

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

TAMER MAHMOUD, et al.,

Plaintiffs,

v.

MONIFA B. MCKNIGHT, in her official
capacity as Superintendent of the
Montgomery Board of Education, et al.,

Defendants.

Case No. 8:23-CV-01380-TJS

**DECLARATION OF
ERIC BAXTER IN SUPPORT OF
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

I, Eric Baxter, declare as follows:

1. I am Senior Counsel at the Becket Fund for Religious Liberty. I represent Plaintiffs in this matter.
2. On June 1, 2023, I received link a copy of the June 2023 edition of the Gator Gazette, a publication of Greenwood Elementary School, which is part of the Montgomery County, Maryland public school system. A copy of the June 2023 newsletter can be found here: <https://perma.cc/D7S5-582P>.
3. The first article in the newsletter is entitled "June is Pride Month!" The article states that "the Greenwood community ... will be participating in 'Reading the Rainbow' month."
4. The article further states that, "[f]or each day in June, classrooms will read an inclusive, LGBTQ+ friendly book" followed by a "community circle discussion."
5. The article includes the following link to a Google document identifying the story books to be read as part of "Reading the Rainbow": <https://shorturl.at/xzES1>.
6. Attached as **Exhibit 1** is a true and accurate copy of one of the books on the list entitled *What Are Your Words?*

7. The book is also recommended by the School Board via its website here: <https://perma.cc/Y44H-TWBF> (Resources for Students Staff and Parents/Affirming LGBTQ+ Young Adults/Elementary Specific).

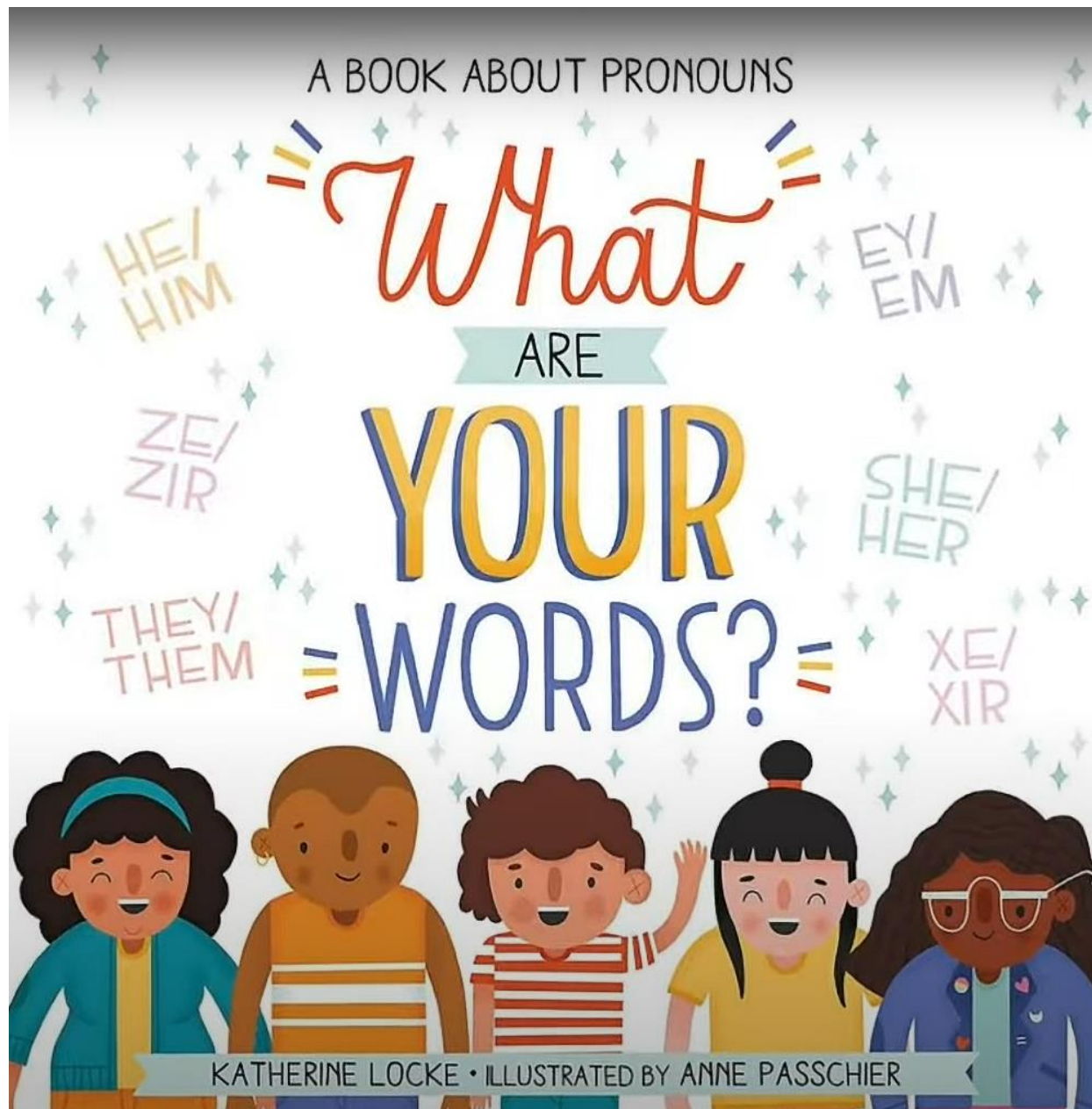
8. Attached as **Exhibit 2** is a true and accurate copy of another book recommended on Defendants' website entitled *Jacob's Room to Choose*.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 12th day of June, 2023.


