

No. 21-2475

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

JOHN M. KLUGE,
Plaintiff-Appellant,

v.

BROWNSBURG COMMUNITY SCHOOL CORPORATION,
Defendant-Appellee,

On Appeal from the United States District Court for the Southern
District of Indiana, Indianapolis Division
Case No. 1:19-cv-2462-JMS-DLP —Hon. Jane Magnus-Stinson

**BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF SOCIAL
WORKERS INCLUDING ITS INDIANA CHAPTER; AMERICAN
ACADEMY OF PEDIATRICS; INDIANA CHAPTER OF THE AMERICAN
ACADEMY OF PEDIATRICS; AMERICAN MEDICAL ASSOCIATION;
AND INDIANA YOUTH GROUP, INC. IN SUPPORT OF DEFENDANT-
APPELLEE BROWNSBURG COMMUNITY SCHOOL CORPORATION
AND AFFIRMANCE**

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Appellate Court No: 21-2475


Short Caption: Kluge v. Brownsburg Community School Corporation

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Covington & Burling LLP
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 - i) Identify all its parent corporations, if any; and
None. (This response applies with respect to each of the organizations listed in Paragraph (1) above.)
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N/A

Attorney's Signature:  Date: 11/4/2021

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENTAppellate Court No: 21-2475Short Caption: Kluge v. Brownsburg Community School Corporation

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N/A

Attorney's Signature:  Date: 11/4/21Attorney's Printed Name: D. Jean VetaPlease indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes No Address: One CityCenter, 850 Tenth St., N.W.Washington, D.C. 20001Phone Number: 202-662-5294Fax Number: 202-778-5294E-Mail Address: jveta@cov.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 21-2475

Short Caption: Kluge v. Brownsburg Community School Corporation

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/Henry Liu Date: 11/8/2021

Attorney's Printed Name: Henry Liu

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I. STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae are the National Association of Social Workers (“NASW”) including its Indiana Chapter, the American Academy of Pediatrics (“AAP”), the Indiana Chapter of the American Academy of Pediatrics (“INAAP”), the American Medical Association (“AMA”), and Indiana Youth Group, Inc. (“YIG”).¹ All five organizations seek to promote the safe and healthy development of lesbian, gay, bisexual, and transgender² (“LGBT”) people in schools and communities.

As well-respected national and Indiana-based medical and mental health organizations, as well as one provider of support services to Indiana transgender youth, *amici* seek to offer additional insight regarding the harm that Plaintiff-Appellant’s proposed accommodation would cause to the health and wellbeing of transgender students, harm that is not adequately addressed in the briefs submitted

¹ The parties have consented to the filing of this brief. Fed. R. App. P. 29(a)(2). *Amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel made any monetary contributions intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

² “Transgender” is an umbrella term used to describe many identities in which the person’s “gender identity, gender expression, or behavior does not conform to that typically associated with the sex to which they were assigned at birth.” *What does transgender mean?*, Am. Psychological Ass’n (2014), <https://www.apa.org/topics/lgbtq/transgender> (last visited Nov. 5, 2021). “Sex assigned at birth refers to one’s biological status as either male or female, and is associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy.” *Id.* Although the term “transgender” can be further subcategorized and also may not encompass all people who are gender non-conforming, for simplicity, this brief uses the term “transgender” to refer to all people who experience a discordance between their gender identity and their sex assigned at birth.

by the parties to this case. “[A] true friend of the court will seek to add value to our evaluation of the issues presented on appeal[,]” including by “[r]elaying views on legal questions by employing tools of social science” or “[s]upplying empirical data informing one or another question implicated by appeal[.]” *Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761, 763 (7th Cir. 2020) (Scudder, J., in chambers) (permitting “additive” amicus briefs).

Here, *amici*’s brief should be considered because it will add important insight, informed by social science and empirical data, not otherwise discussed by the parties. The parties’ dispute concerns whether Defendant-Appellee, Brownsburg Community School Corporation (“BCSC”) should have provided Plaintiff-Appellant John Kluge with a religious accommodation to a school policy that required Mr. Kluge to refer to students, including transgender students, by the names listed in the school database. Using social science and empirical data not discussed by the parties, *amici* detail the harm that Mr. Kluge’s proposed accommodation would have on the health and wellbeing of transgender youth, by failing to affirm their gender identities and by engaging in behavior that has the effect of singling out and stigmatizing transgender students.

