

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 STATE OF NORTH CAROLINA; )  
 PATRICK MCCRORY, in his official )  
 capacity as Governor of North Carolina; )  
 NORTH CAROLINA DEPARTMENT )  
 OF PUBLIC SAFETY; UNIVERSITY )  
 OF NORTH CAROLINA; and BOARD )  
 OF GOVERNORS OF THE )  
 UNIVERSITY OF NORTH CAROLINA, )  
 )  
 Defendants. )  
\_\_\_\_\_ )

Case No. 1:16-cv-425

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF UNITED STATES’  
MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

Plaintiff United States respectfully submits this memorandum of law in support of its motion for preliminary injunctive relief to enjoin Defendants the State of North Carolina, Governor Patrick McCrory, the North Carolina Department of Public Safety (“DPS”), the University of North Carolina and the Board of Governors of the University of North Carolina (collectively, “UNC”) from complying with or implementing Section 1.3 of North Carolina Session Law 2016-3, House Bill 2 (“H.B. 2”).

**INTRODUCTION**

H.B. 2 denies transgender people access to sex-segregated bathrooms and changing rooms consistent with their gender identity unless they can produce an amended birth certificate. This denial of access constitutes (1) discrimination on the basis of sex in

an education program receiving federal funds in violation of Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* (“Title IX”); (2) a pattern or practice of employment discrimination on the basis of sex and resistance to the full enjoyment of federal employment rights in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* (“Title VII”); and (3) discrimination on the basis of sex, including gender identity, in programs receiving federal funds in violation of the Violence Against Women Act, 42 U.S.C. § 13925(b)(13) (“VAWA”).

The Fourth Circuit’s decision in *G.G. v. Gloucester Cnty. Sch. Bd.*, --- F. 3d ---, No. 15-2056, 2016 WL 1567467 (4th Cir. Apr. 19, 2016), *reh’g denied* (4th Cir. June 1, 2016), establishes the United States’ strong likelihood of success under Title IX. The controlling logic of that decision and the growing consensus among federal courts about what constitutes sex discrimination further establishes the United States’ likelihood of success under Title VII and—coupled with VAWA’s express coverage of discrimination based on gender identity—under VAWA. Excluding transgender men and women from bathroom and changing facilities consistent with their gender identity causes significant and irreparable physical, psychological, economic, social, and stigmatic harm to transgender people including the more than 44,000 transgender adults residing in North Carolina who seek to study in state universities, work in state agencies, or simply access those institutions as part of daily civic and cultural life.<sup>1</sup>

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<sup>1</sup> Andrew R. Flores, et al., *Williams Institute: How many adults identify as transgender in the US?* (2016) (Ex. 1).

Furthermore, Defendants’ purported privacy and public safety interests in enacting and implementing H.B. 2 are factually baseless and legally insufficient to justify this discrimination. As the record shows, transgender people in North Carolina have long used bathrooms consistent with their gender identity in private facilities and, before H.B. 2, in public facilities, without precipitating criminal conduct or widespread complaints about the invasion of privacy. H.B. 2 is not merely a solution to a non-existent problem; it is state-sanctioned discrimination that is inflicting immediate and significant harm on transgender individuals. That, along with the balance of equities and the public interest in preventing discrimination, support a preliminary injunction halting compliance with and implementation of H.B. 2.

## **BACKGROUND**

### *Sex, Gender Identity, and Being Transgender*

Transgender people are people whose gender identity is different from the sex assigned to them at birth. Declaration of George R. Brown (June 20, 2016) (Ex. 35) (hereinafter “Brown Dec.”) ¶ 23. Generally, sex is assigned on a birth certificate solely on the basis of the appearance of the external genitalia at birth. Brown Dec. ¶¶ 10, 13. As both science and the law recognize, however, an individual’s sex consists of multiple factors beyond external genitalia. *See Gloucester*, 2016 WL 1567467, at \*6-7 & n.7; Brown Dec. ¶¶ 10-12. Among those factors are hormones, internal reproductive organs, chromosomes, secondary sexual characteristics (i.e., physical features that develop during puberty), brain anatomy, and gender identity, which is a person’s internal sense of being male or female. Brown Dec. ¶¶ 11, 20.

Gender identity is real; everyone has one. Brown Dec. ¶ 20; Declaration of Lin Fraser (June 20, 2016) (Ex. 36) (hereinafter “Fraser Dec.”) ¶ 12. It is usually established at a very young age. Brown Dec. ¶ 21; Fraser Dec. ¶ 12; Declaration of Scott F. Leibowitz (June 20, 2016) (Ex. 37) (hereinafter “Leibowitz Dec.”) ¶¶ 14, 16. The best evidence and experts in the field agree that gender identity, including whether or not one is transgender, is at least in part determined by biology. Brown Dec. ¶¶ 24-32. Studies suggest that gender identity is a biological function of the brain, much as hormones are a biological function of endocrine glands. *See* Brown Dec. ¶¶ 25-31. For example, studies have found that transgender women have brain anatomy more similar to non-transgender women than to non-transgender men. Brown Dec. ¶¶ 27-28, 31.

Some transgender people assert at a very young age a gender identity different from their sex assigned at birth. For a variety of reasons including the psychological distress that divergence creates, however, other transgender people may delay assertion of their gender identity until after puberty or even much later in life. Brown Dec. ¶ 36; Leibowitz Dec. ¶ 14. Once transgender people assert their true gender identity, it tends to remain stable; transgender people are not men one day and women another. Leibowitz Dec. ¶¶ 16, 18; Fraser Dec. ¶ 12; Brown Dec. ¶ 38.

For purposes of determining whether a person is a man or a woman, gender identity is the critical factor because it “is the underlying basis for how one presents oneself to others in society in ways that typically communicate what sex one is in our culture.” Brown Dec. ¶¶ 22, 32. Indeed, early efforts to treat transgender people by attempting to bring their gender identity into alignment with the sex they were assigned at

birth, rather than defining their sex by reference to their gender identity, caused “substantial psychological pain,” to the point where such treatment is now considered medically unethical and has been debunked by the Federal Substance Abuse and Mental Health Services Administration. Brown Dec. ¶¶ 53-54.

A range of medical conditions can arise from incongruence among a person’s various sex-related characteristics. Brown Dec. ¶¶ 17-19; *see also Gloucester*, 2016 WL 1567467 at \*6. Gender dysphoria is a diagnosis reflecting the set of psychological symptoms transgender people suffer as a result of the incongruity between their gender identity and their sex assigned at birth. Brown Dec. ¶ 33; Fraser Dec. ¶ 14; Leibowitz Dec. ¶ 8. There is an objective, scientifically validated, clinical approach to diagnosing gender dysphoria. Brown Dec. ¶¶ 33-41; Leibowitz ¶¶ 11-12, 15-18. In particular, a diagnosis requires six months of consistent assertion of a gender identity opposite to the sex assigned at birth. Brown Dec. ¶ 38.

Surgery is sometimes, but not always, a necessary part of a treatment plan for gender dysphoria. Brown Dec. ¶¶ 49-52. “Most transgender people never undergo sex reassignment surgery (also referred to as gender affirming, or gender confirming, surgery). . . . Other treatments . . . are frequently sufficient to alleviate their gender dysphoria, making invasive, expensive genital surgery unnecessary.” Brown Dec. ¶ 49.

Social transition, *i.e.*, living consistent with one’s gender identity in all aspects of one’s life, “is an important—and often the most important—component of a treatment plan.” Brown Dec. ¶ 43; *see also id.* ¶ 44. “Access to sex-segregated bathrooms and changing facilities consistent with gender identity is an essential part of the social role

transition, as all people, transgender or not, need to access these facilities multiple times each day.” Brown Dec. ¶ 45; *see also* Fraser Dec. ¶ 24; Leibowitz Dec. ¶ 23.

*North Carolina House Bill 2*

On March 23, 2016, in response to the passage of a Charlotte city ordinance prohibiting discrimination against transgender people in public accommodations, the state legislature enacted and the Governor signed H.B. 2 into law. H.B. 2 mandates that all “[p]ublic agencies . . . require multiple occupancy bathrooms or changing facilities . . . be designated for and only used by individuals based on their biological sex.” N.C. Session Law 2016-03, sec. 1.3, § 142-760(b).<sup>2</sup> H.B. 2 defines “biological sex” as “[t]he physical condition of being male or female, which is stated on a person’s birth certificate.” *Id.* sec. 1.3 § 143-760(a)(1). Thus, in the absence of documentation of an amended birth certificate, transgender women are excluded from the women’s room and transgender men are excluded from the men’s room in covered public agencies.

H.B. 2 permits, but does not require, public agencies at their discretion to provide “accommodations such as single occupancy bathrooms or changing facilities upon a person’s request due to special circumstances”—including, presumably, the request of transgender people for access to single-occupancy facilities when they are barred from multiple-occupancy ones consistent with their gender identity. *Id.* sec 1.3, § 143-760(c). But “in no event shall that accommodation result in the public agency allowing a person to use a multiple occupancy bathroom or changing facility designated under subsection

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<sup>2</sup> H.B. 2 further defines “public agencies” to include, among other entities, the state executive, judicial, and legislative branches, including the University of North Carolina system. *Id.* sec. 1.3 § 142-760(a)(2) & (4).

(b) of this section for a sex other than the person’s biological sex”—meaning, that in no event shall any “accommodation” include allowing a transgender woman or man who does not have an amended birth certificate the same access other women and men have to facilities that correspond with their gender identity. *Ibid.*

Defendants are implementing section 1.3 of H.B. 2. On April 12, 2016, Governor McCrory issued an executive order affirming that “every multiple occupancy restroom, locker room or shower facility located in a cabinet agency must be designated for and only used by persons based on their biological sex.”<sup>3</sup>

On April 5, 2016, UNC’s President directed that “University institutions must require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.”<sup>4</sup> On April 13, 2016, in response to a request for information from the United States, UNC’s President affirmed that “the University is specifically covered by H.B. 2 and is required as a public agency to comply with its applicable portions, including the provisions related to multiple-occupancy bathrooms and changing facilities.”<sup>5</sup>

In public statements after the passage of H.B. 2, UNC’s President explained that as “a state office holder who is charged with upholding the laws of this state[,] . . . [I am]

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<sup>3</sup> N.C. Exec. Order 93 § 3 (Ex. 27).

<sup>4</sup> Memorandum from Margaret Spellings, President, Univ. of N.C., to Chancellors 1 (Apr. 5, 2016) (hereinafter “Spellings Mem.”) (Ex. 2).

<sup>5</sup> Letter from Margaret Spellings, President, Univ. of N.C., to Shaheena Ahmad Simons, Acting Chief, U.S. Dep’t of Justice, Civil Rights Div., Educ. Opportunities Section 3 (Apr. 13, 2016) (Ex. 3).

not in a position to pick and choose which laws.”<sup>6</sup> UNC’s President also communicated to the UNC Board of Governors that “[a]s a state agency this university and its officers are expected and will follow HB2 and every other law of this state.”<sup>7</sup> Several UNC campuses have also issued specific statements explaining to campus communities that they must comply with H.B. 2.<sup>8</sup> UNC has also “provided information about the location of single-occupancy bathrooms” to people on campus.<sup>9</sup>

This message about H.B. 2’s validity and application to its campuses unquestionably has reached UNC’s students. *See* Declaration of C.W. (July 1, 2016) (Ex. 39) (hereinafter “C.W. Dec.”) ¶ 24 (“the President of the University of North Carolina system said that the system is following the law in complying with H.B. 2.”); Declaration of H.K. (June 28, 2016) (hereinafter “H.K. Dec.”) ¶ 18 (“I understand that the University of North Carolina is a State school, and therefore has to follow State law, including H.B.

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<sup>6</sup> Blake Hodge, *UNC President Margaret Spellings Clarifies Stance on HB2*, CHAPELBORO (Apr. 8, 2016, 3:34 PM) (Ex. 4).

<sup>7</sup> Jess Clark, *UNC Board Members Concerned About HB2*, WUNC (Apr. 16, 2016) (Ex. 5).

<sup>8</sup> THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, MESSAGE FROM UNIVERSITY LEADERS: UPDATE ON HOUSE BILL 2 (Apr. 8, 2016) (Ex. 6) (“the law relating to public restrooms and changing facilities does apply to the University.”); APPALACHIAN STATE UNIVERSITY, AN UPDATE ON PUBLIC FACILITIES PRIVACY & SECURITY ACT (HB2) DEMONSTRATIONS (Apr. 12, 2016) (Ex. 7) (Appalachian State is “required to comply with the laws of our state”); Bradley Lucore, THE WESTERN CAROLINA JOURNALIST, *HB2 creates “chilling effect” on higher education* (Apr. 15, 2016) (Ex. 8) (quoting Western Carolina University’s Chancellor, David Belcher, explained further that H.B. 2 is “a state law at this point and Western Carolina University is obligated to follow the law, and in fact I have sworn to uphold the law of the state of North Carolina, as has the president of the UNC system. We have no choice on that.”).

<sup>9</sup> *See* Doc. 46 at 11; NORTH CAROLINA STATE UNIVERSITY, HB2 UPDATE: IMPACTS ON NC STATE, (Ex. 9) (providing a map of single-occupant toilets).



2.”); C.W. Dec. ¶ 19 (“the Chancellor sent out a list of these bathrooms to the entire student body immediately after H.B. 2 passed”).

As recently as May 9, 2016, UNC’s President confirmed that UNC “must adhere to laws duly enacted by the State’s General Assembly and Governor.”<sup>10</sup> The May 9 Statement unequivocally confirmed that “HB2 remains the law of the State, and the University has no independent power to change that legal reality.” *Id.*

*Enforcement Action by the United States*

On May 4, 2016, the United States notified all Defendants that their compliance with and implementation of Section 1.3 of H.B. 2 violated federal non-discrimination requirements.<sup>11</sup> In addition to being subject as employers to Title VII, UNC receives Federal funding that subjects it to the non-discrimination provisions of Title IX and VAWA, and DPS receives Federal funding that also subjects it to the non-discrimination provision of VAWA. *See, e.g.*, Doc. 48-1 (Declaration of Nadine M. Neufville (June 18, 2016)); Doc. 32 (Answer, ¶¶ 8, 9). The United States requested that Defendants agree not to implement Section 1.3 of H.B. 2 and to advise transgender individuals that they are permitted access to multiple-occupancy bathrooms and changing facilities consistent with

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<sup>10</sup> Public Statement from Margaret Spellings, President, Univ. of N.C (May 9, 2016) (Ex. 10).

<sup>11</sup> Letter from Vanita Gupta, Principal Deputy Assistant Attorney Gen., U.S. Dep’t of Justice, Civil Rights Div., to Pat McCrory, Governor, State of N.C. (May 4, 2016) (Ex. 11); Letter from Vanita Gupta, Principal Deputy Assistant Attorney Gen., U.S. Dep’t of Justice, Civil Rights Div., to Margaret Spellings et al., President, Univ. of N.C. (May 4, 2016) (Ex. 12); Letter from Vanita Gupta, Principal Deputy Assistant Attorney Gen., U.S. Department of Justice, Civil Rights Div., to Frank L. Perry, Secretary, Dep’t of Pub. Safety, State of N.C. (May 4, 2016) (Ex. 13).

their gender identity, as required by federal law. The United States informed Defendants that it would sue if Defendants failed to comply with federal non-discrimination law.

The United States filed suit on May 10, 2016. No Defendant has since demonstrated compliance with federal requirements with respect to H.B. 2.

### **QUESTIONS PRESENTED**

1. Whether the United States is likely to succeed on one or more of its claims that Defendants' compliance with and implementation of Section 1.3 of H.B. 2 violates Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. § 1681 *et seq.*, and its implementing regulations, 28 C.F.R. Pt. 54, 34 C.F.R. Pt. 106; Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), 42 U.S.C. § 2000e, *et seq.*; and the Violence Against Women Reauthorization Act of 2013 ("VAWA"), 42 U.S.C. § 13925(b)(13).

2. Whether Defendants' compliance with and implementation of Section 1.3 of H.B. 2 creates a probability of irreparable harm.

3. Whether the balance of equities supports issuing an injunction halting Defendants' compliance with and implementation of Section 1.3 of H.B. 2.

4. Whether an injunction halting Defendants' compliance with and implementation of Section 1.3 of H.B. 2 would be in the public interest.

## ARGUMENT

The United States requests preliminary injunctive relief to enjoin Defendants' compliance with and implementation of Section 1.3 of H.B. 2. To obtain a preliminary injunction, the United States must demonstrate a likelihood of success on the merits on one or more of its three claims, a likelihood of irreparable harm in the absence of preliminary relief, a balance of equities that tips in its favor, and that the public interest would be served by injunctive relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20-22 (2008).

H.B. 2 requires public agencies to bar transgender people from bathrooms and changing facilities that correspond with their gender identity unless they can produce an amended birth certificate. This exclusion violates Title IX under the Fourth Circuit's reasoning in *G.G. v. Gloucester Cnty. Sch. Bd.*, --- F. 3d ---, No. 15-2056, 2016 WL 1567467 (4th Cir. Apr. 19, 2016), *reh'g denied* (4th Cir. June 1, 2016), which afforded controlling weight to the Department of Education's interpretation of its Title IX regulations to require education programs and activities receiving federal funds to permit transgender students access to facilities consistent with their gender identity. H.B. 2 also violates Title VII and VAWA because barring transgender employees from bathrooms and changing facilities consistent with their gender identity is unlawful sex discrimination, and VAWA explicitly clarifies that discrimination based on gender identity is covered by its non-discrimination mandate. In addition, H.B. 2 is causing irreparable stigmatic, psychological, economic, social, and physical harm to transgender people; the equities weigh in favor of granting preliminary injunctive relief to remedy

these violations of federal non-discrimination law; and such relief would serve the public interest in enforcing the nation's civil rights laws.

**I. The United States is Likely to Succeed on Its Claims that Defendants' Compliance with and Implementation of H.B. 2 Violates Federal Civil Rights Laws.**

To demonstrate a likelihood of success on the merits, the United States must make a "clear showing" that it is likely to succeed at trial, but "need not show a certainty of success." *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013). In light of controlling authority on Title IX and the weight of authority on Title VII, and the plain language of VAWA, the United States more than satisfies this standard.

**A. The Fourth Circuit's Controlling Decision in *G.G. v. Gloucester* Establishes a Strong Likelihood of Success on the United States' Title IX Claim.**

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 educational program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Regulations promulgated by the Department of Justice and the Department of Education, both of which enforce Title IX, state that funding recipients "may provide separate toilet, locker room, and shower facilities on the basis of sex" without running afoul of Title IX, as long as the "facilities provided for students of one sex" are "comparable to such facilities provided for students of the other sex." 28 C.F.R. 54.410 (Department of Justice); 34 C.F.R. 106.33 (Department of Education). These regulations do not address how funding recipients should treat transgender people in the context of sex-segregated facilities. Interpretive guidance issued by both agencies,

however, clarifies that funding recipients who choose to provide sex-segregated facilities must treat transgender individuals consistent with their gender identity. That is, “a school must not treat a transgender student differently from the way it treats other students of the same gender identity.” Dear Colleague Letter, U.S. Departments of Justice and Education (May 13, 2016) at 2 (Ex. 14). This reflects the consistent interpretation of both Departments for several years.<sup>12</sup>

The Fourth Circuit has deferred to this interpretation, affording it controlling weight. In *Gloucester*, 2016 WL 1567467, a transgender male high school student sought access to the school boy’s bathroom in the face of a school policy limiting such access to students’ “corresponding biological sex.” The Fourth Circuit held that the Department of Education’s interpretation of its Title IX regulation to require providing transgender students access to sex-segregated facilities consistent with their gender identity is entitled to controlling weight under *Auer v. Robbins*, 519 U.S. 452 (1997). The Fourth Circuit determined that agency regulations permitting sex-segregated facilities under Title IX are ambiguous with respect to transgender people. *Gloucester*, 2016 WL 1567467 at \*6.

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<sup>12</sup> See also Brief for the United States as *Amicus Curiae* at 8-22, *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056 (4th Cir. Oct. 28, 2015) (stating that “although recipients may provide separate restrooms for boys and girls, when a school does so, it must treat transgender students consistent with their gender identity”) (Ex. 15); Letter from James A. Ferg-Cadima, OCR Acting Deputy Assistant Secretary of Policy (Jan. 7, 2015) (same) (Ex. 16); Resolution Agreement Between the Arcadia Unified School District, the U.S. Department of Education, Office for Civil Rights, and the U.S. Department of Justice, Civil Rights Division 3 (July 24, 2013) (requiring a school district to provide a transgender student with access to the sex-specific facilities that corresponded with the student’s gender identity) (Ex. 17); U.S. Dep’t of Educ. Office for Civil Rights, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities* 25 (Dec. 1, 2014) (OCR Single-Sex Q&A) (Ex. 18); U.S. Dep’t of Educ. Office for Civil Rights, *Questions and Answers on Title IX and Sexual Violence* 5 (Apr. 29, 2014) (Ex. 19).

Examining the Department of Education’s regulation specifically, the court reasoned that, “[a]lthough the regulation may refer unambiguously to males and females, it is silent as to how a school should determine whether a transgender individual is a male or female for the purpose of access to sex-segregated restrooms.” *Id.* Specifically, the regulation “assumes a student population composed of individuals of what has traditionally been understood as the usual ‘dichotomous occurrence’ of male and female where the various indicators of sex all point in the same direction,” and therefore “sheds little light on how exactly to determine the ‘character of being either male or female’ where those indicators diverge,” as they do with transgender individuals. *Id.* at \*7.

In light of that ambiguity, the Fourth Circuit held that the Department of Education’s interpretation of its Title IX regulation was reasonable, consistent with the text of Title IX and the regulation, and the product of the agency’s fair and considered judgment. *Id.* at \*6-\*8. The meaning of “sex” reflected in the Gloucester school district’s policy was contrary to the federal agency’s interpretation, which the court held was permitted by “the varying physical, psychological, and social aspects—or, in the words of an older dictionary, ‘the morphological, physiological, and behavioral peculiarities’—included in the term ‘sex.’” *Id.* at \*7. By deferring to the agency interpretation, which, like the Department of Justice’s interpretation of its identical Title IX regulation, is premised on a view that sex discrimination includes discrimination against transgender people, the court established that when recipients of Federal financial assistance separate individuals based on sex, compliance with Title IX requires those

recipients, in the context of access to bathrooms and changing facilities, to treat transgender men as men and transgender women as women.

*Gloucester* dictates the same result here. As the Fourth Circuit noted, the question at the “heart of th[e *Gloucester*] appeal is whether Title IX requires schools to provide transgender students access to restrooms congruent with their gender identity.” 2016 WL 1567467 at \* 1. By deciding that question in the affirmative, *Gloucester* does not simply establish the likelihood of success on the United States’ Title IX claim here but ensures it. A conclusion that Title IX permits H.B. 2’s restriction of sex-segregated facilities to persons whose sex designation on their birth certificate matches the sign on the facility door cannot be reconciled with the Fourth Circuit’s decision. *Id.* at \*8. This conclusion is underscored by the decision of the *Gloucester* district court on remand to summarily issue a preliminary injunction preventing the Gloucester school district from denying the plaintiff access to bathrooms consistent with his gender identity. *G.G. v. Gloucester Cnty. Sch. Bd.*, Doc. 69, No. 4:15-cv-54 (E.D. Va. June 23, 2016) (Ex. 20).

Although the plaintiff’s claim in *Gloucester* presented the issue of access to bathrooms only, because he did not use school changing facilities, the reasoning of *Gloucester*’s holding applies to changing facilities with equal force. The Title IX regulation at issue in *Gloucester* addresses “toilet, locker room, and shower facilities,” 34 C.F.R. 106.33, and there is no basis for parsing that regulation to afford conflicting levels of deference to the agencies’ uniform interpretation that both bathrooms and changing facilities must be provided to transgender students consistent with their gender identity.

Moreover, as the Fourth Circuit noted, the Department of Education’s interpretation was afforded deference in part because it is “in line with the existing guidances and regulations of a number of federal agencies,” *Gloucester*, 2016 WL 1567467 at \*7-8, and those “existing guidances and regulations” do not distinguish between bathrooms and other sex-segregated public spaces in the requirement to provide access to transgender people consistent with gender identity.<sup>13</sup> There is, therefore, no basis for the Court to draw such a distinction either in terms of the deference owed to agency interpretation or in terms of the requirements of Title IX and its regulations.

Thus, given the Fourth Circuit’s controlling decision and the weight of additional agency authority interpreting funding recipients’ obligations under Title IX, the Court should find that the United States is likely to succeed on the merits of its Title IX claim.<sup>14</sup>

**B. The United States is Likely to Succeed on Its Title VII Claim.**

Title VII makes it “an unlawful employment practice for an employer to . . . discriminate against any individual with respect to [his or her] compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex . . . or . . . to limit, segregate or classify his employees . . . in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his

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<sup>13</sup> See *infra* note 17 and accompanying text.

<sup>14</sup> Although the Court need not reach this question in light of the controlling authority regarding the requirement of deference to agency interpretation established by the Fourth Circuit’s decision in *Gloucester*, the Court could also, for the reasons stated in Parts I.B.1 and 2, *infra*, find, as a matter of statutory interpretation and irrespective of the deference owed to agency interpretations of Title IX regulations, that the United States is likely to succeed on its claim that Defendants’ compliance with and implementation of H.B. 2 violates Title IX’s prohibition on sex discrimination.



status as an employee, because of such individual's . . . sex . . . ." 42 U.S.C. § 2000e-2(a).

The weight of legal authority holds that discriminating against transgender employees is discrimination "because of . . . sex" under Title VII. Denying transgender people access to bathrooms and changing facilities consistent with their gender identity discriminates in the provision of a term or condition of employment and deprives transgender employees of employment opportunities and adversely affects their status, in violation of Title VII. Indeed, given that courts have traditionally considered Title VII and Title IX's sex discrimination prohibitions to be consistent,<sup>15</sup> it would be incongruous to find that Title VII permits employers in the Fourth Circuit to bar transgender men and women from workplace facilities consistent with their gender identity when recipients of federal funding under Title IX cannot. *See Gloucester*, 2016 WL 1567467 at \*6-7. Thus, compliance with and implementation of H.B. 2 by the State, UNC, and DPS constitutes a pattern or practice of discrimination against their employees. Separately, the State and Governor are engaged in a pattern or practice of resistance to the full enjoyment of equal employment rights by all public employees by requiring all public agency employers to follow H.B. 2's mandate of discrimination.

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<sup>15</sup> *See, e.g., Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 75 (1992) (rule that sexual harassment constitutes sex discrimination under Title VII applies equally to Title IX); *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."); *Preston v. Virginia ex rel. New River Comm. Coll.*, 31 F.3d 203, 207-08 (4th Cir. 1994) (holding that Title IX discrimination claim should be interpreted in accordance with principles governing Title VII).

1. Discrimination Against Transgender People is Discrimination Because of Sex.

Treating transgender people differently from non-transgender people because they are transgender constitutes differential treatment “because of . . . sex” under Title VII. As Judge Davis recognized in *Gloucester*, “the weight of circuit authority” recognizes that “discrimination against transgender individuals constitutes discrimination ‘on the basis of sex’” under Title IX and “analogous statutes” including Title VII. *Gloucester*, 2016 WL 1567467, at \*12 (Davis, J., concurring) (citing cases); *id.* at \*14 (Davis, J., concurring) (noting that “the weight of authority establishes that discrimination based on transgender status is already prohibited by the language of federal civil rights statutes, as interpreted by the Supreme Court.”).

Since the Supreme Court’s decision in *Price Waterhouse v. Hopkins*, it has been well established that sex discrimination under Title VII includes differential treatment based on “sex-based considerations.” 490 U.S. 228, 242 (1989) (plurality). In *Price Waterhouse*, the Supreme Court held that an accounting firm violated Title VII when it denied a female senior manager partnership because she was considered “macho,” “aggressive” and insufficiently “feminine[.]” *Id.* at 235. In doing so, *Price Waterhouse* rejected the notion that “sex” discrimination occurs only in situations in which an employer prefers a man over a woman (or vice versa); rather, a prohibition on sex discrimination encompasses any differential treatment based on “sex-based considerations.” *Id.* at 242.

A transgender person's transgender status is unquestionably a "sex-based consideration." Indeed, the very definition of being "transgender" is that one's gender identity does not match one's birth-assigned sex. See *Gloucester*, 2016 WL 1567467, at \*1; Brown Dec. ¶ 20. Thus, discrimination against transgender people because they are transgender denies them an opportunity or benefit based on a consideration related to sex. See, e.g., *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000). Indeed, denying transgender people benefits based on their transgender status "literally discriminat[es] 'because of ... sex.'" *Schroer v. Billington*, 577 F. Supp. 2d 293, 308 (D.D.C. 2008). This is true whether viewed as discrimination based on the divergence between gender identity and the sex assigned at birth or as discrimination due to an individual's gender transition. As the *Schroer* court aptly analogized, firing an employee because she converts from Christianity to Judaism "would be a clear case of discrimination 'because of religion,'" even if the employer "harbors no bias toward either Christians or Jews but only 'converts,'" because "[n]o court would take seriously the notion that 'converts' are not covered by the statute." *Id.* at 306. By the same logic, discrimination against people because they have "changed" their sex, *i.e.*, they are living as a different sex from the one assigned to them at birth, is a "clear case" of discrimination because of sex. *Id.*

Furthermore, discriminating against transgender women and men because they do not satisfy H.B. 2's purportedly "biological" definition of who counts as "women" and "men" impermissibly discriminates against transgender individuals based on sex stereotypes. See, e.g., *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (recognizing "a congruence between discriminating against transgender and transsexual

individuals and discrimination on the basis of gender-based behavioral norms”); *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2005) (holding transgender people are a protected class under Title VII). The Supreme Court has noted 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,” *Price Waterhouse*, 490 U.S. at 251, yet H.B. 2 demands that transgender people match certain sex-based stereotypes required by that statute for admission to sex-segregated bathrooms and changing facilities. Just as the plaintiff in *Price Waterhouse* was not promoted because she confounded her employer’s stereotypical notion of womanhood, so, too, are transgender people adversely treated by H.B. 2 because they do not conform to the statute’s stereotypical notion of what makes someone a “real” man or “real” woman.

As Judge Davis noted in *Gloucester*, 2016 WL 1567467, at \*12 (Davis, J., concurring), the conclusion that discrimination against transgender people is sex discrimination rests on a substantial and growing body of legal authority arising primarily in the employment context. *See, e.g., Glenn*, 663 F.3d at 1316 (upholding summary judgment for plaintiff alleging termination based on transgender status); *Barnes*, 401 F.3d at 737 (upholding trial verdict in favor of plaintiff in a Title VII claim of discrimination against a transgender employee); *Smith v. City of Salem*, 378 F.3d 566, 575 (6th Cir. 2004) (holding that discrimination based on “transsexual” status states a claim under Title VII); *Lewis v. High Point Regional Health Sys.*, 79 F. Supp. 3d 588 (E.D.N.C. 2015) (holding that discrimination against transgender employees states a claim under Title VII); *Finkle v. Howard Cnty.*, 12 F. Supp. 3d 780, 788 (D. Md. 2014) (same); *Schroer*,

577 F. Supp. 2d at 306 (holding after trial that employment discrimination against a transgender individual is sex discrimination); *Mitchell v. Axcan Scandipharm, Inc.*, No. 05-CV-243, 2006 WL 456173, at \*2 (W.D. Pa. Feb. 17, 2006) (holding that a transgender woman stated a claim under Title VII by alleging she was fired because she announced her intent to transition from male to female); *Tronetti v. TLC HealthNet Lakeshore Hosp.*, No. 03-CV-0375, 2003 WL 22757935 (W.D.N.Y. Sept. 26, 2003) (holding that a transgender employee alleging constructive termination following gender confirmation surgery stated a claim under Title VII).

This employment discrimination case law is further bolstered by cases in other statutory contexts interpreting sex discrimination to cover discrimination against transgender people, based on legal reasoning that applies equally to Title VII (as well as VAWA, discussed below). *See, e.g., Schwenk*, 204 F.3d 1187 (holding that sexual assault motivated by a person’s transgender status states a claim under a statute prohibiting crimes “committed because of gender or on the basis of gender” and specifically noting that “Congress intended proof . . . to proceed in the same way that proof of discrimination on the basis of sex or race is shown under Title VII”); *Rumble v. Fairview Health Servs.*, No. 14-CV-2037, 2015 WL 1197415 (D. Minn. Mar. 16, 2015) (holding that discrimination against a transgender person states a claim under Section 1557 of the Affordable Care Act, which incorporates Title IX’s prohibition on sex discrimination).

Consistent with these legal rulings, the Equal Employment Opportunity Commission (“EEOC”) has concluded that “intentional discrimination against a

transgender individual because that person is transgender is, by definition, discrimination “based on . . . sex” in violation of Title VII. *Lusardi v. Department of the Army*, No. 0120133395, 2015 WL 1607756, at \*7, \*9 (EEOC Apr. 1, 2015) (finding that an employer discriminated on the basis of sex in violation of Title VII when it barred a transgender complainant from using the restroom consistent with her gender identity); *Macy v. Department of Justice*, No. 0120120821, 2012 WL 1435995, at \*11 (EEOC Apr. 20, 2012) (same with respect to refusal to hire a transgender person).

The EEOC has filed several complaints in federal court advancing this interpretation—*see, e.g., E.E.O.C. v. Lakeland Eye Clinic P.A.*, No. 8:14-CV-2421 (M.D. Fla. Sept. 25, 2014); Complaint, *E.E.O.C. v. R.G. & G.R. Harris Funeral Homes Inc.*, No. 2:14-CV-13710 (E.D. Mich. Sept. 25, 2014)—at least one of which involved a claim that a private employer violated Title VII when it “refused to allow” a transgender female employee “to use the women’s restroom and forced her to use the men’s restroom instead.” Complaint at 12, *E.E.O.C. v. Deluxe Fin. Servs., Inc.*, No. 0:15-CV-2646 (D. Minn. June 4, 2015).

To be sure, some federal courts have construed prohibitions on sex discrimination to exclude discrimination against transgender people. *See, e.g., Etsitty v. Utah Transit Auth.*, 502 F.3d 1215 (10th Cir. 2007); *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081, 1084-1085 (7th Cir. 1984). But as other circuit courts have noted, these decisions simply cannot be reconciled with the Supreme Court’s decision in *Price Waterhouse*, and therefore should not be afforded any weight by this Court. *Smith*, 378 F.3d at 573 (noting that *Price Waterhouse* “eviscerated” the approach of cases denying that discrimination

against transgender people is sex discrimination); *Schwenk*, 204 F.3d at 1201 (noting that “[t]he initial judicial approach” to sex discrimination “has been overruled by the logic and language of *Price Waterhouse*”).<sup>16</sup>

Likewise, the likelihood that Congress did not contemplate Title VII’s application to transgender people at the time of enactment does not outweigh the many cases holding that discrimination against a transgender person constitutes sex discrimination. Even if the Congress that enacted Title VII in 1964 did not have transgender individuals in mind, the same can be said for other conduct that is now well established as prohibited sex discrimination under Title VII. *See, e.g., Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998). As the Supreme Court explained in *Oncale*, “male-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII.” *Id.* at 79. Nonetheless, the Court emphasized that “statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of

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<sup>16</sup> Although the Tenth Circuit’s decision in *Etsitty* post-dates the Supreme Court’s decision in *Price Waterhouse*, that circuit’s attempt to distinguish the Supreme Court’s decision is unpersuasive, turning on that circuit’s understanding of the “plain meaning” of “discrimination based on sex” as limited to discrimination based on anatomical difference notwithstanding the Supreme Court’s rejection of that interpretation in *Price Waterhouse*. Moreover, the Tenth Circuit itself acknowledged its decision may have a shelf life, in that “[s]cientific research may someday cause a shift in the plain meaning of the term ‘sex’ so that it extends beyond the two starkly defined categories of male and female,” emphasizing that its decision was made “[a]t this point in time and with the record and arguments before this court . . . .” 502 F.3d at 1222. As the Fourth Circuit held in *Gloucester* when it acknowledged “the varying physical, psychological, and social aspects—or, in the words of an older dictionary, ‘the morphological, physiological, and behavioral peculiarities’—included in the term ‘sex,’” the plain meaning of sex cannot be reconciled with the Tenth Circuit’s limited, and now clearly erroneous, view. *Gloucester*, 2016 WL 1567467 at \*7.

our legislators by which we are governed.” *Id.* Excluding from the statute’s purview something that falls within its text simply because Congress may not have contemplated it “is no longer a tenable approach to statutory construction.” *Schroer*, 577 F. Supp. 2d at 307.

The legal conclusion that discrimination based on sex includes discrimination on account of transgender status is bolstered by an informed understanding of the real-life meaning of the term “sex.” As both science and the Fourth Circuit recognize, an individual’s sex consists of multiple factors, which may not always be in alignment. *See Gloucester*, 2016 WL 1567467, at \*6-7 & n.7; *see also* Brown Dec. ¶¶ 10-22. Among those factors is gender identity, which is an individual’s internal sense of being male or female. Brown Dec. ¶¶ 11, 20. For purposes of determining whether a person is a man or a woman, gender identity is the critical factor because it “is the underlying basis for how one presents oneself to others in society in ways that typically communicate what sex one is in our culture.” Brown Dec. ¶¶ 22, 32. Indeed, early efforts to “cure” transgender people by ignoring their gender identity and forcing them to live as the sex they were assigned at birth notoriously failed and resulted in “substantial psychological pain,” to the point where such treatment is now considered medically unethical. Brown Dec. ¶¶ 53-54. Thus, it would be contrary to basic scientific and medical understanding of the meaning of sex to exclude gender identity from the legal definition of sex.

Acknowledging that gender identity is the dispositive determinant of sex does not obliterate the notion of sex or mean that any person can claim to be a “man” or a “woman” on a whim. Gender identity, contrary to Defendants’ misconceptions, is not a



mere psychological fancy or “a lifestyle choice.” Brown Dec. ¶ 24; *see also supra* Background Section; Brown Dec. ¶¶ 20-21; Fraser Dec. ¶ 12; Leibowitz Dec. ¶¶ 14, 16. In fact, gender identity—and thus, whether or not one is transgender—is, at least in part, a question of biology, as studies suggest that gender identity is a biological function of the brain, much as hormones are a biological function of endocrine glands. *See* Brown Dec. ¶¶ 24-32. It is wrong, therefore, to juxtapose gender identity in opposition to other biological aspects of sex such as anatomy or chromosomes, which, as discussed further below, are themselves not the clear-cut factors Defendants assume them to be. Gender identity is no less a legitimate biological concept than those other attributes. There is, therefore, no basis for privileging anatomy as the sole basis for determining sex.

Indeed, defining sex to exclude gender identity and turn exclusively on anatomy is both medically inaccurate and legally problematic. Brown Dec. ¶¶ 11, 19. The notion that sex can be reduced to a simple matter of genitalia or genes, or that sex assigned at birth is a clear-cut determinant of sex, is vividly disproven by a range of conditions that result when sex-related factors diverge. For example, “[b]abies with much higher levels of androgens early in life may appear to have male genitalia at birth even though they have typically female chromosomes and a female gender identity.” Brown Dec. ¶ 17. Some other people are born with chromosomal abnormalities that make it impossible to classify their sex based on chromosomes. Brown Dec. ¶ 18. These phenomena illustrate how H.B. 2’s reduction of “sex” to anatomy cannot be defended as an objectively valid way to define sex. *See* Brown Dec. ¶ 10. As the Fourth Circuit noted, reducing “sex” solely to genitalia creates unresolvable ambiguities about how laws governing sex

discrimination and the lawfulness of sex-segregated facilities would apply to “an intersex individual,” and “an individual born with X-X-Y chromosomes,” and “an individual who lost external genitalia in an accident.” *Gloucester*, 2016 WL 1567467, at \*6.

Collectively, these facts belie Defendants’ attempts to argue that challenging H.B. 2 amounts to “an assault on the fundamental legal and social understanding of what distinguishes men from women.” Doc. 8-1 ¶ 8. Defendants’ portrayal of what distinguishes men from women is grounded in stereotype rather than reality, and their legal theory fails to grapple with the controlling authority of *Price Waterhouse*. An informed understanding of the complexities of sex, the meaning and significance of gender identity, and the reality of being transgender supports the substantial legal authority cited above on which the Court should rely to conclude that discrimination against transgender people is sex discrimination.

2. Denying Access to Sex-Segregated Bathrooms and Changing Facilities Consistent with Gender Identity is Unlawful Discrimination under Title VII.

Denying transgender employees access to sex-segregated bathrooms and changing facilities consistent with their gender identity violates Title VII both because it discriminates with respect to a term, condition, or privilege of employment, *see* 42 U.S.C. § 2000e-2(a)(1), and because it limits, segregates, or classifies employees in a way that deprives them of opportunities and adversely affects them, 42 U.S.C. § 2000e-2(a)(2). H.B. 2 denies transgender men and women the same access to sex-segregated bathrooms and changing facilities consistent with their gender identity that other employees take for

granted, and thereby causes significant psychological, stigmatic, economic, social, and physical harms.

As the EEOC recognized in *Lusardi*, both “depriv[ation] . . . of common locker and shower facilities that non-transgender employees could use” and “[e]qual access to restrooms is a significant, basic condition of employment.” 2015 WL 1607756 at \*9 & n.7; *see also Bell v. Florida Highway Patrol*, 325 F. App’x 758, 760 (11th Cir. 2009) (reversing dismissal of a Title VII claim and holding that a requirement for black employees to use separate restrooms from white employees stated a claim “with respect to conditions of employment”); *Baker v. John Morrell & Co.*, 220 F. Supp. 2d 1000, 1011, 1014 (N.D. Iowa 2002) (holding that denial of equal access to bathroom facilities alters the terms and conditions of employment); *cf. DeClue v. Central Illinois Light Co.*, 223 F.3d 434, 436 (7th Cir. 2000) (holding that denial of access to bathrooms could violate Title VII, but plaintiff waived the claim by failing to properly raise it).

When employers provide segregated bathrooms and changing facilities on equal terms for women and men, that sex-based classification does not in itself adversely affect employees or deny employment opportunities to either sex. It does not stigmatize women or men, or suggest that either is not worthy of equal status. It does not, in short, disadvantage any person on the basis of sex. *See* 28 C.F.R. 54.410; 34 C.F.R. 106.33.

But H.B. 2 does not simply segregate bathrooms and changing facilities between men and women. It instead seeks to exclude a particular group of women from using facilities reserved for women and likewise for men. This exclusion of transgender people from workplace bathroom and changing facilities consistent with their gender identity

causes concrete and demonstrable harm, and therefore is a facially invalid sex-based classification in violation of Title VII. First, H.B. 2's mandate that employers exclude transgender men and women from bathroom and changing facilities that correspond with their gender identity stigmatizes transgender people, sending the signal that they are innately inferior to other "real" men or women. That message itself causes harm. *See Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) ("[A]s we have repeatedly emphasized, discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the disfavored group as 'innately inferior' and therefore as less worthy participants in the political community can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group.") (internal citations omitted); *see also, e.g., Romer v. Evans*, 517 U.S. 620, 633-34 (1996). The EEOC has emphasized the particular damage such stigmatic harm does to transgender employees, noting that denying them use of a facility "that other persons of [his or] her gender [are] freely permitted to use" not only denies them "access to a resource open to others," but also deprives them of "equal status, respect, and dignity in the workplace," and thereby functions to negate their "very identity." *Lusardi*, 2015 WL 1607756 at \*10.

