

GENDER JUSTICE

February 16, 2018

PUBLIC VERSION

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MN Department of Human Rights
625 Roberts St. N.
St. Paul, MN 55155

**Re: J. ████████ H. ████████ obo minor v.
ISD #11 Anoka-Hennepin Public School District
MDHR ████████**

Dear ████████ ████████:

As you are aware, Gender Justice represents charging party J. ████████ H. ████████ on behalf of her minor son (██████) against ISD #11 Anoka-Hennepin Public School District (Anoka-Hennepin). The Department should find probable cause that Anoka-Hennepin discriminated against H. ████████ and ████████ based on his gender identity.

Factual Background

In this case, the parties largely agree on the facts.

H. ████████' minor son, ████████, attended Coon Rapids High School (CRHS), a high school in the Anoka-Hennepin school district, during the school years 2015-16 and 2016-17. ████████ participated in the school sports team. He also took physical education classes, which are required for graduation. During the 2015-16 school year, he was using the boys' locker room without issue until February of 2016, when the sports team had three sports events left in the season. On February 1, 2016, the CRHS principal told H. ████████ and ████████ that the school board had instructed ████████ to stop using the boys' locker room. Fortunately, this decision was reversed later that night.

Four days later, on February 5, 2016, ████████ was hospitalized because of mental health concerns. He was released on February 17. Before his release that day, H. ████████ sent an email to Anoka-Hennepin to express her concerns about the school board's actions. On February 22, Board Chair Tom Heidemann responded to this email. He apologized for the disruption to ████████'s school day on February 1, expressed concern about his hospitalization, and

affirmed that the district was committed to providing a safe and respectful learning environment for all students. But he also undercut that by signaling that he considered ■■■'s use of the boys' locker room as a privacy concern for other students: "When rest room and locker room accommodations are considered we try to balance and respect the privacy rights and needs of all students."

■■■ intended to take physical education as required during the upcoming school session. But in late February, H■■■ received notice that on March 3, 2016, there would be a meeting at the school to discuss what locker room ■■■ could use. The day before this meeting, on March 2, 2016, ■■■ was re-hospitalized.

Because of the hospitalizations, H■■■ and her son worked with a Child Protection Worker named ■■■. Ms. ■■■ noted the connection between the timing of hospitalizations and school discussions about what locker room ■■■ could use. To avoid triggering additional discussions about locker room use, Ms. ■■■ recommended that ■■■ request that his time on the sports team substitute for his physical education credit. Even though neither H■■■ nor her son wanted him to be given different treatment because of his gender identity, they went along with Ms. ■■■'s recommendation because of the risks. The school approved this substitute for physical education credit and the school district tabled the question of what locker room ■■■ could use.

In the summer of 2016, CRHS remodeled its locker room facilities¹. The modifications primarily consisted of walling off a portion of the boys' locker room, creating separate stalls for changing and showering in this walled-off portion, and creating a new, entirely separate locker room entrance outside the main locker room to access this "enhanced privacy" locker room.

■■■ again planned to take physical education, as required for graduation, during the third trimester of the 2016-17 school year. This school period was scheduled to begin on March 20, 2017. Prior to the start of the trimester, H■■■ and her son broached the issue of locker room use for physical education with CRHS.

In February of 2017, Anoka Hennepin arranged to have a closed session of the school board to determine what locker room ■■■ could use. During the open session of the school board that same day, H■■■ and other trans-rights advocates urged Anoka Hennepin to adopt a policy such as the one in place in St. Paul public schools.

Following this school board meeting, Anoka Hennepin's district-wide Title IX coordinator, Jennifer Cherry, met with H■■■ and her son to have them tour the enhanced privacy locker room area. H■■■ and ■■■ immediately expressed concern that segregating ■■■ into

¹ In its exhibits for its letter to the Minnesota Department of Human Rights, Anoka Hennepin provided photos and architectural drawings identifying these changes.

this separate locker room area could be unsafe for him. Cherry noted that any student could request to use the enhanced privacy space, but Anoka Hennepin personnel ignored H [REDACTED] and [REDACTED]'s assertions that they had not requested this space and did not want [REDACTED] to be forced to use it. Despite H [REDACTED] and [REDACTED]'s concerns, and over their objections, Anoka Hennepin told them that [REDACTED] would be "assigned" to use the separate, enhanced privacy locker room.