Eric S. Baxter

Exhibit 1





Lior is my favorite uncle.



They have many beautiful, colorful hats.



The garden at their house is magical.



They are a biologist and look at teeny-tiny living things under a microscope.

I learn a lot from Uncle Lior, like that people can be described by more than what they look like or what they do. In fact, there are lots of words to say who people are and how they feel. Some of those words are pronouns. Pronouns are words that can take the place of your name, like *I*, *me*, *you*, *she*, *he*, or *they*.



Uncle Lior knows how important *my* words are to me because I am always growing and changing, and some of my words change with me. So every time they visit they ask, "What are your words, Ari?"



Sometimes I know my words right away.

HAPPY! CREATIVE!
FUNNY! HE/HIM



Sometimes I have to think about my words.

THOUGHTFUL! ATHLETIC!
SILLY! SHE/HER



Sometimes I have to try my words out.

SLEEPY! CALM!
HONEST! EY/EM





Sometimes I just use
one set of pronouns.



Sometimes I change
my pronouns.



Sometimes I use all the
pronouns I can think of.

My pronouns are like the weather. They change
depending on how I feel.



AND THAT'S OKAY,
BECAUSE THEY'RE
MY WORDS.

This time when Uncle Lior asks about my words, I have
a problem.

"I don't know what words to use!" I cry. I can't decide
which pronouns fit today.

"That's okay," Uncle Lior tells me, their smile warm.
"You have all day to think about it!"

But I want to know my words *now*.
He and *him* feel squirmy and wiggly to me.
Those aren't right.





I'll have to think about my words later because it's time for Uncle Lior, my sister, Rachel, and me to head to our neighborhood's big summer bash. Summer is my favorite season, and barbeques are my favorite type of party!

Rachel dances and sings in the street, twirling around and making me laugh. Rachel has her own words. Her pronouns don't change, but sometimes she's quiet instead of loud. Today she is loud!



Mrs. Bolton walks behind us, laughing at her friend Charlie's joke. Mrs. Bolton's cat chases Charlie's little brown dog up and down the sidewalk. Mrs. Bolton and Charlie each have their own words too.

Our neighbor Anna tinkers with her car in the driveway. When I first met Anna, she had a different name and used different pronouns. But now she goes by Anna and uses *she* and *her* every day. She's my favorite neighbor. "I'll be there soon!" she calls.





Ava and George from the ivy-covered house are on their way to the summer bash.

"Nice to meet you, Lior!" Ava says.

"They are *Uncle Lior*," I explain proudly. Everyone laughs. Rachel laughs the loudest and turns to me.

"What are your words today, Ari?" she asks.



I think about my words.

She and *her* feel sharp and crackly to me.

Those won't work today.

WHY CAN'T I FIGURE
OUT WHICH WORDS
TO USE?
I WANT TO BE
ABLE TO SHARE
THEM WITH
EVERYONE.

When we arrive at the bash, we see our new neighbor.

"Hello! My name is Ari. What are your words?" I ask.

"Hi, Ari! I'm Avery, and I use *they* and *them*," they reply.

"Like my uncle Lior!" I say. "What are your other words?"

Avery thinks. "My other words are *teacher*, *friendly*, and *loyal*! What are *your* words?" Avery asks.

I scrunch my face. I thought I would know by now.