The District Court found that *amici*’s brief in that case was not necessary for it to rule in favor of BCSC because the harms to transgender students that would be

caused by Mr. Kluge’s requested accommodation were “undisputed.”³ Should this Court come to a different conclusion, *amici* respectfully request that the Court consider this brief, which provides additional, detailed reasons why Mr. Kluge’s proposed accommodation would impose an undue hardship on BCSC by actively harming transgender BCSC students.

1. National Association of Social Workers. Founded in 1955, NASW is a nonprofit organization and the largest association of professional social workers in the United States with 110,000 members in 55 chapters. NASW develops policy statements on issues of importance to the social work profession, promulgates professional policies, conducts research, publishes professional studies and books, provides continuing education, and promotes and administers the NASW Code of Ethics. Consistent with NASW policy statements, NASW, including its Indiana Chapter, supports full human rights and the end to all public and private discrimination on the basis of gender identity and gender expression, whether actual or perceived, and regardless of assigned sex at birth. The NASW National Committee on LGBT Issues develops, reviews, and monitors NASW programs that significantly affect LGBT individuals. The NASW Code of Ethics for professional social workers requires that all people—including those who are transgender—be

³ Doc. 159 at 26. All references to “Doc.” refer to documents filed with the District Court and are identified by ECF number. All references to “App. Doc.” refer to documents filed with this Court and are identified by ECF number.

afforded the same respect and rights regardless of gender identification. NASW supports safe and secure educational environments at all levels of education, in which children, youth, and adults may obtain an education free from discrimination, harassment, violence, and abuse. NASW asserts that discrimination and prejudice directed against any individual on the basis of gender identity or gender expression can be damaging to the social, emotional, psychological, physical, and economic well-being of the affected individual, as well as to society as a whole.⁴

2. The American Academy of Pediatrics. Founded in 1930, AAP is a national, not-for-profit professional organization dedicated to furthering the interests of child and adolescent health. Since AAP's inception, its membership has grown to 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for infants, children, adolescents, and young adults. Over the past 91 years, AAP has become a powerful voice for child and adolescent health through education, research, advocacy, and the provision of expert advice. Research has shown that adolescents who identify as LGBT face significantly higher rates of depression, anxiety, eating

⁴ NASW, *Policy Statement: Transgender and Gender Nonconforming People*, in *Social Work Speaks*, 323, 327 (11th ed. 2018) (hereinafter "NASW Policy Statement").

disorders, self-harm, and suicide. Such challenges are often more intense for youth who do not conform to social expectations and norms regarding gender. AAP thus strives to support laws and policies that foster an inclusive environment for LGBT youth.

3. The Indiana Chapter of the American Academy of Pediatrics. INAAP is a statewide 501(c)(3) nonprofit organization incorporated in Indiana focusing on issues related to the health and well-being of all children in the state. With over 900 pediatrician, pediatric specialist, and advance practice nurse members throughout the state, INAAP is committed to attaining optimal physical, mental, and social health for all infants, children, adolescents, and young adults. INAAP strives to support laws and policies that foster an inclusive environment for LGBT youth.

4. American Medical Association. The AMA is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. The AMA is committed to partnering with public and private organizations

dedicated to public health and public policy to improve health among LGBT youth and reduce LGBT youth suicide. AMA members practice in every medical specialty and in every state, including Indiana.

5. Indiana Youth Group. IYG is a nonprofit organization whose primary mission is to promote the safety and healthy development of LGBT youth in Indiana schools and communities. Among other things, IYG provides services and programs to support the mental health and wellness of LGBT youth, including services and programs that are offered exclusively to transgender youth. IYG also educates Indiana school officials, parents, and community members about transgender inclusivity and works with Indiana schools to develop school policies requiring school officials to treat students in a manner consistent with the students' gender identity, including name and pronoun usage policies for transgender students. IYG is also responsible for managing the Indiana GSA Network, an association of over 50 youth-led gender sexuality alliances that seek to create safe spaces for LGBT youth and address anti-LGBT harassment and discrimination. At Brownsburg High School, the student-run GSA is known as the "Equality Alliance" and is a member of the Indiana GSA Network. IYG has worked directly with the Brownsburg Equality Alliance and its student members since 2011.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

