

The Right to Pee – Introduction & Autreat’s Response

Never, never be afraid to do what’s right, especially if the well-being of a person or animal is at stake. Society’s punishments are small compared to the wounds we inflict on our soul when we look the other way.

Dr. Martin Luther King, Jr.

Autreat must develop a response to University of Pittsburgh’s policies. Not doing so will show that Autreat does not intend to remedy the discrimination faced by transgender, transsexual, and intersexed people (among others) at Autreat. Non-action, slow-action, or a lack of public notice of this action will be seen as Autreat being either uninformed or, even worse, unconcerned about discrimination experienced by our attendees.

Autreat discriminated against attendees in 2012. While we have no evidence that people had negative experiences, transgender attendees faced a different set of rules on the Johnstown campus than they experience almost anywhere else in the US. Whether they realized it, complained about it, or were affected by it in a concrete way is irrelevant – there was a policy in place by the venue Autreat pays that is discriminatory.

While Autreat did not intend to discriminate against attendees in 2012, it did so due to commitments previously made and late awareness about this policy, not by willful choice. The question for 2013 is:

Will Autreat discriminate in 2013?

Joel’s Response

I will be unable to assist with Autreat in any way, or even attend Autreat, unless something changes that allows Autreat to take place at a site that is not actively discriminating against people. I attended this year after learning of this policy due only to commitments I made, such as the commitment to present. But I also have to stand by my deep convictions and will not support with energy or money any event that discriminates against people.

I believe very strongly in non-discrimination on the basis of gender identity and expression. If Autreat plans to hold Autreat 2013 at Johnstown or any other U Pitt campus, I do not see how I can assist Autreat financially or with my time.

Definitions

For this letter, *trans people*, will refer to transgendered, intersexed, transsexual, and otherwise gender variant individuals. It is not meant to exclude, mislabel, or insult, but rather as a shorthand.

Different individuals will prefer different language. **Always** defer to the labels that someone uses about themselves rather than my language, if they conflict.

What is the Problem?

Written University of Pittsburgh Policy

The University of Pittsburgh has a non-discrimination statement¹ includes the following summary:

The University of Pittsburgh, as an educational institution and as an employer, values equality of opportunity, human dignity, and racial/ethnic and cultural diversity. Accordingly, the University prohibits and will not engage in discrimination or harassment on the basis of race, color, religion, national origin, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity and expression, genetic information, disability, or status as a veteran. The University also prohibits and will not engage in retaliation against any person who makes a claim of discrimination or harassment or who provides information in such an investigation. Further, the University will continue to take affirmative steps to support and advance these values consistent with the University's mission.

Note that **genetic information, gender identity and expression, and sex** are all defined as protected classes for the basis of Pitt's policies. In addition Pitt claims to have the policy of "[taking] affirmative steps to support and advance these values."

This is a good policy that meets most current best practice recommendations².

¹ University of Pittsburgh. *University of Pittsburgh Policy 07-01-03*. University of Pittsburgh, 2003. Retrieved 7/15/2012 from

<http://www.cfo.pitt.edu/policies/policy/07/07-01-03.html>

² Human Rights Campaign. *Employment Policies: Adding Gender Identity as a Protected Category*. Human Rights Campaign, 2012.

<http://www.hrc.org/resources/entry/employment-policies-adding-gender-identity-as-a-protected-category>

Unwritten University Policy Interpretation

Unfortunately, the University of Pittsburgh has chosen to undermine its' current policy by creating an unwritten interpretation of the policy that is discriminatory. While it's ironic that a non-discrimination policy would be interpreted in a way to allow for discrimination, that is exactly what University of Pittsburgh has done.

As part of an ongoing discussion on transgender inclusion/exclusion at UPitt, the student newspaper reports, "... the [Anti-Discriminatory Policy Committee], one of the standing committees of the University Senate, unanimously passed a resolution that would allow students to use bathrooms allocated to the gender they identify with, not their natal sex. The ADP committee does not make policy, but instead advises the University Senate."³

However, this recommendation was not acted upon. Instead, according to the above article and other sources, University administration indicated to the committee that a new standard would apply to trans students, and, thus, also to faculty and others using University facilities. This standard is seemingly simple: students must use gendered facilities that correspond to the sex indicated on their birth certificate.

