



TRANSGENDER EDUCATION  
NETWORK OF TEXAS  
TRANS RIGHTS ARE HUMAN RIGHTS



HUMAN  
RIGHTS  
CAMPAIGN<sup>®</sup>

November 14, 2022

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Board of Trustees

Dr. Mike Waldrip, Superintendent  
Frisco Independent School District (“Frisco ISD”)  
5515 Ohio Drive  
Frisco, Texas 75035

*Via E-mail*

**Re: Supporting Transgender Students in Frisco ISD**

Dear Frisco ISD Board of Trustees and Superintendent Waldrip,

We are civil rights organizations dedicated to upholding the rights of all people in Texas, including lesbian, gay, bisexual, transgender, queer, intersex, and asexual (“LGBTQIA+”) students in your school district. We write to inform you that the proposed policy you are considering tonight, CS (Local),<sup>1</sup> violates federal law and severely misinterprets Texas state law. Enacting this policy would harm Frisco ISD students, invade their medical privacy, and defy best practices recommended by nonpartisan education associations, including the Texas Association of School Boards (TASB).

**I. Proposed CS (Local) Violates Federal and State Law**

The proposed CS (Local) begins with the words “To the extent permitted by law.” Yet no aspect of this policy is grounded in or permitted by federal or Texas law. The words “biological sex” are not defined in this policy, nor are they defined in any federal or Texas statute. Indeed,

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<sup>1</sup> See Proposed Policy CS (Local), Frisco ISD (Oct. 31, 2022), available at <https://meetings.boardbook.org/Public/Agenda/2014?meeting=556178>.

the American Medical Association (AMA) and other scientific organizations recognize that “biological sex” is not “simple and binary,” but is instead based on a variety of characteristics, including someone’s anatomy, genetic makeup, and hormones.<sup>2</sup> Because approximately 1.7% of people are born intersex, with many variations possible in genitalia, hormones, internal anatomy, and/or chromosomes,<sup>3</sup> it is scientifically inaccurate and impossible for school districts to set policy based on a binary view of “biological sex.”

The proposed CS (Local) acknowledges that school districts keep records of students that identify their gender based on their birth certificate, but this policy goes far beyond Texas law to allow Frisco ISD administrators to challenge or second-guess students’ official birth certificates.<sup>4</sup> The proposed policy would allow (and seemingly require) school administrators to ask whether the sex listed on students’ birth certificates was “[e]ntered at or near the time of the person’s birth” or “[m]odified only to the extent necessary to correct any type of scrivener or clerical error in the person’s biological sex.”

It is deeply invasive and unlawful for school administrators to interrogate students’ private medical information in this way. School districts have no right to question students’ sexual characteristics such as genitalia, hormones, internal anatomy, or chromosomes. When enacting Texas Education Code § 33.0834 last legislative session, the Texas Legislature clarified that any UIL rules regarding transgender students must comply “with state and federal law regarding the confidentiality of student medical information, including Chapter 181, Health and Safety Code, and the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.).”<sup>5</sup> Here, Frisco ISD seeks to violate the Texas Education Code and Texas law by authorizing school administrators to interrogate students’ private medical information. And such a gross invasion of privacy would also violate students’ federal and state privacy rights, including the constitutional right to privacy in the U.S. and Texas Constitutions.

It is also unlawful for Frisco ISD to categorically ban transgender students from accessing multi-user facilities that align with their gender identity. Across the country, federal courts of appeal have unanimously found that public school districts cannot exclude transgender students from multi-user, sex-separated facilities.<sup>6</sup> Federal prohibitions on sex discrimination have repeatedly been interpreted to protect transgender people from discrimination. In June of 2020, the Supreme Court ruled in a 6-3 decision that discrimination “because of sex” in Title VII

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<sup>2</sup> See Report 10 of the Board of Trustees, American Medical Association at 14 (June 2021), <https://www.ama-assn.org/system/files/2021-05/j21-handbook-addendum-ref-cmte-d.pdf>.

<sup>3</sup> Caroline Medina and Lindsay Mahowald, *Key Issues Facing People with Intersex Traits*, Center for American Progress (Oct. 26, 2021), available at <https://www.americanprogress.org/article/key-issues-facing-people-intersex-traits/>.

<sup>4</sup> Parts of this policy seem to borrow language from Texas Education Code § 33.0834, which was enacted in 2021 after House Bill 25 passed into law, but that language is not accurately quoted, has nothing to do with restrooms, does not permit Texas school districts to limit student restroom access, and cannot supersede federal law or allow school districts to discriminate against their students.

<sup>5</sup> § 33.0834(d).