Experts in the field amplify this point, drawing on their extensive experience working with transgender people. "Forbidding individuals from using restrooms and other gender segregated facilities consistent with their gender identities sends the message that their identity is invalid, wrong, or problematic. This negatively impacts their self-esteem, self-worth, ability to trust in others, and willingness to go out into the

world.” Leibowitz Dec. ¶ 25; *see also* Fraser Dec. ¶ 25 (“[B]eing denied access to gender identity-appropriate facilities can be traumatizing for transgender individuals,” because it “stigmatizes” them); *id.* ¶ 36 (“Laws that limit an individual’s access to bathrooms and changing facilities consistent with their gender identity can have the effect of making people feel that they do not belong in the world.”).

Second, H.B. 2 causes psychological harm by denying an essential part of a transgender person’s identity. Transgender people struggle to “be seen by the world as they see themselves” and rely on “social feedback,” including “[a]ccess to gender identity-appropriate restrooms and locker rooms,” to avoid deep psychological harm including “anger, self-hatred, depression, and anxiety.” Fraser Dec. ¶¶ 20-26; *see also* Brown Dec. ¶ 57 (“Being denied access to gender appropriate single-sex bathrooms and changing facilities is one of the most common and acute forms of discrimination that transgender people experience. As such, restrictive restroom and locker room policies can contribute to negative general health and mental health outcomes for transgender people.”).

For those transgender people who are diagnosed with gender dysphoria, denying access to bathroom and changing facilities consistent with their gender identity causes particularly acute psychological damage, as it interferes with medically necessary treatment, particularly the “social role transition”—*i.e.*, living in all aspects of one’s life as one’s gender identity—and risks “depression, anxiety, trauma and isolation that exacerbates the mental health issues associated with Gender Dysphoria.” Brown Dec. ¶ 45; *see also id.* ¶¶ 43-45; Leibowitz Dec. ¶ 19-20, 23-25, 29; Fraser Dec. ¶¶ 17-20, 27-

28. By contrast, peer-reviewed evidence demonstrates that transgender people who have fully socially transitioned have rates of anxiety and depression that are no different from the general population. Leibowitz Dec. ¶¶ 43-44. Consequently, “[e]very professional major medical organization across all disciplines providing care to youth has come out against coercive laws and policies that dictate restroom use based on a person’s physical anatomy.” Leibowitz Dec. ¶ 32.

Third, H.B. 2 causes harm by involuntarily outing people as transgender in their schools, workplaces, and communities by forcing them to either use bathroom and changing facilities obviously inconsistent with their gender identity and presentation, or to use single-user facilities specially designated for transgender people. Fraser Dec. ¶ 32; Leibowitz Dec. ¶ 28. Many transgender people undergo hormone therapy that dramatically changes their “appearance and physiology,” giving them secondary sex characteristics consistent with their gender identity (i.e., body shape, body hair patterns, breasts, and the sound of their voice). Brown Dec. ¶ 47; *see also* Leibowitz Dec. ¶¶ 21-22 (discussing pubertal suppression). Thus, a transgender man or woman is often indistinguishable from any other man or woman but for their genitals or perhaps even just the label on a birth certificate. For such people, entering bathroom or changing facilities inconsistent with their gender identity risks creating a situation that would be not only humiliating to the person and disruptive in exactly the ways H.B. 2’s proponents profess to be concerned about, but also would expose that person to the high risk of bullying, harassment, “and other harmful attacks, including hate crimes that may result in death.” Brown Dec. ¶ 56; Leibowitz Dec. ¶ 28; Jaime M. Grant *et al.*, *Injustice At Every Turn: A*

*Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force (NCTE Study), at 154 (2011) (noting that “outing” a person as transgender “presents the possibility for disrespect, harassment, discrimination or violence”) (Ex. 21).

As a practical matter on a daily basis, H.B. 2 leaves transgender people with a series of untenable options when they require use of a public bathroom. First, they could use a bathroom inconsistent with their gender identity and presentation. As discussed above, however, whether because of psychological trauma or the risk of harassment, that is often no option at all. Alternatively, they could use a single-occupancy bathroom that has been specifically designated for transgender individuals to use, which, assuming one is available, still stigmatizes them as not “real” men or women, and may unwillingly out them as transgender. Or, they could violate state law and use facilities consistent with their gender identity, living in fear of either official or private enforcement of H.B. 2’s prohibition on their presence.

Finally, transgender people could avoid using public bathrooms altogether. Many choose the latter course, risking discomfort at the very least, if not significant health consequences. Fraser Dec. ¶ 33 (“Denial of restroom use in accordance with gender identity causes the use of such facilities to become a source of anxiety for transgender individuals. For example, when faced with the possibility of being forced to use facilities based on the sex that they were assigned at birth, some of my clients have tried not to drink anything all day to avoid going to the bathroom and have developed medical complications, such as urinary tract infections, due to lack of voiding.”).

Each of these options imposes burdens on transgender employees that other employees do not bear. Recognizing the potential adverse consequences of denying transgender people access to workplace bathrooms consistent with their gender identity, the Occupational Safety and Health Administration (“OSHA”) has issued a guide to bathroom access for transgender workers, which advises that “all employees should be permitted to use the facilities that correspond with their gender identity” in order to avoid “the adverse health effects that can result if toilets are not available when employees need them.” Memorandum to Regional Administrators and State Designees from John B. Miles, Jr., Director of Compliance Programs, Regarding OSHA’s Interpretation of 29 C.F.R. 1910.141(c)(1)(i): Toilet Facilities (Apr. 6, 1998) (Ex. 22); *see* OSHA, *A Guide to Restroom Access for Transgender Workers*, at 2 (June 1, 2015) (OSHA Transgender Guidance) (“Bathroom restrictions can result in employees avoiding using restrooms entirely while at work, which can lead to potentially serious physical injury or illness.”) (Ex. 26).<sup>17</sup>

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<sup>17</sup> That view is consistent with the bathroom access positions of the Department of Housing and Urban Development (HUD), and the Office of Personnel Management (OPM), which have concluded that, in a situation where a distinction based on sex is permissible under the law, a transgender person’s “sex” must be determined by his or her gender identity, not by the sex assigned at birth. HUD, *Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities* at 3 (Feb. 20, 2015) (Ex. 23); OPM, *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace* (Ex. 24); *see also* U.S. Dept. of Labor, Office of Job Corps, *Directive: Job Corps Program Instruction Notice No. 14-31* at 3-4 (stating that the overriding factor in assigning students to sex-specific facilities should be the student’s gender identity); Equal Employment Opportunity Commission, Order 560.008 *Question and Answers* (June 22, 2016) at 5-6 (Ex. 25) (same, and explaining that bathrooms must be available consistent with gender identity).



No one would question that an employer's decision to exclude certain women from women's bathroom or changing facilities because they did not have long hair, or because they did not have breasts, or because their voices were too deep, would be an unlawfully discriminatory employment practice. *Cf. Price Waterhouse*, 490 U.S. at 242. H.B. 2's exclusion of transgender women from women's bathrooms and exclusion of transgender men from men's bathrooms because of the sex they were assigned at birth is no different. "Treatment of this kind by one's employer is most certainly adverse." *Lusardi*, 2015 WL 1607756 at \*10.

Therefore, because it stigmatizes and disadvantages transgender employees relative to other employees, denying transgender employees access to workplace bathrooms and changing facilities consistent with their gender identity constitutes unlawful sex-based employment discrimination under Title VII.

3. Defendants' Compliance With and Implementation of H.B. 2 Violates Title VII as a Pattern or Practice of Discrimination Against Their Own Employees and as a Pattern or Practice of Resistance to all Public Employees' Federal Employment Rights.

Because H.B. 2's exclusion of transgender people is an unlawful employment practice based on sex, Defendants are liable under Title VII in two separate and independent ways.

First, the State, UNC and DPS are liable for implementing a pattern or practice of discriminatory treatment of transgender employees. Discriminatory conduct rises to the level of a "pattern or practice" under Title VII if it is the employer's "standard operating procedure," as opposed to "the mere occurrence of isolated or 'accidental' or sporadic

discriminatory acts.” *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 (1977). H.B. 2 easily satisfies those criteria because it applies statewide and thereby makes a facially discriminatory employment policy the “standard operating procedure” of North Carolina’s public agencies and, in the process, harms large numbers of transgender North Carolinians. This broad mandate can hardly be dismissed as merely an “isolated,” “accidental” or “sporadic” incident of employment discrimination. *Id.* Because this facially discriminatory policy treats transgender individuals adversely based on their sex, no further showing of animus or intent is required to prevail on the Title VII claim. *Int’l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991) (“Whether an employment practice involves disparate treatment through explicit facial discrimination does not depend on why the employer discriminates but rather on the explicit terms of the discrimination.”); *City of Los Angeles, Dep’t of Water & Power v. Manhart*, 435 U.S. 702, 711 (1978) (holding that policies that treat employees “in a manner which but for that person’s sex would be different” are facially discriminatory); *Bauer v. Lynch*, 812 F.3d 340, 347 (4th Cir. 2016), *pet. for cert. filed* (June 9, 2016) (holding that Title VII is violated where a greater burden is placed on the protected group).

Separately, the State and Governor are also liable under Title VII for executing H.B. 2’s mandate of discrimination as to all public agency employers. Title VII applies not only to employers but also to “any person or group of persons,” including “governments, governmental agencies, [and] political subdivisions,” who resist the full enjoyment of Title VII rights. 42 U.S.C. § 2000e-6(a). The State and Governor are

engaging in a pattern or practice of resistance to the full enjoyment of equal employment under Title VII by enforcing H.B. 2’s mandate on public agencies and requiring those employers under their authority to discriminate in violation of Title VII. *See United States v. Bd. of Educ.*, 911 F.2d 882, 892 & n.9 (3d Cir. 1990); N.C. Exec. Order 93 § 3 (Ex. 27).

**C. The United States is Likely to Succeed on its VAWA Claim.**

VAWA provides that “[n]o person in the United States shall, on the basis of actual or perceived . . . sex, [or] gender identity (as defined in paragraph 249(c)(4) of title 18, United States Code) . . . , be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under [VAWA] . . . .” 42 U.S.C. 13925(b)(13)(A).

H.B. 2 requires public agencies receiving funds under VAWA—including UNC and DPS—to treat transgender people differently from non-transgender people. Whereas people who are not transgender may continue to use UNC and DPS bathrooms and changing facilities that correspond to their gender identity, H.B. 2 prohibits transgender people from doing so because their birth-assigned sex differs from their gender identity. This is, by definition, discrimination under VAWA.

Consequently, these Defendants’ compliance with and implementation of H.B. 2 violates VAWA in multiple respects—as discrimination based on sex, including gender identity, and perceived sex. The term “sex” carries the same meaning in VAWA that it does in Title IX and Title VII. *See Schwenk*, 204 F.3d at 1202 (holding that both Title VII and a precursor statute to VAWA “prohibit discrimination based on gender as well as

sex. Indeed, for purposes of these two acts, the terms ‘sex’ and ‘gender’ have become interchangeable.”). Thus, for the same reasons identified above, Defendants’ compliance with and implementation of H.B. 2 discriminates because of sex, including gender identity, in violation of VAWA.<sup>18</sup> Regardless of the meaning of sex under VAWA or any other statute, H.B. 2 is also discrimination on the basis of gender identity, in violation of the plain language of VAWA. H.B. 2 further discriminates based on “perceived sex” because the basis for requiring transgender men to use women’s bathroom and changing facilities and transgender women to use men’s facilities turns on the fact that those who enacted and enforce that statute “perceive” transgender people’s sex to be the opposite of what it is—that is, Defendants do not perceive transgender women to be women until and unless their birth certificate has been changed. Because of the myriad harms transgender people experience as a result of this discriminatory treatment, *see* Part I.B.2., *supra*, H.B. 2 violates VAWA.

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<sup>18</sup> The express listing of “gender identity” in VAWA does not negate the argument that discrimination based on gender identity falls within the meaning of discrimination “based on . . . sex.” There is no evidence that Congress intended the inclusion of “gender identity” in VAWA to imply such a limitation on “sex,” and Congress’ inaction on including that explicit term in Title VII and Title IX does not support an inference regarding its intent with regard to the scope of those statutes. *See also Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) (“Congressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change.”); *cf.* Brief of 128 Members of Congress as Amici Curiae Supporting Plaintiff-Appellant at 2, *Christiansen v. Omnicom Group, Inc.*, No. 16-cv-748 (2d Cir. June 28, 2016) (explaining that pending congressional legislation that would make “sexual orientation” and “gender identity” expressly covered by Title VII represents an effort to codify and clarify existing Title VII protections and does not undermine the conclusion that “Title VII’s sex discrimination provision already prohibits discrimination based on an individual’s sexual orientation and gender identity”).

**D. Defendants’ Purported Justifications for H.B. 2 Do Not Alter the United States’ Strong Likelihood of Success on the Merits.**

Defendants have previewed several arguments why they claim H.B. 2 does not unlawfully discriminate against transgender people. None of these arguments has merit or justifies categorically excluding transgender people who have not obtained amended birth certificates from public bathroom and changing facilities consistent with their gender identity, let alone alters the conclusion that the United States is likely to succeed on the merits.

1. Access to Single-Occupancy Facilities Does Not Negate H.B. 2’s Discrimination.

Defendants claim H.B. 2 is not unlawful because the statute authorizes public agencies “to accommodate . . . [transgender] individuals.” Doc. No. 32 at 14. The only “accommodation” authorized by H.B. 2 allows public agencies to create single-occupancy bathrooms and changing facilities for transgender people who are denied the right to use multiple-occupancy facilities. N.C. Session Law 2016-03, sec. 1.3 § 143-760(c).<sup>19</sup> Notably, this accommodation is purely discretionary. H.B. 2 does not require provision of single-occupancy facilities or require that any such facilities be equivalent to multiple-occupancy facilities. But, even if it did, providing access to a single-user facility would not erase the stigmatic or psychological harms caused by H.B. 2. *See*

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<sup>19</sup> Specifically, this provision states that “Nothing in this section shall prohibit public agencies from providing accommodations such as single occupancy bathroom or changing facilities upon a person’s request due to special circumstances, but in no event shall that accommodation result in the public agency allowing a person to use a multiple occupancy bathroom or changing facility designated under subsection (b) of this section for a sex other than the person’s biological sex.” § 143-760(c).

*supra* Part I.B.2. The harm of discrimination comes from the exclusion itself, from the stigma and shame of being labeled insufficiently female or male to “qualify” to use multiple-occupancy bathroom and changing facilities, not merely from the inability to access equivalent facilities. *See id.*; *see also, e.g.*, Declaration of Paige Dula (June 30, 2016) (Ex. 32) (hereinafter “Dula Dec.”) ¶ 7 (“Having to use a separate bathroom made me feel ostracized, isolated, and not part of the team. I felt like an ‘other.’”); Declaration of A.N. (July 1, 2016) (Ex. 41) (hereinafter “A.N. Dec.”) ¶ 23 (“If I were required to use only gender-neutral facilities I would feel singled out. It would remind me of the 1960s when I grew up in Georgia and saw signs on doors and restaurants where blacks and Jews were not allowed.”).

Moreover, as explained above, requiring that transgender people use special facilities risks outing transgender people to communities who may not be aware they are transgender, risking psychological harm and increased exposure to bullying, harassment, and violence. *See supra* Part I.B.2. As federal agency guidelines suggest, agencies may offer transgender people the *option* of using single-occupancy facilities, just as they may offer that option to any person seeking greater privacy than can be found in a multiple-occupancy facility. But they may not *mandate* that transgender people use single-occupancy facilities and thereby discriminatorily exclude transgender men from bathrooms and changing facilities available to other men and transgender women from facilities available to other women. *See* Dear Colleague Letter, U.S. Departments of Justice and Education (May 13, 2016) (Ex. 14); Memorandum to Regional Administrators and State Designees from John B. Miles, Jr., Director of Compliance

Programs, Regarding OSHA's Interpretation of 29 C.F.R. 1910.141(c)(1)(i): Toilet Facilities (Apr. 6, 1998) (Ex. 22); OSHA, *A Guide to Restroom Access for Transgender Workers*, at 2 (June 1, 2015) (Ex. 26).

As the EEOC recognized in *Lusardi*, the denial of *equal access* is the discriminatory act, regardless whether the agency provides segregated alternatives for transgender employees. 2015 WL 1607756 at \*9 (“Equal access to restrooms is a significant, basic condition of employment.”). The same logic applies to VAWA and Title IX. Moreover, *Gloucester* forecloses this argument at least as to Title IX by affording controlling weight to the federal agency determination that recipients of federal funds that provide multiple-occupancy, sex-segregated facilities must open them to transgender people consistent with their gender identity. *Gloucester*, 2016 WL 1567467 at \*6-7. Thus, under all three civil rights statutes, the provision of alternative bathroom and changing facilities cannot, as a matter of law, negate the illegality of denying transgender people access to multiple-occupancy facilities consistent with their gender identity when other men and women face no such denial.

Even if the availability of single-occupancy bathroom and changing facilities were a relevant factor in determining whether H.B. 2 constitutes discrimination, which it is not, the statute does not *require* public agencies to provide access to such facilities. Whether because of indifference because officials will not believe it worth the cost, some almost certainly will not. And the record before the Court demonstrates that transgender people cannot be expected to rely on access to such facilities to serve their needs. *See* A.N. Dec. ¶ 22 (testifying to a lack of gender-neutral options at the fire stations that serve the

witness's base for her work as an EMT); Declaration of D.B. (July 1, 2016) (hereinafter "D.B. Dec.") ¶ 18; Declaration of D.S.B. (June 30, 2016) (hereinafter "D.S.B. Dec.") ¶ 8 (noting that "one of my client[s] couldn't find a bathroom he felt safe using and urinated on himself in public because he couldn't hold it any longer."); Declaration of A.T. (July 2, 2016) (Ex. 40) (hereinafter "A.T. Dec.") ¶19 (describing an incident where he was intimidated to use the men's room, and there were "no conveniently located gender neutral restrooms nearby" so he used the women's room, which "triggered my dysphoria so badly that I will never do it again."); H.K. Dec. ¶ 13 (describing gender neutral bathroom in campus center as "locked" and "[i]n order to access it, one has to go to a guest services desk and ask for a key" which "'outs' me as transgender."); C.W. Dec. ¶¶ 17-18 (noting that "a majority of gender neutral bathrooms on campus are off the beaten path, tucked away in rarely used hallways or hidden behind offices, so I fear being attacked in these remote locations" and noting that he primarily uses "the restroom in my dorm suite" or "the restroom in my friends' dorm suites" but that the "dorms are not convenient to where my classes are located and can take 20 to 40 minutes roundtrip depending on pedestrian traffic and where I am located on campus.").

For all of these reasons, H.B. 2's accommodation to permit public agencies to provide transgender people access to single-user facilities does not diminish the United States' likelihood of success on the merits.



2. Permitting Transgender People Who Have Obtained Amended Birth Certificates to Access Facilities Consistent with Gender Identity Does Not Negate H.B. 2's Discrimination.

Defendants further claim that H.B. 2 does not discriminate because transgender people may use bathrooms and changing facilities consistent with their gender identity if they have “a sex change operation” and “make a corresponding change to their birth certificate.” Doc. 8-1 ¶ 3, 37.<sup>20</sup> However, the possibility of having surgery and changing one’s birth certificate does not remedy H.B. 2’s discrimination, for several reasons.

First, medical professionals agree that using bathroom and changing facilities consistent with gender identity is a prerequisite to surgery, not the other way around. Transgender people must live as their gender identity—including by accessing bathroom and changing facilities consistent with their gender identity—for at least 12 continuous months before a medical professional will authorize surgery. Brown Dec. ¶ 46, 52; *see also* Leibowitz Dec. ¶ 23. Thus, H.B. 2 requires transgender people to endure

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<sup>20</sup> At least 21 states, including North Carolina, statutorily require transgender people to undergo surgery in order to change their birth certificates, and others may require it as a matter of practice. Alabama: Ala. Code § 22-9A-19(d) (2016); Arizona: Ariz. Rev. Stat. Ann. § 36-337(a)(3) (2016); Arkansas: Ark. Code Ann. § 20-18-307(d) (West 2016); Colorado: Colo. Rev. Stat. Ann. § 25-2-115(4) (West 2016); Georgia: Ga. Code Ann. § 31-10-23(e) (2015); Illinois: 410 Ill. Comp. Stat. 535/17(1)(d) (2016); Iowa: Iowa Code Ann. § 144.23(3) (West 2016); Kentucky: Ky. Rev. Stat. Ann. § 213.121(5) (West 2016); Louisiana: La. Stat. Ann. § 40:62 (2016); Michigan: Mich. Comp. Laws Ann. § 333.2831(c) (West 2016); Mississippi: Miss. Code Ann. §41-57-21 (2016); Missouri: Mo. Rev. Stat. § 193.215(9) (2016); Montana: Mont. Admin. R. 37.8.311(5) (2016); Nebraska: Neb. Rev. Stat. Ann. § 71-604.01 (West 2016); Nevada: Nev. Admin. Code § 440.130 (2015); New Hampshire: N.H. Rev. Stat. Ann. 5-C:87(V) (2016); New Jersey: N.J. Stat. Ann. § 26:8-40.12 (West 2016); New Mexico: N.M. Stat. Ann. § 24-14-25(D) (West 2016); North Carolina: N.C. Gen. Stat. Ann. § 130A-118(b)(4) (West 2016); Virginia: Va. Code Ann. § 32.1-269(E) (West 2015), *amended by* 2016 Virginia Laws Ch. 496 (S.B. 592) (2016); Wisconsin: Wis. Stat. Ann. § 69.15(4) (West 2016), *amended by* 2015-2016 Wisc. Legis. Serv. Act 380 (2015 A.B. 41) (West 2016).

discrimination for at least 12 months before they could even be eligible for surgery. They must also be in a stable psychological state, with symptoms of gender dysphoria largely under control. Brown Dec. ¶ 46, 52. As such, the trauma and interruption of treatment for gender dysphoria caused by H.B. 2 may prevent transgender people from ever meeting the “readiness criteria” for surgery.

Second, for many transgender people, other treatments for the distress of gender dysphoria—such as social role transition or hormone therapy—are sufficient, rendering surgery unnecessary. Brown Dec. ¶¶ 49, 55. Forcing transgender people to undergo unnecessary major surgery as a condition of obtaining access to facilities consistent with their gender identity is, itself, discriminatory.

Third, surgery is simply out of reach for many transgender people. For some, specific medical conditions may foreclose the option. Brown Dec. ¶ 50. Surgery is also not available for people under the age of majority. Brown Dec. ¶ 52; Leibowitz Dec. ¶ 22. And for many more, the high cost and lack of health insurance coverage make surgery unobtainable. Brown Dec. ¶ 51. Others may simply choose not to have surgery, a decision that the law should not unnecessarily force upon them. Transgender men are men and transgender women are women, “irrespective of whether they have had surgical interventions to change their bodies.” Brown Dec. ¶ 32. For all these reasons, the vast majority of transgender people do not have surgery, and thus H.B. 2 still discriminates against the vast majority of transgender people. Brown Dec. ¶ 49.

Fourth, amended birth certificates are not available as a matter of law to many transgender people, even if they have obtained surgery. At least four states do not permit

changes to birth certificates under any circumstance—meaning that transgender residents or visitors to North Carolina born in those states face discrimination in the form of an absolute prohibition on access to bathrooms and changing facilities consistent with their gender identity.<sup>21</sup>

Finally, the law still treats transgender people adversely by erecting inappropriate and burdensome obstacles to their equal access that are not imposed on non-transgender people. Non-transgender people are not required to show their birth certificate before using a public facility. They are not required to engage in a bureaucratic process to obtain documentation of their sex. *See* D.B. Dec. ¶ 9 (discussing the expense and obscure burdens of obtaining an out-of-state birth certificate amendment); Declaration of Alaina Kupec (July 1, 2016) (Ex. 34) (hereinafter “Kupec Dec.”) ¶ 7 (same). Thus, H.B. 2 still stigmatizes, singles out, and burdens transgender people. *See* Dula Dec. ¶¶ 9-10 (“Even though H.B. 2 does not prohibit me from using the women’s bathroom because I have changed by birth certificate, I am scared that someone will harass me for being in the women’s bathroom if they think I am transgender. . . . I have begun planning my day to make sure I use the restroom at work or at home where I feel safe and avoid using any public restrooms.”); Kupec Dec. ¶ 7 (“I felt humiliated to have to change my birth certificate . . . . I would be horrified if I had to disclose that I am transgender in order to use a women’s bathroom.”).

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<sup>21</sup> *See* Tenn. Code Ann. § 68-3-203(d) (2006); *In re Ladrach*, 32 Ohio Misc. 2d 6, 513 N.E.2d 828 (Ohio Prob. Ct. 1987); *In re Estate of Gardiner*, 273 Kan. 191 (2002); IDAHO CODE ANN. § 39-250 (West 2005); IDAHO ADMIN. CODE r. 16.02.08.201 (2015). Thus, even under the view that sex discrimination only covers discrimination based on anatomical differences, H.B. 2 discriminates against transgender people born in these states who have had genital surgery.

For all these reasons, notwithstanding H.B. 2's clause permitting people who have obtained amended birth certificates to access bathrooms and changing facilities consistent with their gender identity, the statute still discriminates against transgender people.

3. Privacy and Public Safety Concerns Do Not Justify H.B. 2's Discrimination.

Defendants also suggest a range of privacy and public safety rationales, bereft of any evidence, for denying transgender people access to facilities consistent with their gender identity. *See, e.g.*, Doc. 32 at 14; Doc. 8-1 ¶ 5.

As an initial matter, the Fourth Circuit rejected these arguments in *Gloucester*. In its grant of deference to the federal agency's interpretation of Title IX's regulations, the Fourth Circuit dismissed the defendant's vague purported safety concerns, as well as the district court's (and dissent's) weighing of privacy and safety concerns, finding those interests a matter of policy committed to the agency, not the courts. *Gloucester*, 2016 WL 1567467 at \*8. Specifically, the Fourth Circuit stated, “[w]e are unconvinced of the existence of danger caused by ‘sexual responses prompted by students’ exposure to the private body parts of students of the other biological sex.’ The same safety concern would seem to require segregated restrooms for gay boys and girls . . . in sex-segregated restrooms.” *Id.* at n.11.

Even if such concerns could justify this discriminatory policy, the particular concerns raised in this case are wholly unsupported and fall far short of justifying a categorical exclusion of transgender people from sex-segregated bathrooms and changing

facilities consistent with their gender identity. Notably, eighteen states<sup>22</sup> and as many as 225 cities and counties<sup>23</sup> currently have protections in place that ensure the right of transgender employees to use sex-segregated facilities consistent with their gender identity, and seventeen states<sup>24</sup> and more than 200 cities and counties<sup>25</sup> prohibit discrimination in public accommodations based on gender identity. Many of those places have had such protections in place for over a decade. Numerous school districts

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<sup>22</sup> CAL. GOV. CODE § 12940 (West 2016); COLO. REV. STAT. ANN. § 24-34-402 (West 2012); COLO. REV. STAT. ANN. § 24-34-301(7) (West 2014); CONN. GEN. STAT. ANN. § 46a-60 (West 2011); DEL. CODE ANN. tit. 19, § 711 (West 2015); D.C. CODE ANN. § 2-1402.11 (West 2016); HAW. REV. STAT. ANN. § 378-2 (West 2016); 775 ILL. COMP. STAT. ANN. 5/1-102 (West 2015); 775 ILL. COMP. STAT. ANN. 5/1-103(O-1) (West 2015); IOWA CODE ANN. § 216.6 (West 2009); ME. REV. STAT. ANN. TIT. 5, § 4572 (2016); ME. REV. STAT. ANN. TIT. 5, § 4553(9-C) (2012); MD. CODE ANN., State Government, § 20-606 (West 2014); MASS. GEN. LAWS ANN. ch. 151B, § 4 (West 2015); MINN. STAT. ANN. § 363A.08 (West 2014); MINN. STAT. ANN. § 363A.03 (Subd. 44) (West 2016); NEV. REV. STAT. ANN. § 613.330 (West 2015); N.J. STAT. ANN. § 10:5-12 (West 2014); N.M. STAT. ANN. § 28-1-7 (West 2008); OR. REV. STAT. ANN. § 659A.030 (West 2016); OR. REV. STAT. ANN. § 174.100(7) (West 2016); 28 R.I. GEN. LAWS § 28-5-7 (West 2016); UTAH CODE ANN. § 34A-5-106 (West 2016); VT. STAT. ANN. tit. 21 § 495 (West 2016); WASH. REV. CODE ANN. § 49.60.180 (West 2007); WASH. REV. CODE ANN § 49.60.040(26) (West 2009).

<sup>23</sup> See Human Rights Campaign, *Cities and Counties with Non-Discrimination Ordinances that Include Gender Identity* (Ex. 28).

<sup>24</sup> CAL. ANN. CODE § 51 (West 2016); COLO. REV. STAT. ANN. § 24-34-601 (West 2014); COLO. REV. STAT. ANN. § 24-34-301(7) (West 2014); CONN. GEN. STAT. ANN. § 46a-64 (West 2012); DEL. CODE ANN. tit. 6, § 4504 (West 2013); D.C. CODE ANN. § 2-1402.31 (West 2016); HAW. REV. STATE. ANN. § 489-3 (West 2016); 775 ILL. COMP. STAT. ANN. 5/5-102 (West 2007); 775 ILL. COMP. STAT. ANN. 5/1-103(O-1) (West 2015); IOWA CODE ANN. § 216.7 (West 2007); ME. REV. STAT. ANN. tit. 5, § 4591 (2016); ME. REV. STAT. ANN. tit. 5, § 4553(9-C) (2012); MD. CODE ANN., State Government, § 20-304 (West 2014); MINN. STAT. ANN. § 363A.11 (West 2014); N.J. STAT. ANN. § 10:5-12 (West 2014); N.M. STAT. ANN. § 28-1-7 (West 2008); OR. REV. STAT. ANN. § 659A.403 (West 2016); OR. REV. STAT. ANN. § 174.100(7) (West 2016); 11 R.I. GEN. LAWS § 11-24-2 (West 2016); VT. STAT. ANN. tit. 9 § 4502 (West 2016); WASH. REV. CODE ANN. § 49.60.010 (West 2007); WASH. REV. CODE ANN § 49.60.040(26) (West 2009).

<sup>25</sup> See National Center for Transgender Equality, *Know Your Rights: Public Accommodations* (Ex. 29).

around the country have well-established practices of permitting transgender students to use facilities consistent with their gender identity.<sup>26</sup> And the vast majority of jurisdictions have no particular policy or practice, but allow social convention to dictate bathroom usage. In those places—and, indeed, in North Carolina until the passage of H.B. 2—it is almost certainly the case that transgender people every day use bathrooms and changing facilities consistent with their gender identity. Despite having this history to draw on, Defendants can point to no valid evidence of an epidemic of public safety issues or complaints about invasion of privacy resulting from allowing transgender people to use facilities consistent with their gender identity.<sup>27</sup>

To the contrary, people with actual experience negotiating the rights of transgender people and the interests of people expressing discomfort about their presence have testified to a range of options available to accommodate and alleviate privacy and safety concerns that do not place the burden of accommodation on transgender people. Janice Adams, an educator and administrator with more than forty years of experience working in schools as teacher, principal, and superintendent, stated that she has known of at least seven transgender students spanning elementary, middle, and high school during her tenure, and that she was always able to address privacy complaints with “a few key

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<sup>26</sup> See United States Department of Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 2016) (Ex. 30).

<sup>27</sup> On May 8, 2016, Governor McCrory was asked on Fox News Sunday whether, to his knowledge, any person in the last one year or five years had ever been a case of a person “using transgender protections to commit crimes in bathrooms?” He replied “not that I’m aware of” and disavowed having used that argument to justify H.B. 2. Fox News Sunday, NC Gov. McCrory says he’ll answer Justice ultimatum on transgender bathroom issue by Monday deadline, <http://www.foxnews.com/politics/2016/05/08/nc-gov-mccrory-says-hell-answer-justice-ultimatum-on-transgender-bathroom-issue-by-monday-deadline.html> (May 8, 2016) (Ex. 31).

steps” including open communication and making available “increased privacy options for all students.” Declaration of Janice Adams (June 27, 2016) (Ex. 38) (hereinafter “Adams Dec.”) ¶¶ 13-15. Those steps involved “minimal time and expense.” *Id.* ¶ 15. After taking those steps, privacy concerns subsided and transgender students were accepted without further incident. *Id.* ¶¶ 11, 16, 19-20.

Helen Carroll, a former athletic director and head women’s basketball coach at UNC-Asheville, co-authored the 2011 NCAA Guide for Transgender Athlete Inclusion and has worked with at least fourteen colleges and high schools to develop transgender-inclusive policies. She stated “that transgender student athletes should be able to use the locker room, shower and toilet facilities in accordance with the student’s gender identity” and that athletic programs may make available, but should not require the use of, separate facilities. Declaration of Helen Carroll (June 24, 2016) (Ex. 42) (hereinafter “Carroll Dec.”) ¶ 15. Although her responsibilities as a coach and athletic director “included ensuring my athlete’s privacy and safety,” she noted that excluding transgender athletes from locker rooms consistent with gender identity was bad for team cohesion and perpetuates “misconceptions and misinformation in policies that create problems rather than solve them.” *Id.* ¶¶ 4-5, 21.

Moreover, drawing on their extensive experience treating transgender people, medical experts have noted that transgender people in sex-segregated spaces generally take pains to conceal any sex-related characteristic that marks them as not belonging; one of the core attributes of being transgender is a desire to be perceived consistent with their gender identity. Fraser Dec. ¶ 30 (“When transgender people use sex-segregated

facilities consistent with their gender identity, their goal is to stay invisible, and to avoid doing anything that would suggest that they do not belong in that space.”); ¶ 31 (“Of the thousands of clients with whom I have worked, I have never encountered anyone who wanted to expose their physical differences to others.”); Kupec Dec. ¶ 10 (“I have used the women’s locker rooms and I never had an issue or problem doing so. . . . The last thing that I wanted to do was to draw any attention to myself.”); Adams Dec. ¶ 18 (“In my experience, transgender students do not want to be noticed. They do not want to call attention to themselves. They just want to be left alone to be kids like their peers. They just want to fit in.”).

Several transgender witnesses testified that, before enactment of H.B. 2 and in private spaces where its exclusion does not apply, they never encountered objections or concerns when they have used facilities consistent with their gender identity. *See* D.B. Dec. ¶ 11; Kupec Dec. ¶¶ 6, 8; A.N. Dec. ¶¶ 12-13, 15. To the contrary, safety concerns and complaints from others when these witnesses used bathrooms consistent with their sex assigned at birth were part of what drove many of them to fully transition to living consistent with their gender identity. D.B. Dec. ¶ 12; A.N. Dec. ¶ 13.

As this evidence demonstrates, H.B. 2 exacerbates rather than addresses privacy concerns by mandating that people who identify, present, and act like men—because they *are* men—nevertheless use women’s bathrooms and changing facilities if their birth certificates do not match their gender identity. *See* Fraser Dec. ¶ 37 (“[A] transgender man forced to use the women’s room will be acutely aware that the women in that space may see him as threatening their physical safety because they do not understand why he



is using the women’s restroom.”); D.B. Dec. ¶ 15 (“I am also concerned that I would frighten women and girls in a women’s bathroom because they would likely be confused and concerned if they saw me enter a women’s bathroom because I look like a man.”). The reality of who transgender people are reveals the illogic of forcing them into bathrooms and changing facilities inconsistent with their gender identity in the name of privacy and safety.

Additionally, there is no basis for concluding that transgender people’s use of bathrooms or changing facilities corresponding to their gender identity poses a safety risk to any other person. Any suggestion that H.B. 2 is necessary to prevent male sexual predators from *posing* as transgender in order to lawfully enter women’s bathrooms to assault them is baseless. This behavior is illegal regardless of the existence or non-existence of H.B. 2,<sup>28</sup> and there is no evidence that North Carolina—or any other of the 17 states or 200 cities and counties that have allowed transgender women to use bathroom and changing facilities that correspond with their gender identity—have either confronted a public safety problem as a result, or been unable to successfully prosecute crimes involving male sexual predators as a result of their non-discrimination laws or policies. There is no evidence to suggest that H.B. 2 would be more effective than existing laws at deterring wrongdoers from criminal behavior. Indeed, the only

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<sup>28</sup> See, e.g., N.C.G.S.A. § 14-27.21; N.C.G.S.A. § 14-27.22; N.C.G.S.A. § 14-27.26; N.C.G.S.A. § 14-27.27; N.C.G.S.A. § 14-27.33. Courts have applied these criminal prohibitions to convict assailants who used deception to gain access to their vulnerable victims. See, e.g., *State v. Miles*, 764 S.E. 2d 237, 241 (2014); *State v. Wilson*, 250 S.E. 2d 621, 628 (1979).

demonstrable effect H.B. 2 has on public safety is that it puts transgender people at greater risk of harassment and physical violence. *See* Part I.B.2, *supra*.

Once tested, Defendants' purported concerns for public safety and bodily privacy can be reduced to an interest in accommodating objections to the presence of transgender people in certain public spaces. But objections to sharing bathrooms and changing facilities with transgender people cannot, as a matter of law, be a basis for discrimination under Title IX, Title VII or VAWA. Sex discrimination cannot be justified by a "desire to accommodate other people's prejudices or discomfort." *Macy*, 2012 WL 1435995, at \*10 and n.15; *Lusardi*, EEOC Decision No. 0120133395 at 10 ("Allowing the preferences of [others] to determine whether sex discrimination is valid reinforces the very stereotypes and prejudices" the law prohibits); *see also* "Directive: Job Corps Program Instruction Notice No. 14-31," Dept. of Labor Job Corps at 4 ("[M]ost courts have concluded that an entity's desire to cater to the perceived biases of its customers, employees, or other third parties is not a defense for unlawful discrimination. The same principle applies to discrimination against transgender persons."); *cf. Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) ("The Constitution cannot control such prejudices but neither can it tolerate it. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."); *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) ("[M]ere negative attitudes, or fear . . . are not permissible bases for" government action).

Courts consistently have rejected legal claims by individuals who have objected to sharing facilities with a transgender person, belying any argument that some

countervailing civil right trumps the right of transgender people to be free from discrimination. *See, e.g., Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 983-984 (8th Cir. 2002) (rejecting argument that being required to share facilities with a transgender coworker constituted an “adverse employment action” under Title VII); *Crosby v. Reynolds*, 763 F. Supp. 666, 670 (D. Me. 1991) (rejecting claim that placing a transgender person in a jail cell with someone who was not transgender violated clearly established right to privacy); *see also Dept. of Fair Employment and Housing v. American Pac. Corp.*, 34-2013-00151153-CU-CR-CDS, at \*1 (Cal. Super. Ct. Mar. 13, 2014) (“Defendant’s hypothetical assertions of emotional discomfort about sharing facilities with transgender individuals are no different than similar claims of discomfort in the presence of a minority group, which formed the basis for decades of racial segregation in housing, education, and access to public facilities like restrooms, locker rooms, swimming pools, eating facilities, and drinking fountains.”). Thus, accommodating other peoples’ objections to the presence of transgender people cannot, as a matter of law, justify a policy that singles out and burdens transgender people on the basis of sex.

Public agencies certainly can take measures to enhance privacy for people who feel the need for it, whether or not they are transgender. They may also take necessary steps to respond to a specific, concrete security concern. What they cannot do in the name of privacy or security is bar an entire class of individuals from using bathrooms and changing facilities that correspond to their gender identity.

## II. H.B. 2 Irreparably Harms Transgender People and the Interests of the United States.

This Court need not engage in a factual inquiry as to irreparable harm; rather, the United States is entitled to a presumption of irreparable harm when it seeks to enjoin the violation of a federal civil rights statute. As a preliminary matter, it is well-established that violations of federal civil rights statutes constitute irreparable harm as a matter of law. *See Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 827 (9th Cir. 2001) (“where a defendant has violated a civil rights statute,” “irreparable injury [may be presumed] from the fact of the defendant’s violation”); *Roberts v. Colo. State Bd. of Agric.*, 998 F.2d 824, 833 (10th Cir. 1993); *Rogers v. Windmill Pointe Village Club Ass’n*, 967 F.2d 525, 528 (11th Cir. 1992) (quoting *Gresham v. Windrush Partners, Ltd.*, 730 F.2d 1417, 1423 (11th Cir. 1984)) (the showing of irreparable injury to support an injunction “may be presumed from the fact of discrimination”); *United States v. Hayes Int’l Corp.*, 415 F.2d 1038, 1045 (5th Cir. 1969) (same); *Pathways Psychosocial Support Ctr., Inc. v. Town of Leonardtown*, 223 F. Supp. 2d 699, 717 (D. Md. 2002) (presuming irreparable harm from violation of civil rights statute); *Doe v. Wood Cnty. Bd. of Educ.*, 888 F. Supp. 2d 771, 773 (S.D. W.Va. 2012) (granting preliminary injunction and holding that “a violation of Title IX may constitute irreparable harm”) (citing *McCormick v. Sch. Dist. of Mamaroneck*, 370 F.3d 275, 301-02 n. 25 (2d Cir. 2004)).

More specifically, the government need not establish irreparable injury when it seeks a preliminary injunction pursuant to an affirmative statutory grant of authority to seek injunctive relief to enjoin the violation of a statutory right. *See, e.g., United States v.*

*Central Carolina Bank & Trust Co.*, 431 F.2d 972, 975 (4th Cir. 1970) (holding that the United States need not demonstrate injury to a private person to be entitled to preliminary injunctive relief under the Civil Rights Act of 1964); *White v. Carlucci*, 862 F.2d 1209, 1211 (5th Cir. 1989) (same); *United States v. Hayes Int'l Corp.*, 415 F.2d 1038, 1045 (5th Cir. 1969) (same). Rather, the “usual prerequisite of irreparable injury need not be established and the agency to whom the enforcement of the right has been entrusted is not required to show irreparable injury before obtaining an injunction.” *Hayes*, 415 F.2d at 1045. Instead, “irreparable injury should be presumed from the very fact that the statute has been violated.” *Id.*; see also *Central Carolina*, 431 F.2d at 975 n.7 (explaining that the statutory authorization for the government to seek “preliminary relief without the intervention of an individual aggrieved party implies that the forbidden discrimination itself constitutes irreparable injury”). Therefore, upon a determination that the United States is likely to succeed on the merits of its civil rights claims, the Court may find irreparable harm without any further factual inquiry.