Surprisingly, the representative of the University, speaking on behalf of both the legal and HR offices of the University, was kept anonymous by the request of the person delivering the new policy. However, this policy has been confirmed in other sources, such as Think Progress, which quotes a University spokesperson, Robert Hill on the policy⁴:

"As this [policy] applies to use of facilities, a female who identifies as a male, or a male who identifies as a female, may use restrooms or locker rooms of his or her declared gender identity after he or she has obtained a birth certificate designating the declared gender. This practice applies to student athletes as well."

This is clear articulation of the current policy, as it is enforced. While Pitt has a great non-discrimination policy, the interpretation, as articulated by a University spokesperson, counteracts the written policy and creates a dangerous environment for trans people.

³ Maier, Em; Shull, Andrew. "University Defines Gendered Facilities Policy." *The Pitt News*, Mar 21, 2012. Retrieved 7/15/2012 from

<http://pittnews.com/newsstory/university-defines-gendered-facilities-policy/>

⁴ Ford, Zach. "University of Pittsburgh Imposes Anti-Trans Bathroom Policy."

ThinkProgress, Apr. 6, 2012. Retrieved 7/15/2012 from

<http://thinkprogress.org/lgbt/2012/04/06/459541/university-of-pittsburgh-imposes-anti-trans-bathroom-policy/>

The Pittsburgh City Paper also confirms this story, indicating⁵:

University officials have not been eager to discuss the policy. Even the official who disclosed it to the ADPC, for example, has not been identified; ADPC members say the person requested to remain anonymous. Robert Hill, Pitt's vice chancellor of public affairs, declined to directly respond to an emailed list of questions about the policy. Instead, he emailed a statement that Pitt's non-discrimination policy, as applied to restrooms, means that a student or faculty member can use the bathroom of "his or her declared gender identity after he or she has obtained a birth certificate designating the declared gender."

This policy interpretation also represents a change from policy prior to 2012. Emilia Lombardi, a U. Pitt professor who researches health care discrimination, and who is also a self-identified transgender woman, has stated that her policy prior to this new interpretation was to simply use the women's room. She's continuing to do so, defiantly, but recognizes that this is a violation of the new interpretation⁶.

Why Is This a Problem?

There are several issues associated with preventing people from using bathrooms that match their gender expression.

The first issue is that of dignity. The dignity of an individual is best respected when that person's own self-identification is respected. When people are questioned for using a bathroom or other single-sex/gender facility, people are humiliated and being told – essentially – that their self-identification is not good enough. They need to prove it. This is devaluing that own individual's self-identity.

The second issue is equally serious: safety. Bathroom usage is dangerous for trans people. The web is filled with thousands of personal stories by trans people of assault, abuse, and harassment in bathrooms. According to *Peeing in Peace*, "In a 2002 survey conducted by the San Francisco Human Rights Commission, nearly

⁵ Young, Chris. "Pitt Bathroom Policy Surprises, Outrages Transgender Faculty, Students." *Pittsburgh City Paper*, Apr 4, 2012. Retrieved 7/15/2012 from <http://www.pghcitypaper.com/pittsburgh/pitt-bathroom-policy-surprises-outrages-transgender-faculty-students/Content?oid=1509064>

⁶ Rservern. "University of Pittsburgh Anti-Discrimination Fail." *Daily Kos*, Apr. 8, 2012. Retrieved 7/15/2012 from <http://www.dailykos.com/story/2012/04/08/1081672/-University-of-Pittsburgh-Anti-Discrimination-Fail>

50% of respondents reported having been harassed or assaulted in a public bathroom.”⁷

The third issue is related to both dignity and safety – confirming others’ perceptions of ones’ gender. Trans people find that others who aren’t sure of their “real” gender may watch which bathroom they use. The choice of a bathroom may confirm that the person is “really” the gender they claim to be when others observe the person entering the appropriate facility.

