No. 15-2056

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

G.G., by his next friend and mother, **DEIRDRE GRIMM**

Plaintiff-Appellant,

v.

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of Virginia
Newport News Division

JOINT APPENDIX

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Joint Appendix
G.G. v. Gloucester County School Board, No. 15-2056

District Court Docket Report as of October 7, 2015 ..... JA 1

Redacted Complaint dated June 11, 2015 ..... JA 9

Redacted Plaintiff's Motion for Preliminary Injunction dated June 11, 2015 ..... JA 25

Corrected Declaration of G.G executed on June 3, 2015. ..... JA 28

Corrected Expert Declaration of Randi Ettner Ph.D executed on June 2, 2015. ..... JA 34

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U.S. District Court
Eastern District of Virginia - (Newport News)
CIVIL DOCKET FOR CASE #: 4:15-cv-00054-RGD-DEM

G.G. v. Gloucester County School Board
Assigned to: District Judge Robert G. Doumar
Referred to: Magistrate Judge Douglas E. Miller
Case in other court: 4CCA Case Manager Jennifer Rice, 15-02056
Cause: 20:1681 Civil Rights Education Amendments Act 1972

Date Filed: 06/11/2015
Jury Demand: None
Nature of Suit: 448 Civil Rights: Education
Jurisdiction: Federal Question

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by his next friend and mother, Deirdre Grimm

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Date Filed	#	Docket Text
06/11/2015	2	Sealed Complaint per 1 Order entered on 6.16.15. (Attachments: # 1 Exhibit A) # 2 Civil Cover Sheet, # 3 Letter, # 4 Receipt) (epri). (Entered: 06/16/2015)
06/11/2015	3	Sealed Declaration of G.G. Document re 2 Sealed Complaint. (Attachments: # 1 Exhibit A)(epri) (Entered: 06/16/2015)
06/11/2015	4	Sealed Expert Declaration of Randi Ettner, Ph.D. re 2 Sealed Complaint. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(epri) (Entered: 06/16/2015)
06/11/2015	5	SEALED PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION, by G. G. (epri) (Entered: 06/16/2015)
06/11/2015	6	SEALED PLAINTIFF'S MOTION FOR LEAVE TO FILE BRIEF IN EXCESS OF THIRTY PAGES by G. G. (epri) (Entered: 06/16/2015)
06/11/2015	7	Sealed Memorandum in Support of Plaintiff's Motion for Leave to File a Brief in Excess of Thirty Pages re 5 SEALED PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION, by G. G 6 SEALED PLAINTIFF'S MOTION FOR LEAVE TO FILE BRIEF IN EXCESS OF THIRTY PAGES by G. G. (Attachments: # 1 Proposed Memorandum of law in support of Plaintiff's Motion for Preliminary Injunction)(epri) (Entered: 06/16/2015)
06/11/2015	8	COMPLAINT (Redacted) against Gloucester County School Board (Filing fee $ 400, receipt number 24683027454.), filed by G. G. (Attachments: # 1 Civil Cover Sheet (Redacted), # 2 Letter (Redacted), # 3 Receipt)(epri) (Entered: 06/16/2015)
06/11/2015	9	Declaration of G. G. re 8 Complaint (epri) (Entered: 06/16/2015)
06/11/2015	10	Expert Declaration of Randi Ettner, Ph.D Preliminary Statement re 8 Complaint (epri) (Entered: 06/16/2015)
06/11/2015	11	PLAINTIFF'S MOTION for Preliminary Injunction by G. G. (epri) (Entered: 06/16/2015)
06/11/2015	12	PLAINTIFF'S MOTION for Leave to File Brief in excess of thirty pages by G. G. (epri) (Entered: 06/16/2015)
06/11/2015	13	Memorandum in Support of Plaintiff's Motion for Leave to File a Brief in Excess of

		Thirty Pages re 11 PLAINTIFF'S MOTION for Preliminary Injunction 12 PLAINTIFF'S MOTION for Leave to File Brief in excess of thirty pages filed by G. G. (Attachments: # 1 Proposed Memorandum of law in support of Plaintiff's Motion for Preliminary Injunction)(epri) (Entered: 06/16/2015)
06/16/2015	1	Sealed ORDER Signed by District Judge Robert G. Doumar on 6/15/2015. (epri) (Entered: 06/16/2015)
06/16/2015	14	One Summons, with service copy, Issued as to Gloucester County School Board. (Attachments: # 1 Civil Motions Procedures)(epri) (Entered: 06/16/2015)
06/17/2015	15	Motion to appear Pro Hac Vice by Joshua Abraham Block and Certification of Local Counsel Rebecca Kim Glenberg Filing fee $ 75, receipt number 0422-4501488. by G. G.. (Glenberg, Rebecca) (Entered: 06/17/2015)
06/17/2015	16	Motion to appear Pro Hac Vice by Leslie Jill Cooper and Certification of Local Counsel Rebecca Kim Glenberg Filing fee $ 75, receipt number 0422-4501506. by G. G.. (Glenberg, Rebecca) (Entered: 06/17/2015)
06/17/2015	17	ORDER granting 12 Motion for Leave to File a brief in excess of thirty pages in support of the plaintiff's motion for a preliminary injunction.. Signed by Magistrate Judge Tommy E. Miller on 6/17/2015. (Miller, Tommy) (Entered: 06/17/2015)
06/18/2015	18	Memorandum in Support re 11 MOTION for Preliminary Injunction filed by G. G.. (Deady, Gail) (Entered: 06/18/2015)
06/18/2015	19	Request for Hearing by G. G. re 11 MOTION for Preliminary Injunction (Deady, Gail) (Entered: 06/18/2015)
06/23/2015	20	ORDER granting 15 Motion for Pro hac vice for Joshua Abraham Block as to G. G.. Signed by District Judge Robert G. Doumar on 6/23/15. (tlev,) (Entered: 06/24/2015)
06/23/2015	21	ORDER granting 16 Motion for Pro hac vice for Leslie Jill Cooper as to G. G.. Signed by District Judge Robert G. Doumar on 6/23/15. (tlev,) (Entered: 06/24/2015)
06/29/2015	22	AFFIDAVIT of Service by G. G. (bgra,). (Entered: 06/29/2015)
06/29/2015	23	NOTICE of Appearance by David P. Corrigan on behalf of Gloucester County School Board (Corrigan, David) (Entered: 06/29/2015)
06/29/2015	24	NOTICE of Appearance by Jeremy David Capps on behalf of Gloucester County School Board (Capps, Jeremy) (Entered: 06/29/2015)
06/29/2015	25	NOTICE of Appearance by Maurice Scott Fisher, Jr on behalf of Gloucester County School Board (Fisher, Maurice) (Entered: 06/29/2015)
06/29/2015	26	MOTION for Extension of Time to File Response/Reply *to Motion for Preliminary Injunction* by Gloucester County School Board. (Fisher, Maurice) (Entered: 06/29/2015)
06/29/2015	27	RESPONSE to Motion re 26 MOTION for Extension of Time to File Response/Reply *to Motion for Preliminary Injunction* filed by G. G.. (Glenberg, Rebecca) (Entered: 06/29/2015)
06/29/2015	28	Statement of Interest of The United States by The United States. (Attachments: # 1

		Exhibit A, # 2 Exhibit B)(bgra) (Entered: 06/29/2015)
06/30/2015		Motion Hearing as to 11 MOTION for Preliminary Injunction set for 7/20/2015 at 02:30 PM in Norfolk Mag Courtroom 1 before District Judge Robert G. Doumar. (lbax,) (Entered: 06/30/2015)
06/30/2015		MOTIONS REFERRED to Magistrate Judge: Tommy E. Miller. 26 MOTION for Extension of Time to File Response/Reply *to Motion for Preliminary Injunction* (bgra) (Entered: 06/30/2015)
06/30/2015	29	ORDER granting 26 Motion for Extension of Time to File Response/Reply re 11 MOTION for Preliminary Injunction. Response due July 7, 2015.Signed by Magistrate Judge Tommy E. Miller on 6/30/2015. (bgra) (Entered: 06/30/2015)
07/07/2015	30	Opposition to 11 MOTION for Preliminary Injunction filed by Gloucester County School Board. (Attachments: # 1 Exhibit Exhibit A -, # 2 Exhibit Exhibit B, # 3 Exhibit Exhibit C)(Corrigan, David) (Entered: 07/07/2015)
07/07/2015	31	MOTION to Dismiss for Failure to State a Claim by Gloucester County School Board. (Corrigan, David) (Entered: 07/07/2015)
07/07/2015	32	Brief in Support to 31 MOTION to Dismiss for Failure to State a Claim filed by Gloucester County School Board. (Attachments: # 1 Exhibit Exhibit 1)(Corrigan, David) (Entered: 07/07/2015)
07/07/2015	33	CERTIFICATE of Service re 30 Opposition by David P. Corrigan on behalf of Gloucester County School Board (Corrigan, David) (Entered: 07/07/2015)
07/07/2015	34	CERTIFICATE of Service re 31 MOTION to Dismiss for Failure to State a Claim by David P. Corrigan on behalf of Gloucester County School Board (Corrigan, David) (Entered: 07/07/2015)
07/07/2015	35	CERTIFICATE of Service re 32 Brief in Support by David P. Corrigan on behalf of Gloucester County School Board (Corrigan, David) (Entered: 07/07/2015)
07/08/2015	36	MOTION for Hearing re 31 MOTION to Dismiss for Failure to State a Claim by Gloucester County School Board. (Corrigan, David) Mo (Entered: 07/08/2015)
07/08/2015	37	Brief in Support to 36 MOTION for Hearing (Corrigan, David) Modified docket text on 7/8/2015 (ccol); Modified docket text to correct linkage to motion on 7/10/2015 (bgra). (Entered: 07/08/2015)
07/08/2015	38	RESPONSE in Opposition re 36 MOTION for Hearing re 31 MOTION to Dismiss for Failure to State a Claim filed by G. G.. (Glenberg, Rebecca) (Entered: 07/08/2015)
07/10/2015	39	Motion to appear Pro Hac Vice by Victoria Lill and Certification of Local Counsel Clare P. Wuerker by The United States. (Attachments: # 1 Exhibit Pro Hac Vice Application)(Wuerker, Clare) (Entered: 07/10/2015)
07/10/2015	40	Reply to Motion re 36 MOTION for Hearing re 31 MOTION to Dismiss for Failure to State a Claim filed by Gloucester County School Board. (Corrigan, David) (Entered: 07/10/2015)
07/13/2015	41	REPLY to Response to Motion re 11 MOTION for Preliminary Injunction filed by G. G.. (Attachments: # 1 Exhibit A)(Deady, Gail) (Entered: 07/13/2015)

07/13/2015		Notice of Correction: The filing user has been notified to file a separate Certificate of Service. re 41 Reply to Response to Motion (bgra) (Entered: 07/16/2015)
07/16/2015	42	ORDER granting 39 Motion for Pro hac vice for Victoria Lill as to The United States. Signed by District Judge Robert G. Doumar on 7/15/15. (tlev,) (Entered: 07/16/2015)
07/16/2015	43	CERTIFICATE of Service re 41 Reply, Reply to Response to Motion by Gail Marie Deady on behalf of G. G. (Deady, Gail) (Entered: 07/16/2015)
07/16/2015	44	RESPONSE in Opposition re 31 MOTION to Dismiss for Failure to State a Claim filed by G. G.. (Attachments: # 1 Exhibit A - Tudor Opinion, # 2 Exhibit B - Tudor Intervenor Complaint)(Glenberg, Rebecca) (Entered: 07/16/2015)
07/17/2015	45	ORDER: This Court will hear the fully briefed Motion to Dismiss before it will consider any other motions. The hearing set on July 20, 2015, is hereby VACATED, and no motions will be heard at that time. Instead, all motions then pending and responded to will be heard on July 27, 2015 at11:00 a.m. in this Court. Copies distributed to all counsel of record. re 36 Motion for Hearing. Signed by District Judge Robert G. Doumar on 7/16/2015. (bgra) (Entered: 07/17/2015)
07/17/2015		Reset Hearing as to 31 MOTION to Dismiss for Failure to State a Claim , and Motions :. Motion Hearing reset for 7/27/2015 at 11:00 AM in Norfolk Grand Jury Courtroom before District Judge Robert G. Doumar. (ptom,) (Entered: 07/17/2015)
07/17/2015		Reset Hearing as to 31 MOTION to Dismiss for Failure to State a Claim , and Motions. Motion Hearing set for 7/27/2015 at 11:00 AM in Norfolk Mag Courtroom 1 before District Judge Robert G. Doumar. (Courtroom change from Grand Jury Room to Mag Courtroom 1) (ptom,) (Entered: 07/17/2015)
07/22/2015	46	Reply to Motion re 31 MOTION to Dismiss for Failure to State a Claim , REPLY to Response to Motion , Reply filed by Gloucester County School Board. (Corrigan, David) (Entered: 07/22/2015)
07/27/2015	47	Motion Hearing before District Judge Robert G. Doumar held on 7/27/2015 re 11 MOTION for Preliminary Injunction filed by G.G., 31 MOTION to Dismiss for Failure to State a Claim filed by Gloucester County School Board. Appearances: Rebecca K. Glenberg, Gail Deady, Leslie J. Cooper and Joshua A. Block appeared for the Plaintiff. David P. Corrigan and Jeremy D. Capps appeared for the Defendant. Clare P. Wuerker and Victoria Lill appeared on behalf of the Interested Party, The United States. Arguments of counsel. Comments of Court. The Court DISMISSED the Title IX claim but takes the remainder of the motions under advisement. The Court will issue a written opinion as to its findings. The Defendants will have 21 days from the filing of the Court's opinion to file an answer. The case will be referred for scheduling at that time. Court adjourned. (Court Reporter Heidi Jeffreys, OCR.)(lbax,) (Entered: 07/28/2015)
07/30/2015	49	Transcript Redaction Request re 48 Transcript,,, by attorney Rebecca Kim Glenberg. (Glenberg, Rebecca) (Entered: 07/30/2015)
07/31/2015	50	Redacted Version of 48 Transcript (afar) (Entered: 07/31/2015)
07/31/2015	51	ORDER: The Court ORDERS that G.G.'s identifying information, as shownon page fifteen (15) of the transcript of the June 27. 2015 hearing, lines fourteen (14).

		fifteen (15), sixteen (16). and eighteen (18), shall be under seal. The Court further ORDERS that this identifying information shall not be released by the Clerk or any party or individual without a specific order of the Court. Copy of Order provided to all counsel of record. Signed by District Judge Robert G. Doumar on 7/31/2015. (bgra) (Entered: 07/31/2015)
09/03/2015		Case Reassigned to Magistrate Judge Douglas E. Miller. Magistrate Judge Tommy E. Miller no longer assigned to the case. (afar) (Entered: 09/03/2015)
09/04/2015	53	ORDER - DENIES 11 Plaintiff's Motion for Preliminary Injunction. Signed by District Judge Robert G. Doumar on 9/4/15. (afar) (Entered: 09/04/2015)
09/08/2015	54	NOTICE OF APPEAL as to 53 Order on Motion for Preliminary Injunction by G. G.. Filing fee $ 505, receipt number 0422-4626161. (Glenberg, Rebecca) (Entered: 09/08/2015)
09/09/2015	55	Transmission of Notice of Appeal to US Court of Appeals re 54 Notice of Appeal (All case opening forms, plus the transcript guidelines, may be obtained from the Fourth Circuit's website at www.ca4.uscourts.gov) (Attachments: # 1 Notice of Appeal)(bgra) (Entered: 09/09/2015)
09/10/2015	56	USCA Case Number 15-2056 4CCA Case Manager Jennifer Rice for 54 Notice of Appeal filed by G. G. (15-2056) (bgra) (Entered: 09/10/2015)
09/17/2015	57	MEMORANDUM OPINION - the Court GRANTED the Motion to Dismiss as to Count II, Plaintiff's claim under Title IX, and DENIED the Plaintiff's Motion for Preliminary Injunction. Signed by District Judge Robert G. Doumar on 9/17/15. (afar) (Entered: 09/17/2015)
09/22/2015	58	Consent MOTION for Leave to File *Corrected Copies of Redacted Documents* by G. G.. (Attachments: # 1 Corrected Decl. of G.G., # 2 Corrected Decl. of Dr. Ettner)(Deady, Gail) (Entered: 09/22/2015)
09/23/2015		MOTIONS REFERRED to Magistrate Judge: Douglas E. Miller. 58 Consent MOTION for Leave to File *Corrected Copies of Redacted Documents* (bgra) (Entered: 09/24/2015)
10/01/2015	59	ORDER granting 58 Motion for Leave to File Corrected Copies of Redacted Exhibits. The corrected copies attached to the Motion (ECF Nos. 58-1 and 58-2) may be filed as substitutes for the redacted Declarations of G.G. and Dr. Randi Ettner originally filed in support of the Motion for Preliminary Injunction (ECF Nos. 9 and 10). Signed by Magistrate Judge Douglas E. Miller on October 1, 2015. (Miller, Douglas) (Entered: 10/01/2015)
10/05/2015	60	Declaration re 9 Declaration - *Corrected* by G. G.. (Deady, Gail) (Entered: 10/05/2015)
10/05/2015	61	Declaration re 10 Declaration - *Corrected* by G. G.. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Deady, Gail) (Entered: 10/05/2015)

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

G.G., by his next friend and mother, DEIRDRE GRIMM, Plaintiffs, v. GLOUCESTER COUNTY SCHOOL BOARD, Defendant.	)	Civil No. 4:15cv54

COMPLAINT

INTRODUCTION

1. G.G. is a 16-year-old boy who recently completed his sophomore year at Gloucester High School. He is a boy who is transgender, which means that he was designated female at birth but he has a male gender identity. He has been diagnosed by medical professionals as having Gender Dysphoria, which is a serious medical condition characterized by clinically significant distress caused by an incongruence between a person's gender identity and the person's assigned sex at birth.

2. Since the end of his freshman year, G.G. has undergone treatment for Gender Dysphoria, in accordance with the widely recognized standards of care for that condition. A critical element of that treatment is a "social transition" in which G.G. lives in accordance with his gender identity as a boy in all aspects of his life. As part of that process, G.G. has legally changed his name to "G.G." (a traditionally male name).

3. Shortly before his sophomore year, G.G. and his mother informed school officials that G.G. is a transgender boy. School officials immediately expressed support for G.G. and

took steps to ensure that he would be treated as a boy by teachers and staff. Later in the school year, at G.G.'s request, and consistent with recognized standards of care for transgender students, school officials allowed him to use the boys' restroom. He did so without incident for approximately seven weeks.

4. On December 9, 2014, the Gloucester County School Board, responding to pressure from some parents – and other Gloucester County residents without school-age children – enacted a policy that overruled the decision of school administrators and categorically barred transgender students from using restrooms that correspond with their gender identity. The policy declared that access to the boys' and girls' restrooms would be limited to students of "the corresponding biological genders," and also declared that students who are unable to use such restrooms because of "gender identity issues" would be relegated to "an alternative appropriate private facility."

5. As a result of the School Board's transgender restroom policy, G.G. is currently the only student in his school who must use separate private restrooms. The distinction stigmatizes G.G. and marks him as different from the other students; it isolates G.G. from his peers; and it exposes him to serious psychological harm. To avoid the stigma of having to use separate restrooms, G.G. has tried to avoid using *any* restroom during the school day.

6. The School Board's transgender restroom policy discriminates against G.G. on the basis of gender and sex in violation of the Equal Protection Clause of the Fourteenth Amendment and Title IX of the Education Amendments of 1972.G.G. seeks redress from this Court.

JURISDICTION AND VENUE

7. This action arises under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*, the Constitution of the United States, and 42 U.S.C. § 1983.This Court has jurisdiction pursuant to Article III of the United States Constitution and 28 U.S.C. § 1331.Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.

8. Venue lies with this Court pursuant to 28 U.S.C. §§ 1391(b)(1)-(2), because the defendant resides in this District and a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

9. Plaintiff G.G. is sixteen years old and is a student at Gloucester High School ("GHS"), a public high school in Gloucester County.

10. Deirdre Grimm is G.G.'s mother and sues as his next friend.

11. The Gloucester County School Board (the "School Board") is an elected body responsible for the operation of the Gloucester County Public Schools ("GCPS"), including the promulgation of policies. At all times relevant, the School Board has acted and continues to act under color of state law.

FACTUAL ALLEGATIONS

12. G.G. was born in Gloucester County on May 4, 1999, and has lived in Gloucester County his entire life. G.G. is a typical teenager who is articulate and intelligent, reads broadly, loves his dog and cats, and enjoys hanging out with his friends.

13. Photographs of G.G. taken over the past year are attached as Exhibit A.

14. G.G. is also a transgender boy. That is, his assigned sex at birth was female, but that designation does not conform to his male gender identity. G.G. has been diagnosed with

Gender Dysphoria, the medical diagnosis for individuals whose gender identity – their innate sense of being male or female – differs from the sex they were assigned at birth, which causes distress.

15. Gender Dysphoria is a serious medical condition that if left untreated can lead to clinical distress, debilitating depression, and even suicidal thoughts and acts.

16. At a very young age, G.G. was aware that he did not feel like a girl.

17. G.G. has always felt uncomfortable wearing "girl" clothes, and by the age of six, he adamantly refused to do so. He soon insisted upon buying all of his clothes in the boys' department.

18. At approximately age twelve, G.G. acknowledged his male gender identity to himself. He gradually began disclosing this fact to close friends. Since the reactions of his friends were generally positive and supportive, he disclosed his gender identity to more friends.

19. In approximately ninth grade, most of G.G.'s friends were aware of his gender identity, and G.G. presented himself as a boy when he socialized with them away from home and school.

20. During his freshman year, G.G. experienced severe depression and anxiety related to his untreated Gender Dysphoria and the stress of concealing his gender identity from his family. For this reason, he did not attend school during the spring semester of his freshman year. Instead, he took classes through a home-bound program that follows the public high school curriculum.

21. In April 2014, G.G. told his parents that he is transgender. At his request, he began to see a psychologist who had experience with working with transgender patients. The psychologist diagnosed him with Gender Dysphoria.

22. Mental health and medical professionals worldwide recognize and follow the evidence-based standards of care for the treatment of Gender Dysphoria developed by the World Professional Association for Transgender Health (WPATH).After diagnosing G.G. with Gender Dysphoria, his psychologist developed a course of treatment consistent with those standards. The goal of treatment is to alleviate distress by helping a person live congruently with the person's gender identity.

23. A critical component of the WPATH Standards of Care is a social transition to living full-time consistently with the individual's gender identity. Accordingly, G.G.'s psychologist recommended that he immediately begin living in accordance with his gender identity as a boy in all respects. That included using a male name and pronouns and using boys' restrooms. G.G.'s psychologist also provided him a "Treatment Documentation Letter" confirming that he was receiving treatment for Gender Dysphoria and that, as part of that treatment, he should be treated as a boy in all respects, including with respect to his use of the restroom.

24. For transgender adolescents, it is critical that the social transition involve full transition at school, including with respect to restrooms. Excluding a transgender boy from the restroom that corresponds to the student's gender identity, or forcing the student to use a separate facility from other boys, communicates to the entire school community that he should not be recognized as a boy and undermines the social transition process.

25. Based on his psychologist's recommendation, in July 2014, G.G. petitioned the Circuit Court of Gloucester County to change his legal name to G.G., and the court granted the petition. G.G. now uses that name for all purposes, and at his request, his friends and family

refer to him using male pronouns. G.G. also uses the boys' restrooms when out in public, e.g., at restaurants, libraries, shopping centers.

26. Also consistent with the WPATH standards of care, G.G.'s psychologist recommended that he see an endocrinologist to begin hormone treatment. G.G. has been receiving hormone treatment since December 2014.Among other therapeutic benefits, the hormone treatment has deepened G.G.'s voice, increased his growth of facial hair, and given him a more masculine appearance.

27. In August 2014, G.G. and his mother informed officials at Gloucester High School that G.G. is transgender and that he changed his name. The high school changed G.G.'s name in his official school records.

28. Before the beginning of the 2014-15 school year, G.G. and his mother met with Gloucester High School Principal T. Nathan Collins and guidance counselor Tiffany Durr to discuss G.G.'s treatment for Gender Dysphoria and the need for him to socially transition at school as part of his medical treatment. Mr. Collins and Ms. Durr both expressed support for G.G. and a willingness to ensure a welcoming environment for him at school. Ms. Durr and G.G. agreed that G.G. would send an email to teachers explaining that he was to be addressed using the name G.G. and to be referred to using male pronouns. To the best of G.G.'s knowledge, no teachers, administrators, or staff at Gloucester High School expressed any resistance to these instructions.

