender status[4]—when it prevented a transgender student from using shared girls' restrooms and required her to use a separate unisex restroom normally used by school staff. The district's exclusion of the student from these shared spaces violated the Act because "[s]he was treated differently from other students solely because of her status as a transgender girl." *Id.* at 606. It was irrelevant to the analysis that state law expressly required school districts to maintain separate facilities for boys and girls, or that the district found itself under competing pressures due to "intense public scrutiny" or "the public's potential discomfort" with a transgender student's use of sex-separated facilities corresponding to her gender identity. *Id.* at 604.

Similarly, federal courts construing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq*., have held repeatedly that a school district unlawfully discriminates when it bars a transgender student from using restrooms, locker rooms,

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[4] At the time *Doe* was decided, Maine law defined "sexual orientation" to include "a person's actual or perceived gender identity or expression." 5 M.R.S. § 4553(9-C) (2013). In 2019, Maine revised its law to separately define "gender identity" as "the gender-related identity, appearance, mannerisms or other gender-related characteristics of an individual, regardless of the individual's assigned sex at birth." 5 M.R.S. § 4553 (5-C) (2019).

and other sex-separated facilities that match his or her gender identity.[5] *See, e.g., Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. Of Educ.*, 858 F.3d 1034, 1049 (7th Cir. 2017), *cert. dismissed*, 138 S. Ct. 1260 (2018) ("A policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX. … Providing a gender-neutral alternative is not sufficient to relieve the School District from liability, as it is the policy itself which violates the Act."); *Grimm v. Gloucester Cty. Sch. Bd.*, 400 F. Supp.3d 444, 456–57 (E.D. Va. 2019) ("[T]here is no question that the Board's policy discriminates against transgender students … . Under the policy, all students except for transgender students may use restrooms corresponding with their gender identity. Transgender students are singled out, subjected to discriminatory treatment, and excluded from spaces where similarly situated students are permitted to go."); *Adams v. Sch. Bd. Of St. Johns Cty.*, 318 F. Supp.3d 1293, 1325 (M.D. Fla. 2018) ("Adams has proven a Title IX violation because the School Board, a federally funded institution, prohibits Adams, a transgender boy, from using the boys' restroom 'on the basis of sex,' which discrimination caused him harm."); *Bd. Of Educ. Of the Highland Local Sch. Dist.*

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[5] Unlike the MHRA, Title IX does not expressly prohibit discrimination based on gender identity. However, these decisions have held that Title IX's sex-discrimination provisions protect transgender students against discrimination based on their transgender status.

V. U.S. Dep't of Educ., 208 F. Supp. 3d 850, 870 (S.D. Ohio 2016) (holding that school district violated Title IX when transgender girl was "denied access to the communal girls' restroom"). *See also Doe v. Boyertown Area Sch. Dist.,* 897 F.3d 518, 530 (3d Cir. 2018) (stating that a policy forcing transgender students to use separate facilities "would very publicly brand all transgender students with a scarlet 'T,' and they should not have to endure that as the price of attending their public school"); *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075, 1106 (D. Or. 2018) ("Forcing transgender students to use facilities inconsistent with their gender identity would undoubtedly harm those students and prevent them from equally accessing educational opportunities and resources.").

In sum, the District Court's conclusion that *Goins* does not bar N.H.'s MHRA claim is amply supported by the text and purpose of the statute. That conclusion is further supported by a large national body of post-*Goins* case law holding that forcing transgender students to use separate locker rooms or other facilities discriminates and stigmatizes them based solely on their gender identity. The Court should affirm the District Court's decision.

II. REQUIRING TRANSGENDER STUDENTS TO USE SEPARATE LOCKER ROOMS DEPRIVES THEM OF EQUAL EDUCATIONAL OPPORTUNITIES AND IS HARMFUL TO THEIR HEALTH AND WELL-BEING.