The forth issue is that it’s difficult to determine sex. Is it genitals? What about someone with mutilated genitals? Or a person with no genitals? Or a person with ambiguous genitals? Is it Chromosomes? Is a heterosexually married AIS woman with XY chromosomes, a typically appearing vagina, breasts, an “F” on her birth certificate, and a female gender identity suddenly a male when her doctor discovers a reason for her infertility in adulthood? Is it the birth certificate? Is that true even if the person is born in Argentina, where a birth certificate can be changed simply for the asking (or Illinois, where three transgender people have succeeded in changing their birth certificate without sex transition surgery⁸)? Or in Ohio where even people who have errors on their birth certificate (sometimes people do hit “M” instead of “F” by mistake) cannot change their birth certificate? Science tells us that it isn’t simple to determine if someone is male or female (or intersexed for that matter). Policies should mesh with reality, and when they don’t, it’s not reality that should be changed!

The reality of the safety and dignity issues is such that no one solution is appropriate for all trans people (or, even for all non-trans people, as not all non-trans people appear “properly” feminine or masculine). Some trans people simply don’t use public facilities, while others search out neutral facilities, yet others search out facilities that match their gender identity and/or expression, and still others will use facilities matching their sex. The reasons are varied and personal, and often deal with personal risk assessment. It is not reasonable for others to decide what risk is and isn’t acceptable for a trans person (any bathroom choice presents risk). Rather, the trans person, who is most affected by negative reactions of others, needs the ability to chose the appropriate facility.

It’s also not reasonable to assume that other people will be comfortable with a person using a facility that matches a person’s sex. For instance, it’s not uncommon for a transwoman using the men’s room to not only experience significant personal

⁷ *Peeing in Peace: A Resource Guide for Transgender Activists and Allies*. Transgender Law Center, 2005. Retrieved 7/15/2012 from

<http://transgenderlawcenter.org/pdf/PIP%20Resource%20Guide.pdf>

⁸ “State Issues New Birth Certificate to Three Transgender ACLU Clients.” *American Civil Liberties Union of Illinois*, July 19, 2011. Retrieved 7/29/2012 from

<http://www.aclu-il.org/state-issues-new-birth-certificates-to-three-transgender-aclu-clients/>

risk, but also cause others in the bathroom discomfort! Men in the bathroom may, upon seeing a woman in the men's room, feel very uncomfortable using the facilities!

In fact, even when a person has unambiguous genitals, unambiguous identification, unambiguous birth sex, and a self-identity that matches these other items, people can have trouble determining which bathroom someone should use. Khadijah Farmer was ejected from a New York City restaurant in 2007 for using the "wrong" bathroom (she used a women's room). She later won a \$35,000 lawsuit against the restaurant that improperly ejected her from the woman's room (including having a male bouncer enter the women's bathroom to eject her)⁹. It should be noted that Khadijah's original birth certificate and sex organs from birth are female (she was the first non-transgender client represented by the Transgender Legal Defense and Education Fund)¹⁰. She also has related that these interactions are humiliating and degrading, and would be for anyone.

What is a Good Policy?

The world's athletic organizations typically understand gender issues better than the general population. Their policies form good models. For instance, the US National College Athletic Association, a group of US colleges that includes almost all higher education institutions as members, has an excellent resource on transgender athletes. It recognizes that transwomen should be allowed to compete as women, and doing so can be done without compromising the integrity of women's sports. In addition to the binding rules that allow transgender and intersexed athletes to compete, the NCAA also provides guidelines on facility use. While these are voluntary guidelines, the NCAA, and, thus, the majority of higher education institutions in the US approved these guidelines by proxy. The NCAA also might be considered one of the most educated organizations on the topic of single-sex/gender facility use in the university setting, since most sports utilize single-sex/gender changing facilities. The guidelines include, among others¹¹:

Changing Areas, Toilets, Showers – Transgender student-athletes should be able to use the locker room, shower, and toilet facilities in accordance with the student's gender identity. Every locker room should have some private, enclosed

⁹ Lee, Jennifer 8. "Women Wins a Settlement Over Her Bathroom ouster." *The New York Times*, May 14, 2008. Retrieved 7/29/12 from <http://www.nytimes.com/2008/05/14/nyregion/14gender.html>

¹⁰ "Khadijah Farmer Interview on Gay USA – Part Three." Retrieved from YouTube on 7/29/12 from <http://www.youtube.com/watch?v=KvCZphWHgTY&feature=relmfu>

¹¹ NCAA Office of Inclusion. *NCAA Inclusion of Transgender Student-Athletes*. NCAA, 2011.

changing areas, showers, and toilets for use by any athlete who desires them. When requested by a transgender student-athlete, schools should provide private, separate changing, showering, and toilet facilities for the student's use, but transgender students should not be required to use separate facilities.

