EXHIBIT A

A Message from Superintendent Daniel Cates

December 1, 2017

On November 30, 2017, a lawsuit was filed against Township High School District 211 claiming the District had violated the rights of a student by failing to provide full and equal access to our facilities – specifically, the locker room – because of the student's transgender identity. As an educational institution centered on supporting all students, we want to both educate and assure all parties of our support.

The allegations in this lawsuit misrepresent the accommodations extended to this student and the District's overall approach to working with and supporting transgender students. District 211 has provided caring and responsive supports for transgender students for years, including transgender students who daily use bathrooms and locker rooms of their gender identity in multiple schools. Every transgender student in District 211 who has requested use of the locker room of their identified gender has been offered such access, along with other supports within an individual support plan.

The Illinois Department of Human Rights has already dismissed this case, stating there was no evidence of discrimination.

Our staff members and students recognize, respect and celebrate the complete range of unique and marvelous human differences, many of which are best served through supportive accommodations. Throughout our schools, we are committed to a foundation of caring and professional regard to all students, and that includes the support we provide to students experiencing transgender identity – honoring each student's stated name, supporting participation on teams, accommodating access to all facilities, and working closely with parents to understand and support each student's progression through the many opportunities and challenges facing today's youth, while always balancing the needs of all the teenagers in our district.

Many in our community remember two years ago when District 211 was embroiled in a federal complaint surrounding our supports to protect access and privacy for all students, including a transgender student. Still today, these matters divide communities across the nation.

The students and staff members in our schools are not divided on this issue. Every day in our schools, transgender students have full access to the bathrooms of their identified gender. Each day, transgender students use the locker room of their identified gender. Some seek more private accommodations, and those are provided as well.

We will vigorously defend and protect compassionate, fair and equitable support for all students, and, at the same time, we continue to defend our supports for transgender students at the federal level. This is our commitment now and throughout whatever challenges are put before us, regardless of agenda or cause.

EXHIBIT B

Post-Board of Education Vote Statement
by Township High School District 211 Superintendent of Schools Daniel Cates

Our position throughout this ongoing matter has always centered on safeguarding student privacy and upholding dignity for all students in our district.

We received many messages urging us to stay true to our position protecting student privacy. This resolution we have reached with the Office for Civil Rights protects student privacy.

On November 2, 2015, the federal Office for Civil Rights alleged that District 211 was not providing a transgender student with an equal opportunity to benefit from its educational program because the District failed to provide full, unrestricted locker room access. OCR threatened to pursue enforcement action against the District including withholding federal funding unless a resolution was reached within 30 days. We disagreed with OCR's allegation because gender is not the same as anatomy.

After many weeks of intense discussions and negotiations, we have now reached a resolution with OCR that stands in stark contrast from their letter of findings. The agreement protects student privacy and will best serve our total school community.

It is essential for everyone to understand the most critical and substantive components of the final agreement between District 211 and OCR:

- Based on the representation of the individual student who filed the OCR complaint that the student will change in private changing stations, the District agrees to provide the student with access to locker room facilities designated for the student's identified gender;
- Any student will have access to privacy accommodations in the locker room through a variety of individual options;
- This agreement pertains **solely** to this individual student and does not require a District-wide policy;
- The agreement makes no reference to the District violating any regulation or law, and reiterates that the District categorically refutes the notion of any violation of law or form of discrimination.

Let me emphasize – consistent with our stated position throughout this matter, if the transgender student seeks access to the locker room, the student will not be granted unrestricted access and will utilize a private changing station whenever changing clothes or showering.

The measures we have proposed for our locker rooms protect student privacy. Every school district with whom we consulted that has supported access to locker rooms by transgender students has also effectively utilized similar individual privacy measures. And, all of these districts have reported that their students participate fully in both sports and educational programs without any disruption. Full student participation is our goal and expectation with these measures in place.

Our District 211 students are supportive, accepting, open-minded and solution-focused. We are confident that our students will demonstrate the same exemplary character surrounding this matter that they consistently display in accepting and celebrating differences.

By reaching this mutual agreement with OCR, the threat of further litigation specific to the initial complaint has ended, and the District will retain full access to its federal funds used primarily to serve at-risk students.

From the outset, our public statements have consistently conveyed the District's position that unrestricted access by transgender students in our open locker rooms is unacceptable, because gender is not the same as anatomy. We have been clear in our public statements that access to gender identified locker rooms must safeguard and protect student privacy whenever students are changing clothes or showering.

We have implemented practices surrounding transgender student access to restrooms for two-and-a-half years, without incident. We are confident that this principle of ensuring privacy will again serve our students in a positive manner.

District 211 personnel have long been leaders in providing supportive, sensitive and responsive services to all our teenage students. We believe that the successful resolution of this OCR matter continues a longstanding tradition of care and service, while respecting the rights of all students.

A message informing the District community of the successful resolution of the OCR matter will be sent this evening, and the complete agreement is accessible via a link provided in the message, along with answers to questions that we have received. The same letter and link will be accessible on the District 211 website this evening.

I want to thank the School Board for the enormous amount of time, effort and thoughtful debate they have put forth in this matter, and for standing on principles that respect our entire school community.

EXHIBIT C

Township High School District 211

Media Statement from Superintendent Daniel Cates Regarding ACLU Lawsuit filed 11-30-2017

The allegations in this lawsuit misrepresent the accommodations extended to this student and District 211's approach to working with and supporting transgender students.

District 211 has provided caring and responsive supports for transgender students for years, including multiple transgender students who daily use bathrooms and locker rooms of their gender identity in multiple schools.

Every transgender student in District 211 who has requested use of the locker room of their identified gender has been offered such access, along with other supports within an individual support plan.

The Illinois Department of Human Rights has already dismissed this case, stating there was no evidence of discrimination. We will vigorously defend and protect compassionate, fair and equitable support for all students, and, at the same time, we continue to defend our supports for transgender students at the federal level.

EXHIBIT D

Judge rules in favor of balanced access to locker room

Daniel Cates, Superintendent
Township High School District 211
Statement Posted: January 25, 2018

For the past two years, District 211 has been one of a few school districts at the center of a national debate around matters of student privacy and access to the locker room of a student's identified gender rather than the gender of the student's birth.

Our privilege as a public school is to serve everyone with caring support. Teenagers throughout our school communities can experience challenges associated with adolescent identity development into early adulthood. We also are aware that changing clothes or showering in the locker room can be associated with unspoken discomfort for many teenagers.

In District 211, our Board of Education and staff members have demonstrated an unwavering commitment to respecting all students and safeguarding student privacy. We are dedicated to providing supportive access that respects and balances the identity and privacy interests of all the nearly 12,000 teenagers in our high schools and we have implemented practices to achieve this.

This commitment was the cornerstone of the approved compromise solution we reached with the federal Office for Civil Rights (OCR) in 2015, following a complaint filed by a student seeking unrestricted access to the locker room of the student's identified gender. Our practices provide transgender students use of the locker room consistent with their gender identity with an agreement to use a private changing stall inside the locker room to change clothes or shower. These enclosed changing stalls are available for any student who wishes to use them in locker rooms throughout our district.

A federal court ruling recently affirmed the appropriateness of this approach, refusing to grant a temporary injunction sought by a group who wanted to prevent any transgender students from using the locker room or bathroom of their identified gender. The federal court ruling stated that there was no evidence that the District's current, balanced practices compromised student privacy in any way.

In the fall of 2017, a second lawsuit was filed by a District 211 student, this time in state court, seeking full and unconditional access to the locker room of a student's identified gender without the use of the changing stall. Today in state court, Judge Allen ruled in favor of the District to continue offering transgender students access to the locker room along with the balanced, reasonable agreement of changing clothes or showering in a privacy stall located inside the locker room.

This particular matter has yet to be fully defined in the law and the District will continue to participate in both the federal court and state court proceedings to uphold and protect compassionate, responsive, and equitable support for all students. As always, we are committed to ensuring that our schools provide a welcoming and inclusive learning environment celebrating each of our unique differences.

EXHIBIT E

THE
ROGER
BALDWIN
FOUNDATION
OF ACLU,
INC.

SUITE 2300
180 NORTH MICHIGAN AVENUE
CHICAGO, ILLINOIS 60601-1287
(312) 201-9740
FAX (312) 201-9760
WWW.ACLU-IL.ORG

ACLU
ROGER BALDWIN FOUNDATION
OF ACLU, INC.

September 8, 2016

Dept. of Human Rights
INTAKE UNIT
SEP 08 2016
RECEIVED
By:

Via Hand Delivery

Ngozi Okorafor, Chief Legal Counsel
Brent Harzman, Manager of Charge Processing Division
Raquel C. Guerra, Supervisor of Intake Unit
Illinois Department of Human Rights
100 West Randolph Street, Ste. 10-100
Chicago, Illinois 60601

Re: In the Matter of Brenda Schweda on behalf of N.S., a minor, And Township High School District 211

Dear Ms. Okorafor, Mr. Harzman and Ms. Guerra:

We represent Brenda Schweda, and her daughter, N.S., a minor. Enclosed please find Ms. Schweda's Charge of Discrimination against Township High School District 211 ("District 211").

We respectfully request that the Illinois Department of Human Rights expedite the investigation of Ms. Schweda's Charge. N.S. is a junior at Palatine High School in District 211. She is a girl who is also transgender. Although designated male at birth, N.S's gender identity is female and she lives and presents as a female in all aspects of her life. She expresses her female gender in her choice of clothing and hair style, uses a female name, and requests that others use female pronouns when referring to her.

However, District 211 has denied N.S. the full and equal enjoyment of its facilities by requiring her to change in a restroom in the nurse's office or a separate single-user locker room instead of the girls' locker room. District 211's refusal to let N.S. use of the girls' locker room because she is transgender is a violation of the Illinois Human Rights Act.

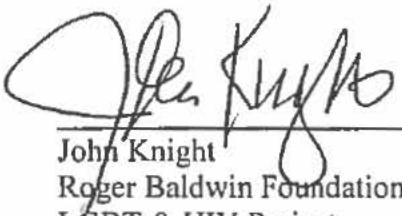
Refusing N.S. full and equal use of the girls' locker room denies her the opportunity to live in complete conformity with her gender identity. This treatment is damaging to N.S.'s health and wellbeing each day she attends school. Such treatment puts her at risk of long-term injury.

Even though N.S. and her mother explained to the District 211 administrators how important it is to allow her to use the locker room consistent with her gender identity, the school

refused to allow N.S. to use the girls' locker room. In order to lessen the harm she is suffering by being forced to dress in a separate space, N.S. and her mother requested and were granted a waiver from gym for N.S. for the current semester. However, missing gym was never what N.S. wanted, nor is it a remedy for the harm District 211 is causing her. N.S. would like to take gym as soon as she can do so without being forced to dress in a separate place from the other girls in her class. She is prepared to start gym again as early as next semester, so long as she is granted permission to use the girls' locker room and her class schedule permits her to add gym at that time. At the very least, she should be able to take gym again during her senior year.

Thus, we respectfully request that the investigation of Ms. Schweda's Charge be completed as soon as possible so that N.S. will be given the same opportunity for gym class provided to her classmates. It is our sincere hope that N.S. will be able to complete high school free from discrimination in her use of the locker room.

Kind Regards,



John Knight
Roger Baldwin Foundation of ACLU, Inc.
LGBT & HIV Project
180 N. Michigan Ave., Suite 2300
Chicago, IL 60601
Phone: 312-201-9740 Ext. 335
Facsimile: 312-288-5225

EXHIBIT F

2017CP0498 01

STATE OF ILLINOIS
ILLINOIS DEPARTMENT OF HUMAN RIGHTS

CHICAGO OFFICE
DEPARTMENT OF HUMAN RIGHTS
100 W RANDOLPH ST., SUITE 10-100
CHICAGO, ILLINOIS 60601
(312) 814-6200
(866) 740-3953 (TTY)

SPRINGFIELD OFFICE
DEPARTMENT OF HUMAN RIGHTS
222 S. COLLEGE ST., ROOM 101
SPRINGFIELD, ILLINOIS, 62704
(217) 785-5100
(866) 740-3953 (TTY)

CHARGE NO: 2017CP0498

CHARGE OF DISCRMINIATION

Dept. of Human Rights
INTAKE UNIT
SEP 08 2016
RECEIVED
By: La

COMPLAINANT

Brenda Schweda, on behalf of N.S., a minor

I believe that I have been personally aggrieved by a civil rights violation committed on

(date/s of harm): June 2015 through present **, by:**

RESPONDENT

Daniel E. Cates, Superintendent
Township High School Dist. 211
1750 S. Roselle Road
Palatine, IL 60067
T: 847-755-6600
F: 847-755-6623

SEE ATTACHED

I, Brenda Schweda **on oath or affirmation state that I am Complainant herein, that I have read the foregoing charge and know the contents thereof, and that the same is true and correct to the best of my knowledge.**

Complainant's Signature and Date

Subscribed and Sworn to

Before me this 3 **day**
of September, 2016

Carol A Kopp
Notary Public Signature

OFFICIAL SEAL
CAROL A KOPP
Notary Public - State of Illinois
My Commission Expires Oct 8, 2017

Notary Stamp

IDHR Form #6
Rev. 05/15

ATTACHMENT

I. A. ISSUE/BASIS

June 2015 to Present – Respondent Township High School District 211 ("District 211") denied N.S. full and equal use of the girls' locker room at Palatine High School on the basis of her gender-related identity, female (designated male at birth).