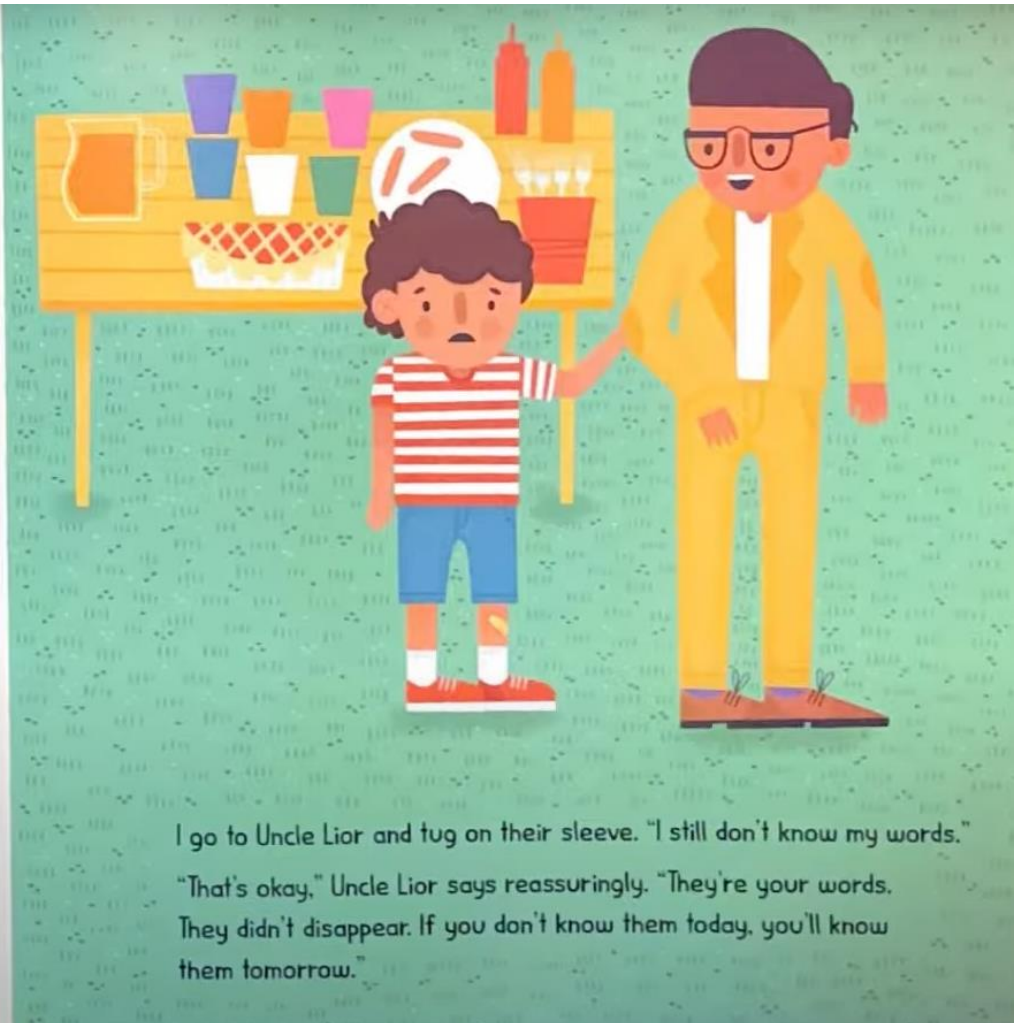
"I'm not sure what fits me today," I tell them.



I try out some other words.
Ey and *air* feel heavy and bumpy to me.
Those don't fit either!



"You'll figure it out," Avery tells me. "Sometimes it just takes patience."
But I don't want to be patient. It shouldn't take this long to find my words.
Everyone else seems to know theirs!



I go to Uncle Lior and tug on their sleeve. "I still don't know my words."
"That's okay," Uncle Lior says reassuringly. "They're your words.
They didn't disappear. If you don't know them today, you'll know
them tomorrow."



Soon, it's time for fireworks. I wait for the show to start,
just like I've been waiting all day to figure out my words.
Waiting makes me buzzy like a bee and makes my skin feel itchy.
When the first explosions finally burst in the sky, everyone gasps.
Suddenly I feel my words fall into place.

Sometimes I know my words right away.
Sometimes I have to think about my words.
Sometimes I have to try my words out.
But sometimes I have to wait for my words to find me.

I squeeze Uncle Lior's hand.
"Uncle Lior!" I whisper excitedly.
"What?" they ask.

There's another boom of fireworks, and colors race through the sky.
I point. "Those are my words! I'm like fireworks!"

IMPATIENT!
EXCITED!
COLORFUL!

And *they* and *them*
feel right today."

"Fireworks!" Uncle Lior says with a laugh.
They squeeze my hand back. "That's
definitely you, Ari."

My words finally found me!
They and *them* feel warm and snug to me.
These pronouns are perfect.







