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Dear Vancouver Board of Education,

I am a parent of two kids in the Vancouver elementary school system. The new Sexual Orientation and Gender Identity policy is a much-needed revision of the current provisions and will work to create a more welcoming environment in the schools. I applaud Committee III for their outstanding work on this draft, welcome the opportunity to comment on it, and urge the board to pass it.

I have much to say in support of the policy, in response to some of the comments made at the consultation meeting I attended last night and a few suggested revisions to improve the policy (the latter of which I will address in a separate letter). There are a lot of misconceptions about what the policy is actually saying and what it is trying to do, some of which I will address in this letter. One thing that has become readily clear to me through this process is that there needs to be an education session for *parents*, and one that is translated into multiple languages. (I would be happy to volunteer to facilitate such a session, as a parent and experienced facilitator, and as one who is not an employee of the VSB.)

I know you have heard much commentary on this new policy. Detractors say that these are medical issues and should be left to the medical community. This is a fallacy and a distraction. Within the context of the school environment, unless you are administering medical care, diagnosing medical conditions or making health care decisions (all of which you are not), these are *social* issues. Human rights law prohibits discrimination and harassment on the grounds of sexual orientation and sex (into which gender identity and expression have both been read). The reality is, though, that too many queer and trans kids face great barriers and a hostile environment within the school system. This policy will help the VSB live up to its legal obligations under “duty to accommodate” provisions and will help keep our kids safer. Nothing in this new policy sits outside the obligations you already have under the BC Human Rights Code. You are just making more explicit how you intend to live up to those responsibilities.

Human rights are protected in the Charter and both federal and provincial Human Rights Codes are quasi-constitutional, meaning that this legislation trumps most other laws, including all the policies that a school board might create. A school board cannot create a policy that is contrary to the Code and, even in the absence of any policy, your rights and responsibilities under the Code to create and maintain a discrimination and harassment free environment are still intact.

I have done queer and trans (and other) human rights work within the post-secondary environment for 20+ years. I see the consequences of unsafe school environments on young adults, including those emerging from our local schools. A supportive and aware/informed school can make a huge difference in a young person’s life. I have also taught future teachers (education students) about queer and trans issues and best practices in the classroom. One thing I always tell them, which I will echo here, is that

parents are not a homogeneous group, nor a group to be feared. There are many, many of us who support a school environment in which human rights are upheld and in which respect and inclusion of everyone is paramount. We may not always be as vocal, but we are your allies.

The rhetoric in these discussions has often created a false dynamic of “parents versus the LGBTQ* community”. I want to explicitly note that I am BOTH a parent and a member of and an ally to the LGBTQ* community (and in support of this VSB policy). Please don’t think that the predominant “parent voice” in these consultation meetings speaks for all parents. I love my kids just as much as other parents and want the best for them. The posters that say that parents want the “best for ALL children” do not include my kids (who incidentally appear to be gender normative and have not reached the age where their sexual orientation is apparent, but are still susceptible to discrimination or harassment because of their queer and trans family), nor do they include LGBTQ* and questioning kids. Study after study has shown that if kids are exposed to diversity in a positive way, they are more likely to demonstrate increased acceptance and increased understanding of others who may not be like themselves. This policy that, if implemented fully and appropriately, will create a more inclusive school environment in which diversity is visible and accepted will help in this regard. There are parents who support you and support this policy.

It is interesting to note, of the young people who have spoken thus far, not a single one of them has been opposed to this policy. The world is changing and it is our kids who are often ahead of their parents in this regard. My kids are 5 and 9. They have known about and are fully versed and cognizant of the spectrum of gender identities and gender expressions since a very young age. I have overheard them talking with their peers about what I may term as “gender politics” in the playground (for example, using or explaining gender inclusive pronouns beyond “she/he” or speaking about gender as distinct from sex and not just man/woman, boy/girl) where they are simply sharing their knowledge and version of the truth/world with their peers. Kids can understand much more than we adults sometimes give them credit for. Again, the early (in my kids’ case) exposure to diversity has increased their acceptance of and understanding of the range and diversity of gender identities and expressions. (I can also help teach parents how to talk with their kids about sexual orientation and gender identity and expression. I have done this and similar work in a professional capacity for many years.)