B. PRIMA FACIE ALLEGATIONS

1. N.S. is a transgender girl whose gender-related identity is female.

2. Respondent District 211 is a place of public accommodation as defined by the Illinois Human Rights Act.

3. Respondent has been aware of N.S.'s gender-related identity, female, at least since January 2015.

4. N.S. is currently a junior (eleventh grade) at Palatine High School in District 211 for the 2016-2017 school year. In all aspects of her life, she lives and presents as female. District 211 uses her female name and female pronouns when referring to her. It also allows her to dress in female clothing and use the girls' restroom. However, District 211 has denied N.S. full and equal enjoyment of its facilities by requiring her to change in a restroom in the nurse's office or a separate single-user locker room instead of the girls' locker room.

5. N.S. and her mother first discussed where, now that she is presenting as female, she would change for gym class on May 1, 2015 during a meeting with Kathleen "Katie" Sobol, a student counselor at Palatine High School. Since that meeting, N.S. and her mother have had several meetings, phone calls, and email exchanges regarding locker room access with District 211 representatives. Those representatives include Frank Rasmussen, Palatine High School's Director of Student Services; Mark Kovack, District 211's Associate Superintendent for Student Services, Gary Steiger, Palatine High School's Principal and Daniel E. Cates, District 211's Superintendent-Elect.

6. District 211 treats N.S. differently than non-transgender female students at District 211, because it denies her the use of the girls' locker room since her gender-related identity, female, fails to match her sex assigned at birth.

7. District 211's refusal to allow N.S. to use the girls' locker room is damaging to her health and wellbeing, because the District denies her the ability to live her life in complete conformity with her gender, isolates and stigmatizes her by treating her differently from other girls.

II. A. ISSUE/BASIS

June 2015 to Present – Respondent Township High School District 211 ("District 211") denied N.S. full and equal use of the girls' locker room at Palatine High School because of her disability, gender dysphoria.

B. PRIMA FACIE ALLEGATIONS

1. N.S. is an individual with a disability within the meaning of Section 1-103(I) of the Human Rights Act. N.S. has been diagnosed with by medical experts in that field.

2. N.S. is a qualified individual who has fulfilled all non-discriminatory requirements for full and equal use of the facilities and services at District 211, including the locker room that matches her gender identity.

3. Respondent District 211 is a place of public accommodation as defined by the Illinois Human Rights Act.

4. District 211 has been aware of N.S.'s disability at least since January 2015.

5. N.S. is a junior (eleventh grade) at Palatine High School in District 211 during the 2016-2017 school year. District 211 denies N.S. full and equal use of the locker room at school that matches her gender identity, because of N.S.'s disability. Instead, because of her disability, District 211 requires her to change in the restroom in the nurse's office or a separate single-user locker room, when girls who do not have are allowed to change in the girls' locker room.

III. A. ISSUE/BASIS

June 2015 to Present – Respondent Township High School District 211 ("District 211") denied N.S. a reasonable accommodation for her disability, when it denied her full and equal use of the girls' locker room.

B. PRIMA FACIE ALLEGATIONS

1. N.S. is an individual with a disability within the meaning of Section 1-103(I) of the Human Rights Act. N.S. has been diagnosed with by medical experts in that field.

2. N.S. is a qualified individual who has fulfilled all non-discriminatory requirements for full and equal access to the facilities and services at District 211, including full and equal access to the locker room that matches her gender identity.

3. Respondent District 211 is a place of public accommodation as defined by the Illinois Human Rights Act.

4. District 211 has been aware of N.S.'s disability at least since January 2015.

5. N.S. is a junior (eleventh grade) at Palatine High School in District 211 during the 2016-2017 school year.

6. N.S. and her mother requested a reasonable accommodation for N.S.'s , namely that she be given the same access to the girls' locker room at school as other girls. Having the same access to the girls' locker room as other girls is a reasonable accommodation because the recommended medical treatment for many people diagnosed with including N.S., is living in complete conformity with the gender with which they identify.

6. District 211 denied N.S. and her mother's request that N.S. be allowed to use the girl' locker room like other girls. District 211 requires that N.S. change in the restroom in the nurse's office or the separate single-user locker room that no girls who do not have are required to use.

EXHIBIT G

STATE OF ILLINOIS
DEPARTMENT OF HUMAN RIGHTS
INVESTIGATION REPORT

Complainant: N.S., a minor[1] **IDHR No.:** 2017CP0498
Respondent: Township High School Dist. #211[2] **EEOC No.:** N/A

Investigator: JRC **Supervisor:** MQL/ **Date:** August 24, 2017

Issue/Basis:	**Finding:**
A. Denial of full and equal access of Respondent's facility/ gender-related identity, female (designated male at birth)	A. Lack of substantial evidence
B. Denial of full and equal access of Respondent's facility/ disability,	B. Lack of substantial evidence
C. Failure to accommodate/disability,	C. Lack of substantial evidence

Jurisdiction:

Alleged violation:	A - C: June 2015 through September 3, 2016[3]
Charge filed:	September 8, 2016
Charge perfected:	September 8, 2016
Amendments:	None
Number of employees:	N/A

Verified Response:

Due: November 25, 2016
Received: November 21, 2016
Timely: X Untimely: ___ **Group Exhibit A**
If untimely, good cause shown: Yes ___ No ___

[1] Complainant's name and of her parent filing on her behalf have been redacted to provide privacy.
[2] In the charge, Respondent is named as "School District #211 Township High School." Respondent's documents appear to indicate that Respondent's proper legal name is Township High School District # 211.
[3] In the charge, it is indicated that the dates of harm were from "June 2015 to present." As the charge was drafted on September 3, 2016, this is the date the Department used as the final date for the purpose of the investigation.

Uncontested Facts:

1. Respondent is a public high school district serving grades 9 through 12 in its five high schools and two alternative high schools.

2. On October 20, 2013, Complainant was enrolled as a student at Respondent's Palatine High School.

3. Complainant is a transgender girl whose gender-related identity is female. Respondent has been aware of Complainant's gender-related identity, female, at least since January 2015.

4. Sometime in August 2015, Complainant and her mother met with Fred Rasmussen, Student Services Director, and Mark Kovack, Associate Superintendent, regarding Complainant's name change on her I.D. and Complainant's use of Respondent's restroom facilities, and explored the possibility of using gender-neutral restrooms.

5. On November 18, 2015, Complainant's name change was finalized in Respondent's system.

6. On January 11, 2016, Respondent held a student support team meeting to develop a plan of support for Complainant's gender transition at the school. This included, Complainant's preferred pronouns, who to seek for support, and the use of Respondent's facilities.

7. On August 11, 2016, Respondent held a second student support team meeting to develop a plan to support Complainant for the 2016-2017 school year.

Complainant's Allegations-Count A:

Complainant, a public high school student, alleges that June 2015 through September 3, 2016, she was denied the full and equal access of Respondent's facilities based upon her gender-related identity, female. Complainant alleges that sometime in January 2015, she had made Respondent aware of her identity as a female, wishing to utilize and equally access the Respondent's girls' locker room. Complainant alleges that Respondent denied her multiple requests to use the girls' locker room and required her to change in a restroom in the nurse's office or a separate single-user locker room instead. Complainant alleges that Respondent treats her differently than non-transgender female students because she is denied the use of the girls' locker room, since her gender-related identity, female, fails to match her sex assigned at birth.

Respondent's Defenses-Count A:

Respondent maintains that it did not deny Complainant the use of Respondent's facilities based on her gender-related identity, female. Respondent maintains that, upon the request of Complainant and her parents, Complainant is not currently engaged in academic or extracurricular activities that required access to a locker room, and thus does not have a need for changing facilities. Respondent denies that it treated Complainant differently than non-transgender female students.

Investigation Summary-Count A:

A. **Complainant's Evidence.**

1. Complainant stated that on or around May 1, 2015, she met with Kathleen Sobol (female), Guidance Counselor, with regards to her dressing up for P.E., as she was now presenting as female and asked if she could use the girls' locker room. Complainant stated that Sobol responded that that this was not an option, indicating that she could use the nurse's office bathroom to change and that a locker in the main hallway will be designated for her to store her clothes. Complainant stated that Sobol did not indicate who made this decision.

2. Complainant stated that in late August 2015, she spoke with Fred Rasmussen (male), Palatine High School Director of Student Services. Complainant stated that the meeting was to confirm the arrangement of her using the nurse's office bathroom and the hallway locker. They also discussed how this accommodation would work. Complainant stated that Rasmussen indicated to her that the use of the girls' locker room would not be an option for her.

3. Complainant's mother (female) indicated that, during Complainant's conversation with Rasmussen, she told him that she was not comfortable using Respondent's girls' restrooms because she was not allowed to use the female locker room. Complainant's mother indicated that Complainant believed that this would call undue attention to other students. Complainant verified her mother's statement.

4. Complainant stated that she and her mother met with Rasmussen and Mark Kovack (male), Associate Superintendent, sometime in late summer of 2015, before Complainant's sophomore year. Complainant stated that they wanted to explain her situation to them so that they can be fully informed. Complainant's mother indicated that it was a fact-finding meeting to get to know Complainant's needs. Complainant stated that they discussed her request to change the name on her I.D. and Complainant's current use of Respondent's restrooms. Complainant's mother indicated that she brought up possible alternative options, including the use of gender-neutral restrooms.

5. Complainant's mother stated that, between Complainant's sophomore and junior years, she was in contact with Rasmussen numerous times via phone calls and emails. Complainant's mother stated that she sent emails to both Rasmussen and Sobol on November 3, 2015 **(Exhibit B)**, indicating that, per a notice that was sent by Respondent on November 2, 2015 **(Exhibit C)**, her daughter should be able to enter the girls' locker room. Complainant's mother stated that both Rasmussen and Sobol reaffirmed that Complainant cannot use the girls' locker room. Complainant's mother stated that Rasmussen indicated that he does not have the power to provide Complainant with access to the girls' locker room. Complainant's mother stated that, as such, she sent an email to Kovack on December 3, 2015 **(Exhibit D)**, asking how a recent settlement between Respondent and another transgender student at one of Respondent's school would affect her daughter. This

is due to the fact that, per an email communication from Respondent on December 4, 2015 **(Exhibit E)**, Respondent had indicated that the agreement only applied "to the student who lodged the complaint" and "does not apply district-wide," implying that it did not apply to all transgender students at Respondent. She wanted to know how the decision would impact her daughter. Complainant's mother stated that in Kovack's response on December 5, 2015 **(Exhibit E)** he "recommend[s] that Complainant seek out Dr. Rasmussen directly" regarding the issue as he [Rasmussen] "can take appropriate steps to mobilize the support team at Palatine in response to new information."

6. Complainant's mother stated that a meeting was held on January 11, 2016, between her daughter, herself, Rasmussen, Sobol, and Eric Smith (male), School Psychologist, to discuss Complainant's well-being and how she could be successful at school. The meeting also addressed Complainant's confidentiality (what she wanted disclosed to others), who she can go to for support at school, what pronouns Complainant wanted the school staff to use, and Complainant's use of restroom facilities.

7. Complainant stated that stated that, in addition to what her mother said, in this meeting they also discussed her request to access the girls' locker room. Complainant stated that this request was denied. Complainant stated that she cannot recall who said it, but she indicated that someone in the meeting informed her that she would not have access to the locker room.

