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GARDEN STATE EQUALITY

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Dear Interim Superintendent Baker,

On behalf of the ACLU of New Jersey and Garden State Equality, we write to you because it has come to our attention that your school district recently revoked Policy 5756, a policy that provided vital information about how transgender students are protected in your district. Repealing this important policy is harmful for two reasons: first, it leaves school administrators and staff without clear guidance, opening the district to liability, and second, it signals to LGBTQ+ students and families within your district that its schools may not be a safe and welcoming environment to all. As explained in more detail below, the latter reason can have serious mental health consequences for students. We are sending this letter to make clear that by revoking the policy, your district is not absolving itself of its duties and responsibilities to transgender students under federal and state law, and we urge you to consider readopting it without delay.

As you may know, former Governor Chris Christie signed N.J.S.A. 18A:36-41 into law in 2017, which directed the Commission of Education to provide school districts with “guidelines concerning transgender students.”¹ Following four stakeholder meetings (two held during the Christie administration and two during the Murphy administration), the New Jersey Department of Education (DOE) released its Transgender Student Guidance for School Districts² in 2018. This important document not only reiterated the statutory and constitutional protections afforded transgender students (discussed in more detail below), but it also made clear that LGBTQ+

¹ See N.J.S.A. 18A:36-41.

² N.J. Dep’t of Educ., *Transgender Student Guidance for School Districts*, <https://www.nj.gov/education/safety/sandp/climate/docs/Guidance.pdf> (last visited Apr. 4, 2024).

The guidance “provide[s] direction for schools in addressing common issues concerning the needs of transgender students, and to assist schools in establishing policies and procedures that ensure a supportive and nondiscriminatory environment for transgender students.” *Id.*

students retain privacy rights as well. Policy 5756 arose out of this critical guidance as a way to help districts navigate their responsibilities. A large majority of the nearly 600 school districts throughout the state went on to adopt Policy 5756, and most of those school districts continue to have this policy on their books today. And for good reason: this policy helps to ensure that district employees do not run afoul of the law by failing to protect students.

Both the New Jersey Law Against Discrimination (LAD) and Title IX of the Education Amendments of 1972 (Title IX) protect students from discrimination. The LAD “generally makes it unlawful for schools to subject individuals to differential treatment based on race, creed, color, national origin, ancestry, marital status, domestic partnership or civil union status, sex, affectional or sexual orientation, gender identity or expression, disability or nationality.”³ This applies to all places of public accommodation, including schools. Additionally, Title IX also places a legal duty on all school districts to protect its students from discrimination—including LGBTQ+ students—by specifically prohibiting discrimination on the basis of sex in federally-funded education programs and activities.⁴

Revoking Policy 5756 is likely to result in students in your district – particularly LGBTQ+ students – feeling less safe and welcome in your schools. At a time when we are seeing attacks against LGBTQ+ students proliferate throughout the state and country, showing your students that you are protecting them is crucial for their ability to feel safe, supported, and respected in the school environment. School officials may often think they are doing the right thing by revealing a student’s sexual orientation or gender identity to their parents—but an authority figure doing so can have dramatic and unforeseen consequences. In one particularly tragic case, a teenager died by suicide after a police officer threatened to disclose his sexual orientation to his family.⁵ While this is an extreme case, many serious harms can arise from disclosing a student’s sexual orientation or gender identity to their parents—such as verbal or physical abuse or being thrown out of the home.⁶

By repealing Policy 5756, your district is risking the wellbeing of your students. LGBTQ+ youth are far more likely to be bullied and harassed at school, to be alienated from their families and communities, and to suffer from depression and suicidal ideation than their non-LGBTQ+ peers. Newly released CDC data found that teens who identify as lesbian, gay, bisexual, or questioning experience “extreme distress” and more than 52% have self-reported as “recently experienc[ing] poor mental health.”⁷ According to research by the Trevor Project, “LGBTQ students are **more**

³ *Id.*

⁴ See 20 U.S.C. § 1681(a).

⁵ See *Sterling v. Borough of Minersville*, 232 F.3d 190, 193 (3d Cir. 2000).

⁶ The Trevor Project, *Homelessness and Housing Instability Among LGBTQ Youth* (2022), <https://www.thetrevorproject.org/research-briefs/homelessness-and-housing-instability-among-lgbtq-youth-feb-2022/> (“16% of LGBTQ youth reported that they had slept away from parents or caregivers because they ran away from home, with more than half (55%) reporting that they ran away from home because of mistreatment or fear of mistreatment due to their LGBTQ identity.”).

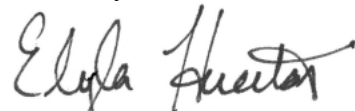
⁷ See CDC, *Youth Risk Behavior Survey, Data Summary & Trends Report (2011-2021)* 62 (2023), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBS_Data-Summary-Trends_Report2023_508.pdf.

than four times as likely to attempt suicide compared to their straight and cisgender peers.”⁸ School administrators and staff must do everything they can to help students, not get rid of policies that are designed to do the opposite. Repealing this important policy—one that so clearly was intended to help keep transgender students safe—sends a dangerous message to your students. Bottom line, all students should feel protected in school, including LGBTQ+ students.

Revoking Policy 5756 does not relieve your district of its obligations to comply with any of the above constitutional and statutory laws. Clarity is critical to ensuring that your school district complies with existing constitutional and statutory obligations. For example, teachers and administrators in your district would likely run afoul of the LAD by failing to ensure that all students are able to use the bathroom consistent with their gender identity, persistently misgendering a student (i.e., using pronouns or a name other than those requested by the student), among other actions currently laid out in the policy. Revoking the policy has only made it more difficult for school district staff to know their responsibilities under the law. A recent article in the New Jersey School Boards Association’s *School Leader* even recognizes that “leaving employees to figure this out for themselves virtually guarantees inconsistency and arbitrary treatment with inevitable legal exposure.”⁹ It is vital that everyone in your district is aware of these risks. Readopting this policy will make it less likely that teachers and administrators within your district will violate the law and will also help prevent exposing your district to legal liability.

For the aforementioned reasons, we strongly urge your school district to consider readopting Policy 5756. In the meantime, our organizations will continue to monitor districts to ensure they are meeting their obligations to provide students with a safe environment that is free from discrimination.

Sincerely,



Elyla Huertas
Staff Attorney



Lauren Albrecht
Director of Advocacy and Organizing for
Garden State Equality

cc: Kerri A. Wright, Esq., via email

⁸ The Trevor Project, *Creating Safer Spaces in Schools for LGBTQ Young People* (2023), <https://www.thetrevorproject.org/wp-content/uploads/2023/07/Creating-Safer-Spaces-in-Schools-for-LGBTQ-Young-People.pdf>.

⁹ David Rubin, School Leader, *Legally Speaking—Transgender Students and Parental Notification: What Path Forward?* (2024), <https://www.njsba.org/news-information/school-leader/>.