Amici curiae urge this Court to affirm the District Court’s finding that “a name carries with it enough importance to overcome a public school corporation’s duty to accommodate a teacher’s sincerely held religious beliefs against a policy that requires staff to use transgender students’ preferred names when supported by a parent and health care provider.”⁵ *Amici* are well-respected national and Indiana-based medical and mental health organizations committed to ensuring that transgender children have access to full educational opportunities, and that their mental and physical wellbeing are protected. Drawing on their experience and expertise in their respective fields, *amici* seek to provide this Court with an empirically grounded view of the exceptional challenges transgender youth face, and the importance of policies that affirm transgender youth’s gender identity, including the policy adopted by Defendant-Appellee BCSC, which provides an avenue for transgender students to be called by the names and pronouns that are consistent with their gender identity.

Over the past several decades, significant academic and medical research has confirmed that transgender youth face severe discrimination in the school environment. In 2020, 40% of transgender students reported that they had been

⁵ Doc. 159 at 51.

physically threatened or harmed due to their gender identity.⁶ Further, studies have found that transgender students are 1.66 times more likely to be bullied at school than their cisgender peers and 4.15 times more likely to be threatened or injured by a weapon at school than their cisgender peers.⁷ This pervasive discrimination has corrosive effects on transgender young people's mental and physical health and their ability to succeed academically. For example, research shows that transgender youth are far more likely than their non-transgender peers to experience depression, eating disorders, and self-harm—including attempted suicide.⁸ According to a recent survey of over 40,000 LGBT young people conducted by the Trevor Project—a nonprofit organization focused on suicide prevention efforts among LGBT youth—over 60% of transgender youth reported engaging in self-harm and over 20% had in fact attempted suicide in the preceding twelve months of their lives.⁹ Those staggering rates reflect a public health crisis that requires urgent attention.

⁶ Amit Paley, *National Survey on LGBTQ Youth Mental Health 2020*, The Trevor Project (Mar. 8, 2021), <https://www.thetrevorproject.org/survey-2020/>. (hereinafter “The Trevor Project 2020 National Survey”) (last visited Nov. 5, 2021).

⁷ Kasey B. Jackman et al., *Suicidality among Gender Minority Youth: Analysis of 2017 Youth Risk Behavior Survey Data*, 7 tbl.2, Archives of Suicide Research (2019) (hereinafter “Suicidality”).

⁸ The Trevor Project 2020 National Survey, *supra* note 6; Suicidality, *supra* note 7 at 8, 9 tbl.3.

⁹ The Trevor Project 2020 National Survey, *supra* note 6.

Fortunately, research shows that school environments that support the educational and social needs of transgender students can dramatically reduce these risks. Schools such as Brownsburg High School must prioritize policies that foster an inclusive environment for transgender youth, including policies that ensure that transgender students are called by the names and pronouns that accurately reflect their gender identities. These policies can help alleviate the long-term effects of trauma experienced by such students. As confirmed by a landmark 2018 study, transgender youth who are able to use names and pronouns consistent with their gender identities experience positive mental health outcomes, including a 29% decrease in reported thoughts of suicide and a 56% decrease in suicide attempts.¹⁰ Further, multiple studies have demonstrated that consistent recognition of transgender students' names and pronouns by educators and school administrators models expectations for the school community and discourages bullying behavior from other students.¹¹

¹⁰ Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior among Transgender Youth*, 63 *J. Adolescent Health* 503, 505 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6165713/pdf/nihms945849.pdf>.

¹¹ See, e.g., Jonathan T. Pryor, *Out in the Classroom: Transgender Student Experiences at a Large Public University*, 56 *J. Coll. Student Dev.* 440, 442 (2015), https://www.researchgate.net/publication/282221787_Out_in_the_Classroom_Transgender_Student_Experiences_at_a_Large_Public_University; Asaf Orr, et al., *Schools in Transition: A Guide for Supporting Transgender Youth in K-12 Schools* 22, Nat'l Educ. Ass'n (2015), <http://assets2.hrc.org/files/assets/resources/Schools-In-Transition.pdf> (hereinafter "*Schools in Transition*").