8. **Exhibit F** is Complainant's copy of the Student Support Team Meeting Notes for the meeting held on January 11, 2016. The notes indicate that Complainant "has not openly identified herself as transgendered to all students but has told her close friends." It also states that, every semester, Sobol, as Complainant's counselor, "will share pertinent information as to [Complainant's] needs in the classroom" and that Complainant's gender identity would be regarded as confidential information and will not be shared with other students and parents. The notes indicate that female pronouns will be used by school staff when referring to Complainant. The document also indicates that Complainant "currently chooses to use the male restroom. She has full access to use the gender-neutral bathroom in the nurse's office and the female restrooms" and Complainant will "have access to use the previous therapy room by the main gym as well as the nurse's office to change clothes for physical education." The document continues to say that Complainant "has requested access to the female locker room not only to change, but to receive additional information regarding the meeting location for her physical education class" and that Complainant "will now have access to use the previous therapy room by the main gym as well as the nurse's office to change clothes." The notes also indicate that Complainant "has periods where she experiences " and "at these times becomes very uncomfortable within her own body, which makes wearing the assigned P.E. uniform uncomfortable for her," which "can lead to depression and anxiety." The plan also indicated that the "team will meet at least once a year to review the plan and revise as needed" and that Complainant can

"request a meeting at any time to revise and/or review the plan by contacting Fred Rasmussen, Katie Sobol, or Eric Smith."

9. Complainant stated that they received a copy of the plan in paper form a few months after the initial meeting in January 2016. She stated that she cannot recall what was on the plan.

10. Complainant's mother stated that, while she doesn't remember receiving the plan, Rasmussen probably sent it to her. Complainant's mother stated that Complainant also indicated in the meeting that she was not comfortable dressing in the accommodations that were already provided to her (i.e., the use of the nurse's office restroom to change). She stated that Complainant was then offered the use of a smaller, more isolated locker room, but was still not allowed to use the female locker room as Complainant requested.

11. Complainant stated that in April 2016, she had a second meeting with Rasmussen, Sobol, and Complainant's gym teacher regarding her difficulties. Complainant stated that, before the meeting even began, Rasmussen indicated to her that he cannot grant her access to the girls' locker room.

12. Complainant's mother stated that on June 17, 2016, she sent an email to Daniel Cates (male), Respondent's Superintendent, making a formal request for Respondent to provide her daughter with locker room access **(Exhibit G)**. The email stated that she had hoped, after a decision was made to provide a transgender student with locker room access at another high school, that Respondent would provide similar accommodations for Complainant. Complainant's mother stated that she also sent a similar formal request for locker room access via email to Rasmussen on the same day **(Exhibit H)**. Complainant's mother stated that a team meeting was set up for her daughter for August 11, 2016. Complainant's mother then sent an email response to Cates (undated), with a list of items she would like covered at the meeting.

13. **Exhibit I** is Complainant's mother's undated email to Cates, stating that she would like to cover the following topics at her daughter's meeting:

- OCR Requirement to report discrimination claims.
- Obama Directive and the District's response to it.
- Policy regarding transgender students access, if it exists.
- PE waiver as a temporary solution or alternative for Complainant.
- Additional training for Respondent's faculty.
- Coordination or development of a transgender student services team.

14. Complainant's mother stated that she received an email response from Cates on July 1, 2016 **(Exhibit J)**, indicating that they will not be responding to the ongoing OCR agreement, will consider her suggestion regarding training, will not be responding to the Obama communication, will "be glad to talk about a PE waiver

for your daughter," and that Respondent has no policy regarding transgender student access to facilitates, as this is done on a case-by-case basis.

15. Complainant's mother stated that in August 2016, she and her daughter met with Kovack and Rasmussen for a support team meeting for Complainant's upcoming school year. Complainant's mother indicated that Kovack and Rasmussen avoided the subject of locker room access and granted a waiver for P.E. instead. Complainant's mother stated that she never asked for a waiver for P.E., as Complainant didn't want a waiver. Complainant's mother indicated that this option was presented to her, and they accepted it because Respondent was still not giving Complainant access to the girls' locker room and Complainant was having a tough time adjusting to dressing in a segregated area. Complainant's mother stated that her daughter's use of the alternative changing locations that Respondent provided was not good for her daughter's emotional well-being.

16. Complainant's mother stated that her daughter still does not have access to the girls' locker room and cannot even go to the locker room to talk to the P.E. teacher. She stated that Complainant was told that she had a choice between the locations that they had previously offered to her or she could use the boys' locker room. At no point was she allowed to use the girls' locker room.

17. Complainant stated that she has multiple friends who also identify as transgender who have requested name changes and locker room access. Complainant stated that none of them were allowed to use the locker rooms of their choosing. Complainant stated that, in addition, all students at the school who are not transgender have been allowed to use their appropriate locker rooms.

B. **Respondent's Evidence.**

1. Rasmussen, the Palatine High School Director of Student Services, indicated that, per Respondent's policy on Non-Discrimination of Students and Staff **(Exhibit K)**, Respondent "provide[s] students and employees a learning and working environment (1) in which the dignity and worth of each individual is valued and respected (2) which is free from all forms of harassment and discrimination due to race, creed, color, age, religion, ancestry, national origin, gender, marital status, sexual orientation, disability, military service, being a victim of domestic or sexual violence, use of lawful products while not at work or school, or any other unlawful basis for discrimination."

   Rasmussen indicated that Respondent does not have a written policy with regards to the use of its locker room facilities, as this is addressed on a case-by-case basis, depending on the student's readiness and needs.

2. Rasmussen indicated that he has no knowledge of the alleged May 2015 conversation between Complainant and Kathleen Sobol, Guidance Counselor. Rasmussen stated that, per Respondent's documentation, on October 3, 2014, Complainant's P.E. teacher, Ms. Coleman (female) sent an email to Sobol, asking

if "the locker room has been a problem" for Complainant **(Exhibit L)**. Sobol's email response to Coleman stated that when Complainant first came to her regarding the issue, she asked Complainant "how she felt about the locker room." Sobol's email stated that Complainant responded that "she was ok, and that she would let [Sobol] know if it becomes a problem."

3. Rasmussen stated that, with regards to Complainant's stated meeting with him in August 2015, he doesn't recall when it occurred, but he remembers walking with Complainant, going over her schedule, and discussing Complainant's use of the nurse's office bathroom to change for P.E. as well as the use of the hallway locker to store her clothes. Rasmussen stated that he does not recall telling Complainant that she will not have access to the female locker room, as he does not remember this as being requested by Complainant at that time. Rasmussen stated that, in addition, Complainant herself indicated to him that she was not comfortable using the female restrooms. Rasmussen stated that, because of this, they discussed the possibility of implementing gender neutral bathrooms. Rasmussen denies having spoken with Complainant about her desire to use the girls' locker room until the idea was brought up at a later time.

4. Rasmussen stated that, per Respondent's documentation, Sobol informed Complainant's teachers in the fall of 2015 that Complainant was transgender. An email was sent by Sobol to Complainant's teachers on August 26, 2015 **(Exhibit M)**, advising them that, although Complainant was born male, she identified as female, and provided them with guidelines "to make her feel more safe and accepted" in their classrooms, which includes, among other things, referring to Complainant by her preferred name and pronouns. Sobol's email indicated that the teachers should also allow Complainant additional time to use the restroom as well as additional time to transition to and from P.E. class, as Complainant may be using the nurse's office restroom to go to the bathroom and change for P.E.

5. Rasmussen stated that sometime in or around August 2015, he met with Complainant, Complainant's mother and Mark Kovack (male), Assistant Superintendent for Student Services, regarding Complainant's name change on her I.D. and Complainant's current use of Respondent's restroom facilities. Rasmussen stated that they reinforced to Complainant that the female restrooms were available for her to use. Rasmussen stated that, at the time, Complainant was not using the girls' restrooms at all. Rasmussen indicated that Complainant's mother brought up alternative options, including the use of gender-neutral bathrooms.

6. Rasmussen stated that, per Respondent's records, on November 3, 2015, Complainant's mother requested that Respondent change Complainant's name in the school's records. The requested change went to effect in Respondent's system on November 18, 2015 **(Exhibit N)**.

7. Rasmussen stated that sometime in late 2015, he received an email from Complainant's mother, regarding a request for Complainant to use the girls' locker

room. Rasmussen stated that, as result of the email, a support team meeting was arranged for Complainant for January 11, 2016.

8. Rasmussen stated that on January 11, 2016, a meeting was held with himself, Complainant, her mother, Sobol, and Eric Smith (male), Respondent's School Psychologist. Rasmussen stated that they discussed creating a plan for Complainant: identifying where Complainant was, what she wanted and didn't want disclosed, what pronouns she wanted used, Complainant's use of Respondent's facilities, etc., to support Complainant in her activities at school. Rasmussen stated that a plan was drafted as a result of the meeting, and the document was sent to both Complainant and her mother **(Exhibit O)**. Rasmussen stated that, with regards to Complainant's use of Respondent's facilities, Complainant chose not to use the female restrooms. Rasmussen stated that Complainant had also indicated that she was not comfortable in dressing in female clothing. Rasmussen stated that Respondent wanted to make sure that that the school was addressing Complainant's needs, and, with Complainant's input, Complainant did not appear ready to change in the girls' locker room. Rasmussen stated that Respondent took the appropriate steps given Complainant's input. Rasmussen stated Complainant and her mother were informed that if they felt that some adjustments were needed in the plan, they could contact him to request to revise the plan. Rasmussen stated that he cannot remember when the copy of the plan was given to Complainant.

9. Rasmussen stated that, after the January 2016 meeting, Respondent provided Complainant with access to a locked changing facility in order to change for P.E. Rasmussen stated that Complainant tried this for a short period, but Complainant had informed him that she was not comfortable with this arrangement and decided to no longer use the locked facility and went back to using the nurse's office bathroom to change.

10. Kovack stated that he had tried to build a supporting relationship with Complainant throughout this process. Kovack stated that his first exposure to Complainant's case was in a meeting with Complainant and her mother during the summer prior to Complainant's sophomore year. Kovack stated that he was just beginning to understand the transition process for transgender students and that the schools within Respondent were trying to keep pace with what was occurring. Kovack stated that a November 2015 district-wide message from Daniel Cates (male), Superintendent, was what brought Complainant's mother back to reopening the discussion with Respondent regarding her daughter's use of Respondent's facilities. Kovack stated that this led to the support team meeting, which led to the January 2016 plan. Kovack stated that he cannot remember having a conversation with Complainant's mother, but indicated it is likely that it happened. Kovack stated that if a conversation did occur, he would have likely referred her back to the school, as they have first-hand knowledge of Complainant and could identify her needs and create a support plan for her.

11. Cates stated that Respondent has been very outward in its support of Complainant changing her name in the system and letting her decide on her choice of restrooms. Cates stated that other outside individuals have even filed lawsuits against Respondent because of this decision, but they've stayed firm in their support of Complainant. Cates stated that the January 2016 meeting stemmed from a district-wide email that he issued on December 4, 2015, regarding a settlement Respondent had with another transgender student at one of Respondent's other high schools. Cates stated that he outlined in the memo that Respondent is not excluding transgender students from using their gender-identified locker room. Cates stated that the accommodations that were ultimately provided to Complainant were appropriate given Complainant's stated comfort level, as she had indicated herself that she was still not using the girls' restrooms. Cates stated that Respondent simply responded appropriately to Complainant's readiness. Cates stated that while the settlement agreement was with one individual, the practice (allowing the students' use of their gender-identified locker rooms) was not just for one person. Cates stated that Respondent works on each student's comfort level individually on a case-by-case basis.

12. Rasmussen indicated that a meeting was arranged between himself, Complainant, Sobol, and Complainant's gym teacher on May 15, 2016, not in April 2016 as Complainant stated. Rasmussen stated that the meeting was regarding Complainant's grade in P.E. class, and he denied that he told Complainant that she cannot use the girls' locker room. Rasmussen indicated that, in the meeting, Complainant's teacher indicated that Complainant was experiencing increasing anxiety due to personal reasons and was not changing for P.E. on a regular basis. She also indicated that whenever Complainant did change for P.E., Complainant was not participating in class. Complainant's teacher was concerned about how this was affecting Complainant's grade.

