



November 1, 2012

VIA U.S. MAIL AND FACSIMILE TO (360) 867-6886

Art Costantino
Vice President of Student Affairs
The Evergreen State College
Library 3009
2700 Evergreen Parkway NW
Olympia, Washington 98505

VIA U.S. MAIL AND FACSIMILE TO (360) 867-6783

Matt Newman
Director of Recreation and Athletics
The Evergreen State College
College Recreation Center Room 210
2700 Evergreen Parkway NW
Olympia, Washington 98505

Re: Use of Evergreen Women's Locker Room by Biological Males

Dear Messrs. Costantino and Newman:

I write on behalf of parents who are concerned about the safety of their children when they use The Evergreen State College pool and locker rooms for swim practice. By way of introduction, Alliance Defending Freedom is an alliance-building legal ministry that defends and advocates for religious liberty and other fundamental rights.

Here are the facts. As you know, students from Capital High School and Olympia High School, as well as children with Evergreen Swim Club and the Aquatics Academy regularly use Evergreen's pool and locker rooms. Most of these students are minors, and range from ages 6 to 18. On several occasions recently, these children saw a naked man in the women's locker room sauna who was displaying his male genitalia. The children saw him through the sauna's glass door, which allowed him a plain view of the young girls while they were changing. The children notified their swim coach, who called the police.

Evergreen Police Services responded to the call and found Evergreen student Colleen Francis (age 45) to be the man in the women's locker room. Sources indicate that Francis believes he is a woman, even though he is biologically a man. According to the police report, despite Francis's obvious violation of Washington's indecent exposure statute, Wash. Rev. Code § 9A.88.010, the local district attorney declined to pursue charges. We are aware that Evergreen

intends to allow Francis to continue to use the women's locker room pursuant to its nondiscrimination policy.

There has been a problem for many years now of men using the women's locker room, especially the sauna. The ongoing problem, including the situation with Francis, regardless of his personal beliefs, endangers the young girls who use Evergreen's locker room and pool. If any harm befalls one of these students, Evergreen and its employees may be held liable for damages. Evergreen has an "affirmative duty to use ordinary care to keep the premises in a reasonably safe condition." *Van Dinter v. City of Kennewick*, 846 P.2d 522, 524 (Wash. 1993) (en banc). Allowing a grown man to use and expose himself in a women's locker room while young girls are changing demonstrates a clear failure to keep Evergreen's premises in a safe condition. Evergreen also may be liable for failure to enforce statutory requirements, such as violation of the indecent exposure statute, when it possesses actual knowledge of a statutory violation. *Bailey v. Town of Forks*, 737 P.2d 1257, 1260 (Wash. 1987), *amended by*, 753 P.2d 523 (Wash. 1988). Finally, placing someone in a known danger with deliberate indifference to her personal, physical safety violates her Fourteenth Amendment rights under the United States Constitution. *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1061 (9th Cir. 2006).

Clearly, allowing a person who is biologically a man to undress and expose himself to young girls places those girls at risk for emotional distress and harm. Any reasonable person would view this as dangerous to the young girls involved. The fact that this individual was sitting in plain view of young girls changing into their swimsuits puts you and Evergreen on notice of possible future harm. Moreover, Evergreen's recent installation of curtains in the locker room and request that the young girls change behind those curtains does not solve the problem. Evergreen continues to allow Francis, and apparently any man who claims to be a woman, to use its women's locker room and expose himself to minors without restraint.

The parents who contacted us are concerned for the safety of their children. Please notify me as soon as possible as to the measures Evergreen intends to take to assure the safety of these children.

Very truly yours,



David J. Hacker
Senior Legal Counsel
ALLIANCE DEFENDING FREEDOM

cc: Todd Nelson, Esq. (Washington licensed attorney)