In any event, even without applying such a presumption, the United States has demonstrated irreparable harm because H.B. 2 is causing significant psychological, stigmatic, economic, social, and physical harm to transgender people.

First, testimony from transgender employees and students in North Carolina make clear that the stigma of separating transgender people from other men and women and subjecting them to disfavored status, as discussed in Part I.B.2, *supra*, is adversely affecting transgender people. See Dula Dec. ¶ 7 (“Having to use a separate bathroom made me feel ostracized, isolated, and not part of the team. I felt like an ‘other.’”);

Kupec Dec. ¶ 9 (“H.B. 2 is degrading and dehumanizing since all I want is to live as the woman that I know I am.”); AT Dec. ¶¶ 22-23 (“The fact that my university is covered by H.B. 2 is hurtful to me. It feels like a punch in the face from the State I love.”); D.S.B. Dec. ¶ 15 (“My clients have expressed that they feel alienated, not protected, that they are not part of society.”).

Second, H.B. 2’s interference with transgender people’s ability to live consistent with their gender identity, including disrupting treatment for gender dysphoria, is also causing actual and ongoing psychological distress. Individual witnesses have testified that, prior to H.B. 2, their use of gender-appropriate facilities was a critical part of their mental health and well-being. Kupec Dec. ¶ 6 (“Once I started living full-time as a woman and using the women’s bathrooms, I felt complete and that finally all the parts of me matched. After a life of hiding myself, this was an indescribably wonderful feeling.”); A.N. Dec. ¶ 17 (“After my full-time transition and before H.B. 2 my world was perfect because I was finally able to live true to myself after many years of turmoil.”).

Since H.B. 2, by contrast, these witnesses have suffered anguish and a diminished sense of self. D.B. Dec. ¶ 14-15 (“I am not comfortable in a women’s bathroom because I am not a woman.”); Kupec Dec. ¶ 11 (“It is degrading and emotionally crippling to even think about” using a men’s locker room); Dula Dec. ¶ 9 (“[S]ince H.B.2 was enacted, my anxiety and insomnia have returned. I am now intending to start using Xanax again because of my anxiety which I have not had to take in years.”); A.N. Dec. ¶ 25 (H.B. 2 “gives me a big ball of stress and anxiety that is difficult to describe.”); A.T. Dec. ¶¶ 21-

22 (“If I were able to consistently and safely use the men’s restroom and men’s locker room I would feel less depressed and experience less dysphoria . . . H.B. 2 often makes me feel anxious and scared”); H.K. Dec. ¶ 20 (“I have gender dysphoria. It has worsened since H.B. 2 passed. I have trouble sleeping and regularly feel anxious and afraid.”); C.W. Dec. ¶ 22, 27 (“Using anything besides the men’s room is invalidating to me. I want to use the men’s room because that is how I see myself. . . . H.B. 2 makes me feel anxious and scared every day.”); A.T. Dec. ¶¶ 22 (“Because of H.B. 2, I think that it would be easier for me to live as a woman. But I can’t go back to living as a woman. If I had to do that, I would probably commit suicide.”).

Third, transgender people are living in fear of being outed as transgender by being forced to use bathrooms inconsistent with their gender identity and presentation, or by being relegated to alternative single-user bathrooms or changing facilities other people are not required to use. D.B. Dec. ¶ 16 (“I find it an invasion of privacy to have to explain that I am transgender simply because I want to use the bathroom.”); H.K. Dec. ¶ 13 (discussing fear of being outed by having to ask special permission for access to the only viable single-user bathroom in a UNC student union). Such people also live in concrete, heightened fear of harassment and violence. *See* D.S.B. Dec. ¶ 7, 13, 15 (“My clients are terrified of using any public bathroom . . . for fear of harassment and danger. Several of my clients will no longer leave their homes to go out at night because they are too afraid of being attacked. They are literally terrified. . . . They are also concerned about their family’s safety.”); D.B. Dec. ¶ 14 (“I am nervous to use the women’s bathroom because I look like and present as a man. . . . I believe that my physical safety

could be at risk if I were to use a women's bathroom."); Dula Dec. ¶¶ 11-13 (describing incidents of being harassed for using bathrooms while transgender); A.N. Dec. ¶ 13 (describing harassment prior to transitioning to using facilities consistent with gender identity and noting that "H.B. 2 puts me in danger because it requires me to go into a men's bathroom even though I am a woman and look like a woman. I am also scared that if I were to use the men's room I could be assaulted or even raped"); A.T. Dec. ¶ 10, 12, 15 ("Every time I use the restroom on campus I am worried people might follow me in and attack me physically, based in part on what I have read and heard about attacks on transgender people. . . . Sometimes when I don't know who might be in a restroom and I feel unsafe or uncomfortable, I ask masculine-looking male friends to come into the restroom with me. I didn't do that prior to H.B. 2. . . . I am afraid that if I am physically attacked in a restroom, I might be the one who gets in trouble because I am violating H.B. 2."); H.K. Dec. ¶ 12, 20 ("I also don't feel safe in men's restrooms, but I was afraid that someone would try to haul me out if I used a women's restroom because of H.B. 2. . . . H.B. 2 has enabled and encouraged people to openly make transphobic and threatening statements and harass transgender people. It makes me feel terrified that I will be attacked."); C.W. Dec. ¶ 17-18, 20, 22 (noting that people have questioned his use of the women's room since H.B. 2 and stating "I do not feel safe using the gender neutral bathrooms on campus . . . Using them outs me as transgender and makes me a target. . . . As a general rule, I don't feel safe using any bathrooms anymore.").

These fears are not baseless. One witness described an incident post-H.B. 2's enactment in which a transgender man attempted to use a men's bathroom he had been



using consistently for the past six months without problems. He was grabbed by the shoulders by another man and physically forced out of the bathroom. “Shaken and scared, he then attempted to use a female public restroom in another location. He was then told he was in the wrong bathroom.” D.S.B. Dec. ¶ 7, 14. Two student witnesses described specific incidents of harassment that have occurred since H.B. 2. Student A.T. testified that he “was using a men’s restroom on campus and I felt very scared because a number of men were in the restroom and stared through the restroom stall door at me. I waited in the stall for over 30 minutes for the men to leave because I was so afraid.” A.T. Dec. ¶ 13. A.T. “did not report this incident to my university because, despite my extreme fear, I didn’t think the university would take action because the men didn’t physically attack me.” *Id.* at ¶ 14. Student C.W. described an incident in early April 2016, a few weeks after H.B. 2 was enacted, wherein he “was confronted by two men in the men’s room in Elliott Center, the main student union on campus.” C.W. Dec. ¶ 12.

According to C.W.:

I entered the bathroom and passed two men at the sink washing their hands on my way to the stall. One of the men turned around and stared at me as I entered the stall. After I entered the stall, among other things, I heard the men say: “It’s unbelievable,” “I can’t believe this,” “Tranny,” “Dyke!”

*Id.* at ¶ 13. This incident “triggered a panic attack and I froze . . . I was afraid they might come back or that they were waiting for me outside the door. After I was calm enough to think, I decided that because no one had come back, and about 20-30 minutes had passed, the men had probably left the building.” *Id.* Immediately after and since this incident, C.W. experienced increased anxiety and depression, began more frequently using anti-

anxiety medication, and attempted to seek additional mental health counseling. *Id.* at ¶¶ 14-16. He has “not used the men’s room on campus since this incident occurred.” *Id.* at ¶ 17. C.W. did not report this incident because “the whole thing was traumatizing, I was scared, and I didn’t think the University would take any action as a result.” *Id.* at ¶ 19. According to C.W., “[h]ad my school made clearer statements about protecting students in bathrooms after H.B. 2, I absolutely would have reported the April 10 incident.” *Id.* at ¶ 24.

Whether by stigmatizing, traumatizing, or involuntarily outing transgender people, H.B. 2 is inflicting concrete and tangible harm. The statute’s discriminatory message puts all transgender people, especially children, at higher risk of mental health problems, including suicide. Leibowitz Dec. ¶¶ 20-31 (discussing how laws like H.B. 2 “promotes rejection of transgender identities, including by parents of transgender youth” who face “much higher risk for suicidal behavior when compared to youth who are not transgender” especially when they do not experience familial support); Fraser Dec. ¶ 37 (describing how laws like H.B. 2 can cause “a resurgence of internalized transphobia, anxiety, depression, anger, stigma, and dissociation” and noting that 41% of transgender individuals have attempted suicide); Kristie L. Seelman, *Transgender Adults’ Access to College Bathrooms and Housing and the Relationship to Suicidality*, J. of Homosexuality Feb. 25, 2016, at 19 (“Findings indicate relationships between denial of access to bathrooms and gender-appropriate campus housing and increased risk for suicidality.”).

H.B. 2’s exclusion also impedes educational, employment, and other socio-economic opportunities for transgender people. Leibowitz Dec. ¶ 27 (reporting that

transgender youth who are unable to use “restroom or other facilities consistent with their gender identity” “are unable to access opportunities traditionally associated with growing up and maturing into an adult, such as getting a job or exploring educational enrichment opportunities. The loss of these activities during an important developmental stage of youth can have long term consequences on individuals’ financial and employment prospects later in life, which can lead to depression and anxiety.”); Fraser Dec. ¶ 34 (noting that “the fear and anxiety such policies inspire can result in transgender people removing themselves from work-related or social interactions. Having to forego these important professional and personal opportunities due to fear that an attempt to use the restroom at such an event could result in being outed, harassed, or worse is not only harmful in the moment, but can also have lasting psychological, social and economic effects (*e.g.*, loss of self-confidence, isolation, professional stagnation).”); D.B. Dec. ¶ 19 (testifying that he is considering leaving his job because of H.B. 2, which could “negatively affect my life and career”); A.N. Dec. ¶ 24 (“I worry that, if the state forced my county to comply with H.B. 2 . . . I would no longer be able to work in EMS in North Carolina.”); D.S.B. Dec. ¶ 5 (averring that a transgender person enrolled in a full-time degree program on a UNC campus withdrew to attend community college from home so that he could better control his access to non-public bathrooms). H.B. 2 also is impacting the ability of transgender people to engage in opportunities for civic participation. D.S.B. Dec. ¶ 6 (reporting that a transgender North Carolinian was shut out of jury duty).

Finally, H.B. 2 is causing serious discomfort and risking medical complications for the many transgender North Carolinians who are responding to the law by avoiding

bathroom usage. *See* D.S.B. Dec. ¶ 12 (“[T]he vast majority of my clients stopped using public restrooms unless they can find family restrooms or a handicap restroom. They also avoid going to state facilities because they don’t want there to be an issue.”); H.K. Dec. ¶ 10 (“After H.B. 2 became law, I started exclusively using gender neutral restrooms on campus when I could find one. When I couldn’t find one or one was not nearby, I would ‘hold it’ until I could find a gender neutral restroom. Sometimes I had to ‘hold it’ for up to two hours, which was very uncomfortable and distressing.”); C.W. Dec. ¶ 21 (“I have learned I have to either live with the physically uncomfortable and distracting process of ‘holding it’ or I have to track my bathroom habits closely. I try to limit my water intake and keep track of the last time I drank by carrying a water bottle and monitoring how much the level in the bottle decreases over a certain period of time so I can plan my bathroom visits. This process is mentally tolling, demoralizing, and distracting.”). In short, H.B. 2 often functions as an effective denial of access to a bathroom altogether.

For all of these reasons, even without the presumption of irreparable harm to which the United States is entitled when a federal civil rights statute is violated, the Court should find that H.B. 2 creates a significant probability of serious, irreparable harm.

### **III. The Balance of Equities Weighs Heavily in Favor of an Injunction to Halt Implementation of H.B. 2.**

In considering preliminary injunctive relief, the court is required to “balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987). The balance of equities weighs clearly in favor of granting the

injunction. The stigmatic, psychological, and physical harms that H.B. 2's implementation causes transgender people have been set forth in detail already, as has the United States' strong interests in enforcement of its civil rights laws. Those equities significantly outweigh the relatively negligible burdens of halting the implementation of H.B. 2 and reverting to the facility access policies of the status quo prior to H.B. 2's enactment just over three months ago.

Prior to H.B. 2's enactment on March 23, 2016, there were no statewide statutory restrictions on transgender individuals' use of bathrooms and other facilities in North Carolina. "The rationale behind a grant of a preliminary injunction has been explained as preserving the status quo so that the court can render a meaningful decision after a trial on the merits." *Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353, 359 (4th Cir. 1991). Notably, "[t]he status quo to be preserved by a preliminary injunction, however, is not the circumstances existing at the moment the lawsuit or injunction request was actually filed, but the last uncontested status between the parties which preceded the controversy. To be sure, it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions . . . such an injunction restores, rather than disturbs, the status quo ante." *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 378 (4th Cir. 2012) (internal citations omitted). In this case, "the last uncontested status between the parties which preceded the controversy" was prior to H.B. 2's enactment. Returning to that status quo would not be any more burdensome for the Defendants today than it was prior to March 23, 2016, following a practice regarding the use of sex-segregated

public facilities that, as the Court itself has observed, has “been followed for a millennia” in North Carolina. Doc. 54 (June 22, 2016, Hearing Tr. 8:1-8).

Granting a preliminary injunction will not harm the Defendants in any significant way, as there is no financial or other real cost in granting the relief. Indeed, prior to the passage of H.B. 2, Defendants had not cited any harms, financial or otherwise, associated with permitting transgender people access to bathrooms and changing facilities consistent with their gender identity. As the Court observed during a June 22, 2016, telephonic conference, proponents and enactors of H.B. 2 appear to have been motivated by a desire to preempt a local ordinance, which is not in effect and would not be in effect should the Court grant the requested preliminary injunction. Doc. 54 (June 22, 2016, Hearing Tr. 7:22-8:6). UNC has repeatedly (if inconsistently) disavowed a desire to enforce H.B. 2, strongly suggesting the absence of negative consequences to that Defendant from a preliminary injunction. And as noted above, numerous jurisdictions around the country continue to allow transgender people to use public facilities corresponding to their gender identity, belying any argument that serious negative consequences would flow from an injunction. *See supra* Part I.D. Moreover, as the Fourth Circuit has noted, “precedent counsels that a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found” unlawful. *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 191 (4th Cir. 2013) (internal quotation omitted).

#### **IV. An Injunction to Halt Implementation of H.B. 2 Would Serve the Public Interest.**

For similar reasons, issuing an injunction halting compliance with and implementation of H.B. 2 is in the public interest because it prevents ongoing harm to transgender people and it effectuates the purposes of federal civil rights statutes. The harms that H.B. 2's implementation causes transgender people have been set forth previously. *See supra* Parts I.B.2 and III. Granting the injunctive relief that the United States seeks would serve the public interest in the enforcement of federal anti-discrimination laws. *See Gen. Tel. Co. of the Nw. v. Equal Employment Opportunity Comm'n*, 446 U.S. 318, 326 (1980) (noting that when the government uses its enforcement power under Title VII “it acts also to vindicate the public interest in preventing employment discrimination”); *Cohen v. Brown Univ.*, 991 F. 2d 888, 906 (1st Cir. 1993) (recognizing that “the overriding public interest [lies] in the firm enforcement of Title IX”); *Doe v. Wood County Bd. Of Educ.*, 888 F. Supp. 3d 771, 778 (S.D. W. Va. 2012) (“The public interest is certainly served by promoting compliance with Title IX”).

#### **V. The United States' Claims Against UNC are Justiciable.**

Finally, rather than dispute H.B. 2's violation of federal law, UNC has argued that the United States' claims against it are not “justiciable” because “the Act . . . is silent about enforcement, and the UNC Defendants consequently neither enforce nor threaten to enforce it.” Doc. 46 at 4. This argument fails for several reasons.

First, H.B. 2 is not “silent about enforcement.” It is a self-executing directive from the State to its constituent public agencies. It states that public agencies, including

UNC, “*shall require* multiple occupancy bathrooms or changing facilities . . . be designated for and *only used by* individuals based on their biological sex” and requires public agencies to deny transgender people access to facilities consistent with their gender identity. N.C. Session Law 2016-03, sec. 1.3 § 143-760(b) (emphasis added). The State of North Carolina and the Governor have represented to this Court that UNC “is bound by the provisions of H.B. 2” and “cannot unilaterally avoid enforcing or complying with H.B. 2.” Doc. 54 (Tr. 12:3-10). Therefore, notwithstanding any statements from UNC officials to the contrary, H.B. 2 applies on UNC’s seventeen campuses in violation of federal law. UNC cannot both comply with H.B. 2 and federal law at the same time.

Second, any statements by UNC that it will not effectuate or enforce H.B. 2 on its campuses are legally insufficient to render this action non-justiciable. Even assuming the University has the authority to follow through on such statements—authority that the State and Governor insist UNC lacks—the Fourth Circuit has held that a defendant’s “promise” that it would interpret a statute as not enforceable against a plaintiff’s activity did not render a controversy non-justiciable because it was “no guarantee that the [defendant] might not tomorrow bring its interpretation more in line with the provision’s plain language.” *N. Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 711 (4th Cir. 1999). UNC has indicated that it will not enforce H.B. 2’s provisions on bathrooms and changing facilities because UNC does not interpret the statute to require enforcement of that provision. Such an interpretation cannot be reconciled with the statute’s mandatory terms, and UNC could change this interpretation at any time absent an order from this



Court. *Id.* at 711 (noting that a “litigation position that [defendant] will voluntarily refrain from enforcing the statute according to its plain language” is not a valid defense).

The cases UNC has cited in its filings in the related case *Carçano v. McCrory*, 1:16-cv-00236, do not suggest otherwise.<sup>29</sup> Unlike a criminal or civil regulatory statute directed at private behavior, H.B.2’s enforcement does not depend upon the prosecutorial discretion of law enforcement or regulatory agencies. To the contrary, it is a self-executing directive from the North Carolina government to a subsidiary institution. Thus, UNC’s reliance on cases holding that a plaintiff must establish a specific threat of enforcement to establish a live case or controversy is entirely misplaced.

Third, notwithstanding UNC’s pronouncements, it has in fact taken action to enforce H.B. 2. Specifically, UNC has informed students and other persons on campus that its bathroom and changing facilities are covered by H.B. 2 and has affirmed that the campus is required to comply with the statute’s mandates. As noted above, UNC’s President issued a memorandum widely distributed on campus directing that, in compliance with H.B. 2, “University institutions must require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.” Memorandum from Margaret Spellings to Chancellors 1 (Apr. 5, 2016) (Ex. 2). That memorandum further directs University institutions to “[p]rovide

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<sup>29</sup> See *Carçano v. McCrory*, 1:16-cv-00236, Doc. 50 (June 9, 2016). Several of the cases UNC cites in that filing also address the question of a private plaintiff’s standing to challenge a statute regulating private behavior, which is irrelevant to the United States’ standing to challenge a policy that is currently in effect and in direct conflict with federal law. See Doc. 46. While Article III standing requirements do apply to the United States, the law is clear that a showing of specific individual injury is not required in enforcement actions brought by the United States. *United States v. Central Carolina Bank & Trust Co.*, 431 F.2d 972, 975 (4th Cir. 1970).

notice of the Act to campus constituencies” and to “fully meet their obligations under the Act.” *Id.* at 1-2 (Ex. 2). It takes the position that “the University is required to fulfill its obligations under the law unless and until the court directs otherwise.” *Id.* at 2; *see also* Letter from Margaret Spellings, President, Univ. of N.C., to Shaheena Ahmad Simons, Acting Chief, U.S. Dep’t of Justice, Civil Rights Div., Educ. Opportunities Section 3 (Apr. 13, 2016) (Ex. 3) (further affirming that the University is “required . . . to comply” with H.B. 2 and declaring that, in UNC’s view, H.B. 2 is “presumptively valid and constitutional”). UNC has also admitted that it “provided information about the location of single-occupancy bathrooms” to people on campus, information that in the context of H.B. 2’s recent passage and UNC’s statements of the law’s applicability would reasonably be interpreted as an instruction to use those facilities and not multiple-occupancy facilities, as H.B. 2 commands. Doc. 46 at 11.

These actions create an objective expectation of compliance with H.B. 2 on UNC campuses. Upon learning that the University is “specifically covered by H.B. 2” and that compliance is “required,” transgender people on UNC’s campus would reasonably understand the University to have instructed them not to use campus facilities consistent with their gender identity. Likewise, other persons may reasonably interpret UNC’s message to mean they should personally challenge, oppose, or report individuals whom they believe are attempting to use a facility inconsistent with UNC’s policy and H.B. 2. Any action or statement by UNC suggesting otherwise indicates, at most, mixed messages and obfuscation, not the absence of a justiciable controversy.

Unsurprisingly, testimony from individual students, UNC employees, and others who attend events on campus suggests precisely this result—people are confused, and remain genuinely fearful of enforcement on UNC’s campuses. D.B. Dec. ¶ 17; Kupec Dec. ¶¶ 12-13; A.T. Dec. ¶ 16; H.K. Dec. ¶ 17; C.W. Dec. ¶ 23. Students who choose to use facilities consistent with their gender identity do so at their own peril—knowing they are in violation of state law and risk having a classmate or colleague report them to a University official, campus police, or local law enforcement. A.T. Dec. ¶ 16 (“My university has not put guards in front of restrooms to enforce H.B. 2, but I do not know what the university would do if someone reported me for violating H.B. 2 on campus. If that were to happen, I am worried I might be charged with trespassing, which could result in a criminal record that would hurt my future employment and graduate school prospects.”); H.K. Dec. ¶ 12 (“I was afraid that someone would try to haul me out if I used a women’s restroom because of H.B. 2.”).

Under these circumstances, the United States’ claims against UNC based on the application of H.B. 2 on campus are ripe and justiciable.

### **CONCLUSION**

For the foregoing reasons, the Court should issue a preliminary injunction prohibiting Defendants from complying with or implementing Part 1.3 of North Carolina Section Law 2016-03, House Bill 2.

This the 5th day of July, 2016.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:16-CV-00425
	)	
STATE OF NORTH CAROLINA;	)	
PATRICK MCCRORY, in his official	)	
capacity as Governor of North Carolina;	)	
NORTH CAROLINA DEPARTMENT OF	)	
PUBLIC SAFETY; UNIVERSITY OF	)	
NORTH CAROLINA; and BOARD OF	)	
GOVERNORS OF THE UNIVERSITY OF	)	
NORTH CAROLINA,	)	
	)	
Defendants.	)	

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 5, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and have verified that such filing was sent electronically using CM/ECF to the following: Karl S. Bowers, Jr., Robert C. Stephens, William Woodley Stewart, Jr., Brennan Tyler Brooks, Frank J. Gordon, Robert N. Driscoll, Amar Majmundar, Olga E. Vysotskaya De Brito, Carolyn C. Pratt, Glen D. Nager, James M. Burnham, Noel J. Francisco, Stuart K. Duncan, Gene C. Shaerr, Robert D. Potter, Jr., David A. Cortman, James A. Campbell, Jeremy D. Tedesco, Jonathan Caleb Dalton; and mailed to the following non-CM/ECF participant:

Steven-Glenn: Johnson  
c/o 208 Nydegg Road  
New Bern, NC 28562

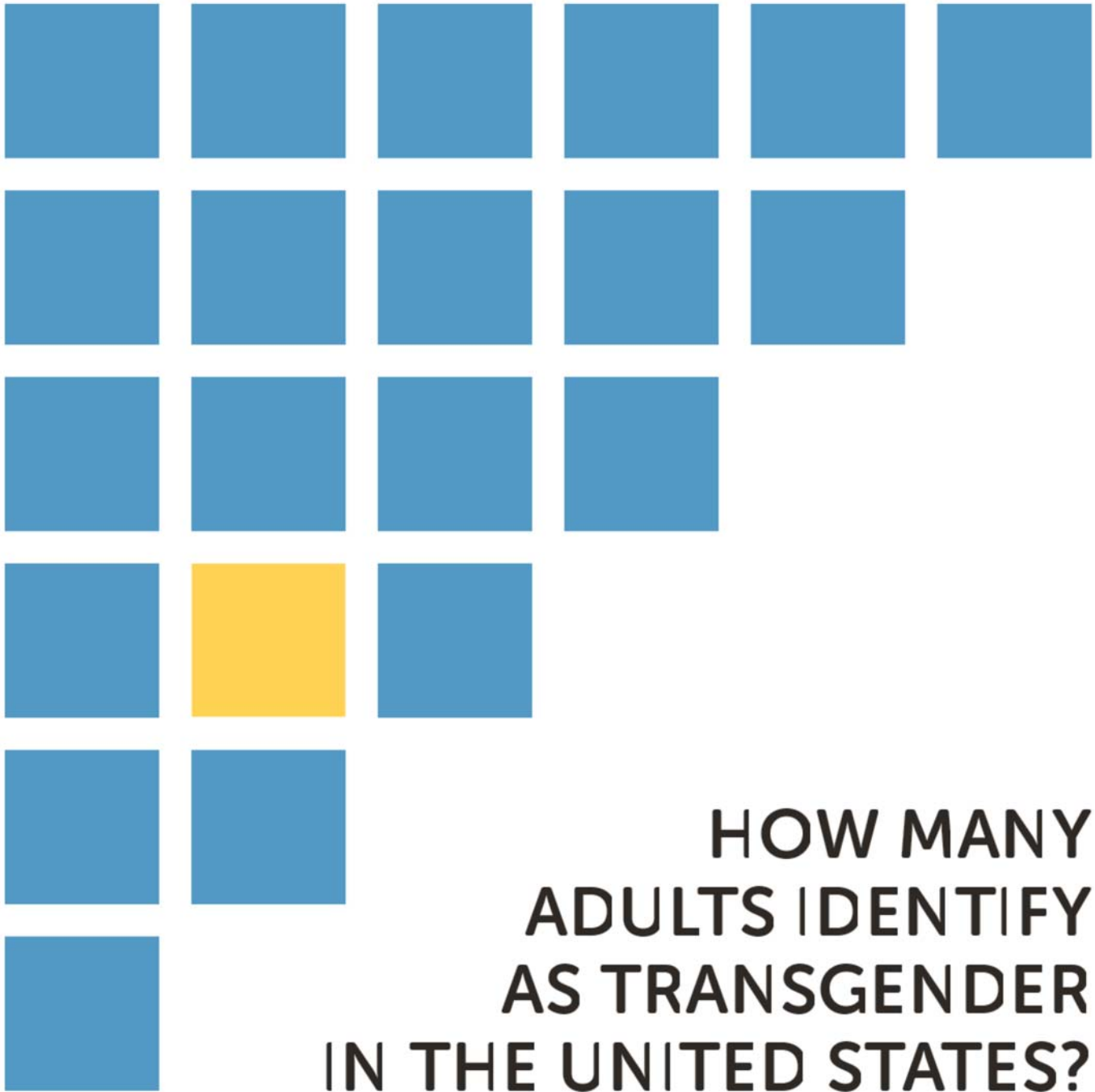
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# EXHIBIT 1

ANDREW R. FLORES, ET AL., WILLIAMS INSTITUTE: HOW MANY ADULTS  
IDENTIFY AS TRANSGENDER IN THE US?



# HOW MANY ADULTS IDENTIFY AS TRANSGENDER IN THE UNITED STATES?

Andrew R. Flores, Jody L. Herman, Gary J. Gates, and Taylor N. T. Brown



*the*  
**Williams**  
INSTITUTE

JUNE 2016



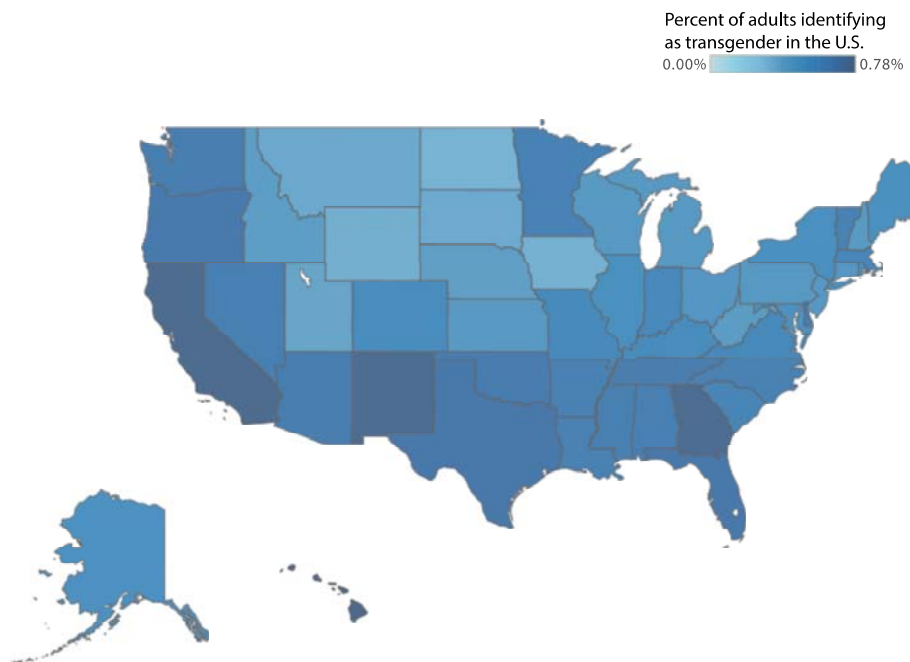
# INTRODUCTION AND SUMMARY

Population-based surveys, meaning those that are designed to allow researchers to generalize findings to the population, rarely ask questions to identify transgender people and, therefore, cannot be used to provide estimates of the size and characteristics of the transgender population. The federal government administers several large, national population-based surveys like the American Community Survey and the National Health Interview Survey that track the demographics, health and well-being of U.S. residents. Unfortunately, these surveys do not currently measure gender identity.<sup>1</sup> However, there are several state-level population-based surveys that identify transgender respondents and can be used to estimate the size and characteristics of the transgender population.

In 2011, Gary J. Gates utilized two state-level population-based surveys that collected data from 2003 in California and from 2007 and 2009 in Massachusetts to estimate that 0.3% of the U.S. adult population, roughly 700,000 adults, identified as transgender.<sup>2</sup> Since then, more state-level data sources have emerged that allow us to utilize an estimation procedure that would not have been possible with the limited data available in 2011. Compared to the data used in Gates' study, these new data sources provide more recent data (2014), larger sample sizes, and more detailed information about respondents. This allows for the development of more recent, detailed, and statistically robust estimates of the percentage and number of adults in the United States who identify as transgender.

This report utilizes data from the CDC's Behavioral Risk Factor Surveillance System (BRFSS) to estimate the percentage and number of adults who identify as transgender nationally and in all 50 states.<sup>3</sup> We find that 0.6% of U.S. adults identify as transgender. This figure is double the estimate that utilized data from roughly a decade ago and implies that an estimated 1.4 million adults in the U.S. identify as transgender.<sup>4</sup> State-level estimates of adults who identify as transgender range from 0.3% in North Dakota to 0.8% in Hawaii.<sup>5</sup> In addition, due to current state-level policy debates that specifically target and affect transgender students, we provide estimates of the number of adults who identify as transgender by age. The youngest age group, 18 to 24 year olds, is more likely than older age groups to identify as transgender.

Figure 1. Percent of Adults Who Identify as Transgender in the United States



### National and State-level Estimates of Transgender-Identified Adults

An estimated 0.6% of adults, about 1.4 million, identify as transgender in the United States. States vary in the percentage of residents who identify as transgender (See Table 1). Hawaii has the highest percentage of adults who identify as transgender, approximately 0.8% of adults, and North Dakota has the lowest percentage, at 0.3%. The District of Columbia is notable for its relatively high percentage of transgender-identified adults (2.8%).<sup>6</sup> Twenty states and the District of Columbia are estimated to have a higher percentage of transgender-identified adults than the national average.

Table 1. Estimated Population of Adults Who Identify as Transgender by State of Residence

STATE	POPULATION	PERCENT	RANK
United States of America	1,397,150	0.58%	-
Alabama	22,500	0.61%	15
Alaska	2,700	0.49%	33
Arizona	30,550	0.62%	12
Arkansas	13,400	0.60%	18
California	218,400	0.76%	2
Colorado	20,850	0.53%	27
Connecticut	12,400	0.44%	37
Delaware	4,550	0.64%	9
District of Columbia <sup>7</sup>	14,550	2.77%	-
Florida	100,300	0.66%	6
Georgia	55,650	0.75%	4
Hawaii	8,450	0.78%	1
Idaho	4,750	0.41%	43
Illinois	49,750	0.51%	30
Indiana	27,600	0.56%	23
Iowa	7,400	0.31%	49
Kansas	9,300	0.43%	41
Kentucky	17,700	0.53%	26
Louisiana	20,900	0.60%	17
Maine	5,350	0.50%	31
Maryland	22,300	0.49%	32
Massachusetts	29,900	0.57%	22
Michigan	32,900	0.43%	40
Minnesota	24,250	0.59%	20
Mississippi	13,650	0.61%	14
Missouri	25,050	0.54%	25
Montana	2,700	0.34%	47
Nebraska	5,400	0.39%	44
Nevada	12,700	0.61%	13

STATE	POPULATION	PERCENT	RANK
New Hampshire	4,500	0.43%	39
New Jersey	30,100	0.44%	36
New Mexico	11,750	0.75%	3
New York	78,600	0.51%	29
North Carolina	44,750	0.60%	16
North Dakota	1,650	0.30%	50
Ohio	39,950	0.45%	34
Oklahoma	18,350	0.64%	8
Oregon	19,750	0.65%	7
Pennsylvania	43,800	0.44%	35
Rhode Island	4,250	0.51%	28
South Carolina	21,000	0.58%	21
South Dakota	2,150	0.34%	46
Tennessee	31,200	0.63%	10
Texas	125,350	0.66%	5
Utah	7,200	0.36%	45
Vermont	3,000	0.59%	19
Virginia	34,500	0.55%	24
Washington	32,850	0.62%	11
West Virginia	6,100	0.42%	42
Wisconsin	19,150	0.43%	38
Wyoming	1,400	0.32%	48

### Estimates of Transgender-Identified Adults by Age

Prior research suggests that individuals who identify as transgender are younger, on average, than non-transgender individuals.<sup>8</sup> As expected, we find that younger adults are more likely than older adults to identify as transgender. An estimated 0.7% of adults between the ages of 18 and 24 identify as transgender. Lower percentages of older adults identify as transgender, with 0.6% of adults age 25 to 64 and 0.5% of adults age 65 or older identifying as transgender.

Table 2. Estimated Population of Adults Who Identify as Transgender by Age and State of Residence

STATE	AGE					
	18-24		25-64		65 AND OLDER	
	POPULATION	PERCENTAGE	POPULATION	PERCENTAGE	POPULATION	PERCENTAGE
United States of America	205,850	0.66%	967,100	0.58%	217,050	0.50%
Alabama	3,250	0.67%	15,450	0.61%	3,700	0.53%
Alaska	500	0.60%	1,950	0.48%	250	0.42%
Arizona	4,700	0.72%	20,800	0.63%	4,850	0.50%
Arkansas	1,850	0.65%	9,150	0.61%	2,300	0.52%
California	33,450	0.84%	154,750	0.77%	29,050	0.63%
Colorado	3,200	0.63%	14,900	0.53%	2,750	0.45%
Connecticut	1,750	0.52%	8,450	0.44%	2,100	0.40%
Delaware	700	0.73%	3,050	0.64%	800	0.55%
District of Columbia	2,600	3.14%	9,900	2.66%	1,950	2.72%
Florida	13,450	0.75%	66,750	0.67%	19,350	0.55%
Georgia	8,700	0.86%	39,500	0.75%	7,450	0.66%
Hawaii	1,200	0.89%	5,700	0.77%	1,550	0.72%
Idaho	750	0.47%	3,250	0.41%	750	0.35%
Illinois	7,150	0.57%	34,500	0.50%	7,750	0.46%
Indiana	4,100	0.62%	18,950	0.56%	4,450	0.50%
Iowa	1,100	0.35%	4,900	0.31%	1,350	0.29%
Kansas	1,500	0.49%	6,300	0.43%	1,500	0.38%
Kentucky	2,400	0.57%	12,200	0.52%	3,000	0.49%
Louisiana	3,150	0.66%	14,550	0.60%	3,100	0.52%
Maine	650	0.56%	3,650	0.50%	1,050	0.45%
Maryland	3,200	0.57%	15,650	0.49%	3,300	0.43%
Massachusetts	4,550	0.66%	20,150	0.56%	5,050	0.53%
Michigan	4,800	0.48%	22,400	0.43%	5,600	0.39%
Minnesota	3,450	0.69%	16,750	0.58%	3,950	0.54%
Mississippi	2,100	0.66%	9,400	0.62%	2,150	0.53%
Missouri	3,600	0.60%	17,000	0.54%	4,400	0.50%
Montana	400	0.40%	1,800	0.34%	450	0.30%

STATE	AGE					
	18-24		25-64		65 AND OLDER	
	POPULATION	PERCENTAGE	POPULATION	PERCENTAGE	POPULATION	PERCENTAGE
Nebraska	800	0.44%	3,650	0.39%	900	0.35%
Nevada	1,750	0.70%	9,100	0.61%	1,750	0.49%
New Hampshire	650	0.50%	3,100	0.43%	750	0.39%
New Jersey	3,950	0.51%	21,050	0.44%	5,050	0.41%
New Mexico	1,800	0.85%	8,000	0.75%	1,850	0.62%
New York	11,150	0.56%	54,150	0.51%	12,850	0.47%
North Carolina	6,600	0.68%	31,050	0.60%	7,150	0.53%
North Dakota	300	0.34%	1,050	0.30%	300	0.29%
Ohio	5,550	0.50%	27,150	0.45%	7,000	0.41%
Oklahoma	2,800	0.72%	12,600	0.64%	2,900	0.55%
Oregon	2,800	0.76%	13,700	0.65%	3,150	0.55%
Pennsylvania	6,100	0.48%	29,250	0.44%	8,250	0.40%
Rhode Island	650	0.56%	2,800	0.51%	750	0.46%
South Carolina	3,150	0.64%	14,250	0.58%	3,450	0.50%
South Dakota	350	0.39%	1,400	0.34%	350	0.30%
Tennessee	4,250	0.68%	21,550	0.63%	5,150	0.56%
Texas	19,600	0.73%	88,950	0.66%	15,700	0.55%
Utah	1,350	0.42%	4,950	0.36%	800	0.30%
Vermont	450	0.67%	2,000	0.59%	550	0.53%
Virginia	5,150	0.62%	24,000	0.54%	5,200	0.49%
Washington	4,850	0.73%	23,150	0.62%	4,700	0.52%
West Virginia	750	0.44%	4,150	0.42%	1,200	0.38%
Wisconsin	2,700	0.49%	13,150	0.43%	3,250	0.39%
Wyoming	200	0.37%	1,000	0.32%	200	0.29%

### Discussion

Our current best estimate of the percentage of adults who identify as transgender in the United States is double that of the estimate produced by Gary J. Gates in 2011. Several reasons may account for this difference. A perceived increase in visibility and social acceptance of transgender people may increase the number of individuals willing to identify as transgender on a government-administered survey. The Gates estimate was based on data from only two states with very small samples. The current study analyzes population-based data from 19 states that identify transgender individuals. This provides larger samples and a wealth of information about transgender-identified adults not previously available. As a result, more sophisticated estimation procedures are now possible that produce more detailed and robust estimates than were possible in 2011. As new data collection efforts emerge at the state and national levels, estimates can continue to be refined to improve our understanding of the size and characteristics of the transgender population.

## Appendix: Methodology and Credible Intervals of Population Estimates

### Methodology

The Behavioral Risk Factor Surveillance System (BRFSS) collects state-specific data on health-related factors across the 50 states, the District of Columbia, and the territories of the United States. The survey is designed to be representative within each state. The survey is conducted by an interviewer via landline and cellular telephone. The national response rate for the 2014 BRFSS was 48.7% for landline telephones and 40.5% for cellular telephones (American Association of Public Opinion Research, Response Rate calculation 4).

The BRFSS contains optional module questionnaires in addition to its standard questionnaire for each state.<sup>9</sup> The 2014 BRFSS had 19 optional modules that states were able to opt-into. One of the modules contained the following question:

Do you consider yourself to be transgender?

Yes

No

[If Yes] Do you consider yourself to be male-to-female, female-to-male, or gender non-conforming?

If the interviewer is asked for a definition of transgender, they respond:

Some people describe themselves as transgender when they experience a different gender identity from their sex at birth. For example, a person born into a male body, but who feels female or lives as a woman would be transgender. Some transgender people change their physical appearance so that it matches their internal gender identity. Some transgender people take hormones and some have surgery. A transgender person may be of any sexual orientation – straight, gay, lesbian, or bisexual.

Since this question is included in an optional module, some states did not ask this question while others did. The 19 states that did ask this question include: Delaware, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Montana, Nevada, New York, Ohio, Pennsylvania, Vermont, Virginia, Wisconsin, and Wyoming. In total, 0.52% of BRFSS respondents in these states identified as transgender, and 151,456 respondents answered this question.

To estimate the population by state, we relied on multilevel regression and post-stratification.<sup>10</sup> The method fits multilevel logistic regression to the data to predict the likelihood that an individual identifies as transgender relying on demographic attributes about the respondents (e.g., race and ethnicity; age cohorts; and educational attainment). State and regional characteristics were accounted for and state-level characteristics were included to add information about how states differ from one another (e.g., racial composition, median income, percentage of households that are of same-sex couples, and percentage of the population that identifies as Evangelical). This method has been applied to measure statewide political attitudes<sup>11</sup> and to measure Jewish populations.<sup>12</sup> Further, the estimation strategy has undergone rigorous evaluation by other scholars, and these evaluations often show the method produces reliable and valid estimates.<sup>13</sup> While the estimation approach is not without its criticisms,<sup>14</sup> the method remains the best available approach to perform this estimation procedure. A recent research grant was awarded by the National Science Foundation to further refine and build upon the method.<sup>15</sup>

We extend the application of the estimation technique by incorporating all of the states in the BRFSS, even though respondents in only 19 states received the gender identity question. By doing so, we impute the states that did not ask the gender identity question by modeling the probability that a respondent identifies as transgender. The hierarchical model still incorporates the statewide covariates to increase precision in the estimation.<sup>16</sup> All models were estimated using a Hamiltonian Monte Carlo as implemented by the Stan probabilistic programming language.<sup>17</sup> The model was evaluated for appropriate diagnostics before results were presented. In the tables below, 95% credible intervals are provided for both the population estimates and the population estimates by age. A credible interval is a Bayesian equivalent of a confidence interval. A 95% credible interval represents the upper and lower bounds where there is a 0.95 probability an estimate falls between them.