13. Kovack stated that on August 11, 2016, Respondent scheduled a support team meeting with Complainant and her mother to develop a new plan for the upcoming school year. Kovack stated that he and Rasmussen were in attendance for Respondent. **Exhibit P** is Respondent's copy of the meeting summary notes. Kovack stated that they discussed the classes that Complainant anticipated that she was going to take. Kovack stated that Complainant had revealed that she had started accessing the female restroom facilities at school beginning in May 2016. Kovack stated that Complainant also shared that she had outside supports that she continued to use. Kovack stated that one of Complainant's outside supports indicated that the use of the girls' locker room was part of the cause of Complainant's anxiety. Kovack stated that Complainant's mother, as a potential solution, brought up the idea of Complainant getting a waiver for P.E., so she could opt out of P.E. and take an academic class related to her post high school plans. Kovack stated that he and Rasmussen agreed to the proposal. Kovack stated that they never discussed the locker room issue, because P.E. was no longer a part of the plan. Kovack stated that the he thought the plan was meeting Complainant where she was. Kovack stated that Complainant's subsequent charge filed with the Department (the current

charge) came as a shock to him, as he thought her mother's response to the plan was positive.

14. Cates stated that, with regards to Complainant's support team meeting in August 2016, the plan that was created included input from Complainant's therapist and was developed with Complainant's interests in mind. Cates stated that, as part of Complainant's mother's request, Complainant was given a waiver for P.E. class. Cates elaborated that waivers for P.E. are typically granted at less than one percent, showing that Respondent was supportive of Complainant's needs.

15. Rasmussen stated that he has no knowledge of students who Complainant indicated were denied locker room access or name changes. Rasmussen stated that Complainant did bring another student who identified as asexual, and did not identify with either gender. Rasmussen stated that Respondent has allowed other transgender students with access to their gender-appropriate locker rooms based on the student's requested needs and readiness.

C. **Complainant's Rebuttal.**

1. Complainant's mother denied that her daughter indicated in the January 11, 2016 meeting that she was uncomfortable wearing female clothing. She stated that the conversation was about Complainant's comfort level with wearing Respondent's P.E. uniform. Complainant's mother stated that conversation had nothing to do with her daughter's choice of clothing of her gender.

2. Complainant's mother stated that, while she agrees that Respondent was invested in helping her daughter, Respondent initially had issues with changing Complainant's name.

3. Complainant's mother denied that they had requested a P.E. waiver and stated that Respondent was the one who had presented this as an option.

Analysis:

The Department's investigation did not reveal that Respondent denied Complainant the full and equal access to its facilities based upon her gender-related identity, female (designated male at birth). The investigation revealed that Respondent had been aware of Complainant's gender-related identity, female, since at least January 2015. The investigation revealed that in August 2015, Complainant informed Respondent that she would be identified henceforth as a female student, and Complainant and Respondent began discussing the prospect of Complainant's use of Respondent's restrooms and changing facilities. The evidence revealed that Complainant's guidance counselor sent an email to Complainant's teachers indicating that, although Complainant was born male, she now identified as female, and guidelines were provided to support Complainant. The investigation revealed that Respondent had accommodated Complainant in the use of her chosen name, gender appropriate pronouns, and the use of the girls' restrooms. The investigation revealed that beginning in August 2015, Respondent had provided Complainant with a gender-neutral restroom in the nurse's office to change for P.E., and in January 2016, Complainant was provided with a locked facility as an alternative option. The investigation

revealed that several emails were sent by Complainant's mother to various representatives of Respondent between November 2015 and June 2015, requesting that Complainant be allowed to use the girls' locker room. Complainant ultimately alleges that Respondent's provided alternative options (the nurse's office restroom and the separate locked facility) constitutes discriminatory and unequal treatment based on her gender identity, female. However, the evidence revealed that, while Respondent had provided Complainant with full access to its female restrooms beginning in August 2015, she didn't start to use the female restrooms until May 2016. The documentation also reveals that, per Complainant's provided documentation, Complainant's mother sent an email to Daniel Cates, Respondent's Superintendent, regarding topics that she wanted discussed at her daughter's upcoming team meeting on August 11, 2016, which included, in part, a "P.E. waiver as a temporary solution or alternative for my child." The investigation revealed that, at the August 2016 team meeting, Respondent had granted the P.E. waiver.

Findings and Conclusion-Count A:

A finding of **Lack of Substantial Evidence** is recommended because: The Department's investigation did not show, nor did Complainant provide, evidence that Respondent engaged in unlawful discrimination when it provided Complainant with alternative locations to change for P.E. instead of the girls' locker room. The evidence shows that Respondent had taken steps to accommodate Complainant after she had revealed her gender-related identity to Respondent, including changing her name in the Respondent's system to her chosen name, having the Respondent's staff use gender appropriate pronouns, allowing Complainant the use of the girls' restrooms, and providing Complainant with a P.E. waiver, as was requested as an alternative solution by Complainant's mother. The evidence also revealed that while Complainant had full access to the female restrooms beginning in August 2015, Complainant did not use them until May 2016.

Complainant's Allegations-Counts B and C:

Complainant alleges that from June 2015 to September 3, 2016, Respondent denied her the full and full and equal use of Respondent's facilities **(Count B)**, as well as failed to accommodate her **(Count C)**, based upon her disability, Complainant alleges that she is disabled as defined by the Illinois Human Rights Act, and that Respondent had been aware of Complainant's disability since January 2015. Complainant alleges that Respondent denied her the full and equal use of Respondent's girls' locker room and instead required her to change in the restroom at the school's nurse's office or a separate single-user locker room, when female students who do not have are allowed to change in the girls' locker room.

Respondent's Defenses-Counts B and C:

Respondent maintains that it did not deny Complainant the full and equal use of Respondent's facilities or that it failed to accommodate Complainant based on her disability
Respondent maintains that, upon the request of Complainant and her parents, Complainant is not currently engaged in academic or extracurricular activities that required access to a locker room, and thus does not have a need for changing facilities. Respondent denies that it treated Complainant differently than female students who do not have

Investigation Summary-Counts B & C:

A. **Complainant's Evidence.**

1. Complainant stated that she has no knowledge of Respondent's policy on disability accommodation.

2. See Complainant's Evidence, Count A.

3. Complainant's mother stated that Complainant's disability was first communicated to Respondent via a phone conversation she had with Kathleen Sobol (disability status unknown), Guidance Counselor, sometime in February 2015, as her daughter had expressed some anxiety to participating in swim class. Complainant's mother stated that this was also communicated to Complainant's P.E. teacher (she cannot recall her name). Complainant's mother stated that Sobol indicated that Complainant would be required to provide a letter from her doctor to be given to the nurse, which she provided **(Exhibit Q)**. The note, dated February 18, 2015, indicates that Complainant has been in counseling for and that "Participation in the swimming unit in gym would increase the level of anxiety and intensify symptoms of for this student. It is important for you to be aware of this potential outcome and consider possible other alternatives or options for this student in light of this information."

4. Complainant stated that she had also requested an accommodation to her disability on May 1, 2015, when she had asked Respondent for access to the girls' locker room to change for P.E. Complainant stated that this request was denied by Respondent.

B. **Respondent's Evidence.**

1. Mark Kovack (male), Assistant Superintendent for Student Services, indicated that, per Palatine High School's Respondent's Accessibility Accommodation policy in the school handbook **(Exhibit R)**, "[Respondent] will not discriminate on the basis of disability against any qualified individual in accordance with the provisions of the Americans with Disability Act (ADA) of 1990. If an individual with a disability would like to request an accommodation or auxiliary aid or service from [Respondent], the individual should make that request to the school's ADA administrator. The request should be made at least one week in advance of the time the accommodation will be needed. While [Respondent] will make reasonable attempts to accommodate requests made with less than one week advance notice, [Respondent] will not be obligated."

2. See Respondent's Evidence, Count A.

3. Rasmussen stated that Respondent does not have a copy of the letter that Complainant referred to in her records, and do not have any other medical documentation confirming Complainant's alleged disability,

4. Rasmussen stated that the only record that Respondent has that mentions Complainant's alleged disability is in Complainant's January 11, 2016 support team meeting plan **(Exhibit O)**, which states that Complainant "has periods where she experiences and "at these times becomes very uncomfortable within her own body, which makes wearing the assigned P.E. uniform uncomfortable for her," which "can lead to depression and anxiety."

C. **Complainant's Rebuttal.**

1. Complainant did not provide any additional information other than what has already been presented in Complainant's Evidence section.

Analysis- Counts B & C:

The Department's investigation did not reveal that Respondent denied Complainant full and equal access or reasonable accommodation related to use of its facilities based upon his cited disability of Respondent's policy states that, with regards to student disability accommodations, the student should make a request to the school's ADA administrator "at least one week in advance of the time the accommodation will be needed."

The investigation revealed that during the relevant period, Complainant was transitioning to her gender-related identity, female, and in August 2015, informed Respondent of her affirmation that she would be identified henceforth as a female student, and Complainant and Respondent began discussing the prospect of Complainant's use of Respondent's restrooms and changing facilities.

The evidence shows that Complainant provided a letter from her doctor to Respondent on February 18, 2015, indicating that Complainant had been in counseling for indicated that Complainant's participation in swimming in P.E. would increase her level of anxiety and intensify her symptoms . The letter also asked that Respondent consider possible other alternatives for swimming. The evidence also shows that Complainant's was discussed at a support team meeting on January 11, 2016, indicating that, when Complainant experiences symptoms of she becomes "very uncomfortable within her own body, which makes wearing the assigned P.E. uniform uncomfortable."

There is no evidence to suggest that during the relevant timeframe that Respondent was aware that Complainant's condition rises to the level of a disability related to or separate from Complainant's previously disclosed and ongoing transition toward her presentation as a female student. Furthermore, there is no specific citation of any medical or related accommodation requested by any medical professional with regards to locker room access.

The investigation revealed that Respondent had accommodated Complainant in the use of her chosen name, gender appropriate pronouns, and the use of the girls' restrooms. The investigation revealed that beginning in August 2015, Respondent had provided Complainant with a gender-neutral restroom in the nurse's office to change for P.E., and in January 2016, Complainant was provided with a locked facility as an alternative option. The investigation revealed that several emails were sent by Complainant's mother to various representatives of Respondent between November 2015 and June 2015, requesting that Complainant be allowed to use the girls' locker

room. Complainant ultimately alleges that Respondent's provided alternative options (the nurse's office restroom and the separate locked facility) constitutes discriminatory and unequal treatment based on her disabili ',

Findings and Conclusion-Counts B & C:

A finding of **Lack of Substantial Evidence** is recommended because: The Department's investigation did not show, nor did Complainant provide, evidence that Respondent engaged in unlawful discrimination based upon any disability. The evidence indicates that since asserting her identity as a female student in August of 2015, Respondent had taken steps including changing Complainant's name in their system, addressing her with the appropriate female pronouns, allowing her access to the girls' restrooms, as well informing her teachers of Complainant's transition as well as providing them with guidelines to help Complainant feel more supported in her transition. There is no evidence of any medical or related accommodation requested by any medical professional with regards to providing Complainant with access to the girls' locker room.

Witness List:

1. Complainant's mother (FFC)
   c/o John Knight, Attorney
   Roger Baldwin Foundation of ACLU, Inc.
   180 N. Michigan Ave., Suite 2300
   Chicago, IL 60601
   (312) 201-9740 ext. 335

2. Complainant
   c/o John Knight, Attorney

3. Fred Rasmussen, Student Services Director
   c/o Jennifer A. Smith, Attorney
   Franczek Radelet P.C.
   300 S. Wacker Drive, Suite 3400
   Chicago, IL 60606
   (312) 786-6589

4. Daniel Cates (male), Superintendent (FFC)
   c/o Jennifer A. Smith, Attorney

5. Mark Kovack, Associate Superintendent
   c/o Jennifer A. Smith, Attorney

Exhibits:

A. The Department's Verified Response Good Cause Determination Form and Respondent's timely Verified Response.
B. Email from Complainant's mother to both Fred Rasmussen and Katie Sobol on November 3, 2015.

