

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

Case No. 17-3113

JOEL DOE, a minor; by and through his Guardians JOHN DOE and JANE DOE;
MARY SMITH; JACK JONES, a minor; by and through his Parents JOHN
JONES and JANE JONES; and MACY ROE,

Defendants-Appellants,

v.

BOYERTOWN AREA SCHOOL DISTRICT; DR. BRETT COOPER, in his
official capacity as Principal; DR. E. WAYNE FOLEY, in his official capacity as
Assistant Principal; DAVID KREM, Acting Superintendent,

Defendants-Appellees,

and

PENNSYLVANIA YOUTH CONGRESS FOUNDATION

Appellee-Intervenor.

On Appeal from the United States District Court for the
Eastern District of Pennsylvania, No. 5:17-cv-01249-EGS

**BRIEF OF TRANSGENDER STUDENTS AS *AMICI CURIAE* IN SUPPORT
OF DEFENDANT-APPELLEE AND APPELLEE-INTERVENOR**

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STATEMENT REGARDING PARTICIPATION BY PARTIES

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *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.

STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE

Amici transgender students attend or recently attended primary and secondary schools across the territorial jurisdiction of the United States Court of Appeals for the Third Circuit. These students are and were directly impacted by their schools' policies regarding transgender students, and thus have a direct interest in the Court rejecting an interpretation of the United States Constitution, Title IX of the Education Amendments of 1972, and state law that would create the limitless privacy right to be free from sharing spaces with transgender people that Plaintiff-Appellants seek and, as a consequence, engender and embolden discrimination against transgender students.

As demonstrated by the personal histories of transgender *amici*, based on interviews conducted in December 2017 and January 2018, transgender students' ability to access educational opportunities depends on whether they are treated consistently with their gender identity in all respects. Moreover, all students

benefit from nondiscriminatory policies that embrace transgender students and foster a culture of understanding, acceptance, and inclusivity. As recounted below, 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. Likewise, these stories demonstrate that non-transgender students are not harmed by sharing space with transgender students. To the contrary, all students benefit from nondiscriminatory policies that create a supportive environment for transgender students, 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 can cause 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. A significant number of schools across the country — including the Boyertown Area School District (“Boyertown”) — are combatting discrimination by adopting inclusive and supportive policies. However, some schools refuse to acknowledge transgender students’ gender identity, including by prohibiting them from using

bathrooms and other sex-specific facilities consistent with their gender identity.

Plaintiffs-Appellants are asking this Court to force Boyertown to do exactly that. *See* Brief of Appellants at 11, 21-22, *Doe v. Boyertown Area School District*, Case No. 17-3113 (3d Cir. Nov. 14, 2017) (Doc. No. 003112777024) (“Appellants’ Brief”). Currently, Boyertown does not forcibly segregate or compel use of sex-specific facilities for *any* student, whether transgender or non-transgender. *See Doe v. Boyertown Area School District*, No. 17-cv-1249, 2017 WL 3675418, at *1, 58 (E.D. Pa. Aug. 25, 2017) (“Opinion”). Any student uncomfortable with using a sex-specific facility — or uncomfortable with the mere presence of transgender students — may choose to use a single-user space, but no student is *forced* to do so. *Id.* Policies that exclude and forcibly segregate transgender students, like those that Plaintiffs-Appellants wish to force upon Boyertown, discriminate against transgender students by preventing them from living consistently with their gender identity and presentation in all respects, which is humiliating, stigmatizing, and disruptive of their education, social development, and medical and mental health.

As the stories of *amici* below demonstrate, Plaintiffs-Appellants’ claim that transgender students would suffer “no stigma” by being forced to use segregated single-user facilities because “all students would be allowed to access the individual facilities” (Appellants’ Brief at 32), is not only factually inaccurate, but misses the point entirely. Transgender students like *amici* are the only ones that

are *forced* to use segregated facilities, and this compelled segregation stigmatizes them by sending the message that they are unsuitable to share facilities used by other students and, in some cases, outs them against their will (*i.e.*, reveals their transgender status). The medical and scientific consensus is that such discrimination causes significant social and psychological distress for transgender people, as credible expert testimony in the trial court established. Opinion at *40.