Table A1. Estimated Population of Adults Who Identify as Transgender by State of Residence, 95% Credible Intervals

STATE	POPULATION		PERCENT	
	LOWER BOUND	UPPER BOUND	LOWER BOUND	UPPER BOUND
United States of America	854,066	2,293,511	0.36%	0.95%
Alabama	11,487	46,858	0.31%	1.27%
Alaska	1,634	4,323	0.30%	0.80%
Arizona	17,137	53,889	0.35%	1.09%
Arkansas	6,898	25,072	0.31%	1.12%
California	120,074	378,513	0.42%	1.31%
Colorado	12,094	35,295	0.31%	0.89%
Connecticut	7,454	19,824	0.27%	0.71%
Delaware	3,195	6,176	0.45%	0.87%
District of Columbia	2,608	66,391	0.50%	12.63%
Florida	58,364	163,960	0.38%	1.07%
Georgia	31,243	97,981	0.42%	1.32%
Hawaii	6,310	11,215	0.58%	1.03%
Idaho	3,403	6,800	0.29%	0.58%
Illinois	30,519	77,228	0.31%	0.79%
Indiana	21,867	35,060	0.44%	0.71%
Iowa	4,558	10,398	0.19%	0.44%
Kansas	7,183	11,706	0.33%	0.54%
Kentucky	13,092	23,060	0.39%	0.69%
Louisiana	15,582	27,230	0.45%	0.78%
Maine	3,202	8,895	0.30%	0.84%
Maryland	17,177	28,088	0.38%	0.62%
Massachusetts	17,251	49,307	0.33%	0.94%
Michigan	19,132	52,059	0.25%	0.68%
Minnesota	19,368	30,211	0.47%	0.74%
Mississippi	6,731	27,122	0.30%	1.21%
Missouri	13,512	43,611	0.29%	0.94%
Montana	1,880	3,669	0.24%	0.47%
Nebraska	3,247	8,207	0.23%	0.59%
Nevada	8,570	18,018	0.41%	0.86%
New Hampshire	2,693	7,362	0.26%	0.70%
New Jersey	17,981	49,987	0.26%	0.73%
New Mexico	6,613	19,959	0.42%	1.27%
New York	57,043	103,813	0.37%	0.68%

STATE	POPULATION		PERCENT	
	LOWER BOUND	UPPER BOUND	LOWER BOUND	UPPER BOUND
North Carolina	26,299	76,786	0.35%	1.03%
North Dakota	961	2,785	0.18%	0.51%
Ohio	30,705	50,183	0.35%	0.56%
Oklahoma	9,049	37,798	0.31%	1.31%
Oregon	10,774	36,440	0.35%	1.20%
Pennsylvania	33,506	56,799	0.33%	0.57%
Rhode Island	2,493	6,979	0.30%	0.84%
South Carolina	12,139	38,343	0.33%	1.05%
South Dakota	1,279	3,592	0.20%	0.57%
Tennessee	16,601	60,319	0.33%	1.22%
Texas	71,791	212,200	0.38%	1.11%
Utah	3,338	16,157	0.17%	0.82%
Vermont	2,126	4,034	0.42%	0.80%
Virginia	26,945	44,697	0.43%	0.71%
Washington	18,574	57,196	0.35%	1.08%
West Virginia	3,518	10,477	0.24%	0.71%
Wisconsin	13,920	25,364	0.32%	0.58%
Wyoming	945	2,073	0.22%	0.47%



Table A2. Estimated Population of Adults Who Identify as Transgender by Age and State of Residence, 95% Credible Intervals

STATE	AGE					
	18-24		25-64		65 AND OLDER	
	POPULATION [LB, UB]	PERCENTAGE [LB, UB]	POPULATION [LB, UB]	PERCENTAGE [LB, UB]	POPULATION [LB, UB]	PERCENTAGE [LB, UB]
United States of America	[121,074, 354,454]	[0.39%, 1.13%]	[569,753, 1,649,712]	[0.34%, 1.00%]	[132,175, 360,271]	[0.31%, 0.84%]
Alabama	[1,624, 7,089]	[0.33%, 1.46%]	[7,630, 32,564]	[0.30%, 1.29%]	[1,868, 7,887]	[0.27%, 1.13%]
Alaska	[282, 806]	[0.35%, 0.99%]	[1,132, 3,210]	[0.28%, 0.81%]	[157, 434]	[0.25%, 0.69%]
Arizona	[2,562, 8,556]	[0.39%, 1.31%]	[11,120, 37,886]	[0.34%, 1.14%]	[2,708, 8,560]	[0.28%, 0.88%]
Arkansas	[966, 3,550]	[0.34%, 1.23%]	[4,614, 17,456]	[0.31%, 1.16%]	[1,185, 4,384]	[0.27%, 0.99%]
California	[18,464, 60,029]	[0.46%, 1.50%]	[83,407, 274,478]	[0.41%, 1.36%]	[15,871, 51,075]	[0.35%, 1.11%]
Colorado	[1,796, 5,616]	[0.35%, 1.10%]	[8,404, 25,994]	[0.30%, 0.92%]	[1,595, 4,612]	[0.26%, 0.76%]
Connecticut	[1,024, 2,942]	[0.30%, 0.86%]	[4,988, 14,281]	[0.26%, 0.74%]	[1,253, 3,458]	[0.24%, 0.65%]
Delaware	[451, 974]	[0.49%, 1.05%]	[2,061, 4,417]	[0.43%, 0.92%]	[541, 1,074]	[0.38%, 0.76%]
District of Columbia	[470, 11,880]	[0.57%, 14.48%]	[1,786, 47,078]	[0.48%, 12.65%]	[361, 9,351]	[0.51%, 13.10%]
Florida	[7,554, 23,144]	[0.42%, 1.29%]	[37,404, 114,026]	[0.37%, 1.14%]	[11,453, 32,341]	[0.33%, 0.92%]
Georgia	[4,847, 16,177]	[0.48%, 1.59%]	[21,496, 71,304]	[0.41%, 1.35%]	[4,147, 13,309]	[0.37%, 1.17%]
Hawaii	[845, 1,662]	[0.62%, 1.23%]	[4,005, 7,975]	[0.54%, 1.08%]	[1,088, 2,098]	[0.51%, 0.99%]
Idaho	[500, 1,087]	[0.32%, 0.69%]	[2,224, 4,882]	[0.28%, 0.61%]	[525, 1,068]	[0.25%, 0.50%]
Illinois	[4,255, 11,778]	[0.34%, 0.94%]	[20,559, 55,749]	[0.30%, 0.81%]	[4,668, 12,533]	[0.28%, 0.74%]
Indiana	[3,045, 5,579]	[0.46%, 0.84%]	[14,012, 25,792]	[0.41%, 0.76%]	[3,457, 5,802]	[0.39%, 0.65%]
Iowa	[656, 1,617]	[0.21%, 0.52%]	[2,963, 7,376]	[0.19%, 0.47%]	[841, 1,939]	[0.18%, 0.41%]
Kansas	[1,065, 1,978]	[0.36%, 0.66%]	[4,565, 8,465]	[0.31%, 0.58%]	[1,130, 1,919]	[0.29%, 0.49%]
Kentucky	[1,665, 3,374]	[0.39%, 0.80%]	[8,649, 16,904]	[0.37%, 0.73%]	[2,190, 3,949]	[0.36%, 0.64%]
Louisiana	[2,204, 4,371]	[0.46%, 0.92%]	[10,310, 20,236]	[0.43%, 0.84%]	[2,260, 4,181]	[0.38%, 0.71%]
Maine	[378, 1,146]	[0.32%, 0.98%]	[2,120, 6,268]	[0.29%, 0.87%]	[607, 1,739]	[0.27%, 0.77%]
Maryland	[2,303, 4,398]	[0.41%, 0.78%]	[11,347, 21,316]	[0.35%, 0.66%]	[2,461, 4,307]	[0.32%, 0.57%]
Massachusetts	[2,568, 7,807]	[0.37%, 1.13%]	[11,326, 34,087]	[0.31%, 0.95%]	[2,832, 8,391]	[0.30%, 0.88%]
Michigan	[2,655, 7,870]	[0.27%, 0.79%]	[12,593, 37,168]	[0.24%, 0.72%]	[3,240, 8,999]	[0.23%, 0.63%]
Minnesota	[2,541, 4,552]	[0.51%, 0.91%]	[12,539, 22,498]	[0.44%, 0.78%]	[3,043, 5,080]	[0.42%, 0.70%]

STATE	AGE					
	18-24		25-64		65 AND OLDER	
	POPULATION [LB, UB]	PERCENTAGE [LB, UB]	POPULATION [LB, UB]	PERCENTAGE [LB, UB]	POPULATION [LB, UB]	PERCENTAGE [LB, UB]
Mississippi	[1,009, 4,310]	[0.32%, 1.37%]	[4,490, 19,158]	[0.29%, 1.26%]	[1,036, 4,327]	[0.26%, 1.08%]
Missouri	[1,876, 6,423]	[0.32%, 1.08%]	[8,975, 30,421]	[0.29%, 0.97%]	[2,324, 7,535]	[0.26%, 0.85%]
Montana	[266, 572]	[0.27%, 0.58%]	[1,222, 2,592]	[0.23%, 0.49%]	[323, 650]	[0.21%, 0.41%]
Nebraska	[473, 1,264]	[0.25%, 0.68%]	[2,143, 5,820]	[0.23%, 0.61%]	[551, 1,389]	[0.21%, 0.54%]
Nevada	[1,135, 2,646]	[0.45%, 1.04%]	[5,889, 13,545]	[0.40%, 0.92%]	[1,150, 2,547]	[0.32%, 0.71%]
New Hampshire	[356, 1,067]	[0.28%, 0.85%]	[1,798, 5,237]	[0.25%, 0.72%]	[450, 1,244]	[0.23%, 0.64%]
New Jersey	[2,265, 6,732]	[0.29%, 0.86%]	[12,204, 36,508]	[0.25%, 0.76%]	[3,013, 8,517]	[0.24%, 0.68%]
New Mexico	[988, 3,255]	[0.46%, 1.53%]	[4,389, 14,044]	[0.41%, 1.32%]	[1,011, 3,160]	[0.34%, 1.07%]
New York	[7,732, 15,788]	[0.39%, 0.79%]	[37,363, 76,111]	[0.35%, 0.72%]	[9,137, 17,614]	[0.33%, 0.64%]
North Carolina	[3,765, 11,609]	[0.39%, 1.19%]	[17,757, 54,557]	[0.34%, 1.06%]	[4,194, 12,219]	[0.31%, 0.91%]
North Dakota	[170, 531]	[0.19%, 0.59%]	[593, 1,834]	[0.17%, 0.51%]	[170, 498]	[0.17%, 0.50%]
Ohio	[4,001, 7,561]	[0.36%, 0.68%]	[19,701, 36,836]	[0.32%, 0.61%]	[5,251, 9,125]	[0.31%, 0.54%]
Oklahoma	[1,351, 6,063]	[0.35%, 1.56%]	[6,026, 26,649]	[0.31%, 1.36%]	[1,438, 6,011]	[0.27%, 1.13%]
Oregon	[1,512, 5,190]	[0.41%, 1.42%]	[7,380, 25,644]	[0.35%, 1.22%]	[1,714, 5,934]	[0.30%, 1.02%]
Pennsylvania	[4,284, 8,404]	[0.34%, 0.67%]	[21,090, 40,686]	[0.31%, 0.60%]	[6,172, 10,959]	[0.30%, 0.54%]
Rhode Island	[389, 1,143]	[0.32%, 0.95%]	[1,608, 4,817]	[0.29%, 0.87%]	[424, 1,219]	[0.27%, 0.77%]
South Carolina	[1,784, 5,944]	[0.36%, 1.21%]	[7,977, 26,549]	[0.32%, 1.08%]	[1,963, 6,533]	[0.28%, 0.94%]
South Dakota	[188, 577]	[0.22%, 0.69%]	[827, 2,452]	[0.20%, 0.58%]	[217, 631]	[0.18%, 0.52%]
Tennessee	[2,220, 8,664]	[0.36%, 1.39%]	[11,036, 42,384]	[0.32%, 1.24%]	[2,740, 9,962]	[0.30%, 1.09%]
Texas	[10,763, 33,983]	[0.40%, 1.27%]	[49,965, 156,972]	[0.37%, 1.16%]	[8,906, 27,059]	[0.31%, 0.95%]
Utah	[617, 3,133]	[0.19%, 0.96%]	[2,244, 11,329]	[0.16%, 0.83%]	[385, 1,804]	[0.14%, 0.67%]
Vermont	[299, 629]	[0.46%, 0.96%]	[1,364, 2,844]	[0.40%, 0.84%]	[372, 745]	[0.38%, 0.75%]
Virginia	[3,798, 6,980]	[0.46%, 0.85%]	[17,590, 33,074]	[0.40%, 0.75%]	[3,987, 7,026]	[0.38%, 0.66%]
Washington	[2,662, 8,550]	[0.40%, 1.29%]	[12,748, 41,018]	[0.34%, 1.10%]	[2,655, 8,291]	[0.29%, 0.91%]
West Virginia	[427, 1,325]	[0.25%, 0.76%]	[2,347, 7,299]	[0.24%, 0.74%]	[687, 2,040]	[0.22%, 0.66%]
Wisconsin	[1,883, 3,799]	[0.34%, 0.69%]	[9,141, 18,414]	[0.30%, 0.61%]	[2,287, 4,434]	[0.28%, 0.54%]
Wyoming	[135, 328]	[0.23%, 0.57%]	[634, 1,509]	[0.21%, 0.49%]	[141, 308]	[0.19%, 0.41%]

\*Note: LB=95% Lower bound; UB=95% Upper bound

## ENDNOTES

- <sup>1</sup> For a discussion of gender identity data collection in federal population-based surveys and recommended measures, see The GenIUSS Group. (2014). *Best Practices for Asking Questions to Identify Transgender and Other Gender Minority Respondents on Population-Based Surveys*. J.L. Herman (Ed.). Los Angeles, CA: The Williams Institute, available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/geniuss-report-sep-2014.pdf>.
- <sup>2</sup> Gates, G.J. (2011). *How many people are lesbian, gay, bisexual, and transgender?* Los Angeles, CA: The Williams Institute, available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>. A more recent report that was released in March 2016 provided estimates of the transgender population ages 13 and above in 15 states ("Estimates of Transgender Populations in States with Legislation Impacting Transgender People, available at <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/estimates-of-transgender-populations-in-states-with-legislation-impacting-transgender-people/>). These estimates were based on Gates' 2011 study and other estimates of the transgender youth population. We believe the current study provides more robust estimates of the percentage of transgender-identified adults in those 15 states.
- <sup>3</sup> A detailed description of the methodology for this study is included in the Appendix and further details will be included in a separate document published alongside this report.
- <sup>4</sup> For national and state estimates provided in this report, adult general population figures from the U.S. Census Bureau's American Community Survey, 2011-2013 3-year PUMS, were multiplied by the estimated percentage of transgender-identified adults to yield the estimated number of transgender-identified adults.
- <sup>5</sup> The District of Columbia is not included in this range for states. DC had a notably high percentage of transgender-identified adults (2.8%) and is considered an outlier due to its unique geographic (urban) and demographic profile.
- <sup>6</sup> See note #5.
- <sup>7</sup> See note #5.
- <sup>8</sup> See, for instance, Conron, K.J., Scott, G., Stowell, G.S., and Landers, S. J. (2012). Transgender Health in Massachusetts: Results from a Household Probability Sample of Adults. *American Journal of Public Health*, 102(1), 118-122.
- <sup>9</sup> For more detailed information on gender identity data collection in the BRFSS, see Baker, K.E. & Hughes, M. (2016). *Sexual Orientation and Gender Identity Data Collection in the Behavioral Risk Factor Surveillance System*. Washington, DC: The Center for American Progress, available at <https://cdn.americanprogress.org/wp-content/uploads/2016/03/29090401/BRFSSdatacollect-brief-03.31.16.pdf>.
- <sup>10</sup> Park, D.K., Gelman, A., & Bafumi, J. (2004). Bayesian multilevel estimation with poststratification: State-level estimates from national polls. *Political Analysis*, 12, 375-385.
- <sup>11</sup> Flores, A.R., & Barclay, S. (2015). Trends in public support for marriage for same-sex couples by state. Los Angeles, CA: The Williams Institute, UCLA.
- <sup>12</sup> Saxe, L., & Tighe, E. (2013). Estimating and understanding the Jewish population in the United States: A program of research. *Contemporary Jewry*, 33(1), 43-62; Tighe, E., Livert, D., Barnett, M., & Saxe, L. (2010). Cross-survey analysis to estimate low-incidence religious groups. *Sociological Methods & Research*, 39(1), 56-82.
- <sup>13</sup> Lax, J.R., & Phillips, J.H. (2009). How should we estimate public opinion in the states? *American Journal of Political Science*, 53(1), 107-121; Warshaw, C., & Rodden, J. (2012). How should we measure district-level public opinion on individual issues? *Journal of Politics*, 74(1), 203-219.
- <sup>14</sup> Buttice, M.K., Highton, B. (2013). How does multilevel regression and poststratification perform with conventional national surveys? *Political Analysis*, 21(4), 449-467; Toshokov, D. (2015). Exploring the performance of multilevel modeling and poststratification with Eurobarometer data. *Political Analysis*, 23(3), 455-460.
- <sup>15</sup> NSF-1424962. (2014-2017). Using multilevel regress and post-stratification to measure and study dynamic public opinion.
- <sup>16</sup> See Flores, A.R. (2016). *Estimating the adult population that identifies as transgender in the BRFSS*. Los Angeles, CA: The Williams Institute, UCLA.
- <sup>17</sup> Stan Development Team. (2016) RStan: The R interface to Stan, version 2.9.0. <http://mc-stan.org>.

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# EXHIBIT 2

MEMORANDUM FROM MARGARET SPELLINGS, PRESIDENT, UNIV. OF N.C., TO  
CHANCELLORS- GUIDANCE- COMPLIANCE WITH THE PUBLIC FACILITIES  
PRIVACY & SECURITY ACT (APR. 5, 2016)

**Constituent Universities**

Appalachian  
State University

East Carolina  
University

Elizabeth City  
State University

Fayetteville State  
University

North Carolina  
Agricultural and  
Technical State  
University

North Carolina  
Central University

North Carolina  
State University  
at Raleigh

University of  
North Carolina  
at Asheville

University of  
North Carolina  
at Chapel Hill

University of  
North Carolina  
at Charlotte

University of  
North Carolina  
at Greensboro

University of  
North Carolina  
at Pembroke

University of  
North Carolina  
at Wilmington

University of  
North Carolina  
School of the Arts

Western Carolina  
University

Winston-Salem  
State University

**Constituent High School**

North Carolina  
School of Science  
and Mathematics

An Equal Opportunity/  
Affirmative Action Employer

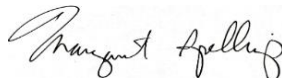
**Margaret Spellings  
President**

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**MEMORANDUM**

**TO:** Chancellors

**FROM:** Margaret Spellings



**DATE:** April 5, 2016

**SUBJECT:** Guidance - Compliance with the Public Facilities Privacy & Security Act

The General Assembly and Governor McCrory enacted the Public Facilities Privacy & Security Act (the "Act," copy attached) on March 23, 2016. This memorandum responds to requests for guidance from UNC system institutions concerning the Act's requirements.

The Act amends the state's public policy statement regarding nondiscrimination, and provides that it supersedes nondiscrimination regulations imposed upon employers and public accommodations by political subdivisions of the state, including local governments. The Act does not limit the ability of local governments and universities to adopt policies with respect to their own employees. The Act requires multiple occupancy bathrooms and changing facilities in government buildings to be designated for and only used by persons based on biological sex.

1. *Does the Act require the University to change its nondiscrimination policies?*

*Answer:* No. The Act does not require University institutions to change their nondiscrimination policies, and those policies should remain in effect.

2. *What are the University's obligations under the Act relating to bathrooms and changing facilities?*

*Answer:* University institutions must require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.

3. *How should University institutions meet their obligations related to bathrooms and changing facilities?*

*Answer:* University institutions should take the following actions to fully meet their obligations under the Act:

- a. Designate and label multiple-occupancy bathrooms and changing facilities for single-sex use with signage.
- b. Provide notice of the Act to campus constituencies as appropriate.
- c. Consider assembling and making information available about the locations of designated single-occupancy bathrooms and changing facilities on campus.

UNC institutions already designate and label multiple-occupancy bathrooms and changing facilities for single-sex use with signage and should maintain these designations and signage. Institutions may provide accommodations such as single-occupancy bathrooms or changing facilities and may designate those facilities as gender-neutral.

4. *Does the Act address enforcement of the bathroom and changing facility provisions?*

*Answer:* The Act does not contain provisions concerning enforcement of the bathroom and changing facility requirements.

5. *What is the status of the lawsuit filed against the Governor, the Attorney General, and the University and how will it affect the implementation of the Act?*

*Answer:* The lawsuit is pending in federal court. The plaintiffs include a student, a faculty member, and a staff member from UNC system institutions. Once the lawsuit is formally served, the University will have several weeks to file a response. The lawsuit alleges that the Act violates rights to equal protection, due process, and privacy protected by the United States Constitution and discriminates on the basis of sex in violation of Title IX. The plaintiffs have asked the court to declare the Act unconstitutional and to stop the state from enforcing its provisions. The Attorney General has announced that he will not represent the Governor or the University in the lawsuit. The University will work with the Attorney General's office to make arrangements for counsel in the lawsuit. Like all public agencies, the University is required to fulfill its obligations under the law unless or until the court directs otherwise.

6. *What should constituent institutions do if contacted by a federal regulatory agency concerning the Act and its implementation?*

*Answer:* If your institution is contacted by a federal agency with questions about the Act, please notify the Division of Legal Affairs at UNC General Administration.

7. *What is the effective date of the Act?*

*Answer:* The Act took effect and became law on March 23, 2016.

8. *Are there any other issues that institutions should consider?*

*Answer:* State and federal law protect personal privacy and limit the personal information that may be requested and/or disclosed by the University concerning students, employees, visitors, patients, and others. In addition, constituent institutions must continue to operate in accordance with their nondiscrimination policies and must take prompt and appropriate action to prevent and address any instances of harassment and discrimination in violation of University policies.

If you have specific questions about your facilities and the Act, please address those with your campus legal counsel. We will continue to provide further guidance and information as appropriate.

Attachment

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SECOND EXTRA SESSION 2016**

**HOUSE BILL 2  
RATIFIED BILL**

AN ACT TO PROVIDE FOR SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING FACILITIES IN SCHOOLS AND PUBLIC AGENCIES AND TO CREATE STATEWIDE CONSISTENCY IN REGULATION OF EMPLOYMENT AND PUBLIC ACCOMMODATIONS.

Whereas, the North Carolina Constitution directs the General Assembly to provide for the organization and government of all cities and counties and to give cities and counties such powers and duties as the General Assembly deems advisable in Section 1 of Article VII of the North Carolina Constitution; and

Whereas, the North Carolina Constitution reflects the importance of statewide laws related to commerce by prohibiting the General Assembly from enacting local acts regulating labor, trade, mining, or manufacturing in Section 24 of Article II of the North Carolina Constitution; and

Whereas, the General Assembly finds that laws and obligations consistent statewide for all businesses, organizations, and employers doing business in the State will improve intrastate commerce; and

Whereas, the General Assembly finds that laws and obligations consistent statewide for all businesses, organizations, and employers doing business in the State benefit the businesses, organizations, and employers seeking to do business in the State and attracts new businesses, organizations, and employers to the State; Now, therefore,

The General Assembly of North Carolina enacts:

**PART I. SINGLE-SEX MULTIPLE OCCUPANCY BATHROOM AND CHANGING FACILITIES**

**SECTION 1.1.** G.S. 115C-47 is amended by adding a new subdivision to read:

"(63) To Establish Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Local boards of education shall establish single-sex multiple occupancy bathroom and changing facilities as provided in G.S. 115C-521.2."

**SECTION 1.2.** Article 37 of Chapter 115C of the General Statutes is amended by adding a new section to read:

**"§ 115C-521.2. Single-sex multiple occupancy bathroom and changing facilities.**

(a) Definitions. – The following definitions apply in this section:

- (1) Biological sex. – The physical condition of being male or female, which is stated on a person's birth certificate.
- (2) Multiple occupancy bathroom or changing facility. – A facility designed or designated to be used by more than one person at a time where students may be in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a school restroom, locker room, changing room, or shower room.
- (3) Single occupancy bathroom or changing facility. – A facility designed or designated to be used by only one person at a time where students may be in various states of undress. A single occupancy bathroom or changing facility may include, but is not limited to, a single stall restroom designated as unisex or for use based on biological sex.

(b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Local boards of education shall require every multiple occupancy bathroom or changing facility that is





designated for student use to be designated for and used only by students based on their biological sex.

(c) Accommodations Permitted. – Nothing in this section shall prohibit local boards of education from providing accommodations such as single occupancy bathroom or changing facilities or controlled use of faculty facilities upon a request due to special circumstances, but in no event shall that accommodation result in the local boards of education allowing a student to use a multiple occupancy bathroom or changing facility designated under subsection (b) of this section for a sex other than the student's biological sex.

(d) Exceptions. – This section does not apply to persons entering a multiple occupancy bathroom or changing facility designated for use by the opposite sex:

- (1) For custodial purposes.
- (2) For maintenance or inspection purposes.
- (3) To render medical assistance.
- (4) To accompany a student needing assistance when the assisting individual is an employee or authorized volunteer of the local board of education or the student's parent or authorized caregiver.
- (5) To receive assistance in using the facility.
- (6) To accompany a person other than a student needing assistance.
- (7) That has been temporarily designated for use by that person's biological sex."

**SECTION 1.3.** Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 81.

"Single-Sex Multiple Occupancy Bathroom and Changing Facilities.

**"§ 143-760. Single-sex multiple occupancy bathroom and changing facilities.**

(a) Definitions. – The following definitions apply in this section:

- (1) Biological sex. – The physical condition of being male or female, which is stated on a person's birth certificate.
- (2) Executive branch agency. – Agencies, boards, offices, departments, and institutions of the executive branch, including The University of North Carolina and the North Carolina Community College System.
- (3) Multiple occupancy bathroom or changing facility. – A facility designed or designated to be used by more than one person at a time where persons may be in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a restroom, locker room, changing room, or shower room.
- (4) Public agency. – Includes any of the following:
  - a. Executive branch agencies.
  - b. All agencies, boards, offices, and departments under the direction and control of a member of the Council of State.
  - c. "Unit" as defined in G.S. 159-7(b)(15).
  - d. "Public authority" as defined in G.S. 159-7(b)(10).
  - e. A local board of education.
  - f. The judicial branch.
  - g. The legislative branch.
  - h. Any other political subdivision of the State.
- (5) Single occupancy bathroom or changing facility. – A facility designed or designated to be used by only one person at a time where persons may be in various states of undress. A single occupancy bathroom or changing facility may include, but is not limited to, a single stall restroom designated as unisex or for use based on biological sex.

(b) Single-Sex Multiple Occupancy Bathroom and Changing Facilities. – Public agencies shall require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex.

(c) Accommodations Permitted. – Nothing in this section shall prohibit public agencies from providing accommodations such as single occupancy bathroom or changing facilities upon a person's request due to special circumstances, but in no event shall that accommodation result in the public agency allowing a person to use a multiple occupancy bathroom or

changing facility designated under subsection (b) of this section for a sex other than the person's biological sex.

(d) Exceptions. – This section does not apply to persons entering a multiple occupancy bathroom or changing facility designated for use by the opposite sex:

- (1) For custodial purposes.
- (2) For maintenance or inspection purposes.
- (3) To render medical assistance.
- (4) To accompany a person needing assistance.
- (4a) For a minor under the age of seven who accompanies a person caring for that minor.
- (5) That has been temporarily designated for use by that person's biological sex."

## **PART II. STATEWIDE CONSISTENCY IN LAWS RELATED TO EMPLOYMENT AND CONTRACTING**

**SECTION 2.1.** G.S. 95-25.1 reads as rewritten:

**"§ 95-25.1. Short title and legislative ~~purpose~~ purpose; local governments preempted.**

(a) This Article shall be known and may be cited as the "Wage and Hour Act."  
(b) The public policy of this State is declared as follows: The wage levels of employees, hours of labor, payment of earned wages, and the well-being of minors are subjects of concern requiring legislation to promote the general welfare of the people of the State without jeopardizing the competitive position of North Carolina business and industry. The General Assembly declares that the general welfare of the State requires the enactment of this law under the police power of the State.

(c) The provisions of this Article supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement upon an employer pertaining to compensation of employees, such as the wage levels of employees, hours of labor, payment of earned wages, benefits, leave, or well-being of minors in the workforce. This subsection shall not apply to any of the following:

- (1) A local government regulating, compensating, or controlling its own employees.
- (2) Economic development incentives awarded under Chapter 143B of the General Statutes.
- (3) Economic development incentives awarded under Article 1 of Chapter 158 of the General Statutes.
- (4) A requirement of federal community development block grants.
- (5) Programs established under G.S. 153A-376 or G.S. 160A-456."

**SECTION 2.2.** G.S. 153A-449(a) reads as rewritten:

"(a) Authority. – A county may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the county is authorized by law to engage in. A county may not require a private contractor under this section to abide by ~~any restriction that the county could not impose on all employers in the county, such as paying minimum wage or providing paid sick leave to its employees,~~ regulations or controls on the contractor's employment practices or mandate or prohibit the provision of goods, services, or accommodations to any member of the public as a condition of bidding on a ~~contract~~ contract or a qualification-based selection, except as otherwise required or allowed by State law."

**SECTION 2.3.** G.S. 160A-20.1(a) reads as rewritten:

"(a) Authority. – A city may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the city is authorized by law to engage in. A city may not require a private contractor under this section to abide by ~~any restriction that the city could not impose on all employers in the city, such as paying minimum wage or providing paid sick leave to its employees,~~ regulations or controls on the contractor's employment practices or mandate or prohibit the provision of goods, services, or accommodations to any member of the public as a condition of bidding on a ~~contract~~ contract or a qualification-based selection, except as otherwise required or allowed by State law."

**PART III. PROTECTION OF RIGHTS IN EMPLOYMENT AND PUBLIC ACCOMMODATIONS**

**SECTION 3.1.** G.S. 143-422.2 reads as rewritten:

**"§ 143-422.2. Legislative declaration.**

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, biological sex or handicap by employers which regularly employ 15 or more employees.

(b) It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general.

(c) The General Assembly declares that the regulation of discriminatory practices in employment is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement upon an employer pertaining to the regulation of discriminatory practices in employment, except such regulations applicable to personnel employed by that body that are not otherwise in conflict with State law."

**SECTION 3.2.** G.S. 143-422.3 reads as rewritten:

**"§ 143-422.3. Investigations; conciliations.**

The Human Relations Commission in the Department of Administration shall have the authority to receive charges of discrimination from the Equal Employment Opportunity Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this process, the agency shall use its good offices to effect an amicable resolution of the charges of discrimination. This Article does not create, and shall not be construed to create or support, a statutory or common law private right of action, and no person may bring any civil action based upon the public policy expressed herein."

**SECTION 3.3.** Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 49B.

"Equal Access to Public Accommodations.

**"§ 143-422.10. Short title.**

This Article shall be known and may be cited as the Equal Access to Public Accommodations Act.

**"§ 143-422.11. Legislative declaration.**

(a) It is the public policy of this State to protect and safeguard the right and opportunity of all individuals within the State to enjoy fully and equally the goods, services, facilities, privileges, advantages, and accommodations of places of public accommodation free of discrimination because of race, religion, color, national origin, or biological sex, provided that designating multiple or single occupancy bathrooms or changing facilities according to biological sex, as defined in G.S. 143-760(a)(1), (3), and (5), shall not be deemed to constitute discrimination.

(b) The General Assembly declares that the regulation of discriminatory practices in places of public accommodation is properly an issue of general, statewide concern, such that this Article and other applicable provisions of the General Statutes supersede and preempt any ordinance, regulation, resolution, or policy adopted or imposed by a unit of local government or other political subdivision of the State that regulates or imposes any requirement pertaining to the regulation of discriminatory practices in places of public accommodation.

**"§ 143-422.12. Places of public accommodation – defined.**

For purposes of this Article, places of public accommodation has the same meaning as defined in G.S. 168A-3(8), but shall exclude any private club or other establishment not, in fact, open to the public.

**"§ 143-422.13. Investigations; conciliations.**

The Human Relations Commission in the Department of Administration shall have the authority to receive, investigate, and conciliate complaints of discrimination in public accommodations. Throughout this process, the Human Relations Commission shall use its good

offices to effect an amicable resolution of the complaints of discrimination. This Article does not create, and shall not be construed to create or support, a statutory or common law private right of action, and no person may bring any civil action based upon the public policy expressed herein."

**PART IV. SEVERABILITY**

**SECTION 4.** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. If any provision of this act is temporarily or permanently restrained or enjoined by judicial order, this act shall be enforced as though such restrained or enjoined provisions had not been adopted, provided that whenever such temporary or permanent restraining order or injunction is stayed, dissolved, or otherwise ceases to have effect, such provisions shall have full force and effect.

**PART V. EFFECTIVE DATE**

**SECTION 5.** This act is effective when it becomes law and applies to any action taken on or after that date, to any ordinance, resolution, regulation, or policy adopted or amended on or after that date, and to any contract entered into on or after that date. The provisions of Sections 2.1, 2.2, 2.3, 3.1, 3.2, and 3.3 of this act supersede and preempt any ordinance, resolution, regulation, or policy adopted prior to the effective date of this act that purports to regulate a subject matter preempted by this act or that violates or is not consistent with this act, and such ordinances, resolutions, regulations, or policies shall be null and void as of the effective date of this act.

In the General Assembly read three times and ratified this the 23<sup>rd</sup> day of March, 2016.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

\_\_\_\_\_  
Pat McCrory  
Governor

Approved \_\_\_\_\_m. this \_\_\_\_\_ day of \_\_\_\_\_, 2016

# EXHIBIT 3

LETTER FROM MARGARET SPELLINGS, PRESIDENT, UNIV. OF N.C., TO SHAHEENA AHMAD SIMONS, ACTING CHIEF, U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., EDUC. OPPORTUNITIES SECTION 3 (APR. 13, 2016)



**Constituent Universities**

Appalachian  
State University

East Carolina  
University

Elizabeth City  
State University

Fayetteville State  
University

North Carolina  
Agricultural and  
Technical State  
University

North Carolina  
Central University

North Carolina  
State University  
at Raleigh

University of  
North Carolina  
at Asheville

University of  
North Carolina  
at Chapel Hill

University of  
North Carolina  
at Charlotte

University of  
North Carolina  
at Greensboro

University of  
North Carolina  
at Pembroke

University of  
North Carolina  
at Wilmington

University of  
North Carolina  
School of the Arts

Western Carolina  
University

Winston-Salem  
State University

**Constituent High School**

North Carolina  
School of Science  
and Mathematics

An Equal Opportunity/  
Affirmative Action Employer

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April 13, 2016

**VIA ELECTRONIC AND U.S. MAIL: [shaheena.simons@usdoj.gov](mailto:shaheena.simons@usdoj.gov)**

Ms. Shaheena Ahmad Simons, Acting Chief  
U.S. Department of Justice  
Civil Rights Division  
Educational Opportunities Section  
950 Pennsylvania Ave, NW  
Washington, D.C. 20530

**Subject:** The Department of Justice's request for information on the University of North Carolina's compliance with Title IX of the Education Amendments of 1972 (Title IX) and the federal regulations implementing Title IX and the Violence Against Women Reauthorization Act of 2013 (VAWA)

Dear Acting Chief Simons:

I write to respond to your letter of April 8, 2016, requesting information about the University of North Carolina's compliance with Title IX, the regulations implementing Title IX, and VAWA. The University of North Carolina (the University) is a public multi-campus university composed of sixteen institutions of higher education and a constituent high school. The University's constituent institutions receive federal financial support and are covered by Title IX and VAWA.

We understand that your request has been prompted by the enactment of the Public Facilities Privacy and Security Act (H.B. 2), which was passed by the North Carolina General Assembly on March 23, 2016, following a one-day special session. The bill was quickly signed into law by the Governor and took effect that same day. After first receiving notice of the bill's contents on the morning of the General Assembly's special session, University staff discovered that the University would be subject to Part I, Section 1.3 of H.B. 2 as a public agency of the State of North Carolina. The University advised the General Assembly through staff that, as written, the bill could conflict with the University's obligations under Title IX and other federal regulations or sub-regulatory guidance as a recipient of federal funds.

With that background and context, I am able to provide the following information and answers to your questions:

**1. Is the document attached to this letter a true and accurate copy of a memorandum from you to the UNC Chancellors?**

Yes. The memorandum you provided dated April 5, 2016, is a true and accurate copy of the memorandum from President Spellings to the UNC constituent institutions' chancellors.

**2. Does the attached memorandum still reflect the position of the UNC system regarding its obligations under, and its plans to comply with, H.B. 2?**

The April 5, 2016, memorandum provides only factual statements on the requirements of H.B. 2. It is neither an endorsement of the law nor a statement of the position of the University concerning H.B. 2. With regard to H.B. 2's specific provisions related to multiple-occupancy bathroom and changing facility identification and use, our constituent institutions had been labeling multiple-occupancy bathrooms and changing facilities for male or female use, and some had been designating single occupancy facilities for family/unisex/gender-neutral use, prior to the new law's passage. The memorandum affirms that the adoption of H.B. 2 will not result in any changes in our constituent institutions' practices for signage or labeling of bathrooms.

The memorandum also addresses three other key issues relevant to your inquiry:

- The University and its constituent institutions will not change existing non-discrimination policies that apply to all students and employees, and we will not tolerate any sort of harassing or discriminatory behavior on the basis of gender identity or sexual orientation. The University's Policy Statement on Equality of Opportunity in the University is included with this response, and continues to include gender identity and sexual orientation as protected statuses, along with race, color, religion, sex, national origin, age, disability, genetic information, and veteran status. See **Attachment 1**.
- The law does not address enforcement and confers no authority for the University or any other public agency to undertake enforcement actions. Moreover, state and federal law protect personal privacy and prohibit the University from requesting and disclosing personal information concerning students, employees, patients, and others.
- The University and its constituent institutions will continue to operate in accordance with our non-discrimination policies and will address and remedy any instances of discrimination and harassment in accordance with existing University policy and applicable law.

Following the issuance of the memorandum, President Spellings reaffirmed the University's fundamental commitment to diversity and inclusion and to ensuring that our campuses are welcoming and safe places for students and faculty of all backgrounds, beliefs, and identities. A written statement issued by President Spellings is included with this response as **Attachment 2**. She has maintained contact on this issue with state leaders, including the Governor and members of the General Assembly, and has informed them not only of the reactions to the law from our students, faculty, staff, and University communities, but explained how H.B. 2 has affected campus climate. President Spellings has also shared information with state leaders about the growing costs and impact that the passage of the law is having in areas such as faculty, staff, and student recruitment; attendance at and participation in academic conferences; private fundraising; and competition for research and grant funding.

**3. Please provide information about any additional steps UNC is taking to implement H.B. 2 beyond the issuance of the attached memorandum.**

The University is taking no additional action. The April 5, 2016, memorandum from President Spellings provides only factual statements about the requirements of H.B. 2. The University's non-discrimination policies and equal opportunity practices and procedures remain in place; they are unaffected by the passage of H.B. 2. The passage of H.B. 2 has not required any change in practices for labeling bathrooms. As noted above, President Spellings continues to talk with state leaders about the effects of the law on the University.

**4. Please provide any additional guidance documents that UNC has prepared for implementation of H.B. 2 on UNC campuses.**

The University has no other guidance documents prepared for implementation of H.B. 2.

**5. Please provide any other information that UNC believes is relevant for consideration.**

The University did not request that H.B. 2 be considered or adopted; however, the University is specifically covered by H.B. 2 and is required as a public agency to comply with its applicable portions, including the provisions related to multiple-occupancy bathrooms and changing facilities. The Fourth Circuit has not yet determined whether discrimination based on "sex" includes discrimination based on "gender identity," and U.S. Supreme Court and Fourth Circuit case law is clear that state legislative enactments are presumptively valid and constitutional until an appropriate court determines otherwise.

During the special session on March 23, the University offered information and technical guidance to the General Assembly staff about the potential effects of the law. The University explained that H.B. 2's provisions could create tension with Title IX, Title VII, Executive Order 11246, as amended, and their associated regulations and with previous sub-regulatory guidance from the federal government. We also explained that the bill could affect more than \$1 billion in funding to the University's constituent institutions due to our receipt of federal financial aid and grants and the status of the University and many of our constituent institutions as federal contractors.

Because H.B. 2 permits employers to have more expansive non-discrimination policies for their own employees, the University will not change any of its existing policies and equal opportunity practices, which already address sexual orientation and gender identity. See again **Attachment 1** and **Attachment 2**. The Governor issued Executive Order No. 93 on April 12, 2016, to clarify H.B. 2's requirements, and it affirms the University's interpretation that this law permits the University to include broader non-discrimination protections for employees and students than H.B. 2 explicitly provides. See **Attachment 3**. Additionally, and consistent with the University's existing Policy Statement on Equality of Opportunity, Executive Order No. 93 further expands the state's employment policy for state employees by including sexual orientation and gender identity as protected statuses. Although Executive Order No. 93 affirms that H.B. 2 requires the University to comply with the provisions of the new law related to bathrooms and changing facilities, the executive order, like H.B. 2, does not address enforcement in any way. The University has no process or means to enforce H.B. 2's provisions. The University and its constituent institutions did not take steps to verify or prohibit individuals from accessing bathrooms according to their gender identity prior to H.B. 2's passage, and will not adopt any such practices as a result of H.B. 2's passage.



Shaheena Ahmad Simons, Acting Chief  
Page 4 of 5  
April 13, 2016

In drafting and considering the bill, we understand that some legislators and staff in the General Assembly may have relied in part upon information found in a flyer entitled "Dispelling the Myths." This flyer is included with this response as **Attachment 4**. The flyer's content is based on the observation that federal sub-regulatory guidance that identifies gender identity as a protected class has not been determined to be legally binding on the University and also that no school has lost federal funding since the enactment of Title IX.

We gather that in supporting H.B. 2, some members of the North Carolina General Assembly and staff have relied on the District Court's order in *Grimm v. Gloucester County School Board*, a case now on appeal to the Fourth Circuit Court of Appeals. We know that the Department of Justice is fully familiar with that case, having filed a brief in support of the plaintiff, but some brief explanation may help put the provisions of H.B. 2 into context. In *Grimm*, a parent acting on behalf of her child who was born as a biological female but identifies and presents as male, contested the Gloucester County School Board's resolution and resulting policy that required students to use restroom and locker room facilities that corresponded to their "biological genders" and that called for students with "gender identity issues" to be provided with alternative appropriate private facilities. The plaintiff challenged the policy under the Equal Protection Clause of the Fourteenth Amendment and Title IX of the Education Amendments of 1972 and also sought a preliminary injunction. The School Board filed a motion to dismiss the Title IX claim, and the District Court granted the motion upon determining that the Department of Education's interpretive guidance that sex includes gender identity should not be given deference, in part because Title IX regulations are not ambiguous about the permissibility of having separate toilet or shower facilities based on sex. As you know, the District Court did not determine whether "sex" includes "gender identity."