Initially, [REDACTED] simply ignored this assignment, and instead used the main boys' locker room as was his preference. On March 20, 2017, Anoka Hennepin told H [REDACTED] and [REDACTED] that if he continued to ignore his assignment to the enhanced privacy locker room, he would be disciplined. Anoka Hennepin did not identify what the discipline would be. Worried for his ability to complete his physical education credits and to graduate, [REDACTED] used the enhanced privacy locker room under protest. Soon afterwards, on April 10, 2017, [REDACTED] was again hospitalized with mental health concerns. He did not return to CRHS.

Legal Analysis

Any analysis of Anoka Hennepin's locker room policy must take account of the Minnesota Supreme Court's decision in *Goins v. West Group*, 635 N.W.2d 717 (Minn. 2001). Julianne Goins was a transgender employee of West Group (West). She identified as a transgender woman² and wished to use the women's restroom at West. West prohibited her from using the women's restroom on her floor, instead requiring her to use a single-occupancy restroom elsewhere in the building. When she did not comply, West threatened her with disciplinary action for using the women's restroom. *Id.* at 721. In *Goins*, the Minnesota Supreme Court held that West had not violated the Minnesota Human Rights Act (MHRA) prohibition against discrimination based on gender identity.³ According to *Goins*, "the MHRA neither requires nor prohibits restroom designation according to self-image of gender or according to biological gender." *Id.* at 723.

The Minnesota Supreme Court analyzed the case in two different ways. First, the Court considered whether West's restroom policy, which it described as "designating restroom use

² In *Goins*, the Court defines a transgender person as one who "seek[s] to live as a gender other than that attributed to them at birth but without surgery." 635 N.W.2d at 721 n.1. That is not consistent with today's usage, which has no necessary connection to what surgical procedures a person has had or desires to have. See *Rumble v. Fairview Health Servs.*, 2015 U.S. Dist. LEXIS 31591 *3 ("Transgender is an umbrella term that may be used to describe people whose gender expression does not conform to cultural norms and/or whose gender identity is different from their sex assigned at birth.").

³ Minn. Stat. § 363A.03 defines "sexual orientation" to include "having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness." Despite the clunky language, courts have recognized that this explicitly protects transgender individuals on the basis of gender identity. *Rumble v. Fairview Health Servs.*, 2015 U.S. Dist. LEXIS 31591 *3.

according to biological gender⁴,” was per se illegal under the MHRA. *Id.* at 722-23. Rather than analyzing the statutory language or the record, the Court essentially took judicial notice that it was traditional for employers to provide restrooms that “reflect the cultural preference for restroom designation based on biological gender.” *Id.* at 723. The Court concluded that despite the language of the MHRA, the legislature surely could not have intended to upset this cultural preference when it acted to protect people based on “having or being perceived as having a self-image or identity not traditionally associated with one’s biological maleness or femaleness.” *Id.*; Minn. Stat. § 363A.03, subd. 44 (2017). Therefore, the Court held, the Minnesota Human Rights Act did not require employers to permit employees whose gender identity differed from their “biological gender” to use the restroom according to their identity.

After this first holding, the Court then discussed whether West had violated Goins’ rights by improperly applying its restroom policy to her. The Court analyzed whether Goins was “eligible to use the restrooms designated for her biological gender and West denied her access to such a restroom.” *Goins*, 635 N.W.2d at 724. The Court considered whether Goins was actually “biologically female” yet prohibited from using the restrooms designated for “biological females.” The Court did not elaborate on its definition of “biological gender” but found that “[o]n the record before us,” Goins had failed to establish she was “qualified” to use these restrooms. *Id.* at 725. In other words, the Court concluded that she had failed to establish that she was biologically female.

At around the same time, the 8th Circuit considered a similar case, but this time brought by a cisgender employee who objected to her employer permitting a transgender co-worker to use the bathroom consistent with her gender identity. *Cruzan v. ACLU*, 294 F.3d 981 (8th Cir. 2002). In that case, the 8th Circuit concluded that it did not create a hostile environment for an employer to permit a transgender co-worker to share a restroom with her cisgender female co-worker. This helped solidify the interpretation of the MHRA as neither requiring nor prohibiting employers from designating use of restrooms and locker rooms based on gender identity.