Indeed, the ability to live consistently with one’s gender identity, including when using bathrooms 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 also* 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”) (discussing treatment options). When allowed to socially transition, transgender youth report similar levels of depression and other harmful emotions as their non-transgender peers, compared to “markedly higher rates of anxiety and depression and lower self-worth” among transgender youth with dysphoria who have not socially transitioned. 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).

For transgender youth, policies affecting them at school, where they spend much of their daily lives, have long-lasting educational, mental, emotional, and social effects. *See, e.g.*, Laura Wernick et al., *Gender Identity Disparities in Bathroom Safety and Wellbeing among High School Students*, 46 J. Youth Adolescence 917, 928 (2017) (“safety using bathroom facilities mediates the inequalities in overall school safety experienced by trans students [and] ... [i]n order to support the wellbeing and healthy development of all students, especially trans students, educational policies and practices can explicitly support the right of students to use a bathroom that matches their identity”); Jaimie Veale et al., *Enacted Stigma, Mental Health, and Protective Factors Among Transgender Youth in Canada*, 2 Transgender Health 207, 214 (2017) (reporting “greatly reduced likelihood of negative mental health outcomes” for transgender youth when in supportive school environments “even when they experienced stigma and discrimination elsewhere”); Marla Eisenberg et al., *Risk and Protective Factors in the Lives of Transgender/Gender Nonconforming Adolescents*, 61 J. of Adolescent Health 521, 524 (2017) (describing findings on prevalence of suicidal ideation and attempt among transgender youth as “a call to action for ... [among others,] school personnel ... to recognize, support, and protect these vulnerable youth”); 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/article/2015-national-school-climate-survey> (discussing widespread prevalence of transgender students experiencing verbal harassment, physical harassment, and even physical assault); 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> (discussing studies showing negative school experiences are “correlated with a variety of poor outcomes, such as higher rates of attempted suicide, homelessness, and serious psychological distress”).

Given the stark differences in outcome for transgender students, schools should and can avoid these extreme negative outcomes with simple solutions such as those that the District Court observed are already in place at Boyertown. See Opinion at *67; see also 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 (“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.”); Ethan Cicero et al., *Supporting the Health and Well-Being of Transgender Students*, 33(2) *Journal of School Nursing* 95, 106 (2017) (forcing

transgender students to use separate bathrooms can “create unsafe conditions for transgender students as others will be able to identify them as trans or remotely located bathrooms produce accessibility challenges and consequences for being tardy to class.”).

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 using sex-specific bathrooms 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 fostered an environment in which transgender students thrived socially and academically. Following the lead of these educators, other students embraced their transgender peers for who they are.

Other *amici*, however, were forbidden from using facilities consistent with their gender identity and were often forced to use separate bathroom 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 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. Transgender students forced to endure these hostile school environments often avoided using bathrooms during school, leading to discomfort and harmful medical consequences such as severe dehydration and other harmful conditions. 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.

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, the claims of purported harm espoused by Plaintiffs-Appellants, and which the District Court correctly rejected here, starkly 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. *See* Opinion at *55-58, 67-71.

ARGUMENT

The consensus of the medical and scientific community and many educators across the Third Circuit (and the country) 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 using sex-specific facilities in schools. The experiences of *amici* recounted below bear this out.

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

The following *amici* are transgender students from states within the Third Circuit who 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, including the ability to use facilities consistent with their gender identity. This support fostered an environment that enabled them to succeed and promoted their social and mental well-being.

Leif T., West Chester, Pennsylvania / Middlebury, Vermont

Leif T. is a 20-year-old student who recently graduated from Westtown High School in Pennsylvania, and is now enrolled in university in Vermont. A recent picture of Leif is below.