C. Complainant's copy of an email notice that was sent by Respondent on November 2, 2015.
D. Email from Complainant's mother to Mark Kovack on December 3, 2015
E. Complainant's copy of an email notice sent by Respondent on December 4, 2015
F. Complainant's copy of the Student Support Team Meeting Notes, dated January 11, 2016.
G. Email from Complainant's mother to Daniel Cates on June 17, 2016.
H. Email from Complainant's mother to Rasmussen on June 17, 2016.
I. Complainant's mother's undated email to Cates.
J. Complainant's copy of an email from Cates on July 1, 2016.
K. Respondent's policy on Non-Discrimination of Students and Staff.
L. Respondent's email from Ms. Coleman to Sobol on October 3, 2014.
M. Respondent's email from Sobol to Complainant's teachers on August 26, 2015.
N. Respondent's computer screenshot of Complainant's identifying information on its system, modified on November 18, 2015.
O. Respondent's copy of Complainant's Student Support Team Meeting Notes, dated January 11, 2016.
P. Respondent's copy of Complainant's Student Support Team Meeting Notes, dated August 11, 2016.
Q. Complainant's letter from her counselor to Respondent, dated February 18, 2015.
R. Respondent's Accessibility Accommodation policy.

EXHIBIT H

STATE OF ILLINOIS
DEPARTMENT OF HUMAN RIGHTS

IN THE MATTER OF:

N.S., A MINOR,		
COMPLAINANT,		CHARGE NO. 2017CP0498
		EEOC NO. N/A
AND		
TOWNSHIP HIGH SCHOOL DISTRICT #211,		
RESPONDENT.		

NOTICE OF DISMISSAL
FOR LACK OF SUBSTANTIAL EVIDENCE

John A. Knight
Roger Baldwin Foundation
Of ACLU, Inc.
180 N. Michigan Ave.
Suite 2300
Chicago, IL 60601

Jennifer A. Smith
Franczek Radelet, PC
300 S. Wacker Drive
Suite 3400
Chicago, IL 60606

DATE OF DISMISSAL: **September 6, 2017**

1. YOU ARE HEREBY NOTIFIED that based upon the enclosed investigation report, the Department has determined that there is NOT substantial evidence to support the allegation(s) of the charge. Accordingly, pursuant to Section 7A-102(D) of the Act (775 ILCS 5/1-101 et seq.) and the Department's Rules and Regulations (56 Ill. Adm. Code. Chapter II, §2520.560) the charge is HEREBY DISMISSED.

2. If Complainant disagrees with this action, Complainant may:

   a) Seek review of this dismissal before the Illinois Human Rights Commission (Commission), 100 West Randolph Street, Suite 5-100, Chicago, Illinois, 60601, by filing a "Request for Review" with the Commission by the request for review filing date below. Respondent will be notified by the Commission if a Request for Review is filed.

   REQUEST FOR REVIEW FILING DEADLINE DATE: December 11, 2017

   Or, Complainant may:

   b) Commence a civil action in the appropriate state circuit court within ninety (90) days after receipt of this Notice. A complaint should be filed in the circuit court in the county where the civil rights violation was allegedly committed.

If you intend to exhaust your State remedies, please notify the Equal Employment Opportunity Commission (EEOC) immediately. The EEOC generally adopts the Department's findings. The Appellate Courts in Watkins v. Office of the State Public Defender, ___ Ill.App.3d ____, 976 N.E.2d 387 (1st Dist. 2012) and Lynch v. Department of Transportation, ___ Ill.App.3d ___, 979 N.E.2d 113 (4th Dist. 2012), have held that discrimination complaints brought under the Illinois Human Rights Act ("IHRA") against the State of Illinois **in the Illinois Circuit Court** are barred by the State Lawsuit Immunity Act. (745 ILCS 5/1 et seq.). Complainants are encouraged to consult with an attorney prior to commencing a civil action in the Circuit Court against the State of Illinois.

PLEASE NOTE: The Department cannot provide any legal advice or assistance. Please contact legal counsel, your city clerk, or your county clerk with any questions.

3. Complainant is hereby notified that the charge(s) will be dismissed with prejudice and with no right to further proceed if a timely request for review is not filed with the Commission, or a timely written complaint is not filed with the appropriate circuit court.

4. If an EEOC charge number is cited above, this charge was also filed with the Equal Employment Opportunity Commission (EEOC). If this charge alleges a violation under Title VII of the Civil Rights Act of 1964, as amended, or the Age Discrimination in Employment Act of 1967, Complainant has the right to request EEOC to perform a Substantial Weight Review of this dismissal. Please note that in order to receive such a review, it must be requested in writing to EEOC within fifteen (15) days of the receipt of this notice, or if a request for review is filed with the Human Rights Commission, within fifteen days of the Human Rights Commission's final order. Any request filed prior to your receipt of a final notice WILL NOT BE HONORED. Send your request for a Substantial Weight Review to EEOC, 500 West Madison Street, Suite 2000, Chicago, Illinois 60661. Otherwise, EEOC will generally adopt the Department of Human Rights' action in this case.

PLEASE NOTE: BUILDING SECURITY PROCEDURES PRESENTLY IN PLACE DO NOT PERMIT ACCESS TO EEOC WITHOUT AN APPOINTMENT. IF AN APPPOINTMENT IS REQUIRED, CALL (312) 869-8000 OR (800) 669-4000.

DEPARTMENT OF HUMAN RIGHTS
Janice Glenn
Acting Director

EXHIBIT I

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NOVA MADAY[1],	)	
	)	
Plaintiff,	)	Case No.
	)	
v.	)	
	)	
TOWNSHIP HIGH SCHOOL DISTRICT 211,	)	
	)	
Defendant.	)	

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Nova Maday ("Nova"), by her attorneys John Knight and Ghirlandi Guidetti of the Roger Baldwin Foundation of ACLU, Inc., and Jeffrey H. Bergman of Mandell Menkes LLC, for her complaint against Township High School District 211 ("District 211" or "the District"), states as follows:

INTRODUCTION

1. Nova is a female high school senior who is suing District 211, the school district that runs her school, Palatine High School, for violating the Illinois Human Rights Act by treating her differently from other girls solely because she is transgender.

2. The District has denied Nova use of the girls' locker room to change into required clothing for participation in physical education ("P.E.") class while permitting all other non-transgender girls to use the locker room to change.

[1] Nova Maday is not the plaintiff's current legal name. Rather, the plaintiff's current legal name is the male name she was assigned at birth. However, she has filed a petition, which is currently pending before this Court, to legally change her name to Nova Maday and has used the name Nova at school and in the community since October 2014.

3. More recently, the District told Nova that it would allow her to use the girls' locker room, but only if she agreed to dress in an unspecified private changing area within the locker room, even though the District does not require other girls to do so.

4. Nova would like to participate in P.E. as other students are required to do.

5. Like students at many other high schools across the country, students attending P.E. classes at Palatine High School change into gym shorts and t-shirts without fully undressing or showering.

6. Students at Palatine High School changing for P.E. generally do not completely undress for class and take measures to preserve their privacy while changing.

7. Like many other students, Nova is modest about her body and would takes steps to avoid other students seeing her body in the locker room.

8. Like other students, Nova values privacy and would use the locker room to discretely change her own clothes and not observe anyone else's changing habits or bodies.

9. Under the District's policy, however, Nova must be conspicuously separated from her fellow students and singled out for differential treatment by being required to dress separately from them, either in a separate facility or in a separate area within the locker room. The District's actions signal to Nova that she is not really a girl and should feel ashamed of who she is and about her body, in particular. Her treatment by the District challenges Nova's identity and personhood, undermines her self-confidence, and revokes her membership from her peer group.

10. In order to take P.E., the District would separate Nova from her peers and single her out by requiring her to change in a separate area. As a result, for both her Junior and her Senior years up until the date of this complaint, she has accepted a waiver from participating in P.E.

11. District 211's discriminatory treatment of Nova constitutes illegal discrimination on the basis of gender identity under the Human Rights Act. School administrators across the country recognize that it is harmful to transgender students to single them out by treating them differently than their peers and that frequently raised hypothetical concerns and fears, including privacy concerns, about allowing transgender students to use locker rooms and restrooms are "wholly unfounded in practice." Brief of Amici Curiae School Administrators from Thirty-One States and the District of Columbia at 3, 11-16, *Gloucester County School Board v. G.G.*, 2017 WL 930055 (U.S. 2017). In contrast, school districts with policies that allow students to use the locker rooms that match the student's gender identity "enhance[] the educational experience for all students." *Id.* at 3.

12. Among other relief, Nova asks the Court to enter a cease and desist order that would allow her to use the girls' locker room to change for P.E. on the same terms as other girls and take P.E. before her last semester of school begins on January 9, 2018.

JURISDICTION

13. Nova celebrated her eighteenth birthday, and became a legal adult, on September 23, 2017. On September 8, 2016, Nova was still a minor, so her mother filed charge number 2017-CP-0498 on her behalf against District 211 with the Illinois Department of Human Rights ("IDHR"). The charge alleged that District 211 unlawfully discriminated against Nova in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.* (the "Act") by denying her use of the girls' locker room because she is transgender.

14. On or about September 6, 2017, IDHR mailed its Notice of Dismissal for Lack of Substantial Evidence (the "Notice of Dismissal") to counsel for the parties. Because IDHR mailed the Notice of Dismissal to the wrong address for Nova and her mother's lawyers, Nova did not

receive it until October 11, 2017. This complaint is filed within ninety (90) days of receipt of the Notice of Dismissal and is therefore timely under 775 ILCS 5/7A-102(D)(3).

15. Venue is proper in this Court because the civil rights violations complained of took place in Cook County. 775 ILCS 5/8-111(A)(1).

THE PARTIES

16. The District is a school district located in Cook County that operates several high schools, including Palatine High School. Nova has attended Palatine High School since she began the ninth grade in the fall of 2014 and is currently in the twelfth grade for the 2017-2018 school year.

17. Palatine High School is an Illinois public school located in Palatine, Illinois. Palatine High School serves students in grades nine through twelve.

18. Palatine High School is a "place of public accommodation" under the Act, since it is a high school. 775 ILCS 5/5-101(A)(11).

FACTS

A. Nova is Female and Transgender

19. Nova is a young woman.

20. Nova is transgender, since her female gender identity does not match her designation as male at birth. While hospital staff identified her as male at birth, she has known since she was young that she is female. Nova lives and presents herself as female in all aspects of her life.

21. Nova is not any less female than her female peers because she is transgender.

22. Everyone has a gender identity, which is an established medical concept referring to a person's deeply felt, inherent sense of being a particular gender (e.g., a girl or female). Most

people have a gender identity that matches their gender-assigned at birth, but transgender people's gender identity fails to match the gender they were assigned when born.

23. Nova first told her family she was a girl on March 29, 2014, before her freshman year at Palatine High School. She did so, because she had been experiencing extreme distress from gender dysphoria, a serious and internationally-recognized medical condition experienced by many transgender persons in which the mismatch between a person's gender identity and gender assigned at birth causes them persistent and clinically significant distress. In March or April of 2014, Nova sought medical treatment and was diagnosed with gender dysphoria. She has received treatment for the condition since then.

24. Gender dysphoria is recognized by the American Psychiatric Association's Diagnostic & Statistical Manual of Mental Disorder (5th ed. 2013).

25. Being transgender, however, "implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Am. Psychiatric Ass'n, *Position Statement on Discrimination Against Transgender & Gender Variant Individuals* (2012), at https://goo.gl/iXBM0S.

26. With appropriate treatment, individuals with gender dysphoria can be cured of the condition and experience no clinical symptoms.

27. Around the same time that Nova was diagnosed with gender dysphoria, she began growing out her hair and dressing and grooming consistent with the styles of other girls her age at her school. Since September of 2014, Nova has presented fully and exclusively as a girl outside of school by also using a traditionally feminine name, the female pronouns "she/her/hers," and using female restrooms in public places. In October 2016, Nova started hormone therapy.

28. The medical and scientific community has reached a consensus that the treatment of gender dysphoria is for girls who are transgender to live as girls, and for boys who are transgender to live as boys. For certain transgender persons, treatment may also include hormone therapy and surgery. Every major medical and mental health organization in the United States supports this consensus regarding treatment, including the American Medical Association and the American Academy of Pediatrics.

29. Transgender persons' ability to live consistent with their gender identity is critical to their health and well-being. This includes the ability to use names and pronouns that are congruent with their gender identity, groom and dress according to norms typically associated with their gender, and the use of restrooms and locker rooms that match their gender identity. Denying persons, including students, the ability to live according to their gender identity puts them at serious risk of depression and even suicide; while persons who are transgender who are able to live consistently with their core identity are able to lead successful lives in all respects, including the ability to excel at school and work.