Exhibit 2

JACOB'S Room to Choose



Sarah and Ian Hoffman

Illustrated by Chris Case

JACOB'S Room to Choose



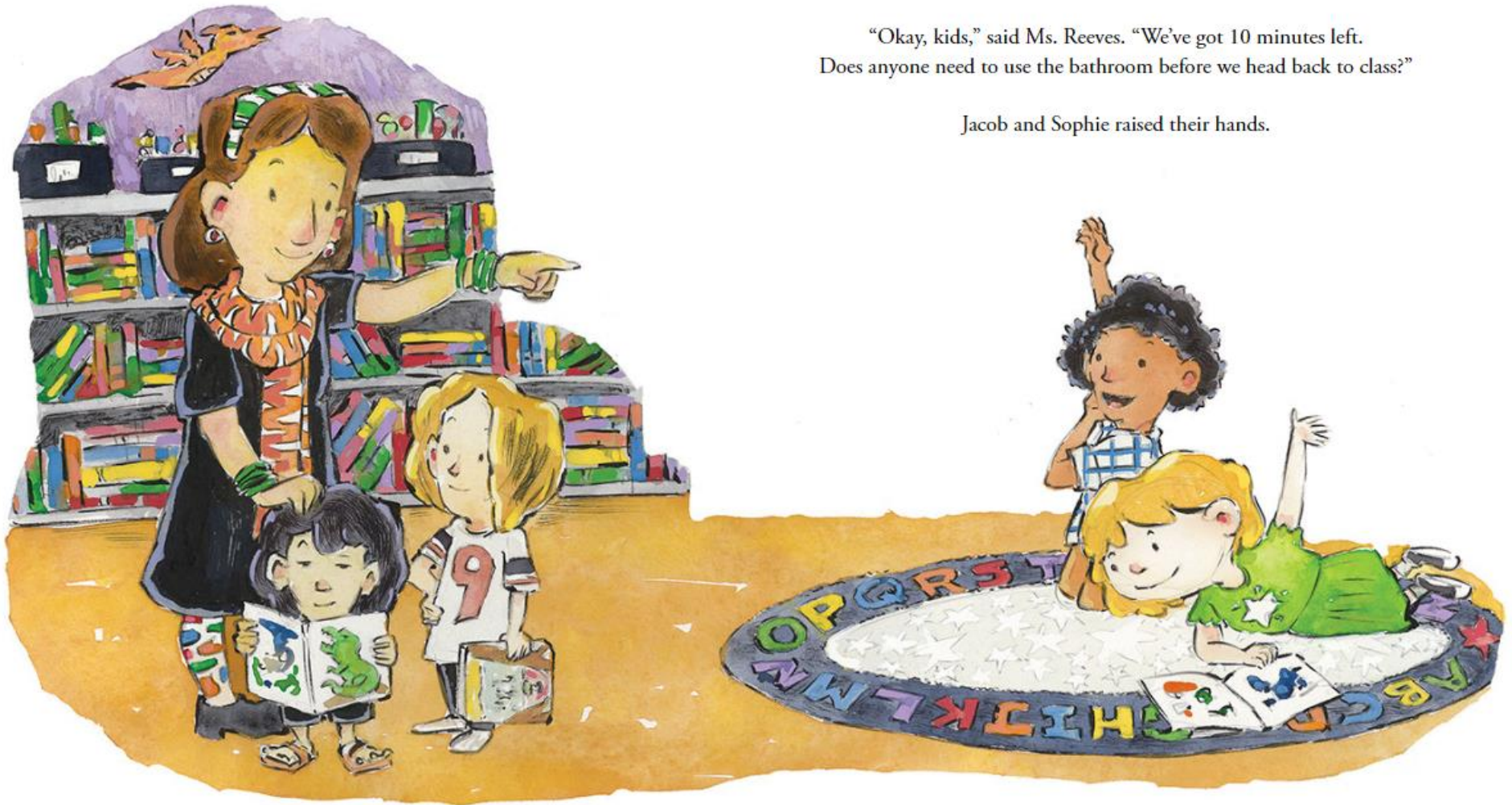
Sarah and Ian Hoffman

Illustrated by Chris Case

Magination Press • Washington, DC
American Psychological Association

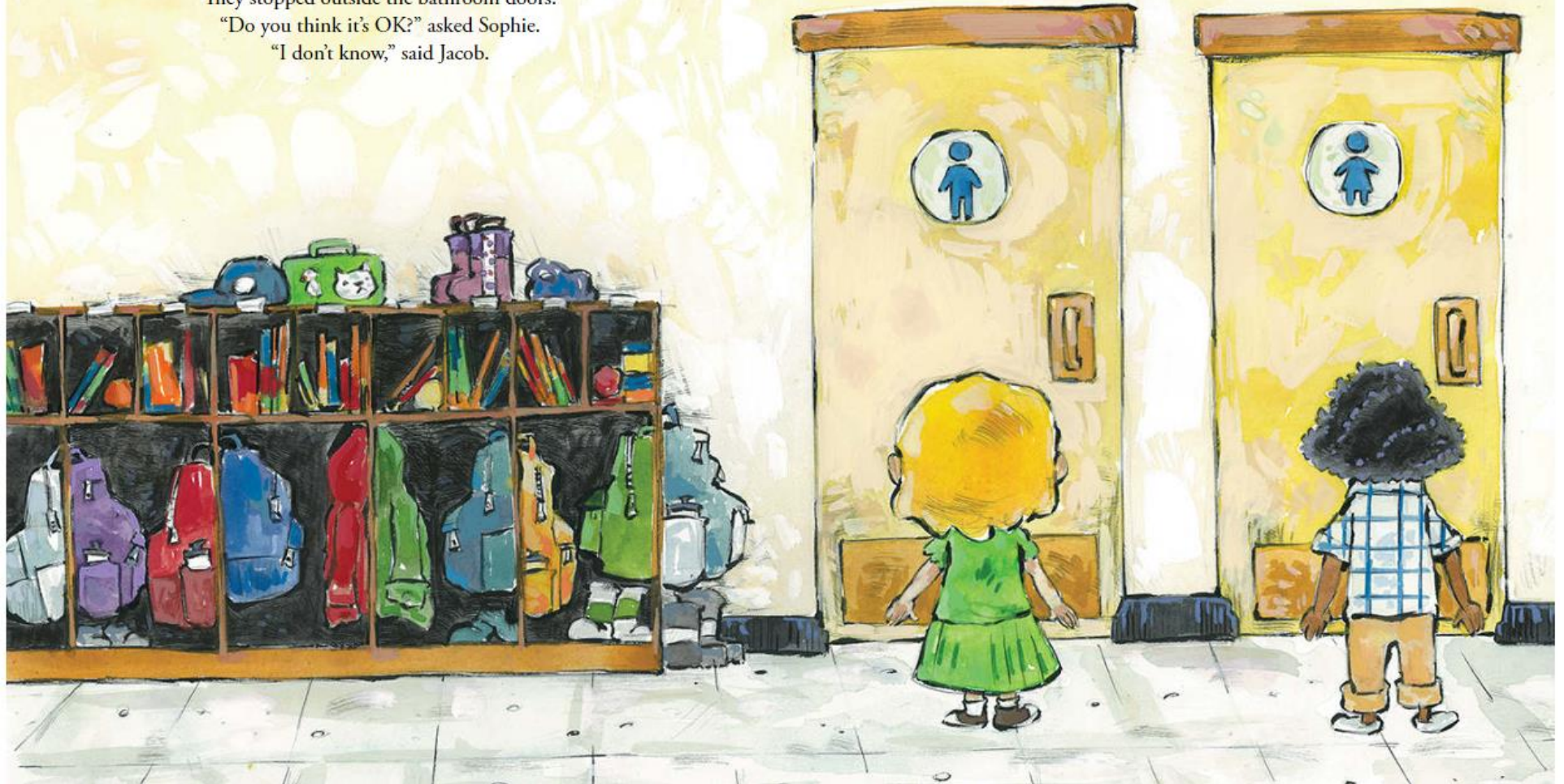
“Okay, kids,” said Ms. Reeves. “We’ve got 10 minutes left.
Does anyone need to use the bathroom before we head back to class?”

Jacob and Sophie raised their hands.