29. G.G. requested, and was permitted, to continue with the home-bound program only for his physical education requirement, while returning to school for the rest of his classes. For this reason, he has not and does not intend to use a locker room at school.

30. G.G. initially agreed to use a separate restroom in the nurse's office because he was unsure how other students would react to his transition.

31. When the 2014-15 school year began, G.G. was pleased to discover that his teachers and the vast majority of his peers respected the fact that he is a boy and treated him accordingly. G.G. quickly determined that it was not necessary for his safety to continue to use the nurse's bathroom, and he found it stigmatizing to have to use a separate restroom. The nurse's bathroom was also very inconvenient to G.G.'s classrooms, making it difficult to use the restroom between classes. For these reasons, G.G. asked Mr. Collins to be allowed to use the boys' bathrooms.

32. On or about October 20, 2014, Mr. Collins agreed that G.G. could use the boys' restrooms. For approximately the next seven weeks, G.G. used the boys' restrooms without incident.

33. Nevertheless, some adults in the community were angered when they came to learn that a transgender student had been allowed to use the restroom corresponding to the student's gender identity. Upon information and belief, those adults contacted members of the School Board to demand that the transgender student be barred from continuing to use the restroom at issue.

34. Shortly before the School Board's meeting on November 11, 2014, Board member Carla B. Hook added an item to the agenda titled "Discussion of Use of Restrooms/Locker Room Facilities." In advance of the meeting, Ms. Hook prepared to submit the following proposed resolution (hereinafter referred to as the "transgender restroom policy"):

> Whereas the GCPS recognizes that some students question their gender identities, and
>
> Whereas the GCPS encourages such students to seek support, advice, and guidance from parents, professionals and other trusted adults, and

> Whereas the GCPS seeks to provide a safe learning environment for all students and to protect the privacy of all students, therefore
>
> It shall be the practice of the GCPS to provide male and female restroom and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided an alternative appropriate private facility.

35. Through emails and online message boards, news circulated among certain Gloucester County residents that they should attend the School Board meeting on November 11, 2014, and speak in favor of Ms. Hook's proposed restroom policy.

36. Neither G.G. nor his parents were informed by the School Board or any other school officials that the School Board would be considering a policy that would bar G.G. from using the boys' restroom. G.G. and his parents learned about the proposal for the first time on November 10 – the day before the School Board meeting was scheduled to take place – when they saw one of the messages posted by supporters of Ms. Hook's proposed restroom policy.

37. Twenty-seven people spoke during the Citizens' Comment Period of the School Board meeting, the majority of whom opposed the school's decision to allow G.G. to use the boys' restrooms. The commenters displayed many misperceptions about transgender people and imagined dire consequences from allowing G.G. to use the boys' restrooms. Some speakers referred to G.G. as a "young lady."Some speakers claimed that transgender students' use of restrooms that match their gender identity would violate the privacy of other students and would lead to sexual assault in bathrooms. Another suggested that boys who are not transgender would come to school wearing a dress and demand to use the girls' restroom for nefarious purposes.

38. G.G. and his parents also attended the meeting to speak against the policy. In doing so, G.G. was forced to identify himself to the entire community, including local press covering the meeting, as the transgender student whose restroom use was at issue. "All I want to

do is be a normal child and use the restroom in peace," G.G. said. "I did not ask to be this way, and it's one of the most difficult things anyone can face," he continued. "This could be your child . . . . I'm just a human. I'm just a boy."

39. Later in the meeting, Board member Carla B. Hook moved to adopt her proposed transgender restroom policy. By a vote of 4-3, the School Board voted to defer a vote on the policy until its meeting on December 9, 2014.

40. Between November 11, 2014, and December 9, 2014, the School Board was informed by many legal sources that the proposed restroom policy conflicted with guidance of the Department of Education's Office of Civil Rights (OCR) regarding Title IX and that adopting the policy would place the district's Title IX funding at risk. According to OCR guidance, transgender students are protected under Title IX from discrimination based on gender identity or gender nonconformity, and schools must respect students' gender identity for purposes of any sex-segregated programming. *See* U.S. Department of Education Office for Civil Rights, Questions & Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities (Dec. 1, 2014); U.S. Department of Education Office for Civil Rights, Questions & Answers on Title IX and Sexual Violence (Apr. 29, 2014).

41. On December 3, 2014, the School Board issued a news release stating that regardless of the outcome of the upcoming meeting, the School Board intended to take measures to increase privacy in student bathrooms. According to the release:

> One positive outcome of all the discussion is that the District is planning to increase the privacy options for all students using school restrooms . . . Plans include adding or expanding partitions between urinals in male restrooms, and adding privacy strips to the doors of stalls in all restrooms. The District also plans to designate single-stall, unisex restrooms, similar to what's in many other public spaces, to give all students the option for even greater privacy.

42. At the School Board's December 9, 2014 meeting, approximately 37 people spoke during the Citizens' Comment Period. The majority of speakers opposed G.G.'s use of the boys' restrooms. Several speakers threatened to vote the School Board members out of office if they did not adopt the transgender restroom policy. Speakers again suggested that permitting G.G. to use the boys' bathroom would violate the privacy of other students, notwithstanding the School Board's announcement that bathrooms would be modified to allow more privacy. Some speakers said that allowing G.G. to use the boys' bathroom would make the bathrooms "coed." Speakers again referred to G.G. as a "girl" or "young lady." One speaker called him a "freak" and compared him to a person who thinks he is a "dog" and wants to urinate on fire hydrants.

43. Following the Citizens' Comment Period, the School Board voted 6-1 to pass the transgender restroom policy.

44. The experience of having the entire community discuss his physical anatomy and debate where he should use the restroom and has been profoundly disturbing for G.G.. He feels that he has been stripped of his privacy and turned into a public spectacle.

45. The day after the School Board adopted the transgender restroom policy, Mr. Collins informed G.G. that he would no longer be allowed to use the boys' restrooms and that there would be disciplinary consequences if he tried to do so.

46. Using the girls' restroom is not possible for G.G. Even before he began treatment for Gender Dysphoria, girls and women who encountered G.G. in female restrooms reacted negatively because they perceived G.G. to be a boy. For example, when G.G. was in eighth and ninth grade, girls would tell him "this is the girls' room" and ask tell him to leave. G.G.'s appearance now is even more masculine. In addition to those practical obstacles, using the girls'

restroom would cause severe psychological distress to G.G. and would be incompatible with his medically necessary treatment for Gender Dysphoria.

47. Since adopting the restroom policy, three unisex, single-stall restrooms have been installed at Gloucester High School. The school also raised the doors and walls around the bathroom stalls so that students cannot see into an adjoining stall. Additionally, the high school installed partitions between urinals in the boys' bathrooms. As a result, a person making normal use of the restroom cannot see the genitals of any other person.

48. G.G. refuses to use the separate single-stall restrooms they make him feel even more stigmatized and isolated than when he used the restroom in the nurse's office. Being required to use the separate restrooms sets him apart from his peers, and serves as a daily reminder that the school views him as "different." Other students do not appear to use the single-stall unisex restrooms. The entire school community knows that they were installed as restrooms for G.G., and any other transgender students, so they would not be in the same restroom as their peers.

49. Instead of using the separate restrooms, G.G. tries to avoid using the restrooms entirely while at school, and, if that is not possible, he uses the nurse's restroom. As a result of trying to avoid using the restroom, G.G. has repeatedly developed painful urinary tract infections. He limits his beverage intake to try to reduce the discomfort and distraction caused by "holding it" as he tries to focus in class.

50. Because the powerful stigma attached to the requirement that he use separate restrooms, and because the exclusion from the boys' restrooms undermines his social transition process, the transgender restroom policy inflicts severe and persistent emotional and social harms on G.G. Research indicates that transgender students are at greater risk than their peers of

experiencing severe and long-term negative effects from being stigmatized by and isolated from their peers. The transgender restroom policy compounds that harm and imposes additional stigma on an already vulnerable group of students.

51. Randi Ettner Ph.D – a psychologist and nationally recognized expert in the treatment of Gender Dysphoria in children and adolescents – recently conducted an independent clinical assessment of G.G. and concluded that "the shame of being singled out and stigmatized in his daily life every time he needs to use the restroom is a devastating blow to G.G. and places him at extreme risk for immediate and long-term psychological harm."

52. By contrast, allowing G.G. to use the boys' restroom would not harm any other student at Gloucester High School in any way. There is no indication that any student was harmed during the seven weeks that G.G. used the boys' restrooms. The privacy modifications made to the restrooms address the already far-fetched concern that G.G. might see the genitals of another boy while using the restroom. Any boy who still feels uncomfortable with using the restroom at the same time as G.G. may avail himself of the recently installed single stall bathrooms. But the School Board may not place the burden solely on transgender students to use separate restroom facilities to address the alleged discomfort of others.

CLAIMS FOR RELIEF

COUNT I
Fourteenth Amendment to the United States Constitution

53. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on gender is presumptively unconstitutional and subject to heightened scrutiny. The Fourteenth Amendment's protections from discrimination based on gender encompass both discrimination based on the biological differences between men and women and discrimination based on gender nonconformity.

54. The School Board is the final policymaker for Gloucester County Public Schools.

55. By requiring G.G. – a transgender boy – to use separate restrooms because of his "gender identity issues," the School Board, under color of state law, has treated and continues to treat G.G. differently from similarly situated students based on his gender.

56. By excluding G.G. – a transgender boy – from the boys' restrooms because the School Board does not deem him to be "biologically" male, the School Board, under color of state law, has treated and continues to treat G.G. differently from similarly situated students based on his gender.

57. The School Board's discrimination against G.G. based on his gender is not substantially related to any important government interest.

58. The School Board's discrimination against G.G. based on his gender is not rationally related to any legitimate government interest.

59. The School Board's discrimination against G.G. based on his gender denies him the equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution.

60. The School Board is liable for its violation of G.G.'s Fourteenth Amendment rights under 42 U.S.C. § 1983.

COUNT II
Title IX of the Education Amendments of 1972
20 U.S.C. § 1681 *et seq*.

61. Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."20 U.S.C. § 1681(a).

62. Under Title IX, discrimination "on the basis of sex" encompasses both discrimination based on biological differences between men and women and discrimination based on gender nonconformity.

63. Gloucester County Public Schools and Gloucester High School are education programs receiving Federal financial assistance.

64. By requiring G.G. – a transgender boy – to use separate restrooms because of his "gender identity issues," the School Board has and continues to exclude G.G. from participation in, deny him the benefits of, and subject him to discrimination in educational programs and activities at Gloucester County Public Schools and Gloucester High School "on the basis of sex," which violates G.G.'s rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*

65. By excluding G.G. – a transgender boy – from the boys' restrooms because the School Board does not deem him to be "biologically" male, the School Board has and continues to exclude G.G. from participation in, deny him the benefits of, and subject him to discrimination in educational programs and activities at Gloucester County Public Schools and Gloucester High School "on the basis of sex," which violates G.G.'s rights under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*

REQUEST FOR RELIEF

For the foregoing reasons, the plaintiffs respectfully request that the Court grant the following relief:

A. A declaration that the School Board's transgender restroom policy violates G.G.'s rights under the Fourteenth Amendment to the United States Constitution and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*;

B. Preliminary and permanent injunctions requiring the School Board to allow G.G. to use the boys' restrooms at school;

C. Damages in an amount determined by the Court;

D. Plaintiffs' reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

E. Such other relief as the Court deems just and proper.

Dated: June 11, 2015

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA FOUNDATION, INC.

/s/
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**Pro hac vice* motion to follow

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

G.G., by his next friend and mother, DEIRDRE GRIMM,	)	
Plaintiffs,	)	
	)	Civil No. 4:15cv54
v.	)	
GLOUCESTER COUNTY SCHOOL BOARD,	)	
Defendant.	)	

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65(a), Plaintiff respectfully requests the Court for a preliminary injunction requiring that Defendant allow him to resume using the boys' restrooms at Gloucester High School when he returns to school for the first day of classes on September 8, 2015, until this Court renders a final judgment on the merits.

As set forth in the accompanying Memorandum, the grounds for this motion are that the Plaintiff is likely to prevail on the merits of his claims of sex discrimination under Title IX and the Equal Protection Clause; the Plaintiff will suffer irreparable harm if preliminary relief is not granted; and the balance of hardships and the public interest favor preliminary relief.

Dated: June 11, 2015

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
OF VIRGINIA FOUNDATION, INC.
/s/
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**Pro hac vice* motion to follow

Dated: June 11, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 2015, I served a copy of the foregoing document by U.S. Mail and electronic mail to the following:

Edwin Wilmot
Gloucester County Attorney
P.O. Box 1309
Gloucester, Virginia 23061
ewilmot@gloucesterva.info

/s/
Gail M. Deady

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

G.G., by his next friend and mother, DEIRDRE GRIMM, Plaintiffs, v. GLOUCESTER COUNTY SCHOOL BOARD, Defendant.	)	Civil No. 4:15-cv-00054-RGD-DEM

CORRECTED DECLARATION OF G.G.

1. I am the plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. My name is G.G.

3. Several photographs of me taken over the past year are attached to this declaration as Exhibit A.

4. I was born in Gloucester County on May 4, 1999, and have lived in Gloucester County my entire life.

5. I am a student at Gloucester High School. I will begin my junior year of high school in September 2015.

6. Although my sex assigned at birth was female, I was aware at a very young age that I did not feel like a girl. I have always felt uncomfortable wearing "girl" clothes, and by the age of six, I adamantly refused to do so. I insisted upon buying all of my clothes in the boys' department.

7. At approximately age twelve, I acknowledged my male gender identity to myself. I gradually began disclosing this fact to close friends. Since the reactions of my friends were generally positive and supportive, I disclosed my gender identity to more friends.

8. In approximately ninth grade, most of my friends were aware of my gender identity, and I lived openly as a boy when socializing with friends away from home and school.

9. During my freshman year, I experienced severe depression and anxiety related to my untreated Gender Dysphoria and the stress of concealing my gender identity from my family. The depression and anxiety was so severe that I could not attend school during the spring semester of my freshman year. Instead, I took classes through a home-bound program that follows the public high school curriculum.

10. In April 2014, I told my parents that I am transgender. At my request, I began therapy with a psychologist who had experience with working with transgender patients.

11. The psychologist diagnosed me with Gender Dysphoria. The psychologist recommended that I immediately begin living as a boy in all respects. That included using a male name and pronouns and using boys' restrooms. The psychologist gave me a "Treatment Documentation Letter" confirming that I am receiving treatment for Gender Dysphoria and that, as part of that treatment, I should be treated as a boy in all respects, including with respect to my use of the restroom. In addition, the psychologist recommended that I see an endocrinologist to begin hormone treatment for Gender Dysphoria.

12. In July 2014, I petitioned the Circuit Court of Gloucester County to change my legal name to G.G., and the court granted the petition. I now use that name for all purposes, and my friends and family refer to me using male pronouns.

13. I use the boys' restrooms when out in public, e.g., at restaurants, libraries, shopping centers.

14. I have been receiving hormone treatment since December 2014. The hormone treatment has deepened my voice, increased my growth of facial hair, and given me a more masculine appearance.

15. In August 2014, my mother and I informed officials at Gloucester High School that I am transgender and that I changed my legal name. The high school agreed to change my name in my official school records.

16. Before the beginning of my sophomore year, my mother and I met with Gloucester High School Principal T. Nathan Collins and guidance counselor Tiffany Durr to discuss my treatment for Gender Dysphoria and the need for me to socially transition at school as part of my medical treatment. Mr. Collins and Ms. Durr both expressed support for me and a willingness to ensure a welcoming environment for me at school.

17. Ms. Durr and I agreed that I would send an email to teachers explaining that I was to be addressed using the name G.G. and to be referred to using male pronouns. To the best of my knowledge, no teachers, administrators, or staff at Gloucester High School expressed any resistance to calling me by my legal name or referring to me using male pronouns.

18. I requested, and was permitted, to continue with the home-bound program only for my physical education requirement while returning to school for the rest of my classes. For this reason, I do not intend to use a locker room at school.

19. I initially agreed to use a separate restroom in the nurse's office because I was unsure how other students would react to my transition. When the 2014-15 school year began, I was pleased to discover that my teachers and the vast majority of my peers respected the fact that

I am a boy. I quickly determined that it was not necessary for me to continue to use the nurse's restroom, and I found it stigmatizing to use a separate restroom. The nurse's bathroom was also very inconvenient to reach from my classrooms, making it difficult for me to use the restroom between classes. For these reasons, I asked Mr. Collins to be allowed to use the boys' restrooms.

20. On or about October 20, 2014, Mr. Collins agreed that I could use the boys' restrooms. For approximately the next seven weeks, I used the boys' restrooms at school. When I used the boys' restrooms, I never encountered any problems from other students.

21. On November 10, 2014, I learned that the School Board would be voting on a proposal at its meeting on November 11, 2014, to adopt a transgender restroom policy that would prohibit me from continuing to use the boys' restroom. My parents and I attended the meeting to speak against the policy. In doing so, I was forced to identify myself to the entire community, including local press covering the meeting, as the transgender student whose restroom use was at issue.

22. I also attended the School Board's meeting on December 9, 2014, when it adopted the transgender restroom policy.

23. As a result of the School Board meetings and the new transgender restroom policy, I feel like I have been stripped of my privacy and dignity. Having the entire community discuss my genitals and my medical condition in a public setting has made me feel like a walking freak show. This personal information about my medical status, and about my very anatomy, has become a public spectacle. My entire community can now identify me as "the transgender student who wants to use the boys' room," which makes me incredibly anxious and fearful.

24. The day after the school board meeting, Mr. Collins told me that I would no longer be allowed to use the boys' restrooms and that there would be disciplinary consequences if I tried to do so.

25. Using the girls' restroom is not a possibility for me. Even before I began receiving treatment for Gender Dysphoria, girls and women who encountered me in female restrooms reacted negatively because they perceived me to be a boy. For example, when I used the girls' restroom in eighth and ninth grade, girls would tell me "this is the girls' room" and ask me to leave. My appearance now is even more masculine. In addition, using the girls' room would cause me to experience severe psychological distress and would be incompatible with my treatment for Gender Dysphoria.

26. To the best of my knowledge, there are now three single-stall unisex restrooms at Gloucester High School that I am permitted to use. Only one of the single-stall restrooms is located anywhere near the restrooms used by other students. Unlike some of the boys' restrooms, none of the new single stall restrooms are located near my classes. As far as I am aware, none of the other students uses the single-stall unisex restrooms.

27. I refuse to use the separate single-stall restrooms because they make me feel even more stigmatized and isolated than when I use the restroom in the nurse's office. They designate me as some type of "other" or "third" sex that is treated differently than everyone else. Everyone knows that they were installed for me in particular so that other boys would not have to share the same restroom as me.

28. Instead of using the separate restrooms, I try to avoid using the restrooms entirely while at school, and, if that is not possible, I use the nurse's restroom. I limit the amount of liquids I drink and try to "hold it" when I need to urinate during the school day. As a result of

trying to avoid using the restroom, I have repeatedly developed painful urinary tract infections. "Holding it" is also uncomfortable and distracting when I am trying to focus in class.

29. Every time I use the restroom at school, I am reminded that nearly every person in my community now knows I am transgender and that I have now been publically identified as "different." It also stark reminder that I was born in the wrong sex, which increases my feelings of dysphoria, anxiety, and distress.

30. It is embarrassing that, every time I use the restroom, everyone who sees me enter the nurse's office knows exactly why I am in there. They know it is because I am transgender and I have been prohibited from using the same boys' restrooms that the other boys use.

31. It also feels humiliating that, whenever I have to use the restroom, I am effectively reminding anyone who sees me go to the nurse's office that, even though I am living and interacting with the world in accordance with my gender identity as a boy, my genitals look different.

32. I just want to live my life like any other boy. And I want to perform the basic human function of using the restroom without being made to feel alienated, humiliated, and different than everyone else.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 3, 2015.

By: [SIGNATURE FILED UNDER SEAL]

G.G.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

G.G., by his next friend and mother, DEIRDRE GRIMM, Plaintiffs, v. GLOUCESTER COUNTY SCHOOL BOARD, Defendant.	)	Civil No. 4:15-cv-00054-RGD-DEM

CORRECTED EXPERT DECLARATION OF RANDI ETTNER, Ph.D

PRELIMINARY STATEMENT

1. I have been retained by counsel for Plaintiff as an expert in connection with the above-captioned litigation. I have actual knowledge of the matters stated in this declaration.

2. My professional background, experience, and publications are detailed in my curriculum vitae, a true and accurate copy which is attached as Exhibit A to this report. I received my doctorate in psychology from Northwestern University in 1979. I am the chief psychologist at the Chicago Gender Center, a position I have held since 2005.

3. I have expertise working with children and adolescents with Gender Dysphoria. During the course of my career, I have evaluated or treated between 2,500 and 3,000 individuals with Gender Dysphoria and mental health issues related to gender variance. Approximately 33% of those individuals were adolescents. I have also served as a consultant to the Wisconsin and Chicago public school systems on issues related to gender identity.

4. I have published three books, including the medical text entitled "Principles of Transgender Medicine and Surgery" (co-editors Monstrey & Eyler; Routledge, 2007). I have

authored numerous articles in peer-reviewed journals regarding the provision of health care to this population. I have served as a member of the University of Chicago Gender Board, and am a member of the editorial board for the *International Journal of Transgenderism*.

5. I am a member of the Board of Directors of the World Professional Association for Transgender Health (WPATH) (formerly the Harry Benjamin International Gender Dysphoria Association), and an author of the WPATH *Standards of Care* (7th version), published in 2011. The WPATH-promulgated Standards of Care are the internationally recognized guidelines for the treatment of persons with Gender Dysphoria and serve to inform medical treatment in the United States and throughout the world.

6. In preparing this report, I reviewed the materials listed in the attached Bibliography (Exhibit B). I may rely on those documents, in addition to the documents specifically cited as supportive examples in particular sections of this report, as additional support for my opinions. I have also relied on my years of experience in this field, as set out in my curriculum vitae (Exhibit A), and on the materials listed therein. The materials I have relied upon in preparing this report are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

7. In addition to the materials in Exhibit B, I personally met with G.G. and Deirdre Grimm on May 26, 2015, to conduct a clinical assessment of G.G. The evaluation consisted of a clinical interview with, and observation of, G.G.; a subsequent interview with his mother; the administration of psychological testing; and a review of health records from his pediatrician and endocrinologist. I am confident that the opinions I hereafter render based on that assessment are both reliable and valid.

8. In the past four years, I have testified as an expert at trial or deposition in the following matters: *Kothmann v. Rosario*, Case No. 5:13-cv-28-Oc-22PRL (M.D. Fla.); *Doe et al v. Clenchy*, Case No cv-09-201 (Me. Super. Ct.)

9. I am being compensated at an hourly rate for actual time devoted, at the rate of $245 per hour for any clinical services, review of records, or report; $395 per hour for deposition and trial testimony; and $900 per day for travel time spent out of the office. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

GENDER IDENTITY AND GENDER DYSPHORIA

10. The term "gender identity" is a well-established concept in medicine, referring to one's sense of oneself as male or female. All human beings develop this elemental internal view: the conviction of belonging to one gender or the other. Gender identity is an innate and immutable aspect of personality that is firmly established by age four, although individuals vary in the age at which they come to understand and express, their gender identity.

11. Typically, people born with female anatomical features identify as girls or women, and experience themselves as female. Conversely, those persons born with male characteristics ordinarily identify as males. However, for transgender individuals, this is not the case. For transgender individuals, the sense of one's self—one's gender identity—differs from the natal, or birth-assigned sex, giving rise to a sense of being "wrongly embodied."

12. The medical diagnosis for that feeling of incongruence is Gender Dysphoria, which is codified in the Diagnostic and Statistical manual of Mental Disorders (DSM-V) (American Psychiatric Association) and the International Classification of Diseases-10 (World Health Organization). The condition is manifested by symptoms such as preoccupation with

ridding oneself of primary and secondary sex characteristics. Untreated Gender Dysphoria can result in significant clinical distress, debilitating depression, and often suicidality.

13. The criteria for establishing a diagnosis of Gender Dysphoria in adolescents and adults are set forth in the DSM-V (302.85):

A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months duration, as manifested by at least two of the following:

1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated sex characteristics).