As you may also know, the University is now a named defendant in a federal lawsuit, *Carcaño, et al. v. McCrory, et al.*, brought by the ACLU, Equality North Carolina, and three individuals who are either students or employees at constituent institutions of the University. That complaint is included with this response as **Attachment 5**. This lawsuit was filed within days of the enactment of H.B. 2. It challenges the constitutionality of the law under the Fourteenth Amendment and asserts that H.B. 2's treatment of transgender people violates Title IX of the Education Amendments of 1972. The plaintiffs are seeking declaratory and injunctive relief.

Appreciation of diversity and a commitment to inclusiveness are values inherent to the University. We therefore take our responsibilities under Title IX, Title VII, VAWA, Executive Orders 13672 and 11246, and other authority seriously. We are committed to providing safe and welcoming environments for all of our employees, students, and visitors. We will continue to work with our legislative leaders to address any concerns. We therefore welcome any additional authority or guidance that the Department of Justice or Department of Education may provide that would facilitate resolving this matter quickly.

Please let me know if you have any further questions or if I can be of additional assistance.

Sincerely,



Thomas C. Shanahan

Shaheena Ahmad Simons, Acting Chief  
Page 5 of 5  
April 13, 2016

cc: Margaret Spellings, President  
W. Louis Bissette, Jr., Chair of the UNC Board of Governors

Enclosures (5):

Attachment 1 - Section 103 of *The Code of The University of North Carolina*

Attachment 2 - President Spellings' Written Statement on H.B. 2 from April 12, 2016

Attachment 3 - Executive Order No. 93 Issued by Governor McCrory on April 12, 2016

Attachment 4 - "Dispelling the Myths" Flyer

Attachment 5 - *Carcaño, et al. v. Patrick McCrory, Roy Cooper III, University of North Carolina; Board of Governors of the University of North Carolina; and W. Louis Bissette, Jr.*

# EXHIBIT 4

BLAKE HODGE, *UNC PRESIDENT MARGARET SPELLINGS CLARIFIES STANCE ON HB2,*  
CHAPELBORO (APR. 8, 2016,)

[chapelboro.com](http://chapelboro.com)

## UNC President Margaret Spellings Clarifies Stance on HB2

*By Blake Hodge*



*Margaret*

*Spellings on UNC Visit. Photo via Blake Hodge.*

Margaret Spellings said on Friday that she wanted to “clarify

perhaps some confusion about the guidance that went out” to the UNC System campuses in a memo dated Tuesday, April 5.

The memo [told campuses](#) that the controversial House Bill 2 did not limit the universities abilities to adopt nondiscrimination policies toward their own employees but did write that the campuses “must require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.”

The memo drew criticism from LGBT advocacy groups including the American Civil Liberties Union, ACLU of North Carolina, Lambda Legal and Equality NC, which have filed a lawsuit in federal court challenging the constitutionality of the law.

Spellings said she did not believe the legislature thoroughly understood the ripple-effect of House Bill 2 when it was passed during a special session of the General Assembly.

“It was, we believe, hastily drawn, perhaps without fully considering all of the implications that were at hand,” Spellings said.

Spellings said that the memo that was sent to campuses was in response to a number of questions coming in to the system offices, and that it was intended as a “just the facts, ma’am, kind of a document.”

“It is in no way an endorsement of this law,” Spellings added.

“That’s not my job. I’m not a member of the North Carolina General Assembly. I’m a state office holder who is charged with upholding the laws of this state.

“We are not in a position to pick and choose which laws.”

Spellings said that she has spoken with members of the General Assembly about the impact of the law on the system and reiterated to them the importance of having university campuses that are welcoming to all, as is the reputation of campuses in North Carolina.

“We want to maintain that full and open kind of culture and climate in our institutions,” Spelling said.

Spellings said that she is “channeling” the concerns she is hearing

from students, faculty members and university leadership from different campuses while she is on her tour of all of the system campuses since being installed as President in March.

“I think there’s a general anxiety for starters,” she recalled. “And then I think there are issues, and this is the kind of thing I’m hearing, that professional conferences are in question, recruitment of faculty and staff – far beyond those who are directly affected by the law, those people who are transgender – but students and faculty broadly who think, ‘Well, if this is a place that is unwelcoming of that particular class of people, what does that mean for others?’”

Spellings clarified that system leadership was not consulted on the law and the implications that it carried.

“Were it up to me, I would not recommend enactment of such a thing,” Spellings said. “Because I do think it creates this idea that is far beyond the particular aspects of this bathroom transgender matter.”

Spellings said that she is concerned over the impact the legislation

will have on the university system.

“I think it sends a chill through these institutions for staff, faculty and student recruitment.”

Spellings added she would be in touch with the US Department of Education in hopes to learn their intentions regarding the law’s impact on federal funding and grants.

As far as enforcement of this legislation when it comes to making members of each campus community use the bathroom that corresponds with their birth certificate rather than their gender identity, UNC General Counsel Thomas Shanahan the law is “silent on enforcement, doesn’t address it at all and doesn’t give the authority to anyone to enforce it, in its language.”

That statement led Spellings to say, “We don’t intend to enforce anything.”

Did you see something wrong in this story, or something missing?

[Let us know](#)



# EXHIBIT 5

JESS CLARK, *UNC BOARD MEMBERS CONCERNED ABOUT HB2*, WUNC (APR. 16, 2016)

[wunc.org](http://wunc.org)

## UNC Board Members Concerned About HB2

*Jess Clark*

About a hundred protestors rallied outside the UNC Board of Governors meeting in Chapel Hill Friday morning. Many protestors said they were there to object to the election of UNC System President Margaret Spellings and to her directive to colleges and universities to comply with HB2.

The meeting was originally scheduled to take place at UNC Asheville but was moved to Chapel Hill. Officials from UNCA and UNC General Administration said they changed the location to avoid large protests on UNCA's campus.

Spellings hasn't expressed support for HB2, the new law that prohibits people from using restrooms that don't correspond to the

sex listed on their birth certificates in public facilities. Spellings has expressed concern HB2 could have a "chilling" impact on the university system. But many students see her directive to comply as implicit support.

UNC-Chapel Hill student Jayna Fishman identifies as transgender and was protesting outside the building before and during the meeting.

"Margaret Spellings' compliance...(with) HB2 has been really harmful to me," Fishman said. HB2 allows Fishman to use gender-neutral bathrooms. But Fishman says they are few and far between on campus.

"HB2 really just cements the fact that nobody wants me there," Fishman said.

During the meeting, Spellings was in the middle of her monthly report, when about twenty students in public seating stood up, and began chanting.

UNC BOG Chairman Lou Bisette called a recess while police

officers cleared the board room. The protestors eventually agreed to leave voluntarily, shouting angrily in unison as they left the building.

When members returned, Spellings reiterated concern about the new law.

"The chancellors tell me we are at risk of losing great teachers, and faculty, and potential business partners and philanthropic support," Spellings told the board.

"We all believe that our universities must be welcoming places for all," she said. "It's a core value for this institution and an absolute necessity if we want North Carolina to sustain the educational excellence and leadership that we so treasure."

At the same time, Spellings reiterated her intention to comply.

"As a state agency this university and its officers are expected and will follow HB2 and every other law of this state," she said.

BOG Chairman Lou Bissette told reporters he, too, worries about

the impacts of HB2.

"We've had some people call up and say, 'We're not going to complete our pledge,' or we've had some anecdotal evidence that some students have said, 'I'm withdrawing my application'—that's bad. That's not good," Bissette said.

The board released a statement saying they will continue to provide information to the General Assembly about the impact of HB2 on the university system and that they will cooperate to make adjustments to the law in the short session, if lawmakers see fit.

# EXHIBIT 6

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL  
HILL, MESSAGE FROM UNIVERSITY LEADERS: UPDATE  
ON HOUSE BILL 2

(APR. 8, 2016)

[unc.edu](http://unc.edu)

## **Message from University leaders: Update on House Bill 2 - The University of North Carolina at Chapel Hill**

Dear Campus Community:

Over the past several weeks, since House Bill 2 (HB2) became the Public Facilities Privacy and Security Act, the response to this new law on our campus has grown more intense and more quickly than any issue we've faced in recent memory. Diversity and inclusiveness are at the heart of what makes Carolina a true University of the people. And many on our campus now feel excluded and unwelcome here and in our state.

Several days ago, we received [guidance on HB2 issued](#) by UNC System President Margaret Spellings about how universities in the system should interpret and apply HB2. To be clear, this was not

intended to be an endorsement of HB2 – only guidance – and **all of UNC-Chapel Hill’s relevant policies remain in effect**. All that Carolina has worked hard to establish over the decades – policies including protections for sexual orientation and gender identity, and fostering a culture of acceptance, respect for one another and human dignity above all else – remain a fundamental cornerstone of what our University aspires to be.

Although the policies on our campus remain, there is no question that many in our LGBTQ community and many others are feeling unwelcome, unsafe and unhappy in the communities where they live and work. We all must work tirelessly to ensure that every member of our community feels welcome and safe and is able to share equally in the benefits of this place where we work, study and live. We encourage you to visit the [Equal Opportunity and Compliance Office](#) for more information.

The memo from UNC General Administration also confirms that the law relating to public restrooms and changing facilities does apply to the University. This is an issue that is deeply personal and involves some of our most basic and extremely private dignities. We have been asked how the University intends to “enforce” this



provision of the law. As noted in the memorandum, the law does not contain any provisions concerning enforcement. We have added and will continue to add public gender-neutral single-use restrooms and changing facilities throughout our campus and we will be adding additional signage.

It is clear that the impacts to Carolina go well beyond the personal toll. There are implications to us, ranging from conferences that will no longer send delegates to North Carolina and our campus; concerns and a pause among some prospective students, faculty, researchers and staff; current and prospective donors who are signaling a reconsideration of their gifts; grants and relationships with businesses that are now in jeopardy; and more. We will continue to share this feedback and concern about effects of the law on our campus with UNC General Administration.

What does this all mean today? We find ourselves in a complicated and uncertain legal environment, involving potential conflicts between federal and state laws that address sensitive issues about which people justifiably have strong feelings. The University must do its best to comply with all laws that govern us while taking practical steps to lessen discomfort and distress.

As University administrators and members of our Carolina community, we are in a challenging situation. We don't agree with the Act, but as stewards of this great University we must comply with it while also ensuring Carolina is welcoming and inclusive, and continues to be an economic and innovation engine for the state. We want to reassure our community, whether they are here today, have been with us in the past, or are future Tar Heels, that Carolina is deeply committed to the ideals embedded in the soul of our beloved University.

Sincerely,

Carol L. Folt  
Chancellor

James W. Dean, Jr.  
Executive Vice Chancellor and Provost

Winston Crisp  
Vice Chancellor for Student Affairs

Felicia A. Washington,

## Vice Chancellor for Workforce Strategy, Equity and Engagement

*Posted April 8, 2016*

# EXHIBIT 7

APPALACHIAN STATE UNIVERSITY, AN UPDATE ON PUBLIC FACILITIES PRIVACY  
& SECURITY ACT (HB2) DEMONSTRATIONS (APR. 12, 2016)

[chancellor.appstate.edu](http://chancellor.appstate.edu)

## **An update on Public Facilities Privacy & Security Act (HB2) Demonstrations**

Dear Appalachian Community:

Monday morning I met with three students who represented the HB2 student protestors who are occupying the first floor in the Administration Building. They shared a list of concerns from the entire occupying group.

Following the initial meeting, I met with the assembled protestors and read a statement. Much of it is outlined below.

We are addressing student protestors' concerns and will communicate regularly about our progress. One of the things I learned in the initial meeting was a concern related to intent versus impact. Students shared that our initial HB2 email messages to the

campus, while intended to be supportive and keep our community informed, were received by the students protesting as neutral. That was not our intent, but I understand and apologize for any negative impact. I want to thank my colleagues who have been meeting and talking with student protestors over recent days. We are truly fortunate to have a dedicated and caring team of professionals here at Appalachian.

Our campus values community engagement, civil discourse and thoughtful debate. We also are fortunate to have a dedicated and passionate student body. Student protestors are exercising their right to free speech and joining many across the state and nation in expressing their opposition to HB2.

Many have courageously been sharing deeply personal stories. It is this personal connection, the well-being of our students, faculty and staff, that touches me most deeply and causes me the greatest anxiety. It saddens me greatly that anyone is suffering as a result of HB2...especially on a university campus where we should stand as beacons of acceptance and inclusion. Further, I told student protestors that I value each of them for who they are and I am dedicated to working together to ensure our campus is inclusive to

all beliefs, backgrounds and identities.

Attorneys for our university and for our system have been helping us navigate this uncertain territory where federal and state laws may be at odds. Appalachian finds itself in the middle of this territory where we are required to comply with the laws of our state and work diligently to support our community during a time of fear and anxiety. I know there has been particular concern about whether or how we intend to enforce the provisions of the new law regarding bathrooms and changing facilities. HB2 does not contain provisions concerning enforcement of the bathroom and changing facility requirements.

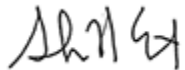
I am among many at Appalachian, and across the UNC system, in the challenging situation of being opposed to HB2; however, our charge makes our campuses subject to it, while also working to embody our campuses' commitment to a diverse, inclusive, safe and supportive environment for all members of our community.

Appalachian is known for a commitment to sustainability. One key concept of true sustainability is social equity and this concept is at the core of who we are at Appalachian. I am confident that our

campus remains and will remain committed to this central and critical ideal and that we will find a way to move forward together. It is essential that we find a solution to this important issue, and I am committed to doing my part to reach a solution that ensures the protection of our diverse community and values each individual within it.

As an important note, this afternoon, Governor McCrory signed Executive Order 93, to clarify existing state law and provide new protections for North Carolina residents. You can view the order and his statement here: <http://governor.nc.gov/press-release/governor-mccrory-takes-action-protect-privacy-and-equality>.

Sincerely,



Sheri N. Everts  
Chancellor



# EXHIBIT 8

Bradley Lucore, THE WESTERN CAROLINA JOURNALIST, *HB2 creates “chilling effect” on higher education* (Apr. 15, 2016)

[thewesterncarolinajournalist.com](http://thewesterncarolinajournalist.com)

## HB2 creates “chilling effect” on higher education

*Bradley Lucore*

Western Carolina University’s Chancellor, David Belcher, said North Carolina law House Bill 2 (HB2) has caused potential students to withdraw their applications, and some donors refuse to give money as long as the law is active.

HB2 says people must use public restrooms, locker rooms and shower facilities designated for the biological sex on their birth certificate. The legislature passed the law in retaliation of the City of Charlotte’s ordinance that would have allowed people to use the restroom based on their gender identity.

Belcher said the university is still assessing the situation, but it must find a balance between following the law and creating an inclusive

environment for everyone.

“We are passionate about ensuring that all of our students are able to live, work and play in the environment that we have here at WCU free of harassment and in safety,” Belcher said.

The university does not have transgender bathrooms on campus.

*See Chancellor Belcher’s thoughts on HB2 below:*

Gov. McCrory signed [Executive Order 93](#) on April 12, which allows private businesses to set their own restroom policies.

Public restroom facilities are limited to biological sexes but must “provide a reasonable accommodation of a single occupancy restroom, locker room or shower facility upon request due to special circumstances.”

The order also prohibits state jobs from “discrimination, harassment or retaliation on the basis of race, religion, color, national origin, sex, sexual orientation, gender identity, age, political

affiliation, genetic information, or disability.”

### **State-wide Fallout**

The American Civil Liberties Union (ACLU) is bringing a federal lawsuit against the State of North Carolina saying HB2 is unconstitutional, according to [NPR](#).

Many major companies including Apple, PepsiCo, and the NBA have denounced the state for passing the law.

National organizations have threatened to, or already did, pull business out of North Carolina. Most recently Bruce Springsteen canceled a concert in Greensboro, and Cirque du Soleil has canceled all shows in North Carolina, according to [WRAL](#).

HB2, also known as the “bathroom bill”, went into effect March 23, 2016, after the legislature met for a special session and governor Pat McCrory signed the bill later that night.

**Related story:** [WP:North Carolina governor’s misleading claim about his executive order and the LGBT law](#)

# EXHIBIT 9

NORTH CAROLINA STATE UNIVERSITY, HB2  
UPDATE: IMPACTS ON NC STATE

[leadership.ncsu.edu](https://leadership.ncsu.edu)

## HB2 Update: Impacts on NC State

Dear NC State Community:

As the end of the 2015-2016 academic year quickly approaches, most in our Wolfpack community are focused on completing their work before the semester comes to a close. For more than 5,000 of our students, this is an especially exciting time as they prepare to graduate and take their NC State experiences off campus to change the world.

In the midst of this always important and often stressful time of the year, many individuals on our campus — along with thousands across the entire University of North Carolina system — are also concerned about campus impacts and broader effects of House Bill 2, the Public Facilities Privacy and Security Act, as well as the governor's more recent executive order No. 93.

The new law does not affect NC State's strong equal opportunity and nondiscrimination [policy](#); we remain steadfast in our commitment to welcoming and supporting all people. As I included in my recent annual letter to the United States Department of Education, NC State's policies ensure that **all** students, faculty and staff are protected from discrimination, regardless of age, color, disability, gender identity, genetic information, national origin, race, religion, sex, sexual orientation or veteran status.

The law does contain specifics on the use of multiple-occupancy bathrooms and changing facilities, leaving many wondering how the university intends to enforce these provisions. First, NC State already uses appropriate signage on all restroom facilities — that will not change. Second, neither the law nor the executive order contains any provisions concerning enforcement.

It is important to know, however, that NC State has many non-gender-specific, single-occupant toilets and shower facilities that are lockable, safe and available to the campus community (in addition to those in residence halls and athletic buildings). A map of the bathroom locations can be found on the GLBT Center's website at <https://oied.ncsu.edu/glb/gender-inclusive-restrooms/>. Any

specific questions about the law and its impacts at NC State can be directed to our university's Office of General Counsel at [howlingcounsel@ncsu.edu](mailto:howlingcounsel@ncsu.edu).

I will continue working with Provost Arden and others on campus to gather information about the many real impacts of this legislation at NC State, and I will share these details with President Spellings as she continues to address this issue with state leaders.

I want to be clear to all students, faculty and staff: Each one of you is an important part of this university. We are making every effort to ensure that everyone in our community is safe and supported and has the opportunity to thrive.

At NC State, we will continue striving to ensure an environment that supports and encourages the free and open exchange of ideas and opinions, while also ensuring that all students, faculty and staff are treated with dignity and respect.

Randy Woodson  
Chancellor



# EXHIBIT 10

PUBLIC STATEMENT FROM MARGARET  
SPELLINGS, PRESIDENT, UNIV. OF N.C  
(MAY 9, 2016)



## STATEMENT

May 9, 2016

**UNC President Margaret Spellings has offered the following comment on her response to the U.S. Department of Justice regarding federal nondiscrimination law and the Public Facilities Privacy and Security Act (HB2), as well as legal action initiated today by the Department:**

Earlier this afternoon, the University responded to the U.S. Department of Justice's letter dated May 4 by again underscoring the UNC system's commitment to full compliance with federal non-discrimination laws and inviting greater dialogue with the Department to resolve concerns it has expressed about HB2.

Our first responsibility as a University is to serve our students, faculty, and staff and provide a welcoming and safe place for all. The University takes its obligation to comply with federal non-discrimination laws very seriously. We also must adhere to laws duly enacted by the State's General Assembly and Governor, however. HB2 remains the law of the State, and the University has no independent power to change that legal reality.

In these circumstances, the University is truly caught in the middle.

As the Attorney General alluded to in her press conference today, we have been in regular contact with the Department about ways to constructively resolve its inquiry into HB2 and the University's compliance with federal civil rights laws. Even though the Justice Department has chosen to file an action in federal court, we intend to continue to engage in further discussions with them on this issue.

We plan to review the Department's complaint, and in consultation with our Board of Governors and legal counsel tomorrow (Tuesday, May 10) during a special meeting of the Board, to determine next steps.

We will continue to keep constituencies apprised as new information becomes available.

# EXHIBIT 11

LETTER FROM VANITA GUPTA, PRINCIPAL DEPUTY ASSISTANT  
ATTORNEY GEN., U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., TO PAT  
MCCRORY, GOVERNOR, STATE OF N.C. (MAY 4, 2016)



U.S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

May 4, 2016

Via electronic and overnight mail

Governor Pat McCrory  
State of North Carolina  
North Carolina Office of the Governor  
116 West Jones Street  
Raleigh, NC 27603-8001

Dear Governor McCrory:

This letter is to inform you that the Department of Justice has determined that, as a result of compliance with and implementation of North Carolina House Bill 2 (“H.B. 2”), both you and the State of North Carolina (the “State”) are in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”). Specifically, the State is engaging in a pattern or practice of discrimination against transgender state employees and both you, in your official capacity, and the State are engaging in a pattern or practice of resistance to the full enjoyment of Title VII rights by transgender employees of public agencies.

Title VII prohibits an employer from discriminating against an individual on the basis of sex and from otherwise resisting the full enjoyment of Title VII rights. *See* 42 U.S.C. § 2000e-2. The Supreme Court made clear in *Price Waterhouse v. Hopkins* that discrimination on the basis of “sex” includes differential treatment based on any “sex-based consideration[.]” 490 U.S. 228, 242 (1989) (plurality). Federal courts and administrative agencies have applied Title VII to discrimination against transgender individuals based on sex, including gender identity. *See, e.g., Glenn v. Brumby*, 663 F.3d 1312, 1315-20 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Schroer v. Billington*, 577 F. Supp. 2d 293, 303-08 (D.D.C. 2008); *Macy v. Holder*, Appeal No. 0120120821, 2012 WL 1435995, at \*4-11 (EEOC Apr. 20, 2012).

Access to sex-segregated restrooms and other workplace facilities consistent with gender identity is a term, condition, or privilege of employment. Denying such access to transgender individuals, whose gender identity is different from their gender assigned at birth, while affording it to similarly situated non-transgender employees, violates Title VII. Significantly, the U.S. Equal Employment Opportunity Commission (“EEOC”) recently addressed this very issue and held that “[e]qual access to restrooms is a significant, basic condition of employment, and that denying transgender individuals access to a restroom consistent with gender identity discriminates on the basis of sex in violation of Title VII.” *Lusardi v. Dep’t of the Army*, No. 0120133395, 2015 WL 1607756, at \*9 (EEOC Apr. 1, 2015). And, in interpreting the analogous

sex discrimination provision of Title IX of the Education Amendments of 1972,<sup>1</sup> the United States Court of Appeals for the Fourth Circuit held in *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467 at \*11 (4th Cir. Apr. 19, 2016), that the Department of Education's guidance that educational institutions "generally must treat transgender students consistent with their gender identity" is entitled to "controlling weight" under *Auer v. Robbins*, 519 U.S. 452, 461 (1997).

H.B. 2, which took effect on March 23, 2016, is facially discriminatory against transgender employees on the basis of sex because it treats transgender employees, whose gender identity does not match their "biological sex," as defined by H.B. 2,<sup>2</sup> differently from similarly situated non-transgender employees. Under H.B. 2, non-transgender state employees may access restrooms and changing facilities that are consistent with their gender identity in public buildings, while transgender state employees may not.

H.B. 2 places similar restrictions on access to restrooms and changing facilities for all public agencies<sup>3</sup> in North Carolina, including, for example, all political subdivisions of the State. On April 12, 2016, you issued Executive Order 93, reaffirming the applicability of this provision of H.B. 2 to all cabinet agencies. By requiring compliance with H.B. 2, you and the State are therefore resisting the full enjoyment of Title VII rights and discriminating against transgender employees of public agencies by requiring those public agencies to comply with H.B. 2.

Based upon the above, we have concluded that, in violation of Title VII, the State is engaged in a pattern or practice of discrimination against its employees and both you and the State are engaged in a pattern or practice of resistance to the full enjoyment of Title VII rights by employees of public agencies. When the Attorney General of the United States has a reasonable basis to believe that a state or person has engaged in a pattern or practice of discrimination in violation of Title VII, she may apply to the appropriate court for an order that will ensure compliance with Title VII. *See* 42 U.S.C. § 2000e-6(a). This responsibility has been delegated to the Principal Deputy Assistant Attorney General of the Civil Rights Division.

Please advise the Department, therefore, no later than close of business on May 9, 2016 whether you will remedy these violations of Title VII, including by confirming that the State will not comply with or implement H.B. 2, and that it has notified employees of the State and public agencies that, consistent with federal law, they are permitted to access bathrooms and other facilities consistent with their gender identity.

We further inform you that today the Department sent letters addressed to the North Carolina Department of Public Safety and the University of North Carolina similarly notifying

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<sup>1</sup> Courts consider often Title VII and Title IX precedent together when analyzing discrimination claims. *See, e.g., Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 74 (1992); *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007); *Murray v. N.Y. Univ. Coll. of Dentistry*, 57 F.3d 243, 249 (2d Cir. 1995).

<sup>2</sup> H.B. 2 defines "biological sex" as the "physical condition of being male or female, which is stated on a person's birth certificate." N.C. Gen. Stat. 143-760(a)(1).

<sup>3</sup> "Public Agencies" are defined by the Act as including: executive branch agencies; all agencies, boards, offices, and departments under the direction and control of a member of the Council of State; units, as defined in N.C. Gen. Stat. 159-7(b)(15); public authorities, as defined in N.C. Gen. Stat. 159-7(b)(10); local boards of education, the judicial and legislative branches, and any other political subdivision of the States. N.C. Gen. Stat. 143-760(a)(4).

them of our conclusion that they have engaged in violations of Title VII, as well as violations of Title IX and its implementing regulations, and the Violence Against Women Reauthorization Act of 2013 ("VAWA"). Courtesy copies of those letters are enclosed.

If you have questions about this letter, please contact Delora Kennebrew at (202) 514-3831/ [Delora.Kennebrew@usdoj.gov](mailto:Delora.Kennebrew@usdoj.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Vanita Gupta", with a long horizontal flourish extending to the right.

Vanita Gupta  
Principal Deputy Assistant Attorney General

# EXHIBIT 12

LETTER FROM VANITA GUPTA, PRINCIPAL DEPUTY  
ASSISTANT ATTORNEY GEN., U.S. DEP'T OF JUSTICE, CIVIL  
RIGHTS DIV., TO MARGARET SPELLINGS ET AL., PRESIDENT,  
UNIV. OF N.C. (MAY 4, 2016)



U.S. Department of Justice

Civil Rights Division

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Washington, D.C. 20530

May 4, 2016

*Via electronic and overnight mail*

Margaret Spellings  
President, University of North Carolina  
P.O. Box 2688  
Chapel Hill, NC 27515

Thomas C. Shanahan  
Senior Vice President and General Counsel  
P.O. Box 2688  
Chapel Hill, NC 27515

University of North Carolina Board of Governors  
c/o W. Louis Bisette, Jr., Chairman  
General Administration  
P. O. Box 2688  
Chapel Hill, NC 27515

Dear President Spellings, Chairman Bisette, and Mr. Shanahan:

On April 8, 2016, the United States Department of Justice (the "Department") requested information necessary to determine whether the University of North Carolina system (including its Board of Governors) ("UNC") is complying with Title IX of the Education Amendments of 1972 ("Title IX"), and its implementing regulations, and the Violence Against Women Reauthorization Act of 2013 ("VAWA").<sup>1</sup> Our information request described recent statements by President Spellings in an April 5, 2016 Memorandum titled "Guidance – Compliance with the Public Facilities Privacy & Security Act," in which you provided guidance on North Carolina House Bill 2 ("H.B. 2"). President Spellings' memorandum instructed Chancellors of the UNC system that "University institutions must require every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex." Memorandum at 1 (Q & A No. 2). Our letter asked, among other questions, whether your Memorandum still reflects the position of the UNC system regarding its obligations under, and its plans to comply with, H.B. 2.

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<sup>1</sup> As described in our letter, our inquiry about the UNC system's Title IX and VAWA compliance was prompted by the recent enactment of North Carolina House Bill 2 ("H.B. 2"), which was signed into law and took effect on March 23, 2016. Part I of H.B. 2 states that "[p]ublic agencies shall require every multiple occupancy bathroom or changing facility to be designated for and only used by persons based on their biological sex," and defines "biological sex" as "[t]he physical condition of being male or female, which is stated on a person's birth certificate." H.B. 2, Section 1.3, codified at N.C.G.S. 143-760(a)(1) & (b). The UNC system is a "public agency" under H.B. 2. See N.C.G.S. 143-760(a)(2) & (4).



UNC's response to our letter, dated April 13, 2016, confirmed issuance of the Memorandum, and attached an additional statement about the impact of H.B. 2 on the UNC System. See President Spellings' comments on the Public Facilities Privacy and Security Act (HB2), available at [https://www.northcarolina.edu/sites/default/files/4.11.16\\_ms\\_statement\\_on\\_hb2\\_0.pdf](https://www.northcarolina.edu/sites/default/files/4.11.16_ms_statement_on_hb2_0.pdf). Nothing in your response to our letter or your supplemental statement changes President Spellings' instruction to Chancellors that University institutions "must require" every multiple-occupancy bathroom and changing facility to be "used only by persons based on their biological sex."

As a recipient of federal financial assistance, including financial assistance from the Department of Justice's Office of Justice Programs ("OJP") and Office on Violence Against Women ("OVW"), the UNC system must comply with Title IX and VAWA. As an employer, UNC is also obligated to comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII"). This letter serves as notice that the Department has determined that UNC is in violation of Title VII, Title IX, and VAWA and is seeking UNC's compliance. If we do not receive assurances and documentation on or before close of business on May 9, 2016 demonstrating UNC has taken the actions described below or comparable steps to achieve compliance, the Department will take enforcement action.

**A. Federal Law Prohibits UNC from Discriminating Against Transgender Individuals.**

Federal law prohibits UNC from discriminating based on sex, including gender identity. As a recipient of federal funds from OVW, UNC must comply with VAWA, which provides that "[n]o person in the United States shall, on the basis of actual or perceived \* \* \* sex, gender identity (as defined in paragraph 249(c)(4) of title 18, United States Code) \* \* \*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under [VAWA] \* \* \*." 42 U.S.C. § 13925(b)(13)(A). As a condition of accepting funds from OVW, UNC signed assurances specifically acknowledging this requirement and "that it will comply with this provision."

Similarly, Title IX and its implementing regulations prohibit discrimination on the basis of sex in education programs and activities operated by recipients of federal financial assistance. 20 U.S.C. § 1681; 34 C.F.R. 106.31; 28 C.F.R. Part 54. As a condition of accepting funds from the Department, UNC signed assurances specifically acknowledging that it will comply with Title IX. Title IX's prohibitions of discrimination cover "any person," including students and employees, as well as third parties, such as parents and other visitors to campus. The U.S. Department of Education, Office for Civil Rights ("OCR"), has issued Title IX guidance clarifying that all students, including transgender students, are protected from sex-based discrimination under Title IX and that Title IX's prohibition on sex discrimination extends to discrimination based on gender identity.<sup>2</sup> See OCR's April 2014 Questions and Answers on

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<sup>2</sup> Federal courts routinely look to OCR guidance when construing Title IX and other federal civil rights laws enforced by the United States. See, e.g., *Davis v. Monroe Cnty. Bd. of Educ.*, 529 U.S. 629, 647-48 (1999); *Favia v. Indiana Univ. of Pa.*, 812 F. Supp. 578, 584 (W.D. Pa. 1993) ("OCR's policy interpretation [of Title IX] deserves

Title IX and Sexual Violence at B-2, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

While the Department of Education'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. *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>. Under the Department of Education's interpretation of its regulations, where a school provides separate restrooms for men and women, barring a student from the restrooms that correspond to his or her gender identity because the student is transgender constitutes unlawful sex discrimination in violation of Title IX.

In your April 13th letter, you expressed interest in any additional authority or guidance on this issue. On April 19, 2016, the United States Court of Appeals for the Fourth Circuit issued an opinion in *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467 (4th Cir. Apr. 19, 2016), regarding educational institutions' obligations to transgender students under Title IX and, in particular, under an implementing regulation promulgated by the Department of Education governing access to restrooms and locker rooms, 34 C.F.R. §106.33. In the *Gloucester* decision, the Fourth Circuit held that the Department of Education's guidance that educational institutions "generally must treat transgender students consistent with their gender identity" is entitled to "controlling weight" under *Auer v. Robbins*, 519 U.S. 452, 461 (1997). *Gloucester*, 2016 WL 1567467 at \*11.

Title VII also prohibits an employer from discriminating against an individual on the basis of sex. *See* 42 U.S.C. § 2000e-2. The Supreme Court made clear in *Price Waterhouse v. Hopkins* that discrimination on the basis of "sex" includes differential treatment based on any "sex-based consideration[]." 490 U.S. 228, 242 (1989) (plurality). Federal courts and administrative agencies have applied Title VII to discrimination against transgender individuals based on sex, including gender identity. *See, e.g., Glenn v. Brumby*, 663 F.3d 1312, 1315-20 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Schroer v. Billington*, 577 F. Supp. 2d 293, 303-08 (D.D.C. 2008); *Macy v. Holder*, Appeal No. 0120120821, 2012 WL 1435995, at \*4-11 (EEOC Apr. 20, 2012). In addition, courts rely on Title VII precedent for guidance in analyzing discrimination claims under other federal civil rights laws, including Title IX. *See, e.g., Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 74 (1992); *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007); *Murray v. N.Y. Univ. Coll. of Dentistry*, 57 F.3d 243, 249 (2d Cir. 1995).

Access to sex-segregated restrooms and other workplace facilities consistent with gender identity is a term, condition, or privilege of employment. Denying such access to transgender

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our great deference.").

individuals, whose gender identity is different from their gender assigned at birth, while affording it to similarly situated non-transgender employees, violates Title VII. Significantly, the U.S. Equal Employment Opportunity Commission (“EEOC”) recently addressed this very issue and held that “[e]qual access to restrooms is a significant, basic condition of employment,” and that denying transgender individuals access to a restroom consistent with gender identity discriminates on the basis of sex in violation of Title VII.” *Lusardi v. Dep’t of the Army*, No. 0120133395, 2015 WL 1607756, at \*9 (EEOC Apr. 1, 2015).

**B. The UNC System is in Violation of Federal Law.**

To date, UNC has not retracted its April 5, 2016 guidance instructing UNC system institutions to discriminate against transgender individuals by requiring “every multiple-occupancy bathroom and changing facility to be designated for and used only by persons based on their biological sex.” Memorandum at 1 (Q & A No. 2). In your April 13th response, you state that the “University and its constituent institutions will not change existing non-discrimination policies that apply to all students and employees, and we will not tolerate any sort of harassing or discriminatory behavior on the basis of gender identity or sexual orientation.” Yet, by issuing the April 5th Memorandum that UNC “is bound to comply with HB 2”—a position reiterated in President Spellings’ April 11th statement attached to your response—UNC has communicated to the campus community that individuals must use restrooms and other facilities that correspond to their “biological sex,” as defined by H.B. 2. This policy discriminates on the basis of sex, including gender identity, because it treats transgender individuals whose gender identities do not match their gender assigned at birth differently from similarly situated non-transgender individuals. Under H.B. 2, non-transgender individuals at UNC and its constituent universities may access campus restrooms and changing facilities that are consistent with their gender identity, while transgender individuals may not.

Even if UNC has no current “process or means to enforce H.B. 2’s provisions,” as you represent in your April 13th letter, the message to the UNC system (and reasonable inference by employees, students, and third parties) is that transgender individuals may not use facilities that correspond with their gender identity. This message conflicts with UNC’s obligations under Title VII, Title IX, and VAWA. UNC is therefore discriminating against transgender individuals on the basis of sex and gender identity.

**C. Opportunity for Compliance and the Department’s Enforcement Authority.**

1. Title IX and VAWA

When compliance with Title IX cannot be secured through voluntary means, compliance may be obtained by “any other means authorized by law,” including judicial enforcement. 20 U.S.C. § 1682. The Department also has the authority to enforce VAWA through civil actions. *See* 42 U.S.C. § 13925(b)(13)(C) (“The authority of the Attorney General . . . to enforce [VAWA’s discrimination prohibition] shall be the same as it is under section 3789d of this title.”); 42 U.S.C. § 3789d(c)(3) (“Whenever the Attorney General has reason to believe that a

State government or unit of local government has engaged in or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court.”).

## 2. Title VII

When the Attorney General of the United States has a reasonable basis to believe that a state agency has engaged in pattern or practice of discrimination in violation of Title VII, she may apply to the appropriate court for an order that will ensure compliance. *See* 42 U.S.C. § 2000e-6(a). This responsibility has been delegated to the Principal Deputy Assistant Attorney General of the Civil Rights Division.

Please advise the Department, therefore, no later than close of business on May 9, 2016 whether UNC has remedied these violations to comply fully with Title IX and VAWA, as well as its obligations as an employer under Title VII, including by retracting President Spellings’ April 5th Memorandum and April 11th statement and by advising the public, including UNC students, employees, and third parties, that, in accordance with federal law, individuals are permitted to access UNC restrooms and other facilities consistent with their gender identity.

We recognize that the enactment of H.B. 2 raised many questions and concerns for students, employees, and administrators at public and federally-funded schools in North Carolina. But President Spellings’ statement that UNC will not tolerate discriminatory behavior on the basis of gender identity cannot be reconciled with UNC’s limitations on bathroom access for transgender individuals on UNC campuses. UNC’s obligations to prohibit discrimination based on sex remain unchanged.

If you have questions about this letter, please contact: Shaheena Simons at (202) 305-3364/Shaheena.Simons@usdoj.gov or Delora Kennebrew at (202) 514-3831/Delora.Kennebrew@usdoj.gov.

Sincerely,



Vanita Gupta  
Principal Deputy Assistant Attorney General

cc: Governor Pat McCrory  
State of North Carolina  
North Carolina Office of the Governor  
116 West Jones Street  
Raleigh, NC 27603-8001

# EXHIBIT 13

LETTER FROM VANITA GUPTA, PRINCIPAL DEPUTY ASSISTANT ATTORNEY GEN.,  
U.S. DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIV., TO FRANK L. PERRY,  
SECRETARY, DEP'T OF PUB. SAFETY, STATE OF N.C. (MAY 4, 2016)



U.S. Department of Justice

Civil Rights Division

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Washington, D.C. 20530

May 4, 2016

Via electronic and overnight mail

Frank L. Perry  
Secretary of Public Safety  
North Carolina Department of Public Safety  
512 North Salisbury Street  
Raleigh, NC 27604

Dear Secretary Perry:

This letter is to inform you that the United States has concluded that, by complying with North Carolina House Bill 2 (“H.B. 2”), the North Carolina Department of Public Safety (“DPS”), as a recipient of federal funds from the Office on Violence Against Women (“OVW”), is in violation of the non-discrimination provision of the Violence Against Women Reauthorization Act of 2013 (“VAWA”), 42 U.S.C. § 13925(b)(13) and, as an employer, is engaged in a pattern or practice of discrimination against its employees in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* (“Title VII”).

On March 23, 2016, H.B. 2 was signed into law and took effect. Part I of H.B. 2 states that “[p]ublic agencies shall require every multiple occupancy bathroom or changing facility to be designed for and only used by persons based on their biological sex,” and defines “biological sex” as “[t]he physical condition of being male or female, which is stated on a person’s birth certificate.” H.B. 2, Section 1.3, codified at N.C.G.S. 143-760(a)(1) & (b). The North Carolina Department of Public Safety is a “public agency” as defined under H.B. 2. *See* N.C.G.S. 143-760(a)(2) & (4). Because H.B. 2 requires public agencies to facially discriminate on the basis of sex and gender identity, the statute is inconsistent with both VAWA and Title VII.

VAWA provides that “[n]o person in the United States shall, on the basis of actual or perceived \* \* \* sex, gender identity (as defined in paragraph 249(c)(4) of title 18, United States Code) \* \* \*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under [VAWA] \* \* \*.” 42 U.S.C. § 13925(b)(13)(A). As a condition of accepting funds from OVW, DPS signed assurances specifically acknowledging this requirement and “that it will comply with this provision.”

H.B. 2 requires public agencies to treat transgender individuals, whose gender identity does not match their gender assigned at birth, differently from similarly situated non-transgender individuals. Under H.B. 2, non-transgender individuals, whose gender identity is consistent with

their birth-assigned gender, may access restrooms and changing facilities that are consistent with their gender identity in buildings controlled or managed by DPS or its sub-recipients, while transgender individuals may not. Denying such access to transgender individuals while affording it to similarly situated non-transgender individuals violates VAWA.

Title VII prohibits an employer from discriminating on the basis of sex. *See* 42 U.S.C. § 2000e-2. The Supreme Court made clear in *Price Waterhouse v. Hopkins* that discrimination on the basis of “sex” includes differential treatment based on any “sex-based consideration[.]” 490 U.S. 228, 242 (1989) (plurality). Federal courts and administrative agencies have applied Title VII to discrimination against transgender individuals based on sex, including gender identity. *See, e.g., Glenn v. Brumby*, 663 F.3d 1312, 1315-20 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir. 2005); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Schroer v. Billington*, 577 F. Supp. 2d 293, 303-08 (D.D.C. 2008); *Macy v. Holder*, Appeal No. 0120120821, 2012 WL 1435995, at \*4-11 (EEOC Apr. 20, 2012).

Access to sex-segregated restrooms and other workplace facilities consistent with gender identity is a term, condition, or privilege of employment. Denying such access to transgender individuals, whose gender identity is different from their gender assigned at birth, while affording it to similarly situated non-transgender employees, violates Title VII. Significantly, the U.S. Equal Employment Opportunity Commission (“EEOC”) recently addressed this very issue and held that “[e]qual access to restrooms is a significant, basic condition of employment,” and that denying transgender individuals access to a restroom consistent with gender identity discriminates on the basis of sex in violation of Title VII.” *Lusardi v. Dep’t of the Army*, No. 0120133395, 2015 WL 1607756, at \*9 (EEOC Apr. 1, 2015). And, in interpreting the analogous sex discrimination provision of Title IX of the Education Amendments of 1972,<sup>1</sup> the United States Court of Appeals for the Fourth Circuit issued an opinion in *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467 at \*11 (4th Cir. Apr. 19, 2016), holding that the Department of Education’s guidance that educational institutions “generally must treat transgender students consistent with their gender identity” is entitled to “controlling weight” under *Auer v. Robbins*, 519 U.S. 452, 461 (1997). Under H.B. 2, non-transgender DPS employees, whose gender identity is consistent with the birth-assigned sex, may access restrooms and changing facilities that are consistent with their gender identity in public buildings, while transgender DPS employees may not access restrooms and changing facilities that are consistent with their gender identity in public buildings. Based upon the above, we have concluded that DPS is engaged in a pattern or practice of discrimination against its transgender employees in violation of Title VII.