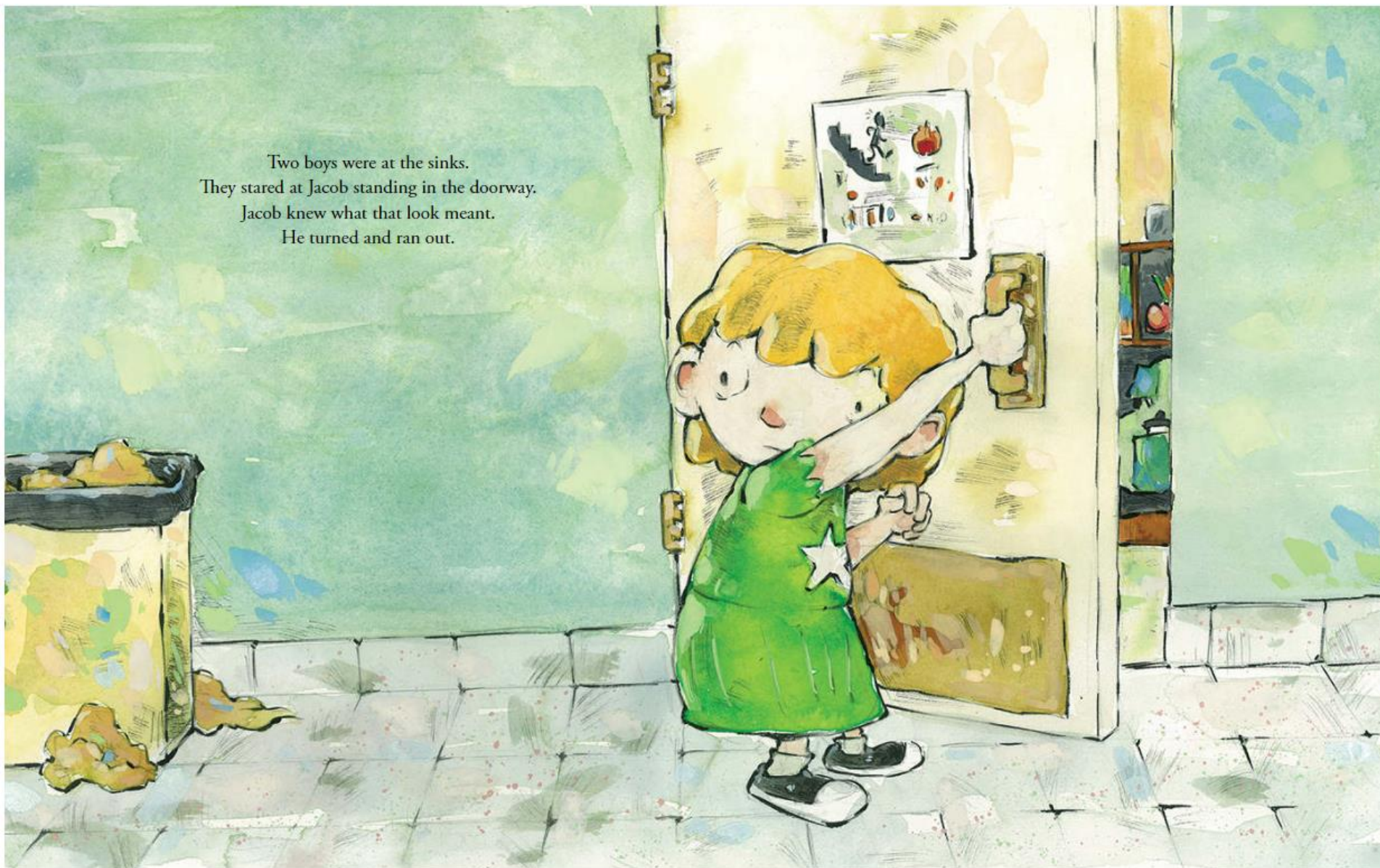


They stopped outside the bathroom doors.
"Do you think it's OK?" asked Sophie.
"I don't know," said Jacob.

Sophie walked through one door.
Jacob took a deep breath and walked through the other.



Two boys were at the sinks.
They stared at Jacob standing in the doorway.
Jacob knew what that look meant.