...

Hotel Rooms – Transgender student-athletes generally should be assigned to share hotel rooms based on their gender identity, with a recognition that any student who needs extra privacy should be accommodated whenever possible.

In addition to the NCAA policies, many states and municipalities (including Pittsburgh, ironically) have passed laws that respect the gender identity of all people, allowing people to use facilities consistent with their gender identity and/or expression. Some states, such as Indiana, Iowa, Louisiana, Nebraska, Ohio, Oklahoma, and Texas recognize gender identity disorder as a disability and provide disability-related protections for many trans people under disability law¹². Simply put, this is no longer a cutting edge area of diversity policy. There are no more trailblazers in this area of the law!

Good policy will not involve mandated “separate but equal” facilities or require birth certificate or other proof of gender/sex, which is problematic for both scientific reasons (hence why the Olympics no longer tests the sex of all athletes) or risks treating some people differently than others during implementation unless it is required for all (as the Pitt News satire of the policy¹³ describes). I find it highly unlikely that I would be asked to produce my birth certificate, for instance – but a trans attendee very well may.

Where did Pitt's Policy Come From?

In late 2011, Johnstown junior Seamus Johnson was arrested and charged for using the men's locker room. He continued to use the men's facilities, at which time Johnstown officials asked for an amended birth certificate indicating that he was male. When Seamus did not produce a birth certificate of any kind, but continued using the men's facilities, he was expelled (officially for disorderly, lewd, or indecent

¹² *Know Your Rights – Transgender People and the Law*. ACLU, 2009. Retrieved 7/16/2012 from http://www.aclu.org/hiv-aids_lgbt-rights/know-your-rights-transgender-people-and-law

¹³ Hickey, Tracey. “April Fools: Transgender Bathroom Policy Works.” *The Pitt News*, Apr. 1, 2012. Retrieved 7/15/2012 from <http://pittnews.com/newsstory/april-fools-transgender-bathroom-policy-works/>

behavior; failing to comply with lawful directions of a University official, and entering University facilities without authorization)¹⁴.

In addition to the expulsion, the criminal charges raise serious concerns as they reflect the understanding of the law by the University police in Johnstown. A trans person using the “wrong” facility (according to either perception of the police and/or their birth certificate) would face the possibility of similar charges as Seamus – in particular, lewd or indecent behavior, a sex charge. As a sex charge, it can have serious effects on a person’s private and public life.

In early 2012, shortly after Seamus was expelled, the Anti-Discrimination Policy Committee passed a non-binding unanimous resolution indicating that they believed the expulsion violated UPitt’s non-discrimination policy and that people should be allowed to use facilities that match their gender identity¹⁵.

Shortly afterwards, as discussed previously in this letter, the University articulated its’ policy of requiring birth certificate proof of sex/gender. No action was taken on the resolution from the Anti-Discrimination Policy Committee.

What is U Pitt Doing Now?

Later, the Senate President announced his intention to create an ad-hoc committee to address transgender policies¹⁶. However, this committee has not yet been fully formed and has not yet met. It is hoped that this committee will determine the direction the school should go sometime over the course of the next academic year. That said, it appears that the University dismissed the recommendations of their own expert faculty on the Anti-Discriminatory Policy Committee and created this new committee, without a single transgender member, because the Anti-Discriminatory Policy Committee’s recommendations went against the desires of others in University leadership. From the article announcing the intent to create the ad-hoc committee:

¹⁴ “Trans ex-student files discrimination complaint.” *University Times*, April 19, 2012. Retrieved 7/15/2012 from <http://www.utimes.pitt.edu/?p=20840>

¹⁵ Young, Chris. “Pitt Bathroom Policy Surprises, Outrages Transgender Faculty, Students.” *Pittsburgh City Paper*, Apr 4, 2012. Retrieved 7/15/2012 from <http://www.pghcitypaper.com/pittsburgh/pitt-bathroom-policy-surprises-outrages-transgender-faculty-students/Content?oid=1509064>

¹⁶ Maier, Em. “Pitt to Form Ad Hoc Committee for Transgender Policies.” *The Pitt News*, Apr. 18, 2012. Retrieved 7/15/2012 from <http://pittnews.com/newsstory/pitt-to-form-ad-hoc-committee-for-transgender-policies/>

"I want neutral and intelligent people who are willing to objectively look at the issue to allow transgender individuals to thrive at the University," [University Senate President] Pinsky said.