B. Nova's Experience at District 211 and Denial of Girls' Locker Room Usage

30. Nova has presented fully as a girl at school since October 2014. At school, she uses a female name and dresses and grooms in a style consistent with the way other girls at school dress and groom. Also, Nova's teachers and peers have referred to her by her female name and female pronouns since October 2014.

31. Nova uses the girls' restrooms at school without incident. She delayed using the girls' restrooms until May 2016, however, because of her concern that the District's requirement that she dress for gym separately from all the other girls would encourage one or more of them to challenge Nova's use of the girls' restrooms.

32. In May 2015, Nova met with a school counselor to discuss her transition within the school environment and whether she could use the girls' locker room. The counselor told Nova she could not use the girls' locker room, which the Director of Student Services confirmed.

33. In June 2015, Nova's mother spoke with the school counselor about Nova's transition and about her locker room usage for P.E. in the fall of 2015. The counselor offered to allow Nova to use the private restroom in the nurse's office to change for P.E. class. Nova agreed to dress separately from the other girls, because the District had excluded her from the girls' locker room.

34. Soon thereafter, Nova's mother requested that the District list Nova's gender as female and reflect her female name in her school records. The District at first said that it was unable to make those changes, but then informed Nova on October 1, 2015 that it would do so.[2] At that time, the District also issued Nova an updated student identification card reflecting her female name and gender.

35. During the beginning of her sophomore year in fall 2015, Nova began to experience anxiety, depression, and worsening of her gender dysphoria related to the requirement that she dress separately from all the other girls for her P.E. class. As a result, her P.E. grade rapidly declined.

36. From November 2015 until June 2016, Nova's mother emailed, spoke by phone, and met with District 211 administration and Nova's P.E. teacher several times regarding Nova's performance and grade in P.E. and the harmful emotional impact her experience dressing for P.E. was having on her. In addition, Nova and her mother repeatedly renewed their request for Nova to be able to use the girls' locker room.

[2] District records indicate that it did not actually make the change until November 18, 2015.

37. On November 3, 2015, for example, Nova's mother emailed the school counselor and Director of Student Services about a notice she had received from the District discussing the federal Department of Education ("ED") investigation of the District for discriminating against another transgender student ("Student A") who attended another high school operated by the District. In the notice, the District referred to private changing stations in locker rooms and stated that transgender students may use the locker room that matches their gender identity if they use "individual measures of privacy." Nova's mother asked if Nova would now be allowed to use the girls' locker room. The Director responded that it was not possible to install privacy areas at Palatine High School so Nova would not be able to use the girls' locker room.

38. Again on December 3, 2015, Nova's mother emailed the District to ask whether the December 2, 2015 ED settlement regarding Student A would mean that Nova would finally be allowed to use the girls' locker room. The Director of Student Services told Nova's mother that the settlement only applied to Student A and would not extend to any other student in the District.

39. Nova's mother called the Director of Student Services on January 3, 2016 regarding Nova's ongoing problems with P.E. The District still refused to allow Nova to use the girls' locker room, but instead offered an alternate private locker room that would remain locked until Nova requested that school staff let her in to dress for P.E. class and to let her in again after class to change out of her gym clothing.

40. Nova began using the separate locker room on February 1, 2016, and soon ran into difficulties. On February 2, she found that the locker containing her belongings had been replaced. Nova went to the school office to ask the Director of Student Services what had happened to her gym clothes. After talking with several other District staff members, Nova learned that her locker had been replaced by other lockers, but no one was sure where the old lockers had been moved.

41. Nova and District staff spent several minutes trying to locate the locker, which they finally found on the school's loading dock. Nova retrieved her clothes and changed. However, by the time Nova made it to P.E. class, the period was halfway over. Even though Nova was late because of the District's actions in moving her locker, the P.E. teacher told her she would be required to complete the full set of class exercises in the remaining class time, which she was unable to do.

42. On February 3, 2016, the day after her locker was placed on the loading dock, Nova went back to using the restroom in the nurse's office to change for P.E. However, from February through May 2016, Nova's P.E. teacher changed the location of class approximately once per week and posted a notice inside the girls' locker room informing the other girls of the change. Nova was not allowed to enter the girls' locker room and the P.E. teacher did not tell her where P.E. class would be held, so Nova frequently had to wander around the school to find out where her P.E. class was being held, causing her to miss a significant amount of class time.

43. Isolating and singling out Nova from the other girls by forcing her to dress separately for P.E. and requiring her to at times wander the halls looking for where her class was being held were extremely upsetting experiences for Nova. These experiences worsened her anxiety level and further impacted her P.E. grade.

44. After Nova's mother contacted the Director of Student Services about the P.E. teacher's failure to advise Nova of the location of her P.E. class, the Director had a notice board installed outside of the girls' locker room where the P.E. teacher could post notice of the location for P.E. each day. However, the P.E. teacher rarely posted such a notice, so Nova continued to face the embarrassment and missed class time from having to search out where her P.E. class was being held.

45. On May 12, 2016, Nova's mother emailed Nova's P.E. teacher to explain Nova's difficulty with class and tried to work on a solution to make it possible for Nova to complete the class with a passing grade.

46. Nova's mother also emailed the Director of Student Services on May 13, 2016, regarding the guidance from the federal Departments of Education and Justice regarding the application of Title IX to transgender students ("Title IX guidance"). She wanted to know whether this guidance would mean that Nova would finally be able to use the girls' locker room. The Director followed up by phone and said the District would not be following the guidance.

47. The following day, May 14, 2016, Nova met with the Director of Student Services to once again request use of the girls' locker room. She informed him that she could not use the nurse's office anymore because of the extreme anxiety using it caused her.

48. From early May 2016 until the end of the school year in June, Nova's P.E. teacher grew increasingly hostile towards Nova, exacerbating Nova's anxiety. The teacher repeatedly told Nova that she would fail P.E. unless she did make-up sessions, and minimized Nova's experience of discrimination. The P.E. teacher's comments further upset Nova, making it even more difficult for her to participate in P.E. class.

49. On May 19, 2016, Nova's mother called the Director of Student Services to express her disappointment in the P.E. teacher's treatment of Nova, and asked that he talk with the P.E. teacher. The Director of Student Services assured Nova's mother that Nova would not have to repeat P.E., and that he would talk with the teacher about the situation.

50. The next day, on May 20, 2016, the P.E. teacher confronted Nova about her grade again, and said she would need to attend make-up sessions in order to pass the class. Nova told her what the Director had said the day before: that she would be able to pass P.E. so long as she

participated in class. The P.E. teacher said she had not heard from the Director but would follow up with him.

51. The P.E. teacher also asked why Nova was having a hard time participating. Nova explained the anxiety she experienced by being separated from all the other girls and forced to dress separately in the nurse's office. The teacher minimized the impact Nova's segregation should have on her, suggested that Nova had brought the problem on herself, and implied that she could simply dress with the boys. The teacher then suggested that Nova could keep her regular clothes on for P.E. for the rest of the school year, rather than changing for gym. Not dressing for gym, Nova explained, would only make her stand out more than she already does, since all the other girls in her class would be in their P.E. clothes.

52. Later that day, Nova told her mother about her conversation with the P.E. teacher. Nova's mother then emailed the Director of Student Services to request a meeting.

53. On May 23, 2016, Nova's mother met with the Director of Student Services, the school counselor, the P.E. teacher, and the Chair of the P.E. Department to discuss Nova's treatment by the P.E. teacher, and again requested that Nova be allowed to use the girls' locker room. This time, the Director told her that he had no authority to grant Nova permission to use the girls' locker room.

54. Nova's mother emailed the District administration on June 17, 2016, to again request that Nova be allowed to use the girls' locker room for the upcoming 2016-2017 school year.

55. Counsel for the District and for Nova spoke by phone on June 17, 2016 about Nova being able to use the girls' locker room. Nova's counsel advised the District's lawyer that Nova

wanted to be able to use the girls' locker rooms, but if the District intended to refuse that request she would accept a gym waiver as an alternative.

56. On July 1, 2016, the District Superintendent emailed Nova's mother regarding Nova's need to use the girls' locker room. Rather than affirming Nova's right to use the girls' locker room, the Superintendent said the District would discuss the possibility of a waiver of Nova's requirement to participate in P.E.

57. On August 11, 2016 District staff met with Nova and her mother and offered Nova a waiver from P.E. class, rather than allowing her to use the girls' locker room,

58. Close to a year later, Nova and her mother met with District staff on July 24, 2017. During that meeting, the District for the first time offered Nova use of the girls' locker room, but only if Nova agreed to dress in an unspecified privacy area. Nova and her mother refused that offer because the District does not require non-transgender girls to dress in a privacy area. Instead, Nova and her mother accepted another waiver from the P.E. requirement.

59. The District has denied Nova the use of the girls' locker room for her sophomore (2015-2016), junior (2016-2017), and senior years (2017), up until the filing of this complaint. Under Illinois law, all students in grades Kindergarten through 12 must take a P.E. class, unless granted a waiver. Nova wants to participate in P.E. class, like other students. However, because the District has refused to let her use the girls' locker room, Nova has agreed up to now to accept a P.E. waiver.

60. District 211's position that Nova should be required to change in a separate area within the locker room because she is transgender is different from the locker room policies and practices used by numerous other schools. Numerous schools in Illinois and nationally treat transgender students the same as non-transgender students with respect to locker room usage.

61. Based on her conversations with other girls, Nova believes that as a general matter the other girls at her high school do not fully disrobe when changing in the locker rooms for P.E. and take steps to minimize the chance that other girls will see their bodies. Nova would do the same.

62. On information and belief, no non-transgender student at District 211 was required to use a separate facility to dress for P.E. class from the common locker room used by the other students of the same gender or forced to use a separate changing area within the locker room.

63. Nova's ability to live as a girl in all aspects of her life has been essential for treating her gender dysphoria. Before treatment, Nova had severe depression. Since her treatment began, Nova's depression has improved, her grades have gotten better in all her classes besides P.E., and she has become more social. On the other hand, being excluded from the girls' locker room at Palatine High School by District 211 or forced to change in a separate area has been extremely upsetting for Nova, and causes her great anxiety. It makes her feel like an outcast and something less than a real person; it is simply humiliating for her.

CIVIL RIGHTS VIOLATIONS UNDER THE ILLINOIS HUMAN RIGHTS ACT

Count I: District 211 Denied Nova the Full and Equal Access of Its Facilities Because of Nova's Gender-Related identity.

64. Nova hereby incorporates by reference and re-alleges Paragraphs 1 through 63, as though fully set forth herein.

65. The Act is intended to prevent and eliminate discriminatory practices in places of public accommodation because of an individual's gender-related identity. 775 ILCS 5/1-102(A). The Act prohibits discrimination on the basis of "sexual orientation," which is defined to include "actual or perceived…gender-related identity, whether or not traditionally associated with the person's designated sex at birth." 775 ILCS 5/1-103(O-1).

66. It is a civil rights violation under the Act "for any person on the basis of unlawful discrimination to…[d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation." 775 ILCS 5/5-102(A).

67. Respondent refused, withheld from, and denied Nova the full and equal enjoyment of its facilities, namely the girls' locker rooms, based on her gender-related identity.

68. As a result of Respondent's violation of the Act, Nova has suffered substantial mental and emotional distress, as well as the stigmatizing injury and deprivation of personal dignity that accompanies the denial of equal access to a place of public accommodation.