When the Attorney General of the United States has a reasonable basis to believe that a state agency has engaged in a pattern or practice of discrimination in violation of the Civil Rights Act, she may apply to the appropriate court for an order that will ensure compliance with Title VII. *See* 42 U.S.C. § 2000e-6(a). This responsibility has been delegated to the Principal Deputy Assistant Attorney General of the Civil Rights Division.

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<sup>1</sup> Courts consider often Title VII and Title IX precedent together when analyzing discrimination claims. *See, e.g., Franklin v. Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 74 (1992); *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007); *Murray v. N.Y. Univ. Coll. of Dentistry*, 57 F.3d 243, 249 (2d Cir. 1995).

Likewise, the Attorney General has the authority to enforce VAWA through civil actions. *See* 42 U.S.C. § 13925(b)(13)(C) (“The authority of the Attorney General . . . to enforce [VAWA’s discrimination prohibition] shall be the same as it is under section 3789d of this title.”); 42 U.S.C. § 3789d(c)(3) (“Whenever the Attorney General has reason to believe that a State government or unit of local government has engaged in or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court.”).

Please advise the Department, therefore, no later than close of business on May 9, 2016 whether DPS has remedied these violations to comply fully with Title VII and the non-discrimination mandate of VAWA, including by confirming that DPS will not comply with H.B. 2, and that it has notified individuals and employees at facilities controlled or managed by DPS or its sub-recipients that, consistent with federal law, they are permitted to access bathrooms and other facilities consistent with their gender identity.

If you have questions about this letter, please contact: Shaheena Simons at (202) 305-3364/Shaheena.Simons@usdoj.gov or Delora Kennebrew at (202) 514-3831/Delora.Kennebrew@usdoj.gov.

Sincerely,



Vanita Gupta  
Principal Deputy Assistant Attorney General

cc: Governor Pat McCrory  
State of North Carolina  
North Carolina Office of the Governor  
116 West Jones Street  
Raleigh, NC 27603-8001



# EXHIBIT 14

DEAR COLLEAGUE LETTER, U.S. DEPARTMENTS OF  
JUSTICE AND EDUCATION (MAY 13, 2016)



U.S. Department of Justice  
Civil Rights Division



U.S. Department of Education  
Office for Civil Rights

**Dear Colleague Letter on Transgender Students**  
**Notice of Language Assistance**

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**Aviso a personas con dominio limitado del idioma inglés:** Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**給英語能力有限人士的通知:** 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov)。

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**Paunawa sa mga Taong Limitado ang Kaalaman sa English:** Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na inpormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalin, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**Уведомление для лиц с ограниченным знанием английского языка:** Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).



**U.S. Department of Justice**  
*Civil Rights Division*



**U.S. Department of Education**  
*Office for Civil Rights*

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance.<sup>1</sup> This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is *significant guidance*.<sup>2</sup> This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at [ocr@ed.gov](mailto:ocr@ed.gov) or 800-421-3481 (TDD 800-877-8339); or DOJ at [education@usdoj.gov](mailto:education@usdoj.gov) or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The examples in that document are taken from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.<sup>3</sup>

### **Terminology**

- Gender identity* refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.
- Sex assigned at birth* refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- Transgender* describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.

- *Gender transition* refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

### **Compliance with Title IX**

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.<sup>4</sup> The Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Departments' interpretation is consistent with courts' and other agencies' interpretations of Federal laws prohibiting sex discrimination.<sup>5</sup>

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.<sup>6</sup> Because transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to restrictions imposed by state or local law in their place of birth or residence),<sup>7</sup> requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students.<sup>8</sup>

#### **1. Safe and Nondiscriminatory Environment**

Schools have a responsibility to provide a safe and nondiscriminatory environment for all students, including transgender students. Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly.<sup>9</sup> If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX. For a more detailed discussion of Title IX

requirements related to sex-based harassment, see guidance documents from ED's Office for Civil Rights (OCR) that are specific to this topic.<sup>10</sup>

## **2. Identification Documents, Names, and Pronouns**

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.<sup>11</sup>

## **3. Sex-Segregated Activities and Facilities**

Title IX's implementing regulations permit a school to provide sex-segregated restrooms, locker rooms, shower facilities, housing, and athletic teams, as well as single-sex classes under certain circumstances.<sup>12</sup> When a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.<sup>13</sup>

- Restrooms and Locker Rooms.** A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.<sup>14</sup> A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.<sup>15</sup>
- Athletics.** Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.<sup>16</sup> A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, the same gender identity) or others' discomfort with transgender students.<sup>17</sup> Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport.<sup>18</sup>
- Single-Sex Classes.** Although separating students by sex in classes and activities is generally prohibited, nonvocational elementary and secondary schools may offer nonvocational single-sex classes and extracurricular activities under certain circumstances.<sup>19</sup> When offering such classes and activities, a school must allow transgender students to participate consistent with their gender identity.
- Single-Sex Schools.** Title IX does not apply to the admissions policies of certain educational institutions, including nonvocational elementary and secondary schools, and private undergraduate colleges.<sup>20</sup> Those schools are therefore permitted under Title IX to set their own

sex-based admissions policies. Nothing in Title IX prohibits a private undergraduate women's college from admitting transgender women if it so chooses.

- **Social Fraternities and Sororities.** Title IX does not apply to the membership practices of social fraternities and sororities.<sup>21</sup> Those organizations are therefore permitted under Title IX to set their own policies regarding the sex, including gender identity, of their members. Nothing in Title IX prohibits a fraternity from admitting transgender men or a sorority from admitting transgender women if it so chooses.
- **Housing and Overnight Accommodations.** Title IX allows a school to provide separate housing on the basis of sex.<sup>22</sup> But a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students. Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.<sup>23</sup>
- **Other Sex-Specific Activities and Rules.** Unless expressly authorized by Title IX or its implementing regulations, a school may not segregate or otherwise distinguish students on the basis of their sex, including gender identity, in any school activities or the application of any school rule. Likewise, a school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity (*e.g.*, in yearbook photographs, at school dances, or at graduation ceremonies).<sup>24</sup>

#### **4. Privacy and Education Records**

Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students' educational rights or opportunities by failing to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.<sup>25</sup> Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).<sup>26</sup> A school may maintain records with this information, but such records should be kept confidential.

- **Disclosure of Personally Identifiable Information from Education Records.** FERPA generally prevents the nonconsensual disclosure of PII from a student's education records; one exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information.<sup>27</sup> Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) PII from education records to the school community may

violate FERPA and interfere with transgender students' right under Title IX to be treated consistent with their gender identity.

- **Disclosure of Directory Information.** Under FERPA's implementing regulations, a school may disclose appropriately designated directory information from a student's education record if disclosure would not generally be considered harmful or an invasion of privacy.<sup>28</sup> Directory information may include a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.<sup>29</sup> School officials may not designate students' sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.<sup>30</sup> A school also must allow eligible students (*i.e.*, students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student's directory information.<sup>31</sup>
- **Amendment or Correction of Education Records.** A school may receive requests to correct a student's education records to make them consistent with the student's gender identity. Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.
  - Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student's education records that is inaccurate, misleading, or in violation of the student's privacy rights.<sup>32</sup> If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the requestor's comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.<sup>33</sup>
  - Under Title IX, a school must respond to a request to amend information related to a student's transgender status consistent with its general practices for amending other students' records.<sup>34</sup> If a student or parent complains about the school's handling of such a request, the school must promptly and equitably resolve the complaint under the school's Title IX grievance procedures.<sup>35</sup>

\* \* \*

We appreciate the work that many schools, state agencies, and other organizations have undertaken to make educational programs and activities welcoming, safe, and inclusive for all students.

Sincerely,

/s/

Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
U.S. Department of Education

/s/

Vanita Gupta  
Principal Deputy Assistant Attorney General for Civil Rights  
U.S. Department of Justice

<sup>1</sup> 20 U.S.C. §§ 1681–1688; 34 C.F.R. Pt. 106; 28 C.F.R. Pt. 54. In this letter, the term *schools* refers to recipients of Federal financial assistance at all educational levels, including school districts, colleges, and universities. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a).

<sup>2</sup> Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), [www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf).

<sup>3</sup> ED, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 13, 2016), [www.ed.gov/oese/oshs/emergingpractices.pdf](http://www.ed.gov/oese/oshs/emergingpractices.pdf). OCR also posts many of its resolution agreements in cases involving transgender students online at [www.ed.gov/ocr/lgbt.html](http://www.ed.gov/ocr/lgbt.html). While these agreements address fact-specific cases, and therefore do not state general policy, they identify examples of ways OCR and recipients have resolved some issues addressed in this guidance.

<sup>4</sup> 34 C.F.R. §§ 106.4, 106.31(a). For simplicity, this letter cites only to ED’s Title IX regulations. DOJ has also promulgated Title IX regulations. See 28 C.F.R. Pt. 54. For purposes of how the Title IX regulations at issue in this guidance apply to transgender individuals, DOJ interprets its regulations similarly to ED. State and local rules cannot limit or override the requirements of Federal laws. See 34 C.F.R. § 106.6(b).

<sup>5</sup> See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 79 (1998); *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467, at \*8 (4th Cir. Apr. 19, 2016); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201–02 (9th Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-08 (D.D.C. 2008); *Macy v. Dep’t of Justice*, Appeal No. 012012082 (U.S. Equal Emp’t Opportunity Comm’n Apr. 20, 2012). See also U.S. Dep’t of Labor (USDOL), Training and Employment Guidance Letter No. 37-14, *Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System* (2015), [wdr.doleta.gov/directives/attach/TEGL/TEGL\\_37-14.pdf](http://wdr.doleta.gov/directives/attach/TEGL/TEGL_37-14.pdf); USDOL, Job Corps, Directive: Job Corps Program Instruction Notice No. 14-31, *Ensuring Equal Access for Transgender Applicants and Students to the Job Corps Program* (May 1, 2015), [https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi\\_14\\_31.pdf](https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf); DOJ, Memorandum from the Attorney General, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (2014), [www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title\\_vii\\_memo.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf); USDOL, Office of Federal Contract Compliance Programs, Directive 2014-02, *Gender Identity and Sex Discrimination* (2014), [www.dol.gov/ofccp/regs/compliance/directives/dir2014\\_02.html](http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html).

<sup>6</sup> See *Lusardi v. Dep’t of the Army*, Appeal No. 0120133395 at 9 (U.S. Equal Emp’t Opportunity Comm’n Apr. 1, 2015) (“An agency may not condition access to facilities—or to other terms, conditions, or privileges of employment—on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individual’s gender identity.”).

<sup>7</sup> See *G.G.*, 2016 WL 1567467, at \*1 n.1 (noting that medical authorities “do not permit sex reassignment surgery for persons who are under the legal age of majority”).

<sup>8</sup> 34 C.F.R. § 106.31(b)(4); see *G.G.*, 2016 WL 1567467, at \*8 & n.10 (affirming that individuals have legitimate and important privacy interests and noting that these interests do not inherently conflict with nondiscrimination principles); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (rejecting claim that allowing a transgender woman “merely [to be] present in the women’s faculty restroom” created a hostile environment); *Glenn*, 663 F.3d at 1321 (defendant’s proffered justification that “other women might object to [the plaintiff]’s restroom use” was “wholly irrelevant”). See also *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (recognizing that “mere negative attitudes, or fear . . . are not permissible bases for” government action).



<sup>9</sup> See, e.g., Resolution Agreement, *In re Downey Unified Sch. Dist., CA*, OCR Case No. 09-12-1095, (Oct. 8, 2014), [www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf](http://www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf) (agreement to address harassment of transgender student, including allegations that peers continued to call her by her former name, shared pictures of her prior to her transition, and frequently asked questions about her anatomy and sexuality); Consent Decree, *Doe v. Anoka-Hennepin Sch. Dist. No. 11, MN* (D. Minn. Mar. 1, 2012), [www.ed.gov/ocr/docs/investigations/05115901-d.pdf](http://www.ed.gov/ocr/docs/investigations/05115901-d.pdf) (consent decree to address sex-based harassment, including based on nonconformity with gender stereotypes); Resolution Agreement, *In re Tehachapi Unified Sch. Dist., CA*, OCR Case No. 09-11-1031 (June 30, 2011), [www.ed.gov/ocr/docs/investigations/09111031-b.pdf](http://www.ed.gov/ocr/docs/investigations/09111031-b.pdf) (agreement to address sexual and gender-based harassment, including harassment based on nonconformity with gender stereotypes). See also *Lusardi*, Appeal No. 0120133395, at \*15 (“Persistent failure to use the employee’s correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment”).

<sup>10</sup> See, e.g., OCR, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2001), [www.ed.gov/ocr/docs/shguide.pdf](http://www.ed.gov/ocr/docs/shguide.pdf); OCR, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010), [www.ed.gov/ocr/letters/colleague-201010.pdf](http://www.ed.gov/ocr/letters/colleague-201010.pdf); OCR, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011), [www.ed.gov/ocr/letters/colleague-201104.pdf](http://www.ed.gov/ocr/letters/colleague-201104.pdf); OCR, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), [www.ed.gov/ocr/docs/qa-201404-title-ix.pdf](http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf).

<sup>11</sup> See, e.g., Resolution Agreement, *In re Cent. Piedmont Cmty. Coll., NC*, OCR Case No. 11-14-2265 (Aug. 13, 2015), [www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf](http://www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf) (agreement to use a transgender student’s preferred name and gender and change the student’s official record to reflect a name change).

<sup>12</sup> 34 C.F.R. §§ 106.32, 106.33, 106.34, 106.41(b).

<sup>13</sup> See 34 C.F.R. § 106.31.

<sup>14</sup> 34 C.F.R. § 106.33.

<sup>15</sup> See, e.g., Resolution Agreement, *In re Township High Sch. Dist. 211, IL*, OCR Case No. 05-14-1055 (Dec. 2, 2015), [www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf](http://www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf) (agreement to provide any student who requests additional privacy “access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.”).

<sup>16</sup> 34 C.F.R. § 106.41(b). Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.

<sup>17</sup> 34 C.F.R. § 106.6(b), (c). An interscholastic athletic association is subject to Title IX if (1) the association receives Federal financial assistance or (2) its members are recipients of Federal financial assistance and have ceded controlling authority over portions of their athletic program to the association. Where an athletic association is covered by Title IX, a school’s obligations regarding transgender athletes apply with equal force to the association.

<sup>18</sup> The National Collegiate Athletic Association (NCAA), for example, reported that in developing its policy for participation by transgender students in college athletics, it consulted with medical experts, athletics officials, affected students, and a consensus report entitled *On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*), [https://www.ncaa.org/sites/default/files/NCLR\\_TransStudentAthlete%2B\(2\).pdf](https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf). See NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes 2*, 30-31 (2011), [https://www.ncaa.org/sites/default/files/Transgender\\_Handbook\\_2011\\_Final.pdf](https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf) (citing *On the Team*). The *On the Team* report noted that policies that may be appropriate at the college level may “be unfair and too complicated for [the high school] level of competition.” *On the Team* at 26. After engaging in similar processes, some state interscholastic athletics associations have adopted policies for participation by transgender students in high school athletics that they determined were age-appropriate.

<sup>19</sup> 34 C.F.R. § 106.34(a), (b). Schools may also separate students by sex in physical education classes during participation in contact sports. *Id.* § 106.34(a)(1).

<sup>20</sup> 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d); 34 C.F.R. § 106.34(c) (a recipient may offer a single-sex public nonvocational elementary and secondary school so long as it provides students of the excluded sex a “substantially

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equal single-sex school or coeducational school”).

<sup>21</sup> 20 U.S.C. § 1681(a)(6)(A); 34 C.F.R. § 106.14(a).

<sup>22</sup> 20 U.S.C. § 1686; 34 C.F.R. § 106.32.

<sup>23</sup> See, e.g., Resolution Agreement, *In re Arcadia Unified Sch. Dist., CA*, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, (July 24, 2013), [www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf](http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf) (agreement to provide access to single-sex overnight events consistent with students’ gender identity, but allowing students to request access to private facilities).

<sup>24</sup> See 34 C.F.R. §§ 106.31(a), 106.31(b)(4). See also, *In re Downey Unified Sch. Dist., CA*, *supra* n. 9; *In re Cent. Piedmont Cmty. Coll., NC*, *supra* n. 11.

<sup>25</sup> 34 C.F.R. § 106.31(b)(7).

<sup>26</sup> 20 U.S.C. § 1232g; 34 C.F.R. Part 99. FERPA is administered by ED’s Family Policy Compliance Office (FPCO). Additional information about FERPA and FPCO is available at [www.ed.gov/fpcoc](http://www.ed.gov/fpcoc).

<sup>27</sup> 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1).

<sup>28</sup> 34 C.F.R. §§ 99.3, 99.31(a)(11), 99.37.

<sup>29</sup> 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.

<sup>30</sup> Letter from FPCO to Institutions of Postsecondary Education 3 (Sept. 2009), [www.ed.gov/policy/gen/guid/fpcoc/doc/censuslettertohighered091609.pdf](http://www.ed.gov/policy/gen/guid/fpcoc/doc/censuslettertohighered091609.pdf).

<sup>31</sup> 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. §§ 99.3, 99.37(a)(3).

<sup>32</sup> 34 C.F.R. § 99.20.

<sup>33</sup> 34 C.F.R. §§ 99.20-99.22.

<sup>34</sup> See 34 C.F.R. § 106.31(b)(4).

<sup>35</sup> 34 C.F.R. § 106.8(b).

# EXHIBIT 15

Brief for the United States as *Amicus Curiae* at 8-22, *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056 (4th Cir. Oct. 28, 2015)

IN THE 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

---

BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* SUPPORTING  
PLAINTIFF-APPELLANT AND URGING REVERSAL

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 15-2056

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

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BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* SUPPORTING  
PLAINTIFF-APPELLANT AND URGING REVERSAL

---

**INTEREST OF THE UNITED STATES**

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 *et seq.*, prohibits sex discrimination in educational programs and activities receiving federal financial assistance. The United States Department of Education (ED) provides federal funding to many educational programs and activities and oversees their compliance with Title IX. 20 U.S.C. 1682. Through its Office for Civil Rights (OCR), ED investigates complaints and conducts compliance reviews; it also promulgates regulations effectuating Title IX, 34 C.F.R. 106, and guidance to

help recipients understand their Title IX obligations. See, e.g., OCR, *Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities* (Dec. 1, 2014) (OCR Single-Sex Q&A), [www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf](http://www.ed.gov/ocr/docs/faqs-title-ix-single-sex-201412.pdf); OCR, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), [www.ed.gov/ocr/docs/qa-201404-title-ix.pdf](http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf).

The Department of Justice (DOJ) coordinates ED's and other agencies' implementation and enforcement of Title IX. Exec. Order No. 12,250, 45 Fed. Reg. 72,995 (Nov. 2, 1980); 28 C.F.R. 0.51. DOJ may file federal actions in Title IX cases where DOJ provides financial assistance to recipients or where ED refers a matter to DOJ. 42 U.S.C. 2000d-1. Pursuant to 28 U.S.C. 517, the United States filed a Statement of Interest in the district court in this case to protect its interest in the proper interpretation of Title IX and its implementing regulations. The United States files this brief pursuant to Federal Rule of Appellate Procedure 29(a).

### **STATEMENT OF THE ISSUES**

We address the following question:

Whether a school district violates Title IX's prohibition on discrimination "on the basis of sex" when it bars a student from accessing the restrooms that correspond to his gender identity because he is transgender.

## STATEMENT OF THE CASE

### 1. *Background*

A transgender person is someone whose gender identity (*i.e.*, internal sense of being male or female) differs from the sex assigned to that person at birth.

Someone who was designated male at birth but identifies as female is a transgender girl or woman; someone who was designated female at birth but identifies as male is a transgender boy or man. Gender dysphoria is a medical diagnosis given to individuals who experience an ongoing “marked difference between” their “expressed/experienced gender and the gender others would assign” them.

American Psychiatric Association, *Gender Dysphoria*, at 1 (2013), [http://dsm5.org/documents/gender\\_dysphoria\\_fact\\_sheet.pdf](http://dsm5.org/documents/gender_dysphoria_fact_sheet.pdf).

To alleviate the psychological stress that this disconnect creates, transgender individuals often undertake some level of gender transition to bring external manifestations of gender into conformity with internal gender identity. The clinical basis for gender transition, and the protocol for transitioning, are well-established. Since the 1970s, the World Professional Association for Transgender Health (WPATH), an internationally recognized organization devoted to the study and treatment of gender-identity-related issues, has published “Standards of Care,” which set forth recommendations for the treatment of gender dysphoria and the research supporting those recommendations. WPATH, *Standards of Care for the*

*Health of Transsexual, Transgender, and Gender-Nonconforming People* (7th ed. 2012) (WPATH Standards), [http://www.wpath.org/uploaded\\_files/140/files/Standards Of Care, V7 Full Book.pdf](http://www.wpath.org/uploaded_files/140/files/Standards%20Of%20Care,%20V7%20Full%20Book.pdf).

A critical stage of gender transition is the “real-life experience,” during which a transgender person experiences living full-time as the gender to which he or she is transitioning. See *O’Donnabhain v. Commissioner*, 134 T.C. 34, 38 (2010). This experience necessarily includes using the sex-segregated facilities (e.g., restrooms) corresponding with that gender. See WPATH Standards, at 61 (“During this time, patients should present consistently, on a day-to-day basis and across all settings of life, in their desired gender role.”).

For individuals for whom genital surgery is appropriate, the WPATH Standards require that they live full-time in their new gender for at least one year. WPATH Standards at 21, 58, 60-61. Contrary to popular misconception, however, the majority of transgender people do not have genital surgery. See Jaime M. Grant *et al.*, *Injustice At Every Turn: A Report of the National Transgender Discrimination Survey*, National Center for Transgender Equality and National Gay and Lesbian Task Force, at 2, 26 (2011), [http://www.thetaskforce.org/downloads/reports/ntds\\_full.pdf](http://www.thetaskforce.org/downloads/reports/ntds_full.pdf) (NCTE Survey) (survey of 6450 transgender and gender non-conforming adults revealed that just 33% of respondents had surgically transitioned). Determinations about medical care must be made by physicians and

their patients on an individualized basis. WPATH Standards at 5, 8-9, 58, 97. For some, health-related conditions make invasive surgical procedures too risky; for others, the high cost of surgical procedures, which are often excluded from insurance coverage, poses an insurmountable barrier. See *id.* at 58. Moreover, and of special salience to the operation of Title IX, sex reassignment surgery is generally unavailable to transgender children under age 18. See WPATH Standards at 21, 104-106.

2. *Statement Of Facts*

G.G., a 16-year-old transgender boy, is a junior at Gloucester High School in Gloucester County, Virginia. Although G.G. was designated female at birth, in April 2014, a psychologist diagnosed him with gender dysphoria and started him on a course of treatment, which included a full social gender transition. JA29. As part of that transition, G.G. legally changed his name to a traditionally male name, changed the gender marker on his driver's license to male, is referred to by male pronouns, uses men's restrooms when not at school, and began hormone treatment, which has deepened his voice, increased his facial hair, and given him a more masculine appearance. JA29-30, 60.

In August 2014, at the start of his sophomore year, G.G. and his mother informed Gloucester High School officials about his gender transition and name change. JA30. School officials changed his name in his school records and



instructed G.G. to email his teachers to explain his transition and request that they refer to him by his new name and male pronouns. JA30. Although G.G. initially agreed to use a separate restroom in the nurse's office, he soon found this option stigmatizing and inconvenient, as well as unnecessary, as his teachers and peers generally respected that he is a boy. JA30-31. Accordingly, upon G.G.'s request, the school permitted him to begin using the boys' restrooms, which he did for seven weeks without incident. JA31.

In November 2014, however, some adults in the community learned that G.G. was using the boys' restroom and demanded that the Gloucester County School Board (GCSB) bar him from doing so. JA15. On December 9, 2014, after two public meetings, GCSB enacted a policy limiting students to restrooms corresponding to their "biological genders" and requiring students with "gender identity issues" to use "an alternative appropriate private facility." JA16.

The next day, G.G.'s principal informed him that, due to GCSB's new policy, he could no longer use the boys' restroom and would be disciplined if he attempted to do so. JA32. Although the school subsequently installed three unisex, single-stall restrooms,<sup>1</sup> G.G. found using these restrooms even more

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<sup>1</sup> The school also made several privacy-related improvements to its communal restrooms, including raising the doors and walls around the stalls and installing partitions between the urinals in the boys' restrooms. JA17, 143-144.

stigmatizing than using the nurse's restroom. JA32. Therefore, for the rest of his sophomore year, G.G. tried to avoid using the restroom altogether while at school, leading him to develop painful urinary tract infections. JA32-33.

3. *Procedural History*

On June 11, 2015, G.G. sued GCSB alleging that its policy violated Title IX and the Equal Protection Clause. JA9-24. G.G. also filed a motion for a preliminary injunction to enjoin GCSB from enforcing the policy and thereby permit him to resume using the boys' restrooms when school started in September. JA25-27. The United States filed a Statement of Interest in support of G.G.'s preliminary injunction motion. JA4-5. On July 7, 2015, GCSB filed a motion to dismiss G.G.'s complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). JA5.

At a July 27, 2015, hearing to address both motions, the court announced that it was dismissing G.G.'s Title IX claim based solely on the fact that ED's Title IX regulations permit schools to provide separate boys' and girls' restrooms. JA114-116. The court stated that it would allow G.G.'s equal protection claim to proceed but postponed ruling on his preliminary injunction motion. JA129-131.

On September 4, 2015, the district court denied G.G.'s preliminary injunction motion (JA137-138), and on September 17, 2015, it issued its memorandum opinion (JA139-164). As to Title IX, the court stated that it need not

decide whether Title IX’s prohibition on sex discrimination includes transgender discrimination because, in its view, G.G.’s Title IX claim “is precluded by” 34 C.F.R. 106.33, ED’s regulation authorizing sex-segregated restrooms. JA149.

## ARGUMENT

### **WHERE A SCHOOL PROVIDES SEPARATE RESTROOMS FOR BOYS AND GIRLS, BARRING A STUDENT FROM THE RESTROOMS THAT CORRESPOND TO HIS OR HER GENDER IDENTITY BECAUSE THE STUDENT IS TRANSGENDER CONSTITUTES UNLAWFUL SEX DISCRIMINATION UNDER TITLE IX**

#### A. *GCSB’s Restroom Policy Violates Title IX*

Title IX provides that no person shall “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 “on the basis of sex.” 20 U.S.C. 1681(a). Since the Supreme Court’s decision in *Price Waterhouse v. Hopkins*, it is well-established that discrimination on the basis of “sex” is not limited to preferring males over females (or vice versa) but includes differential treatment based on any “sex-based consideration[.]” 490 U.S. 228, 242 (1989) (plurality).

Here, GCSB’s restroom policy denies G.G. a benefit that all of his peers enjoy—access to restrooms consistent with their gender identity—because, unlike them, his birth-assigned sex does not align with his gender identity. The policy subjects G.G. to differential treatment, and the basis for that treatment—the

divergence between his gender identity and what GCSB deemed his “biological gender”—is unquestionably a “sex-based consideration[.]” *Price Waterhouse*, 490 U.S. at 242 (plurality). GCSB’s generalized assertions of safety and privacy cannot override Title IX’s guarantee of equal educational opportunity.

Accordingly, G.G. established a likelihood of success on his claim that GCSB’s policy violates Title IX.

*1. Treating A Transgender Student Differently From Other Students Because He Is Transgender Constitutes Differential Treatment On The Basis Of Sex*

GCSB’s restroom policy denies G.G. a benefit that every other student at his school enjoys: access to restrooms that are consistent with his or her gender identity. Whereas the policy permits non-transgender students to use the restrooms that correspond to their gender identity (because their gender identity and “biological gender” are aligned), it prohibits G.G. from doing so because, although he identifies and presents as male, the school deems his “biological gender” to be female. Indeed, prohibiting G.G. from using the boys’ restrooms was precisely GCSB’s purpose in enacting the policy.

Treating a student differently from other students because his birth-assigned sex diverges from his gender identity constitutes differential treatment “on the basis of sex” under Title IX. Although federal courts initially construed prohibitions on sex discrimination narrowly—as prohibiting only discrimination

based on one's biological status as male or female, see, *e.g.*, *Ulane v. Eastern Airlines, Inc.*, 742 F.2d 1081, 1084-1085 (7th Cir. 1984), cert. denied, 471 U.S. 1017 (1985)—the Supreme Court “eviscerated” that approach in *Price Waterhouse*. *Smith v. City of Salem*, 378 F.3d 566, 573 (6th Cir. 2004). There, the Court held that an accounting firm violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, when it denied a female senior manager partnership because she was considered “macho,” “aggressive,” and not “feminine[.]” enough. *Price Waterhouse*, 490 U.S. at 235 (plurality) (citations omitted). In doing so, *Price Waterhouse* rejected the notion that “sex” discrimination occurs only in situations in which an employer prefers a man over a woman (or vice versa); rather, a prohibition on sex discrimination encompasses any differential treatment based on a consideration “related to the sex of” the individual.<sup>2</sup> *Schwenk v. Hartford*, 204 F.3d 1187, 1202 (9th Cir. 2000).

A transgender person's transgender status is unquestionably related to his sex: indeed, the very definition of being “transgender” is that one's gender identity does not match one's “biological” or birth-assigned sex. See *Glenn v. Brumby*, 663 F.3d 1312, 1316 (11th Cir. 2011) (recognizing “a congruence between

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<sup>2</sup> Although *Price Waterhouse* arose under Title VII, this court and others “look to case law interpreting Title VII \* \* \* for guidance in evaluating a claim brought under Title IX.” *Jennings v. University of N.C.*, 482 F.3d 686, 695 (4th Cir.), cert. denied, 552 U.S. 887 (2007); see also JA146.

discriminating against transgender \* \* \* individuals and discrimination on the basis of gender-based behavioral norms”); see also *Finkle v. Howard Cnty.*, 12 F. Supp. 3d 780, 788 (D. Md. 2014); *Rumble v. Fairview Health Servs.*, No. 14-CV-2037, 2015 WL 1197415, at \*2 (D. Minn. Mar. 16, 2015). Thus, discrimination against a transgender person based on the divergence between his gender identity and birth-assigned sex denies that person an opportunity or benefit based on a consideration “related to” sex. *Schwenk*, 204 F.3d at 1202.

Whether viewed as discrimination based on the divergence between G.G.’s gender identity and “biological” sex or discrimination due to gender transition, GCSB’s policy “literally discriminat[es] ‘because of . . . sex.’” *Schroer v. Billington*, 577 F. Supp. 2d 293, 308 (D.D.C. 2008). As the *Schroer* court explained, firing an employee because she converts from Christianity to Judaism “would be a clear case of discrimination ‘because of religion,’” even if the employer “harbors no bias toward either Christians or Jews but only ‘converts,’” because “[n]o court would take seriously the notion that ‘converts’ are not covered by the statute.” *Id.* at 306. By the same logic, the court concluded, discrimination against a person because he has “changed” his sex, *i.e.*, he is presenting as a different sex from the one he was assigned at birth, would be “a clear case” of discrimination because of sex. *Ibid.*

Following the reasoning of *Price Waterhouse, Glenn, and Schroer*, the Equal Employment Opportunity Commission (EEOC) has concluded that “intentional discrimination against a transgender individual because that person is transgender is, by definition, discrimination ‘based on . . . sex’” in violation of Title VII. *Macy v. Department of Justice*, No. 0120120821, 2012 WL 1435995, at \*11 (EEOC Apr. 20, 2012). Although *Macy* involved an employer’s refusal to hire a transgender individual, in *Lusardi*, the EEOC applied *Macy*’s holding to a claim involving a restriction on a transgender employee’s restroom access akin to the restriction GCSB placed on G.G. As here, it was undisputed that Lusardi’s transgender status “was *the* motivation for [the employer’s] decision to prevent [her] from using the common women’s restroom.” *Lusardi v. Department of the Army*, No. 0120133395, 2015 WL 1607756, at \*7 (EEOC Apr. 1, 2015). Thus, the EEOC held, because discrimination against a person because she is transgender “is, by definition, discrimination ‘based on . . . sex,’” *ibid.*, the employer violated Title VII when it barred Lusardi from using the women’s restroom—a resource “that other persons of her gender were freely permitted to use,” *id.* at \*9—because she is transgender.

To be sure, a few courts have held, largely based on assumptions about what Congress must have intended when it enacted Title VII in 1964, that the prohibition against sex discrimination does not apply to discrimination against

transgender individuals. See, e.g., *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1221-1222 (10th Cir. 2007) (relying on *Ulane*, 742 F.2d at 1084-1087). But as *Schroer* observed, those decisions “represent an elevation of ‘judge-supposed legislative intent over clear statutory text.’” 577 F. Supp. 2d at 307 (quoting *Zuni Pub. Sch. Dist. No. 89 v. Department of Educ.*, 550 U.S. 81, 108 (2007) (Scalia, J., dissenting)). It may well be that the Congresses that enacted Title VII in 1964 and Title IX in 1972 did not have transgender individuals in mind. But the same can be said for other conduct that is now recognized as prohibited sex discrimination under those statutes. See, e.g., *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998). As the Supreme Court explained in *Oncale*, “male-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII.” *Id.* at 79. Nonetheless, the Court emphasized that “statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.” *Ibid.* Excluding from the statute’s purview conduct that falls within its plain text simply because Congress may not have contemplated it “is no longer a tenable approach to statutory construction.” *Schroer*, 577 F. Supp. 2d at 307.

In the wake of *Oncale* and *Price Waterhouse*, numerous courts now recognize that prohibitions against sex discrimination protect transgender



individuals from discrimination. See, e.g., *Glenn*, 663 F.3d at 1317; *Smith*, 378 F.3d at 573; *Schwenk*, 204 F.3d at 1201; *Finkle*, 12 F. Supp. 3d at 788; *Lewis v. High Point Reg'l Health Sys.*, 79 F. Supp. 3d 588, 589-590 (E.D.N.C. 2015); *Schroer*, 577 F. Supp. 2d at 308; *United States v. Southeastern Okla. State Univ.*, No. 5:15-CV-324, 2015 WL 4606079, at \*2 (W.D. Okla. July 10, 2015); *Rumble*, 2015 WL 1197415, at \*2. This Court should too. Treating a student adversely because the sex assigned to him at birth does not match his gender identity is literally discrimination “on the basis of sex.” 20 U.S.C. 1681.

2. *Where A School Provides Sex-Segregated Restrooms, Denying A Student Access To The Restrooms Consistent With His Or Her Gender Identity Denies That Student Equal Educational Opportunity*

Just as “[e]qual access to restrooms is a significant, basic condition of employment,” *Lusardi*, 2015 WL 1607756, at \*9, so too is it a basic condition of full and equal participation in a school’s educational programs and activities. See 20 U.S.C. 1687(2)(B) (defining “program[s] or activit[ies]” to mean “all of the operations” of a school). Prohibiting a transgender male student from using boys’ restrooms, when other non-transgender male students face no such restriction, deprives him not only of equal educational opportunity but also “of equal status, respect, and dignity.” *Lusardi*, 2015 WL 1607756, at \*10.

Under GCSB’s policy, G.G. may only use either the girls’ restroom or a separate “unisex” restroom. That other students may choose to use the unisex

restroom does not change the fact that this policy, which was directed at G.G., not only denies G.G.’s “very identity” as a boy, *Lusardi*, 2015 WL 1607756, at \*10, but also singles him out in a way that is humiliating and stigmatizing. For example, even when there is a boys’ restroom next to his classroom or locker, G.G. must seek out a unisex restroom in a different part of the school. See JA32. In placing this restriction on G.G., GCSB essentially labels him as “other.”

The only other “option” made available to G.G.—using the girls’ restroom—is illusory. It is unrealistic to suggest that a student like G.G., who identifies and presents as a boy and whom the school treats as a boy in every other respect, could walk into a girls’ restroom without creating a situation that is disruptive to his female classmates and humiliating to him.<sup>3</sup> Not surprisingly, students put in such an untenable position often try to avoid using the restroom all day—putting them at risk for urinary tract infections and other health problems (see JA33)—rather than use a facility that either conflicts with their gender identity or physically and symbolically marks them “as some type of ‘other.’” JA32. In other words, denying a transgender boy access to the boys’ restroom is often much more than a

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<sup>3</sup> Indeed, even before he began masculinizing hormone treatment, G.G.’s female classmates, perceiving him to be a boy, reacted negatively to his presence in the girls’ restroom. JA32.

mere inconvenience or limitation on his ability to use the restroom—it can be an effective denial of a restroom altogether.

As a result of such a policy, transgender students like G.G. are denied the ability to participate fully in and take advantage of their school’s educational programs. No one could reasonably expect a student to make it through an entire school day without access to a restroom; any student who attempted to do so would likely experience discomfort and anxiety affecting his ability to concentrate during class, further diminishing his educational experience. See JA32-33. And even if a student could avoid using the restroom during regular school hours, such a restriction would still limit his ability to participate in after-school extracurricular activities that are important to a child’s intellectual, social, and emotional development.<sup>4</sup>

Just as an employee is denied equal employment opportunity if he is denied access to an on-site restroom that co-workers of his same gender may use, see

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<sup>4</sup> And even if a transgender student were willing to use a unisex restroom, the number and location of such restroom(s) may be such that a transgender student at a large school would have difficulty reaching the “authorized” restroom in the allotted time between classes. See, *e.g.*, JA32 (G.G.’s affidavit stating that only one of the unisex restrooms is “located anywhere near the restrooms used by other students” and that none of the unisex restrooms is “located near [his] classes”). A student in such situation may feel as though he needed to limit his movement over the course of the day to ensure proximity to an “authorized” restroom, to avoid being late to class or, even worse, having an accident that would humiliate and stigmatize him further.

*Lusardi*, 2015 WL 1607756, at \*9,<sup>5</sup> so too is a student denied equal educational opportunity when restrictions of these kinds are placed on his ability to use the restroom. It is for this reason that the Department of Education—the agency with primary enforcement authority over Title IX—has concluded that, although recipients may provide separate restrooms for boys and girls, when a school does so, it must treat transgender students consistent with their gender identity. Doing so is the only way to ensure that the school’s provision of sex-segregated restrooms complies with Title IX’s mandate not to subject any student to discrimination on the basis of sex.<sup>6</sup>

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<sup>5</sup> The Department of Labor’s Occupational Safety and Health Administration (OSHA) guidelines require agencies to provide employees access to adequate sanitary facilities. See Memorandum to Regional Administrators and State Designees from John B. Miles, Jr., Director of Compliance Programs, Regarding OSHA’s Interpretation of 29 C.F.R. 1910.141(c)(1)(i): Toilet Facilities (Apr. 6, 1998), [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=22932](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22932). To that end, OSHA has issued guidance clarifying that employees “should be permitted to use the facilities that correspond with their gender identity” and that “[t]he employee,” not the employer, “should determine the most appropriate and safest option for him- or herself.” OSHA, *A Guide to Restroom Access for Transgender Workers*, at 2 (June 1, 2015) (OSHA Transgender Guidance), <http://www.osha.gov/Publications/OSHA3795.pdf>.

<sup>6</sup> ED’s view is consistent with that of numerous other federal agencies, including the EEOC, the Department of Housing and Urban Development (HUD), the Office of Personnel Management (OPM), and OSHA, which have all concluded that, in situations in which a distinction based on sex is permissible under the law, a transgender person’s “sex” must be determined by his or her

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3. *General Invocations Of Privacy And Safety Do Not Override Title IX's Prohibition Against Sex Discrimination*

Although GCSB claims that its policy “seeks to provide a safe learning environment for all students and to protect the privacy of all students” (JA142), such asserted concerns do not justify barring G.G. from accessing the restrooms consistent with his gender identity. While a school certainly may take steps designed to ensure the safety of its students, general invocations of “safety” provide no basis for denying a student access to the gender-identity appropriate restroom. To the extent GCSB claims to be concerned about *other students’* safety, it has not provided any factual basis for concluding that G.G.’s use of the boys’ restroom poses a safety risk to any student. A school cannot deny a transgender boy educational opportunities based on a blanket and unfounded

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gender identity, not by the sex assigned at birth. See *Lusardi*, 2015 WL 1607756, at \*8; HUD, *Appropriate Placement for Transgender Persons in Single-Sex Emergency Shelters and Other Facilities*, at 3 (Feb. 20, 2015), <https://www.hudexchange.info/resources/documents/Notice-CPD-15-02-Appropriate-Placement-for-Transgender-Persons-in-Single-Sex-Emergency-Shelters-and-Other-Facilities.pdf>; OPM, *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace*, <http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance> (last visited Oct. 27, 2015); OSHA Transgender Guidance, *supra* note 5; cf. DOJ, Office for Civil Rights, Office of Justice Programs, *FAQ: Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013*, at 8-9 (Apr. 9, 2014), [www.justice.gov/ovw/docs/faqs-ngc-vawa.pdf](http://www.justice.gov/ovw/docs/faqs-ngc-vawa.pdf).

assumption that all transgender boys pose a danger to other boys in the restroom just by virtue of being transgender.

To the extent GCSB claims to be concerned about *transgender students'* safety, such a claim is belied by the fact that the policy it enacted makes it *more likely* that transgender students will be subject to harassment (or worse). In many cases, a transgender student's classmates do not even know he is transgender; requiring him to use either a restroom contrary to his gender identity or a separate unisex restroom thus functions to "out" him, putting the student at increased risk of harm. See NCTE Survey at 154, p. 4, *supra* (noting that "outing" a person as transgender "presents the possibility for disrespect, harassment, discrimination or violence"). Where the student is already "out" publicly—as G.G. was here, largely due to the public hearings putting his transgender status front-and-center—the school can, and should, monitor other students' treatment of him and put measures in place to ensure that he not suffer sex-based harassment in the restroom or anywhere else. See *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999) (school violates Title IX when it is deliberately indifferent to known student-on-student sexual harassment). The appropriate solution, in other words, is to monitor, prevent, and punish the students *doing* the harassing, not to deny the

vulnerable student an equal educational opportunity in the name of protecting him.<sup>7</sup>

Likewise, however commendable an interest in student privacy may be in the abstract, general appeals to “privacy” cannot justify denying transgender students the right to use gender-identity appropriate restrooms. With regard to its existing restrooms, a school can take—and, in fact, Gloucester High School has taken—measures to enhance privacy, such as “adding or expanding partitions between urinals in male restrooms,” and “adding privacy strips to the doors of stalls in all restrooms.” JA17. If a school wishes to accommodate students who are particularly modest, it may create—and, in fact, Gloucester High School has created—additional single-user restroom options. JA19. What it cannot do in the name of “privacy” is exclude a male student from the boys’ restroom and require him to use a separate restroom because he was assigned a different sex at birth than other boys. The desire to accommodate other students’ (or their parents’) discomfort cannot justify a policy that singles out and disadvantages one class of students on the basis of sex. *Macy*, 2012 WL 1435995, at \*10 & n.15; cf. *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 983-984 (8th Cir. 2002) (dismissing

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<sup>7</sup> It goes without saying that if a student is being harassed in the restroom because of his religion or his disability, the appropriate solution is to restrict and punish the harasser, not to single out the victim of harassment and require *him* to use a separate bathroom.

female employee's claim alleging that transgender female co-worker's use of women's restroom created hostile work environment).