He turned and ran out.





Jacob stood in the hall, his heart pounding.
Just then Sophie ran out of her bathroom.

It was hard for Jacob to talk.

"Did you get chased out?"

Sophie nodded.

Back at the library, Sophie shifted from foot to foot.

"I need to use the bathroom," she said.

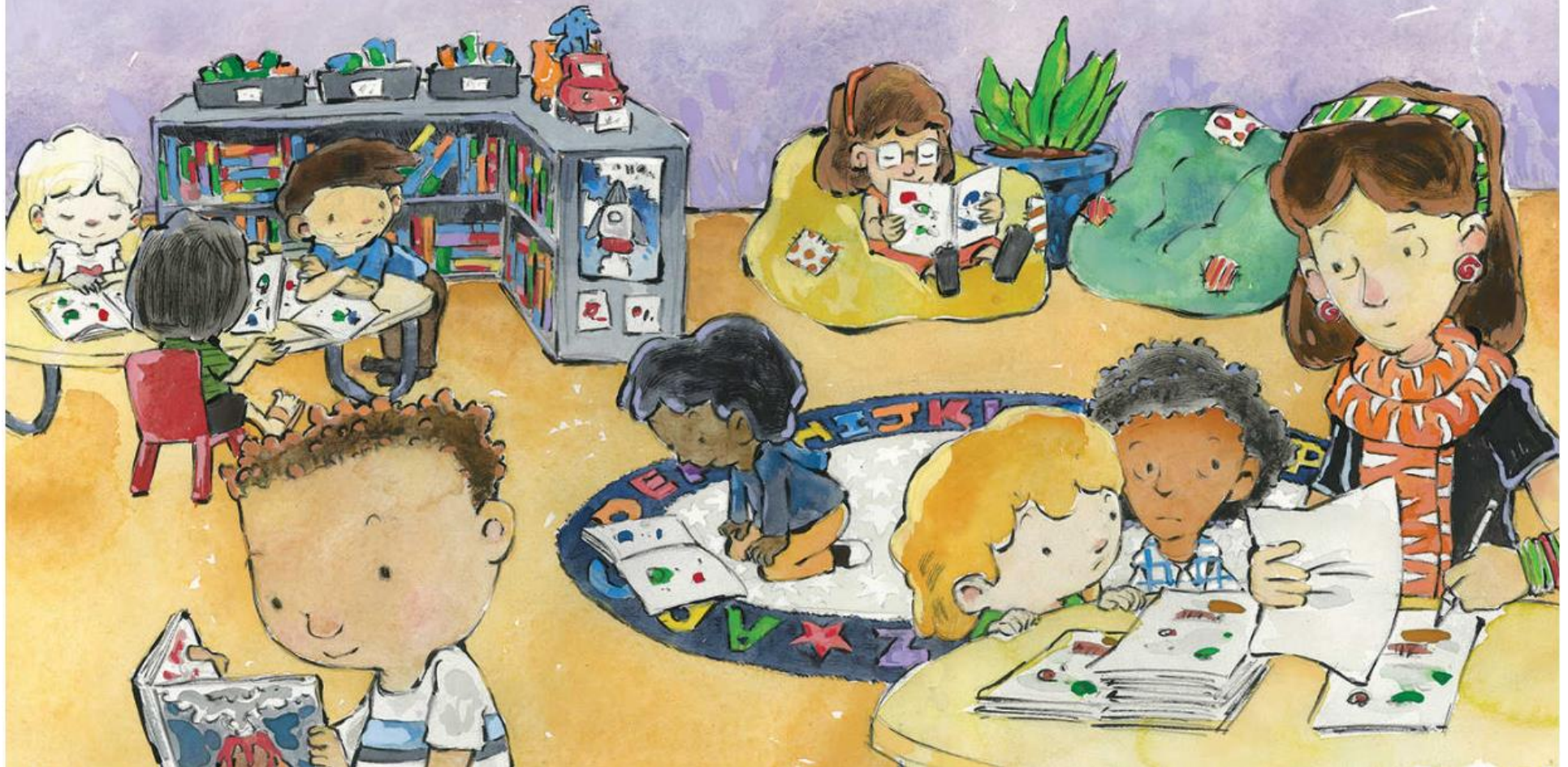
Ms. Reeves was confused.