2. A strong desire to be rid of one's primary/and or secondary sex characteristics because of a marked incongruence with one's experienced/ expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).

3. A strong desire for the primary and /or secondary sex characteristics of the other gender.

4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).

5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).

6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

14. The World Professional Association for Transgender Health (WPATH) has established internationally accepted Standards of Care (SOC) for the treatment of people with Gender Dysphoria. The SOC have been endorsed as the authoritative standards of care by leading medical and mental health organizations, including the American Medical Association, the Endocrine Society, and the American Psychological Association.

15. In accordance with the SOC, individuals undergo medically-recommended transition in order to live in alignment with their gender identity. Treatment of the condition is multi-dimensional and varies from individual to individual depending on their needs, but can consist of social role transition, hormone therapy, and surgery to alter primary and/or secondary sex characteristics to help the individual live congruently with his or her gender identity and eliminate the clinically significant distress caused by Gender Dysphoria.

16. Social role transition is a critical component of the treatment for Gender Dysphoria. Social role transition is living one's life fully in accordance with one's gender identity. That typically includes, for a transgender male for example, dressing and grooming as a male, adopting a male name, and presenting oneself to the community as a boy or man. Social transition is crucial to the individual's consolidation of his or her gender identity. The social transition takes place at home, at work or school, and in the broader community. It is important that the individual is able to transition in all aspects of his or her life. If any aspect of social role transition is impeded, however, it undermines the entirety of a person's transition.

17. In prior decades before Gender Dysphoria was well-studied and understood, some considered it to be a mental condition that should be treated by psychotherapy aimed at changing the patient's sense of gender identity to match assigned sex at birth. There is now a medical consensus that such treatment is not effective and can, in fact, can cause great harm to the patient.

TREATMENT OF GENDER DYSPHORIA IN ADOLESCENTS AND HARMFUL EFFECTS OF EXCLUSIONS FROM SCHOOL RESTROOMS

18. As with adults, treatment for Gender Dysphoria in adolescents frequently includes social transition and hormone therapy, but genital surgery is not permissible under the WPATH Standards of Care for persons who are under the legal age of majority. Hormone therapy has a

profound virilizing effect on the appearance of a transgender boy. The voice deepens, there is growth of facial and body hair, body fat is redistributed, and muscle mass increases.

19. As with adults, for teenagers with Gender Dysphoria, social transition is a critical part of treatment. And as with adults, it is important that the social transition occur in all aspects of the individual's life. For a gender dysphoric teen to be considered male in one situation, but not in another, is inconsistent with evidence-based medical practice and detrimental to the health and well-being of the child. The integration of a consolidated identity into the daily activities of life is the aim of treatment. Thus, it is critical that the social transition is complete and unqualified—including with respect to the use of restrooms.

20. Access to a restroom available to other boys is an undeniable necessity for transgender male adolescents. Restrooms, unlike other settings (e.g. the library), categorize people according to gender. There are two, and only two, such categories: male and female. To deny a transgender boy admission to such a facility, or to insist that one use a separate restroom, communicates that such a person is "not male" but some undifferentiated "other," interferes with the person's ability to consolidate identity, and undermines the social-transition process.

21. When transgender adolescents are not permitted to use restrooms that match their appearance and gender identity, the necessity of using the restroom can become a source of anxiety. The Chicago Gender Center physicians clinically report that youngsters often avoid drinking fluids during the day and hold their urine for the entire school day, making them prone to developing urinary tract infections, dehydration, and constipation. Anxiety regarding use of the restroom also makes it difficult for students to concentrate on learning and school activities.

22. Transgender adolescents like G.G. are particularly vulnerable during middle adolescence. Middle adolescence, approximately 15-16 years, is the period of development

when a teenager becomes extremely concerned with appearance and one's own body. This stage is accompanied by dramatic physical changes, including height and weight gains, growth of pubic and underarm hair, and breast development and menstruation in girls. Boys will experience growth of testicles and penis, a deepening of the voice and facial hair growth. There is an increased effort to make new friends, and an intense emphasis on the peer group. "Fitting in" is the overarching motivation at this stage of life.

23. While peers are developing along a "normal" and predictable trajectory, however, transgender teens like G.G. feel betrayed by the body, anxious about relationships, and frustrated by the challenges of a "non-normative" existence. At the very time of life when nothing is more important than being part of a peer group, fitting in, belonging, they may conspicuously stand out. Research shows that transgender students are at far greater risk for severe health consequences – including suicide – than the rest of the student population, and more than 50% of transgender youth will have had at least one suicide attempt by age 20.

24. If school administrators amplify this discomfort by sending a message that the student is different than his peers or shameful, they stigmatize nascent identity formation, which can be devastating for the student. Studies show that external attempts to negate a person's gender identity constitute *identity threat*. Developing and integrating a positive sense of self—identity formation—is a developmental task for all adolescents. For the transgender adolescent, this is more complex, as the "self" violates society's norms and expectations. Attempts to negate a person's gender identity – such as excluding a transgender male adolescent from the restrooms used by other boys – challenge this blossoming sense of self and pose health risks, including depression, post-traumatic stress disorder, hypertension, and self-harm.

25. School administrators and other adults play a critical role in "setting the tone" for whether a student will be stigmatized and ostracized by peers. Excluding a transgender adolescent from the same restroom as his peers puts a "target on one's back" for potential victimization and bullying. When adults—authority figures—deny an adolescent access to the restroom consistent with his lived gender, they shame him—negating the legitimacy of his identity and decimating confidence. In effect, they revoke membership from the peer group.

26. In a study of transgender youth age 15 to 21, investigators found school to be the most traumatic aspect of growing up. Experiences of rejection and discrimination from teachers and school personnel led to feelings of shame and unworthiness. The stigmatization they were routinely subjected to led many to experience academic difficulties and to drop out of school.

27. Until recently, it wasn't fully understood that these experiences of shame and discrimination could have serious and enduring consequences. But it is now known that stigmatization and victimization are some of the most powerful predictors of current and future mental health problems, including the development of psychiatric disorders. The social problems these transgender teens face at school actually create the blueprint for future metal health, life satisfaction, and even physical health. A recent study of 245 gender non-conforming adults found that stress and victimization at school was associated with a greater risk for post-traumatic stress disorder, depression, life dissatisfaction, anxiety, and suicidality in adulthood.

ASSESSMENT OF G.G.

28. It is my professional opinion that the Gloucester County School Board's policy of excluding G.G. from the communal restroom used by other boys and effectively banishing him to separate single-stall restroom facilities is currently causing emotional distress to an extremely vulnerable youth and placing G.G. at risk for accruing lifelong psychological harm.

29. As noted above, I personally met with G.G. on May 26, 2015, to conduct a clinical assessment. G.G. meets the criteria for Gender Dysphoria in adolescents and adults (302.85), in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition (F64.1) in the International Classification of Diseases. Indeed, G.G. has a *severe* degree of Gender Dysphoria. By adolescence, children with G.G.'s severe degree of Gender Dysphoria are so dysphoric they cannot even attempt to live as female. Such individuals seek hormones and, when they are old enough, surgeries that can offer them the only real hope of a normal life. As an adolescent, medically necessary treatment for G.G. currently includes testosterone therapy and social transition in all aspects of his life – including with respect to use of the restrooms. Untreated, many of these youngsters commit suicide.

30. As a result of the School Board's restroom policy, however, G.G. is put in the humiliating position of having to use a separate facility, thereby accentuating his "otherness," undermining his identity formation, and impeding his medically necessary social transition process. The shame of being singled out and stigmatized in his daily life every time he needs to use the restroom is a devastating blow to G.G. and places him at extreme risk for immediate and long-term psychological harm.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 2, 2015.

By: [ORIGINAL SIGNATURE UNDER SEAL]

Randi Ettner Ph.D.

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POSITIONS HELD

Clinical Psychologist
Forensic Psychologist
Fellow and Diplomate in Clinical Evaluation, American Board of Psychological Specialities
Fellow and Diplomate in Trauma/PTSD
President, New Health Foundation Worldwide
Board of Directors, World Professional Association of Transgender Health (WPATH)
Chair, Committee for Incarcerated Persons, WPATH
University of Minnesota Medical Foundation: Leadership Council
Psychologist, Chicago Gender Center
Adjunct Faculty, Prescott College
Editorial Board, International Journal of Transgenderism
Television and radio guest (more than 100 national and international appearances)
Internationally syndicated columnist
Private practitioner
Medical staff privileges attending psychologist Advocate Lutheran General Hospital

EDUCATION

PhD, 1979 Northwestern University (with honors)
Evanston, Illinois

MA, 1976 Roosevelt University (with honors)
Chicago, Illinois
Major: Clinical Psychology

BA, 1969-72 Indiana University (cum laude)
Bloomington, Indiana
Major: psychology, Minor: sociology

1972 Moray College of Education
Edinburgh, Scotland
International Education Program

1970 Harvard University
Cambridge, Massachusetts
Social relation undergraduate summer program in group dynamics and processes

CLINICAL AND PROFESSIONAL EXPERIENCE

Present	Psychologist: Chicago Gender Center Consultant: Walgreens; Tawani Enterprises Private practitioner
2011	Instructor, Prescott College: Gender - A multidimensional approach
2000	Instructor, Illinois Professional School of Psychology
1995-present	Supervision of clinicians in counseling gender non-conforming clients
1993	Post-doctoral continuing education with Dr. James Butcher in MMPI-2 interpretation University of Minnesota
1992	Continuing advanced tutorial with Dr. Leah Schaefer in Psychotherapy
1983-1984	Staff psychologist, Women's Health Center, St. Francis Hospital, Evanston, Illinois
1981-1984	Instructor, Roosevelt University, Department of Psychology: Psychology of Women, Tests and Measurements, Clinical Psychology, Personal Growth, Personality Theories, Abnormal Psychology
1976-1978	Research Associate, Cook County Hospital, Chicago, Illinois Department of Psychiatry
1975-1977	Clinical Internship, Cook County Hospital, Chicago, Illinois Department of Psychiatry
1971	Research Associate, Department of Psychology, Indiana University
1970-1972	Teaching Assistant in Experimental and Introductory Psychology Department of Psychology, Indiana University
1969-1971	Experimental Psychology Laboratory Assistant, Department of Psychology, Indiana University

LECTURES AND HOSPITAL GRAND ROUNDS PRESENTATIONS

Gender reassignment surgery- Midwestern Association of Plastic Surgeons, 2015

Adult development and quality of life in transgender healthcare- Eunice Kennedy Shriver National Institute of Child Health and Human Development, 2015

Healthcare for transgender inmates- American Academy of Psychiatry and the Law, 2014

Supporting transgender students: best school practices for success- American Civil Liberties Union of Illinois and Illinois Safe School Alliance, 2014

Addressing the needs of transgender students on campus- Prescott College, 2014

The role of the behavioral psychologist in transgender healthcare – Gay and Lesbian Medical Association, 2013

Understanding transgender- Nielsen Corporation, Chicago, Illinois, 2013;

Role of the forensic psychologist in transgender care; *Care of the aging transgender patient*- University of California San Francisco, Center for Excellence, 2013

Evidence-based care of transgendered patients- North Shore University Health Systems, University of Chicago, Illinois, 2011; Roosevelt-St. Vincent Hospital, New York; Columbia Presbyterian Hospital, Columbia University, New York, 2011

Children of Transsexuals-International Association of Sex Researchers, Ottawa, Canada, 2005; Chicago School of Professional Psychology, 2005

Gender and the Law- DePaul University College of Law, Chicago, Illinois, 2003; American Bar Association annual meeting, New York, 2000

Gender Identity and Clinical Issues – WPATH Symposium, Bangkok, Thailand, 2014; Argosy College, Chicago, Illinois, 2010; Cultural Impact Conference, Chicago, Illinois, 2005; Weiss Hospital, Department of Surgery, Chicago, Illinois, 2005; Resurrection Hospital Ethics Committee, Evanston, Illinois, 2005; Wisconsin Public Schools, Sheboygan, Wisconsin, 2004, 2006, 2009; Rush North Shore Hospital, Skokie, Illinois, 2004; Nine Circles Community Health Centre, University of Winnipeg, Winnipeg, Canada, 2003; James H. Quillen VA Medical Center, East Tennessee State University, Johnson City, Tennessee, 2002; Sixth European Federation of Sexology, Cyprus, 2002; Fifteenth World Congress of Sexology, Paris, France, 2001; Illinois School of Professional Psychology, Chicago, Illinois 2001; Lesbian Community Cancer Project, Chicago, Illinois 2000; Emory University Student Residence Hall, Atlanta, Georgia, 1999; Parents, Families and Friends of Lesbians and Gays National Convention, Chicago, Illinois, 1998; In the Family Psychotherapy Network National Convention, San Francisco, California, 1998; Evanston City Council, Evanston, Illinois 1997; Howard

Brown Community Center, Chicago, Illinois, 1995; YWCA Women's Shelter, Evanston, Illinois, 1995; Center for Addictive Problems, Chicago, 1994

Psychosocial Assessment of Risk and Intervention Strategies in Prenatal Patients- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984; Purdue University School of Nursing, West Layette, Indiana, 1980

Psychonueroimmunology and Cancer Treatment- St. Francis Hospital, Evanston, Illinois, 1984

Psychosexual Factors in Women's Health- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984

Sexual Dysfunction in Medical Practice- St. Francis Hospital, Dept. of OB/GYN, Evanston, Illinois, 1980

Sleep Apnea - St. Francis Hospital, Evanston, Illinois, 1996; Lincolnwood Public Library, Lincolnwood, Illinois, 1996

The Role of Denial in Dialysis Patients - Cook County Hospital, Department of Psychiatry, Chicago, Illinois, 1977

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"Post-traumatic Stress Disorder," *Chicago Daily Law Bulletin*, 1995.

"Compensation for Mental Injury," *Chicago Daily Law Bulletin*, 1994.

"Workshop Model for the Inclusion and Treatment of the Families of Transsexuals," Proceedings of the Harry Benjamin International Gender Dysphoria Symposium; Bavaria, Germany, 1995.

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PROFESSIONAL AFFILIATIONS

University of Minnesota Medical School –Leadership Council
American College of Forensic Psychologists
World Professional Association for Transgender Health
Advisory Board, Literature for All of Us
American Psychological Association
American College of Forensic Examiners
Society for the Scientific Study of Sexuality
Screenwriters and Actors Guild
Board of Directors, Chiaravalle Montessori School
Phi Beta Kappa

AWARDS AND HONORS

Phi Beta Kappa, 1971
Indiana University Women's Honor Society, 1969-1972
Indiana University Honors Program, 1969-1972
Merit Scholarship Recipient, 1970-1972
Indiana University Department of Psychology Outstanding Undergraduate Award Recipient, 1970-1972
Representative, Student Governing Commission, Indiana University, 1970

LICENSE

Clinical Psychologist, State of Illinois, 1980

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

G.G., by his next friend and mother, DEIRDRE GRIMM, Plaintiffs,	)	Civil No. 4:15cv54
v.	)	
GLOUCESTER COUNTY SCHOOL BOARD, Defendant.	)	

REQUEST FOR HEARING ON
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Local Civil Rule 7(E), Plaintiff respectfully requests that the Court set Plaintiff's Motion for Preliminary Injunction for hearing.

The Motion requests a preliminary injunction requiring the Defendant to allow Plaintiff access to boys' restrooms when school resumes on September 8, 2015. In order to ensure ample time for the Court to rule on the Motion before that date, Plaintiff requests that the hearing take place as soon as possible after Defendant has an opportunity to respond to the Motion. Specifically, Plaintiff asks that the hearing be set during July 2015, on any date except for July 10-16, 2015, when counsel is unavailable.

Plaintiff anticipates that, unless the Court indicates a preference for witness testimony, only oral argument will be necessary. Plaintiff expects argument to take no longer than one hour.

Dated: June 18, 2015

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA FOUNDATION, INC.
/s/
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**Pro hac vice* motion pending

Dated: June 18, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 2015, I served a copy of the foregoing document by U.S. Mail and electronic mail to the following:

Edwin Wilmot
Gloucester County Attorney
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ewilmot@gloucesterva.info

/s/
Gail M. Deady

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

January 7, 2015

REDACTED - PII

Dear REDACTED - PII

I write in response to your letter, sent via email to the U.S. Department of Education (the Department) on December 14, 2014, regarding transgender students' access to facilities such as restrooms. In your letter, you mentioned statements in recent guidance documents issued by the Department concerning the application of Title IX of the Education Amendments of 1972 (Title IX) to gender identity discrimination. In addition, you identified a particular school district's policy about access to restrooms and asked about the existence and distribution of any guidance by the Department about policies or practices regarding transgender students' access to restrooms. Your letter has been referred to the Department's Office for Civil Rights (OCR), and I am happy to respond.

As you know, OCR's mission includes enforcing Title IX, which prohibits recipients of Federal financial assistance from discriminating on the basis of sex, including gender identity and failure to conform to stereotypical notions of masculinity or femininity.[1] OCR enforces and interprets Title IX consistent with case law,[2] and with the adjudications and guidance documents of other Federal agencies.[3]

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[1] *See* OCR's April 2014 Questions and Answers on Title IX and Sexual Violence at B-2, http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf.

[2] *See, e.g., Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (holding that Title VII of the Civil Rights Act of 1964's (Title VII) prohibition on sex discrimination bars discrimination based on gender stereotyping, that is "insisting that [individuals] matched the stereotype associated with their group"); *Barnes v. City of Cincinnati*, 401 F.3d 729, 736-39 (6th Cir. 2005) (holding that demotion of transgender police officer because he did not "conform to sex stereotypes concerning how a man should look and behave" stated a claim of sex discrimination under Title VII); *Smith v. City of Salem*, 378 F.3d 566, 574-75 (6th Cir. 2004) ("[D]iscrimination against a plaintiff who is a transsexual—and therefore fails to act and/or identify with his or her gender—is no different from the discrimination directed against Ann Hopkins in *Price Waterhouse*, who, in sex-stereotypical terms, did not act like a woman."); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000) (applying *Price Waterhouse* to conclude, under the Equal Credit Opportunity Act, that plaintiff states a claim for sex discrimination if bank's refusal to provide a loan application was because plaintiff's "traditionally feminine attire.... did not accord with his male gender"); *Schwenk v. Hartford*, 204 F.3d 1187, 1201-02 (9th Cir. 2000) (holding that discrimination against transgender females—*i.e.*, "as anatomical males whose outward behavior and inward identity [do] not meet social definitions of masculinity"—is actionable discrimination "because of sex" under the Gender Motivated Violence Act").

[3] *See, e.g.*, U.S. Dept. of Justice, Memorandum from the Attorney General regarding the Treatment of

The Department's Title IX regulations permit schools to provide sex-segregated restrooms, locker rooms, shower facilities, housing, athletic teams, and single-sex classes under certain circumstances. When a school elects to separate or treat students differently on the basis of sex in those situations, a school generally must treat transgender students consistent with their gender identity.[4] OCR also encourages schools to offer the use of gender-neutral, individual-user facilities to any student who does not want to use shared sex-segregated facilities.

OCR refrains from offering opinions about specific facts, circumstances, or compliance with federal civil rights laws without first conducting an investigation, and does not release information about its pending investigations. Nevertheless, it may be useful to be aware that in response to OCR's recent investigations of two complaints of gender identity discrimination, recipients have agreed to revise policies to make clear that transgender students should be treated consistent with their gender identity for purposes of restroom access. For examples of how OCR enforces Title IX in this area, please review the following resolutions of OCR investigations involving transgender students: Arcadia Unified School District;[5] and Downey Unified School District.[6]

OCR is committed to helping all students thrive at school and ensuring that schools take action to prevent and respond promptly and effectively to all forms of discrimination, including gender-identity discrimination. OCR staff is also available to

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Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (Dec. 15, 2014) (stating that the protection of Title VII extends to claims of discrimination based on an individual's gender identity, including transgender status), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf; *see also Macy v. Holder*, Appeal No. 012012082 (U.S. Equal Emp't Opportunity Comm'n Apr. 20, 2012) (holding that gender identity and transgender status did not need to be specifically addressed in Title VII in order to be prohibited bases of discrimination, as they are simply part of the protected category of "sex"), http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt; U.S. Dept. of Health & Human Services, Office for Civil Rights, *Letter to Maya Rupert, Esq.*, Transaction No. 12-0008000 (July 12, 2012) (stating that Section 1557 of the Affordable Care Act, which incorporates Title IX's prohibition on sex discrimination, "extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity"), http://www.scribd.com/doc/101981113/Response-on-LGBT-People-in-Sec-1557-in-the-Affordable-Care-Act-from-the-U-S-Dept-of-Health-and-Human-Services; U.S. Dep't of Labor, Office of Federal Contract Compliance Programs, *Gender Identity and Sex Discrimination*, Directive 2014-02 (Aug. 14, 2014) (directing that for purposes of Executive Order 11246, which prohibits employment discrimination on the basis of sex by federal contractors and subcontractors, "discrimination based on gender identity or transgender status … is discrimination based on sex"), http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html.

[4] *See, e.g.*, OCR's December 2014 Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities, at Q. 31, http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf.

[5] OCR Case No. 09-12-1020 (July 24, 2013), http://www.justice.gov/crt/about/edu/documents/arcadialetter.pdf (resolution letter); and http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf (resolution agreement).

[6] OCR Case No. 09-12-1095 (October 14, 2014), http://www2.ed.gov/documents/press-releases/downey-school-district-letter.pdf (resolution letter); and http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf (resolution agreement).

offer schools technical assistance on how to comply with Title IX and ensure all students, including transgender students, have equal access to safe learning environments.

If you have questions, want additional information or technical assistance, or believe that a school is engaging in discrimination based on gender identity or another basis protected by the laws enforced by OCR, you may visit OCR's website at www.ed.gov/ocr or contact OCR at (800) 421-3481 (TDD: 800-877-8339) or at ocr@ed.gov. You may also fill out a complaint form online at www.ed.gov/ocr/complaintintro.html.

I hope that this information is helpful and thank you for contacting the Department.

Sincerely,

James A. Ferg-Cadima
Acting Deputy Assistant Secretary for Policy
Office for Civil Rights

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

G.G.,

Plaintiff,

v. Case No. 4:15-cv-00054-RGD-TEM

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant.

DECLARATION OF TROY M. ANDERSEN

On this 7th day of July 2015, I, Troy M. Andersen, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am over the age of eighteen, suffer no legal disabilities, have personal knowledge of the facts set forth below, and am competent to testify.

2. I am the Gloucester Point District Representative for the Gloucester County School Board ("the School Board" or "GCSB"), and I served in that capacity during the 2014-2015 school year. I am still a member of the School Board and currently serve as its chairman.

3. It has always been the practice of Gloucester County Schools to separate restrooms and locker rooms at school facilities on the basis of the students' biological sex, and this practice has been in place the entire time that Plaintiff has been a student within the Gloucester County school system. It is my understanding that Plaintiff enrolled as a freshman at Gloucester High School for the 2013-2014 school year as a female student.

4. While Plaintiff was granted permission at the school level to begin using the boys' restrooms at Gloucester High School on October 20, 2014, no decision was made by the School Board until December 9, 2014. Beginning on October 21, 2014, the School Board began

EXHIBIT
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receiving numerous complaints from parents and students about Plaintiff's use of the boys' restrooms.

5. On December 9, 2014, the School Board adopted a restroom and locker room resolution that provided:

> Whereas the GCPS recognizes that some students question their gender identities, and
>
> Whereas the GCPS encourages such students to seek support, advice, and guidance from parents, professionals and other trusted adults, and
>
> Whereas the GCPS seeks to provide a safe learning environment for all students and to protect the privacy of all students, therefore
>
> It shall be the practice of the GCPS to provide male and female restroom and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided an alternative appropriate private facility.

6. The restroom and locker room resolution reflects what has always been the practice of the schools. The resolution was developed to treat all students and situations the same.

7. The School Board had three single-stall unisex bathrooms constructed at Gloucester High School. All three restrooms were open for use by December 16, 2014. Any student can use these unisex bathrooms, regardless of their biological sex, if they are uncomfortable using a communal bathroom, or for any other privacy reason. Students may also use a restroom located in the nurse's office.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Executed on: 7/7/15 (date)

Troy M. Andersen

Troy M. Andersen

AMERICAN PSYCHOLOGICAL ASSOCIATION

Definition of Terms:
Sex, Gender, Gender Identity, Sexual Orientation

Excerpt from: The Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients, adopted by the APA Council of Representatives, February 18-20, 2011. The Guidelines are available on the APA website at http://www.apa.org/pi/lgbt/resources/guidelines.aspx

Definition of Terms

Sex refers to a person's biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female). There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.