As a parent, I hope that my kids will always feel that they can come to me with anything. However, if they feel this is not the case, I would much rather that they go to a trusted and informed adult than someone without the requisite knowledge and experience to be of meaningful assistance or to no one at all.

I do human rights work for a living. I know the BC Human Rights Code inside out and have addressed hundreds of complaints of discrimination and harassment under university human rights policies. I know the language of the law which better helps me understand what is meant by the terminology used in the policy. I have heard numerous speakers not understand or misinterpret what “identifies or is perceived as identifying as LGBTQ*” means. They think this means that others (usually teachers) are identifying or “diagnosing” people as LGBTQ*, and thus are somehow stepping outside their professional area of expertise (which, if it were true, would be a position that I would agree with.) In fact, “identifies as” could as easily read “self-identifies as” or simply “is” LGBTQ*. It is what the person knows their sexual orientation and/or gender identity to be.

“Perceived to be LGBTQ*” stems from the *North Vancouver School Dist. No. 44 v. Jubran (2005)*, 52 C.H.R.R. D/1, 2005 BCCA 201 human rights case which ruled that someone can be/identify as heterosexual, but still be subjected to discrimination or harassment on the grounds of sexual orientation if they experience harassment which is persistent, homophobic in nature, and negatively affects one’s educational experience in school. The Court of Appeal also ruled that the School District has a responsibility to foster a discrimination-free school environment (comparable to the Supreme Court of Canada’s decision in *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84 that says an employer has a responsibility to provide a healthy, discrimination and harassment-free work environment). The School District, it found, is responsible for discrimination in the learning environment, even when that discrimination is caused by student conduct. The Tribunal also ruled (and this was upheld by the Court of Appeal) that the School District failed to meet the standard of the Code because it did nothing to address the issue of homophobia and homophobic harassment of students through more pro-active, anti-harassment programs directed to both students and teachers. The revised VSB policy, with the commitment to education and better explanation of how the VSB expects individual schools to meet their obligations under legal “duty to accommodate” requirements will help prevent such a charge against you.

Human rights law has also made clear that there is no hierarchy of rights (“no one right is more important than another”) and no rights are absolute. When addressing a claim, one must look at the “extent of interference. Only actual burdens on rights” are considered. “The law also recognizes that rights have limits in some situations where they substantially interfere with the rights of others.” *Ontario Human Rights Commission*, <http://www.ohrc.on.ca/en/policy-competing-human-rights#sthash.B3Uc4QpW.dpuf>.

Because someone doesn’t understand the policy is no reason to abandon it. However, it is a reason to clarify what is meant, to address misconceptions and to educate. This policy is based in current research by professionals in the field, not lay people who may not understand the law or know or be able to interpret the research. The research or “facts” behind this policy are demonstrably sound. A professional who has done the research and works in the field is not “biased”, they are *informed* (and often peer-reviewed). We would not say this (that one is biased if they work or study in the field) of other professionals. For example, we would not say that a fertility doctor who has pursued medical education to become a doctor, further specialized in reproductive health; studies and applies best practices; and who is paid for their work must therefore be “biased”, making their work, research and contributions unreliable. Instead, we would call them a *specialist*. You have heard from a number of professionals from different areas. They are all saying the same thing. The research and reasoning (including best practices) of this policy is sound and thus it should be passed.

In my work, when I inevitably get asked “the bathroom question”, I address it thusly: what is important is not how someone identifies in a public washroom, but *how they behave*. It is not *who* you are, but *how* you act. For example, as a cisgender woman in a women’s bathroom, if I am peering under the stalls or engaging in other inappropriate behaviour, I may be in the “right” washroom, but I am engaging in the wrong behaviour. It is not my identity which is making the washroom less safe, but my actions. Thus, as long as people are engaging in appropriate behaviours, one’s gender identity or

expression should not keep anyone from using the bathroom appropriate (or most closely appropriate) to their gender identity or a non-gendered facility.