Leif came out as transgender as a sophomore in high school, after transferring from another high school where he was ostracized and bullied because he did not conform to expected gender roles. When he came out, Leif approached the administration because he felt “very uncomfortable using the girls’ bathroom” and living in the girls’ dormitory given his male identity and appearance. At the time, the school had no policy regarding facility usage and initially required Leif to use a faculty bathroom in a separate building during the day and the girls’ bathroom after hours. As a result, Leif “had difficulty functioning because I was

stressed out about having to go to the bathroom,” would “hold it all the time,” and “was psychologically having trouble because I was told that everyone else’s comfort was more important than my ability to go to the bathroom.”

However, the school soon adopted a policy allowing transgender students to use facilities consistent with their gender identity. Although he has heard of abstract concerns about privacy, Leif explained that once the policy was in place, “they let me use everything and it was fantastic. And there were no problems at all.” He recalls: “When I finally told some people I was trans, they [said] ‘oh really? I had no idea.’” Indeed, Leif states that the only time he recalls anyone taking issue with him in a bathroom was when he had to use a women’s bathroom before he came out and a woman questioned why he was there. Leif believes policies that rely on assigned sex have “ironic” results because “I shouldn’t be going into the women’s bathroom” because “[t]hat’s a women’s space ... [and] well, I’m not a woman.”

Since his sophomore year, Leif has consistently used men’s facilities. “No one knows” Leif’s transgender status unless he has told them himself, and there are “never any problems.” When Leif has made the choice to come out to his peers, this did not change. However, if Leif were forced to use a single-user stall, it would prevent him from choosing when, and with whom, he is comfortable sharing

his transgender status: “Forcing trans people to use different bathrooms forces you to out yourself and share something you may not be willing to share.”

His high school’s supportive policies allowed Leif to succeed and go on to a college education: “I could function again because I was able to go to the bathroom without being discriminated against.” Leif’s energy and enthusiasm for school increased, allowing him to excel academically, become a leader in extracurricular activities, and graduate with a merit scholarship. Leif’s teachers and friends told him that he “seemed so much happier, more efficient, and able to get things done” after the school implemented the supportive policy.

Leif uses men’s facilities at his university in all instances and has never had any issues. For example, Leif uses the men’s locker room to change after rock climbing and at a climbing gym where he is a youth rock climbing instructor. Leif also recently participated in a multi-day outdoor leadership trip to learn the skills necessary to become an outdoor educator with nine other non-transgender males from across the country. At first, Leif was apprehensive and would hide to change. However, after Leif came out to his peers and “nothing has happened,” he realized that “no one really cared but me ... You just change and move on with your life.”

Leif is currently majoring in environmental studies with a focus on human ecology and plans to continue his LGBTQ advocacy efforts.

Maddie Heeney, Wilmington, Delaware

Maddie is a 17-year-old girl and a senior at a high school in Wilmington, Delaware. A recent picture of Maddie is below.



Maddie transitioned at school when she was 10 years old, after taking trips and spending time with family as the girl that she is. Maddie's parents approached her school in the summer before her fifth grade year to ask that the administration use Maddie's correct name, pronouns, and allow her to use the girls' facilities. Her

stepmother reports that the principal did not “even want to look at pictures of Maddie.” as a girl; several of the school’s administrators refused to talk to Maddie’s parents; and the director of human resources stated that Maddie was “registered [as] a boy with a boy’s name,” summarily denying their requests to respect Maddie’s gender identity.

As a result, Maddie attended a private school for fifth through eighth grade that respected her gender identity. Maddie explains that at this school she was “never uncomfortable” or “discriminated against.” In fact, although the school knew that Maddie is transgender, other students did not until eighth grade when she came out. When she did, Maddie states that there were “no bad reactions,” and that she was embraced by her peers. Maddie was allowed to use all girls’ facilities, was in the girls’ health class, and bunked with female students on camping trips. Nothing changed after she came out.

Asked about privacy issues during school and extracurricular activities, Maddie reports that she was conscious of maintaining her privacy. Maddie explains that she knew “how to change without anyone seeing anything,” and, in any case, “at 10 to 13 a lot of people are not really secure so it is not a weird thing to shield or cover yourself ... everyone covered themselves.” Although Maddie was uncomfortable at first, as time went on without any incident or concern her apprehension vanished and she “never felt uncomfortable” again.