"Didn't you and Jacob just go to the bathroom?"

Sophie squeezed her eyes shut against the tears.

"They wouldn't let her," said Jacob.

"They said she had to use the boys' room."



Ms. Reeves looked inside the bathroom. It was empty.
“Anybody in there?”
There was no response.
She waited in the hall while Sophie and Jacob went in.



“Better?” asked Ms. Reeves.

“Yes,” said Sophie.

“Has this happened before?”

Sophie and Jacob glanced at each other.



“Usually I don’t go at school,” said Jacob.

Sophie started to cry again. “It’s not fair,” said Sophie.

“No,” agreed Ms. Reeves. She gave them both a hug. “It isn’t.”



Back in the classroom,
Ms. Reeves drew on the board.
“What do these pictures mean?”
“Boys and girls!” the kids shouted happily.

“OK,” said Ms. Reeves,
“but how do you know?”
“The girl has long hair,” said Emily,
“and she’s wearing a dress.”
“The boy is wearing shorts,” said Noah.
“And a t-shirt.”

"Now I want each of you
to stand near the picture that
looks like you," said Ms. Reeves.

Jacob and Sophie looked at Ms.
Reeves. Ms. Reeves winked back.

"Hold on," called Ms. Reeves. "Noah, you
have long hair. That sign shows short hair.
And Emily, you're wearing pants, but the
person on that sign is wearing a dress."



Ms. Reeves scratched her head. "Why don't you switch places?"
Noah shrugged and walked to where Ms. Reeves pointed.



Emily looked at the group of boys.
"I don't want to stand there," she said.
"Why not?" asked Ms. Reeves.
"Because I'm a girl."





Ms. Reeves studied the kids again.
“You know what? A lot of you don’t look
like the signs. Let’s try this: look at the
person next to you and help them stand
next to people who look like them.”



Arguing and giggling, the kids
shuffled and reshuffled until
everyone found a place to stand.



Ms. Reeves pointed at the board.

"Are these pictures of what boys and girls really look like?"

"Yes," said Emily.

"No," said Sophie.

"Sometimes," said Jacob.

"I wonder," said Ms. Reeves, "if there is another way?"

Everyone has to use the bathroom, right?"

"Maybe the signs should be pictures of toilets!" shouted Noah.

Everyone giggled.