What is it that (some) people are afraid will happen to their kids? Where is the risk of actual harm? Another fallacy that has emerged in the opposition to this policy is that children using all-gender washrooms or washrooms where trans students can use the facility consistent with their gender identity and presentation are somehow less “safe” than they would be in a sex-segregated washroom; that they are more susceptible to sexual violence. Trans and gender variant people are not, as a group, sexual abusers and to suggest that they are is not only erroneous, but it is also slanderous and more than insulting. (In fact, research has repeatedly shown that the vast majority of people who commit sexual assault, and sexual assaults on children, are heterosexual, cisgender men.) We all want our kids to be safe. The reality is, though, that if someone is determined to commit sexual assault, a gendered sign (or non-gendered sign) on a washroom door is not going to prevent this. (I do believe that our schools are generally safe against stranger/adult assault, though.) This misconception is based on heterosexist assumptions about sexual violence and often an inability or lack of awareness to fully see gender identity as not analogous to sex. It conflates issues of sexual violence with gender and makes assumptions about who commits violence against whom. The reality is that violence and harassment can also happen between persons of the same sex and/or of similar genders. A gender segregated bathroom will not prevent all forms of sexual violence or harassment. Again, the reality is that the children who are most unsafe in school washrooms are the kids who don’t conform to gender norms (or who stand out and are targeted for other reasons). Washrooms are one of the few places in school where teachers, support staff and/or administrators are not watching the kids. This relative privacy from authority figures can enable these to be sites of incredible cruelty and violence for those who do not fit in. I have heard too many stories of kids who have been beaten, bullied or harassed by fellow students in the “privacy” of a school washroom.

Another related fallacy that came up in discussion at the consultation meeting is that people will “pretend” to be trans so as to inappropriately access washrooms that are not consistent with their actual gender. Trans kids, gender variant and gender non-conforming kids are marginalized, even in the most supportive schools. No one is going to go to the trouble and work of identifying as trans, working with their parents and the school system, and risk being ostracized from their peers just to get into the “wrong” bathroom. (We are nowhere near a point where being trans is “cool” or enviable.) Again, a sign on the door will not prevent someone from entering the “wrong” washroom if they choose to do so. People who want to commit violence or engage in voyeuristic or other inappropriate behaviours can do so in many ways other than pretending to be trans.

I know many trans people who do not drink enough during their day (contributing to serious health consequences) or who have mapped out every single stall, non-gendered washroom in the areas they will frequent during the day so as not to have to use a public, multi-stall washroom. This is true even if it means (in the context of my work experience) travelling across campus to use the washroom or holding in their need to urinate or defecate until they get home. I can assert with confidence that every single trans or gender non-confirming person faces much more danger and trepidation in a public bathroom than do the cisgender, gender confirming users of the shared space. Again, we must focus on the behaviour of the person who is using the space, not their identity.

We implemented gender inclusive washrooms at a local university about 10 years ago. Since that time, there has never been a report of harassment or violence against any cis/non-trans people in the gender inclusive washrooms. The same is not true of gender variant and gender non-conforming folks, however. This is similar to reports I have heard from other human rights practitioners who have implemented gender inclusive washroom practices where the fears of what might happen were unfounded and fortunately failed to materialize. Human rights law has supported the position that people are legally entitled to use the bathroom that is most consistent with their gender presentation and identity. This is legal decision and, again, both provincial and federal Human Rights Code/Act are quasi-constitutional; they trump most other legislation, including school board policies. You cannot develop policies that go against this without opening yourselves to a charge of discrimination.

As an aside, my youngest child, now in kindergarten, was formally in reputable daycare at my place of employment. In the provincially regulated, multicultural daycare centres, children all used the same washroom which had 4 toilets and a row of sinks. There were no doors or dividers between the toilets or between the sink and toilets. Theoretically kids could see what other kids on the toilets were doing. They just didn't care. Sharing a bathroom was normal for them. If this was acceptable practice for my child less than a year ago, what has changed now that she is in elementary school?

In closing, education and clarification (with translation, as needed) may be useful in lessening the gap between those who support and those who oppose this policy. I have addressed some of the areas that have been identified in this letter. Hopefully this can better be shared out with other parents and interested parties. My thanks for reading my lengthy, though informative, letter to the end. Stephanie Lofquist knows how to get ahold of me (or you can respond to my email address), should you wish further clarification or to ask any questions.

Sincerely,

Anne-Marie Long