Maddie’s high school, the Cab Calloway School of the Arts, is just as supportive of her gender identity as her middle school was — using the correct name, pronouns, and allowing Maddie to use the girls’ facilities. Because she was starting at a new school, Maddie decided she would not come out as transgender to the other students at her new school until her junior year. Maddie says, similar to the first time she came out, her peers were incredibly supportive, allowing her to become more confident and socially and academically engaged.

In high school, Maddie has taken swim classes and used the locker room without incident. Maddie reports that no issues have arisen and explained that all of the girls in her high school change in stalls to be more comfortable anyway. Maddie observes that any students who are uncomfortable in locker rooms already “cater to their own discomfort and do something for themselves to be more comfortable.” Transgender students, like Maddie, are no different than any of their fellow non-transgender students.

Maddie is now actively engaged in her school’s community, academically successful, and participates in her school’s theater club as a technical producer. Maddie is thankful that her parents had the resources to put her in private school and enrolled her in her current high school. Maddie states that if her school’s administration was not as supportive of her gender identity she likely would not be

participating in extracurricular programs or “doing well academically.” Maddie plans to attend college and to continue studying directing and theater production.

Jace White, Moscow, Pennsylvania / Lexington, Kentucky

Jace is a 20-year-old recent graduate of North Pocono High School in Moscow, Pennsylvania. A recent picture of Jace is below.



Jace began transitioning and first came out as transgender to his close friends in his junior year. Although he initially continued using female bathrooms at first, he was soon uncomfortable because “I had come out as male and was presenting as male so it didn’t make sense for me to use women’s bathrooms.” Eventually, Jace “tended to avoid bathrooms because of the stress and nervousness that using the bathroom caused.” Given this untenable personal, social, and educational position, Jace contacted his school principal just prior to his senior year to inform the school of his transgender status and to request the administration’s assistance. The administration was “very supportive” and met with Jace on multiple occasions to discuss how the school could support him. The principal and superintendent told Jace that “they wanted to keep my safety a priority.”

At the time, the administration did not have a non-discrimination policy that included gender identity and temporarily asked Jace to use the nurse’s bathroom while it worked to add gender identity to the policy. Jace initially agreed to the temporary solution, but swiftly found that “using the nurse’s bathroom felt segregating and embarrassing. It felt like they didn’t know what to do with me, and this was avoiding dealing with it.” As promised, however, the administration quickly amended the non-discrimination policy and allowed Jace to use all facilities — both locker rooms and bathrooms — consistent with his gender

identity. Although he heard occasional comments made about his transgender status, everything went “very smoothly” after the policy was changed.

The supportive tone from the administration also helped Jace and his peers, who largely accepted him. Jace recalls only one serious bullying incident after his transition. After a classmate who Jace had known to make homophobic comments threw a ball at his head, the school immediately addressed the problem, and Jace faced no further incidents of harassment. In fact, Jace explains that when the school adopted the supportive policy, it “made for a much more comfortable environment to be in” and it was “like everyone took a deep breath and it didn’t end the world.” He also believes that it “helped the student population and people stopped staring me down or questioning me. It felt like they accepted me as a normal student.” Jace believes that the change in the policy “was good for the rest of the school population” as well because, as students came to a greater understanding of and embraced diversity, the student population realized that “transgender students are the same and we’re all equals going through the same school experience.”

Asked about claimed privacy issues in bathrooms and locker rooms, Jace states that a contrary policy would “not change anything in a positive way” and would be “detrimental to a lot of peoples’ mental health.” He continues: “No one is going into the bathroom to spy on people ... We are all just getting an education

and trying to get through the day.” Moreover, “in most locker rooms, there is a separate private area if someone is uncomfortable.”

According to Jace, the support he received from his school administration, teachers, and classmates “has moved me forward in the goals that I have and the future that I want to live.” He continues: “the support and love helped me push through high school and all the other challenges I faced.” When Jace recently graduated from high school, he was honored for his scholastic achievements and outstanding character and leadership qualities.

