



January 11, 2024

Tracy Dorland  
Superintendent of Jefferson County  
Public Schools  
[tracy.dorland@jeffco.k12.co.us](mailto:tracy.dorland@jeffco.k12.co.us)

The Jefferson County  
School Board:

Michelle Applegate  
[michelle.applegate@jeffco.k12.co.us](mailto:michelle.applegate@jeffco.k12.co.us)

Mary Parker  
[mary.parker@jeffco.k12.co.us](mailto:mary.parker@jeffco.k12.co.us)

Erin Kenworthy  
[erin.kenworthy@jeffco.k12.co.us](mailto:erin.kenworthy@jeffco.k12.co.us)

Danielle Varda  
[danielle.varda@jeffco.k12.co.us](mailto:danielle.varda@jeffco.k12.co.us)

Paula Reed  
[paula.reed@jeffco.k12.co.us](mailto:paula.reed@jeffco.k12.co.us)

Dear Superintendent Dorland and Jefferson County Public School officials,

Thank you for your response to our letter. Unfortunately, it seems our demands were misinterpreted, so we would like to clarify our request and respond to a few factual inaccuracies. But our primary concern is your failure to state whether parents can opt their children out of any policy that rooms children by gender identity rather than sex.

To begin, you stated that our letter contained a “fundamental error” because neither “the supervising chaperones” nor “the private tour operator (EF Tours)” knew that one of the students in D.W.’s room was transgender. That’s not the relevant question here. This was a Jefferson County-sponsored trip, so the *district’s* knowledge, rather than that of the individual teachers on the trip, is pertinent. Policy JB-R requires that the “school shall maintain a mandatory permanent student record that includes a student’s legal name and legal gender.” Therefore, even if the student “enrolled for the trip as a female,” the district’s permanent record still reflects the student’s male sex. The district knew about the student’s sex and allowed the student’s parents to choose whether their child was roomed with male or female students. Our clients are merely asking for similar treatment. They would like the same opportunity to decide whether their daughter is roomed with male or female

students. Your stated policy allowed one family to make an informed decision beforehand, while the Waileses were not given that consideration.

Next, despite the information you say you received from other sources, our initial letter was factually correct. JCPS assigned D.W. and three other students to stay in a hotel room with two beds. JCPS knew one of those four students was a male who identifies as a girl and would be required to sleep in a bed with one of the other three girls assigned to the room. Prior to the trip, and without knowledge about the male student's sex or gender identity, it was determined that D.W. would sleep in the bed with the male student who identifies as a girl. This fact can be corroborated by multiple third parties present on the trip, including JCPS staff members.

To be clear, we did *not* demand that you “shar[e] [y]our students’ private gender identity information with other families.” Nor did we demand confidential medical information about other students. Instead, we asked “whether parents can opt their children out of any policy that rooms children by gender identity rather than sex.” This can be accomplished in a number of confidential manners. For example, when parents fill out the registration forms for any school-sponsored trip, the district could ask: “Do you submit to Policy JB-R, which allows students to stay in the same room or bed with a child of the opposite sex who identifies as transgender?” JCPS could also obtain an opt-in to the policy generally for all overnight trips at the beginning of the school year or obtain a verbal opt-in by calling parents when arranging rooms for trips. These solutions inform parents of your policy, give parents the ability to opt out prior to the trip, and allow parents to choose the sex of their child’s roommates, all without disclosing any student information at all.

This proposed resolution does not reveal gender identity (or any medical information) of any student, nor does it even reveal any student’s name or if any student on the trip identifies as transgender. Rather, it provides parents like the Waileses with enough information ahead of the trip which allows them to make informed decisions about whether their children participate in school trips and where they are comfortable rooming their children. This still allows parents of students who identify as transgender to choose whether to place their child with male or female roommates while maintaining their privacy. In other words, this resolution provides choice, equality, and privacy for *all* students, regardless of gender identity, while also securing the constitutional rights of all parents. Furthermore, it benefits your staff whom you have also placed in a difficult position.