GCSB's claim that it has "had a long-standing practice" of restricting restroom use by "biological sex" to "respect the safety and privacy of all students" (Doc. 32, at 6 (brief in support of motion to dismiss); see also Doc. 46, at 3 (reply to appellant's response to motion to dismiss)), is belied by the fact that it needed to enact a formal policy establishing such a restriction. Indeed, the reality is that, in the context of restrooms outside the home, people generally use the facilities that are appropriate for them based on their gender identity and expression; nobody is stationed at the door asking for a birth certificate or the results of a chromosome test, or checking to see what genitals the people entering the facility have. It is only in response to transgender people gaining more visibility that schools and other entities have begun to depart from that practice and demand that restroom access be based on "birth" or "biological" sex. And even then, as this case suggests, employers and educational institutions appear to enforce such bathroom policies predicated on "birth" or "biological" sex against only those individuals who have self-identified as transgender or been outed by others.

In short, although promoting safety and privacy are legitimate goals in the abstract, neither of these rationales can justify a policy that denies G.G.—and other



students like him—not just access to the gender-appropriate restroom but, more fundamentally, an equal opportunity at an education.

*B. The Department Of Education’s Title IX Regulations Do Not Permit Schools To Enact Discriminatory Restroom Policies Like GCSB’s*

Contrary to the district court’s conclusion, ED’s Title IX regulations do not “preclude[]” G.G.’s Title IX claim. JA149. The regulation in question states only that a school “may provide separate toilet \* \* \* facilities on the basis of sex” under Title IX, as long as the “facilities provided for students of one sex” are “comparable to such facilities provided for students of the other sex.” 34 C.F.R. 106.33. It is silent on the question at issue here: whether, once a school has provided separate boys’ and girls’ restrooms pursuant to Section 106.33, it may prohibit a male student from accessing the boys’ restrooms because he is transgender.<sup>8</sup>

The district court’s conclusion that Section 106.33 “clearly” permits GCSB’s restroom policy (JA152) directly contradicts the interpretation of the Department of Education—the agency that promulgated the regulation. ED

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<sup>8</sup> G.G. does not challenge the existence of male and female restrooms, Appellant’s Br. 31, and for good reason. ED has concluded that the mere act of providing separate restroom facilities for males and females does not violate Title IX (as long as the facilities are comparable), see 34 C.F.R. 106.33, which is reasonable because such segregation does not disadvantage or stigmatize any student but simply comports with a historical practice when using multi-user restroom facilities outside the home. See also Appellant’s Br. 36-37.

interprets Section 106.33 to mean that recipients may provide separate restrooms for boys and girls. Section 106.33 does not, in ED's view, give schools the authority to decide that only those males who were assigned the male sex at birth can use the boys' restroom. To the contrary, ED has stated explicitly that although "[t]he Department's Title IX regulations permit schools to provide sex-segregated restrooms," when a school elects to do so, it "generally must treat transgender students consistent with their gender identity" so as not to violate Title IX. JA55 (Letter from James A. Ferg-Cadima, OCR Acting Deputy Assistant Secretary of Policy (Jan. 7, 2015)); see also OCR Single-Sex Q&A at 25 (same guidance for classes and activities).<sup>9</sup>

That interpretation is consistent with how ED has enforced Title IX in this context. ED has reached voluntary resolution with two school districts that had imposed restrictions on transgender students' restroom access similar to GCSB's policy; the agreements provide that those districts will treat transgender students consistent with their gender identity in all aspects of their education, including

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<sup>9</sup> ED's guidance does not limit a school's ability to accommodate a transitioning student's voluntary request to phase in his access to restrooms of his new gender, as was done here. Absent such a request, however, schools must treat a transitioning student consistent with his gender identity.

their restroom access.<sup>10</sup> ED has also, in conjunction with DOJ's Civil Rights Division, filed two Statements of Interest and the instant *amicus* brief asserting that, although recipients may provide separate boys' and girls' restrooms pursuant to Section 106.33, a recipient violates Title IX when it prohibits transgender students from using restrooms consistent with their gender identity. See Doc. 38; Statement of Interest of the United States, *Tooley v. Van Buren Pub. Sch.*, No. 2:14-CV-13466 (E.D. Mich. Feb. 20, 2015). Thus, ED plainly does not interpret Section 106.33 to permit schools to enact policies like GCSB's.

Where there is dispute about the meaning of a regulation, the agency's interpretation is "controlling unless plainly erroneous or inconsistent with the regulation." *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (citation and internal quotation marks omitted). That "deferential standard," *ibid.*, is certainly met here.<sup>11</sup> ED interprets its regulation as clarifying that schools may provide separate

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<sup>10</sup> Resolution Agreement Between the United States and Downey Unified School District (Oct. 8, 2014), <http://www2.ed.gov/documents/press-releases/downey-school-district-agreement.pdf>; Resolution Agreement Between the United States and Arcadia Unified School District (July 24, 2013), <http://www.justice.gov/crt/about/edu/documents/arcadiaagree.pdf>.

<sup>11</sup> *Auer* deference is owed to agency interpretations expressed in *amicus* briefs and Statements of Interest filed pursuant to 28 U.S.C. 517, see *Auer*, 519 U.S. at 462 (*amicus* brief); *M.R. v. Dreyfus*, 697 F.3d 706, 735 (9th Cir. 2011) (Statement of Interest), as well as those issued "through an informal process" like  
(continued...)

restrooms for boys and girls without running afoul of Title IX. That is the most natural reading of the regulatory language. See 34 C.F.R. 106.33 (“A recipient *may provide* separate toilet \* \* \* 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.*”) (emphasis added). Because the regulation is silent on what the phrases “students of one sex” and “students of the other sex” mean in the context of transgender students, ED has provided guidance on that question. ED interprets the regulation as requiring schools to treat students consistent with their gender identity because doing so ensures that transgender students are not denied equal educational opportunity for the reasons described above. ED’s interpretation is a reasonable one, and is thus entitled to deference. See *Chase Bank USA, N.A. v. McCoy*, 562 U.S. 195, 207 (2011) (where regulation is silent as to the “crucial interpretive question,” court must look to the agency’s “own interpretation of the regulation”); *Humanoids Group v. Rogan*, 375 F.3d 301, 306 (4th Cir. 2004) (deferring to agency interpretation of how its trademark regulation should apply in situation not explicitly addressed by regulation’s language).

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an “opinion letter,” *D.L. v. Baltimore City Bd. of Sch. Comm’rs*, 706 F.3d 256, 259 (4th Cir. 2013).

Section 106.33 is comparable to a Maine statute requiring that restrooms in school buildings be “[s]eparated according to sex.” Me. Rev. Stat. Ann. Tit. 20-a, § 6501 (2013). In *Doe v. Regional School Unit 26*, 86 A.3d 600 (Me. 2014), the Maine Supreme Court concluded that this statute “does not mandate, or even suggest, the manner in which transgender students should be permitted to use sex-separated facilities.” *Id.* at 605-606. Thus, the court concluded, an elementary school could not rely on the statute to justify its decision to bar a transgender girl from the girls’ restroom. *Id.* at 606. As the court explained, although the statute requires schools to provide “separate bathrooms for each sex,” it “does not—and school officials cannot—dictate the use of the bathrooms in a way that discriminates against students in violation of” the State’s nondiscrimination law. *Ibid.* ED reasonably reached the same conclusion with regard to 34 C.F.R. 106.33.

The district court’s conclusion that Section 106.33’s plain language supports *only* the court’s interpretation and therefore “is not ambiguous” (JA152), does not withstand scrutiny.<sup>12</sup> The district court’s strained reading—that by using the term “on the basis of sex,” Section 106.33 authorizes schools to use whatever sex-based criterion they wish to determine who qualifies as a boy or girl for restroom use—divorces the phrase from the context in which it appears. In contrast to Title IX’s

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<sup>12</sup> Whether a regulation is ambiguous is a legal question that this Court determines *de novo*. *Humanoids*, 375 F.3d at 306.

statutory language banning sex-based discrimination, the phrase “on the basis of sex” in the context of Section 106.33 most naturally refers to the commonplace, and long-accepted, practice of providing separate male and female restrooms. It would be incongruous for the Department of Education, in a regulation implementing Title IX’s antidiscrimination provision, to have given schools free rein to use whatever sex-based criterion they want in determining who gets to use each restroom. Certainly a school that has created separate restrooms for boys and girls could not decide that only students who dress, speak, and act sufficiently masculine count as boys entitled to use the boys’ restroom, or that only students who wear dresses, have long hair, and act sufficiently feminine may use the girls’ restroom. To do so would engage in precisely the sort of sex stereotyping that *Price Waterhouse* forbids. Yet, the district court’s interpretation of Section 106.33 would seem to allow just that. That is not a sensible reading.

But even if the district court’s interpretation of Section 106.33 were plausible, that does not render ED’s reading incorrect; at most it would mean that the regulation is ambiguous. This is not a case like *Christensen v. Harris County*, which involved a regulation whose plain language precluded the agency’s interpretation. 529 U.S. 576, 587-588 (2000) (regulation’s use of “may” instead of “must” made regulation permissive, thus foreclosing agency’s interpretation setting forth a mandatory requirement). Here, Section 106.33’s language does not “clearly

preclude[]” ED’s interpretation; indeed, as explained, ED’s interpretation is the best reading of its own regulation. *Humanoids*, 375 F.3d at 306. But to the extent there is any ambiguity, this Court must give “binding deference” to ED’s reasonable interpretation of its own regulation. *Kentuckians for the Commonwealth, Inc. v. Rivenburgh*, 317 F.3d 425, 439 (4th Cir. 2003).

The district court’s suggestion that ED arrived at its interpretation “for the purposes of litigation” is inaccurate. JA153. ED is “not a party to this case”; it advances its interpretation of Section 106.33, both below and on appeal, as an *amicus curiae*, just as the Department of Labor did in *Auer*. *Chase Bank*, 562 U.S. at 209. Thus, its position “is in no sense a ‘*post hoc* rationalizatio[n]’ advanced by an agency seeking to defend past agency action against attack.” *Auer*, 519 U.S. at 462 (quoting *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 212 (1988)). To the contrary, the interpretation of Section 106.33 that ED advances here “is entirely consistent with its past views,” as expressed in the agreements it has reached with school districts, in its guidance on single-sex activities, in OCR’s 2014 letter, and in its Statement of Interest in *Tooley*. *Chase Bank*, 562 U.S. at 210.

The district court’s characterization of ED’s interpretation as “newfound” (JA153) is also misplaced. Section 106.33’s application to the context of transgender students’ restroom access “did not arise until recently.” *Talk Am., Inc. v. Michigan Bell Tel. Co.*, 131 S. Ct. 2254, 2263 (2011) (according *Auer* deference

to agency's new interpretation of its "longstanding" regulations). For most of its existence, there was no dispute about Section 106.33's meaning; it was understood simply to mean what it says, *i.e.*, that Title IX recipients can provide separate boys' and girls' facilities. It is only in recent years, as schools have confronted the reality that some students' gender identities do not align with their birth-assigned sex, that schools have begun citing Section 106.33 as justification for enacting new policies restricting transgender students to facilities based on their "birth" or "biological" sex. It is to those "newfound" policies that ED's interpretation of the regulation responds. Providing guidance on how its regulations apply in new contexts is precisely the role of a federal agency.

ED has reasonably concluded that, although Section 106.33 permits schools to provide separate boys' and girls' restrooms, when a school elects to do so, it must permit students to use the restrooms that are consistent with their gender identity. Because ED's interpretation of its own regulation controls, the district court erred in dismissing G.G.'s Title IX claim on the ground that Section 106.33 authorizes GCSB's restroom policy.



## CONCLUSION

GCSB's restroom policy singles G.G. out and treats him differently from all other students because the sex he was assigned at birth does not align with his gender identity. Because that policy is "*literally* discrimination 'because of . . . sex,'" *Schroer*, 577 F. Supp. 2d at 308, G.G. established a likelihood of success on his Title IX claim, and the district court thus erred in dismissing it.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure, that the attached BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* SUPPORTING PLAINTIFF-APPELLANT AND URGING REVERSAL:

(1) complies with Federal Rules of Appellate Procedure 29(d) and 32(a)(7)(B) because it contains 6727 words; and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007, in 14-point Times New Roman font.

s/ Christine A. Monta \_\_\_\_\_  
CHRISTINE A. MONTA  
Attorney

Dated: October 28, 2015

## **CERTIFICATE OF SERVICE**

I certify that on October 28, 2015, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* SUPPORTING PLAINTIFF-APPELLANT AND URGING REVERSAL with the Clerk of the Court using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I further certify that eight paper copies of the electronically-filed brief were sent to the Clerk of the Court by first class mail.

s/ Christine A. Monta \_\_\_\_\_  
CHRISTINE A. MONTA  
Attorney

# EXHIBIT 16

LETTER FROM JAMES A. FERG-CADIMA, OCR ACTING  
DEPUTY ASSISTANT SECRETARY OF POLICY (JAN. 7, 2015)



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

January 7, 2015

Emily T. Prince, Esq.  
[emily@emily-esque.com](mailto:emily@emily-esque.com)

Dear Ms. Prince:

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.<sup>1</sup> OCR enforces and interprets Title IX consistent with case law,<sup>2</sup> and with the adjudications and guidance documents of other Federal agencies.<sup>3</sup>

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<sup>1</sup> 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>.

<sup>2</sup> 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").

<sup>3</sup> 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.<sup>4</sup> 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;<sup>5</sup> and Downey Unified School District.<sup>6</sup>

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](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](http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html).

<sup>4</sup> 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>.

<sup>5</sup> 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).

<sup>6</sup> 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](http://www.ed.gov/ocr) or contact OCR at (800) 421-3481 (TDD: 800-877-8339) or at [ocr@ed.gov](mailto:ocr@ed.gov). You may also fill out a complaint form online at [www.ed.gov/ocr/complaintintro.html](http://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

# EXHIBIT 17

RESOLUTION AGREEMENT BETWEEN THE ARCADIA UNIFIED  
SCHOOL DISTRICT, THE U.S. DEPARTMENT OF EDUCATION,  
OFFICE FOR CIVIL RIGHTS, AND THE U.S. DEPARTMENT OF  
JUSTICE, CIVIL RIGHTS DIVISION 3 (JULY 24, 2013)



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## **RESOLUTION AGREEMENT**

Between the Arcadia Unified School District,  
the U.S. Department of Education, Office for Civil Rights, and  
the U.S. Department of Justice, Civil Rights Division

OCR Case Number 09-12-1020  
DOJ Case Number 169-12C-70

### **BACKGROUND AND JURISDICTION**

The U.S. Department of Education, Office for Civil Rights (“OCR”) and the U.S. Department of Justice, Civil Rights Division (“DOJ”) (jointly referred to as the “United States”) investigated a complaint (“Complaint”) filed against the Arcadia Unified School District (“District”), pursuant to Title IX of the Education Amendments of 1972 (“Title IX”) and Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c *et seq.* (“Title IV”). The Complaint alleged discrimination on the basis of sex against a student in the District (“Student”). The Student is a transgender boy who has consistently and uniformly presented as a boy at school and in all other aspects of his life for several years, as supported by documentation provided to the District by his family. The Student has been known, treated, and accepted as a male by his family, teachers, and classmates. Specifically, the Complaint alleged that the District denied the Student educational opportunities on the basis of sex when, because the Student is transgender, it prohibited him from accessing (1) sex-specific facilities designated for male students at school for use during school and extracurricular activities, and (2) sex-specific student cabins for male students during a school-sponsored overnight academic camp. Without admitting any unlawful conduct, in order to resolve the Complaint, the District agrees to implement this Resolution Agreement (“Agreement”), which includes individual and District-wide measures.

### **DEFINITIONS**

For the specific purposes of this Agreement, the following definitions apply:

- A. “Gender-based discrimination” is a form of sex discrimination, and refers to differential treatment or harassment of a student based on the student’s sex, including gender identity, gender expression, and nonconformity with gender stereotypes, that results in the denial or limitation of education services, benefits, or opportunities. Conduct may constitute gender-based discrimination regardless of the actual or perceived sex, gender identity, or sexual orientation of the persons experiencing or engaging in the conduct.
- B. “Sex assigned at birth” and “assigned sex” refer to the gender designation listed on one’s original birth certificate.
- C. “Gender expression” refers to external cues that one uses to represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.

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- B. “Sex assigned at birth” and “assigned sex” refer to the gender designation listed on one’s original birth certificate.
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- D. “Gender identity” refers to one’s internal sense of gender, which may be different from one’s assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student’s core identity.
  - E. “Transgender” describes an individual whose gender identity is different from the individual’s assigned sex. “Transgender boy” and “transgender male” refer to an individual assigned the female sex at birth who has a male gender identity. An individual can express or assert a transgender gender identity in a variety of ways, which may but do not always include specific medical treatments or procedures. Medical treatments or procedures are not considered a prerequisite for one’s recognition as transgender. For purposes of this Agreement, a “transgender student” is a student who consistently and uniformly asserts a gender identity different from the student’s assigned sex, or for which there is documented legal or medical evidence that the gender identity is sincerely held as part of the student’s core identity.
  - F. “Gender transition” refers to the experience by which a transgender person goes from living and identifying as one’s assigned sex to living and identifying as the sex consistent with one’s gender identity. A gender transition often includes a “social transition,” during which an individual begins to live and identify as the sex consistent with the individual’s gender identity, with or without certain medical treatments or procedures.
  - G. “Gender stereotypes” refers to stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.
  - H. “Gender nonconformity” refers to one’s gender expression, gender characteristics, or gender identity that does not conform to gender stereotypes.
  - I. “Sex-specific facilities” refers to facilities and accommodations used by students at school or during school-sponsored activities and trips, and include, but are not limited to, restrooms, locker rooms, and overnight facilities.
  - J. “Parent” means a student’s parent(s) or legal guardian(s).

#### **TERMS OF THE AGREEMENT**

##### **I. EXPERT CONSULTANT**

- A. No later than ninety (90) calendar days after execution of this Agreement, the District will engage one or more third-party consultants with expertise in child and adolescent gender identity, including discrimination against transgender and gender nonconforming youth, to support and assist the District in implementing this Agreement.

D. “Gender identity” refers to one’s internal sense of gender, which may be different

from one's assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student's core identity.

E. "Transgender" describes an individual whose gender identity is different from the individual's assigned sex. "Transgender boy" and "transgender male" refer to an individual assigned the female sex at birth who has a male gender identity. An individual can express or assert a transgender gender identity in a variety of ways, which may but do not always include specific medical treatments or procedures. Medical treatments or procedures are not considered a prerequisite for one's recognition as transgender. For purposes of this Agreement, a "transgender student" is a student who consistently and uniformly asserts a gender identity different from the student's assigned sex, or for which there is documented legal or medical evidence that the gender identity is sincerely held as part of the student's core identity.

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H. "Gender nonconformity" refers to one's gender expression, gender characteristics, or gender identity that does not conform to gender stereotypes.

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- B. The consultant(s) will be agreed upon by both the District and the United States.
  - C. The District will promptly notify the United States if it intends to retain additional or alternative consultants during the term of this Agreement for purposes of implementing this Agreement.
  - D. The District will be responsible for all costs, if any, associated with the retention of expert consultants.

## II. INDIVIDUAL MEASURES

- A. For the duration of the Student's enrollment in the District, the District will continue to:
  - 1. provide the Student access to sex-specific facilities designated for male students at school consistent with his gender identity; however, the Student may request access to private facilities based on privacy, safety, or other concerns;
  - 2. provide the Student access to sex-specific facilities designated for male students at all District-sponsored activities, including overnight events and extracurricular activities on and off campus, consistent with his gender identity; however, the Student may request access to private facilities based on privacy, safety, or other concerns;
  - 3. treat the Student the same as other male students in all respects in the education programs and activities offered by the District; and
  - 4. ensure that any school records containing the Student's birth name or reflecting the Student's assigned sex, if any, are treated as confidential, personally identifiable information; are maintained separately from the Student's records; and are not disclosed to any District employees, students, or others without the express written consent of the Student's parents or, after the Student turns 18 or is emancipated, the Student.
- B. The District will notify the Student and his parents that they may, at any point during the Student's enrollment in the District, request that the District establish a support team to ensure the Student has access and opportunity to participate in all programs and activities, and is otherwise protected from gender-based discrimination at school. If the District receives such a request, it will form a support team that will:
  - 1. include, at a minimum, the Student, his parents, an advocate or representative of the parents' choice (if any), a medical professional of the

B. The consultant(s) will be agreed upon by both the District and the United States.

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B. The District will notify the Student and his parents that they may, at any point during the Student's enrollment in the District, request that the District establish a support team to ensure the Student has access and opportunity to participate in all programs and activities, and is otherwise protected from gender-based discrimination at school. If the District receives such a request, it will form a support team that will:

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parents' choice (if any), and relevant District personnel familiar with the Student;<sup>1</sup>

2. develop a Student-specific support plan to provide the Student with safe and equitable access to all school and District facilities and activities, addressing any particular issues raised by the Student or his parents;
3. document its meetings, recommendations, and decisions, including, but not limited to, the date and location of each meeting, the names and positions of all participants, the basis for its recommendations and decisions, and supporting third-party opinions and information considered and/or relied upon in the meeting; and
4. at least once each school year and at any time upon the request of the Student or his parents, review the Student's particularized circumstances to determine whether existing arrangements related to the Student's gender identity, gender transition, or transgender status are meeting his educational needs and ensuring that the Student has equal access to and equal opportunity to participate in the District's education programs and activities. Once constituted, the support team will be in place for the remainder of the Student's enrollment in the District or until his parents request in writing that it be terminated.

### III. DISTRICT-WIDE MEASURES

#### A. Policies, Procedures, and Regulations

1. No later than November 30, 2013, the District, in consultation with its consultant(s) and following approval by the United States, will revise all of its policies, procedures, regulations, and related documents and materials (e.g., complaint forms, handbooks, notices to students and parents, website information) related to discrimination (including harassment) to:
  - a. specifically include gender-based discrimination as a form of discrimination based on sex, and
  - b. state that gender-based discrimination includes discrimination based on a student's gender identity, gender expression, gender transition, transgender status, or gender nonconformity.
2. No later than January 31, 2014, the District, with the assistance of the consultant(s) and following approval by the United States, will ensure that its policies, procedures, and regulations applicable to or governing student

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<sup>1</sup> The District will not bear the costs of the student's medical professional or advocate, if any.

parents' choice (if any), and relevant District personnel familiar with the Student;

2. develop a Student-specific support plan to provide the Student with safe and equitable access to all school and District facilities and activities, addressing any particular issues raised by the Student or his parents;
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### **III. DISTRICT-WIDE MEASURES**

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participation in all programs and activities offered by the District provide all students, including transgender students and other students who do not conform to sex stereotypes, equal access to and equal opportunity to participate in all such programs and activities in a manner that does not discriminate based on sex. The District will:

- a. identify all existing policies and regulations applicable to or governing students' access to and participation in programs and activities offered by the District, and revise those policies and regulations as necessary to ensure that all students, including gender nonconforming and transgender students, are provided with equal access to all such programs and activities;
  - b. modify current policies or develop a comprehensive gender-based non-discrimination policy to ensure that all students, including transgender students, are protected from gender-based discrimination and have equal access to and equal opportunity to participate in all education programs and activities offered by the District; and
  - c. develop an implementation guide for site administrators, faculty, and staff addressing the application of the District's gender-based discrimination policies, as adopted or modified under ¶ III.A.2.b. above, to transgender and gender nonconforming students.
3. If the District is notified by a student, parent, or representative that the student is undertaking, planning to undergo, or has completed a gender transition, the District will promptly inform the notifying individual and the student of their right to request a support team of appropriate individuals to ensure that the student has equal access to and equal opportunity to participate in the District's programs and activities.

**B. Instruction and Professional Development**

1. Starting with the 2013-2014 school year, and then annually thereafter for the term of this Agreement, the District, in consultation with its consultant(s) and the United States, will provide training to all certificated District-level and school-based administrators regarding the District's obligations to prevent and address gender-based discrimination; implementation of the policies, procedures, and regulations adopted under this Agreement; and best practices for creating a nondiscriminatory school environment for transgender students. The initial training will be conducted no later than March 31, 2014. Site administrators will, throughout each school year, provide this information to all faculty and staff during existing trainings, meetings, and other appropriate opportunities. No later than March 31, 2014, and by November 1 of each school year thereafter, the District will submit a plan, for the United

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States' review and approval, indicating how it intends to provide this information to faculty and staff.

2. Consistent with the policies and procedures adopted in this Agreement and with applicable law, the District, in consultation with its consultant(s), will, in its bullying prevention and sexual harassment programs, provide age-appropriate instruction to all students on gender-based discrimination and will provide examples of prohibited conduct, including harassment, in various school-related contexts, including the types of conduct prohibited with respect to sex-specific facilities and elsewhere at school.

#### **IV. MONITORING AND REPORTING**

- A. For all policies, procedures, regulations, and other materials revised under this Agreement, the District will provide draft documents to the United States for its review no later than thirty (30) calendar days before the applicable deadline for implementation. The United States will provide comments no later than thirty (30) calendar days after its receipt of the draft documents. The parties will work in good faith to resolve any disagreements by the applicable deadline for implementation.
- B. The District will provide documentation of its compliance with this Agreement through written compliance reports, which will be produced to the United States on February 15 and August 15 of the first year this Agreement is in force, and annually thereafter on August 15 for each year this Agreement is in place. The first report will be due on February 15, 2014 and will contain information for the period running from the date of the execution of this Agreement through January 31, 2014. Each subsequent report will contain information for the period ending July 31 of the respective year. Each report will contain the following information and documents:
  1. the name(s), position(s), employer(s) or professional affiliation(s), and contact information of each consultant retained by the District in connection with this Agreement, as well as the start and end dates of each individual's services;
  2. a copy of all relevant policies, procedures, regulations, and related materials (e.g., handbooks) that were implemented, revised, or rescinded during the reporting period;
  3. a copy or detailed description of all gender-based discrimination or harassment complaints or incidents that occurred during the reporting period, including documentation or a detailed written description of the District's response to each incident;
  4. whether the District was notified during the reporting period that any student was undertaking, planning to undergo, or had completed a gender

States' review and approval, indicating how it intends to provide this information to faculty and staff.

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B. The District will provide documentation of its compliance with this Agreement through written compliance reports, which will be produced to the United States on February 15 and August 15 of the first year this Agreement is in force, and annually thereafter on August 15 for each year this Agreement is in place. The first report will be due on February 15, 2014 and will contain information for the period running from the date of the execution of this Agreement through January 31, 2014. Each subsequent report will contain information for the period ending July 31 of the respective year. Each report will contain the following information and documents:

1. the name(s), position(s), employer(s) or professional affiliation(s), and contact information of each consultant retained by the District in connection with this Agreement, as well as the start and end dates of each individual's services;
2. a copy of all relevant policies, procedures, regulations, and related materials (e.g., handbooks) that were implemented, revised, or rescinded during the reporting period;
3. a copy or detailed description of all gender-based discrimination or harassment complaints or incidents that occurred during the reporting period, including documentation or a detailed written description of the District's response to each incident;
4. whether the District was notified during the reporting period that any student was undertaking, planning to undergo, or had completed a gender

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transition; and, if so, whether the District notified each such student and his/her parent of their right to request a support team; and whether any requests for a support team were made;

5. for all support teams formed or that were in place during the reporting period (including for the Student), the names and positions of the team members, documentation of the request for the formation of the team, date(s) the team met, and any documentation of its meetings, recommendations, and decisions;
  6. a detailed description or documentation related to all trainings provided to District employees pursuant to this Agreement, including the date(s) of each training; and the name, position, and school/work site of each employee who was required, but did not attend the training;
  7. a detailed written description of any changes to the District's bullying prevention and sexual harassment programs made pursuant to this Agreement, including a copy of all relevant instructional materials; and
  8. a detailed written description of the District's compliance with the individual measures required by Section II of this Agreement, as well as all documentation related to the Student's support team and support plan.
- C. The District will provide all reports, documents, and information required to be produced to the United States pursuant to this Agreement in electronic form, usable by the United States, or in written form if the data in electronic form would not be usable, in accordance with the timelines set herein.
- D. The District will produce to the United States all reports, documents, and information required by this Agreement, including those containing students' personally identifiable information ("PII") from education records. Pursuant to the law enforcement exception to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g(b)(1)(C) and (3), which applies to the United States in this matter, the United States may receive documents containing PII from education records in connection with the enforcement of the federal legal requirements which relate to federally supported education programs. *See* 20 U.S.C § 1232g(b)(1)(C)(ii). The United States will maintain the confidentiality of all such information produced by the District, consistent with the Privacy Act of 1974, 5 U.S.C. § 552a, the Freedom of Information Act, 5 U.S.C. § 552, and FERPA.

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5. for all support teams formed or that were in place during the reporting period (including for the Student), the names and positions of the team members, documentation of the request for the formation of the team, date(s) the team met, and any documentation of its meetings, recommendations, and decisions;

6. a detailed description or documentation related to all trainings provided to District employees pursuant to this Agreement, including the date(s) of each training; and the name, position, and school/work site of each employee who was required, but did not attend the training;

7. a detailed written description of any changes to the District's bullying prevention and sexual harassment programs made pursuant to this Agreement, including a copy of all relevant instructional materials; and

8. a detailed written description of the District's compliance with the individual measures required by Section II of this Agreement, as well as all documentation related to the Student's support team and support plan.

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**V. ENFORCEMENT**

- A. The United States may enforce the terms of this Agreement, Title IX, Title IV, and all other applicable federal laws.
- B. OCR will not initiate enforcement action and DOJ will not initiate litigation regarding the Complaint provided that the District implements the provisions of this Agreement in good faith.<sup>2</sup>
- C. If OCR or DOJ determines that the District has failed to comply with the terms of this Agreement or has failed to comply in a timely manner, one or both agencies will so notify the District in writing and will attempt to resolve the issue(s) in good faith with the District. If the United States is unable to reach a satisfactory resolution of the issue(s) within sixty (60) calendar days of providing notice to the District, OCR may initiate administrative compliance proceedings<sup>3</sup> and DOJ may initiate civil enforcement proceedings in federal court.
- D. The District understands that the United States will monitor this Agreement until it determines that the District has fulfilled the terms of this Agreement. Sections I and III of this Agreement may not be terminated prior to June 30, 2016. Section II of this Agreement may not be terminated prior to the Student's withdrawal or graduation from the District, whichever is sooner.
- E. The District further understands that the United States retains the right to evaluate the District's compliance with this Agreement, including the right to conduct site visits, observe trainings, interview District staff and students (including *ex parte* communications with students and employees other than school and District administrators), and, if necessary, request additional reports or data.

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<sup>2</sup> As of the date of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described herein. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described herein, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by this Agreement.

<sup>3</sup> OCR may initiate compliance proceedings under 34 C.F.R §§ 100.8-100.12 and 34 C.F.R Part 101.

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- A. The United States may enforce the terms of this Agreement, Title IX, Title IV,

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2

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3

D. The District understands that the United States will monitor this Agreement until it determines that the District has fulfilled the terms of this Agreement. Sections I and III of this Agreement may not be terminated prior to June 30, 2016. Section II of this Agreement may not be terminated prior to the Student's withdrawal or graduation from the District, whichever is sooner.

and DOJ may initiate civil enforcement proceedings in federal court.

E. The District further understands that the United States retains the right to evaluate the District's compliance with this Agreement, including the right to conduct site visits, observe trainings, interview District staff and students (including ex parte communications with students and employees other than school and District administrators), and, if necessary, request additional reports or data.

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3

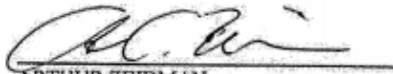
OCR may initiate compliance proceedings under 34 C.F.R §§ 100.8-100.12 and 34 C.F.R Part 101.

8



FOR THE UNITED STATES OF AMERICA:

For the U.S. Department of Education:

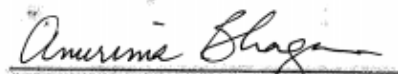


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OCR San Francisco

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Suzanne Taylor  
Kendra Fox-Davis  
Gayle Sakowski  
U.S. Department of Education  
Office for Civil Rights  
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Date: July 24, 2013

For the U.S. Department of Justice:



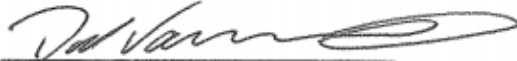
ANURIMA BHARGAVA  
Chief  
Educational Opportunities Section

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Educational Opportunities Section  
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Date: July 24, 2013

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**FOR THE ARCADIA UNIFIED SCHOOL  
DISTRICT:**



**DAVID VANNASDALL**  
Deputy Superintendent, Educational Services  
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Date: 7-24-13

FOR THE ARCADIA UNIFIED SCHOOL DISTRICT:

VANNASDALL Deputy Superintendent, Educational Services and Programs

Arcadia Unified School District

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Fax: (626)

## **RESOLUTION AGREEMENT**

Between the Arcadia Unified School District,  
the U.S. Department of Education, Office for Civil Rights, and  
the U.S. Department of Justice, Civil Rights Division

OCR Case Number 09-12-1020  
DOJ Case Number 169-12C-70

### **BACKGROUND AND JURISDICTION**

The U.S. Department of Education, Office for Civil Rights (“OCR”) and the U.S. Department of Justice, Civil Rights Division (“DOJ”) (jointly referred to as the “United States”) investigated a complaint (“Complaint”) filed against the Arcadia Unified School District (“District”), pursuant to Title IX of the Education Amendments of 1972 (“Title IX”) and Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c *et seq.* (“Title IV”). The Complaint alleged discrimination on the basis of sex against a student in the District (“Student”). The Student is a transgender boy who has consistently and uniformly presented as a boy at school and in all other aspects of his life for several years, as supported by documentation provided to the District by his family. The Student has been known, treated, and accepted as a male by his family, teachers, and classmates. Specifically, the Complaint alleged that the District denied the Student educational opportunities on the basis of sex when, because the Student is transgender, it prohibited him from accessing (1) sex-specific facilities designated for male students at school for use during school and extracurricular activities, and (2) sex-specific student cabins for male students during a school-sponsored overnight academic camp. Without admitting any unlawful conduct, in order to resolve the Complaint, the District agrees to implement this Resolution Agreement (“Agreement”), which includes individual and District-wide measures.

### **DEFINITIONS**

For the specific purposes of this Agreement, the following definitions apply:

- A. “Gender-based discrimination” is a form of sex discrimination, and refers to differential treatment or harassment of a student based on the student’s sex, including gender identity, gender expression, and nonconformity with gender stereotypes, that results in the denial or limitation of education services, benefits, or opportunities. Conduct may constitute gender-based discrimination regardless of the actual or perceived sex, gender identity, or sexual orientation of the persons experiencing or engaging in the conduct.
- B. “Sex assigned at birth” and “assigned sex” refer to the gender designation listed on one’s original birth certificate.
- C. “Gender expression” refers to external cues that one uses to represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.

- D. “Gender identity” refers to one’s internal sense of gender, which may be different from one’s assigned sex, and which is consistently and uniformly asserted, or for which there is other evidence that the gender identity is sincerely held as part of the student’s core identity.
- E. “Transgender” describes an individual whose gender identity is different from the individual’s assigned sex. “Transgender boy” and “transgender male” refer to an individual assigned the female sex at birth who has a male gender identity. An individual can express or assert a transgender gender identity in a variety of ways, which may but do not always include specific medical treatments or procedures. Medical treatments or procedures are not considered a prerequisite for one’s recognition as transgender. For purposes of this Agreement, a “transgender student” is a student who consistently and uniformly asserts a gender identity different from the student’s assigned sex, or for which there is documented legal or medical evidence that the gender identity is sincerely held as part of the student’s core identity.
- F. “Gender transition” refers to the experience by which a transgender person goes from living and identifying as one’s assigned sex to living and identifying as the sex consistent with one’s gender identity. A gender transition often includes a “social transition,” during which an individual begins to live and identify as the sex consistent with the individual’s gender identity, with or without certain medical treatments or procedures.
- G. “Gender stereotypes” refers to stereotypical notions of masculinity and femininity, including expectations of how boys or girls represent or communicate one’s gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics.
- H. “Gender nonconformity” refers to one’s gender expression, gender characteristics, or gender identity that does not conform to gender stereotypes.
- I. “Sex-specific facilities” refers to facilities and accommodations used by students at school or during school-sponsored activities and trips, and include, but are not limited to, restrooms, locker rooms, and overnight facilities.
- J. “Parent” means a student’s parent(s) or legal guardian(s).

## **TERMS OF THE AGREEMENT**

### **I. EXPERT CONSULTANT**

- A. No later than ninety (90) calendar days after execution of this Agreement, the District will engage one or more third-party consultants with expertise in child and adolescent gender identity, including discrimination against transgender and gender nonconforming youth, to support and assist the District in implementing this Agreement.

- B. The consultant(s) will be agreed upon by both the District and the United States.
- C. The District will promptly notify the United States if it intends to retain additional or alternative consultants during the term of this Agreement for purposes of implementing this Agreement.
- D. The District will be responsible for all costs, if any, associated with the retention of expert consultants.

## **II. INDIVIDUAL MEASURES**

- A. For the duration of the Student's enrollment in the District, the District will continue to:
  - 1. provide the Student access to sex-specific facilities designated for male students at school consistent with his gender identity; however, the Student may request access to private facilities based on privacy, safety, or other concerns;
  - 2. provide the Student access to sex-specific facilities designated for male students at all District-sponsored activities, including overnight events and extracurricular activities on and off campus, consistent with his gender identity; however, the Student may request access to private facilities based on privacy, safety, or other concerns;
  - 3. treat the Student the same as other male students in all respects in the education programs and activities offered by the District; and
  - 4. ensure that any school records containing the Student's birth name or reflecting the Student's assigned sex, if any, are treated as confidential, personally identifiable information; are maintained separately from the Student's records; and are not disclosed to any District employees, students, or others without the express written consent of the Student's parents or, after the Student turns 18 or is emancipated, the Student.
- B. The District will notify the Student and his parents that they may, at any point during the Student's enrollment in the District, request that the District establish a support team to ensure the Student has access and opportunity to participate in all programs and activities, and is otherwise protected from gender-based discrimination at school. If the District receives such a request, it will form a support team that will:
  - 1. include, at a minimum, the Student, his parents, an advocate or representative of the parents' choice (if any), a medical professional of the

parents' choice (if any), and relevant District personnel familiar with the Student;<sup>1</sup>

2. develop a Student-specific support plan to provide the Student with safe and equitable access to all school and District facilities and activities, addressing any particular issues raised by the Student or his parents;
3. document its meetings, recommendations, and decisions, including, but not limited to, the date and location of each meeting, the names and positions of all participants, the basis for its recommendations and decisions, and supporting third-party opinions and information considered and/or relied upon in the meeting; and
4. at least once each school year and at any time upon the request of the Student or his parents, review the Student's particularized circumstances to determine whether existing arrangements related to the Student's gender identity, gender transition, or transgender status are meeting his educational needs and ensuring that the Student has equal access to and equal opportunity to participate in the District's education programs and activities. Once constituted, the support team will be in place for the remainder of the Student's enrollment in the District or until his parents request in writing that it be terminated.

### **III. DISTRICT-WIDE MEASURES**

#### **A. Policies, Procedures, and Regulations**

1. No later than November 30, 2013, the District, in consultation with its consultant(s) and following approval by the United States, will revise all of its policies, procedures, regulations, and related documents and materials (e.g., complaint forms, handbooks, notices to students and parents, website information) related to discrimination (including harassment) to:
  - a. specifically include gender-based discrimination as a form of discrimination based on sex, and
  - b. state that gender-based discrimination includes discrimination based on a student's gender identity, gender expression, gender transition, transgender status, or gender nonconformity.
2. No later than January 31, 2014, the District, with the assistance of the consultant(s) and following approval by the United States, will ensure that its policies, procedures, and regulations applicable to or governing student

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<sup>1</sup> The District will not bear the costs of the student's medical professional or advocate, if any.

participation in all programs and activities offered by the District provide all students, including transgender students and other students who do not conform to sex stereotypes, equal access to and equal opportunity to participate in all such programs and activities in a manner that does not discriminate based on sex. The District will:

- a. identify all existing policies and regulations applicable to or governing students' access to and participation in programs and activities offered by the District, and revise those policies and regulations as necessary to ensure that all students, including gender nonconforming and transgender students, are provided with equal access to all such programs and activities;
  - b. modify current policies or develop a comprehensive gender-based non-discrimination policy to ensure that all students, including transgender students, are protected from gender-based discrimination and have equal access to and equal opportunity to participate in all education programs and activities offered by the District; and
  - c. develop an implementation guide for site administrators, faculty, and staff addressing the application of the District's gender-based discrimination policies, as adopted or modified under ¶ III.A.2.b. above, to transgender and gender nonconforming students.
3. If the District is notified by a student, parent, or representative that the student is undertaking, planning to undergo, or has completed a gender transition, the District will promptly inform the notifying individual and the student of their right to request a support team of appropriate individuals to ensure that the student has equal access to and equal opportunity to participate in the District's programs and activities.

B. Instruction and Professional Development

1. Starting with the 2013-2014 school year, and then annually thereafter for the term of this Agreement, the District, in consultation with its consultant(s) and the United States, will provide training to all certificated District-level and school-based administrators regarding the District's obligations to prevent and address gender-based discrimination; implementation of the policies, procedures, and regulations adopted under this Agreement; and best practices for creating a nondiscriminatory school environment for transgender students. The initial training will be conducted no later than March 31, 2014. Site administrators will, throughout each school year, provide this information to all faculty and staff during existing trainings, meetings, and other appropriate opportunities. No later than March 31, 2014, and by November 1 of each school year thereafter, the District will submit a plan, for the United



States' review and approval, indicating how it intends to provide this information to faculty and staff.

2. Consistent with the policies and procedures adopted in this Agreement and with applicable law, the District, in consultation with its consultant(s), will, in its bullying prevention and sexual harassment programs, provide age-appropriate instruction to all students on gender-based discrimination and will provide examples of prohibited conduct, including harassment, in various school-related contexts, including the types of conduct prohibited with respect to sex-specific facilities and elsewhere at school.