Jace is now a freshman at the University of Kentucky – Lexington, which also recognizes his male gender identity in all respects. He explains that his university is “very progressive and everyone has been friendly and supportive” of him. He has had “no issues” with using facilities and no harassment, and this support allows him to continue thriving academically and personally. Jace is considering his options for majors at college and is committed to his “LGBTQ advocacy to help youth so they will not have to struggle” as much as transgender students who have come before them.

* * * * *

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

forcibly 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 WELL-BEING

In stark contrast, other *amici* reported that they faced discriminatory school policies that barred them from using the bathrooms 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 their education. 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.

Trinity Neal, Wilmington, Delaware

Trinity is a 14-year-old girl in the eighth grade, who is about to start a new public charter school next year. A recent picture of Trinity is below.



Trinity told her parents that she was a girl when she was 4 years old. Her mother explains: “She didn’t have the words to tell us that she’s transgender, [but] she is now 14” and has not lived as anything but the girl she is since then.

Trinity’s parents approached the elementary school when she was set to enter kindergarten, but the school refused to use female pronouns and her chosen name, or to let her use the girls’ bathroom. During the first week of school, Trinity

received her bus identification, which children in kindergarten through third grade are required to wear to go on the bus. This identification had her birth name and listed her as male but featured a picture of her as dressed as the girl she is.

Trinity's family felt it would not be safe for Trinity and, to avoid the damaging effects of the kindergarten's non-supportive policy, her mother quit her job to homeschool Trinity, forcing the family close to poverty.

Trinity and her mother considered re-enrolling Trinity in public school when she entered middle school, but were again met with resistance. The middle school in Trinity's district refused to consider a request for Trinity to use the girls' bathrooms. Trinity would also have been forced to use her birth name and be designated as male. Faced with no options, Trinity knew she had to continue homeschooling. Trinity was disappointed that the middle school was "forcing on you stuff you don't want" by requiring her to pretend to be a boy despite the fact that she had lived as a girl for the vast majority of her life to that point; Trinity explains that she "just want[ed] to be [her]self" and the school was not recognizing her "as a person." Trinity explains she would constantly "feel scared" to be in such an environment and wonders why, although "it's just a bathroom, people make it seem like the end of the world." Trinity, and her family, believed it was simply "not going to be safe" for Trinity to attend public school at that time.

Meanwhile, Trinity uses girls' facilities everywhere else without incident. She explains, "I use the bathroom, nothing happens, [and] no one cares." For example, Trinity participated in ballet classes when she was younger and changed with all the other girls her age with no issues whatsoever. Trinity recalls the experience: "It was just girls putting on ballet suits. No one questioned ... there was nothing wrong." Moreover, the homeschooling social group Trinity participates in and her family's Buddhist religious community all treat her consistently with her female gender identity and allow her to use all of the girls' facilities. Although some of the students may know she happens to be transgender, none of the other kids know her as anything other than the girl that she is.

Fortunately, Trinity will be enrolling in a new charter school in the fall of this year that will recognize Trinity's gender identity in all respects. Trinity exclaims that she is "really excited" to enroll in school and join a supportive community of her peers. When Trinity and her family first met with the school, they were told by the administration that Trinity could use the facilities consistent with her gender identity and "in which she is comfortable."

Trinity and her family are very excited for Trinity to go to a traditional schooling environment that will treat her "so respectfully" and enable her to enjoy a social and educational life with her peers. Trinity wants to be a computer coder

and is excited and hopeful that her new school will help give her the background and skills necessary to pursue this career.

E.S., Southeast of Dover, Delaware

E.S. is a 10-year-old girl in fourth grade and an aspiring comic book writer and graphic designer. At the end of first grade, E.S. asked her mom: “Is there a box you can check that says girl instead of boy” at school. During that summer between first and second grade, E.S. went to summer camp consistent with her gender identity as the girl she truly is.

