

**DURHAM PUBLIC SCHOOLS BOARD OF EDUCATION
RESOLUTION OPPOSING HB 2 AND URGING REPEAL**

WHEREAS, on March 23, 2016, in response to a Charlotte nondiscrimination ordinance, the North Carolina General Assembly in special session ratified, and Governor Pat McCrory signed, House Bill 2 (Session Law 2016-3), the “Public Facilities Privacy & Security Act”; and

WHEREAS, House Bill 2 appears to repeal the Charlotte ordinance by establishing new statewide standards for what constitutes discriminatory practice in employment and public accommodations; and by establishing new statewide requirements for bathrooms and changing facilities in all public agencies, including schools; and

WHEREAS, HB 2 omits sexual orientation, gender identity, gender expression, and other categories from the statewide list of categories protected from discrimination and makes protections unavailable under state law, and

WHEREAS, HB 2 also appears to eliminate a person’s right to bring a civil action in a North Carolina court for a claim of discrimination in employment or public accommodations on account of race, religion, color, national origin, age, or biological sex (as well as handicap for employment only); and

WHEREAS, by enacting HB 2, our state’s General Assembly and Governor McCrory have taken extreme measures to attempt to diminish the legislative authority of local governments and to codify discrimination and division into state law rather than to advance the rights and dignity of North Carolinians; and

WHEREAS, compliance with HB 2 creates serious legal and fiscal risks for public schools because it conflicts with federal and state laws, and

WHEREAS, the Federal Department of Education is currently reviewing HB 2 “to determine any potential impact on the state’s federal education funding” (\$4.3 billion to North Carolina last year) and

WHEREAS, Title IX of the Education Amendments of 1972 prohibits sex discrimination in federally funded education programs, and Title IX protection applies to all students - “from elementary to professional school students; male and female students; straight, gay, lesbian, bisexual and transgender students; part-time and full-time students; students with and without disabilities; and students of different races and national origins”, and

WHEREAS, the U.S. Departments of Justice and Education have stated repeatedly in guidance and court briefs that Title IX prohibits discrimination based on gender identity, including practices that bar students from using school restrooms and changing rooms consistent with their gender identity, and

WHEREAS, Title IX permits schools to maintain gender-segregated facilities but requires schools to give students access to those facilities on the basis of their gender identity, regardless of the gender they were assigned at birth, and

WHEREAS, Title VII of the Civil Rights Act of 1964 prohibits sex discrimination by state and local government employers, and

WHEREAS, the U.S. Justice Department and Equal Employment Opportunity Commission (EEOC) have recognized that Title VII prohibits gender identity discrimination and requires employers to provide equal access to workplace restrooms and changing facilities consistent with an employee's gender identity, and

WHEREAS, HB 2 is inconsistent with the Equal Protection Clause of the United States Constitution, which provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws" (US Const amend XIV, § 1); and

WHEREAS, the Durham Public Schools Board of Education is dedicated to the principles of equality, nondiscrimination, full inclusion and engagement by any student in the civil rights, benefits, and privileges of all students (see DPS Policy 4000 - Equal Opportunity for All Students); and

WHEREAS, discrimination against transgender and gay students is harmful and counter to the educational mission of schools, and

WHEREAS, a national survey conducted by the Gay, Lesbian, and Straight Education Network (GLSEN) found that 75 percent of transgender students feel unsafe at school, and

WHEREAS, transgender students already experience high rates of bullying, and the stress of harassment and discrimination can lead to lower attendance and grades as well as increased risk for depression, anxiety, self-harm and suicide, and

WHEREAS, NC General Statute 115C-407.15 - School Violence Prevention requires that "schools shall develop and implement methods and strategies for promoting school environments that are free of bullying or harassing behavior" and further states "bullying or harassing behavior includes, but is not limited to, acts reasonably perceived as being motivated by any actual or perceived differentiating characteristic, such as race, color, religion, ancestry, national origin, gender, socioeconomic status, academic status, gender identity, physical appearance, sexual orientation, or mental, physical, developmental, or sensory disability, or by association with a person who has or is perceived to have one or more of these characteristics" and

WHEREAS, in a recent presentation to the North Carolina Child Fatality Task Force, Dr. David Goldston of Duke University Medical School outlined the risk factors associated with youth suicide. Among them are a variety of factors related to how parents, peers, and society as a whole respond to LGBTQ youth, including bullying, social isolation, parental rejection, and

WHEREAS, according to a study by the American Foundation for Suicide Prevention, 41 percent of transgender people have attempted suicide compared to just 4.6 percent of the rest of the population, and

WHEREAS, schools are first and foremost places where all students and staff must feel safe, included and protected, and

NOW, THEREFORE, BE IT RESOLVED:

That the Board of Education reaffirms its support for protecting and advancing the constitutional rights and equitable treatment of all students, staff and citizens of Durham and its opposition to discrimination, prejudice, homophobia, and transphobia, and

The Board of Education takes a stand for dignity and equality in North Carolina, and

The Board of Education urges the North Carolina General Assembly to repeal House Bill 2 at the earliest opportunity. Meanwhile, the Board will adopt appropriate local policies to advance the cause of equal protection of its students and staff.

This the 4th day of April, 2016.

Heidi Carter, Board Chair

Mike Lee, Board Vice-Chair

Matt Sears

Natalie Beyer

Sendolo Diaminah

Leigh Bordley

Minnie Forte-Brown

Sari L. Reisner et al., *Mental Health of Transgender Youth in Care at an Adolescent Urban Community Health Center*, 56 J. ADOLESCENT HEALTH 274 (Mar. 2015).

Brief for the United States as Amicus Curiae, *G.G. v. Gloucester Cty. Sch. Bd.*, No. 15-2056 (4th Cir. Oct. 28, 2015); *Tooley v. Van Buren Pub. Sch.*, No. 2:14-cv-13466 (E.D. Mich.), Statement of Interest of the USA (Feb. 24, 2015); U.S. Dept. of Education, Office for Civil Rights, Title IX Coordinators Guide 15, 19, 21-22 (April 2015).

Attorney General Memorandum, Dec. 15, 2014, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964*; *Lusardi v. McHugh*, E.E.O.C. App. No. 0120133395 (Apr. 1, 2015).

Asaf Orr & Joel Baum, *Schools in Transition: A Guide to Supporting Transgender Students in K-12 Schools* (2015), https://www.nea.org/assets/docs/Schools_in_Transition_2015.pdf.

Nat'l Ctr. for Transgender Equality & Gay, Lesbian & Straight Education Network, *Model School District Policy on Transgender and Gender Nonconforming Students* (2016), <http://www.transequality.org/sites/default/files/GLSEN%20Trans%20Model%20Policy%202016.pdf>.

North Carolina Law May Risk Federal Aid, *The New York Times*, April 2, 2016 http://www.nytimes.com/2016/04/02/us/politics/north-carolina-anti-discrimination-law-obama-federal-funds.html?_r=0