December 2, 2014

VIA E-MAIL (boe@shenet.org)

Shenendehowa Board of Education
Five Chelsea Place
Clifton Park, NY 12065

Re: BOE Policy 5645
BOE Regulation 5645R
Subject: Use of Bathroom and Locker Room Facilities

Dear Members of the Board:

New Yorkers for Constitutional Freedoms (NYCF) is an advocacy organization that represents the evangelical Christian community within the State of New York. Many of our supporters reside in the Shenendehowa Central School District. We respectfully submit this open letter to express concerns regarding the above-referenced policy and regulation in anticipation of this evening’s Board meeting, when both documents are scheduled for the Board’s consideration.

Our concerns about the proposed policy and regulation center on the provisions allowing high school students who identify as members of the opposite sex to obtain permission to use opposite-sex restrooms and locker rooms. Allowing the use of opposite-sex restrooms and locker rooms by students creates major issues as to student privacy and safety, and opens a Pandora’s Box of problems that could and should remain closed. While allowing use of opposite-sex restrooms and locker rooms might make the very few Shenendehowa students who identify as members of the opposite sex feel more comfortable, the negative effects of this decision would far outweigh any positive impact that it might have. Being required to disrobe in front of a member of the opposite sex could cause students unnecessary anxiety during a key stage of their development, could unnecessarily sexualize a locker room environment, and could actually invite taunting and bullying to take place. Furthermore, allowing a teenaged girl to undress in the boys’ locker room raises red flags in regard to student safety. If the Board truly believes that it is appropriate and not harmful to allow opposite-sex teens to undress in the same room, the logical extension of this approach would be to make all restrooms and locker rooms unisex. If the Board does not believe that this practice is appropriate and not harmful, it should not make an exception for students who identify as members of the opposite sex.

In addition to our major concern regarding opposite-sex restroom and locker room use, we are also concerned about the following issues:

- The proposed BOE Regulation 5645R creates a mechanism for staff members who identify as members of the opposite sex to obtain permission to use opposite-sex restrooms and locker rooms. NYCF is unaware of any provision of state or federal law that could be
construed to require schools to allow this. Furthermore, the regulation is silent as to whether a staff member who identifies as a member of the opposite sex could be assigned to supervise students in an opposite-sex locker room. We believe that allowing this type of supervision would be both ill-advised and unnecessary.

- The regulation recites that requests for permission for opposite-sex bathroom use would be evaluated according to several criteria, including “the protection of privacy for all students and staff members” and “the necessity to protect the safety and dignity of all the students and staff involved.” If these criteria were to be truly and fairly applied, no student or staff member would ever be allowed to use an opposite-sex restroom or locker room.

- The policy and the regulation make the use of a single-user bathroom and/or alternative changing facility the default approach to resolving restroom and locker room issues for students who identify as members of the opposite sex. The policy and the regulation fail to state why this accommodation is not sufficient, or why it would ever be necessary to go beyond this accommodation by allowing opposite-sex restroom or locker room use.

We wish to emphasize that we do not fault the Board for its good-faith attempt to navigate the troubled waters into which state law has placed it. The chief problem here is with the Dignity for All Students Act (DASA), which contains confusing language that some might construe to require the type of action that the Board is considering. The solution to this problem is for the Legislature to clarify that DASA is not intended to require public schools to allow students who identify as members of the opposite sex to use opposite-sex restrooms and locker rooms. Whether or not the Legislature resolves the confusion that it has created, the Board—along with other school districts—should refrain from enabling students to utilize opposite-sex restrooms and locker rooms.

In closing, we respectfully urge the Board to refrain from adopting the proposed policy and regulation. At the very least, the proposed policy and regulation should be amended to address the concerns set forth above. For the good of the Shenendehowa student body, political correctness must give way to common sense.

Thank you for your consideration.

In His Service,

Rev. Jason J. McGuire
Executive Director