However, E.S.’s school did not support her using the girls’ bathrooms and strongly encouraged her to use the nurse’s bathroom, which was very far from her classroom, or the faculty bathroom, which was also on the “other side of the hallway and down another huge long hallway.” E.S. reports that this caused her to feel separated from her peers, made her uncomfortable when teachers needed to use the bathroom and were upset they had to wait for her to finish, and it suggested to other students that E.S. was different. E.S. explains that “I would try to hide when going in or pretend like I was going somewhere else” because being forced to use this bathroom “made me feel scared” people would find out she was transgender.

During third grade, the school acquiesced and allowed E.S. to use the girls’ bathroom and the single-user bathrooms, but strongly suggested E.S. should

continue using the latter. As a practical matter, E.S. is “afraid to use” the girls’ bathroom because the school has not made “it safe” by failing to address and remedy severe bullying. E.S. has endured both physical and verbal harassment from peers after her transgender status was disclosed, including incidents where students have thrown and struck E.S. with shoes and physically twisting the skin on her arms until she is in pain that lasts long after the incident. Though E.S. and her mother feel that some of the teachers at her school listen and want to help, there are no practical consequences for the bullying. E.S. explains that her teachers “talk to me to help but don’t really do anything else” to change the school environment. E.S. has been forced, at times, to engage in “restorative sessions” with her bullies where the bullying incident is reduced to a mutual conflict and both the bully and E.S. are asked to make amends when E.S. is the only one that has been harassed. E.S. does not even report many incidents because she is scared of retaliation.

Things have improved somewhat in fourth grade. She has been able to consistently use the girls’ bathroom, despite occasional harassing comments from some students in the hallway. E.S. reports that this year she no longer “holds it in” as often as she did when she was trying to avoid the single-user bathroom. She also reports that she can dress more freely instead of wearing clothes specifically intended to hide accidents or issues of leaking from struggling to “hold it in” for so

long. A few more of E.S.'s teachers have been understanding of E.S., although not as proactive as she needs and would like. Both E.S. and her mother remain disheartened by the overall response of the administration. E.S. hopes that she can dedicate greater focus to her studies in fourth grade rather than her bathroom usage and having to structure her entire schedule around when to go to the bathroom.

C.T., Southeast of Harrisburg, Pennsylvania

C.T. is a 16-year-old girl in tenth grade. C.T. came out at school in eighth grade because it was too stressful, overwhelming, and psychologically harmful for her to live as a boy in school but as a girl everywhere else: C.T. failed eighth grade, began cutting herself, and suffered from suicidal ideation. With the help of her doctors and family, C.T. realized it was essential for her to live authentically as a girl everywhere.

When she first came out, C.T. temporarily agreed to use a single-user bathroom located in a hallway that was no longer in use and distant from her classes. C.T. agreed because she could not continue using the boys' bathroom due to her female identity and appearance, which resulted in harassment in the boys' bathroom. However, other students could see C.T. using a hallway that no one else used, and she was unwillingly outed every time she used that bathroom. The bathroom also shared a door with the woodshop on the other side and students would pound on the door from the woodshop and yell obscenities and lewd

comments at C.T. through the door. C.T. described the simple task of using the bathroom as “an absolute nightmare.” When C.T. reported the incidents, she was summarily dismissed or told that she “misunderstood” the offensive comments. The administration eventually allowed C.T. to use a different single-user bathroom near the cafeteria, but this did not solve the issues.

Although the administration suggested to C.T. and her parents that it would make changes, the school has not changed the policy of excluding her from the girls’ bathrooms. Moreover, although C.T. was on the girls’ track team, the school suspended C.T. at the beginning of ninth grade for changing in a stall in the girls’ bathroom near her track practice after hours when all the other students were gone, despite that she understood the policy not to apply after school hours. C.T. explained that she always tries to be respectful of the administration and was simply trying to change and make it to her track practice on time. C.T. was “devastated” and “felt totally ambushed” by the suspension. C.T. was also outed by the prior principal to other schools hosting track meets when he called those schools to disclose her transgender status without her consent, causing those other schools to force her to use separate facilities. The principal justified this action by claiming he could not forbid C.T. from using the girls’ bathroom at her school if she was allowed to use it elsewhere. C.T. felt so dehumanized and unsafe that she

stopped using the bathroom at track meets, despite the need to hydrate while participating.