For these reasons, the scientific literature supports BCSC’s requirement that school employees refer to students by their names and pronouns listed in the “PowerSchool” database, which provides an avenue for transgender students (and indeed all students) to record names and pronouns that affirm their gender identity. Plaintiff-Appellant Kluge, by contrast, sought an accommodation that would have allowed him to refuse to use the names listed in PowerSchool, so as to avoid using transgender students’ first names and accurate pronouns.¹² According to empirical data and scientific consensus, Mr. Kluge’s proposed accommodation would significantly harm—and already has harmed—the psychological and emotional well-being of transgender students. These harms conflict with BCSC’s mission to provide “a secure environment,” in which “*all* students” may pursue their “maximum intellectual potential” and “become well-rounded individuals.”¹³ Accordingly, *amici* respectfully request that the Court affirm the District Court’s finding that Mr. Kluge’s requested accommodation would result in an undue hardship to BCSC.

¹² App. Doc. 17 at 7, 10.

¹³ *BCSC Mission Statement*, Brownsburg Cmty. Sch. Corp., <https://www.brownsburg.k12.in.us/Page/138> (last visited November 4, 2021) (emphasis added).

III. ARGUMENT

A. Transgender Youth Face Severe Discrimination and Serious Physical and Mental Health Risks.

Because transgender people face rampant discrimination and violence, including in school settings, medical and mental health professionals widely recognize that policies affirming each person’s gender identity can greatly improve health outcomes.¹⁴

1. More than a Million Americans, Including Over a Hundred Thousand Teenagers, Identify as Transgender.

Gender identity is a person’s “deep internal sense of being female, male, a combination of both, somewhere in between, or neither[.]”¹⁵ Transgender people “have a gender identity that is not fully aligned with their sex assigned at birth.”¹⁶ Scientific evidence suggests that gender identity depends closely on biological and

¹⁴ See, e.g., Jason Rafferty, *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, Am. Acad. of Pediatrics 142(4) Pediatrics 1, 6 (2018), <https://pediatrics.aappublications.org/content/pediatrics/142/4/e20182162.full.pdf?eType=EmailBlastContent&eid=02884fcc-3768-4603-82b8-5e4d7fbe34d5> (hereinafter “AAP Policy Statement”).

¹⁵ *Id.* at 2 tbl.1; see also NASW Nat’l Comm. on LGBT Issues, *Position Statement: Sexual Orientation Change Efforts (SOCE) and Conversion Therapy with Lesbians, Gay Men, Bisexuals, and Transgender Persons*, Nat’l Inst. of Soc. Workers, at 3-4 (2015), <https://www.socialworkers.org/LinkClick.aspx?fileticket=IQYALknHU6s%3D&portalid=0>.

¹⁶ Am. Psychological Ass’n, *Guidelines for Psychological Practice with Transgender and Gender Nonconforming People*, 70(9) Am. Psychologist 832, 832 (2015), <https://www.apa.org/practice/guidelines/transgender.pdf> (hereinafter “APA Guidelines”). Transgender people differ from non-transgender individuals, whose gender identity aligns with their sex assigned at birth. *Id.*

genetic factors.¹⁷ People often begin to express and articulate their gender identity as children, at the same time that their school environment plays a vital role in their life and development.¹⁸ In the United States, approximately 1.5 million individuals identify as transgender.¹⁹ Of these, approximately 150,000 are teenagers aged 13 to 17.²⁰

The scientific community’s understanding of transgender people and gender identity has become more robust and sophisticated over the past two decades.²¹ There is now a consensus that being transgender “implies no impairment in judgment, stability, reliability, or general social or vocational capabilities[.]”²² Instead, medical and mental health professionals recognize that affirming gender identity can significantly improve the well-being of transgender people.²³ By

¹⁷ See, e.g., Milton Diamond, *Transsexuality Among Twins: Identity Concordance, Transition, Rearing, and Orientation*, 14 Int’l J. Transgenderism 24, 30–31 (2013).

¹⁸ Am. Psychiatric Ass’n, *Gender Dysphoria*, in *Diagnostic & Statistical Manual*, 451–455 (5th ed. 2013).

¹⁹ Jody L. Herman et al., *Ages of Individuals Who Identify as Transgender*, Williams Institute (Jan. 2017), <https://williamsinstitute.law.ucla.edu/publications/age-trans-individuals-us/>.

