

BOYERTOWN AREA SCHOOL DISTRICT
FREQUENTLY ASKED QUESTIONS ABOUT ISSUES REGARDING DOE VS. BASD

March 27, 2017

To date the District has issued and posted to www.boyertownasd.org several communications to provide factual information to our community – including the media - in the aftermath of the filing of the recent lawsuit known as *Doe vs. BASD*. Also posted is a copy of the plaintiffs' Demand Letter, which will be discussed at the March 28th Board meeting. Unfortunately, much false and/or misleading information is included in the plaintiff's court filing, and has been repeated in some media reports. As the Board President stated in his recent message, the district will not try the lawsuit in the press, but it will do everything possible to make sure that our community receives from the district only factual information in a timely manner. Every citizen is entitled to the facts and the opportunity to form their own opinions about this and any other issue that comes before the board.

1. WHAT IS THE DISTRICT'S POLICY REGARDING BATH AND LOCKER ROOM USE BY PERSONS OF THE OPPOSITE SEX?

A: There is no specific policy. The District follows applicable Federal and State laws to ensure a non-discriminatory environment for all students and individuals in the BASD. The district's practice has been to address these matters on an individual basis. The district believes that transgender students should have the right to use school bathroom and locker facilities on the same basis as non-transgender students. The district is sensitive to the concerns of both transgender and non-transgender students and allows all impacted students to accommodate their specific concerns by using separate bathroom and/or changing facilities. The district's position is consistent with guidance from the Pennsylvania School Boards Association, the National School Boards Association, our Solicitor and what the school district administration believe is fair and equitable under the circumstances.

2. WHAT IS ITS POLICY WITH REGARD TO STUDENTS WHO IDENTIFY AS TRANSGENDER MALE OR FEMALE?

A: There is no specific written policy other than the practices just described. The District follows applicable Federal and State laws to ensure a non-discriminatory environment for all students

and individuals in the BASD. The district's position is consistent with guidance from the Pennsylvania School Boards Association and its Solicitor and what the administration believes is fair in its quest to have equitable treatment of all students.

3. IS THE CURRENT FEDERAL AND/OR STATE POLICY, OR GUIDANCE, DIFFERENT THAN THE ONE IN EFFECT EARLIER IN THE SCHOOL YEAR, OR LAST YEAR?

A: Yes. The guidance on this controversial issue of the prior Federal administration, under its interpretation of Title IX of Federal Education Amendments of 1972, was reversed by the new administration. However, the law remains unsettled due to pending litigation in the Federal courts, including a recent Western Pennsylvania case (*Evancho vs. Pine-Richland School District*). Because of the failure of the Federal executive branch, Congress and the Pennsylvania legislature to address issues such as transgender rights, the Boyertown Area School Board is ultimately left with the difficult choice in balancing the rights of a minority group of transgender students and the balance of the school community. Any decision that the school board is bound to make with respect to the demand letter of the plaintiffs in the lawsuit will alienate a certain portion of the school community because of the lack of national, state and regional direction on the subject.

4. DOES THE DISTRICT HAVE A GENERAL POLICY REGARDING DISCRIMINATION?

A: Yes. The District has adopted for guidance purposes Federal law, rooted in the Constitution, to ensure educational equality and non-discriminatory treatment to all those we educate and impact.

5. REGARDING THE LAWSUIT, IS IT CORRECT THAT AN ADMINISTRATOR TOLD A MALE STUDENT HE HAD TO 'TOLERATE' CHANGING WITH A TRANSGENDER STUDENT - WHO IDENTIFIED AS MALE – IN A BOY'S LOCKER ROOM?

A: No. The student, who objected to the situation in the high school locker room, was advised of the separate heightened personal privacy alternatives that were available to him. In other words, the district does not force students, and did not force this student, to change into his gym clothes for PE class near a transgender student. In fact, the transgender male student has always worn his

physical education uniform (a tee shirt and shorts) under his school clothes to avoid revealing his undergarments in the locker room. The BASH locker room, renovated last summer, is also equipped with three (3) shower stalls and one (1) ADA-compliant shower stall. For purposes of showering and changing, those stalls afford any student the opportunity to shower and change in private. The administration and staff worked closely with the cisgender student who filed the complaint and his guardians in an effort to reach a respectful, reasonable and appropriate accommodation. To date, his has been the only such complaint formally or informally lodged with the district.

6. DID THE ADMINISTRATION, AS STATED IN THE FILING AND REPEATED IN SOME PRESS REPORTS, EVER INTIMIDATE THE STUDENT AND TELL HIM AND HIS FAMILY IF HE DID NOT LIKE THE RULES, HE COULD ALWAYS TRANSFER, OR BE HOME SCHOOLED?

A: No. It was never stated or implied that the student was not welcome in the school. The alternatives presented to him and his guardians included using the private Health Office Bathroom as a place to change in total privacy before and after gym class.

7. WOULD THE DISTRICT AGREE THAT ITS RESOLUTION OF THE SITUATION TO DATE IS A FORM OF DISCRIMINATION?

A: No. The District is dedicated to ensuring a non-discriminatory environment – in every respect – for all those who enter our buildings. We look for guidance, assisted by our solicitor, from our Federal government, state government, and the courts. We also appreciate the fact that we are not alone in confronting these challenges as we strive to do the right thing for all involved. Unfortunately, it is highly likely that the issue will not ultimately be resolved until there is a definite decision by the U.S. Supreme Court. No such case is currently scheduled for consideration by the high court. The district further recognizes that whatever position it takes with respect to future transgender policy regarding the use of bathrooms and facilities it will likely get sued by whichever group deems that the policy is unfair, inequitable or illegal.

8. DOES THE DISTRICT FORCE ANY STUDENT TO USE ANY OF ITS FACILITIES, WHETHER IT BE A BATH OR LOCKER ROOM?

A: No.

9: DOES THE DISTRICT HAVE AN OPINION ON THE CLAIM BY THE PLAINTIFFS FOR MONEY DAMAGES?

A: No. The District regrets that this matter is being litigated, but respects the right of the plaintiffs to file a lawsuit. Though the district will incur legal costs as the result of this challenge, the legal cost will likely be mitigated by one of the district's insurance companies providing a defense to the school district beyond its deductible.

10: DID THE DISTRICT HAVE ADVANCE NOTICE IT WAS BEING SUED?

A: No. The attorneys for the plaintiffs held a news conference in Philadelphia to make the announcement. They are affiliated with the Harrisburg, PA-based Independence Law Center and Arizona-based Alliance Defending Freedom.

11. PUTTING THE LAWSUIT ASIDE, HOW DOES SOMEONE LEARN MORE ABOUT THE BROADER SUBJECT OF GENDER IDENTIFICATION?

A: There are a number of excellent online resources that assist the public to better understand the broader subject of gender identity. Links include <https://www.cdc.gov/lgbthealth/youth-resources.htm> and www.healthychildren.org at the national level. You might also find of interest this update from the PSBA www.psba.org/2017/02/transgender-legal-update/, and a resource guide - https://cdn-files.nsba.org/s3fs-public/reports/Transgender_Guide_3917_V9_FINAL.pdf?.0e4Eqvha3WMSbz.wNGL8UxuGaoQsH8D - from the NSBA.

You can also arrange a meeting with a member of the BASD counseling staff by contacting your school's principal. The high school has had a GSA/Gay & Straight Alliance group for many years. This group is supportive of the actions of the administration to provide accommodations for transgender students.