There are a number of problems both with the holding in *Goins*, and with the application of these holdings to the actions of Anoka-Hennepin in this case.

⁴ The *Goins* court did not define biological gender, so it is not clear whether it meant to refer to external genitalia, chromosomes, assigned sex at birth, or some other aspect of sex or gender. Later in this letter, we argue that in fact, biological sex is complex and the best proxy for biological sex is gender identity. The phrase “biological gender” is awkward because often feminist theory has described sex as a biological concept and gender as a societal or cultural construct. This has led to generalizations that obscure the complicated reality that both sex and gender are cultural constructs. See, e.g. <https://www.autostraddle.com/its-time-for-people-to-stop-using-the-social-construct-of-biological-sex-to-defend-their-transmisogyny-240284/>.

Goins Is Wrongly Decided

The Minnesota Supreme Court in *Goins* based its ruling on the supposedly “traditional” designation of restrooms on the basis of “biological gender.” There are at least two problems with this. First, the Court did not demonstrate or provide any evidence or analysis that “biological gender” is the traditional basis for restroom designation. Second, the Court failed to consider the existing evidence that the legislature actually did intend the prohibition against gender identity discrimination to apply to restroom use without exception.

While public restrooms and locker rooms, including school restrooms and locker rooms, have often been divided into spaces for “women” and spaces for “men,” this designation typically does not specify how these labels are defined and applied. In the absence of monitors at the door to examine genitalia, birth certificates, or chromosomes, one must assume that restroom and locker room users self-select which facility to use based on whatever criteria they feel comfortable with. As a court in North Carolina observed, “some transgender individuals have been quietly using bathrooms and other facilities that match their gender identity, without public awareness or incident. . . . This appears to have occurred in part because . . . for obvious reasons, transgender individuals generally seek to avoid having their nude or partially nude bodies exposed in bathrooms, showers, and other similar facilities.” *Carcaño v. McCrory*, 203 F. Supp. 3d 615, 622 (M.D.N.C. 2016).

The *Goins* Court declared that the legislature had provided no guidance on the question of whether “biological” or some other determinant of sex should apply for restroom use, but in fact, there was good evidence that the legislature did not intend to create a restroom and locker room exception to employment or education discrimination under the MHRA. This is clear because the legislature did create a specific exemption, but only in the context of public accommodation discrimination claims. Minn. Stat. § 363A.24 (“The provisions of [the public accommodation section] relating to sex, shall not apply to such facilities as restrooms, locker rooms, and other similar places.”). This does not resolve the key question here of how “sex” is defined, but it does show that the legislature had the ability to create specific exemptions around restroom and locker room use. The legislature chose not to make any such exemption for restroom use in employment or education discrimination.⁵ This in itself is enough reason to doubt that the legislature enacted an unspoken preference for restroom or locker room use based on, as the Court in *Goins* put it, “biological gender.”

⁵ In its position statement, Anoka-Hennepin cites to this provision in support of its position, arguing that schools are also a type of public accommodation. (Stmnt. p. 10, n.34.) But the fact that the Minnesota legislature has explicitly distinguished public accommodation discrimination from education discrimination, and provided different exemptions in each category, clearly shows that this exemption does not apply.

Since the *Goins* decision in Minnesota in 2001, courts all over the country have considered the question of whether schools and employers must allow transgender individuals to use facilities consistent with their gender identity and come to a different conclusion than the Minnesota Supreme Court did. Title IX is a federal law that prohibits sex discrimination in education. Unlike the Minnesota Human Rights Act, Title IX does not explicitly protect people based on gender identity. It prohibits discrimination solely “on the basis of sex.” 20 U.S.C. § 1681. Over the years, courts have recognized that sex discrimination includes gender identity discrimination. With that understanding in place, multiple federal circuit courts have ruled that transgender students must be treated consistent with their gender identity for restroom and locker room use.

For years, Title IX cases have recognized that “sex” includes individuals who are perceived as not conforming to gender stereotypes and expectations. *Miles v. New York University*, 979 F. Supp. 248 (S.D.N.Y. 1997) (holding that Title IX protects a transgender student subjected to discriminatory harassment because of her female gender identity).