²⁰ *Id.*

²¹ APA Guidelines, *supra* note 16, at 832.

²² See, e.g., Jack Drescher et al., *Position Statement on Discrimination Against Transgender and Gender Variant Individuals*, Am. Psychiatric Ass’n (July 2018), <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Discrimination-Against-Transgender-and-Gender-Diverse-Individuals.pdf>.

²³ APA Guidelines, *supra* note 16, at 832.

contrast, transgender people who encounter unsupportive social environments are more likely than the general population to experience health challenges such as depression, anxiety, stress and suicidality.²⁴

2. Transgender Youth Face Severe Discrimination, Which Threatens Their Education and Physical and Mental Well-Being.

Unfortunately, the story of transgender youth is one of rampant harassment, discrimination, and violence. In a 2017 study of over 23,000 students, approximately 78% of transgender students reported that they were discriminated against at school.²⁵ Another study found that transgender students are 1.66 times more likely than their non-transgender peers to be bullied at school, 2.43 times more likely to be electronically bullied, and 4.15 times more likely to be threatened or injured with a weapon.²⁶ Indeed, 40% of transgender youth reported having been physically threatened or harmed due to their gender identity.²⁷

This widespread discrimination and violence against transgender students can have serious consequences for their ability to succeed in an educational

²⁴ See AAP Policy Statement, *supra* note 14, at 4.

²⁵ Joseph G. Kosciw et al., *2017 National School Climate Survey*, GLSEN, at 94 (2018) <https://www.glsen.org/sites/default/files/2019-10/GLSEN-2017-National-School-Climate-Survey-NSCS-Full-Report.pdf> (hereinafter “2017 National School Climate Survey”).

²⁶ Suicidality, *supra* note 7, at 7 tbl.2.

²⁷ The Trevor Project 2020 National Survey, *supra* note 6 (“Discrimination and Physical Harm” section).

environment. Studies show that transgender students are more likely to miss school, change schools, or prematurely abandon the educational setting altogether. Indeed, one recent study reported that almost half of transgender students had missed school or changed schools because of fears for their safety.²⁸ Another study found that 15% of transgender participants prematurely left educational settings because of harassment.²⁹ The experiences of transgender people as adolescents have long-lasting consequences: a 2015 survey of nearly 28,000 transgender adults found that those who had faced discrimination because of their transgender identity while in school were more likely to experience serious psychological distress or to have experienced homelessness later in life.³⁰

Due to the challenges of living in a culture in which they are often bullied and marginalized, transgender youth have significantly higher mental and physical health risks than those among the general population. Studies consistently show that transgender students experience significantly higher rates of depression,

²⁸ 2017 National School Climate Survey, *supra* note 25, at 97.

²⁹ Jamie M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, The Nat'l Gay and Lesbian Task Force and the Nat'l Ctr. for Transgender Equal., at 33 (2011), https://www.thetaskforce.org/wp-content/uploads/2019/07/ntds_full.pdf.

³⁰ Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey*, Nat'l Ctr. for Transgender Equal., at 132 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

disordered eating, and self-harm than their non-transgender peers.³¹ In 2020, the Trevor Project conducted a survey of over 40,000 LGBT youth in the United States, which was the largest survey of LGBT youth mental health ever conducted. Significantly, the results showed that over 60% of transgender youth reported engaging in self-harm in the preceding twelve months and over 75% of transgender youth reported symptoms of generalized anxiety disorder in the preceding two weeks.³²

Suicide rates among transgender youth are a public health crisis. The same survey by the Trevor Project found that more than 50% of transgender youth seriously considered attempting suicide and more than 20% had in fact attempted suicide *in the preceding twelve months of their lives*.³³ Another research study likewise determined that transgender youth are 2.71 times more likely to attempt suicide than other young people.³⁴ While these figures are staggering, they are not surprising. As the AAP has observed, “[y]outh who identify as [transgender] often confront stigma and discrimination, which contribute to feelings of rejection and

³¹ Maureen D. Connolly et al., *The Mental Health of Transgender Youth: Advances in Understanding*, 59 J. Adolescent Health 489, 494 (2016).

³² The Trevor Project 2020 National Survey, *supra* note 6 (“Introduction” section).