Gender refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. Behavior that is compatible with cultural expectations is referred to as gender-normative; behaviors that are viewed as incompatible with these expectations constitute gender non-conformity.

Gender identity refers to "one's sense of oneself as male, female, or transgender" (American Psychological Association, 2006). When one's gender identity and biological sex are not congruent, the individual may identify as transsexual or as another transgender category (cf. Gainor, 2000).

Gender expression refers to the "...way in which a person acts to communicate gender within a given culture; for example, in terms of clothing, communication patterns and interests. A person's gender expression may or may not be consistent with socially prescribed gender roles, and may or may not reflect his or her gender identity" (American Psychological Association, 2008, p. 28).

Sexual orientation refers to the sex of those to whom one is sexually and romantically attracted. Categories of sexual orientation typically have included attraction to members of one's own sex (gay men or lesbians), attraction to members of the other sex (heterosexuals), and attraction to members of both sexes (bisexuals). While these categories continue to be widely used, research has suggested that sexual orientation does not always appear in such definable categories and instead occurs on a continuum (e.g., Kinsey, Pomeroy, Martin, & Gebhard, 1953; Klein, 1993; Klein, Sepekoff, & Wolff, 1985; Shiveley & DeCecco, 1977) In addition, some research indicates that sexual orientation is fluid for some people; this may be especially true for women (e.g., Diamond, 2007; Golden, 1987; Peplau & Garnets, 2000).

Coming out refers to the process in which one acknowledges and accepts one's own sexual orientation. It also encompasses the process in which one discloses one's sexual orientation to others. The term *closeted* refers to a state of secrecy or cautious privacy regarding one's sexual orientation.

*The 2011 guidelines replace the *Guidelines for Psychotherapy with Lesbian, Gay, and Bisexual Clients* adopted by the Council, February 26, 2000, which expired at the end of 2010.

EXHIBIT
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

G.G., by his next friend and mother, DEIRDRE GRIMM, Plaintiffs, v. GLOUCESTER COUNTY SCHOOL BOARD, Defendant.	)	Civil No. 4:15cv54

SUPPLEMENTAL DECLARATION OF G.G.

1. My name is G.G. I am the plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. On or about May 27, 2015, I went to a local branch of the Virginia Department of Motor Vehicles (DMV) to apply for a learner's permit and to complete Gender Change Designation Request in order to ensure that the permit would reflect my gender as male.

3. I subsequently received a letter from DMV dated June 5, 2015 stating: "The Department of Motor Vehicles (DMV) has approved your request to have the gender indicator on your credential changed from F to M." A copy of the letter (with my name, address, and DMV Customer Number redacted) is attached to this Declaration as Exhibit A.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 10, 2015.

By: G.G.
G.G.

COMMONWEALTH of VIRGINIA
Department of Motor Vehicles
2300 West Broad Street

Richard D. Holcomb
Commissioner

Post Office Box 27412
Richmond, VA 23269-0001

June 5, 2015

Dear

The Department of Motor Vehicles (DMV) has approved your request to have the gender indicator on your credential changed from F to M.

Please visit your local DMV to complete this transaction. Please present this letter to the Customer Service Representative (CSR) as it will help to expedite your request. You will then be issued a new credential with the new gender indicator.

Please retain this letter in the event you need to return to a Customer Service Center for a replacement or reissue credential.

If you or the CSR has any questions regarding the re-issuance of your credential or our gender change policy, you may contact us Monday-Friday from 8:15 a.m. until 5:00 p.m. at (804) 367-6203.

Sincerely,

R. Smalls

R. Smalls
Medical Evaluator Senior
Medical Review Services

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

- - - - - - - - - - - - - - - - - - - -

G.G., by his next friend and mother, Deirdre Grimm, Plaintiff,	)	CIVIL CASE NO. 4:15cv00054
v.	)	
GLOUCESTER COUNTY SCHOOL BOARD, Defendant,	)	
THE UNITED STATES, Interested Party.	)	

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TRANSCRIPT OF PROCEEDINGS
Norfolk, Virginia
July 27, 2015

BEFORE: THE HONORABLE ROBERT G. DOUMAR,
United States District Judge

APPEARANCES:

AMERICAN CIVIL LIBERTIES UNION
By: Joshua A. Block
and
ACLU OF VIRGINIA
By: Rebecca K. Glenberg
Counsel for the Plaintiff

HARMAN, CLAYTOR, CORRIGAN & WELLMAN
By: David P. Corrigan
Jeremy D. Capps
Counsel for the Defendant

U.S. DEPARTMENT OF JUSTICE
By: Victoria Lill
and
U.S. ATTORNEY'S OFFICE
By: Clare P. Wuerker
Counsel for the United States

(The hearing commenced at 10:58 a.m.)

THE CLERK: Civil Action No. 4:15cv54, Plaintiff, G.G., by his next friend and mother, Deirdre Grimm v. Defendant, Gloucester County School Board and interested party, the United States.

For the plaintiff, Ms. Glenberg, Mr. Block, are you ready to proceed?

MR. BLOCK: Yes, Your Honor.

THE CLERK: For the defendant, Mr. Corrigan, Mr. Capps, are you ready to proceed?

MR. CORRIGAN: Yes, we are.

THE CLERK: And for the interested parties, the United States, Ms. Wuerker, Ms. Lill, are you ready?

MS. WUERKER: Yes, Your Honor.

THE COURT: Well, first we want to take up the motion to dismiss, and who is going to argue the case for the plaintiff?

MR. BLOCK: I am, Your Honor.

THE COURT: What is your name?

MR. BLOCK: Well, for the plaintiff, Joshua Block, but I didn't know if you wanted defense --

THE COURT: Well, first, for the plaintiff who is going to be arguing?

MR. BLOCK: Joshua Block, on behalf of the plaintiff.

THE COURT: All right, Mr. Block. And who is going to be arguing on behalf of the defendant?

MR. CORRIGAN: I am, Your Honor. My name is David Corrigan.

THE COURT: All right, Mr. Corrigan. And who is going to say anything on behalf of the government?

MS. LILL: My name is Victoria Lill, Your Honor.

THE COURT: You're going to have to speak louder. I have trouble hearing.

MS. LILL: I'm Victoria Lill, and I'll be speaking on behalf of the United States.

THE COURT: All right, Ms. Lill.

This is on the motion to dismiss. Now, I spent yesterday reading this material. It took all day, Mr. --

MR. CORRIGAN: Corrigan.

THE COURT: Mr. Corrigan, it took all day.

MR. CORRIGAN: Yes, sir.

THE COURT: A beautiful Sunday that I could have played golf, and instead I read. So I just want you to know that. So try not to be too repetitive.

MR. CORRIGAN: I promise not to be repetitive, Your Honor.

THE COURT: All right. This is on the motion to dismiss. How much time do you want?

MR. CORRIGAN: I think my presentation right now

will take less than ten minutes.

THE COURT: All right.

MR. CORRIGAN: Your Honor, David Corrigan. I represent the Gloucester County School Board.

THE COURT: Just a minute. Counsel for the plaintiff in this case, Mr. Block, how much time do you want to take?

MR. BLOCK: On the motion to dismiss I'll take 15 minutes.

THE COURT: That's all right. I'm not limiting you. And I assume, Ms. Lill, you want to spend some time or --

MS. LILL: Your Honor, we filed a statement of interest related to the preliminary injunction, and so I would be happy to answer questions and to speak on the issues that we --

THE COURT: I don't think I'd be too happy to answer questions if I were you, but, in any event, since you're happy to answer them, I may ask you some. Since you've invited the questions, you may get them.

All right. Go ahead.

MR. CORRIGAN: Yes, sir. Thank you, Your Honor. David Corrigan, representing the Gloucester County School Board.

I'm here today, of course, as you've mentioned, on the School Board's motion to dismiss the complaint filed by

the plaintiff. And the Court has the benefit of the plaintiff's complaint, the School Board's memorandum in support of motion to dismiss, as well as our reply brief and the opposition of the plaintiff, as well as the briefs in the preliminary injunction matter, both of which we've said we're going to feel free to argue those as well, not for purposes of turning this into a summary judgment motion, but just on the motion to dismiss.

Because the issues have been addressed and the arguments of the two sides pretty well laid out --

THE COURT: Almost invariably, both of these motions are involved in this matter. In fact, I've never seen a plaintiff's motion so thorough. I was wondering if they were going to tell me about his birth. They didn't miss anything.

MR. CORRIGAN: Your Honor, I intend to address the reasons the School Board --

THE COURT: They didn't miss anything.

MR. CORRIGAN: No, sir.

-- should prevail on this motion without --

THE COURT: One thing you're going to be prepared for while we're waiting, Mr. --

MR. CORRIGAN: Corrigan.

THE COURT: I've got to find out -- I keep -- Mr. --

MR. BLOCK: Block.

THE COURT: Mr. Block, in your complaint you

interchanged "sophomore," "freshman," some times, so that nobody -- I could never figure out how old anyone was at any particular time.

I want you to go through your complaint. I want you to list every age at any time you talk about "sophomore," "freshman," or anything else, so that I can get some idea of the continuity. It was jumping around from one to -- I'm not criticizing you, I'm merely saying you jumped around. It makes it difficult to determine at what age what happened, and, therefore, to find any logical sequence.

Other than that, everything else was in the complaint that I could see and a heck of a lot more than was necessary. But, nonetheless, it's there.

Okay. Let's go along.

MR. CORRIGAN: Yes, sir, Your Honor. What I intend to argue is the reasons that the defense wins the motion to dismiss the complaint.

On December 9th, 2014, the Gloucester County School Board passed a resolution. And I'm going to read the resolution because it is so important.

"Whereas, the GCPS recognizes that some students question their gender identities; and, whereas, the GCPS encourages such students to seek support, advice, and guidance from parents, professionals, and other trusted adults; and, whereas, the GCPS seeks to provide a safe

learning environment for all students and to protect the privacy of all students; therefore, it shall be the practice of the GCPS to provide male and female restroom and locker room facilities at its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided an alternative appropriate private facility."

And all the Court needs to decide today is whether this plaintiff has alleged facts sufficient to survive a motion to dismiss the equal protection in Title IX claims. In the end, Your Honor, what the school board resolution did was to provide each student in the school with two choices. The first choice was use the restroom associated with your biological sex, and the second choice is use, to quote the resolution, an alternative appropriate facility.

As it applies to this plaintiff, there are three single-stall restrooms available for use by this child or by any other child at Gloucester County High School to use if the child does not want to use the restroom associated with the child's biological sex, and that accommodation is not unconstitutional or a violation of Title IX.

And the reason it's not unconstitutional or a violation of Title IX is this: The plaintiff is not being treated differently from others similarly situated. All students have two choices; go to a bathroom of their

biological sex or go to a private bathroom. No student is permitted to use the restroom of the opposite sex.

We don't even get into whether transgender is a protected class. It is not. No case says it is, and even the plaintiff agrees that they're attempting to bring this claim based simply on transgender status.

We don't get into the rational basis test or the intermediate test; although, the policy passes under either standard because the School Board has a legitimate interest in providing safe and appropriate facilities consistent with society's long-held tradition of sex-segregated spaces based on biological sex. And that's the argument put forth and the holding of the *Johnston* case from Pennsylvania that we rely on so heavily. The School Board balanced the needs, interests and rights of children in kindergarten through 12th grade in passing its resolution. We don't get into the Title IX debate. All students have equal, comparable bathroom opportunities; their biological sex bathroom or the private bathroom.

And, finally, there is no *Pricewaterhouse* analysis because that line of cases is based on sex stereotyping. *Pricewaterhouse* does not say that males and females must be required to use the same restrooms together. It says that effeminate men or macho women are not to be discriminated against because their behavior does not conform to a sex

stereotype. That line of cases has no bearing on this situation where the School Board has given all students, including the plaintiff, two choices; use the bathroom of your biological sex or use an alternative private restroom.

There's no discrimination against the plaintiff except in the use of restroom. That's it. The plaintiff was treated with respect, called by the name he requested. His classroom attendance is not affected. He was not told what to wear or how to look. This is not a sexual stereotyping case where the plaintiff is being told to stop acting like a boy. The plaintiff is free to behave in the way he has chosen. The only limitation is in the use of a restroom, and there he can go to the girls' restroom, which the School Board understands he no longer wants to do and is sympathetic to that, or, like every other student who does not want to utilize the restroom of his biological sex, he can use the separate, private, single-stall restrooms.

This scheme may not be what the plaintiff or the Department of Justice or the Department of Education and Office of Civil Rights would prefer, but it does not violate the Equal Protection Clause or Title IX, and the School Board asks the Court to dismiss the case in its entirety.

Thank you.

THE COURT: Well, that's short and sweet. Thank you, Mr. Corrigan.

MR. CORRIGAN: Yes, sir.
MR. BLOCK: Good morning, Your Honor.
THE COURT: Good morning, Mr. Block.
MR. BLOCK: I think the defense began this argument with a factual assertion that is not in the complaint and contradicts the allegations in the complaint. The defendant said that under the policy any student, including a transgender student --
THE COURT: Well, it's the policy you're seeking to have set aside. Isn't that correct? It doesn't say so in your complaint, but you're suing the School Board.
MR. BLOCK: Yes, Your Honor.
THE COURT: And you're suing them because of action taken at a particular time in announcing a particular policy. Is that correct?
MR. BLOCK: Yes, Your Honor.
THE COURT: And you seek to have that policy rejected, correct?
MR. BLOCK: As it applies to plaintiff, yes.
THE COURT: As it applies to anyone.
MR. BLOCK: No, no, no, not as it applies to anyone, Your Honor.
THE COURT: Oh, you want your client treated differently than anyone else?
MR. BLOCK: Well, I mean, we --

THE COURT: Either you want the policy out or you don't.

MR. BLOCK: Well, I think it depends on what we're talking about the policy is, Your Honor.

THE COURT: Because that's what the School Board did, was enact the policy.

MR. BLOCK: Yes, Your Honor. I think --

THE COURT: And you don't want that policy changed, correct?

MR. BLOCK: Correct, but I think the policy that they passed --

THE COURT: In that case, you don't want a case. Who else is a defendant here besides the School Board?

MR. BLOCK: Your Honor, I guess I'm not sure what you're saying. It's a case on behalf of an individual plaintiff, it's not a class action.

THE COURT: I understand that, but you're seeking to obtain an injunction to prevent the School Board from providing certain action that affects your plaintiff in a different manner. Isn't that correct?

MR. BLOCK: Yes, and it's --

THE COURT: In that case, let's get to it. Don't play games. That complaint has got so much in it. It's the longest complaint I've read in years.

MR. BLOCK: Well, Your Honor, I'm not trying to play

games.

THE COURT: All you did is you put so much stuff in it, most of which may have to do with what I would generally call evidence, but, nonetheless, you put it in there.

So the question really boils down to the action of the School Board taken on December 9th. Isn't that correct?

MR. BLOCK: Yes, Your Honor. And there's a factual disagreement about what that policy does.

The defendants have said here that the policy allows every student to use the restroom based on their sex assigned at birth. I think --

THE COURT: Well, isn't that what Title IX says?

MR. BLOCK: Well --

THE COURT: Title IX is explicit.

MR. BLOCK: No, no, no, Your Honor. I'm saying that --

THE COURT: It says, "A recipient may provide separate toilet, locker rooms and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex."

MR. BLOCK: Exactly.

THE COURT: Isn't that Title IX?

MR. BLOCK: It exactly is, and I think there's an ambiguity.

THE COURT: Is "gender" different from "sex"?
MR. BLOCK: No, Your Honor.
THE COURT: It is not?
MR. BLOCK: No. The Supreme Court used --
THE COURT: So "gender" and "sex," you say, are one and the same.
MR. BLOCK: I'm saying --
THE COURT: Is there any definition of "gender" which you have said it doesn't mean biological sex? Or does it?
MR. BLOCK: Your Honor --
THE COURT: "Gender" doesn't mean biological sex? "Gender" wasn't utilized, I understand, according to Wikipedia, which, unfortunately, is an easy consult now, since the Encyclopedia Britannica has gone by way of all flesh.
In any event, Wikipedia indicates that it started -- the word "gender" was used first in about 1955. Is that correct?
MR. BLOCK: I don't know whether that's correct or not.
THE COURT: Well, you're defining "gender" and "sex" as the same.
MR. BLOCK: The Supreme Court -- all the Supreme Court sex discrimination cases use "gender" and "sex"

interchangeably.

THE COURT: So "gender" and "sex" aren't the same. "Gender" is what the person believes themselves to be; whereas, "sex" is what they are biologically.

MR. BLOCK: Your Honor, no, I don't think that's correct. The Supreme Court has never said that. Justice Scalia, in dissent, said that the Supreme Court should stop using the word "gender" because it means something else, and the majority refused to do that. All the Supreme Court sex discrimination cases say "gender." They don't say "sex" in the modern cases.

But before we get into the legal merits, they are contradicting a key factual allegation in the complaint. There's a contested fact about whether plaintiff, in fact, would be allowed to use the girls' restroom, if they wanted to, and that's because the notion that a School Board, ostensibly concerned with privacy, would think it is perfectly acceptable for a transgender boy, who has facial hair, who has a male driver's license --

THE COURT: Well, at the time this was done he didn't have that. That's why I was trying to figure out the time. He started getting hormone shots after this incident was created.

MR. BLOCK: That's true, Your Honor, but it's an ongoing --

THE COURT: Well, so after the incident arises you give him hormone shots, and then you start talking about facial hair.

Don't do that to me. That's one of the reasons that I wanted dates, and that's one of the reasons, if you expect me to read everything you've gotten, that you present it in a fashion that doesn't contradict itself.

MR. BLOCK: Well, Your Honor, for the entire sophomore year the plaintiff -- his birthday is in May.

THE COURT: How old was he?

MR. BLOCK: He was 15 when these events took place.

THE COURT: All right. When he was 15 years old -- go ahead. He was a sophomore. When is his birthday?

MR. BLOCK: [redacted].

THE COURT: [redacted] of what?

MR. BLOCK: '99, so he just turned 16 [redacted] ago.

THE COURT: So he turned 16 [redacted] ago. Okay.

You see, what I'm trying to do is to find out when certain things were done and at what portion of time they were done, because I think that's important.

MR. BLOCK: Your Honor, this is a continuing policy. It didn't just --

THE COURT: I understand the policy is one that was adopted on December 9th, you're objecting to.

MR. BLOCK: But it's still in place, and it's going to be in place for the rest of the --

THE COURT: It's in place now, correct, but we'll deal with that policy. And it's that policy you're seeking to have an injunction to prevent its utilization insofar as this young man is concerned.

And you say he's a young man. I don't mind calling him a young man, because that's what he believes himself to be, correct?

MR. BLOCK: Well, yes, he --

THE COURT: Whatever you believe yourself to be. Isn't that correct? That's gender.

MR. BLOCK: No, Your Honor, I don't think that's correct. Gender identity is -- there are medical protocols for what constitutes gender dysphoria and what doesn't.

THE COURT: Oh, no, that's a psychiatrist or a psychologist. In here you have had a psychologist say that he suffers from gender dysphoria. Dysphoria?

MR. BLOCK: Yes, Your Honor.

THE COURT: Is that what you call it?

MR. BLOCK: Yes, Your Honor, that's what the DSM calls it.

THE COURT: And it's in -- let me see one of these -- gosh, I wish I made...

(There was a pause in the proceedings.)

THE COURT: Matt, would you do me a favor? On my desk is a pad. Would you get it for me? It has some references.

In any event, this gender dysphoria -- you maintain "gender" and "sex" are one and the same. Correct or incorrect? Tell me.

MR. BLOCK: I think as a legal matter the term "sex" and the term "gender" are the same thing.

THE COURT: You know what? This is what I call avoiding the answer to the question.

You will learn something about me. I ask questions; I want answers. You give me a lot of who-struck-John and start explaining things -- you better be able to tell me "yes" or "no." Isn't it capable of being answered "yes" or "no"?

MR. BLOCK: I was just trying to understand the question, Your Honor.

THE COURT: I'll bet there's nobody in this audience that didn't understand the question, and you say you didn't understand what the question was?

MR. BLOCK: The term "sex" and "gender" -- I was unclear if you were asking as a medical matter or as a legal matter.

THE COURT: So you have different definitions if some doctor is saying it rather than if some lawyer is saying

it? Is that what you're saying now?

MR. BLOCK: Yes, I --

THE COURT: That "gender" doesn't have a universal meaning, it has meaning for -- when we bring a lawsuit, it has this meaning and when we see a doctor it has this meaning?

MR. BLOCK: Yes, Your Honor, I think the way doctors use the term "gender" is different than the way other people use the term "gender."

THE COURT: So -- I know what "gender" is, according to most of the people today, when we're talking about transgender. I have no problem with "transgender." I have a lot of problem with "sex." So "biological sex" and "transgender" are one and the same?

MR. BLOCK: No, Your Honor. That's not -- no.

THE COURT: Thank you for answering. I thought maybe you were contending they were.

MR. BLOCK: Your Honor, "sex" includes -- so "sex" includes several biological things, which includes anatomy externally. It also includes things like hormones.

THE COURT: So in order to understand this case you have to take an anatomy course. Is that correct?

MR. BLOCK: Well, Your Honor, I think --

THE COURT: I thought I read everything you could possibly get on this matter.

MR. BLOCK: Well, Your Honor, I think, regardless of what the definition of "sex" or "gender" is, there is -- I would just like to highlight two factual disputes that their entire defense rests on that --

THE COURT: Well, the factual disputes don't have anything to do with the motion to dismiss, do they?

MR. BLOCK: Well, exactly. They want you to accept their facts that contradict the complaint, and I'm trying to explain why -- what they have told you --

THE COURT: I'm not asking to accept any facts. I'm taking the complaint on its face. I'm asking you if it is that you desire that the resolution adopted December the 9th, 2014, by the School Board of Gloucester County is unconstitutional.

MR. BLOCK: Yes, Your Honor.

THE COURT: It's that simple.

MR. BLOCK: I said, yes, Your Honor.

I'm just trying to say that --

THE COURT: Is that what you're seeking?

MR. BLOCK: Yes, Your Honor.

THE COURT: Oh, finally. Okay. That's what I want to know, what you're seeking. That is unconstitutional.

MR. BLOCK: And I'm trying to explain why the policy --

THE COURT: Well, you can explain. I don't have

that -- I'm just trying to get -- I'm trying to find out where you're going, Mr. Block, not what it is. I know what the law is, Mr. Block.

MR. BLOCK: I'm not trying to explain the law, I'm trying to say that they are contradicting facts in the complaint, and the facts in the complaint they're contradicting is the complaint does not say that he's entitled to use the restroom -- the girls' room. That allegation is not in the complaint. They have asserted that. That contradicts the complaint.

If you look at footnote 9 on page 11 of their motion to dismiss they say, "Plaintiff alleges that the School Board" --

THE COURT: What I'm concerned with is not what they say, what we're concerned with is what you say. Stop "what they say."

Their motion is that they want to get a thing dismissed. I'm trying to figure out why it should not be dismissed. So, consequently, I'm looking at your complaint, not their answer.

MR. BLOCK: Okay, Your Honor. So our complaint is that he's not treated the same as every other student. He does not have a choice --

THE COURT: He certainly isn't treated the same as every other student, because he's not like every other

student, correct?

MR. BLOCK: Correct, Your Honor.

THE COURT: All right.

MR. BLOCK: Therefore, I don't think he has a choice, under the School Board's policy, between using the girls' room or a separate room. I think --

THE COURT: So what you want him to do is to be able to go into the girls' room?

MR. BLOCK: No, that's what defendants want him to be able to do.

THE COURT: Oh. You want him to use the boys' room.

MR. BLOCK: Yes.

THE COURT: All right. Let me ask you a question. Here is a resolution passed by the Board, correct?

MR. BLOCK: Correct.

THE COURT: You seek and you've admitted that you seek to have that resolution declared unconstitutional, correct?

MR. BLOCK: Yes, Your Honor.

THE COURT: All right. Now, as I understand, in your complaint you put forward that your client won't go into the boys' locker room. Is that correct?

MR. BLOCK: He is exempt from gym class entirely, so that is correct.

THE COURT: So he volunteers not to follow that

which he seeks to obtain, correct?