WHEREFORE Plaintiff respectfully requests the following relief:

A. The entry of an order directing District 211 to cease and desist from discriminating on the basis of gender-related identity by refusing transgender students, including but not limited to Nova, to use the locker rooms consistent with their gender identity and on the same terms as other students (i.e., without restrictions);

B. The entry of an order directing District 211 to cease and desist from all other violations of the Act;

C. Actual damages, including damages for emotional distress, for the injury and loss suffered by Nova;

D. Interest on Nova's actual damages;

E. An order mandating that District 211 pay Nova's and her mother's reasonable attorneys' fees and costs pursuant to 775 ILCS 5/8A-104(G); and

F. Any additional relief that the Court deems just and appropriate.

DATED: November 30, 2017

Respectfully Submitted,

NOVA MADAY

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EXHIBIT J

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

NOVA MADAY, Plaintiff, v. TOWNSHIP HIGH SCHOOL DISTRICT 211, Defendant, and STUDENTS AND PARENTS FOR PRIVACY, a voluntary unincorporated association, Proposed Intervenor.	)	Case No. 17 CH 15791 Hon. Thomas R. Allen, Judge Presiding

MOTION TO DISMISS PURSUANT TO § 2-615

Plaintiff wields the gender identity nondiscrimination provisions of the Illinois Human Rights Act ("HRA") as a sword, trying to force access for a male to enter distinctly private female facilities—specifically, a girls' high school locker room—by conflating the categories of sex and gender identity.[1] But the Legislature has spoken directly to this issue by exempting single-sex privacy facilities from the HRA in accord with established public policy and decisions by the Illinois appellate courts. While the HRA will protect a male presenting as female in many scenarios, the Legislature also protected the bodily privacy of adolescent girls in a high school locker room via the exemption. Plaintiff's Complaint fails as a matter of law, and because it

[1] As before, counsel use "sex" in this brief to mean male or female as grounded in reproductive biology. Sex is binary, fixed at conception, and objectively verifiable. Counsel use "gender" consistently with gender identity theory: a malleable, subjectively discerned continuum of genders that range from male to female to something else. This usage is consistent with the plain language of the HRA as demonstrated below, contra the Plaintiff's conflation of the terms.

relies upon conjecture, speculation, and simply wrong statements rather than well-pled facts. Importantly, Plaintiff's attack on the broad statutory protection for distinctly private facilities would impact not just one high school locker room, but every communal sex-specific privacy facility within a place of public accommodation that is otherwise subject to the HRA. Pursuant to §2-615 of the Code of Civil Procedure, Plaintiff's Complaint for Injunctive and Other Relief ("Pl.'s Compl.") should be dismissed because it fails to state a claim under Illinois law, and further because it rests on no more than conclusory allegations.

I. The Complaint must be dismissed because the HRA insulates distinctly private facilities like girls' locker rooms from intrusion by the opposite sex and does not authorize access to distinctly private facilities based upon self-perceptions of gender.

> A motion to dismiss brought under section 2–615 tests the legal sufficiency of a complaint. On review, the inquiry is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff, and taking all well-pleaded facts and all reasonable inferences that may be drawn from those facts as true, are sufficient to establish a cause of action upon which relief may be granted. Because Illinois is a fact-pleading jurisdiction, a plaintiff must allege facts, not mere conclusions, to establish his or her claim as a viable cause of action. A claim should not be dismissed pursuant to section 2–615 unless no set of facts can be proved which would entitle the plaintiff to recover.

Napleton v. Vill. of Hinsdale, 229 Ill. 2d 296, 305 (2008) (internal citations omitted).

Plaintiff's Complaint is grounded in the HRA which in relevant part states "It is a civil rights violation for any person on the basis of unlawful discrimination to: (A) Enjoyment of Facilities, Goods, and Services. Deny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation . . . ." 775 ILCS 5/5-102. Public school districts are covered by this provision. 775 ILCS 5/5-101(A)(11).

The Human Rights Act is intended to "secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military

service in connection with employment . . . .” 775 ILCS 5/1-102(A). Two of those protected categories are particularly germane to the instant case and were clearly defined by the Legislature:

> (O) Sex. “Sex” means the status of being male or female.
>
> (O-1) Sexual orientation. “Sexual orientation” means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth. “Sexual orientation” does not include a physical or sexual attraction to a minor by an adult.

775 ILCS5 /1-103.[2]

Such clear definitions within a statute require that courts “must give effect to its plain and ordinary meaning without resort to other aids of statutory construction.” *Murray v. Chicago Youth Ctr*., 224 Ill. 2d 213, 235 (2007) (internal citations omitted). But even if the Court were to turn to an interpretive aid such as standard dictionary definitions for “sex” contemporaneous with the enactment of the HRA, it would find that sex was consistently defined in respect to human reproductive capacity. *See, e.g.*, *Webster’s New World Dict. of the Am. Language* 545 (rev. ed. 1984) (“either of the two divisions of organisms distinguished as male and female,” where male means “of the sex that fertilizes the ovum,” *id.* at 364, and female means “of the sex that bears offspring,” *id.* at 225); *Random House College Dict*. 1206 (rev. ed. 1980) (“either the male or female division of a species, esp. as differentiated with reference to the reproductive functions”); *Webster’s New Collegiate Dict*. 1054 (1979) (“the sum of the structural, functional, and behavioral characteristics of living beings that subserve reproduction by two interacting parents and that distinguish males and females”); *American Heritage Dict*. 1187 (1976) (“the

[2] The original HRA took effect in 1980, but sexual orientation protection was not added until 2005. Bryan P. Cavanaugh, *How Illinois' New Gay Rights Law Affects Employers and Workers*, 94 Ill. B.J. 182, 182–83 (2006).

property or quality by which organisms are classified according to their reproductive functions"); and *Webster's Third New Int'l Dict.* 2081 (1971) ("the sum of the morphological, physiological, and behavioral peculiarities of living beings that subserves biparental reproduction with its concomitant genetic segregation and recombination which underlie most evolutionary change ...").

Note that grounding the definition of sex in our reproductive nature means that one's sex is objectively determined by such factors as genitalia and chromosomes. This is quite different than gender identity, which Plaintiff admits is "a person's deeply felt, inherent sense of being a particular gender (e.g., a girl or female)." Pl.'s Compl. 4-5 ¶ 22. But Plaintiff tells only part of the story, as gender identity is a subjectively discerned, malleable continuum encompassing everything from male to female to something else:

> Other categories of transgender people include androgynous, multigendered, gender nonconforming, third gender, and two-spirit people. Exact definitions of these terms vary from person to person and may change over time but often include a sense of blending or alternating genders. Some people who use these terms to describe themselves see traditional, binary concepts of gender as restrictive.

Am. Psychological Ass'n, *Answers to Your Questions About Transgender People, Gender Identity, and Gender Expression* 2 (3rd ed. 2014), http://bit.ly/2lGcOeR; *see also* Asaf Orr et al., *Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools* 5, 7 (2015), http://bit.ly/2di0ltr (describing gender identity as falling on a "gender spectrum" and defining "gender identity" as "a personal, deeply-felt sense of being male, female, both or neither"); Randi Ettner, et al., *Principles of Transgender Medicine and Surgery* 43 (2nd ed. 2016) ("Gender identity can be conceptualized as a continuum, a mobius, or patchwork." (internal citations omitted)).

With this in mind, carefully reading Plaintiff's definition of gender identity reveals the

absence of any state-law basis for Plaintiff's claim to access privacy facilities based on perceived gender identity rather than sex. Plaintiff defines gender identity as "a person's deeply felt, inherent sense of being a particular gender (e.g., a girl or female)." Pl.'s Compl. 4-5 ¶ 22. By defining gender identity as a person's "sense," gender identity clearly falls outside the Legislature's definition of sex as a "status of being male or female." 775 ILCS 5/1-103(O) (emphasis added). And the Legislature recognized that gender identity is distinct from—in fact, disassociated from—being male or female when it stated that a given gender identity may exist "whether or not traditionally associated with the person's designated sex at birth." 775 ILCS 5/1-103(O-1). This Legislative distinction between the subjective, malleable continuum of gender identity and the objective binary of male and female is critical, as the District has full authority under the HRA to reserve use of privacy facilities to one sex:

> § 5-103. Exemption. Nothing in this Article shall apply to:
>
> ....
>
> (B) Facilities Distinctly Private. Any facility, as to discrimination based on sex, which is distinctly private in nature such as restrooms, shower rooms, bath houses, health clubs and other similar facilities for which the Department, in its rules and regulations, may grant exemptions based on bona fide considerations of public policy.
>
> ....

775 ILCS 5/5-103.

Keeping boys out of girls' locker rooms is not actionable under the HRA, at all. This principle is unremarkable, as evidenced by myriad Illinois laws and regulations that mandate separate male and female privacy facilities.[3] Moreover, specifically in the school context, Illinois

[3] *See* 410 ILCS 35/15 (West 1992) (Equitable Restrooms Act requiring substantially more female than male restroom facilities per capita for certain public entertainment venues to solve undue waiting for the females to use facilities); Ill. Admin. Code tit. 77, § 890.810 (2014)

courts have upheld school district policies prohibiting school staff from supervising locker rooms reserved to the use of opposite-sex students. *See Zink v. Bd. of Educ. of Chrisman*, 146 Ill. App. 3d 1016, 1021-22 (4th Dist. 1986) (upholding school employment requirement for male teacher to supervise boys' locker rooms); and *McLain v. Bd. of Educ. of Georgetown Cmty. Unit Sch. Dist. No. 3 of Vermilion Cty.*, 66 Ill. App. 3d 1024, 1027 (4th Dist. 1978) (upholding school employment requirement for female teacher to supervise girls' locker rooms). Note that these two decisions in 1978 and 1986 closely preceded the enactment of the express privacy facility exemption of the HRA in 1987, via P.A. 85-867, and courts "must presume that, when the legislature uses a term that has a well-settled legal meaning, the legislature intended it to have that settled meaning" in subsequent enactments. *People v. Harris*, 2013 IL App (1st) 110309, ¶ 13.[4] *McClain* and *Zink* are powerful evidences that the General Assembly intended to maintain boys' locker rooms for males, and girls' locker rooms for females when it amended the HRA.

Creating school policies that violate that overarching state public policy by intermingling

("When public restroom facilities are required by this Part [Illinois Plumbing Code], separate facilities for males and females shall be provided."); Ill. Admin. Code tit. 77, § 890.810 (2014) (requiring staffed gas stations to provide separate restrooms for males and females); Ill. Admin. Code tit. 77, § 890 App. A, TBL. B, n.2 (2014) (permitting substitution of urinals for water closets where the number of fixtures was governed by number of occupants, which implicitly recognizes physiological differences between males and females); Ill. Admin. Code tit. 89, § 410.190(n) (2000) (requiring separate bathroom use for males and females in youth emergency shelters); Ill. Admin. Code tit. 89, § 410.190(p) (2000) (requiring separate male and female showers in youth emergency shelters); Ill. Admin. Code tit. 89, § 409.230(b)(14) (requiring separate bathroom use for males and females in youth transitional housing programs); Ill. Admin. Code tit. 89, § 409.230(b)(16) (requiring shower use to be separate for males and females in youth transitional housing programs).

[4] Although the Legislature's intent to exempt privacy facilities from the HRA is clear and unambiguous, even if one were to see a tension between the provisions protecting gender identity versus those protecting sex, the court is obligated to give effect to both. *In re Jarquan B.*, 2016 IL App (1st) 161180, ¶ 23 *reh'g denied* (Oct. 18, 2016), *aff'd sub nom. In re JARQUAN B.*, 2017 IL 121483, ¶ 23, and the logical dividing line for the two categories is at the privacy facility door.

the sexes in distinctly private facilities—as District 211 has done—has real consequences: In May, 2016, 136 individuals—63 students and 73 parents associated as Students and Parents for Privacy ("Privacy Association")—sued the District because its policy of intermingling the sexes in privacy facilities had led to several incidents where students' bodily privacy was violated, and the bodily privacy of many others was put at ongoing risk. *Students and Parents for Privacy v. U.S. Dep't of Educ.*, No. 1:16-cv-04945, 2017 WL 6629520 (N.D. Ill. Dec. 29, 2017). The instant case replicates that privacy violation risk: Plaintiff, a male, already has gained access (albeit with an inconsequential condition[5]) to the Palatine High School girls' locker room and is authorized to enter girls' bathrooms, when at least three minor female student members of Students and Parents for Privacy are currently attending that school and using those facilities. This replicates the access granted to "Student A" in the federal case: a male student, professing to be female, accessed and used the girls' locker room at Fremd High School within District 211 after he agreed to change behind a curtain—and it was that scenario which was an instrumental factor leading the students and parents to file the federal suit. Privacy Association Pl.'s Compl. 15 ¶ 71-19 ¶ 109.

In sum, although the HRA prohibits invidious discrimination based upon gender identity, it expressly authorizes schools to provide restrooms and locker rooms that are restricted to the use of one sex or the other. If access to privacy facilities were to be granted based upon perceived gender identity rather than sex, it would render the Legislature's express exception a

[5] That condition is that the Plaintiff take some extra effort to protect privacy, such as changing in a stall or behind a curtain. Even if accepted and enforced, such a restriction is immaterial to 775 ILCS 5/5-103, which draws the privacy line at the facility door, not wherever a curtain may be hung. Were it otherwise—if privacy in a girls' restroom or locker room resides only within a commode stall—there would be no reason to exclude a male football coach from walking into the girls' locker room to do his business, so long as he stepped inside a stall.

nullity—there would be a male in the girls' locker room. In light of that, District 211 should maintain girls' privacy facilities for strictly female-only use, but even if it does not, no claim arises under the HRA from the District permitting Plaintiff restricted use[6] when it has full legal authority to deny Plaintiff and every male student any use whatsoever of the girls' locker room.