Gender identity is a person's inner sense of belonging to a particular gender. It is an innate, core component of human identity, with a strong biological basis.[6] Children typically become aware of, and often articulate, their gender identity between ages two and four.[7]

Separating children from their peers based on an innate characteristic "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954). "The impact is greater when it has the sanction of the law; for the policy . . . is usually interpreted as denoting the inferiority of the [separated] group. A sense of inferiority affects the motivation of a child to learn." *Id.* (internal quotation and citations omitted). Not surprisingly, when transgender students are treated differently or segregated from their same-gender peers, the impact can be

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[6] *See, e.g.,* Blaise Vanderhorst, *Whither Lies the Self: Intersex & Transgender Individuals & a Proposal for Brain-Based Legal Sex*, 9 Harvard L. & Pol'y Rev. 241, 259-60 (2015) (reviewing scientific research); Milton Diamond, *Transsexuality among Twins: Identity Concordance, Transition, Rearing, and Orientation*, 14 Int'l. J. of Transgenderism 24 (2013).

[7] Am. Psychiatric Ass'n, *Diagnostic & Statistical Manual of Mental Disorders* 451 (5th ed. 2013).

devastating. *See, e.g.*, *Boyertown*, 897 F.3d at 529 ("When transgender students face discrimination in schools, the risk to their wellbeing cannot be overstated—indeed, it can be life threatening."); *Whitaker*, 858 F.3d at 1045 (school district stigmatized student "when it dismissed him to a separate bathroom" because he was transgender); *G.G. v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709, 728 (4th Cir. 2016) (Davis, J., concurring), *vacated on other grounds*, 137 S. Ct. 1239 (2017) (forcing student to use separate restroom "accentuat[es] his 'otherness,' undermin[es] his identity formation, and imped[es] his medically necessary social transition process. The shame of being singled out and stigmatized . . . every time he needs to use the restroom is a devastating blow . . . and places him at extreme risk for immediate and long-term psychological harm.") (internal quotation and citation omitted).

Medical research confirms that when transgender students are supported and allowed to live as who they are, they thrive. When they are stigmatized, rejected and prevented from living consistent with their gender identity, they suffer. According to established medical consensus, the only effective treatment for the distress a transgender person experiences from the mismatch between their birth sex and gender identity, an experience clinically termed gender dysphoria,[8] is to enable

[8] Gender dysphoria is the scientific term for a "marked incongruence" between one's gender identity and assigned sex and is accompanied by clinically significant distress unless treated. Am. Psychiatric Ass'n, *Diagnostic & Statistical Manual of Mental Disorders* 451 (5th ed. 2013).

a transgender person to live fully in accordance with the person's gender identity. The process of allowing and supporting an individual to do so is called gender transition and may include adopting a new haircut, new clothes, a new name, and different pronouns, and interacting with peers and one's environment in a manner that matches the child's gender identity. A critical part of any such gender transition is allowing the child to use the same shared facilities as other students, consistent with their gender identity. Gender transition significantly eases the symptoms of gender dysphoria, prevents harm, and allows transgender children to thrive.[9] By contrast, isolating transgender children from facilities used by other students causes harm.[10] The harm is long lasting and can have a profound negative impact on a child's life.[11] Subjecting transgender youth to such separation serves only to subject

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[9] World Prof'l Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, & Gender-Nonconforming People* (2012), *available at* https://www.wpath.org/publications/soc (last visited Feb. 27, 2020); Bethany Gibson & Anita J. Catlin, *Care of the Child with the Desire to Change Gender – Part 1*, 36 Pediatric Nursing 53, 55 (2010).

[10] LGBTQ youth who experience victimization because of their gender expression are twice as likely to not pursue a secondary education. GLSEN, *The 2017 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools* (2018), *available at* https://www.glsen.org/school-climate-survey (last visited Feb. 27, 2020).

[11] Nearly two percent of high school students identify as transgender. In 2017, 35 percent of those transgender students had attempted suicide in the previous year. Ctr. for Disease Control & Prevention, *Transgender Identity & Experiences of Violence Victimization, Substance Use, Suicide Risk, & Sexual Risk Behaviors Among High*

them to harm and serves no legitimate governmental interest. *See Highland,* 208 F. Supp.3d at 877-78.