MR. BLOCK: No, Your Honor. He's exempt from gym entirely for --

THE COURT: There's a bathroom -- I shouldn't say "bathroom." That dates me.

There's a restroom in the locker room, correct.

MR. BLOCK: I don't know if there's a restroom in the locker room. I don't know anything about --

THE COURT: You don't know anything about the locker rooms.

MR. BLOCK: He does not participate --

THE COURT: Just because he says he's not going to do it, but what does that have to do with the resolution?

MR. BLOCK: It doesn't have anything to do with the resolution, it has to do with his case.

THE COURT: Well, the resolution said he couldn't use that. Isn't that correct?

MR. BLOCK: Yes, Your Honor. I mean, I -- if the two -- it's possible to have it struck down as applied to restrooms.

THE COURT: So what you're saying...

MR. BLOCK: And, Your Honor, if I could just illustrate something.

For a transgender student, it is impossible to put them in a restroom that matches both their sex assigned at

birth and their gender identity, the sex that they appear as to everyone else.

THE COURT: Well, let me ask you a question that the United States may be better able to answer. I don't know.

Do the people who use the restroom have any constitutional rights to privacy?

MR. BLOCK: Yes, Your Honor, they do. The School Board is not protecting those rights --

THE COURT: All I'm asking you is do they have a constitutional right of privacy.

MR. BLOCK: Well, yes, Your Honor.

THE COURT: Can a young man take down his pants in a restroom?

MR. BLOCK: I -- when they're in a stall, using the restroom in the stall.

THE COURT: Only if they're in a stall?

MR. BLOCK: Your Honor, I don't think people use the restroom with their -- I don't know what you mean by taking down your pants, Your Honor.

THE COURT: Have you ever been in the Army?

MR. BLOCK: I haven't been in the Army, Your Honor, but the Army is about to lift its ban on transgender soldiers. You know, the Army can figure this out. It's not something that's beyond the competence of --

THE COURT: No, they have separate restrooms, also.

But --

MR. BLOCK: Yeah, Your Honor, but the question is whose interest does it serve to have a plaintiff, a transgender boy, in the restroom with the girls, which is what the school says it prefers.

The school says it has no problem whatsoever taking someone who looks to everyone else in the restroom like a boy and having him be in the girls' room. I think it's fair to say that many girls would be uncomfortable with that situation, but the School Board is standing up before you and saying it has no objection whatsoever to plaintiff going into the restroom that matches his sex assigned at birth, and that's what that would mean.

THE COURT: So do you think that the parents who are raising the issue on behalf of their children who are going to use the particular bathroom have a point?

MR. BLOCK: No, Your Honor. I guess --

THE COURT: Oh, they don't have any point at all?

MR. BLOCK: I think it's understandable --

THE COURT: So if you have a student -- the problem is that we have -- let's get really down to it.

You're talking about medicine. There are only two instincts -- two. Everything else is acquired -- everything. That is, the brain only has two instincts. One is called self-preservation, and the other is procreation. And

procreation is the highest instinct in individuals who are in the latter part of their teen-age years. All of that is accepted by all medical science, as far as I can determine in reading information.

So there is a problem with the mating of sex, isn't there?

MR. BLOCK: Well, Your Honor, I think you're assuming the sexual orientation of the people in these restrooms. People who are -- there are gay men in the boys' room. There's no evidence in the record of, like, the sexual orientation of anyone. You know, there can be transgender men in women's rooms that are sexually attracted to women.

So the point is you need to find someplace for a transgender person to use the bathroom, and we have three options. One is having a transgender boy in the restroom with other boys. The other is having a transgender boy in a restroom with girls, no matter how uncomfortable those girls are. And the third option is to segregate the transgender person in a separate restroom from everyone else.

The School Board is saying that it's following option two, and I think that is extremely difficult to credit; that the School Board is actually okay with people who look to everyone else like boys walking into the women's restroom. The only reason that they're standing up here and saying that is because they know there's no chance the

plaintiff is ever going to take them up on the offer.

So I don't think we can accept their assertion that he's treated differently than every other person who is biologically --

THE COURT: Let's discuss *Pricewaterhouse*. *Pricewaterhouse* concerns what the defendants perceived. Isn't that correct?

MR. BLOCK: I think that is a big part of it, yes, Your Honor.

THE COURT: Here what we're concerned with is what the plaintiff perceives. Isn't that correct?

MR. BLOCK: Well, it --

THE COURT: He perceives himself to be a male.

MR. BLOCK: Your Honor, yes, that's true, but we don't know what defendant --

THE COURT: So there's not a big difference between the perceptions in this case.

MR. BLOCK: Well, Your Honor, I think -- I think --

THE COURT: So that the discrimination in *Pricewaterhouse* comes from the top down; whereas, here the discrimination comes from the bottom up.

MR. BLOCK: Well, I disagree with the last thing you said, because I think that is a question of fact. There is no evidence --

THE COURT: Otherwise, you wouldn't have any case at

all, would you?

MR. BLOCK: Well, Your Honor, they have asserted -- we don't know what their motivations were. We don't know how they perceive plaintiff. They have --

THE COURT: Let me ask you a question. In reading your complaint I came across Statistical Manual of Mental Disorders.

MR. BLOCK: Yes, Your Honor.

THE COURT: So what they're saying is this is a mental disorder.

MR. BLOCK: Your Honor, it's not --

THE COURT: That's what the -- I'm only looking at your complaint, not somebody else's.

MR. BLOCK: Right, it is a serious medical condition that, if untreated, is a disorder.

THE COURT: So we now have what the doctors seem to say under the gender dysphoria is a -- is under the manual of mental disorders, isn't it?

MR. BLOCK: If untreated. If it's treated, it's not viewed as a mental disorder, if it's not causing any distress.

THE COURT: So if you get a pill it disappears, correct?

MR. BLOCK: Yes, the --

THE COURT: It's no longer a mental disorder?

MR. BLOCK: The disorder is the feeling of dysphoria from being in a body that does not match your gender identity. If you're no longer feeling dysphoric --

THE COURT: Where did you get your medical degree?

MR. BLOCK: Your Honor, this is the evidence in the record.

THE COURT: Is that in the case?

MR. BLOCK: Your Honor --

THE COURT: Where in the complaint does it say that?

MR. BLOCK: It's the DSM.

THE COURT: Just point it out in the complaint.

MR. BLOCK: It's what the DSM says.

THE COURT: I'm only referring to the complaint. Just tell me what's in the complaint.

MR. BLOCK: The complaint cites to the DSM, the Diagnostic Statistical Manual. It used to be called "gender identity disorder." They removed the "disorder" term to make clear that it's not a disorder if it's treated. I didn't write the DSM; that's what the DSM says.

THE COURT: Let me read it. Would you read that portion to me that says it's not a disorder?

MR. BLOCK: It doesn't say that. The complaint cites to the DSM.

THE COURT: Just read what the complaint says.

MR. BLOCK: The complaint says that it is --

THE COURT: What paragraph?
MR. BLOCK: I'm pulling it up, Your Honor.
THE COURT: I may have missed it. What paragraph? I'm not perfect. That's for sure.
MR. BLOCK: Your Honor, what I said was --
THE COURT: Just read from the complaint. Don't tell me your interpretation, read from the complaint.
MR. BLOCK: Your Honor, I'm trying to find the reference in the complaint to the DSM, and that's what I'm trying to locate.
THE COURT: Good.
MR. BLOCK: And, so --
THE COURT: Take your time. I'll give you ample time.
(There was a pause in the proceedings.)
MR. BLOCK: The complaint does cite to the WPATH standards of care at page 5.
THE COURT: Page 5. Let's take a look at page 5 of the complaint. And what paragraph number?
MR. BLOCK: So paragraph 22 simply says, "Mental health and medical professionals worldwide recognize and follow the evidence-based standards for care for the treatment of gender dysphoria developed by the World Professional Association for Transgender Health."
THE COURT: All right. I'm still looking for what

you said it said.

MR. BLOCK: Well, that's what I'm trying to clarify.

The complaint doesn't say it; it cites documents.

THE COURT: You know, the problem is it may not be in the complaint. I don't mind that. But, Mr. Block, you've got to -- when I ask a question -- my problem is I looked at the complaint. I tried to read it thoroughly. It took me one hour to read this complaint -- one hour -- and it's a simple situation.

MR. BLOCK: Your Honor --

THE COURT: It's a very simple situation, and it took an hour to read the complaint? You know, what it is is -- were you more interested in obtaining publicity or in obtaining a judgment?

MR. BLOCK: Your Honor, we're interested in obtaining a judgment. This matter was handled entirely confidentially until it was placed on the School Board agenda.

THE COURT: It was so confidential that I had to order you to take the plaintiff's name off the suit. You filed with the plaintiff's name.

MR. BLOCK: Yes, Your Honor.

THE COURT: You know, and you're saying, "Oh, we want to protect the plaintiff." That immediately said to me something. The rules of this court protect minors.

MR. BLOCK: Your Honor, this matter became public when it was placed on the School Board agenda in front of the press, in front of everyone. It was --

THE COURT: I had nothing to do with what the School Board did. I have something to do with what this court does, and I'm telling you you violated the orders of this court.

MR. BLOCK: Well, I respectfully disagree, Your Honor, but I --

THE COURT: And what worried me is, with this length of a complaint, was it designed to convince the Court or to convince the media?

MR. BLOCK: It's designed to humanize transgender people, Your Honor. There are a lot of misperceptions, and not everyone has met a transgender person.

THE COURT: Well, as far as I'm concerned, it was not beneficial to this plaintiff. It was not.

MR. BLOCK: Well, I'm sorry about that. I think the problem is that --

THE COURT: Well, you should be sorry, because you violated the rules of this court that are designed to protect people.

MR. BLOCK: I respectfully disagree with the Court's --

THE COURT: And, somehow or another, I don't like it when I see it, because I begin to assume that there are other

reasons why something is done.

MR. BLOCK: Your Honor, it's very difficult to humanize someone for courts when you can't use their name. It makes them --

THE COURT: You know, one thing I notice is when people have done something wrong they don't want to admit it, do they?

MR. BLOCK: Well, I respectfully disagree with the Court's ruling on how the local rule applies to the waiver of Rule --

THE COURT: So you don't agree with how we apply the rules here. Is that correct? I'm sorry you don't. You're going to have to pay attention to them. And you will have to.

MR. BLOCK: I can --

THE COURT: And we sent the complaint back to you to re-file without the name of the individual, didn't we?

MR. BLOCK: Yes, Your Honor, and we respectfully disagree with that decision.

THE COURT: And you disagree with what the rules say?

MR. BLOCK: I agree with what the rule says. I respectfully think the Court misinterpreted the rule.

But I'm not here to litigate that in front of Your Honor. We --

THE COURT: Well, you want to make sure that you don't admit that you ever did anything wrong. Is that correct?

MR. BLOCK: No, Your Honor, we --

THE COURT: That's not affecting your plaintiff. Don't misunderstand me. Right now we're talking about you, not your client. Unfortunately, they're different.

MR. BLOCK: Your Honor, we intend to appeal the Court's decision, if it comes to that point, so, Your Honor --

THE COURT: So you want to disclose his name?

MR. BLOCK: Your Honor, his name is already disclosed to everyone. I think in order for --

THE COURT: So where is the embarrassment, then?

MR. BLOCK: It's already been done. It's already been done to him.

THE COURT: So if it's already been done, where are we going with the injunction?

MR. BLOCK: We want him to have the same right that anyone else has to be able to use a bathroom --

THE COURT: I'm not denying that he may have that right. I haven't made any decision on that point. But the question in my mind is where are we going?

You're saying that there's a stigma, and you broadcast it to the world?

MR. BLOCK: The stigma is having to go to a separate bathroom than everyone else.

THE COURT: Let me tell you something. You're supposed to be representing this young man.

MR. BLOCK: Your Honor, we respectfully don't think that the fact of being transgender is something that someone should feel stigmatized about.

THE COURT: Well, what you just did was to say it doesn't make any difference about the stigma, and that's the reason why he can't use the unisex bathrooms, correct?

MR. BLOCK: The stigma is not --

THE COURT: And the stigma that you've given to him is the reason that he can't use the unisex bathroom?

MR. BLOCK: The stigma is not being transgendered, it's being told that you have to use a different bathroom from everyone else. That's the stigma. I wanted to be clear about that.

THE COURT: How is anybody going to know?

MR. BLOCK: Because he's already been broadcast on the news in front of the School Board. That happened --

THE COURT: So there's nothing that's important right this moment, then.

MR. BLOCK: If he has to go to a separate bathroom than everyone else, that is stigmatizing, even if everyone else knows that he's transgender. It's not to hide that he's

transgender, it's stigmatizing to be told that your very presence in a bathroom is something that is unacceptable to other people. That's what's stigmatizing.

THE COURT: It's only unacceptable if they have an idea why, isn't it?

MR. BLOCK: No, Your Honor. I think it's unacceptable --

THE COURT: Or if they have no idea why -- I use unisex bathrooms every time they have a facility down here on the Festevents, which is right in downtown Norfolk. They have nothing but unisex portable bathrooms, so to speak, or restrooms. I keep using the word "bathroom." There's no bath in there.

But they're unisex, aren't they?

MR. BLOCK: I don't know. I assume so.

THE COURT: Well, let me ask you, have you ever been to a golf course?

MR. BLOCK: I have, when I was much younger.

THE COURT: Oh, you have played golf before? Did you use a bathroom at some of them?

MR. BLOCK: I'm sure I did; I was a child.

THE COURT: You know, some of them don't have any markings on "Men" or "Women," do they?

MR. BLOCK: No, Your Honor. It's not the fact of using a unisex bathroom, it's being told that you have to use

it because your very presence of using it with other people is unacceptable.

THE COURT: Let me ask you a question.

Could the school eliminate restrooms altogether?

MR. BLOCK: You mean have no restroom facilities at all?

THE COURT: None.

MR. BLOCK: I assume so.

THE COURT: Any constitutional requirement that you have a restroom?

MR. BLOCK: I'm not aware of one.

THE COURT: So they could eliminate restrooms entirely, and nobody would suffer, correct?

MR. BLOCK: Well, I think people would suffer, but it wouldn't be -- people would want to use the bathroom, but I don't think it would create any stigma for anyone.

THE COURT: It wouldn't create a stigma for him.

MR. BLOCK: Right, because he would be treated like everyone else.

THE COURT: So that is one solution, correct, have no bathroom?

MR. BLOCK: I don't think it's a solution.

THE COURT: Well, he couldn't get any stigma, could he?

What I'm really going into is where we're going. I

don't mind saying that, certainly, if he feels like he's being discriminated against -- and he's alleged that. It may be a good complaint.

I'm concerned, too, about whether there's any reason to grant a preliminary injunction, and I'm having a lot of trouble because your complaint indicates that there isn't.

MR. BLOCK: Well, I'm happy to argue the preliminary injunction separately. I thought we were --

THE COURT: Well, start arguing it, because if you don't -- in the first place, I want to make sure you understand I'm interrupting another trial to have this hearing today, and the other trial -- I've interrupted it to have this hearing, and I'm going to have some other hearings because I interrupted the trial.

But you've got until -- what is it, 2:00?

THE CLERK: 2:30, yes, sir.

THE COURT: You've got until 2:30 to argue that, so maybe we better start arguing the preliminary injunction.

MR. BLOCK: Sure. Well, so --

THE COURT: You'll probably get by the question of the complaint. You've got so much in there that I may just let you go ahead.

But I want to know what irreparable injury he's suffering.

MR. BLOCK: Thank you, Your Honor.

According to the expert declaration of Dr. Ettner, which has not been disputed at all as a matter of fact by the defendant, so the uncontested --

THE COURT: Well, have they answered the suit?

MR. BLOCK: In their opposition to the preliminary injunction.

THE COURT: What did they say?

MR. BLOCK: They submitted a declaration on behalf of a School Board member, but they didn't submit any -- they didn't dispute the --

THE COURT: All I'm asking you is what did they say.

MR. BLOCK: All right. Well, they said almost what they said in their motion to dismiss. They didn't say anything about whether or not the expert's diagnosis of him was correct.

THE COURT: You know, I probably have heard, I'd estimate, maybe close to a thousand physicians testify, maybe even 2,000, and, boy, I find that there's huge disagreement between physicians. Psychiatrists -- my gracious. In defending criminal cases, numerous psychiatrists disagree, you know, and you're saying, "You've got to accept the testimony of a psychologist." Is that it? You proffered some information from a psychiatrist, but that's your hired expert. He says you hired him. He wasn't seeing the defendant as a treating physician, he was hired by the

defendant to testify in this case.

MR. BLOCK: Yes, she was hired by us, but it's still an adversarial system. If there was another psychiatrist or psychologist, then of course the Court would have to determine who to credit. But they haven't presented --

THE COURT: Oh, so it also allows the Court to hire a psychiatrist, doesn't it?

MR. BLOCK: The Court, obviously, can appoint its own expert, if it wants.

THE COURT: So the question really is -- that's a question of fact, isn't it?

MR. BLOCK: Yes, it is, and for preliminary injunction --

THE COURT: So what you're saying is anything you say is taken for true, absolutely, huh? But what somebody else may disagree with you -- if they do, they're wrong?

MR. BLOCK: No, Your Honor, I'm saying that we presented evidence, and if they're going to oppose it they should either contest the evidence or --

THE COURT: All right, then, I'll be hearing evidence. Have a seat.

Right now I'm going to hold any ruling on the motion to dismiss in abeyance. I'm going to allow the case to proceed on the question of the preliminary injunction. If you want a preliminary injunction, you can present what you

have to present.

MR. BLOCK: Currently, or at a future date?

THE COURT: I'm here, I'm listening.

MR. BLOCK: Okay, Your Honor. Well, we --

THE COURT: I'll be glad to hear anything you want to present.

MR. BLOCK: So we have the declaration, Your Honor, of -- our expert declaration which says -- you know, this is a nationally recognized expert on the issue of transgender --

THE COURT: That this is a mental disorder.

MR. BLOCK: No, Your Honor. I don't want to repeat our conversation about the semantics of if it's a disorder or not. I'm saying that the expert cites to the DSM. The DSM, which I didn't write --

THE COURT: All right. First, you're saying based on a declaration you're entitled to an injunction.

MR. BLOCK: I'm saying that based on the undisputed declaration --

THE COURT: What do you say is in the declaration that entitles you to an injunction?

MR. BLOCK: I'm saying based on an undisputed declaration that --

THE COURT: What is in it that makes this case so strong? Tell me.

MR. BLOCK: Your Honor, because -- half of all

transgender students attempt suicide before they turn 20. This is an extremely at-risk population that is already at much more extreme rates of clinically significant depression, anxiety, and suicide attempts. The --

THE COURT: I don't have any doubts that transgender is a problem. Don't misunderstand me. I have no doubts about it being a problem.

The question in my mind is it's such a problem that I have to declare a resolution by the School Board -- you see, so often people don't understand what precedent is. For instance, in this courtroom some years ago the government, at that time a very conservative government, presented a person whom they said was, and I quote, an "enemy combatant." It's the first time I had ever heard that term, and they said they weren't entitled to a writ of habeas corpus. Anyhow, it was rejected. We needn't go into it. It had to go to the Supreme Court to finally get rejected.

But what is important is now they've picked up that term and tied it to another citizen. And they said they could kill him without a hearing, without anything, because it's a precedent. They even took the school boy, who was the son of that man, who happened to make a mistake in going to Yemen, and killed him, too. Was there ever any hearing? It was interesting, because the Justice Department wrote a 45-page memorandum that mentioned all kinds of laws except

the Constitution itself.

MR. BLOCK: But we --

THE COURT: It was a precedent. Oh, we've got a precedent, enemy combatant. I don't know what the boy was.

MR. BLOCK: We absolutely agree with Your Honor on that. You know, we --

THE COURT: So what happens here is the same thing. It's a question of precedent. Where are we going, and what is happening?

So if we cut out this resolution, if we say, this resolution is unconstitutional, does it mean that anyone who genuinely believes that they should be of the opposite sex can use any restroom?

MR. BLOCK: Absolutely not, Your Honor. And I'm happy to explain why.

THE COURT: Well, you better.

MR. BLOCK: Yes. So, there are accepted diagnostic criteria for being diagnosed with gender dysphoria. What we have here is someone -- there is no allegation that this is some sort of passing phase here. This is someone who has changed his name, changed his official gender marker on his photo ID from the State of Virginia, someone --

THE COURT: I'm not disputing the fact that he genuinely is convinced that he wants to be a boy and not a female, okay? I also am convinced that he is biologically a

female. And he wants to be a male, correct?

MR. BLOCK: I disagree, but I understand you're convinced.

THE COURT: It's his mind. It's not physical that causes that, it's what he believes.

MR. BLOCK: Your Honor, I disagree. There's neurological issues that control it which are very much physical, so I --

THE COURT: What physical thing is it, other than what the doctors have just started doing, and that is supplying him with hormones?

MR. BLOCK: The neurology of the brain for transgender people is different, so I don't want to --

THE COURT: I didn't see anything in the complaint about his brain. Did they do any testing of his brain?

MR. BLOCK: No, Your Honor. I'm responding to your question about the science in general.

THE COURT: Okay. So what you're saying is there's a difference in the brain.

MR. BLOCK: I'm saying that there are physical components that lead to someone having a particular gender identity.

THE COURT: Well, I think that is true, that certain people -- there are genetic differences that occur by virtue of people wanting to obtain a different status. I'm not

questioning that at all. My biggest problem is with the remainder of the population, and that is with the other children.

The other thing that worries me are the cases of assault that have occurred in some of the young men's bathrooms. Not necessarily in Gloucester. I'm talking about here in Southside Virginia that have happened before. I'm very concerned about the overall effects of what occurs, not only for the utilization but for the safety of the individual concerned. You know, it isn't as easy as one thinks.

MR. BLOCK: Well, Your Honor, there's a seven-week record here in which nothing like that occurred. There was no risk of anything like that occurring.

THE COURT: It hasn't said anything occurred. Unfortunately, I wasn't born yesterday. Unfortunately, this isn't the only case I've ever tried, and it certainly won't be the only case I've ever tried.

There's the other side of the fence, and it -- maybe that's wrong. Maybe I shouldn't consider what may occur and the problems associated therewith.

MR. BLOCK: Well, Your Honor, a lot of people, unfortunately, have been victims of assault in the boys' room. There are a lot of gay kids that have been victims of assault in the boys' room, but we don't have a policy saying that all gay kids have to use a separate bathroom from

everyone else, even though --

THE COURT: I'm only looking at it in regard to the protection of G.G. in this case.

MR. BLOCK: Well, I'm speaking to that, too.

THE COURT: I really am. My -- there is a stigma attached to those who adopt a different gender by many portions of society, unfortunately. I've been involved in cases in which they do bad things to some of the people, and I've seen that. Not here, but in the state courts often.

The question in my mind is that what occurs to -- what may be one person's rights has to be weighed against other people's rights. You have to consider the rights and the constitutional rights of others.

Ever since *Roe v. Wade* we've come down with a litany -- and I needn't go into those cases -- concerning the rights of privacy, and these are very strong rights. And right now I'm concerned about the rights of privacy, because that is an indication of something that occurred which seems to say, well, there shouldn't be considerations.

MR. BLOCK: Well, Your Honor, I think concern for the rights of privacy for everyone does include the rights of privacy for girls in the girls' room that, under this policy, are going to have transgender boys there.

THE COURT: Well, I tell you, it really creates a monstrous problem, then, doesn't it?

MR. BLOCK: Well, no. I think that someone is going to be uncomfortable; that a transgender personal needs to go to the bathroom, and unless they're going to have to go to the bathroom by themselves separate from everyone, someone is going to be uncomfortable. So we're trying to find --

THE COURT: So the question is you're saying the fact that someone is uncomfortable is -- your client is uncomfortable with this present situation, correct?

MR. BLOCK: Yes, Your Honor, because it's unconstitutionally stigmatizing to tell someone -- the school isn't saying that their policy is he uses a separate bathroom from everyone. They're not defending that policy.

THE COURT: You're pretty good. I can understand why the ACLU wants you. But answer my questions, and then you can make your explanation.

But it's all right. Go ahead.

MR. BLOCK: So, Your Honor, if the school was standing up here and saying, yes, our policy is that transgender students use a separate bathroom from everyone else, then we'd be having that conversation, but that's not what they're saying.

THE COURT: No, they're not saying use a separate bathroom from everyone else. That's what you say. It's a unisex bathroom. Anyone can use it. They're private. There are three of them in this case. Anybody can use them,

anyone.