<sup>6</sup> *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034 (7th Cir. 2017) (providing a single-user bathroom to a transgender student while denying him access to the boys’ bathroom likely violated student’s rights under Title IX and the Equal Protection Clause); *Dodds v. United States Dep’t of Educ.*, 845 F.3d 217 (6th Cir. 2016) (injunctive relief was warranted to allow transgender female student to use the girls’ bathroom).

fully protects transgender people from discrimination.<sup>7</sup> This precedent bolsters the rationale relied on by federal courts of appeals to resoundingly find that federal nondiscrimination laws require government entities to grant transgender people access to sex-separated facilities in accordance with their gender identities.

Federal appeals court decisions in this area recognize the deeply harmful effects of forcing transgender students to use separate restrooms from their peers, even when those restrooms are single-user facilities. As the Third Circuit recently explained, requiring “transgender student[s] to use the single-user facilities’ under an assigned-at-birth-based bathroom policy ‘would very publicly brand all transgender students with a scarlet ‘T’” that would ostracize these students from their peers and expose them to bullying and harassment.<sup>8</sup> The Seventh Circuit also found that requiring transgender students to use single-user facilities “actually invited more scrutiny and attention from [their] peers” and led to increased anxiety and depression for transgender students.<sup>9</sup>

The federal government has also made clear that public school districts violate the Constitution and Title IX when they try to exclude transgender students from sex-segregated facilities that align with their gender identity. The U.S. Department of Education’s Office for Civil Rights (OCR) has stated that public districts may be putting their federal funding at risk if they discriminate against transgender students and has already opened investigations into school districts in Texas that violate Title IX in this way.<sup>10</sup>

TASB has likewise cautioned school districts against discriminating against transgender students and stated that “[t]here is no law that prohibits a district from granting the transgender student’s request to use these facilities.”<sup>11</sup> Further, TASB advises districts to respect court orders and states that “[t]he legal trend [in this area] strongly supports a student’s right to use facilities corresponding to the student’s gender identity.”<sup>12</sup>

Countless principals and superintendents have explained that parents’ concerns and school administrators’ fears are often based on prejudice and misplaced beliefs about the real risks facing transgender students. Across the country and here in Texas, thousands of transgender students have been using multi-use restrooms that align with their gender identity without any

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<sup>7</sup> *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020).

<sup>8</sup> *Doe*, 897 F.3d at 530.

<sup>9</sup> *Whitaker*, 858 F.3d at 1045.

<sup>10</sup> See *Confronting Anti-LGBTQI+ Harassment in Schools: A Resource for Students and Families*, U.S. Dep’t of Justice and Education (June 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf>. Note that this document has been preliminary enjoined due to a court order in *State of Tenn., et al. v. U.S. Dep’t of Educ.*, No. 3:21-cv-308 (E.D. Tenn.) (July 15, 2022), but that injunction only runs against the specific parties in that case. See also En Banc Brief for the United States as Amicus Curiae, *Adams v. School Board of St. John’s County*, Case No. 18-13592 (11th Cir. Nov. 26, 2021), <https://www.justice.gov/crt/case-document/file/1458461/download>. OCR is also undergoing rulemaking to further clarify that “Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than de minimis harm on the basis of sex.” Federal Register Notice of Proposed Rulemaking Title IX of the Education Amendments of 1972, U.S. Dep’t of Educ., 34 C.F.R. 106 (2022), <https://www2.ed.gov/about/offices/list/ocr/docs/t9nprm.pdf>.

<sup>11</sup> *Legal Issues Related to Transgender Students*, Texas Association of School Boards (June 2022) at 10, [https://www.tasb.org/services/legal-services/tasb-school-law-resource/students/documents/legal\\_issues\\_related\\_to\\_transgender\\_students.pdf](https://www.tasb.org/services/legal-services/tasb-school-law-resource/students/documents/legal_issues_related_to_transgender_students.pdf).

<sup>12</sup> *Id.* at 9.

issues.<sup>13</sup> As the Fourth Circuit noted in *Gavin Grimm v. Gloucester County School Board*, school administrators’ fears about allowing transgender students to use multi-use restrooms are often unfounded. “No one questions that students have a privacy interest in their own body when they go to the bathroom. But the [School] Board ignores the reality of how a transgender child uses the bathroom: by entering a stall and closing the door.”<sup>14</sup>

## II. Proposed CS (Local) Would Harm Frisco ISD Students

When transgender students are excluded from using facilities that match who they are and are separated from all other students, the mental health outcomes can be catastrophic. Allowing transgender students to use restrooms that match who they are has been shown to reduce depression, suicidal ideation, and suicide attempts.<sup>15</sup> When restroom access is denied, one in three transgender students report attempting suicide in the year following that decision and one in five report attempting to end their life multiple times.<sup>16</sup>

These serious and devastating consequences have been recognized by the American School Counselor Association, the National Association of Elementary School Principals, the National Association of School Psychologists, and the National Association of Secondary School Principals, which have all affirmed that “[h]aving support at school and acknowledging a student’s right to use the bathroom consistent with their gender identity is critical. A negative school experience not only hinders a transgender student’s academic achievement and growth but can also interfere with their long-term health and well-being.”<sup>17</sup>

Following this guidance from major educational associations across the country, TASB, and numerous federal courts of appeals, many other school districts here in Texas allow transgender students to use multi-user restrooms and locker rooms that align with their gender identity on a case-by-case basis.<sup>18</sup> There is no reason for Frisco ISD to violate federal and state law, invade students’ privacy, and defy best practices from TASB and other educational organizations, particularly when the district’s actions will cause immense and irreparable harm to its transgender students.