This indicated that Pinsky felt that the Anti-Discriminatory Policy Committee's membership was either non-neutral, non-intelligent, or unwilling to objectively look at the issue. One is forced to wonder how he let these unintelligent, biased people continue to meet for so long before mentioning this – after all, his job as president is to ensure that the committees function well and are staffed with the best possible members!

A University Times article¹⁷ sheds further light on this new committee and the likelihood of it reaching non-discriminatory conclusions:

Jane Feuer, chair of the Senate anti-discriminatory policy committee, said, "Dr. Pinsky had asked me to recommend people for the ad hoc committee. Lots of faculty who knew and researched transgender issues from a number of areas — social work, public health, the law school — had volunteered," Feuer told the University Times. "Now he's made a complete turnabout. He now wants an ad hoc committee of uninformed faculty. This is a direct insult to my committee. In doing this, he has disenfranchised the committee, which has served as a watchdog for minority rights at Pitt since the early 1990s."

In addition, from the same article, other members of the Anti-Discriminatory Policy Committee speak out about the need for further research with the new ad-hoc committee that was formed:

ADPC pro tem member Deborah Brake, who specializes in discrimination law, told the University Times: "On the specific issue of restroom use, there is simply no need for further 'study.' Until very recently, the practice at the Oakland campus was to allow transgender students to use the restroom according to their lived gender identity, as long as they had a supporting letter from a health care provider. The newly announced 'policy' [by the Office of General Counsel] — which is unwritten — overriding that practice should be reversed immediately."

This committee is currently not meeting and will not meet until some discrimination complaints brought by the student LGBT organization and the expelled student are settled. This could be viewed cynically as retribution for bringing a discrimination complaint, however the University has stated that they will not revisit policy while litigation is underway¹⁸. Interestingly, the same article that discusses this policy

¹⁷ "Senate Ad Hoc Committee to Look at Transgender Issues." *University Times*, Apr. 5, 2012. Retrieved 7/15/2012 from <http://www.utimes.pitt.edu/?p=20578>

¹⁸ "Creation of Transgender Committee Put on Hold." *University Times*, May 17, 2012. Retrieved 7/15/2012 from <http://www.utimes.pitt.edu/?p=21319>

being put on hold mentions previous LGBT legal battles where, in the midst of litigation, a committee was formed and policy was changed. I leave it to the reader to decide why U Pitt may be delaying the committee's work. That said, the previous legal battle had the distinction of being, at the time of action, the ACLU of Pennsylvania's longest-running legal battle¹⁹. Clearly, U Pitt is willing and able to battle legally over the long haul before making changes, and thus Autreat should not expect this to be resolved this academic year.

Current Discrimination Case Litigation

Currently, there are two complaints being lodged with the Pittsburgh Commission on Human Relations. These complaints deal with the expulsion of Seamus from the University for using the "wrong" locker room and the policy's general effects on the University community.

The director of the commission has stated:

*"According to the city code, 'Sex is the gender of a person, as perceived, presumed or assumed by others, including those who are changing or have changed their gender identification,'" Morrison said. "From what it sounds like, the University is not in accord with [the code]."*²⁰

Ignoring the confusion in the Pittsburgh city code between sex and gender, it is clear that there may be substance to the idea that U Pitt is violating, at the least, Pittsburgh city code. However, the commission has not yet issued any rulings in either case and both are being contested by the University.