MR. BLOCK: Right, but he's the only one --

THE COURT: So you keep saying my client is forced to use it. He's not. Anyone can use those bathrooms.

MR. BLOCK: Your Honor, that's like having two separate seatings in a restaurant where white people can use one part and anyone can use the second part.

THE COURT: Well, that's entirely different, because you're treating the same people differently. You're saying, "My client is not the same."

MR. BLOCK: No, but I'm saying in the example I gave everyone can use the second part, but it's still treating people differently, based on their race there. G.G. is the only person who can't --

THE COURT: You're treating people differently based on the mental situation. Isn't that correct?

MR. BLOCK: Well, under this hypothetical, yes. That's not what the school is saying their policy is. They're disputing that their policy -- we're not having -- in the briefs the school doesn't say, "Look, because of Plaintiff's medical situation we need to have him in a separate restroom."

THE COURT: Well, the irreparable harm is what?

He can't use the locker room. Is that irreparable harm?

MR. BLOCK: He's not taking gym class, so, no, he's not --

THE COURT: So if I outlaw the resolution of December the 9th he can use the locker room, correct?

MR. BLOCK: Well, I think -- it's severable, so I don't think the Court has to address that in order to resolve this case.

THE COURT: I don't think you have to do anything to resolve any case, but the action that's wrong is the action taken on December the 9th, and that's what I'm concerned with. That's the action that's claimed to have been unconstitutional. If I declare it unconstitutional, then every single school in Gloucester County has to allow any person with transgender, if they -- and I don't know how you establish that.

MR. BLOCK: Your Honor, the --

THE COURT: So a person comes in and says, "I don't want to be of the other sex. I want to be different."

MR. BLOCK: You establish it with a medical diagnosis and a transition plan with the school. So we're only talking about people --

THE COURT: So I have to make an injunction saying, "Abolish this, but you've got to make everything here" -- shouldn't that be the result of an extended case with evidence?

MR. BLOCK: This is just a preliminary injunction on behalf of one person, so the Court's ultimate decision --

THE COURT: No, it isn't a preliminary injunction for one person, it's a preliminary injunction -- let's understand what this case is about.

The case is about a resolution passed on December the 9th, 2014, by the Gloucester County School Board, and that it affects this particular individual. And the only way we can get it is to say you can't enforce that resolution.

MR. BLOCK: Well, I think that's the final judgment in the case, Your Honor, but on a preliminary injunction the Court is just forecasting likelihood of success, and the Court is free to --

THE COURT: The question is not whether there's success on the merits, it's a question of what is the irreparable harm that will occur.

You already have said everybody knows the fact that we have a transgender situation, and if they didn't you made sure they did because of the publicity that you obtained doing it.

MR. BLOCK: Irreparable harm is the stigma caused from having been forced to use a separate restroom from everyone else every time you need to use the bathroom.

Plaintiff has urinary tract infections from trying

to hold it as much as possible during the school day so he won't have to go into one of those bathrooms that no one else has to go into.

THE COURT: It says that in the complaint?

MR. BLOCK: Yes.

THE COURT: Read me that.

MR. BLOCK: Well, it definitely says it in the preliminary injunction.

THE COURT: You know, you keep making these statements. I like to hear it.

MR. BLOCK: Paragraph 49 of the complaint.

THE COURT: Read it.

MR. BLOCK: "Instead of using a separate restroom, G.G. tries to avoid the restrooms entirely while at school, and if that's not possible he uses the nurse's restroom. As a result of trying to avoid using the restroom, G.G. has repeatedly developed painful urinary tract infections. He limits his beverage intake to try to reduce the discomfort and distraction caused by holding it as he tries to focus in class."

THE COURT: So holding in your urine causes infection?

MR. BLOCK: Yes, Your Honor.

THE COURT: And what doctor said that?

MR. BLOCK: I think it's --

THE COURT: I never heard of it before. This is some new thing, but what doctor said that?

MR. BLOCK: Your Honor, I think it's --

THE COURT: What doctor said it?

MR. BLOCK: This was from -- the expert declaration, said that --

THE COURT: Oh, the doctor said it, then; that this is -- by holding your urine you make for infection?

MR. BLOCK: Yes. If you hold your urine too long, you can get a urinary tract infection from it.

THE COURT: Isn't that interesting? That's a new theory, but perhaps it's true. I don't know. I'd like to hear the doctor who said that.

But I have doubts about that because of -- I can understand you can get urinary tract infections, but not by virtue of that. You may get a burst bladder, if you have it strong enough you can hold it. I've heard of that, but I've never heard of a urinary tract infection.

Anyhow, what else have you got that's irreparable harm?

MR. BLOCK: Irreparable --

THE COURT: So if he chooses not to use a unisex bathroom then he can get a urinary tract infection. Is that correct?

MR. BLOCK: Yes, if he holds --

THE COURT: And that's his choice, correct?
MR. BLOCK: It is his choice to avoid the stigmatizing treatment, yes, Your Honor.
THE COURT: What stigma? Everybody knows it now.
MR. BLOCK: The stigma isn't the fact that --
THE COURT: And you made sure that if they didn't, they would.
MR. BLOCK: Your Honor, the stigma isn't the fact that he's transgender, just like being African-American isn't stigmatizing by itself.
THE COURT: So every person who has transgender, without regard to what the stigma is, should not be required to use a unisex bathroom, correct?
MR. BLOCK: They should have the same requirement as anyone else. If all they are is using --
THE COURT: You're saying now that they should have the right not to have unisex bathrooms and that they should use the bathroom of the male, correct, if they believe themselves to be male and they are a female?
MR. BLOCK: Yes, I'm saying that if other students are allowed to use the communal restroom, a transgender person should be able to use the communal restroom, too.
THE COURT: Stop a minute. Let's just -- every transgender person constitutionally has a right to use the bathroom or the -- I should say "restroom," not "bathroom" --

the restroom of the sex in which he wants to be, correct?

MR. BLOCK: Sure.

THE COURT: And that's your position.

MR. BLOCK: My position is as long as you have sex-segregated restrooms -- I'm not saying the school is obligated to have communal --

THE COURT: Well, Title IX gives you the right to have separate restrooms, and it tells you that, doesn't it?

MR. BLOCK: Well, Your Honor, it says -- yes, but here's the issue --

THE COURT: So your case in Title IX is gone, by the way.

MR. BLOCK: I completely -- Your --

THE COURT: Isn't any question about that. I would throw that out --

MR. BLOCK: But, Your Honor, let me --

THE COURT: -- but I'm not going to --

MR. BLOCK: I'd like to just --

THE COURT: -- throw out the rest of it.

Title IX is gone. It's specific and exact, and it allows it.

MR. BLOCK: Well, Your Honor, I just want to illustrate the ambiguity here, because --

THE COURT: I'm not worried about the ambiguity. I just ruled, so we end that as far as your complaint is

concerned.

Because of Title IX itself -- I'm only dealing with Title IX now; that is, the fact that you cannot utilize what the government has already put out in Title IX and say what they put out is unconstitutional.

MR. BLOCK: Your Honor, I disagree about what that regulation means. I think it's finding --

THE COURT: I don't have any problem with it whatsoever. I understand that you cannot agree to it and represent this client's position in so far as Title IX is concerned. I appreciate that, and I can understand it. I'm merely telling you that I have no problem understanding exactly what Title IX says.

MR. BLOCK: Your Honor, I -- can I just make one statement, Your Honor? I just want to illustrate the ambiguity here.

THE COURT: I just ruled. Please, Mr. Block. Move on to something else, will you, please?

And just learn this: If I make a statement to say I'm ruling, that's the end of that. You'll understand me. I don't try to hide anything. I tell you exactly like it is.

I have no problem understanding Title IX. There is a specific grant in Title IX, and that grant I'm following. Now, I understand you disagree with it because you interpret it in a different fashion entirely, okay? Now we move on.

What else have you got?

The Title IX case is gone. I'm going to grant the motion to dismiss the allegations concerning Title IX. I thought I better tell you that. I decided that long before we started because of the memoranda. If you don't -- and I think I've read every case I could get through. I didn't read them with a fine-tooth comb because I only had one day to read them all.

MR. BLOCK: So I --

THE COURT: I'm not worried about Title IX. Now I'm worried about the constitutional situation whereby you want an injunction to prohibit the utilization of the resolution enacted on December 9th, 2014, by the Gloucester County School Board, okay?

Now, you want a preliminary injunction, correct?

MR. BLOCK: Yes, Your Honor.

THE COURT: Because of what you perceive to be the stigma attached if the person uses the unisex bathroom.

MR. BLOCK: If they are forced to use it when everyone else isn't. It's the unequal treatment that's the stigma.

THE COURT: I understand what you're saying.

Now, is there a stigma attached if some woman were to use the unisex bathroom? I keep calling it a "bathroom." Forgive me. That's because that's what we used to call them

60 years ago.

MR. BLOCK: There's only a stigma if it's unequal treatment.

THE COURT: The only stigma is what?

MR. BLOCK: Is if the person has to use the unisex restroom and it's optional for everyone else. It's the unequal treatment that creates the stigma.

THE COURT: So any male can use that bathroom, any female can use that restroom --

MR. BLOCK: But G.G. --

THE COURT: -- but he does not want to use that restroom to the extent that -- evidently he's been treated by a physician for urinary tract infection brought about by withholding his urine.

Is that my understanding?

MR. BLOCK: Your Honor, I'm not sure the details of his treatment from the -- from urinary tract infections, but it's the exclusion from the communal restroom that's the stigma.

THE COURT: I would assume that it hadn't occurred, but maybe -- you're saying he might possibly get it from that?

MR. BLOCK: No, it has occurred. I just don't know --

THE COURT: Oh, it has occurred.

MR. BLOCK: I just don't know what the treatments it --

THE COURT: So you must have some physician testifying to that. He must have had some treatment.

MR. BLOCK: Your Honor -- yes.

THE COURT: And he has had treatment, and the physician says it was caused by withholding urine?

MR. BLOCK: Your Honor, I don't know the answer to that, Your Honor. I know that as a general matter it can cause it. I know as a general matter.

THE COURT: As a general matter, I've never heard of it, but that may be just me. There are a lot of things I've never heard of.

MR. BLOCK: The more serious risk, Your Honor, is extreme risk of emotional distress that, in extreme situations, can lead to self-harm.

THE COURT: I'm having problems with that inasmuch as he's saying -- irreparable harm comes about by being forced to use things, but certain things he's saying he isn't going to use.

MR. BLOCK: Well, Your Honor --

THE COURT: It just confuses me. He's not going to use the locker room.

MR. BLOCK: Your Honor, he's not in gym class, so there's no occasion to use the locker room. It's not like

he's in gym class but using a different locker room.

THE COURT: Well, you don't have to be in the gym class to use the locker room facility, do you? Is that what you're telling me, only people in the gym class can use the locker room facility?

MR. BLOCK: I think that's the only reason people use it. I don't have --

THE COURT: Apparently that's what's happening, but I don't think there's any limitation on it. You know, you can invent one.

MR. BLOCK: Well, I don't think he engages in sports. I don't think there's a reason that --

THE COURT: Mr. Block, you have an uphill battle. Let me hear what they say about this.

We're talking about the preliminary injunction now.

MR. CORRIGAN: Yes, sir, Your Honor.

THE COURT: This young man says he cannot use the unisex bathroom because if he uses it there's a stigma attached because people know that he is a transgender situation.

MR. CORRIGAN: As the Court has pointed out, it's already known that he's transgender, so it's not -- my understanding of their argument is it's not just that he's transgender but that he's transgender and has to use that bathroom. That's what I understand them to be saying is the

irreparable harm.

Our position at this stage, Your Honor, with respect to even the likelihood of success on the merits, which is the first element of the preliminary injunction, is it's not the same as the motion to dismiss.

THE COURT: I understand that. It's a stronger test.

MR. CORRIGAN: Yes, sir, it must clearly establish the burden of persuasion to an extraordinary remedy involving the exercise of far-reaching power to be applied in limited circumstances --

THE COURT: He has to show irreparable injury.

MR. CORRIGAN: Yes, sir. But even on the likelihood of success on the merits, Your Honor, I think where the plaintiff's argument breaks down, that they're not going to win on the merits, is -- you asked the question, "So a transgender has the right to use the restroom he identifies with?" That was the question, and his answer was, "Yes." And the problem is under the Equal Protection Clause that's not so. That is not so. It is not a protected class to be transgender. That's not a protected class.

And, so, that's not a way to explain --

THE COURT: Why do you say it's not a protected class? It's a class that now exists.

MR. CORRIGAN: Because all the cases say so.

There's no case that says transgender status alone -- and that's why they go to the Title VII cases and start talking about the *Pricewaterhouse* analysis and all that.

Because the situation normally would be it's the behavior; it's the acting like you're the other gender, and the people don't like, and you can't act like that. None of that is true here. The only thing is the bathroom. No one has said he can't act exactly the way he wants to act or behave the way he wants to behave. All they've said is, weighing the circumstances, that the other people do have rights, and under these circumstances it's the School Board's -- it's a Solomonic result that comes up with, "Here's the opportunity: Anyone can use these other three bathrooms. Anyone can use them, including you."

The argument started with Counsel talking about the School Board saying -- you know, putting him in the --

THE COURT: I'm not worried about the School Board anything, I'm worried about the resolution adopted December 9th, 2014, by the School Board. That is the resolution that is the foment of this case. That is the important resolution. Is that resolution constitutional?

MR. CORRIGAN: Yes, sir.

THE COURT: All right. Tell me why you think it's constitutional.

MR. CORRIGAN: It is constitutional because, in the

first instance, it does not treat the plaintiff differently than others similarly situated. What it does is it sets up all biological females, all biological males, and says, all biological females go to this bathroom, all biological males go to that bathroom, and everyone else, and anyone, can use this alternative restroom. That includes the plaintiff, but it also includes anyone else who, for whatever reason, wants to use another restroom. That, by itself, means it's not unconstitutional. He's not being treated differently. That's number one.

THE COURT: Well, he says he gets stigma by virtue of the fact that they're saying, you can use this bathroom, and that stigma causes him to withhold his urine, which causes him injury.

MR. CORRIGAN: And I understand he says that, and, again, there is no medical testimony about that.

THE COURT: No, there isn't any.

MR. CORRIGAN: It's a psychologist, and it's his statement. There is nobody here who has said, I'm a -- I guess it would be a urologist or someone who would explain that, or maybe a family doctor, somebody who deals with that.

THE COURT: I don't know. It's something I hadn't heard before, but it may be true. I don't know.

MR. CORRIGAN: And it may be true, Your Honor, but I don't think that makes this a question of whether it's

constitutional or not. Whether that happens or not does not affect whether it's constitutional or not.

THE COURT: Well, that's his choice.

MR. CORRIGAN: Yes, sir.

THE COURT: He chooses to become infected, he says, rather than to use the bathroom.

MR. CORRIGAN: Yes, sir, that is his choice.

THE COURT: And the reason he doesn't use the bathroom is because there's a stigma attached to it, which I haven't understood yet. That's the problem. I'm having a huge problem with everybody knowing that he desires to be a male and, in fact, his attorney advertising that to the world.

MR. CORRIGAN: Yes, Your Honor, I agree.

THE COURT: And that really set me off when I read this case. Why did they do that? The only thing I could figure out is if they didn't they wouldn't get any publicity.

MR. CORRIGAN: The way this breaks down is that all students have two choices --

THE COURT: I call it like I see it. Excuse me.

MR. CORRIGAN: Yes, sir.

THE COURT: But that doesn't have anything to do with the constitutional rights of the plaintiff in this case, it just has to do with the actions taken.

MR. CORRIGAN: And, Your Honor, again, the case that

we rely on is that *Johnston* case from Pittsburgh, the University of Pittsburgh, and the student in that case was a college student. So the interests weren't the same on behalf of the school as they are here. We're talking about high school students. We're talking about someone who is less than the age of majority, and we're talking about all the peers being age 14, 15, 16, 17, 18. So it's different concerns that the School Board has than in that case, but even in that case, in a college situation -- and the judge there held that transgender is not a protected class, is not a protected status.

THE COURT: That's what he held, yes.

MR. CORRIGAN: And I think that there's no case that they've cited where --

THE COURT: Well, that's why this case is so important --

MR. CORRIGAN: Yes, sir.

THE COURT: -- to them, and it's probably why the United States is participating. And we haven't heard from them.

I always like to hear from the Department of Justice. They always have some good ideas. The Constitution itself doesn't have to be considered under certain circumstances, merely the Amendments to the Constitution, and you don't have to worry about it if the American citizen is

outside of the country, and the law doesn't apply in one state that does in another.

You know, it really excites me. Because if a guy is smoking marijuana on the Key Bridge, is he guilty of a crime or not? You know, I thought, isn't that interesting.

MR. CORRIGAN: That's a good question, Your Honor.

THE COURT: Well, I know one thing: He won't be prosecuted by the federal government. But the question really is we are -- I'm confused, because every day I'm getting problems with people smoking marijuana who are on supervised release, and because they're not supposed to be using drugs, you have to send them to jail. How can I send somebody to jail for using marijuana if in another area the Department of Justice says, oh, no, it's perfectly all right?

In fact, the state can tax it. In fact, now one state is suing another state to try to stop them from allowing them to do something. I assume the Department of Justice is going to be involved in that. It's got to be the interest of the United States.

I'm sorry for the Department of Justice, but isn't it strange? Or does anybody else besides me find it strange --

MR. CORRIGAN: I agree with you.

THE COURT: -- that a state has to sue another state about the utilization of what were laws? I don't know.

Sanctuary cities? The whole thing is -- what's happening? Where are we going?

So let me hear from the Department of Justice. I understand your argument.

MR. CORRIGAN: Thank you, Your Honor.

THE COURT: I've read the case. It does say what you say it says.

Okay, Ms. Lill. Now, you represent the Department of Justice. This time it wants to protect whom?

MS. LILL: Well, Your Honor, our statement of interest addressed the Title IX claim here and the Department of Education's interpretation of its sex-segregated restroom regulations. And because Your Honor has ruled on that claim, unless you wish to revisit Title IX, unfortunately, we have nothing more to add here today.

THE COURT: So the only reason to interfere was Title IX.

MS. LILL: Yes, Your Honor. We entered our --

THE COURT: So you don't have any interest in the case any more except to appeal it, correct?

MS. LILL: Yes, if Your Honor has ruled on Title IX, that's correct.

THE COURT: Well, that's all right. I'm rather upset with where we're going in the United States, because I used to think that the laws applied universally. I used to

think. Old man "Used To" is dead and gone, isn't he?

I used to believe that -- you know, there was only one crime defined in the Constitution, only one. Can you imagine? If you read the initial Constitution of the United States, only one crime is defined. It tells you what you must do to utilize it, everything. Yet the Department of Justice wrote a 45-page memorandum and never discussed -- never discussed it. Oh, they discussed all the amendments, discussed all the statutes -- never discussed it.

I get perplexed. I get very perplexed. I believe in the Constitution. I also believe in its amendments, but they're not the only things in the Constitution. That crime was totally ignored, even though it was defined as to how you could prove it and that a jury trial was absolutely essential. Huh.

Well, I've already ruled that the very regulation itself modifies Title IX, so it's no problem, Ms. Lill. I don't mean to be giving you heck, I'm just wondering where we're going. Maybe it's my being old fashioned.

MS. LILL: I'm happy to address the Title IX claim, Your Honor. I'm happy to answer questions that you have on Title IX, if you have any questions.

THE COURT: I don't have any questions on Title IX. Thank you, Ms. Lill. Don't pay any attention to me giving the Department of Justice heck. It's just that I'm worried

about where we are going.

MS. LILL: I understand, Your Honor.

THE COURT: I believe in the Constitution. I believe in jury trials. I believe in the rights of individuals to have a hearing. I believe in due process and equal protection of the laws. I also believe corruption of the blood was something that died with the Middle Ages. Now it's been extended; you can kill the son. Where the United States is going scares me. It really scares me. Precedent is an awful thing.

Okay. Thank you, ma'am.

MS. LILL: Thank you, Your Honor.

THE COURT: All right, Mr. Block. You're fighting an uphill battle on irreparable harm.

MR. BLOCK: Yes, Your Honor. And I don't want to beat a dead horse, but I just want to make sure that our position is clear that the harm isn't people knowing that he's transgender. That's not the stigma, knowing that he's transgender. The stigma is having to use a separate restroom. So an African-American person having to use a separate restroom, the stigma isn't people knowing that he's African-American, the stigma is the unequal treatment.

THE COURT: Well, I think that can be developed very well in our case, when we hear all of the evidence and handle the case in that fashion.

I'm inclined not to dismiss the case. I will hear evidence, especially in view of the fact that there are a lot of statements made about medicals that I find a little unusual.

At this time I'm going to go back, read all the cases, and issue an opinion. And it will be a written opinion.

It's highly unlikely that I would award an injunction unless I found that it was absolutely essential to protect the constitutional rights of an individual. I don't have any problem protecting the rights of individuals. I do have a problem with being too fast in doing it, especially where there are many things that have to be discussed and where there are unusual circumstances. The unusual circumstances are that if I declared the actions of the School Board unconstitutional, then, as far as I could determine, it would set a precedent for every school in Gloucester County. It might set a precedent for every school in the Eastern District of Virginia, which is really tough.

And I'm not -- I worry about precedent. A lot of people don't worry about precedent. I could give you a lecture on the necessity to study history and precedents, because they keep repeating themselves. I'm not about to go too far. I can tell you that.

The question of what is medically necessary may be

paramount; it may not. Right now, I don't see anything that's irreparable harm at this moment. However, I'm going to look at it closer. I'm going to issue a written opinion. I'm probably going to allow the case to proceed. I'm not going to dismiss the complaint.

I'm not sure about what transgender entitles people to do yet. It certainly in some instances is not a comparable term. It may not be a protected term, but I'm not ready to say that, either. It may be protected. In some instances it is.

I don't have any problem distinguishing *Pricewaterhouse* from these cases. I couldn't distinguish *Johnston*, that case in Pennsylvania. I can't distinguish that. And that would seem to say that your position is not good, but I'm going to look into it. I will look into it.

MR. BLOCK: I would just --

THE COURT: The question is I think I'm going to have to have a trial in this case. If I do, I would think the trial is going to have to take place in Newport News, where the witnesses might be from. I'm not going to make them take a chance on coming through the tunnel. So probably we'll get a date set for that, and we'll do that right now so you don't have to meet again.

Ms. Baxter, what dates have we got available? I'm loaded, I know, but --

THE CLERK: For a hearing?
THE COURT: For a trial.
THE CLERK: They haven't filed an answer yet, have they?
THE COURT: Have they filed an answer?
MR. CORRIGAN: No, sir, we haven't filed an answer.
THE COURT: How long will it take you to file an answer?
MR. CORRIGAN: I would like the benefit of the Court's opinion before I file an answer.
THE COURT: You're getting as bad as Mr. Block.
MR. CORRIGAN: Yes, sir. I learned from him here today.
THE COURT: All right. I'll get an opinion out, and when I file an opinion you'll have 21 days within which to file an answer.
MR. CORRIGAN: Thank you, Your Honor.
THE COURT: Then we'll set it down. I'll wait and see.
I'm probably going to allow the case to proceed. I realize, Mr. Corrigan, you don't want it to proceed at all, but there are too many facts alleged in this 45-paragraph thing, and it's a situation that's got too much in there for me to let it go like this, as if it's uncontestable. So, consequently, I'm going to probably allow it.

I'll get an opinion out, and then you'll have 21 days within which to answer after the opinion, and then we'll set it. I'm just trying to save time. But we'll get it out. I don't know when I can get an opinion out. As I said, I'm loaded right now.

MR. CORRIGAN: Yes, sir.

THE COURT: And, like so many people, I'm going to be taking a vacation next month, so...

I wish this were like the old days. You know, they didn't used to hold court, when I first started practicing law, in August, ever, not even in the state courts, except police and traffic court. They don't have police and traffic court anymore, they have general district court. But you didn't used to find anybody in August. The lawyers never were around.

Of course, the fees were a lot smaller then and more reasonable. Now they're anything but reasonable. That's why people have to resort to the ACLU to get their rights protected. I don't mind that. Unfortunately, the School Board has to pay, but that's just unfortunate. Not for Mr. Corrigan, it's just unfortunate for the School Board.