A. Families And Schools Play An Important Role In The Social, Emotional, And Psychological Development Of All Children, Including Transgender Children.

Research shows that youth who are supported by their parents and other caregivers have significantly higher levels of self-esteem, social support, and general health in adulthood, compared to peers with low levels of family acceptance.[12] Specific parental and caretaker behaviors—such as advocating for their children when they are mistreated because of their gender identity or gender nonconformity—protect against depression, substance abuse, suicidal thoughts, and suicide attempts in early adulthood.[13] Parental efforts to support and affirm a child's

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School Students — 19 States and Large Urban School Districts (2017), *available at* https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm?s_cid=mm6803a3_w (last visited Feb. 27, 2020).

[12] Caitlin Ryan *et al.*, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 Pediatrics 346, 346, 349-50 (2009) [hereinafter Ryan *et al.*; *Family Rejection*]. *See also* Caitlin Ryan *et al.*, *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual, and Transgender Children*, *available at* https://familyproject.sfsu.edu/publications (last visited Feb. 27, 2020) [hereinafter Ryan et al., *Supportive Families*].

[13] Ryan *et al*., *Family Rejection*, *supra* note 1, at 350; Ryan *et al*., *Supportive Families*, *supra* note 11, at 17 ("Transgender and gender non-conforming children who are supported by their families have higher self-esteem, a more positive sense

gender expression are among the most important protective factors for supporting the child's long term health.[14] In contrast, parental or caregiver behaviors such as pressuring a child to be more or less masculine or feminine, or telling a child that how he or she acts or looks will shame or embarrass the family, significantly increase the child's risk for depression, substance abuse, unprotected sex, and suicidality in adulthood.[15]

Allowing a school to separate a transgender boy from his peers undermines parents' efforts to safeguard their children's safety and health and subjects these young people to the serious negative outcomes identified above.

With the single exception of families, schools play the most important role in children's development and socialization. As one author has noted:

> Children spend the majority of their waking hours in school. Over the years they spend significantly more time with their classmates and teachers than they do with their parents. A child's experience at school can significantly enhance or undermine their sense of self.

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of the future and are at lower risk for health and mental health problems as young adults.").

[14] Ryan *et al*., *Family Rejection*, *supra* note 29, at 350; Ryan *et al*., *Supportive Families*, *supra* note 29, at 17.

[15] Ryan *et al*., *Family Rejection*, *supra* note 29, at 350; Ryan *et al*., *Supportive Families*, *supra* note 29, at 17.

> Furthermore, children need to feel emotionally safe to learn effectively.[16]

For adolescents in particular, school "is the primary social setting in which friends are made, social skills are learned, and self-efficacy is developed."[17] A young person's healthy psychosocial development "is centrally connected to the quality of the social interactions that take place within the school setting."[18]

The same evidence-based research that guides families about how to avoid negative health outcomes and increase positive health outcomes applies equally to teachers and other school officials.[19] Because transgender youth are vulnerable to stigma and discrimination, they have a heightened need for safety and support at

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[16] Stephanie A. Brill & Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* 153 (2008).

[17] Deana F. Morrow, *Social Work Practice with Gay, Lesbian, Bisexual, and Transgender Adolescents*, 85 Families in Society 91, 93 (2004).

[18] *Id*.

[19] American Psychological Association, Developing Adolescents: A Guide for Professionals 24 (2002) ("Some of the same qualities that characterize families of adolescents who do well—a strong sense of attachment, bonding, and belonging, and a feeling of being cared about—also characterize adolescents' positive relationships with their teachers and schools.") [hereinafter APA, *Developing Adolescents*].

school.[20] Students who are rejected or harassed because of gender non-conformity are at high risk of serious mental health problems and of contracting sexually transmitted diseases and HIV.[21] Moreover, those negative impacts are not transient, but persist into adulthood.[22] Conversely, being able to socialize with other students and participate in school activities and programs in the appropriate gender role is highly predictive of a student's long term health.[23] These experiences are a critical part of healthy adolescent development. Being able to have these experiences enables transgender youth to develop a strong, positive sense of self—including healthy, culturally appropriate ways to be a boy or a girl—while learning how to feel connected to, and relate to, others. Being denied them predictably damages

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[20] Morrow, *supra* note 16, at 93. *See also* Gay, Lesbian, Straight Education Network, *Harsh Realities: The Experiences of Transgender Youth in Our Nation's Schools* 47 (2009).