Although a new school administration has shown greater support for C.T., school has been a “let down.” When she first came out, C.T. was “excited, like they had my back, but now feel like they are watching me and waiting for me to slip up. I try to watch what I wear, how I act and how I do in school [be]cause I feel like if I mess up they will point a finger at me and say that I am not a good role model. It is sometimes a lot since I just want to focus on my work and not all the extra that comes with being trans.” C.T. explains that her school’s bathroom policy has caused depression and “tells me I can’t be myself.”

While the school made two other single-use bathrooms available, C.T. still avoids these bathrooms because, though closer, they are still much further than the girls’ bathroom next to her classes. More importantly, C.T. does not want to be outed by using the single-use bathrooms between class when other students are in the hall. “I hide, I am being singled out and harassed and followed and bullied ... If I just blended in it would be much easier ... I would be with everybody else and I would have a better chance of being protected than being alone.” C.T. also feels that she misses out on opportunities to socialize and integrate with her peers.

Outside of school, C.T. loves skiing and has used girls’ locker rooms and bathrooms at ski resorts and on ski trips without issue: “In the girl’s bathroom

there are stalls. No one is seeing anything they shouldn't, there have been things put in the bathroom to provide people with privacy ... whatever happens behind that locked door is going to stay there. No one is really doing anything in the bathroom to be disrespectful or to be in other people's privacy."

Despite facing much adversity, C.T. remains hopeful. "I am always on the honor roll, I am always looking my best, and trying to be the best I can be because I know I am the face of this there."

* * * * *

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 using school facilities and resources on equal terms as their peers and, in some cases, literally bar them altogether. These policies lead to medical complications and dehydration when students stop drinking water or avoid bathrooms altogether, and cause some students to skip school entirely to avoid these humiliating and painful experiences. These policies 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

can and do lead to confrontation with non-transgender students or parents who are unaware that the student is transgender and are surprised that a person they know only as a girl or boy is in a bathroom that does not match that reality.

CONCLUSION

Amici's accounts demonstrate that school policies regarding bathroom use have very real and lasting consequences for transgender students. When schools' policies are unsupportive and discriminatory, transgender students struggle socially, medically, psychologically, and academically. But when schools treat transgender students consistently with their gender identity in all respects — including allowing them to use bathrooms and locker rooms that match who they are — they thrive, and so do their peers. Schools that foster a nondiscriminatory environment that supports transgender students enable them, and their peers, to succeed academically and personally, on equal terms. For these reasons, *amici* respectfully urge this Court to affirm the decision of the Eastern District of Pennsylvania, which denied Plaintiffs' request to order Boyertown to reverse its supportive policies for transgender students and instead ban them from using facilities used by their non-transgender peers.

Dated: January 23, 2018

Respectfully submitted,

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CERTIFICATE OF BAR MEMBERSHIP

Under Local Rule 28.3(d), I hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

Dated: January 23, 2018

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**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF
APPELLATE PROCEDURE 32(a) AND LOCAL RULE 31.1**

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify the following:

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 6,248 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f) and Local Rule 29.1.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5), the type style requirements of Fed. R. App. P. 32(a)(6), and Local Rule 32.1 because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Times New Roman style, with 14-point font.

3. This brief complies with the electronic filing requirements of Local Rule 31.1(c) because the text of this electronic brief is identical to the text of the paper copies, and McAfee VirusScan Enterprise, version 10.5, has been run on the file containing the electronic version of this brief and no viruses have been detected.

DATED: January 23, 2018

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CERTIFICATE OF SERVICE

I hereby certify that, on January 23, 2018, I filed the foregoing Brief of Transgender Students and Allies as *Amici Curiae* in Support of Defendant-Appellees with the Clerk of the Court using the CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

I further certify that, pursuant to Local Rule 31.1(a), I am serving the foregoing Brief of Transgender Students and Allies as *Amici Curiae* in Support of Defendant-Appellees by electronic mail upon all counsel of record and am also sending the same by regular mail to:

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