While we appreciate your admission that children should not be forced to share a bed with a student of the opposite sex, your commitment to “not knowingly assign students of different birth sexes to share a bed” doesn’t fully address the problem. It is your practice to assign students to a room and then allow the students to decide

who sleeps in which bed. Therefore, you essentially promised nothing as you do not assign students to beds. Your practice means you assigned four students to a room, *knowing* that one of the three girls would be sharing a bed with a male who identifies as a girl, likely without her knowledge and consent. You cannot simply wash your hands of the matter by only assigning students to rooms rather than beds.

Furthermore, a student should not be forced to share a room with a classmate of the opposite sex any more than she should be forced to share a bed. The same concerns apply to requiring a student to share a hotel room with a person of the opposite sex as they must sleep mere feet away from each other, shower, use the restroom, change their clothes, and take care of all personal hygiene needs within the same room and bathroom. If a young girl like D.W. is uncomfortable sharing a bed with a male who identifies as a girl, she is likely to also be uncomfortable showering, dressing, and sleeping a few feet away from this student.

You state that your policy “envisions individualized arrangements based on a case-by-case assessment of the privacy interests of *any* student.” While this may have been the vision, it has not come to fruition. To realize this vision, you would need to adopt some form of a policy where parents have an opportunity to assess the privacy interests of their children and request an individualized arrangement. But you fail to do that.

Interestingly, your current policy actually causes some of the problems that you are concerned with. Your admission that children can be forced to share a room with a student of the opposite sex but not a bed means that students like D.W. would have to inquire about the gender identity of their assigned roommates before deciding on bed arrangements. Your current policy also requires young children to be forced to request an accommodation in front of their peers and often without their parents on the trip. Additionally, students who do not want to disclose their sex or gender identity will suddenly have that information highlighted in front of their peers. This puts all students, regardless of gender identity, in an untenable position where JCPS is violating student privacy on both sides. JCPS is putting students in unnecessary and uncomfortable situations by requiring students to manage this on their own during the trip. Instead, JCPS could work this out prior to the trip in consultation with parents in a confidential manner where no student is put on the spot.

Since we sent our first letter, there has been an outpouring of support for the Waileses from the Jefferson County community. We have been approached by many parents who are similarly concerned about your current policy and practice. We also discovered that what happened to the Wailes family was not an isolated incident within your district. In fact, we have spoken with other families whose children were placed in the same room with children of the opposite sex at Outdoor Lab. As you

know, Outdoor Lab is a longstanding, highly anticipated, and *required* component of the sixth-grade curricula in JCPS. We have reports of sixth graders of the opposite sex being placed in the same cabin. Even more concerning, we have spoken with parents whose eleven-year-old sixth-grade child was placed in a cabin with an 18-year-old high school counselor of the opposite sex. In addition to staying in the same cabin as sixth graders, counselors at Outdoor Lab are also in charge of supervising showers to ensure students do not take too long. Considering that students at Outdoor Lab cannot contact their parents during the trip, it would be up to an eleven-year-old to face this invasion of privacy alone. Here, the child did not feel comfortable speaking up during the trip, and the parents did not discover this invasion of their child's privacy until the trip ended. This cannot be the "individualized arrangement" your policy envisions.

In conclusion, we are seeking a policy change that allows parents to opt their children in or out (depending on how it is worded) of any policy that rooms children by gender identity rather than sex. Please respond in writing by January 25, 2024, whether you will add the requested change to Policy JB-R. Additionally, your first response failed to disclose any documents related to JB-R, including related policies, training materials, emails discussing JB-R, and documentation of previously granted accommodations. Please forward those materials immediately.

Respectfully Submitted,



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Katherine L. Anderson  
Sr. Counsel, Director of the Center for  
Parental Rights