II. The Complaint must be dismissed because it is grounded in conclusory allegations rather than well-pled facts.

Plaintiff alleges but a single claim of discrimination on the basis of gender identity under the HRA. Pl.'s Compl. 1 ¶ 1, 14 ¶ 67. The issue centers on Plaintiff's demand for unrestricted access to the female locker rooms, and Plaintiff tacitly admits that bodily privacy is an issue therein by stating that Plaintiff is "modest about her body and would takes [sic] steps to avoid other students seeing her body in the locker room," *id.* 2 ¶ 7, and that "[l]ike other students, Nova values privacy and would use the locker room to discretely change her own clothes and not observe anyone else's changing habits or bodies." *Id.* ¶ 8.

Plaintiff attempts to deflect the privacy concern, however, by Plaintiff's prefatory allegation that "[s]tudents at Palatine High School changing for P.E. generally do not completely undress for class and take measures to preserve their privacy while changing." *Id.* ¶ 6. But at ¶ 61, Plaintiff admits that the statement in ¶ 6 is based only "on her conversations with other girls" and thus is no more than speculation grounded in hearsay. Nothing within the Complaint provides a factual basis to say that students are not partially or fully exposed to one another while changing in the school locker rooms.

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[6] It is difficult to square Plaintiff's claims of injury from such an arrangement with Plaintiff's admissions that "Nova is modest about her body and would takes [sic] steps to avoid other students seeing her body in the locker room," Pl.'s Compl. ¶ 7, and that "Nova values privacy and would use the locker room to discretely change her own clothes and not observe anyone else's changing habits or bodies." Id. ¶ 8. A reasonable inference from those admissions would be that the District simply offered a tool for the Plaintiff to protect those interests.

Plaintiff further alleges that "privacy concerns[] about allowing transgender students to use locker rooms and restrooms are 'wholly unfounded in practice,'" Pl.'s Compl. ¶ 11, relying upon the Brief of Amici Curiae School Administrators from Thirty-One States and the District of Columbia at 3, 11-16, *Gloucester County School Board v. G.G.*, 2017 WL 930055 (U.S. 2017). But that brief only reflects the views of individual officials who held various positions within individual schools or school districts scattered across the nation, some of whom were retired. *Id.* at *1A-*30A. For Plaintiff's categorical "unfounded" statement to be credited, one must assume that every one of those amici had comprehensive knowledge of every student or parent privacy complaint arising from gender identity policies in the facilities under their purview from the time of policy enactment until amici signed onto the brief in 2017. There is nothing within the brief that provides the assurance that amici had that knowledge, and it cannot be fairly represented as a systematic, comprehensive audit of privacy complaints within the entities purportedly represented by amici.

But even if comprehensive knowledge were assumed, what the brief really presents is a Catch-22 story: it turns out that the schools which adopted gender identity policies also adopted policies that forced students who complained about opposite sex use of their privacy facility to abandon their use of the communal facility and retreat to individual facilities. *Id.* at *17-*21. Thus, privacy complaints were minimized—if not outright suppressed—by amici's policies, and the brief does not support Plaintiff's unqualified statement that privacy concerns are "unfounded" when gender identity policies thrust students of one sex into the opposite sex's privacy facilities.

Furthermore, Plaintiff's counsel, Mr. Knight, is also counsel of record in Privacy Association's federal lawsuit, in which are stated specific instances of Privacy Association

members encountering opposite-sex students within District 211's privacy facilities. Although Plaintiff and Plaintiff's counsel understandably contest the legal implications thereof, given the facts presented in that case, Plaintiff cannot plausibly state that privacy concerns are categorically "unfounded" when the same district that Plaintiff is suing is being sued for privacy violations arising from its gender identity policies.

This is all the more true when the facts in this case so closely parallel Privacy Association's federal lawsuit: a male student has gained girls' restroom access as well as inconsequentially limited access to the girls' locker room, and demands unfettered access thereto. That the Plaintiff must be considered to be male under the HRA is demonstrated by Plaintiff's own admissions: Compare Complaint ¶ 19 (asserting Plaintiff is a "young woman") with ¶ 22 (gender identity is a "deeply felt, inherent sense of being a particular gender") and ¶¶ 20 and 30 (Plaintiff presents as a girl). The statement in ¶ 19 is incorrect under the clear terminology given by the Legislature through the HRA: being male or female is a status. "Feeling" and "sensing" are subjective perceptions, and "presenting" is a behavior, and the Legislature recognized that such manifestations associated with gender identity were distinct (indeed, disassociated) from sex per 775 ILCS 5/1-103(O-1).

Furthermore, Plaintiff admits to being recognized as having male status at birth, which is currently discordant with Plaintiff's professed gender identity, Pl.'s Compl. 4 ¶ 20, but makes no allegation that Plaintiff was born with an intersex condition that might have lent ambiguity to recognizing Plaintiff as male, nor that Plaintiff's male status was erroneously recorded at birth. In sum, while Plaintiff may have protections under the HRA for feeling, sensing, or presenting in a feminine way in areas covered by the public-accommodation rubric, Plaintiff has no affirmative right to enter opposite sex privacy facilities expressly exempted from HRA coverage

by the Legislature and cannot state a claim for such a right under the plain language of the HRA. Certainly, the clash of Plaintiff's self-perceptions of femininity with the objective fact of being male is undoubtedly very difficult for Plaintiff to navigate, but Plaintiff's legal recourse to gain access to opposite sex facilities would be to ask the Legislature, not this Court, to rewrite the HRA.

The claims in ¶¶ 28-29 as to consensus, efficacy, and safety of gender affirmation treatment (conforming the physical body or appearance to perceived gender via drugs, surgery, or adopting some forms of stereotypical behavior) are no more than an opening salvo in what will likely become a battle of experts should this case not be dismissed. These generic statements are simply coloration for the Plaintiff to frame the case, and are not factual on their face.

Much of the ensuing narrative in ¶¶ 30-58 reflects a school system trying to navigate uncertain legal terrain and numerous efforts by the school to affirm Plaintiff's perceptions (¶ 30, allowed to dress, groom and be named in feminine manner; ¶ 31, uses female restrooms; ¶34, gender marker changed), and the District offered (and Plaintiff accepted) waivers from the physical education class which eliminated any need to change clothes. *Id.*¶¶ 57-59. Ultimately the District offered Plaintiff access to the girls' locker room, subject only to Plaintiff changing in a "privacy area." *Id.* ¶ 58. Thus, the ¶ 59 statement, that the "District has refused to let her use the girls' locker room," is false: it is belied by the prior paragraph's admission. But again, the HRA does not compel the District to authorize any male any access whatsoever to female privacy facilities.

Conclusion

Plaintiff's allegation that "no non-transgender student at District 211 was required to use a separate facility to dress for P.E. class from the common locker room used by the other students of the same gender or forced to use a separate changing area within the locker room,"

id. ¶ 62, ironically admits that the District exercised a portion of the statutory authority conveyed by 775 ILCS 5/5-103(B) to protect the privacy of each sex within distinctly private facilities.

The District has full authority under the HRA to exclude the Plaintiff from any access whatsoever to any portion of the girls' privacy facilities based on the Plaintiff's male status and no claim arises when the District has exercised a portion of that legal authority to limit access to a portion of the facility.[7] Plaintiff's own admissions reveal that Plaintiff has the status of male, and no male has an affirmative right under the HRA to enter distinctly private female facilities. Even aside from the clear letter of the HRA, Plaintiff's allegations in respect to necessary elements of Plaintiff's claim, such as Plaintiff's sex and the risk of privacy violations from intermingling sexes within privacy facilities, are not well-pled facts, but mere speculation, coloration, or simply wrong. Plaintiff's Complaint must be dismissed for failure to state a claim.

Respectfully submitted,

/s/Thomas Brejcha
One of Proposed Intervenors' Attorneys

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**Pro hac vice application forthcoming*

[7] In so stating, Intervenors in no way waive any claim arising under the HRA grounded in its protection for sex, and the District's policies which intentionally intermingle the sexes within District privacy facilities.

EXHIBIT K

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MADAY

v.

TOWNSHIP HIGH SCHOOL DIST. 211

No. 2017 CH 15791

ORDER

THIS MATTER COMING BEFORE THE COURT ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION ~~[illegible]~~, DUE NOTICE HAVING BEEN GIVEN, AND THE COURT BEING FULLY ADVISED IN THE PREMISES, IT IS HEREBY ORDERED:

1. SAID MOTION IS DENIED FOR THE REASONS STATED ON THE RECORD;

2. THIS CASE IS SET FOR A STATUS CONFERENCE ON FEBRUARY 8, 2018, at 11:00 WITHOUT FURTHER NOTICE; and

3. DEFENDANTS' TIME TO ANSWER OR OTHERWISE PLEAD IS CONTINUED GENERALLY.

Attorney No.: _____

Name: _____

Atty. for: _____

Address: _____

City/State/Zip: _____

Telephone: _____

ENTERED:

Dated: _____

ENTERED
JUDGE THOMAS ALLEN-2043
JAN 25 2018
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

_____
Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EXHIBIT L

Gmail [redacted]

District Response to Office of Civil Rights
5 messages

D211Communications@d211.org <D211Communications@d211.org> Mon, Nov 2, 2015 at 5:57 PM
To: [redacted]

Important Information from

211 Township High School District 211 211

(847) 755-6600 • adc.d211.org

Please do not reply to this email

Today, the Office of Civil Rights (OCR) informed Township High School District 211 of its allegation that District 211 has violated Title IX by not providing a transgender student unrestricted access to the locker room. We do not agree with their decision and remain strong in our belief that the District's course of action, including private changing stations in our locker rooms, appropriately serves the dignity and privacy of all students in our educational environment.

The solutions proposed by District 211 included multiple privacy stations in the locker rooms designed to provide privacy to any student while ensuring the full integration of transgender students in educational programs and activities. Individualized, supportive approaches such as the ones proposed by District 211 have been implemented successfully in other schools.

District 211 has long recognized and been responsive to the needs of our transgender students, dealing sensitively and effectively with the challenges they face. The OCR has even recognized this and found that the District treated the individual consistent with the student's gender identity in all respects except unrestricted locker room access. These actions include changing both name and listed gender on school rosters; supporting participation on sports teams of their identified gender; and providing access to the bathrooms of their gender identity, because bathrooms have stalls that protect everyone's privacy. The District also provides private bathroom accommodations, if requested. Whenever requested, transgender students and their parents have access to a support team with extensive training in addressing the identity development needs of adolescents.

District 211 is not excluding transgender students from their gender-identified locker room. Though our position has been inaccurately reported, a transgender student may use his or her gender-identified locker room simply by utilizing individual measures of privacy when changing clothes or taking showers.

The students in our schools are teenagers, not adults, and one's gender is not the same as one's anatomy. Boys and girls are in separate locker rooms – where there are open changing areas and open shower facilities – for a reason. The District is encouraged that the OCR acknowledges that the District must respect the legal rights of all students, including privacy rights.

We recognize that this is an emerging and critical matter for school districts nationwide. The policy that the OCR seeks to impose on District 211 is a serious overreach with precedent-setting implications. District 211 continues to believe that what we offer is reasonable and honors every student's dignity. Over the next 30 days, the District will continue what have been productive settlement negotiations with the OCR, the District is prepared to engage in all avenues of due process to affirm our position of honoring the rights of all the students is within the law.

We celebrate and honor differences among all students and we condemn any vitriolic messages that disparage transgender identity or transgender students in any way. We believe that this particular moment can be one of unification as we strive to create environments that ensure sensitivity, inclusiveness and dignity for ALL students.

If you have questions or concerns, please contact your principal.

Sincerely,

Daniel E. Cates

Superintendent

You received this electronic communication because you provided your email address to High School District 211. Changes or updates to your email address can be made using the Infinite Campus Parent Portal. If you have questions regarding any of the information contained within this email, please call the high school for assistance with your concern.

Please do not reply to this email

[redacted]