So we'll see. I do thank you. The memorandums in this case, I must say, exhausted every possibility. I couldn't imagine any more thorough memorandums. I couldn't. I do take offense at the fact that the complaint did not stay

with the dates of when things occurred, because saying, I did this when I was such-and-such an age, and this when I was a sophomore, or this when I was a freshman, not knowing what dates we are so that you could follow it logically -- other than that, I don't have any complaints on that. But it worries me, because you can't put things together timely, and that's very important.

In any event, I thank you gentlemen. And, Ms. Lill, I didn't mean to take you on or the Justice Department on, but I feel strongly about what's happening in the Justice Department. They may not feel so strongly. I just feel strongly about it. I feel strongly about memoranda. Now it's perfectly all right, you know?

It used to be an ethical rule that you had to recite not only the cases in your favor but the cases against you, but since the American Bar Association has been taken over by those who practice a lot, they say, don't do that, don't cite the cases against you, make the Judge go look them up. I'm lazy. I don't want to have to look them up. It's a good thing I've got good law clerks. That's all I can say.

MR. CORRIGAN: I think between us we cited an awful lot of cases, too, Your Honor.

THE COURT: Oh, you cited everything you could name. I didn't say that, I said the memorandum just exhausted everything. And if you don't believe it, here (indicating).

MR. CORRIGAN: I credit my partner, Mr. Capps, with all that work.

THE COURT: Oh, you do? I'm glad you've got a writing partner. It always helps. And that's why we have to have law clerks.

I told somebody the other day when I went to law school the Code of Federal Regulations weren't bigger than an inch -- not bigger than an inch.

MR. CORRIGAN: Unbelievable.

THE COURT: There's no way -- if we stacked them up in this room, you wouldn't see this wall. I'm not sure you'd see that one, either.

So there's no cost-benefit analysis, nothing to stop you from making laws. The State of Virginia will make about 2,000 bills pending. I used to say, maybe we could get a constitutional amendment that said you had to eliminate one for every one you got. Wouldn't that be something? Somebody would have to figure out should they make this law, until the point is -- and I don't think anybody can exist a day without transgressing some regulation of some kind. That's a sad state of affairs.

You know, the French philosophers Rousseau and Voltaire, they talked about laws a lot, and one of the things they said is you should never change a law except under exceptional circumstances. I was thinking about getting one

of those books and sending it to Congress. Maybe they would understand then. Otherwise, people lose respect for the law. And I can truthfully say that people have. There's no way -- they say the law says you've got to know the law. Well, I guess maybe now that almost everyone can carry around a computer they may be able to punch enough buttons in to find what the law might be. Anyhow, things are changing.

We'll recess until 2:30.

(The hearing adjourned at 12:35 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s

Heidi L. Jeffreys

July 29, 2015

Date

FILED
SEP - 4 2015
CLERK, US DISTRICT COURT
NORFOLK, VA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

G.G., by his next friend and mother, DEIRDRE GRIMM,

Plaintiff

v.

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant.

CIVIL NO. 4:15cv54

ORDER

This matter is before the Court on Plaintiff G.G.'s challenge to a recent resolution (the "Resolution") passed by the Gloucester County School Board (the "School Board") on December 9, 2014. This Resolution addresses the restroom and locker room policy for all students in Gloucester County Public Schools. Specifically, G.G. brings claims under both the Equal Protection Clause of the Fourteenth Amendment and Title IX of the Education Amendments of 1972, seeking to contest the School Board's restroom policy under the Resolution.

On June 11, 2015, G.G. filed a Motion for Preliminary Injunction. ECF No. 11. A hearing on this motion was held on July 27, 2015. ECF No. 47. No testimony was elicited at this hearing. Id. The Court hereby **DENIES** the Plaintiff's Motion for Preliminary Injunction. A memorandum opinion detailing the reasons for the denial will be forthcoming shortly.

The Clerk is **DIRECTED** to forward a copy of this Order to all Counsel of Record.

IT IS SO ORDERED.

/s/
Robert G. Doumar
Senior United States District Judge

UNITED STATES DISTRICT JUDGE

Norfolk, VA
September 4, 2015

FILED
SEP 17 2015
CLERK, US DISTRICT COURT
NORFOLK, VA

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

G.G., by his next friend and mother, DEIRDRE GRIMM,

Plaintiffs,

v.

CIVIL NO. 4:15cv54

GLOUCESTER COUNTY SCHOOL BOARD,

Defendant.

MEMORANDUM OPINION

This matter is before the Court on Plaintiff G.G.'s challenge to a recent resolution (the "Resolution") passed by the Gloucester County School Board (the "School Board") on December 9, 2014. This Resolution addresses the restroom and locker room policy for all students in Gloucester County Public Schools. Specifically, G.G. brings claims under both the Equal Protection Clause of the Fourteenth Amendment (the "Equal Protection Clause") and Title IX of the Education Amendments of 1972 ("Title IX"), seeking to contest the School Board's restroom policy under the Resolution.

On June 11, 2015, G.G. filed a Motion for Preliminary Injunction, ECF No. 11, and on July 7, 2015, the School Board filed a Motion to Dismiss, ECF No. 31. On July 27, 2015, the parties appeared before the Court and argued their respective positions as to both motions. ECF No. 47. At that hearing, the Court took both motions under advisement. From the bench, the Court **GRANTED** the Motion to Dismiss as to Count II, G.G.'s claim under Title IX. On September 4, 2015, the Court **DENIED** the Motion for Preliminary Injunction. ECF No. 53. This opinion memorializes the reasons for these orders.

I. FACTUAL AND PROCEDURAL HISTORY

The following summary is taken from the factual allegations contained in Plaintiff's Complaint, which, for purposes of ruling on the Motion to Dismiss as to Count II, the Court accepts as true. Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 253 (4th Cir. 2009).

This case arises from a student's challenge to a recent restroom policy passed by the School Board. Plaintiff G.G. was born in Gloucester County on , 1999 and designated female.[1] Compl. ¶¶ 12, 14. However, at a very young age, G.G. did not feel like a girl. Id. ¶ 16. Before age six, Plaintiff "refused to wear girl clothes." Id. ¶ 17. Starting at approximately age twelve, "G.G acknowledged his male gender identity to himself."[2] Id. ¶ 18. In 2013–14, during G.G.'s freshman year of high school, most of his friends were aware that he identified as male. Id. ¶¶ 18–19. Furthermore, away from home and school, G.G. presented himself as a male. Id. ¶ 19.

During G.G.'s freshman year of high school, which began in September 2013, he experienced severe depression and anxiety related to the stress of concealing his gender identity from his family. Id. ¶ 20. This is the reason he alleges that he did not attend school during the spring semester of his freshman year, from January 2014 to June 2014, and instead took classes through a home-bound program. Id. In April 2014, G.G. first informed his parents that he is

[1] For the sake of brevity occasionally in this opinion the term "birth sex" may be used to describe the sex assigned to individuals at their birth. "Natal female" will be used to describe the gender assigned to G.G. at birth.

[2] The American Psychiatric Association ("APA") defines "gender identity" as "an individual's identification as male, female, or, occasionally, some category other than male or female." American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 451 (5th ed. 2013) ("DSM"). The DSM is "a classification of mental disorders with associated criteria designed to facilitate more reliable diagnoses of these disorders." Id. at xli. Although the DSM was included in G.G.'s briefs, it was not alleged in the Complaint and will consequently not be considered for the purpose of the Motion to Dismiss. However, the Court finds it instructive for definitional purposes.

transgender, that is, he believed that he was a man.[3] Id. ¶ 21. Sometime after informing his parents that he is transgender in April 2014, G.G., at his own request, began to see a psychologist, who subsequently diagnosed him with Gender Dysphoria.[4] Id. ¶ 21. As part of G.G.'s treatment, his psychologist recommended that G.G. begin living in accordance with his male gender identity in all respects. Id. ¶ 23. The psychologist provided G.G. with a "Treatment Documentation Letter" that confirmed that "he was receiving treatment for Gender Dysphoria and that, as part of that treatment, he should be treated as a boy in all respects, including with respect to his use of the restroom." Id. The psychologist also recommended that G.G. "see an endocrinologist and begin hormone treatment." Id. ¶ 26.

Subsequently, G.G. sought to implement his psychologist's recommendation. Id. ¶ 25. In July 2014, G.G. petitioned the Circuit Court of Gloucester County to change his legal name to his present masculine name and, the court granted his petition. Id. At his own request, G.G.'s new name is used for all purposes, and his friends and family refer to him using male pronouns. Id. Additionally, when out in public, G.G. uses the boys' restroom. Id.

G.G. also sought to implement his lifestyle transition at school. In August 2014, G.G. and his mother notified officials at Gloucester High School that G.G. is transgender and that he had changed his name. Id. ¶ 27. Consequently, officials changed school records to reflect G.G.'s new masculine name. Id. Furthermore, before the beginning of the 2014–15 school year, G.G. and his mother met with the school principal and guidance counselor to discuss his social transition. Id. ¶ 28. The school representatives allowed G.G. to email teachers and inform them that he preferred to be addressed using his new name and male pronouns. Id. Being unsure how students

[3] The APA defines "transgender" as "the broad spectrum of individuals who transiently or persistently identify with a gender different from their natal gender." Id.

[4] The APA defines "gender dysphoria" as "the distress that may accompany the incongruence between one's experienced and expressed gender and one's assigned gender." Id.

would react to his transition, G.G. initially agreed to use a separate bathroom in the nurse's office. Id. ¶ 30. G.G. was also permitted to continue his physical education requirement through his home school program. Id. ¶ 29. Consequently, G.G. "has not and does not intend to use a locker room at school." Id.

However, after 2014–15 school year began, G.G. found it stigmatizing to use a separate restroom. Id. ¶ 31. G.G. requested to use the male restroom. Id. On or around October 20, 2014, the school principal agreed to G.G.'s request. Id. ¶ 32. For the next seven weeks, G.G. used the boys' restroom. Id.

Some members of the community disapproved of G.G.'s use of the men's bathroom when they learned of it. Id. ¶ 33. Some of these individuals contacted members of the School Board and asked that G.G. be prohibited from using the men's restroom. Id. Shortly before the School Board's meeting on November 11, 2014, one of its members added an item to the agenda, titled "Discussion of Use of Restrooms/Locker Room Facilities," along with a proposed resolution. Id. ¶ 34. This proposed resolution stated as follows:

> Whereas the [Gloucester County Public Schools] recognizes that some students question their gender identities, and
>
> Whereas the [Gloucester County Public Schools] encourages such students to seek support, advice, and guidance from parents, professionals and other trusted adults, and
>
> Whereas the [Gloucester County Public Schools] seeks to provide a safe learning environment for all students and to protect the privacy of all students, therefore
>
> It shall be the practice of the [Gloucester County Public Schools] to provide male and female restroom and locker room facilities in its schools, and the use of said facilities shall be limited to the corresponding biological genders, and students with gender identity issues shall be provided an alternative appropriate private facility.

Id. ¶ 34. At the meeting, a majority of the twenty-seven people who spoke were in favor of the proposal. Id. ¶ 37. Some proponents argued that transgender students' use of the restrooms would violate the privacy of other students and might "lead to sexual assault in the bathrooms." Id. It was suggested that a non-transgender boy could come to the school in a dress and demand to use the girls' restroom. Id. G.G. addressed the group and spoke against the proposed resolution and thus identified himself to the entire community. Id. ¶ 38. At the end of the meeting, the School Board voted 4-3 to defer a vote on the policy until its meeting on December 9, 2014. Id. ¶ 39.

On December 3, 2014, the School Board issued a news release stating that regardless of the outcome, it intended to take measures to increase privacy for all students using school restrooms, including "expanding partitions between urinals in male restrooms"; "adding privacy strips to the doors of stalls in all restrooms"; and "designat[ing] single-stall, unisex restrooms, similar to what's in many other public spaces." Id. ¶ 41. On December 9, 2014, the School Board held a meeting to vote on the proposed resolution. Id. Before the vote was conducted, a Citizens' Comments Period was held to allow a discussion on the proposed resolution. Id. Again, a majority of the speakers supported the resolution. Id. ¶ 42. Speakers again raised concerns about the privacy of other students. Id. After thirty-seven people spoke during the Citizens' Comment Period, the School Board voted 6-1 to pass the Resolution. Id. ¶ 43.

On December 10, 2015, the day after the School Board passed the Resolution, the school principal informed G.G. that he could no longer use the boys' restroom and would be disciplined if he did. Id. ¶ 45.

Since the adoption of the restroom policy, certain physical improvements have been made to the school restrooms at Gloucester High School. The school has installed three unisex

single-stall restrooms. Id. ¶ 47. The school has also raised the doors and walls around the bathroom stalls so that students cannot see into an adjoining stall. Id. Additionally, partitions were installed between the urinals in the boys' restrooms. Id.

Sometime after the actions of the School Board, G.G. began receiving hormone treatment in December 2014. Id. ¶ 26 These treatments have deepened his voice, increased the growth of his facial hair, and given him a more masculine appearance. Id.

It is alleged that "[u]sing the girls' restroom is not possible for G.G." Id. ¶ 46. G.G. alleges that prior to his treatment for Gender Dysphoria, girls and women who encountered G.G. in female restrooms would react negatively because of his masculine appearance; that in eighth and ninth grade, the period from September 2012 to June 2014, girls at school would ask him to leave the female restroom; and that use of the girls' restroom would also cause G.G. "severe psychological stress" and would be "incompatible with his medically necessary treatment for Gender Dysphoria." Id.

G.G. further alleges that he refuses to use the separate single-stall restrooms installed by the school because the use of them would stigmatize and isolate him; that the use of these restrooms would serve as a reminder that the school views him as "different"; and that the school community knows that the restrooms were installed for him. Id.

From these alleged facts, on June 11, 2015, G.G. brought the present challenge to the School Board's restroom policy under the Equal Protection Clause and Title IX. ECF No. 8. On that same day, G.G. filed the instant Motion for Preliminary Injunction, requesting that the Court issue an injunction allowing G.G. to use the boys' bathroom at Gloucester High School until this case is decided at trial. ECF No. 11. On June 29, 2015, the United States ("the Government"), through the Department of Justice, filed a Statement of Interest, asserting that the School Board's

bathroom policy violated Title IX. ECF No. 28. The School Board filed an Opposition to the Motion for Preliminary Injunction on July 7, 2015, ECF No. 30, along with a Motion to Dismiss, ECF No. 31. On July 27, 2015, the parties appeared before the Court and argued their respective positions as to both motions. ECF No. 47. At that hearing, the Court took both motions under advisement. From the bench, the Court granted the Motion to Dismiss as to Count II, G.G.'s claim under Title IX. On September 4, 2015, the Court denied the Motion for Preliminary Injunction. ECF No. 53. This opinion memorializes the reasons for these orders.

II. MOTION TO DISMISS

A. STANDARD OF REVIEW

The function of a motion to dismiss under Rule 12(b)(6) is to test "the sufficiency of a complaint." Occupy Columbia v. Haley, 738 F.3d 107, 116 (4th Cir. 2013). "[I]mportantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). "To survive such a motion, the complaint must allege facts sufficient 'to raise a right to relief above the speculative level' and 'state a claim to relief that is plausible on its face.'" Haley, 738 F.3d at 116. When reviewing the legal sufficiency of a complaint, the Court must accept "all well-pleaded allegations in the plaintiff's complaint as true" and draw "all reasonable factual inferences from those facts in the plaintiff's favor." Edwards v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir. 1999). Legal conclusions, on the other hand, are not entitled to the assumption of truth if they are not supported by factual allegations. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). However, a motion to dismiss should be granted only in "very limited circumstances." Rogers v. Jefferson–Pilot Life Ins. Co., 883 F.2d 324, 325 (4th Cir. 1989).

B. COUNT II - TITLE IX

G.G. also alleges that the School Board's bathroom policy violates Title IX. Under Title

IX, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program . . . ." 20 U.S.C. § 1681(a). "Under Title IX, a prima facie case is established by a plaintiff showing (1) that [he or] she was excluded from participation in (or denied the benefits of, or subjected to discrimination in) an educational program; (2) that the program receives federal assistance; and (3) that the exclusion was on the basis of sex." Manolov v. Borough of Manhattan Comm. Coll., 952 F. Supp. 2d 522, 532 (S.D.N.Y. 2013) (quoting Murray v. N.Y. Univ. Coll. of Dentistry, No. 93 Civ. 8771, 1994 WL 533411, at *5 (S.D.N.Y. Sept. 29, 1994)); Bougher v. Univ. of Pittsburgh, 713 F. Supp. 139, 143–44 (W.D. Pa. 1989), aff'd, 882 F.2d 74 (3d Cir. 1989)).

The School Board Resolution expressly differentiates between students who have a gender identity congruent with their birth sex and those who do not. Compl. ¶ 34. G.G. alleges that this exclusion from the boys' bathroom based on his gender identity constitutes sex discrimination under Title IX. Compl. ¶¶ 64, 65.

1. Arguments

The parties contest whether discrimination based on gender identity is barred under Title IX. To support their respective contentions, both parties cite to cases interpreting Title VII, upon which courts have routinely relied in determining the breadth of Title IX. See Jennings v. Univ. of N.C., 482 F.3d 686, 695 (4th Cir. 2007) ("We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.").

The School Board argues that sex discrimination does not include discrimination based on gender identity. For support, the School Board cites Johnston v. University of Pittsburgh of Commonwealth System of Higher Education, --- F. Supp. 3d ---- , 2015 WL 1497753 (W.D. Pa. Mar. 31, 2015). In Johnston, the Western District of Pennsylvania found that a policy separating the bathrooms by birth sex at the University of Pittsburgh did not violate Title IX because sex

discrimination does not include discrimination against transgender individuals. 2015 WL 1497753, at *12–19. The School Board asserts that Johnston establishes that Title IX does not incorporate discrimination based on gender or transgender status.

In response, G.G. maintains that sex discrimination includes discrimination based on gender. G.G. cites to a number of Title VII cases in which courts have found sex discrimination to include gender discrimination. See, e.g., Glenn v. Brumby, 663 F.3d 1312, 1317 (11th Cir. 2011); Smith v. City of Salem, 378 F.3d 566, 574–75 (6th Cir. 2004); Finkle v. Howard Cnty., Md., 12 F. Supp. 3d 780, 788 (D. Md. 2014); Lopez v. River Oaks Imaging & Diagnostic Grp., Inc., 542 F. Supp. 2d 653, 660 (S.D. Tex. 2008); see also Schwenk v. Hartford, 204 F.3d 1187, 1201 (9th Cir. 2000) ("'[S]ex' under Title VII encompasses both sex—that is, the biological differences between men and women—and gender.").

In addition, G.G. contends that the cases Johnston cited to support its proposition, Ulane v. E. Airlines, Inc., 742 F.2d 1081 (7th Cir. 1984), and, Sommers v. Budget Mktg., Inc., 667 F.2d 748 (8th Cir. 1982), cert. denied, 471 U.S. 1017 (1985),[5] are no longer good law. In both Ulane and Sommers, the courts refused to extend sex discrimination to include discrimination against transgender individuals or those with nonconforming gender types. However, G.G. asserts that Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), overruled these cases. In Price Waterhouse, the Supreme Court considered a Title VII claim based on allegations that an employee at Price Waterhouse was denied partnership because she was considered "macho" and "overcompensated for being a woman." 490 U.S. at 235. She had been advised to "walk more femininely, talk more

[5] The more recent case Johnston cites is a Tenth Circuit case, in which the court avoided deciding the issue. Etsitty v. Utah Transit Auth., 502 F.3d 1215, 1224 (10th Cir. 2007) ("This court need not decide whether discrimination based on an employee's failure to conform to sex stereotypes always constitutes discrimination 'because of sex' and we need not decide whether such a claim may extend Title VII protection to transsexuals who act and appear as a member of the opposite sex.").

femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry." Id. The Court found that such comments were indicative of gender stereotyping, which Title VII prohibited as sex discrimination. The Court explained that

> we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for '[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.'

Id. at 251 (quoting L.A. Dept. of Water & Power v. Manhart, 435 U.S. 702, 707 n.13 (1978)). Accordingly, the Court found that "an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be" has acted on the basis of sex. Id. at 251.

Other courts have found that Price Waterhouse overruled the cases cited in Johnston. "[S]ince the decision in Price Waterhouse, federal courts have recognized with near-total uniformity that 'the approach in . . . Sommers, and Ulane . . . has been eviscerated' by Price Waterhouse's holding." Glenn, 663 F.3d at 1318 n.5 (quoting City of Salem, 378 F.3d at 573)); see also Schwenk, 204 F.3d at 1201 ("The initial judicial approach taken in cases such as Holloway has been overruled by the logic and language of Price Waterhouse."); Lopez, 542 F. Supp. 2d at 660. Based on Price Waterhouse and its progeny, G.G. claims that discrimination against transgender individuals or other nonconforming gender types is now prohibited as a form of sex discrimination. Accordingly, G.G. asserts that the Resolution's differentiation between students who have a gender identity congruent with their birth sex, and those who do not, amounts to sex discrimination under Title IX.

2. Analysis

Although the primary contention between the parties is whether gender discrimination fits within the definition of sex discrimination under Title IX, G.G.'s claim does not rest on this

distinction. Rather, the Court concludes that G.G.'s Title IX claim is precluded by Department of Education regulations. As noted above, Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ." 20 U.S.C. § 1681. However, this prohibition on sex-based decision making is not without exceptions. Among the exceptions listed in Title IX is a provision stating that "nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes." 20 U.S.C. § 1686. Although the statute does not expressly state that educational institutions may maintain separate bathrooms for the different sexes, Department of Education regulations stipulate:

> A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

34 C.F.R. § 106.33. This regulation (hereinafter, "Section 106.33") expressly allows schools to provide separate bathroom facilities based upon sex, so long as the bathrooms are comparable. When Congress delegates authority to any agency to "elucidate a specific provision of the statute by regulation, any ensuing regulation is binding on the courts unless procedurally defective, arbitrary or capricious in substance, or manifestly contrary to the statute." United States v. Mead Corp., 533 U.S. 218, 227 (2001). The Department of Education's regulation is not "arbitrary, capricious, or manifestly contrary to the statute."[6] Rather, Section 106.33 seems to effectuate Title IX's provision allowing separate living facilities based on sex.[7] Therefore, Section 106.33

[6] It is significant that neither party raised, nor even hinted at raising, a challenge to the validity of Section 106.33 under Title IX.

[7] The term "living facilities" in 20 U.S.C. § 1686 is ambiguous, and legislative history of Title IX does not

is given controlling weight.

In light of Section 106.33, G.G. fails to state a valid claim under Title IX. G.G. alleges that the School Board violated Title IX by preventing him from using the boys' restrooms despite the fact that his gender identity is male. Compl. ¶¶ 64, 65. According to G.G., the School Board's determination was based on the belief that Plaintiff is biologically female, not biologically male.[8] Id. ¶ 65. However, Section 106.33 specifically allows schools to maintain separate bathrooms based on sex as long as the bathrooms for each sex are comparable. Therefore, the School Board did not run afoul of Title IX by limiting G.G. to the bathrooms assigned to his birth sex.

In fact, the only way to square G.G.'s allegations with Section 106.33 is to interpret the use of the term "sex" in Section 106.33 to mean *only* "gender identity." Under this interpretation, Section 106.33 would permit the use of separate bathrooms on the basis of gender identity and *not* on the basis of birth or biological sex. However, under any fair reading, "sex" in Section 106.33 clearly includes biological sex. Because the School Board's policy of providing separate bathrooms on the basis of biological sex is permissible under the regulation, the Court need not decide whether "sex" in the Section 106.33 also includes "gender identity."

Instead, the Court need only decide whether the School Board's bathroom policy satisfies Section 106.33. Section 106.33 states that sex-segregated bathrooms are permissible unless such

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provide clear guidance as to its meaning. This term could be narrowly interpreted to mean living quarters, such as dormitories, or it could be broadly interpreted to include other facilities, such as bathrooms. See Implementing Title IX: The New Regulations, 124 U. Pa. L. Rev. 806, 811 (1976). Because the Department of Education's inclusion of bathrooms within "living facilities" is reasonable, the Court defers to its interpretation. See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842–44 (1984).