³³ *Id.* (“Suicide and Mental Health” section)

³⁴ Suicidality, *supra* note 7, at 11 tbl.4.

isolation that can adversely affect physical and emotional well-being.”³⁵ Similarly, NASW has determined that “discrimination and prejudice directed against any individuals on the basis of gender identity or gender expression, whether actual or perceived, are damaging to the social, emotional, psychological, physical, and economic well-being of the affected individual.”³⁶ The scientific community therefore believes that “[p]olicies and interventions are needed to reduce suicidality among gender minority youth, improve access to mental healthcare, and reduce peer victimization and substance use.”³⁷

B. School Communities like BCSC Should Adopt Policies That Require Respect for Students’ Names and Pronouns Consistent with Their Gender Identities.

In light of the significant challenges that transgender youth face, school communities such as BCSC must prioritize policies that respect and protect the rights of students, including policies that require respect for the names and pronouns that match a student’s gender identity. Numerous studies have found that the simple act of referring to transgender students respectfully by the names and pronouns consistent with their gender identities can significantly improve mental health outcomes and may reduce the risk of suicide.

³⁵ AAP Policy Statement, *supra* note 14, at 3.

³⁶ NASW Policy Statement, *supra* note 4, at 327.

³⁷ Suicidality, *supra* note 7, at 1.

1. Using Transgender Students' Names and Pronouns That Accord with Their Gender Identities Improves Physical and Mental Health Outcomes.

Schools play a major role in children's lives and can have a significant impact on their development and mental health. The Centers for Disease Control and Prevention has, for example, recognized the importance of "[a] positive school environment . . . characterized by caring and supportive interpersonal relationships; opportunities to participate in school activities and decision-making; and shared positive norms, goals, and values."³⁸ It is therefore critical that schools create a supportive and inclusive environment for transgender students free of discrimination.³⁹

A growing body of scientific research has found that policies ensuring that others address students by their appropriate pronouns correlates closely with far lower rates of discrimination, psychological distress, and attempted suicide. For example, the Journal of Adolescent Health published a landmark study in 2018 on

³⁸ *School Connectedness: Strategies for Increasing Protective Factors Among Youth*, Ctrs. for Disease Control & Prevention, at 7 (2009), <https://www.cdc.gov/healthyyouth/protective/pdf/connectedness.pdf>.

³⁹ See Russell B. Toomey et al., *Gender-Nonconforming Lesbian, Gay, Bisexual, and Transgender Youth: School Victimization and Young Adult Psychosocial Adjustment*, 46 *Developmental Psychology* 1580, 1586 (2010), available at https://familyproject.sfsu.edu/sites/default/files/FAP_School%20Victimization%20of%20Gender-nonconforming%20LGBT%20Youth.pdf ("Enactment of school policies that specifically prohibit victimization due to LGBT status, gender nonconformity, and other types of bias-related harassment can help reduce negative psychosocial outcomes in LGBT and gender-nonconforming young people.").

the benefits of such policies on transgender youth.⁴⁰ Transgender youth who were able to use names and pronouns that affirmed their gender identities in an educational setting, or in one of three other contexts, experienced a 29% decrease in reported thoughts of suicide and a 56% decrease in suicide attempts.⁴¹ On the basis of those findings, the authors recommended that schools adjust regulations and information systems to respect the names and pronouns of students that accord with their gender identities in records, rosters, and means of identification (i.e., ID cards).⁴² As the authors explained, “policies that promote the social transition process of gender affirmation among transgender youth, such as chosen name use or access to restrooms consistent with gender identity or presentation, will likely enhance safety and reduce physical and mental health disparities for transgender populations.”⁴³ Medical professionals have highlighted the value of the 2018 study, noting that it underscores the importance of using gender-affirming names and pronouns to transgender students’ mental health.⁴⁴

⁴⁰ See, e.g., Russell, *supra* note 10, at 505.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Stanley R. Vance, *The Importance of Getting the Name Right for Transgender and Other Gender Expansive Youth*, 63 J. Adolescent Health 379, 379 (2018), available at [https://www.jahonline.org/article/S1054-139X\(18\)30335-5/pdf](https://www.jahonline.org/article/S1054-139X(18)30335-5/pdf).