According to *The Pitt News*, the University has contested Seamus Johnson's complaint on the basis of the harm having occurred in Johnstown, not Pittsburgh. The University is contesting the complaint brought by the Rainbow Alliance (U Pitt's LGBT student organization) because the complaint lacks "actual instances of alleged discrimination."²¹

¹⁹ *ACLU Ends Discrimination Lawsuit Against the University of Pittsburgh Following Decision to Provide Equal Benefits to Gay Employees*. ACLU, 2004. Retrieved 7/15/2012 from http://www.aclu.org/lgbt-rights_hiv-aids/aclu-ends-discrimination-lawsuit-against-university-pittsburgh-following-decisi

²⁰ Maier, Em. "Pitt's Transgender Policy Conflicts with City, County Policies." *The Pitt News*, Apr. 2, 2012. Retrieved 7/15/2012 from <http://pittnews.com/newsstory/pitts-transgender-policy-conflicts-with-city-county-policies/>

²¹ Barney, Gwenn; Maier, Em. "Pitt Issues Responses to Transgender Complaints." *The Pitt News*, Jun. 5, 2012. Retrieved 7/15/2012 from <http://pittnews.com/newsstory/pitt-issues-responses-to-transgender-complaints/>

It's unknown whether U Pitt or the complainants will prevail, but any action may take substantial time. In addition, Pitt defending itself using technicalities does not indicate that Pitt is committed to following even its' own non-discrimination policies.

Finally, this delay will increase – beyond a year most likely – the time before the ad-hoc committee can make a decision on Pitt's formal policies.

Why Should Autreat Care?

This is not about some internal policy struggle at U Pitt. If it was, I could accept that institutions do things that not everyone likes. However, this policy has significant affects on Autreat attendees and Autreat paying the University of Pittsburgh will contribute to an organization that has taken a strong stand against some members of the Autreat community, particularly trans people.

There are three reasons Autreat should care:

1. Some trans people attend Autreat. Autreat should provide a safe, non-discriminating environment to all attendees. The current policy exposes trans people and others to risk of arrest, humiliation, and other abuse.
2. It's the right thing to do. We claim to believe in respecting people's self-identity.
3. Autreat has a voice that can speak either in support of the status quo at U Pitt or against it.

What Should Autreat Do?

Autreat should find a new venue.

In private correspondence with a person familiar with situation at U Pitt:

I wonder why any transgendered person would want her or his money to go to such a transphobic institution. It would be like a black person in the 1960's going to segregated institution and hoping they would be spared the Jim Crow treatment because they were paying, short term guests.

It's acceptable for us, in my eyes, to choose a venue that lacks any (oral or written) policy on trans people, as without evidence to the contrary, the venue very well may be extremely inclusive. It also gives our attendees the opportunity to set expectations for both themselves and future trans people that the venue may encounter in the future, without having the hands of the venue bound by a formal policy (or interpretation!).

However, preferable would be a location that has a good, formal non-discriminatory policy that includes positive provisions about single-sex/gender facility usage.

While I believe our only real choice, if we want to be non-discriminatory, is to choose a new venue, I believe staying at a University of Pittsburgh campus may be acceptable, if one of the following occurs:

1. An in-force judicial order is issued that forces Johnstown to comply with Title IX, Pittsburgh's non-discrimination ordinance, or other non-discrimination law – with the specific outcome of allowing facility use based on gender identity/expression. This is unlikely, however, since the legal challenges currently underway do not have a guarantee of success and such litigation takes significant time.
2. A binding statement from the University that people can use single-sex/gender facilities that match a person's gender identity, not their birth certificate. This statement needs to be specific, not simply a reiteration of the non-discrimination policy. It needs to specifically mention the things that were mentioned in their unwritten policy interpretation and apply to the entire University.

What is not acceptable if we remain at Johnstown is a statement that Johnstown has no discriminatory policy, since the policy does exist, albeit in an unwritten form. It's also evidenced by the actions that resulted in Seamus being expelled and charged criminally. In addition, it would be unacceptable to have a policy that limits fair treatment of our attendees to only certain areas of campus. The policy should apply to all attendees, both before, during, and after Autreat, on all areas of campus.

So, What Now?

My question to the Autreat Planning Committee:

Will you look for a new venue, or have you decided discrimination is okay?

I hope we do the right thing, not the convenient thing or the comfortable thing.

I have a very strong feeling that the opposite of love is not hate – it's apathy.

Dr. Leo Buscaglia