[21] Toomey *et al.*, *Gender Nonconforming Lesbian, Gay, Bisexual and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 Dev. Psychol. 1580, 1581 (2010).

[22] *Id.*

[23] APA, *Developing Adolescents*, *supra* note 18, at 21 (discussing importance of peer relationships "for adjustment both during adolescence and into adulthood").

psychosocial development.[24] As explained further below, having access to gender-appropriate restrooms is an essential part of that socialization process.

B. Locker Rooms And Other Shared Spaces Play An Important Role In Peer Relationships And Socialization, Which Are Critical To A Child's Ability To Feel Safe And To Learn.

Singling out a transgender boy and requiring him to use a separate locker room—not because of any misconduct or misbehavior, but solely because he has a medical condition that carries a social stigma—disrupts his ability to develop normal peer relationships, marginalizes and isolates him, and exposes him to rejection and discrimination. These are serious harms that prevent a child from feeling safe and from having equal opportunities to learn and to participate at school. They are also likely to have a lasting negative impact on an individual's long-term health and well-being and the quality of his adult life.

One of the core aspects of adolescent development is learning how to develop and consolidate one's gender identity and gender role, including by building friendships with same-sex peers. For many boys, no small part of that experience takes place in boys' locker rooms. The socialization and bonding that take place in

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[24] *Id.* ("Social isolation among peer-rejected teens has been linked to a variety of negative behaviors" and to "psychosocial difficulties during adulthood.").

these settings are critical components of building confidence, self-esteem, and healthy relationships with same-sex peers.

Excluding an adolescent boy from these social spaces is profoundly isolating and makes it much more difficult for him to develop peer relationships. Rather than having multiple opportunities to socialize, interact with other boys, and develop a healthy gendered self, he is singled out, isolated and marginalized. A policy that requires and reinforces isolation is inherently disruptive and sends a clear message there is something dangerous, inferior, or wrong about the excluded boy—a message that his peers readily absorb. That message is especially harmful when, as apparently happened in this case, such a stigmatizing policy is adopted in response to an expression of hostility toward the child by school board and/or community members.

A boy who is identified as "different"—particularly, when so identified by school administrators—is at high risk of being shunned or rejected by other boys, in ways that range from overt teasing or harassment to more subtle forms of relational aggression. Being excluded from shared locker rooms would be harmful for any boy, but it is especially so for a boy who is already at risk of being marginalized because of his transgender status. At a minimum, such a policy would serve as a constant reminder of difference and preclude any possibility of full integration and acceptance. Every time a friend or group of boys is goes into to the locker room, the excluded transgender boy will be forced either to fabricate an excuse about why he

cannot join or, regardless of any desire for privacy, to endure daily reminders to himself and everyone else of his difference. And if peers are aware of the reason for the transgender boy's exclusion, the potential for ostracism and harassment is multiplied even further.

Requiring a transgender boy to use a separate locker room is also harmful because it sends a potentially devastating message that he is not really a boy, but something freakish or "other." Adolescents are commonly preoccupied with their physical appearance; many feel extremely self-conscious about any ways, real or imagined, in which their bodies differ from others. Schools should not subject children to practices that put children at risk of such serious psychological damage, while serving no legitimate purpose.

CONCLUSION

For the reasons stated above, as well as those set forth in Respondents' briefs, amici curiae respectfully request that the Court affirm the District Court's denial of Defendant/Appellant's motion to dismiss.

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Respectfully submitted,

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CERTIFICATION

The undersigned certifies that this Brief complies with the typeface requirements of Minn. R. Civ. P. 132.01 subd. 3; it was prepared in 14-point proportionally spaced typeface, using Microsoft Word 2016 software, and contains 4,695 words excluding the Table of Contents and Table of Authorities based on a word count by Microsoft Word 2016 software.

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