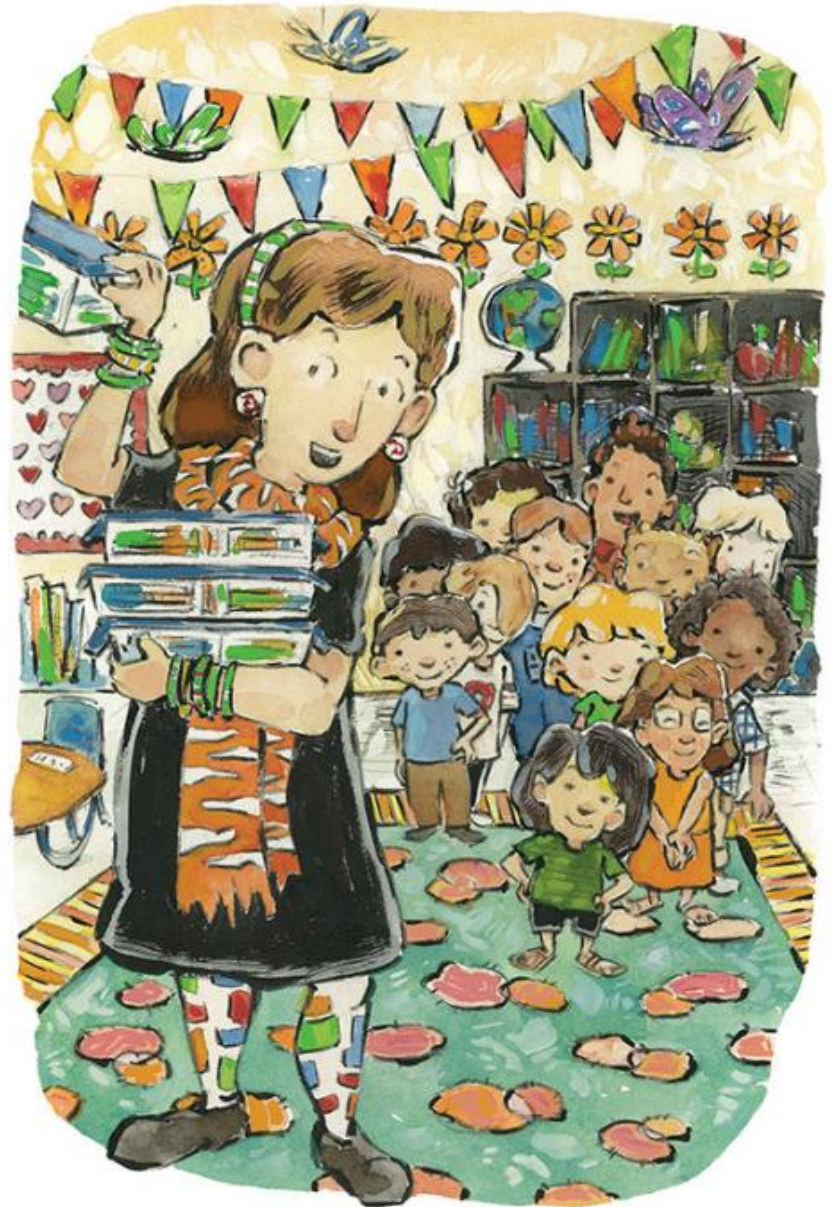
"We should make our own bathroom signs," said Sophie.

"And rules," said Jacob. "Like, if you're in the bathroom and you see a kid who doesn't look like you — leave them alone."

"Or 'I have to pee, so let me be!'" said Noah.

The giggling turned to cheers.

"Great ideas!" said Ms. Reeves. "Let's get to work!"



The afternoon was filled
with markers and laughter.



Jacob and Sophie stopped outside the bathroom doors.



"Do you think it's OK?" asked Jacob.
Sophie smiled. "I think it will be," she said.
And in they went.

Authors' Note

When our son Sam was in kindergarten, he had waist-length blond hair and a gentle smile. His favorite outfit was a pink dress. Everyone who met him assumed he was a girl, and he didn't mind.

Sam's interests were a mix of traditional "girl" things like ballet, make-believe, and art, mixed with traditional "boy" things like knights, castles, and dinosaurs. Clinically, children like Sam are called gender-nonconforming; we liked to call him a pink boy—the male equivalent of a tomboy.

We didn't think there was anything wrong with being a pink boy, but we knew Sam was different—and different isn't always easy. In order to support Sam, we worked hard to educate his teachers about gender-nonconforming children. In turn, his teachers taught lessons about gender, difference, and acceptance. We were surprised how quickly and comfortably Sam's classmates took to looking at Sam—and the world—in a whole new way.

But the bathrooms at school were used by kids who weren't necessarily Sam's classmates. Older kids, bigger kids, kids who hadn't been taught these lessons looked at Sam—and didn't like what they saw. He was verbally and physically attacked by children who had not been taught to be kind in the face of unexpected difference.

It wasn't just school bathrooms that were a problem. It was restaurant bathrooms, and playground bathrooms, and airport bathrooms. It was the zoo bathroom where a little boy with a crew cut screamed, "Get out of here!" and tried to punch Sam—while Sam was using the urinal. There was no public bathroom our son could use without an adult along to guarantee his safety.

It doesn't have to be that way. Your home probably doesn't have a "men's bathroom" and a "women's bathroom." It just has a bathroom the whole family uses. As gender-nonconforming young people enter the mainstream, schools and institutions are starting to adjust to their presence and make changes. After all, everyone needs to use the bathroom.

It's not a choice; it's a necessity. Wouldn't it be great if everybody could do it in safety?

—*Sarah and Ian Hoffman*