Courts often look to Title VII’s prohibition of sex discrimination when interpreting Title IX’s similarly phrased prohibition. *See e.g., Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 75 (1992) (rule that sexual harassment constitutes sex discrimination under Title VII applies equally to Title IX); *Smith v. Metro. Sch. Dist. Perry Twp.*, 128 F.3d 1014, 1023 (7th Cir. 1997). Title VII cases have been even more express regarding protection for transgender individuals. *See, e.g., Smith v. City of Salem*, 378 F.3d 566, 571-73 (6th Cir. 2004) (holding a fire department liable for sex discrimination after it threatened to terminate a lieutenant who transitioned from male to female); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011) (finding that an employer violated Title VII when it terminated a transgender woman because she was undergoing a gender transition); *Kastl v. Maricopa Cnty. Cmty. Coll. Dist.*, 325 Fed. Appx. 492 (9th Cir. 2009) (Fletcher, McKeown, and Gorsuch, Circuit Judges) (holding that it is unlawful under Title VII for an employer to discriminate against a transgender person because he or she does not behave in accordance with the employer’s gendered expectations); *Schroer v. Billington*, 577 F. Supp. 2d 293, 303-08 (D.D.C. 2008) (concluding that the Library of Congress was liable for withdrawing a job offer from an applicant who revealed she was completing a gender transition); *Macy v. Holder*, Agency No. ATF-2011-00751 at *11 (April 20, 2012) (following cases like *Smith* and *Schroer* to determine that “intentional discrimination against a transgender individual because that person is transgender is, by definition, discrimination ‘based on . . . sex,’ and such discrimination therefore violates Title VII.”).

The 8th Circuit has already indicated in *Hunter v. United Parcel Service, Inc.*, 697 F.3d 697 (8th Cir. 2012), that Title VII extends to transgender rights, and in doing so, it ruled consistently with other circuits. Many courts now hold that Title VII’s bar on discrimination “because of sex” must extend to discrimination against trans individuals, either under a *per se* analysis or under a gender-stereotyping analysis like that mandated by *Price Waterhouse v. Hopkins*, 490

U.S. 228 (1989). *Price Waterhouse* held that discrimination on the basis of sex under Title VII encompasses discrimination based on gender stereotyping. *Id.* at 250-52. Both the Second and the Eleventh Circuits have recently reaffirmed this interpretation of Title VII to cover gender identity discrimination. *See Fowlkes v. Ironworkers Local 40*, 790 F.3d 378 (2d Cir. 2015); *Chavez v. Credit Nation Auto Sales, LLC*, 641 F. App'x 883, 884 (11th Cir. 2016).

With this understanding of the scope of federal anti-discrimination law, courts have ruled that school districts must honor students' gender identity in locker room use or restroom use. *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1049 (7th Cir. 2017) ("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."); *Dodds v. United States Dep't of Educ.*, 845 F.3d 217, 221 (6th Cir. 2016) (refusing to overturn an injunction that required a school district to allow an 11-year-old transgender girl use the girl's restroom at school, and noting that the injunction had already greatly alleviated her mental distress).

The Department of Justice has similarly enforced Title IX to protect transgender students. *See* Resolution Agreement Between Arcadia Unified Sch. Dist., U.S. Dep't of Educ., & U.S. Dep't of Justice, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, at 1 (July 24, 2013), available at http://www.ncrights.org/wp-content/uploads/2013/09/Arcadia_Resolution_agreement_07.24.2013.pdf (DOJ settlement of a complaint from a twelve-year-old transgender boy who was told to use a restroom in the nurse's office instead of the boys' restroom and locker room, requiring the school district to permit the student to use the boys' multi-stall restroom and locker room).

Importantly, the few federal courts that have not followed this reasoning object to discrimination against transgender people being covered by federal civil rights laws at all. They argue that when the Civil Rights Act of 1964 was enacted, legislators would not have understood discrimination "because of sex" to include discrimination against transgender individuals⁶. *See, e.g., Texas v. United States*, 201 F. Supp. 3d 810, 832-33 (N.D. Tex. 2016) (holding that "the plain meaning of the term sex" in Title IX is sex as assigned by others at birth). Since the Minnesota Human Rights Act explicitly protects people based on their gender identity, this argument doesn't apply here.

Ultimately, the question of whether to reverse *Goins* will be up to the Minnesota Supreme Court. But even in the absence of a new decision overturning *Goins*, the Department may still find in favor of Ms. H [REDACTED] and her son.