Transgender young people have also been confronted with significant harm and discrimination here in Texas. Forty-five percent of LGBTQ+ youth “seriously considered suicide in the past year, including more than half of transgender and nonbinary youth.”<sup>19</sup> Tragically,

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<sup>13</sup> Brief of Amici Curiae School Administrators from Thirty-One States and the District of Columbia at 7, *Gloucester Cnty. Sch. Bd. v. G.G.*, 136 S. Ct. 2442 (2017) (No. 16-273), [http://www.scotusblog.com/wp-content/uploads/2017/03/16-273\\_bsac\\_school\\_of\\_administrators\\_from\\_thirty-one\\_states\\_and\\_the\\_dis.pdf](http://www.scotusblog.com/wp-content/uploads/2017/03/16-273_bsac_school_of_administrators_from_thirty-one_states_and_the_dis.pdf) (describing examples in which transgender students have been able to use multi-user bathrooms without problems).

<sup>14</sup> *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 613 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *cert. denied*, 141 S. Ct. 2878 (2021) (quoting *Whitaker*, 858 F.3d at 1052).

<sup>15</sup> Myesha Price-Feeney, et al., *Impact of Bathroom Discrimination on Mental Health of Transgender and Non-Binary Youth*, *Journal of Adolescent Health* (Dec. 4, 2020), [https://www.jahonline.org/article/S1054-139X\(20\)30653-4/fulltext](https://www.jahonline.org/article/S1054-139X(20)30653-4/fulltext).

<sup>16</sup> *Id.*

<sup>17</sup> *Transgender Students and School Bathrooms*, *Gender Spectrum* (2019), <https://genderspectrum.org/articles/bathroom-faq>.

<sup>18</sup> *See supra* note 12.

<sup>19</sup> *See National Survey on LGBTQ Youth Mental Health 2022*, The Trevor Project, *available at* <https://www.thetrevorproject.org/survey-2022/>.

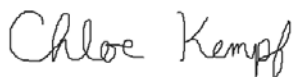
18% percent of LGBTQ+ youth attempted suicide this the past year.<sup>20</sup> Phone calls to mental health crisis hotlines for LGBTQ+ youth have skyrocketed here in Texas. During 2021, when the Texas Legislature debated dozens of bills targeting transgender youth, the Trevor Project received more than 14,500 calls, texts, and messages from LGBTQ+ youth in Texas in need of support.<sup>21</sup> This year, transgender youth continue to find their ability to play sports, their access to health care, and their very existence threatened and subject to political debate.

The undersigned organizations<sup>22</sup> urge you not to exacerbate the trauma and harm that many transgender students in your district are already experiencing. CS (Local) flagrantly violates federal and state law and would invade student privacy and harm students in your district. We would be happy to discuss these legal issues further and appreciate your time and attention to this matter.

Sincerely,



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<sup>20</sup> *Id.*

<sup>21</sup> Josh Weaver, *The Trevor Project Reaffirms Support for Texas Trans Youth, Supportive Parents, and its Crisis Counselors Against Unlawful Attacks*, The Trevor Project (Feb. 24, 2022), available at <https://www.thetrevorproject.org/blog/the-trevor-project-reaffirms-support-for-texas-trans-youthsupportive-parents-and-its-crisis-counselors-against-unlawful-attacks/>.

<sup>22</sup> Equality Texas works to secure full equality for lesbian, gay, bisexual, transgender, and queer Texans through political action, education, community organizing, and collaboration.

Transgender Education Network of Texas (TENT) is an organization dedicated to furthering gender-diverse equality in Texas. We work to accomplish this through education and networking in both public and private forums. Through our efforts, we strive to halt discrimination through social, legislative, and corporate education.

Texas Freedom Network (TFN) is a grassroots organization of religious and community leaders, and young Texans building an informed and effective movement for equality and social justice.

Lambda Legal is the oldest and largest national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people ("LGBT") and everyone living with HIV through impact litigation, education and public policy work.

The ACLU of Texas is a nonpartisan, nonprofit organization dedicated to defending the civil rights and civil liberties of all Texans with nearly 200,000 supporters across the Lone Star State.

The Human Rights Campaign and the Human Rights Campaign Foundation together serve as America's largest civil rights organization working to achieve LGBTQ+ equality. By inspiring and engaging individuals and communities, HRC strives to end discrimination against LGBTQ+ people and realize a world that achieves fundamental fairness and equality for all.