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Via Email and First Class Mail

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Re: Pentucket High Graduation Caps and Gowns - G.L. c. 76, § 5

Dear Pentucket Regional High School Officials:

I am writing on behalf of the American Civil Liberties Union of Massachusetts (“ACLUM”) to provide some legal background concerning what I understand is an ongoing discussion about moving to having all students wear the same colored graduation gowns and stoles in order to eliminate gender and gender identity issues and promote inclusion. The current policy is to have students choose between white or green gowns, even though green has long been associated with males and white with females and in fact such alignment was specifically required until recently.

Please be advised G.L. c. 76, § 5, as amended, provides in pertinent part that “[n]o person shall be ... discriminated against ... in obtaining the advantages, privileges ... of [a] public school on account of ... gender identity”

As we understand it, there is a long history at Pentucket Regional High School of “male” students being assigned green gowns and caps and “female” students being assigned white gowns and caps. Apparently, students are now allowed to choose between the two and are not required to wear a gown assigned by apparent binary birth gender, but still can choose only between the two options long associated with male and female birth genders.

As we understand it, the school issues only either green or white gowns and matching caps and almost all students who identify as “male” still select green and those who identify as “female” select white.

This situation leaves transgender and non-binary students with the option only of choosing between two colors, each of which is associated with a binary gender identity. It also leaves transgender and non-binary students at risk of harassment or bullying if they choose the color that other students feel is not accurately associated with their apparent gender. As I understand it, at least one non-binary student has felt compelled to seek counseling over this issue and the dilemma presented by this choice.

As a result, we believe this arrangement likely discriminates against transgender and non-binary students in obtaining the advantages and privileges of the school in violation of law. Indeed, the Department of Elementary and Secondary Education (“DESE”), in its guidance on G.L. c. 76, § 5, as amended, specifically noted that the law requires adjustments to gender-based graduation cap and gown policies, and spoke favorably about policies designating the same color caps and gowns for all students. <http://www.doe.mass.edu/sfs/lgbtq/GenderIdentity.html>, page 5.

The school’s gender-associated gown colors may also raise issues of gender discrimination under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681.

The provisions of G.L. c. 76, § 5 are enforceable prospectively through an action for declaratory injunction, pursuant to G.L. c. 231A; through the courts’ general equity jurisdiction, G.L. c. 214, § 1, *see, e.g., Ames v. Town of Wayland*, 32 Mass. L. Rptr. 325, 2014 WL 5307908 *3 (Mass. Sup. Ct. 2014); and, to the extent damages are being sought, pursuant to G.L. c. 76, § 16. *See Goodwin v. Lee Public Schools*, 475 Mass. 280 (2016). In addition, to the extent that students are required by individual school officials, upon threat of sanction, to conform to the discriminatory cap and gown policy, actions against those officials in their individual capacities may be brought pursuant

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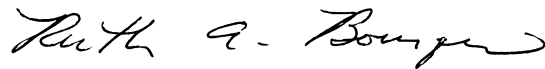
to the Massachusetts Civil Rights Act. *See Doe v. D'Agostino*, 367 F. Supp. 2d 157 (D. Mass. 2005).

For these reasons, we ask that Pentucket Regional High School promptly and in time for graduation 2020, designate that all students will wear the same color caps and the same color gowns, which could still reflect the school colors. For instance, everyone could wear green gowns and caps with white tassels and/or sashes, green gowns and white caps with green tassels, or white caps and gowns with green tassels and sashes, etc.

Not only will this bring Pentucket Regional schools into compliance with the law and avoid unlawful discrimination, it will ensure that all students feel welcome and fully included. The right and lawful thing needs to be done here regardless of whether some members of the community object to the loss of "tradition."

Please feel free to contact me with any questions concerning this letter. We hope to hear from you soon that this issue is resolved.

Sincerely,

A handwritten signature in black ink that reads "Ruth A. Bourquin". The signature is written in a cursive style with a large, sweeping flourish at the end.

Ruth A. Bourquin