

Michigan

# Michigan school's bathroom policy stigmatizes transgender students, ACLU argues

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JENISON, MI - The American Civil Liberties Union of Michigan has taken up the case of a Jenison High School transgender student who complained about being denied the ability to use the bathroom corresponding with his gender identity.

Jay Kaplan, attorney with the ACLU of Michigan's LGBT Project, wrote a letter to Jenison Superintendent Tom TenBrink about why the district's bathroom options for transgender students are unacceptable.

School officials told students they could choose between the bathroom corresponding with the gender they were assigned at birth, one of three unisex staff bathrooms and a gender-neutral bathroom installed in August.



## Transgender bathroom policy earns criticism for Jenison

"We believe that such a policy is harmful to transgender students in that it stigmatizes them and impairs their ability to participate fully at school and to enjoy a safe learning environment," Kaplan wrote in the five-page letter he sent the district last week.

"We also believe that permitting transgender students to access restrooms in accordance with the gender that they live with every day not only is the best interest of these students, but is required by both federal anti-discrimination law and the constitution."

### [Read: Kaplan's full 5-page letter to Superintendent TenBrink](#)

The district denied it is engaging in any discriminatory practices toward transgender students. TenBrink previously stated the school has been working directly with transgender students to ensure they feel that they are treated with respect and dignity.

Kaplan said he is optimistic about potential changes at the school district. He said he spoke to Katherine Broaddus, the attorney representing the district from Thrun Law Firm, on Friday, April 14, and said she intends to get back to him about the issues raised.

The attorney said the ACLU wants a timely response to its letter, which did not directly threaten a lawsuit.

In response, the district released the following statement on Tuesday, April 18:

Jenison Public Schools is proud of the nurturing, respectful educational environment that exists at our schools. Our students are very successful, in large part, because of our efforts in assuring that all students are treated with sensitivity and dignity. It goes without saying, the district does not discriminate against any student regarding any protected characteristics. Any assertion that the district has engaged in discriminatory practices with transgender or other classes of students is untrue. We always place student safety and well-being first, taking into account individual students' requests for accommodation and support.

But Kaplan said the option of going to a bathroom marked with the gender you don't identify with is not an option, and providing access to staff or unisex bathrooms could single out individual students. In the situation it creates, he said, some students try not to use the bathroom during the school day, which can cause health issues.

Transgender is defined as a person who identifies with or expresses a gender identity that differs from the gender identity assigned to them at birth.

The student who reached out to the ACLU was assigned female gender at birth, but now identifies as male, according to the organization. The student has not been identified by either the ACLU or the district, and has declined comment through the ACLU.

TenBrink previously told MLive the student is not the only transgender student at Jenison High School, to which the unwritten bathroom guidelines apply. Kaplan said, at this time, the ACLU has not been contacted by any other transgender students from Jenison.

The issue first gained public attention during Jenison's spring break when the student took to Facebook, posting concerns about the bathroom guidelines on the "For the Love of Georgetown Township" page.

Members of the Michigan Association of Civil Rights Activists (MACRA) saw the post and began a social media campaign to encourage community members to contact the superintendent, principal and other administrators to express their displeasure and urge adoption of pertinent Michigan State Board of Education guidelines.

In September, the state board approved the new guidelines by a 6-2 vote. They include a recommendation for districts to allow transgender K-12 students access to restrooms or locker rooms in accordance with their gender identity.



### **Transgender bathroom guidelines approved by State Board**

"While gender-neutral bathroom facilities are often the solution that works best for all students, including transgender students, districts are reminded that current interpretation of federal civil rights laws protect the right of transgender students to use the bathroom of their gender identity if they choose," according to the state board.

In his letter to the district, Kaplan included the state board's guidance on the issue. He also informed the district that the federal Title IX of the Education Amendments Act of 1972 protects transgender students from discrimination in public education.

"In a well-known case of *G.G. v. Gloucester County School Board*, the Fourth Circuit Court of Appeals gave legal deference to the Department of Education's interpretive guidance of Title IX as requiring that a school treat transgender students in accordance with their gender identity," he wrote.

"Although those guidelines have been withdrawn by the Trump Administration, there still remains case law precedent that transgender students are protected under sex non-discrimination laws, such as Title IX."

Holly Huber, a member of the Michigan Association of Civil Rights Activists, said the association was pleased to learn the ACLU is taking up the case.

"We are concerned that the school continues to enforce a confusing and secret policy," Huber said.

Under the Freedom of Information Act, MACRA sought documents to support TenBrink's statement about the unwritten transgender bathroom guidelines, including who produced and approved them, and how the transgender students, administrators, teachers and security were informed.

However, in a letter to MACRA, the district denied the request because "a public record does not exist meeting your description."

- **Jenison's response to FOIA request filed by MACRA**

"I certify that to the best of my knowledge, information and belief, the public record does not exist under the name given or another name reasonably known to the public," Leslie Philipps, the district's FOIA coordinator, wrote in the response to the request.

Kaplan said discrimination against transgender students violates the Equal Protection Clause found in the 14th Amendment to the U.S. Constitution.

"Research shows denying transgender students access to restrooms that correspond with the gender they live every day has a serious impact on transgender people, impacting their education, employment, health and participation in public life," Kaplan said.

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