⁶ Similarly, Anoka Hennepin cites to "current federal guidance interpreting Title IX" to argue that its policy on restroom access is correct because it was determined locally. (Stmt. p. 11.) It ignores that the key factor in rescinding former guidance protecting transgender students is a dispute around the meaning of "sex" in Title IX. There is no dispute that transgender students are protected under the Minnesota Human Rights Act.

Goins Permits Restroom Separation Based On “Biological Gender,” But the Best Proxy for the Complex Concept of Biological Sex or Gender is Gender Identity

Scientific research into biological sex shows that it is a complex concept with many components. Scientists who study sex consider gender identity to be one of these biological components, and in fact the primary determinant of sex. As one expert witness testified, “whenever there is a lack of congruence among the various elements of sex, the goal of the gender specialists is to bring the other elements of sex into conformity with one’s gender identity.” Sharon M. McGowan, *Working with Clients to Develop Compatible Visions of What It Means to “Win” a Case: Reflections on Schroer v. Billington*, HARV. C.R.-C.L. L. REV. 205, 235 (2011).

The best available current science examines “*how*, not *whether*, biological forces influence the development of gender identity.” M. Dru Levasseur, *Gender Identity Defines Sex: Updating the Law to Reflect Modern Medical Science is Key to Transgender Rights*, Vt. Law R. 39:943, 981 (2015) (emphasis in original). Gender identity is immutable and attempts to change it are generally very harmful. *Id.* Most experts recognize that gender identity has both biological and psychosocial influences. *Id.* at 981-82.

Other biological factors that play a role in sex, such as genitalia or chromosomes, can be ambiguous or in conflict with each other. For example, many people have never had their chromosomes tested, and instead they assume that they have whatever chromosomes are considered typical for someone with their gender identity or external genitalia. But there are many chromosome variations, including XXY and XXX chromosomes. It is also possible for a person not to know that they have ambiguous chromosomes. See The Focus Foundation, *X & Y Chromosomal Variations are Common but Frequently Undiagnosed*, available at <http://thefocusfoundation.org/x-y-chromosomal-variations/>; R Lisker et al, *A Case of XX Male Syndrome*, Journal of Medical Genetics, 1970 Dec. v. 7(4) 394-398. As the title of this article demonstrates by referring to the studied group as “XX males,” learning of a chromosomal ambiguity late in life does not typically cause a person to re-evaluate their gender identity. Men who learn they have XX chromosomes, or women who learn they have XXY chromosomes or some other variation, don’t generally reevaluate their gender identity.

Courts have also recognized the complexity of biological sex. *Radtke v. Misc. Drivers & Helpers Union Local #638 Health, Welfare, Eye & Dental Fund*, 867 F.Supp.2d 1023, 1032 (D. Minn. 2012) (“An individual’s sex includes many components, including chromosomal, anatomical, hormonal, and reproductive elements, some of which could be ambiguous or in conflict within an individual. The assigned sex of an individual at birth is based only on observation of anatomy at birth, which itself may change when the individual reaches puberty.”) (internal citations omitted).

In addition, as a practical matter, institutions such as schools or employers lack the ability to fully restrict restroom or locker room use based on factors that non-scientists point to as conclusive of sex, including external genitalia, hormones, or chromosomes. Surely privacy would be harmed rather than enhanced by a monitor at the locker room door to examine students' genitalia or their medical test results. Around the country, attempts to restrict the restroom use of transgender individuals in practice turn into attempts to police gender expression. In other words, self-nominated enforcers try to figure out who might be transgender based on their clothes, face, or body type and then punish these suspected transgender individuals. This just demonstrates that these policies are based on bias rather than science.

As a result of our increased scientific understanding that the best proxy for biological sex is gender identity, it is perfectly consistent with *Goins* to require school districts and employers to permit students and employees to use restrooms and locker rooms consistent with their gender identity. The Minnesota Supreme Court in *Goins* did not define its phrase "biological gender." We are not confined to outdated and impractical ideas about how to best define biological sex or gender.