Other research studies likewise found that requiring the use of appropriate names and pronouns correlates with far lower rates of discrimination, psychological distress, and attempted suicide among transgender youth.⁴⁵ For example, in a case study of transgender students at a large Midwestern university, a transgender student who was referred to by his name and pronouns that matched his gender identity noted that his teachers' recognition of him as male discouraged other students from bullying him.⁴⁶ Similarly, a community-based study of 73 transgender, prepubescent children aged 3 to 12 found that transgender children who are "supported in their gender identity have developmentally normative levels of depression and only minimal elevations in anxiety."⁴⁷ These studies underscore the mental health consequences of ensuring the use of names and pronouns for transgender youth that are consistent with their gender identities, and the necessity for policies that require school employees to support children who are at great risk of discrimination and long-term negative psychosocial outcomes.

2. The Growing Professional Consensus Requires Schools to Respect Students' Names and Pronouns That Accord with Their Gender Identities.

⁴⁵ See The Trevor Project 2020 National Survey, *supra* note 6; Russell, *supra* note 10, at 505.

⁴⁶ Pryor, *supra* note 11, at 448.

⁴⁷ Kristina R. Olson et al., *Mental Health of Transgender Children Who Are Supported in Their Identities*, 137(3) *Pediatrics* 1, 3 (2016); see also APA Guidelines, *supra*, at 846 (higher levels of peer support from other transgender people is associated with better mental health).

Along with the scientific data, there is growing consensus among education and mental health professionals that schools should adopt policies that allow transgender students to be referred to by gender-affirming names and pronouns.

For example, the National Education Association (“NEA”) has stated that, to prevent and alleviate “the distress that transgender youth often experience, . . . healthcare providers recommend that the child ‘socially transition’ and live consistently with their gender identity,” including by “using names and pronouns in a manner consistent with their identified gender.”⁴⁸ The NEA found that “[c]onsistently using a transgender student’s chosen name and pronouns signals that the speaker is respecting and affirming the transgender student’s gender identity. When the speaker is an educator or administrator, using the student’s chosen name and pronoun also models and sets expectations for the school community.”⁴⁹ These simple actions “can have a profound effect on the student’s experience.”⁵⁰

Other national organizations have echoed the NEA’s views. The Council on Social Work Education has encouraged the implementation of “policies and practices [that are] associated with the use of preferred names and pronouns,”

⁴⁸ *Schools in Transition*, *supra* note 11, at 9.

⁴⁹ *Id.*, at 22.

⁵⁰ *Id.*

including policies that allow students to change their name in academic institutions' information systems.⁵¹ The Child and Adolescent Social Work Journal has recognized that “[l]egally changing a child’s name to match his/her/their identity and gender presentation can often make the child more comfortable in school, recreation and medical settings where legal names are documented and often called aloud.”⁵² And guidelines promulgated by the American Psychological Association state that refusing to use the names and pronouns that accord with a transgender person’s gender identity, or otherwise failing to support their gender identity, should be viewed as discrimination.⁵³

Amici are among the chorus of educational, medical, and mental health professionals who stress the importance of respecting the gender-affirming names and pronouns of transgender youth. The AAP has found that affirming gender identity of “adolescents with gender dysphoria often reduces the emphasis on gender in their lives, allowing them to attend to other developmental tasks, such as

⁵¹ Ashley Austin et al., *Guidelines for Transgender and Gender Nonconforming (TGNC) Affirmative Education: Enhancing the Climate for TGNC Students, Staff and Faculty in Social Work Education* 4, Council on Soc. Work Educ. (2016), https://www.cswe.org/getattachment/Centers-Initiatives/Centers/Center-for-Diversity/About/Stakeholders/Commission-for-Diversity-and-Social-and-Economic-J/Council-on-Sexual-Orientation-and-Gender-Identity/5560-Beswe_CSOGIE_WP2_TGNC_final_web.pdf.aspx.

⁵² Ashley Austin, *Transgender and Gender Diverse Children: Considerations for Affirmative Social Work Practice*, Child and Adolescent Soc. Work J. at 8 (2017).

