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December 28, 2012

VIA EMAIL (msilverman@transgenderlegal.org) AND 1ST Class U.S. Mail

Michael D. Silverman, Executive Director
Transgender Legal Defense & Education Fund, Inc.
151 West 19th Street
Suite 1103
New York, New York 10011

Re: Coy Mathis/Fountain-Fort Carson School District

Dear Mr. Silverman:

This office represents the Fountain-Fort Carson School District and your December 26th letter to Superintendent Cheryl Serrano has been forwarded to me for response.

Coy Mathis was born a male and has male sex organs. I understand, however, that Coy identifies as a girl. As you note, Coy has been permitted to wear girls' clothing for approximately a year and is referred to by the use of female pronouns and has thus been able to "express who she is". However, Eagleside staff was advised months ago that Coy was not going to be permitted to use the girls' restroom but instead would be permitted to use the accessible gender neutral faculty bathrooms at the school. Recently, the District discovered this was not occurring and following a discussion with Eagleside staff, the parents were informed of the decision.

The District's decision took into account not only Coy but other students in the building, their parents, and the future impact a boy with male genitals using a girls' bathroom would have as Coy grew older. The reason it has not apparently been an "issue" to date is that fellow students and even the other teachers in the building are not aware that Coy is a male and at his young age, he may appear to be a female. In addition, when he was in kindergarten last year, the restroom facilities were gender-neutral, as opposed to the restrooms used by elementary school students.

Michael D. Silverman, Executive Director
December 28, 2012

However, I'm certain you can appreciate that as Coy grows older and his¹ male genitals develop along with the rest of his body, at least some parents and students are likely to become uncomfortable with his continued use of the girls' restroom, and that it would be far more psychologically damaging and disruptive for the issue to arise at an age when students deal with lots of social issues.

I believe you have misinterpreted C.R.S. § 24-34-601(2). That provision, as pertinent here, provides that it is a

discriminatory practice and unlawful to refuse, withhold from, or deny to an individual or a group, because of disability ...sex, sexual orientation ... the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation

Coy Mathis has not been denied access to "the full and equal enjoyment" of the educational services, facilities, privileges, advantages or accommodations of Eagleside Elementary School. Coy attends class as all other students, is permitted to wear girls' clothes, and is referred to as the parents have requested. Coy has easy access to single-user restrooms (marked "Men" or "Women") used by employees or the gender-neutral single-user bathroom located in the school's health room.

As you undoubtedly know, Maine is one of several states that have legislation that protects transgender persons on the basis of gender identity or expression. However, as you also undoubtedly know, on November 20th the Penobscot County Superior Court in Maine ruled that Riverside RSU 26, formerly Orono School District (OSD), did not violate a transgender (male-to-female) student's rights under the Maine Human Rights Act (MHRA) when school officials prohibited the student from using the girls' restroom at school. It also rejected the student's claims of discrimination under the MHRA based on deliberate indifference to student-on-student harassment or harassment by school officials.

In addition, I understand that even the Colorado Civil Rights Commission has acknowledged in public hearing that the regulations don't absolutely require students to be able to use restrooms consistent with their gender identity provided the other offered facilities are similarly accessible. There are no reported Colorado cases requiring public schools to permit transgender students to use restrooms of the gender with which they identify.

The District and I believe therefore that the District has made reasonable accommodations for Coy's gender identity and we would hope that you would not choose to make this a matter of litigation, which, in your own words, would undoubtedly prove to "be

¹ I refer to Coy at times as "boy", "he" or "his" not in an attempt to be disrespectful, but because I am referring to male genitals.

Michael D. Silverman, Executive Director
December 28, 2012

psychologically damaging and disruptive” of Coy’s education.

Very truly yours,

ANDERSON, DUDE & LEBEL, P.C.

A handwritten signature in black ink, appearing to read "Wm. Kelly Dude", written over the printed name below.

Wm. Kelly Dude

cc: Cheryl Serrano, Superintendent (via email)
John Fogarty, Director of Human Resources (via email)
Jason Crow, Principal, Eagleside Elementary School (via email)