[8] The Court is sensitive to the fact the G.G. disapproves of the School Board's term "biological gender." See Compl. ¶ 66 (placing biological in dismissive quotation marks). G.G. may also take issue with the Court's phrase biological sex. The Court is guided in its usage by the APA "Definition of Terms: Sex, Gender, Gender Identity, Sexual Orientation" from 2011, which the School Board submitted with its Brief in Opposition to Motion for Preliminary Injunction. Ex. 3, ECF No. 30. The APA defines "sex" as "a person's biological status," and identifies "a number of indicators of biological sex." Id.

facilities are not comparable. G.G. fails to allege that the bathrooms to which he is allowed access by the School Board—the girls' restrooms and the single-stall restrooms—are incomparable to those provided for individuals who are biologically male. In fact, none of the allegations in the Complaint even mention or imply that the facilities in the bathrooms are not comparable. Consequently, G.G. fails to state a claim under Title IX.

Nonetheless, despite Section 106.33, the Government urges the Court to defer to the Department of Education's interpretation of Title IX, which maintains that a policy that segregates bathrooms based on biological sex and without regard for students' gender identities violates Title IX. In support of its position, the Government attaches a letter (the "Letter"), dated January 7, 2015, issued by the Department of Education, through the Office for Civil Rights, apparently clarifying its stance on the treatment of transgender students with regard to sex-segregated restrooms. Statement of Interest 9, ECF No. 28; id. Ex. B, at 2, ECF No. 28-2. In the Letter, the Acting Deputy Assistant Secretary for Policy for the Department of Education's Office of Civil Rights, writes:

> The Department's Title IX regulations permit schools to provide sex-segregated restrooms, locker rooms, shower facilities, housing, athletic teams, and single-sex classes under certain circumstances. When a school elects to separate or treat students differently on the basis of sex in those situations, a school must treat transgender students consistent with their gender identity.

Id. at 9–10, Ex. B, at 2. The Letter cites a Department of Education significant guidance document (the "Guidance Document") published in 2014 in support of this interpretation. According to the Guidance Document:

> Under Title IX, a recipient must generally treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes.

See Department of Education, Office for Civil Rights, Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities 25 (Dec. 1, 2014). Despite the fact that Section 106.33 has been in effect since 1975,[9] the Department of Education does not cite any documents published before 2014 to support the interpretation it now adopts.

The Department of Education's interpretation does not stand up to scrutiny. Unlike regulations, interpretations in opinion letters, policy statements, agency manuals, and enforcement guidelines "do not warrant Chevron-style deference" with regard to statutes. Christensen v. Harris Cnty., 529 U.S. 576, 587 (2000). Therefore, the interpretations in the Letter and the Guidance Document cannot supplant Section 106.33. Nonetheless, these documents can inform the meaning of Section 106.33. An agency's interpretation of its own regulation, even one contained in an opinion letter or a guidance document, is given controlling weight if (1) the regulation is ambiguous and (2) the interpretation is not plainly erroneous or inconsistent with the regulation. Id. at 588 ("Auer deference is warranted only when the language of the regulation is ambiguous."); Auer v. Robbins, 519 U.S. 452, 461 (1997) ("[The agency's] interpretation of [its own regulation] is, under our jurisprudence, controlling unless plainly erroneous or inconsistent with the regulation.").

Upon review, the Department of Education's interpretation should not be given controlling weight. To begin with, Section 106.33 is not ambiguous. It clearly allows the School Board to limit bathroom access "on the basis of sex," including birth or biological sex. Furthermore, the Department of Education's interpretation of Section 106.33 is plainly erroneous and inconsistent with the regulation. Even under the most liberal reading, "on the basis of sex" in Section 106.33 means both "on the basis of gender" *and* "on the basis of biological sex." It does

[9] Title IX regulations were promulgated by the Department of Health, Education, and Welfare in 1975 and adopted by the Department of Education upon its establishment in 1980. 45 Fed. Reg. 30802, 30955 (May, 9 1980) (codified at 34 C.F.R. §§ 106.1–.71).

not mean "only on the basis of gender." Indeed, the Government itself states that "under Price Waterhouse, 'sex' . . . encompasses both sex—that is, the biological differences between men and women—*and* gender." Statement of Interest 6–7, ECF No. 28. Thus, at most, Section 106.33 *allows* the separation of bathroom facilities on the basis of gender. It does not, however, require that sex-segregated bathrooms be separated on the basis of gender, rather than on the basis of birth or biological sex. Gender discrimination did not suddenly supplant sex discrimination as a result of Price Waterhouse; it supplemented it.

To defer to the Department of Education's newfound interpretation would be nothing less than to allow the Department of Education to "create *de facto* a new regulation" through the use of a mere letter and guidance document. See Christensen, 529 U.S. at 588. If the Department of Education wishes to amend its regulations, it is of course entitled to do so. However, it must go through notice and comment rulemaking, as required by the Administrative Procedure Act. See 5 U.S.C. § 553. It will not be permitted to disinterpret its own regulations for the purposes of litigation. As the Court noted throughout the hearing, it is concerned about the implications of such rulings. Mot. to Dismiss & Prelim. Inj. Hr'g at Tr. 65:23–66:19; 73:6–74:7. Allowing the Department of Education's Letter to control here would set a precedent that agencies could avoid the process of formal rulemaking by announcing regulations through simple question and answer publications. Such a precedent would be dangerous and could open the door to allow further attempts to circumvent the rule of law—further degrading our well-designed system of checks and balances.

In light of Section 106.33, the Court cannot find that the School Board's bathroom policy violates Title IX.

III. MOTION FOR PRELIMINARY INJUNCTION

The Motion for Preliminary Injunction is entirely different. The complaint is no longer

the deciding factor, admissible evidence is the deciding factor. Evidence therefore must conform to the rules of evidence. G.G. has sought a preliminary injunction. This Motion requests that the Court issue an injunction allowing G.G. to resume using the boys' restrooms at Gloucester High School until there is a final judgment on the merits.[10] ECF No. 11. In support of his motion for a preliminary injunction, G.G. has submitted two declarations: one from G.G. and another from an expert in the field of Gender Dysphoria. Decl. of G.G., ECF No. 9 ("G.G. Decl."); The Expert Declaration of Randi Ettner, Ph.D, ECF No. 10 ("Ettner Decl."). The School Board contests the injunction and attaches single a declaration to its Opposition to the Motion for Preliminary Injunction from Troy Andersen, a member of the School Board and the 2014–15 Gloucester Point District Representative for the Gloucester County School Board. Decl. of Troy Andersen, ECF No. 30-1 ("Andersen Decl."). On July 27, 2015, the parties appeared before the Court to argue this Motion, and both parties were given the opportunity to introduce evidence supporting their respective positions. ECF No. 47. At the hearing, neither G.G. nor the School Board introduced additional evidence for support. Id.

As the Court has granted the School Board's motion to dismiss as to Count II, G.G.'s claim under Title IX, it need not discuss reasons for denying the Motion for Preliminary Injunction on this Count. While the Court has not yet ruled on whether G.G. has stated a claim under the Equal Protection Clause, the Court finds that, even if he has stated a claim, G.G. has not submitted enough evidence to establish that the balance of hardships weigh in his favor. Accordingly, the issuance of a preliminary injunction is not warranted.

A. STANDARD OF REVIEW

"The grant of preliminary injunctions [is] . . . an extraordinary remedy involving the

[10] G.G. claims that he does not intend to use the locker room at school. Mem. in Supp. of Mot. for Prelim. Inj., 8 n.2, ECF No. 18 ("Prelim. Inj."). However, the requested injunction allowing him to use the male restrooms would apply to the male restroom in the locker room.

exercise of a very far-reaching power, which is to be applied 'only in the limited circumstances' which clearly demand it." Direx Israel, Ltd. v. Breakthrough Med. Corp., 952 F.2d 802, 811 (4th Cir. 1992) (quoting Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 800 (3d Cir. 1989)). A plaintiff must overcome the "uphill battle" of satisfying each of the four factors necessary to obtain a preliminary injunction. Real Truth About Obama, Inc. v. FEC, 575 F.3d 342, 347 (4th Cir. 2009) (stating that the four factors must be "satisfied as articulated"), vacated on other grounds, 559 U.S. 1089 (2010). To obtain a preliminary injunction, "[p]laintiffs must demonstrate that (1) they are likely to succeed on the merits; (2) they will likely suffer irreparable harm absent an injunction; (3) the balance of hardships weighs in their favor; and (4) the injunction is in the public interest." League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 236 (4th Cir. 2014) (citing Winter v. Natural Res. Def. Council, 555 U.S. 7, 20 (2008)). The failure to make a clear showing of any one of these four factors requires the Court to deny the preliminary injunction.[11] Real Truth About Obama, Inc., 575 F.3d at 346.

A plaintiff seeking a preliminary injunction does not benefit from the presumption that the facts contained in the complaint are true. A plaintiff must introduce evidence in support of a Motion for Preliminary Injunction. While oral testimony is not strictly necessary, this Court has never granted a Preliminary Injunction without first hearing oral testimony. Declarations are frequently drafted by lawyers, and the evidence presented within them is not subject to the rigors of cross examination. A plaintiff relying solely on such weak evidence is unlikely to make the clear showing required for the issuance of a preliminary injunction. Additionally, this Court will

[11] The parties dispute whether the injunction sought is mandatory or prohibitory in nature. "Whereas mandatory injunctions alter the status quo, prohibitory injunctions 'aim to maintain the status quo and prevent irreparable harm while a lawsuit remains pending.'" League of Women Voters of N.C., 769 F.3d at 236 (quoting Pashby v. Delia, 709 F.3d 307, 319 (4th Cir. 2013)). There is a heightened standard for mandatory injunctions. Taylor v. Freeman, 34 F.3d 266, 270 n.2 (4th Cir. 1994) ("Mandatory preliminary injunctive relief in any circumstance is disfavored, and warranted only in the most extraordinary circumstances."). Because the Court finds that G.G. fails to show that a preliminary injunction is warranted even if the injunction sought is prohibitory, the Court does not decide the issue.

not consider evidence that would be inadmissible at trial, such as hearsay, that is contained within affidavits.

B. ARGUMENTS OF THE PARTIES AND FACTS IN EVIDENCE

G.G. characterizes the question of competing hardships as "not a close question." Mem. in Supp. of Mot. for Prelim. Inj., 40, ECF No. 18 ("Prelim. Inj."). He argues that this Court must weigh "the severe, documented, and scientifically supported harms" that the restroom policy continues to inflict upon G.G, who has been diagnosed with Gender Dysphoria, against the "School Board's unfounded speculation about harms that might occur to others at some future date." Id. The School Board by contrast implores this Court to consider the safety and privacy interests of all its students. Br. in Opp'n to Mot. for Prelim. Inj., 18, ECF No. 30. It emphasizes that while litigation is ongoing, G.G. may use the "girls' restroom, the three single-stall restrooms, or the restroom in the nurse's office." Id.

1. Facts and Arguments Concerning the Hardship to G.G.

G.G. relies on two declarations to establish the hardships he would suffer should this Court deny his Motion for Preliminary Injunction. ECF Nos. 9, 10. G.G.'s Declaration largely repeats the material in his complaint. Compare ECF Nos. 8 and 9. The Court recounts only those assertions that concern the effect that G.G.'s Gender Dysphoria has had on his schooling. G.G. alleges other harms he has suffered, such as being humiliated and forced to speak at the School Board hearing, G.G. Decl. ¶ 23, but these harms are not relevant to the issuance of an injunction allowing G.G. to use the male restroom during this litigation. Here the declaration of G.G. is a recital of the allegations in the complaint and is replete with inadmissible evidence including thoughts of others, hearsay, and suppositions. The Court recounts these allegations before analyzing their credibility.

G.G. claims that during his freshman year, which began in September 2013, he

"experienced severe depression and anxiety related to his untreated Gender Dysphoria." Id. ¶ 9. The depression and anxiety were so severe that G.G. did not attend school during the spring semester which began in January 2014. Id. There is nothing to corroborate that his "untreated Gender Dysphoria" was the reason for his absence. In April of 2014, weeks before his fifteenth birthday, G.G. first informed his parents that he is transgender. Id. ¶ 10. After his parents learned of his gender identity, G.G. began "therapy with a psychologist who had experience with working with transgender patients." Id. He claims that this psychologist diagnosed him with Gender Dysphoria and recommended that he begin to live as a boy in all respects, including in his use of the restroom. Id. ¶ 11. There is no report or declaration from this psychologist. In August 2014, G.G. and his mother informed officials at Gloucester High School of his gender identity. Id. ¶ 15 At the start of the school year, G.G. agreed to use a separate restroom in the nurse's office. Id. ¶ 19. G.G. then determined that it "was not necessary to continue to use the nurse's restroom." Id. He claims that he "found it stigmatizing to use a separate restroom." Id.

On December 9, 2014, the School Board adopted the restroom policy. Id. ¶ 22. With the new transgender restroom policy, G.G. feels like he has been "stripped of [his] privacy and dignity." Id. ¶ 23. He is unwilling to use the girls' restroom because, he claims, girls and women object to his presence there. Id. ¶ 25. Additionally, use of the girls' restroom would be incompatible with his treatment for Gender Dysphoria. Id. He claims that the new unisex restrooms are not located near his classes and that only one of these restrooms is located near where the single-sex restrooms are located. Id. ¶ 26. He refuses to use these restrooms because "they make him feel even more stigmatized and isolated than when [he] use[d] the restroom in the nurse's office." Id. ¶ 27. He claims that everyone knows that the restrooms were installed for him. Id. Because G.G. refuses to use any of the restrooms permitted for his use, he has held his

urine and developed urinary tract infections. Id. ¶ 28.

The Expert Declaration of Randi Ettner, Ph.D, adds little to these factual claims. Ettner is not the psychologist who analyzed G.G. after he first told his parents he was transgender; rather, he was retained by G.G.'s counsel in preparation for this litigation. See Ettner Decl. ¶¶ 1, 7, 9. Ettner met G.G. once before preparing his report. Id. ¶ 7. The bulk of his declaration describes the diagnosis and treatment of Gender Dysphoria. It defines Gender Dysphoria as the feeling of incongruence between one's gender identity and the sex assigned one at birth. Id. ¶¶ 11–12. It notes that Gender Dysphoria is "codified in the Diagnostic and Statistical [M]anual of Mental Disorders (DSM-V) (American Psychiatric Association) and the International Classifications of Diseases-10 (World Health Organization)." Id. ¶ 12. It describes the studies that have looked at transgender youth who could not use restrooms corresponding to their gender identity. Id. ¶¶ 18–27. However, beyond confirming that G.G. has a "*severe* degree of Gender Dysphoria," id. ¶ 29, there are no facts particular to G.G. in the report. See id. ¶¶ 28–30.

The School Board, supported by the declaration of Troy Andersen, emphasizes that any student may use the three unisex restrooms that were installed and open for use by December 16, 2014. Andersen Decl. ¶ 7; Br. in Opp'n to Mot. for Prelim. Inj., 18, ECF No. 30. Any student may also use the restroom in the nurse's office. Andersen Decl. ¶ 7. Moreover, the School Board contends that G.G. may use the female restrooms and locker rooms, Br. in Opp'n to Mot. for Prelim. Inj., 18, ECF No. 30, and G.G. has made no showing that he is not permitted to use them.

2. Facts and Arguments Concerning Student Privacy

The School Board contends that granting the preliminary injunction and allowing G.G. to use the male restroom would endanger the safety and privacy of other students. Br. in Opp'n to Mot. for Prelim. Inj., 18, ECF No. 30. G.G. argues in response, without any independent factual

support, that his presence in the male restroom would not infringe upon the privacy rights of his fellow students. He claims that the student body itself is comfortable with his presence in the restroom because during the seven weeks in which he used the male restroom, he "never encountered any problems from other students." G.G. Decl. ¶ 20. The Andersen Declaration describes a different reaction to G.G.'s use of the male restroom. Andersen Decl. ¶ 4. According to Andersen, the School Board "began receiving numerous complaints from parents and students" the day after G.G. was granted permission to use the boys' bathroom. Id.

G.G. also contends that the improvements that the School Board made to the restrooms alleviated any concerns that parents or students may have had about "nudity involving students of different sexes." Prelim. Inj. at 33. His complaint describes these improvements, which include raising the doors and walls around the bathroom stalls so that students cannot see into an adjoining stall, and adding three unisex, single-stall restrooms. Compl. ¶¶ 47, 52. The School Board disputes the extent to which the improvements have increased privacy and claims that the restrooms, "and specifically the urinals," are "not completely private," although it also does not submit any evidence in support of this contention. Br. in Opp'n to Mot. for Prelim. Inj., 18 n.17, ECF No. 30.

Finally, G.G. argues that any student uncomfortable with his presence in the male restrooms may use the new unisex restrooms. Prelim. Inj. at 35, 39.

C. ANALYSIS

G.G.'s Motion for Preliminary Injunction asks this Court to allow him, a natal female, to use the male restroom at Gloucester High School. Mot. for Prelim. Inj., ECF No. 11. Restrooms and locker rooms are designed differently because of the biological differences between the sexes. See Faulkner v. Jones, 10 F.3d 226, 232 (4th Cir. 1993) ("differences between the genders demand a facility for each gender that is different"). Male restrooms, for instance, contain

urinals, while female restrooms do not. Men tend to prefer urinals because of the convenience. Furthermore, society demands that male and female restrooms be separate because of privacy concerns. Id.; see also Virginia v. United States, 518 U.S. 515, 550 n.16 (1996) ("[a]dmitting women to VMI would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements"). The Court must consider G.G.'s claims of stigma and distress against the privacy interests of the other students protected by separate restrooms.

In protecting the privacy of the other students, the School Board is protecting a constitutional right. The Fourth Circuit has recognized that prisoners have a constitutional right to bodily privacy. Lee v. Downs, 641 F.2d 1117, 1119 (4th Cir. 1981). Although the Fourth Circuit has never held that the right to bodily privacy applies to all individuals, it would be perverse to suppose that prisoners, who forfeit so many privacy rights, nevertheless gained a constitutional right to bodily privacy. In recognizing the right of prisoners to bodily privacy the court spoke in universal terms: "Most people . . . have a special sense of privacy in their own genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating." Id.

Several circuits have recognized the right to bodily privacy outside the context of prisoner litigation. Doe v. Luzerne County, 660 F.3d 169, 177 (3d Cir. 2011) (holding that bodily exposure may meet "the lofty constitutional standard" and constitute a violation of one's reasonable expectation of privacy); Brannum v. Overton County School Bd., 516 F.3d 489, 494 (6th Cir. 2008) (holding that a student's "constitutionally protected right to privacy encompasses the right not to be videotaped while dressing and undressing in school athletic locker rooms"); Poe v. Leonard, 282 F.3d 123, 138–39 (2d Cir. 2002) ("there is a right to privacy in one's

unclothed or partially unclothed body"); York v. Story, 324 F.2d 450, 455 (9th Cir. 1963) ("We cannot conceive of a more basic subject of privacy than the naked body."). In these circuits, violations of the right to bodily privacy are most acute when one's body is exposed to a member of the opposite sex. See Doe, 660 F.3d at 177 (considering whether "Doe's body parts were exposed to members of the opposite sex" in deciding whether her reasonable expectation of privacy was violated); Brannum, 516 F.3d at 494 ("the constitutional right to privacy . . . includes the right to shield one's body from exposure to viewing by the opposite sex"); York, 324 F.2d at 455 (highlighting that the exposed plaintiff was female and the viewing defendant male); Poe, 282 F.3d at 138 (citing with approval the Ninth Circuit's emphasis on the different genders of defendant and plaintiff in York).

Not only is bodily privacy a constitutional right, the need for privacy is even more pronounced in the state educational system. The students are almost all minors, and public school education is a protective environment. Furthermore, the School Board is tasked with providing safe and appropriate facilities for these students. Linnon v. Commonwealth, 752 S.E.2d 822, 826 (Va. 2014) (finding that "school administrators have a responsibility 'to supervise and ensure that students could have an education in an atmosphere conducive to learning, free of disruption, and threat to person.'" (quoting Burns v. Gagnon, 727 S.E.2d 634, 643 (Va. 2012)).

G.G.'s unsupported claims, which are mostly inadmissible hearsay, fail to show that his presence in the male restroom would not infringe upon the privacy of other students. G.G.'s claim that he "never encountered any problems from other students," G.G. Decl. ¶ 20, is directly contradicted by the Andersen Declaration. Andersen Decl. ¶ 4. Moreover, even if the Court accepted G.G.'s self-serving assertion, it would still not find that there was no discomfort among the students. It would not be surprising if students, rather than confronting G.G. himself,

expressed their discomfort to their parents who then went to the School Board.

G.G. further contends that the improvements that the School Board made to the restrooms minimize any privacy concerns. Prelim. Inj. at 33. However, G.G. does not introduce any evidence that would help the Court understand the extent of the improvements. He fails to recognize that no amount of improvements to the urinals can make them completely private because people sometimes turn while closing their pants. He does not submit any evidence that would show that other students would be comfortable with his presence in the male restroom because of the improvements. Finally, he fails to recognize that the School Board's interests go beyond preventing most exposures of genitalia. The mere presence of a member of the opposite sex in the restroom may embarrass many students and be felt a violation of their privacy. Accordingly, the privacy concerns of the School Board do not diminish in proportion to the size of the stall doors.

G.G.'s argument that other students may use the unisex restrooms if they are uncomfortable with his presence in the male restroom unintentionally reveals the hardship that the injunction he seeks would impose on other students. It does not occur to G.G. that other students may experience feelings of exclusion when they can no longer use the restrooms they were accustomed to using because they feel that G.G.'s presence in the male restroom violates their privacy. He would have any number of students use the unisex restrooms rather than use them himself while this Court resolves his novel constitutional challenge.

G.G.'s dismissal of the School Board's privacy concerns only makes sense if assumes that there are fewer or no privacy concerns when a student shares a restroom with another student of different birth sex but the same gender identity. If there were no privacy concerns in this situation, there would be no hardship if G.G. used the male restroom while this litigation

proceeds. Of course, this litigation is proof that not everyone—certainly not the Gloucester County School Board—shares in this belief. The Court gives great weight to the concerns of the School Board—which represents the students and parents in the community—on the question of the privacy concerns of students, especially at this early stage of litigation and in the complete absence of credible evidence to the contrary.

Against the School Board's strong interest in protecting student privacy, the Court must consider G.G.'s largely unsubstantiated claims of hardship. G.G. acknowledges that he may use the unisex restrooms or the nurse's restroom. His declaration fails to articulate the specific harms that would occur to him if he uses those restrooms while this litigation proceeds; it simply says that using these restrooms would cause him distress and make him feel stigmatized. It is telling to the Court that his declaration mirrors his complaint, a sign that it was drafted by his lawyers and not by him. G.G. attempts to support his claims of distress by describing the diagnosis of the first psychologist who saw him, but these allegations are hearsay and will not be considered.

Similarly, G.G. makes several claims about the thoughts and feelings of other students for which he has not submitted any admissible evidence or corroboration. He has nothing to substantiate his claims that other students view the unisex restrooms as designed solely for him. Nor has he submitted a layout of the school that would confirm his claim that the unisex restrooms are inconvenient for him to use.

The declaration of Dr. Ettner is almost completely devoid of facts specific to G.G. Dr. Ettner is not the psychologist who allegedly first diagnosed G.G. with Gender Dysphoria. Rather, he has been retained for this litigation. Having met G.G. only once, he has little to say about the harm that would occur to G.G. specifically if G.G. is not allowed to use the male restrooms during this litigation.

G.G. has been given an option of using a restroom in addition to the female restroom that corresponds to his biological sex. He has not described his hardship in concrete terms and has supported his claims with nothing more than his own declaration and that of a psychologist who met him only once, for the purpose of litigation and not for treatment. The School Board seeks to protect an interest in bodily privacy that the Fourth Circuit has recognized as a constitutional right while G.G. seeks to overturn a long tradition of segregating bathrooms based on biological differences between the sexes. Because G.G. has failed to show that the balance of hardships weighs in his favor, an injunction is not warranted while the Court considers this claim.

Having found that G.G. has not shown that the balance of the hardships are in his favor, the Court does not need to consider the other showings required for a preliminary injunction. However, the Court notes that just as G.G. has failed to provide adequate proof of the hardship that would occur if the injunction is not granted, he has also failed to make a clear showing of irreparable injury.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTED** the Motion to Dismiss as to Count II, Plaintiff's claim under Title IX, and **DENIED** the Plaintiff's Motion for a Preliminary Injunction. The Clerk is **DIRECTED** to forward a copy of this Opinion to all Counsel of Record.

IT IS SO ORDERED.

/s/
Robert G. Doumar
Senior United States District Judge

UNITED STATES DISTRICT JUDGE

Newport News, VA
September 17, 2015