Anoka-Hennepin Can't Rely on the *Goins* Holding to Justify Segregating Trans Students

As Anoka-Hennepin points out in its position statement, the scenario here differs from that in *Goins*. Anoka-Hennepin permitted ██████ to "use [a] restroom and locker room consistent with his male gender identity" but segregated him into an "enhanced privacy area boys locker room." (Stmt p. 11.) The Minnesota Supreme Court in *Goins* permitted employers to designate restrooms based on "biological gender," but it also separately considered whether this assignment was enacted in a harassing or discriminatory manner against *Goins* in particular. *Goins*, 635 N.W.2d at 725 (analyzing hostile environment claim).

In a similar case involving a young transgender girl denied access to the girls' restroom at school, the Colorado Division of Civil Rights noted some concerns about segregating transgender students:

The evidence suggests that the restroom restriction also created an exclusionary environment, which tended to ostracize the Charging Party, in effect producing an environment in which the Charging Party was forced to disengage from her group of friends. It also deprived her of the social interaction and bonding that commonly occurs in girls' restrooms during these formative years, i.e., talking, sharing, and laughter. An additional problematic issue with this solution is the possibility that the Charging Party may be in an area where she does not have easy access to approved restrooms. As a result, at six years old, the Charging Party is tasked with the burden of having to plan her restroom

visits to ensure that she has sufficient time to get to one of the approved restrooms. Even if the Charging Party was in the vicinity of the staff or health office restroom, she would have to explain to her friends why she is not permitted to go with them into the girls' restroom. Telling the Charging Party that she must disregard her identity while performing one of the most essential human functions constitutes severe and pervasive treatment, and creates an environment that is objectively and subjectively hostile, intimidating or offensive.

Mathis Determination, Colorado Division of Civil Rights, June 18, 2013, available at https://archive.org/stream/716966-pdf-of-coy-mathis-ruling/716966-pdf-of-coy-mathis-ruling_djvu.txt.

The question of segregating trans students is an entirely separate question from how a school district determines sex for its sex-segregated locker rooms and restrooms. Even if *Goins* is interpreted to permit schools to designate locker rooms based on an antiquated notion of “biological sex,” that doesn’t provide a justification for isolating and therefore outing transgender students.

Anoka-Hennepin’s Suggestion that It is More Important to Segregate Trans Students in Schools than in Employment is Wrong

Anoka-Hennepin argues that “[t]he rationale for [*Goins*] applies with even greater force in the context of the more intimate setting of a high school locker room.” (Stmt. p. 1.) It argues that because the locker room is a “more intimate area” than a restroom, schools have a stronger interest in designating locker rooms for use based on an antiquated notion of “biology,” or in other words, restricting the locker room use of transgender students. (Id. at 11.) Lurking in the background here is the assumption that the reason why a school district would wish to segregate transgender students from cisgender students in a locker room is for the privacy and comfort of the cisgender students.

The school district does not identify any particular cisgender students who raised privacy concerns. Nor does it explain why any speculative privacy concerns could not be alleviated by having the privacy-sensitive student use the enhanced privacy locker rooms.

But more crucially, it also ignores that the purpose of the Minnesota Human Rights Act and the Department’s enforcement of that act is to protect students from discrimination. It is transgender students, not their cisgender classmates, who are particularly vulnerable to discrimination during their foundational grade school years. From the Department’s perspective then, the rationale for protecting transgender individuals applies with even greater force when they are children in school rather than employees in the work place.

In a footnote, Anoka Hennepin frames its interest in cisgender students' privacy as a "legitimate, nondiscriminatory reason" for segregating transgender students. (Id. at 12, n.39.) But describing this as a "nondiscriminatory reason" is belied by the citation to *Johnston v. Univ. of Pittsburgh of Commonwealth System of Higher Ed.*, 97 F. Supp. 3d 657, 669-70 (W.D.Pa. 2015). The court in *Johnston* offensively refers to this privacy interest as a desire of "students to disrobe and shower outside of the presence of members of the opposite sex." *Id.* This formulation essentially denies the existence of transgender students, suggesting that they are in reality "the opposite sex" from their gender identity, while simultaneously rejecting the existence of non-binary identities. In Minnesota, our state laws have sought to eradicate discrimination against transgender individuals since 1993, and to privilege "privacy interests" of people who deny the existence of transgender students over the rights of transgender students themselves is incompatible with these laws.

Conclusion

In conclusion, the Minnesota Department of Human Rights should find probable cause that Anoka Hennepin discriminated against H [REDACTED] and her son [REDACTED].

Sincerely,

/s/ Christy L. Hall

Christy L. Hall