⁵³ APA Guidelines, *supra* note 16, at 838.

academic success, relationship building, and future-oriented planning.”⁵⁴

Similarly, NASW has concluded that referring to transgender clients by “a name and pronoun that most reflects their sense of self can be enormously empowering.”⁵⁵ NASW thus supports policies that require the “use of respectful address” including “asserted name” and “pronouns” and policies that allow for electronic record systems to “capture asserted names,” “pronouns,” and “asserted gender identities[.]”⁵⁶

C. Mr. Kluge’s Proposed Accommodation Would Result in an Undue Hardship to BCSC Because It Harms the Well-being of Transgender Students.

Plaintiff-Appellant Kluge sought an accommodation that would allow him to refuse to call transgender students by their gender-affirming first names and pronouns, contrary to the empirical data and expert consensus described above. The District Court correctly concluded that such an accommodation would result in an undue hardship to BCSC because the accommodation would result in psychological and emotional harms to transgender students—and indeed, that it

⁵⁴ AAP Policy Statement, *supra* note 14, at 6.

⁵⁵ Arlene Istar Lev, *Transgender Emergence: Understanding Diverse Gender Identities and Expression*, Nat’l Ass’n of Soc. Workers, at 12 (Feb. 2006), https://cdn.ymaws.com/www.naswma.org/resource/resmgr/imported/FCE_transgender.pdf.

⁵⁶ NASW Policy Statement, *supra* note 4, at 327–28.

had already caused such harm—and thus, would interfere with BCSC’s mission of providing “a safe and supportive environment for all students.”⁵⁷

Consistent with the scholarly guidance described above, BCSC concluded that “transgender students face significant challenges in the high school environment, including diminished self-esteem and heightened exposure to bullying” and that “these challenges threaten transgender students’ classroom experience, academic performance, and overall well-being.”⁵⁸ To address these challenges, BCSC promulgated a policy requiring its employees to address each student using the name listed in the school’s “PowerSchool” database, thus providing an avenue for transgender students to be recognized by gender-affirming names and pronouns. Such a policy is supported by the scientific literature, the consensus of medical and mental health professionals, and the recommendations of national organizations such as NASW and AAP. It is also consistent with BCSC’s mission, which is to “provide, within a *secure* environment, an engaging, relevant educational program with academic opportunities for *all* students to pursue their maximum intellectual potential” and “[s]ocial and physical opportunities” that will encourage students to “become well-rounded individuals.”⁵⁹

⁵⁷ Doc. 159 at 44.

⁵⁸ Doc. 120-1 at 2; *see also* App. Doc. 17 at 7.

⁵⁹ *BCSC Mission Statement*, *supra* note 13 (emphasis added).

Mr. Kluge's requested accommodation,⁶⁰ by contrast, contradicts scientific consensus and poses a direct threat to BCSC's mission. The accommodation would fail to affirm transgender students' gender identities, and would in fact have the effect of singling out and stigmatizing transgender students, leading to grave physical and mental health risks for these students. These risks are underscored by the experiences of transgender students at Brownsburg High School, who reported feeling dehumanized, alienated, and targeted as a result of Mr. Kluge's refusal to call them by their gender-affirming names and pronouns.⁶¹ Transgender students impacted by Mr. Kluge's requested accommodation have quit extracurricular activities and even changed high schools altogether.⁶² These outcomes do not align with BCSC's mission to provide *all* of its students with a secure environment in which they can reach their maximum intellectual potential and become well-rounded individuals. Accordingly, the District Court correctly concluded that Mr. Kluge's requested accommodation resulted in an undue hardship to BCSC.

IV. CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court affirm the District Court's Order and Judgment granting BCSC's Motion for Summary Judgment and denying Mr. Kluge's Motion for Partial Summary Judgment.

⁶⁰ App. Doc. 17 at 10–11 (describing Mr. Kluge's requested accommodation).

⁶¹ Doc. 159 at 12–14.

⁶² *Id.*

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Respectfully submitted,

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I hereby certify that on November 8, 2021, I electronically filed the foregoing **BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF SOCIAL WORKERS AND ITS INDIANA CHAPTER; AMERICAN ACADEMY OF PEDIATRICS; INDIANA CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS; AMERICAN MEDICAL ASSOCIATION; AND INDIANA YOUTH GROUP, INC. IN SUPPORT OF DEFENDANT-APPELLEE BROWNSBURG COMMUNITY SCHOOL CORPORATION AND AFFIRMANCE** with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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