#### **IV. MONITORING AND REPORTING**

- A. For all policies, procedures, regulations, and other materials revised under this Agreement, the District will provide draft documents to the United States for its review no later than thirty (30) calendar days before the applicable deadline for implementation. The United States will provide comments no later than thirty (30) calendar days after its receipt of the draft documents. The parties will work in good faith to resolve any disagreements by the applicable deadline for implementation.
- B. The District will provide documentation of its compliance with this Agreement through written compliance reports, which will be produced to the United States on February 15 and August 15 of the first year this Agreement is in force, and annually thereafter on August 15 for each year this Agreement is in place. The first report will be due on February 15, 2014 and will contain information for the period running from the date of the execution of this Agreement through January 31, 2014. Each subsequent report will contain information for the period ending July 31 of the respective year. Each report will contain the following information and documents:
  1. the name(s), position(s), employer(s) or professional affiliation(s), and contact information of each consultant retained by the District in connection with this Agreement, as well as the start and end dates of each individual's services;
  2. a copy of all relevant policies, procedures, regulations, and related materials (e.g., handbooks) that were implemented, revised, or rescinded during the reporting period;
  3. a copy or detailed description of all gender-based discrimination or harassment complaints or incidents that occurred during the reporting period, including documentation or a detailed written description of the District's response to each incident;
  4. whether the District was notified during the reporting period that any student was undertaking, planning to undergo, or had completed a gender

transition; and, if so, whether the District notified each such student and his/her parent of their right to request a support team; and whether any requests for a support team were made;

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- D. The District understands that the United States will monitor this Agreement until it determines that the District has fulfilled the terms of this Agreement. Sections I and III of this Agreement may not be terminated prior to June 30, 2016. Section II of this Agreement may not be terminated prior to the Student's withdrawal or graduation from the District, whichever is sooner.
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<sup>2</sup> As of the date of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described herein. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described herein, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by this Agreement.

<sup>3</sup> OCR may initiate compliance proceedings under 34 C.F.R §§ 100.8-100.12 and 34 C.F.R Part 101.

**FOR THE UNITED STATES OF AMERICA:**

**For the U.S. Department of Education:**



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Date:

July 24, 2013

**For the U.S. Department of Justice:**




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Date:

July 24, 2013

**FOR THE ARCADIA UNIFIED SCHOOL  
DISTRICT:**



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Fax: (626) 821-8647

Date: 7-24-13

# EXHIBIT 18

U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, QUESTIONS  
AND ANSWERS ON TITLE IX AND SINGLE-SEX ELEMENTARY  
AND SECONDARY CLASSES AND EXTRACURRICULAR  
ACTIVITIES 25 (DEC. 1, 2014)



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

**Questions and Answers on Title IX and Single-Sex Elementary and Secondary  
Classes and Extracurricular Activities\***

The Office for Civil Rights (OCR) of the U.S. Department of Education (Department) has received a number of questions about the legality, under the Department's regulations implementing Title IX of the Education Amendments of 1972 (Title IX), of single-sex elementary and secondary classes and extracurricular activities offered by recipients of funding from the Department.<sup>1</sup>

Although Title IX prohibits discrimination on the basis of sex in federally funded education programs and activities, regulations issued by the Department authorize schools to offer single-sex classes or extracurricular activities under certain circumstances.<sup>2</sup> In order to ensure that schools subject to Title IX comply with the Department's requirements if they choose to offer single-sex classes and extracurricular activities, OCR provides the following responses to questions that schools should consider when assessing their compliance with Title IX. Although this document focuses on single-sex classes, some of the legal principles will also apply to single-sex schools. In order to gain a complete understanding of these legal requirements and recommendations, this document should be read in full.

Authorized by

/s/

Catherine E. Lhamon  
Assistant Secretary for Civil Rights

December 1, 2014

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\* The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at [www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf). OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that it enforces. OCR's legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to [OCR@ed.gov](mailto:OCR@ed.gov), or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

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***Overview of Title IX's Application to Single-Sex Classes and Extracurricular Activities\****

**1. What types of schools are covered by the Department's Title IX regulations on single-sex classes?**

**Answer:** Coeducational elementary and secondary schools and school districts that receive Federal financial assistance from the Department must comply with the Department's Title IX regulations in 34 C.F.R. § 106.34(b) on single-sex classes if they intend to offer such classes. (OCR often refers to these schools and school districts as "recipients.") In practice, the regulations regarding single-sex classes apply to every public school (including traditional, charter, and magnet schools) because every public school is part of a local education agency that receives financial assistance from the Department. The regulations also apply to the few private coeducational schools that receive Federal financial assistance from the Department<sup>3</sup> and wish to offer single-sex classes.<sup>†</sup>

**2. Are there other legal considerations beyond the Title IX regulations discussed in this guidance document that apply to single-sex classes?**

**Answer:** Yes. While this document only addresses the requirements of the Department's Title IX regulations, public school districts and schools that are currently offering or are interested in offering single-sex classes must comply with the Constitution of the United States and other applicable Federal laws. The Equal Protection Clause of the Fourteenth Amendment prohibits discrimination on the basis of sex by public schools.<sup>4</sup> In addition, Title IV of the Civil Rights Act of 1964 (Title IV) prohibits public school boards from denying students the equal protection of the laws based on sex,<sup>5</sup> and the Equal Educational Opportunities Act (EEOA) prohibits some forms of student assignment to schools if the assignment results in sex segregation.<sup>6</sup>

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\* The Department's regulations clarified in this document apply to all single-sex classes and extracurricular activities covered by 34 C.F.R. § 106.34(b). For simplicity, OCR generally uses the term "classes" or "classes and activities" to refer to "classes and extracurricular activities."

† A private school that is controlled by a religious organization is exempt from Title IX even when it receives Federal financial assistance to the extent that the law's requirements conflict with the organization's religious tenets. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office. (See the response to Question 33 to determine which regional office serves your location.)

All of these legal requirements are enforced in different ways. OCR has authority to investigate a potential Title IX violation in response to a complaint or proactively through a compliance review and may refer a matter to the Department of Justice (DOJ) if voluntary compliance cannot be achieved.<sup>7</sup> DOJ also has independent authority to enforce the Equal Protection Clause, Title IV, and the EEOA. Additionally, an individual may bring a private lawsuit against a school district or school for alleged violations of Title IX, the Equal Protection Clause, or the EEOA, and DOJ may seek to intervene in such a suit.

Therefore, when public school districts and schools offer single-sex classes, they must ensure that they comply with the Constitution and all applicable Federal laws, not just Title IX. State and local rules cannot limit or override the requirements of Federal laws, including Title IX and its regulations, but States and localities may have constitutions, laws, or regulations that impose additional limitations regarding the offering of single-sex classes.<sup>8</sup>

OCR recommends that a school district or school consult with legal counsel prior to offering single-sex classes.

### **3. Does this document address single-sex schools?**

**Answer:** This document focuses on the Department's Title IX regulations pertaining to single-sex classes in public elementary and secondary schools. There are separate Title IX regulations in 34 C.F.R. § 106.34(c) that govern public, nonvocational single-sex schools. Generally, a school district may offer a single-sex nonvocational elementary or secondary school under Title IX only if it offers a substantially equal single-sex or coeducational school to students of the excluded sex.<sup>9</sup> However, single-sex nonvocational private schools are not governed by the Department's Title IX regulation requiring a substantially equal single-sex or coeducational school. By contrast, vocational schools that receive Federal financial assistance may never be limited to one sex.<sup>10</sup> There are also Department Title IX regulations that apply to admissions to single-sex nonvocational public and private colleges and universities.<sup>11</sup>

As noted in the response to Question 2, public single-sex schools are subject to the Equal Protection Clause of the Fourteenth Amendment and other Federal statutes as well as Title IX. The Department requires grant applicants that seek funds or other forms of Federal financial assistance for the establishment or operation of a public single-sex school to demonstrate the school's compliance with Title IX, the Equal Protection Clause of the Fourteenth Amendment, and all other applicable laws and regulations. Failure to demonstrate compliance with these requirements may lead to a rejection of the grant application or disqualification from receipt of continuation funds or other financial assistance.

**4. May schools offer single-sex classes and extracurricular activities under the Department's Title IX regulations?**

**Answer:** Yes. The Department's Title IX regulations permit offering single-sex classes under certain circumstances. The general rule under Title IX is that a recipient may not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex in its education programs or activities—including classes and extracurricular activities—unless expressly authorized to do so under Title IX or the Department's implementing regulations.<sup>12</sup> The Department's Title IX regulations identify the following categories for which a recipient may intentionally separate students by sex:<sup>13</sup>

- Contact sports in physical education classes;<sup>14</sup>
- Classes or portions of classes in elementary and secondary schools that deal primarily with human sexuality;<sup>15</sup> and
- Nonvocational classes and extracurricular activities within a coeducational, nonvocational elementary or secondary school if certain criteria are met.<sup>16</sup>

**5. What kinds of classes and activities does this document address?**

**Answer:** This document focuses on the last exception noted in the response to Question 4—nonvocational classes and extracurricular activities in a coeducational, nonvocational elementary or secondary school receiving Federal financial assistance. These include any single-sex curricular activity (such as a class or a field trip) and any single-sex extracurricular activity (such as a before-school or after-school activity, lunch, or recess). The requirements regarding this exception apply to single-sex classes and activities whether they are provided directly by a school district or school or through another entity.<sup>17</sup>

Vocational classes are not discussed further in this document because they may never be offered on a single-sex basis.<sup>18</sup> For purposes of this document, vocational classes are those classes that have as their primary purpose the preparation of students to pursue a technical, skilled, or semi-skilled occupation or trade; or to pursue study in a technical field, consistent with the definition of "institution of vocational education" in 34 C.F.R. § 106.2(o).<sup>19</sup>

OCR does not address interscholastic, club, or intramural athletics in this document because extracurricular athletics are governed by separate Title IX regulations.<sup>20</sup>

**6. Is a class that is open to all students but in which only members of one sex enroll covered by the Title IX regulations described in this document?**

**Answer:** No. The regulations described in this document apply to a class that excludes students of one sex from enrolling or otherwise participating in that class.

By contrast, a class is not subject to the regulations described in this document if it is open to members of both sexes, even if students of only one sex, or a substantially disproportionate number of students of one sex, enroll. If such disproportion exists in a coeducational class, however, it may be an indication of inappropriate steering or other discrimination in counseling or guidance. Title IX requires that, if such disproportion exists, the school ensure that the disproportionate enrollment is not the result of discrimination on the basis of sex, including in counseling or guidance of students or applicants for admission.<sup>21</sup>

**7. What criteria must be met to offer single-sex classes under the Department's Title IX regulations?**

**Answer:** The Department's Title IX regulations permit a nonvocational elementary or secondary school to offer a nonvocational single-sex class if it has a two-part justification for doing so that demonstrates that:

- each single-sex class is based on the recipient's "important objective" either to
  - improve its students' educational achievement through its overall established policies to provide diverse educational opportunities (the diversity objective), or
  - to meet the particular, identified educational needs of its students (the needs objective); and
- the single-sex nature of the class is "substantially related" to achieving that important objective.<sup>22</sup>

In addition to establishing a justification for offering a single-sex class, in order to comply with the Department's Title IX regulations, the recipient must:

- implement its objective in an evenhanded manner;
- ensure that student enrollment in the single-sex class is completely voluntary;
- provide a substantially equal coeducational class in the same subject; and

- conduct periodic evaluations to determine whether the class complies with Title IX, and if not, modify or discontinue the class to ensure compliance with Title IX.

Each of these elements is discussed below.

### ***Justification for Offering a Single-Sex Class***

#### **8. Does a recipient need a justification for each single-sex class or activity it offers?**

**Answer:** Yes. A specific, individual justification (demonstrating the recipient's objective and the substantial relationship between the objective and the single-sex nature of the class or activity) is necessary for each single-sex class or activity. A recipient may not offer single-sex classes in multiple grades or subjects without separately justifying each class. At the elementary school level, where a class typically covers many subjects, the recipient must separately justify the use of single-sex classes for each subject. This requirement applies to each single-sex curricular activity and each single-sex extracurricular activity offered by the school.

#### **9. When must a recipient establish its justification for a single-sex class?**

**Answer:** A recipient must establish its justification prior to offering the single-sex class.<sup>23</sup>

Although OCR does not pre-approve class offerings or offer legal advisory opinions, OCR will request documentation of the justification during a complaint investigation or compliance review. OCR will review the justification to ensure that it was the actual reason that motivated the offering of that single-sex class, rather than an after-the-fact explanation prepared in response to the complaint or investigation.<sup>24</sup> A recipient is not required to prepare a written justification, but in the absence of a written justification, OCR will assume that the recipient did not establish its justification prior to offering the single-sex class and that any justification was established after the initiation of the complaint investigation or compliance review, unless the recipient can prove otherwise. Therefore, it is strongly recommended that the recipient articulate its justification in writing prior to offering the single-sex class and preserve that documentation for at least as long as the recipient offers the single-sex class in question and for a reasonable time after the class ends. This documentation may also assist the recipient as it periodically evaluates its single-sex offerings, as discussed in more detail in response to Questions 23 through 28.

#### **10. In what ways can a school identify an important objective for offering a single-sex class?**

**Answer:** To offer a single-sex class, a school district or school must first identify an important objective that the particular single-sex class is intended to address. The Title IX



regulations on single-sex classes describe the following two important objectives, one of which must be the basis for offering a single-sex class.

- Diversity Objective: “To improve educational achievement of its students, through a recipient’s overall established policy to provide diverse educational opportunities, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective.”<sup>25</sup>

To meet this objective, a recipient must first identify the educational achievement it seeks to improve through the diverse educational opportunities it offers and the proposed single-sex class.<sup>26</sup> Recipients may not rely on the diversity objective if the only type of nontraditional class offered is a single-sex class.<sup>27</sup> Rather, the recipient must offer a range of diverse educational opportunities beyond single-sex and coeducational classes. Diverse offerings in a school might include, for example, a variety of electives, a variety of curricula (such as a science, technology, engineering, math (STEM) focus or International Baccalaureate classes), co-op or internship opportunities, or the option to take classes at other schools.

- *Example A\**: The students at Options High School earn high grades and above-average scores on State exams, but their enrollment in Advanced Placement (AP) classes is low. Options High School would like to increase enrollment in AP classes in an effort to improve its students’ college preparedness. As part of its college-preparedness effort, Options High School offers diverse educational opportunities, including AP classes, a variety of electives, a STEM-focused curriculum option, and a visual and performing arts-focused curriculum option. Many students who are not enrolled in AP classes have expressed interest in taking AP classes in a single-sex setting. The high school would like to add single-sex AP classes to its class offerings in order to increase enrollment in AP classes and thus improve college preparedness. Under these circumstances, attempting to improve its students’ college preparedness through single-sex AP classes is an appropriate use of the diversity objective.

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\* This document provides guidance on a number of Title IX requirements applicable to single-sex classes, including justification/important objective; substantial relationship; evenhandedness; voluntariness; a substantially equal coeducational class; and periodic evaluations. Each example in this document is intended to illustrate the principles discussed in the response in which the example appears. Each example also presumes compliance with all the Title IX requirements discussed elsewhere in the document and should be read with that understanding.

- Needs Objective: “To meet the particular, identified educational needs of its students, provided that the single-sex nature of the class or extracurricular activity is substantially related to achieving that objective.”<sup>28</sup>

Unlike the diversity objective, to meet the needs objective, the recipient must identify a particular educational need in its student body, evidenced by limited or deficient educational achievement, which is not being met by coeducational classes.<sup>29</sup>

- *Example B*: Underperforming Elementary School wants to address the fact that its male third-grade students routinely score “not proficient” on the State reading exam. Attempting to increase male students’ performance to proficient on a State exam through the offering of a single-sex third-grade reading class is an appropriate use of the needs objective.

The needs objective also encompasses certain social needs that students may have. The Department recognizes that a school’s educational mission may extend beyond strictly academic objectives, and that classes and activities may provide social benefits that can have a positive effect on students’ educational outcomes.<sup>30</sup>

- *Example C*: A high school’s Title IX coordinator has received a number of reports of dating violence among the school’s students. All of the reports came from female complainants and were about male aggressors. Many of the female complainants have expressed a fear of interacting with male students. To address the issue, the school offers an after-school, extracurricular program to provide all students with information about dating violence, the cycle of abuse, anger management, and effective methods for ending a violent relationship. The school offers the program to students on a single-sex basis, with boys meeting on one night and girls meeting a different night, as well as a coeducational option.

Given the circumstances at this school, attempting to decrease the prevalence of dating violence among students by offering a single-sex extracurricular activity is an appropriate use of the needs objective.

Regardless of which objective it chooses, the recipient must meet the other Title IX requirements discussed in this document, including showing that the single-sex nature of the class is substantially related (see the responses to Questions 11 and 12) to meeting the identified objective.

Administrative convenience will never justify the offering of single-sex classes.<sup>31</sup>

- *Example D:* Shortcut Elementary School's fourth-grade class is half female and half male. The fourth-grade students have lunch and recess from 10:30 a.m. to 11:30 a.m., with half an hour allotted for lunch and half an hour for recess. Half of the students have lunch first, followed by recess. The other half of the students go to recess first, followed by lunch. To make it easier for teachers to know whether students are attending their assigned lunch/recess block, Shortcut Elementary has divided the students by sex, with all fourth-grade girls in the first group and all fourth-grade boys in the second group. This is not an appropriate justification for operating single-sex lunch and recess.

**11. What kind of evidence may a recipient use to show that the single-sex nature of a class is substantially related to achieving an important objective?**

**Answer:** The substantial relationship between the single-sex nature of the class and the school's important objective must be directly supported by evidence (as described below) gathered and evaluated prior to offering the single-sex class. Below are examples of types of evidence that a recipient may use to demonstrate the required substantial relationship. A recipient may use more than one type of evidence to determine whether a substantial relationship exists. Regardless of the evidence used, the justification may "not rely on overbroad generalizations about the different talents, capacities, or preferences of" either sex, so, likewise, the evidence cited in the justification may not rely on these overly broad generalizations.<sup>32</sup>

Comparator schools: The recipient may obtain data demonstrating a substantial relationship through the use of comparator schools. To do this, the recipient must: (1) identify comparator schools with a student population and school and class setting (*e.g.*, grades served, curricular offerings, geographic location, admissions requirements, educational benefits, etc.) that are similar to the population and setting of the recipient's school; and (2) obtain data showing that the comparator schools achieved the recipient's important objective in the relevant subject or with respect to the relevant educational or social need through the use of single-sex classes. When identifying comparator schools, the recipient should consider factors that may distinguish two schools, such as socioeconomic differences among the student population, differences in admissions policies and criteria, or resources available through private funding.

If the recipient can identify appropriate comparator schools that have offered single-sex classes in the same subjects and grades, the recipient should ensure that the comparator school's success in each class is substantially related to the single-sex nature of the class rather than other simultaneously used strategies (*e.g.*, tutoring, extended class sessions, weekend academic programming, etc.). If the comparator school used other strategies in

its single-sex class, the recipient will need to take further steps in order to show a substantial relationship between its important objective and the single-sex nature of the class because it would be very difficult to determine whether any success in the comparator school was due to the single-sex nature of the class or the other strategies that were used. One way for the recipient school to demonstrate that the single-sex nature of the class contributed to the students' success is to try the other strategies used by the comparator school in a coeducational setting at the recipient's school prior to offering a single-sex class and to compare the results relative to the important objective that the recipient seeks to achieve.

- *Example E:* A majority of seventh-grade boys at Evidentiary Middle School have scored "not proficient" on the State science exam for the past three years. The school has identified a public school in a neighboring district, Comparator Middle School, which has dramatically increased its seventh-grade boys' scores on the State science exam over the past five years. Comparator Middle School is roughly the same size as Evidentiary Middle School, and both schools serve students at the same grade level and of similar socioeconomic status. Evidentiary Middle School would like to implement Comparator Middle School's science program in hopes that Evidentiary's seventh-grade boys will achieve similar success.

In achieving its gains, Comparator Middle School offered a single-sex science class for seventh-grade boys. The State science exam scores of male students in that class increased significantly. The all-boys science class used a newly developed curriculum and textbook, implemented a double-period science class, offered after-school tutoring to all students in the class, and implemented a mandatory robotics-themed Saturday school for the seventh-grade students in those classes.

Evidentiary Middle School implemented these same sex-neutral strategies in its coeducational seventh-grade science classes: it adopted the curriculum and textbook used by Comparator, increased class time to make science a double-period class, offered after-school tutoring, and implemented the same mandatory robotics-themed Saturday school. It offered these classes on a coeducational basis for three years, but the science scores of its seventh-grade boys remained stagnant. At that point, consistent with the needs objective, Evidentiary decided to offer an all-boys seventh-grade science class in conjunction with the sex-neutral strategies listed above.

Given these facts, OCR would find that Evidentiary Middle School had shown a substantial relationship between its objective of increasing its seventh-grade male students' proficiency on the State science exam and the single-sex nature of the boys science class it decided to offer.

- *Example F:* Most girls at Scientific High School do not enroll in AP Chemistry, though their grades and scores on State science exams suggest that they would be good candidates for the class. Boys at Scientific High School do enroll in AP Chemistry and all students otherwise take advantage of the school's widely diverse class offerings. Consistent with the diversity objective, Scientific High School would like to improve the educational achievement of its students by increasing female enrollment in AP Chemistry by further expanding its class offerings to include an all-girls AP Chemistry class.

Scientific High School has identified two schools in nearby districts that have implemented an all-girls AP Chemistry class. These schools are approximately the same size as Scientific High School, and all three schools serve students at the same grade level and of similar socioeconomic status. All three are neighborhood schools with no specific admissions requirements, and all students receive transportation to and from school through the applicable district.

Over the last three years, since the implementation of those classes, the enrollment rate of female students in AP Chemistry has steadily increased at both of the two comparator schools. Female enrollment in those schools' coeducational AP Chemistry classes has stayed roughly the same. The schools did not change any other aspect of their AP Chemistry programs; the single-sex classes are identical to their coeducational counterparts.

Given these facts, OCR would find that, through its overall policy to provide diverse educational opportunities, Scientific High School had shown a substantial relationship between the single-sex nature of the girls science class and its important objective of improving the educational achievement of its students by increasing female enrollment in AP Chemistry.

Research Evidence: Research evidence demonstrating the effectiveness of single-sex classes in circumstances sufficiently similar to the school's circumstances may also satisfy the substantial relationship requirement. A 2005 Department-commissioned survey found the results of available research on the general use of single-sex education were equivocal.<sup>33</sup> Nonetheless, to satisfy the substantial relationship requirement, OCR will accept a research study that: 1) employs a rigorous research design for causal inference; 2) demonstrates the

effectiveness of the single-sex nature of the class with respect to the specific important objective at issue (e.g., improving achievement in Algebra or reducing infractions requiring discipline); and 3) includes a sample that overlaps with the proposed populations or settings (e.g., ninth-grade girls in low-income communities) that the recipient is targeting. The standards set forth in the Department's *What Works Clearinghouse Procedures and Standards Handbook*<sup>34</sup> provide an appropriate guide for assessing the strength of a study of the effectiveness of the intervention (e.g., limiting a class to a single sex) in addressing the school's important objective.

- *Example G:* Town Elementary School would like to offer an all-boys fourth-grade class to reduce the discipline problems of the boys in that grade. Before it offers this class, Town Elementary School finds a research study that meets the What Works Clearinghouse Procedures and Standards and concludes that boys ages five through ten in all-boys classrooms committed fewer infractions leading to discipline than boys in coeducational "control" classes with identical rules and procedures for discipline, curricula, educational strategies, teacher-student ratio, and student population (e.g., eligibility for free and reduced-price lunch).<sup>35</sup> The population and settings of the single-sex and coeducational classes examined in the study are almost identical to those of Town Elementary School's fourth-grade classes. Absent facts distinguishing the research classes from Town Elementary School's classes, OCR would find this study is sufficient to show a substantial relationship between the school's objective of reducing discipline and the single-sex nature of the class.

**12. May a recipient demonstrate a substantial relationship using a claim that a certain strategy, other than single-sex, is more effective for most members of one sex?**

**Answer:** Claims that a certain strategy (such as a teaching method or a specific learning environment) is more effective for most members of one sex will not be sufficient, standing alone, to show a substantial relationship between the single-sex nature of a class and the important objective. This is because such a strategy may be equally effective regardless of whether it is implemented in a single-sex or a coeducational setting. If the recipient wants to use that strategy in a single-sex setting, the recipient still needs to show that students will benefit from the fact that the class is single-sex. Therefore, even assuming a recipient had evidence showing that a certain strategy was particularly effective for one sex, the recipient would need further evidence showing that the exclusion of the other sex was necessary to make the strategy effective or, at the least, substantially more effective. (This showing could be made through the use of comparator schools or research evidence, described in the response to Question 11.)

- *Example H:* A majority of third-grade girls at Cold Elementary School are underperforming on State science tests. Cold Elementary School would like to implement an all-girls third-grade class that keeps the classroom temperature ten degrees higher than the school's other classrooms, because the school's principal has read an article suggesting that girls learn better in warmer temperatures and boys learn better in colder temperatures. The article did not cite to any studies comparing students in coeducational warm or cold classes with students in single-sex warm or cold classes, but rather simply concluded that all girls will learn better in a warm environment and that all boys will learn better in a cold environment. Even if this research were reliable, it would not prove that boys would learn better in a cold environment with no girls, or that girls would learn better in a warm environment with no boys.

Thus, the school cannot show a substantial relationship between the single-sex nature of the class and the anticipated increase in girls' State science test scores. If the school believes temperature affects educational outcomes, it can offer a coeducational "warm" and a coeducational "cool" classroom and use criteria, other than the student's sex, to decide which students would attend each of those coeducational classrooms, such as allowing students and parents to choose the learning environment they believe best suits each student.

### *Evenhanded Offerings*

#### **13. What is the evenhandedness requirement?**

**Answer:** A recipient must treat male and female students evenhandedly in implementing its important objective.<sup>36</sup> The evenhandedness requirement means that a recipient offering single-sex classes must provide equal educational opportunities to students regardless of their sex, with the end result that both sexes receive substantially equal classes.<sup>37</sup>

#### **14. How does the evenhandedness analysis apply if a recipient is asserting the diversity objective?**

**Answer:** If the recipient asserts the diversity objective, and it has identified single-sex classes for which it can demonstrate a substantial relationship to its important objective, it must still ensure that the choice of diverse educational opportunities, including single-sex or coeducational classes, is offered evenhandedly to male and female students. To do this, it must conduct a thorough and impartial assessment of what single-sex classes to offer to each sex, and then offer those classes evenhandedly to its students.<sup>38</sup> Thus, under the diversity objective, if a recipient is able to justify single-sex classes for both sexes, offering single-sex classes for only one sex will likely violate the evenhandedness requirement,

unless the recipient can show that it evenhandedly gauged the interest of both sexes and the excluded sex was not interested in having the option to enroll in single-sex classes. Likewise, if one sex is offered single-sex classes in the school's core subjects, while the other sex is only offered single-sex classes in the school's non-core subjects, OCR would not find that the recipient is offering classes in an evenhanded manner.

- *Example I:* Advanced High School would like to use single-sex classes to increase enrollment of both male and female students in its AP Physics, English, or American History classes. Advanced High School has already determined that it can meet the requisite regulatory requirements of the Department's Title IX regulations for all of these classes, but because of staffing concerns, the school can only offer single-sex classes in one subject. Advanced High School conducted a survey to determine which subject male students would prefer; the male students chose AP Physics. Because it could only devote one teacher to single-sex classes, Advanced High School did not survey its female students, but decided instead to offer the female students a single-sex AP Physics class, as well.

This would violate the evenhandedness requirement. Even though all students are being offered identical single-sex classes, taught by the same teacher, the assessment of which class to offer favored the male students.

This does not mean, however, that male and female students must always be offered single-sex classes in the same subjects. To ensure evenhandedness, once it has completed its justification for each single-sex class, a recipient may wish to collect pre-enrollment information from parents\* and students or survey parents and students about interest in enrolling in single-sex classes in each subject. If students of one sex lack interest in a single-sex class in a certain subject, the recipient would not be required to provide them a single-sex class in that subject.

- *Example J:* Nearby Middle School is considering adding single-sex classes to the diverse array of other classes it offers. Having documented its justification for the addition of single-sex classes in Pre-Algebra, American History, English, and Geometry, the school surveys all parents and students to determine whether students would be interested in taking any of these classes on a single-sex basis. Forty eighth-grade boys express interest in all-male Pre-Algebra and American

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\* When this document refers to "parents," the term encompasses both parents and legal guardians.



History classes, while only two girls request these classes on a single-sex basis. Thirty-five eighth-grade girls request all-female English and Geometry classes, while no boys request these classes on a single-sex basis. In this scenario, Nearby Middle School may offer the all-male Pre-Algebra and American History classes and all-female English and Geometry classes to its eighth-grade students without violating the evenhandedness requirement.

**15. How does the evenhandedness analysis apply if a recipient is asserting the needs objective?**

**Answer:** If the recipient asserts the needs objective, the evenhandedness analysis is different from the analysis used under the diversity objective. Under the needs objective, the recipient must first conduct an assessment to identify the educational needs of its students, and then determine how to meet those needs on an evenhanded basis.<sup>39</sup> If a recipient has evidence demonstrating that a single-sex class in a particular subject would meet the particular, identified educational needs of students of both sexes and that the single-sex nature of the classes is substantially related to meeting the needs for both sexes, then if the recipient offers a single-sex class in that subject, it must do so for both sexes. On the other hand, if the evidence shows that the single-sex class in that subject would meet the particular, identified needs of only one sex or that the single-sex nature of the class would be substantially related to meeting the needs of only one sex, a recipient may not offer the single-sex class to students of the other sex. That recipient would instead have to determine, based on its assessment of the educational needs of both sexes, whether a single-sex class in another subject should be offered to the excluded sex, in order to meet the evenhandedness requirement.<sup>40</sup>

- *Example K:* Faraway High School intends to offer an all-boys AP English class because the percentage of its male students passing the AP English exam is far below the district average. The school's female students pass the AP English exam at a rate higher than the district average. The reverse is true with respect to AP Physics: the percentage of girls passing the AP Physics exam is far below the district average, while the boys' scores suggest no deficiency.

Under these circumstances, Faraway High School may provide an all-boys AP English class without offering an all-girls AP English class because there is no particular identified need for such an all-girls class. To meet the evenhandedness requirement, however, in light of data showing its female students' deficiency on the AP Physics exam, the school must first research whether an all-girls AP Physics class would be substantially related to increasing

female students' proficiency on that exam. If so, then the school must offer the female-only AP Physics class as well.

### ***Voluntariness***

#### **16. Who decides whether a student enrolls in a single-sex class?**

**Answer:** The Department's Title IX regulations require that student "enrollment in a single-sex class or extracurricular activity" be "completely voluntary."<sup>41</sup> To meet this requirement, OCR strongly encourages recipients to obtain the affirmative consent from the parents to enroll a student in a single-sex class.<sup>42</sup> Nevertheless, OCR will defer to State law to determine whether a student or the student's parents will have ultimate decision-making authority regarding whether a student will be enrolled in a single-sex class. If State law is silent, a recipient may use its educational judgment, based on the age and circumstances of its students and its normal class assignment procedures. The affirmative consent of the designated decision-maker, whether the parent or the student, must be received before assigning a student to a single-sex class.

#### **17. May a recipient assign students to a single-sex class as long as it permits students to opt out of the class?**

**Answer:** No. Regardless of whether the authority rests with the student or the parent, the decision-maker must affirmatively opt into a single-sex class; the student may not simply be assigned to a single-sex class by the school and then be permitted to opt out.<sup>43</sup> If no affirmative consent is received, the student must be enrolled in a coeducational class.<sup>44</sup> OCR recommends that such affirmative consent come in the form of a written, signed document.<sup>45</sup>

#### **18. May a recipient make it easier to enroll in a single-sex class than it is to enroll in a coeducational class?**

**Answer:** No. A school cannot use a less stringent class enrollment procedure for its single-sex classes than it does for its coeducational classes. In order for the choice to be completely voluntary, a school may not influence the choice to enroll in one class over the other. In assessing whether a decision to enroll in a single-sex class was voluntary, OCR will consider, among other things, whether the choice was influenced by extraneous factors. For example, any authorization (*e.g.*, a permission slip) or procedure (*e.g.*, a pre-enrollment meeting with a guidance counselor) that is required for enrolling in a coeducational class, but not for enrolling in the single-sex counterpart would render involuntary the choice to enroll in the single-sex class.

**19. How does the breadth of class offerings affect voluntariness?**

**Answer:** For the single-sex class to be voluntary, a recipient must offer a substantially equal coeducational class in the same subject.<sup>46</sup> (Factors for determining substantial equality are discussed in the response to Question 22.) If a student is forced to choose between taking a single-sex class in a particular subject and not taking a class in that subject, the choice to take the single-sex class is not voluntary. Likewise, if the only honors class in a given subject is a single-sex class, a student's selection of that single-sex class will not be considered voluntary. And if a student must take a single-sex class in order to avoid a coeducational option that is set at a remedial level, the single-sex class will also not be considered voluntary. (Classes with such differences may also violate the requirement of offering a substantially equal coeducational class, discussed in the responses to Questions 21 and 22.)

**20. What additional steps should a recipient take to ensure that participation in a single-sex class is completely voluntary?**

**Answer:** Because an uninformed decision may, in many circumstances, not be completely voluntary, OCR recommends that recipients provide pre-enrollment information about each class to students and parents in sufficient time and in a manner that is accessible to those with disabilities and with limited English proficiency so that the decision-maker can make an informed choice.<sup>47</sup>

This pre-enrollment information should explain that the decision-maker has the option of choosing between the coeducational and single-sex class;<sup>48</sup> describe the similarities and differences between the coeducational and single-sex classes; and provide a summary of the recipient's justification for offering the single-sex option. OCR recommends that pre-enrollment disclosures specify that parents and students have the option of reviewing the recipient's full justification (and any periodic evaluations, described in the responses to Questions 23 through 28) upon request. In providing this pre-enrollment information, recipients must ensure that the information is conveyed in a way that does not pressure parents to enroll students in a single-sex class.

- *Example L:* Steering Elementary School is planning to implement single-sex fifth-grade reading and math classes for both boys and girls. To comply with the Title IX regulatory requirements for establishing new single-sex classes, over the summer, the school sends an information packet to every parent of an incoming fifth-grade student that includes: the school's justification for its single-sex classes; the data upon which the school relied in developing its justification; a statement that substantially equal coeducational reading and math classes are available; and a description of the differences between the single-sex and

coeducational classes. In each packet are two consent forms—one for the reading class and one for the math class—allowing parents to opt in to each single-sex class. The form states that if a parent does not return the form for a given class, his or her child will be placed in a substantially equal coeducational class.

A week before school starts, the principal of Steering Elementary School calls all of the parents who have not returned the consent forms to remind them of the option to enroll their children in single-sex classes. He encourages them to take advantage of the single-sex classes, and explains that if there is not enough interest to sustain them, the school will not be able to provide the classes to anyone. He explains that many people are interested in the single-sex classes, and warns parents against being the individuals who “hold up” implementation of the “unique and beneficial opportunity.”

Although the elementary school’s practice of sending an impartial information packet home to parents, along with an appropriate opt-in form, is a good one, OCR would consider the principal’s later behavior to be inappropriate pressure to enroll in a single-sex class. His warning inappropriately suggested that a parent should consider factors outside of his or her child’s educational well-being (including ensuring that other students have access to single-sex classes). Any consent forms received after the principal’s phone calls would not be valid.

### ***Substantially Equal Coeducational Option***

#### **21. Must a recipient offer a substantially equal coeducational option for every single-sex class offered?**

**Answer:** Yes. A recipient that offers a single-sex class must provide all other students, including students of the excluded sex, with a substantially equal coeducational class in the same subject.<sup>49</sup> At least one substantially equal coeducational section must be offered in each subject for which there is a single-sex class, and more than one section may be needed because every student who requests a coeducational option must be enrolled in one. Once the preferences of students seeking a coeducational class are met, a school may offer more than one single-sex section in a given subject if enrollment in that subject warrants it.

- *Example M:* If a school offers each of its 50 eighth-grade boys the choice between single-sex or coeducational Algebra classes, and 40 choose a single-sex class and 10 choose a coeducational class, the school may offer two single-sex sections and only one coeducational section of Algebra. This is permissible, so long as every student who sought the coeducational option was enrolled in a

substantially equal coeducational class. (Additionally, the school may also be required to provide a substantially equal single-sex class for its eighth-grade girls, consistent with the evenhandedness requirement discussed in the responses to Questions 13 through 15.)<sup>50</sup>

A school is not obligated to provide a single-sex class to any individual student, even if that student opted into the single-sex class. The school must consider the number of students interested in the option and the school's need to provide a substantially equal coeducational class for all other students, including students of the excluded sex. Thus, in the example above, if all of the eighth-grade boys opted into the single-sex Algebra class, resulting in the substantially equal coeducational class enrolling only girls, the school could not honor all of the requests for the single-sex boys class, because doing so would deny the girls a substantially equal coeducational class.

**22. What factors will OCR consider in determining whether a coeducational class is substantially equal to the single-sex class?**

**Answer:** OCR will consider all relevant factors, both individually and in the aggregate, in determining whether a coeducational class is substantially equal to the single-sex class.<sup>51</sup> Although the single-sex and coeducational classes do not need to be identical with respect to each factor, they need to be substantially equal. This means that if one class is significantly superior with respect to one factor, or slightly superior with respect to many factors, the classes are likely not substantially equal.<sup>52</sup> The Department's Title IX regulations include a non-exhaustive list of factors, each of which is addressed individually below, that OCR will consider while conducting a complaint investigation or compliance review. OCR will consider all relevant factors in determining whether a coeducational class and a single-sex class are substantially equal.<sup>53</sup> Whether information is relevant will depend on the specific facts and circumstances of each case, because each single-sex class seeks to achieve a different objective and may be offered in a different way.

- The admissions criteria and policies;
  - *Example N:* College-Bound High School offers single-sex and coeducational classes in AP Spanish. Both the coeducational and single-sex AP Spanish classes were open only to students with a grade point average of 3.5 or higher and who participate in a summer language program. On these facts, OCR would consider the admissions criteria and policies to be substantially equal.

- The educational benefits provided, including the quality, range, and content of curriculum and other services, and the quality and availability of books, instructional materials, and technology;
  - *Example O:* Tech-Savvy Middle School offers single-sex and coeducational biology classes. The coeducational classes follow a curriculum that uses textbooks with corresponding videos, which the students watch on a DVD player in the classroom, to teach lessons. The single-sex classes incorporate individually issued laptops, which allow for interactive, technology-based lessons, into the curriculum. On these facts, OCR would not consider the educational benefits provided to be substantially equal.
- The qualifications of faculty and staff;
  - *Example P:* Tenured Middle School ensures that an equal proportion of first- and second-year teachers as compared to more experienced teachers are assigned to its single-sex and coeducational Pre-Algebra classes. All of the Pre-Algebra teachers have a background in mathematics and receive training on teaching the school's Pre-Algebra curriculum. Prior to teaching the class, each teacher must demonstrate content knowledge and competencies in the relevant teaching methods. On these facts, OCR would consider the qualifications of the faculty of the classes to be substantially equal.
- Geographic accessibility;<sup>54</sup>
  - *Example Q:* Centrally Located High School offers one all-male and one all-female chemistry class onsite. For students wishing to take this class on a coeducational basis, Centrally Located High School has entered into an agreement with Distant High School, 15 miles away, which will accept Centrally Located High School's students. Because of traffic in the district, it would take students approximately 30 minutes each way to travel to the class at Distant High School, resulting in an hour of lost instruction time. On these facts, OCR would not consider the geographic accessibility of the classes to be substantially equal.
- The quality, accessibility, and availability of facilities and resources provided to the class;
  - *Example R:* Updated High School offers both coeducational and single-sex Chemistry classes. The coeducational Chemistry class is held in a chemistry lab that was original to the building, constructed in 1970. Updated High School added a new wing in 2010, which includes a new chemistry lab that offers state-of-the-art equipment and incorporates interactive technology. The single-sex

Chemistry classes are held in the new lab. On these facts, OCR would not consider the facilities and resources of the classes to be substantially equal.

- Intangible features, such as the reputation of faculty.
  - *Example 5:* Connected High School offers two single-sex journalism classes: one for boys and one for girls. A journalist for a local newspaper teaches both of these classes. The journalist is well connected in the local media community, and in the past, she has assisted students with obtaining internships at local media outlets. The school also offers a coeducational journalism class that is taught by an individual with a degree in English, but who has never worked in the field or been involved in a school journalism program. On these facts, OCR would not consider the reputation of the faculty (an intangible feature) of the two classes to be substantially equal.

### ***Periodic Evaluations***

#### **23. How often must a recipient conduct an evaluation of its single-sex programs?**

**Answer:** The recipient must evaluate each of its single-sex classes, and the original justification behind each single-sex class, at least every two years.<sup>55</sup> A recipient may decide to conduct evaluations more frequently (because its own findings have identified concerns or for other reasons). If OCR investigates a recipient and identifies compliance problems, OCR may require the recipient to conduct more frequent evaluations.<sup>56</sup>

#### **24. What is the purpose of these evaluations?**

**Answer:** The recipient must use these periodic evaluations to ensure that each single-sex class it offers is based upon genuine justifications, does not rely on overly broad generalizations about either sex, and continues to be substantially related to the achievement of the important objective (see the responses to Questions 7 through 12).<sup>57</sup> The periodic evaluations should also confirm that substantially equal single-sex classes are offered if necessary to comply with the evenhandedness requirement (see the responses to Questions 13 through 15), and that a substantially equal coeducational alternative to each single-sex class is available (see the responses to Questions 21 and 22). The periodic evaluations must assess evidence and data related to the recipient's single-sex classes, rather than relying on the comparator school or research evidence used at the justification stage (see the response to Question 27).

**25. Must the periodic evaluation address the way a single-sex class is taught?**

**Answer:** Yes. Because of the risk that single-sex classes may lead to the adoption of classroom methods or strategies that revert to sex stereotypes, the Department's Title IX regulations require that the recipient ensure that each single-sex class is operated in a manner that does not "rely on overly broad generalizations about the different talents, capacities, or preferences of either sex."<sup>58</sup> Thus, classroom methods or strategies should be chosen on the basis of their effectiveness in teaching the individual students in the class, without regard to the sex of those students. Of course, it may be difficult to ascertain why certain methods or strategies were chosen, so the following information is intended to help schools understand how OCR will conduct its analysis during a complaint investigation or compliance review.

If identical classroom methods and strategies—including choices about classroom activities and environment—are used in single-sex classes for boys and in single-sex classes for girls (or in a single-sex class and a coeducational class), the evaluation of the way the classes are taught is complete. This is because the use of the same methods and strategies for classes for boys and classes for girls offers no reason to believe the decision to use those methods and strategies was based on overly broad generalizations about either sex.

But if different classroom methods or strategies are used in single-sex classes for boys than are used in single-sex classes for girls (or in a single-sex class in comparison with its coeducational counterpart), then the recipient must evaluate whether the decision to adopt these different methods or strategies was made in reliance on overly broad generalizations. In some cases, the different methods or strategies used in single-sex classes may simply be the result of the professional choices of an individual teacher without regard to the sex of his or her students. If the recipient can show that the teacher would have selected identical methods and strategies even if he or she were teaching a single-sex class of the opposite sex or a coeducational class, OCR will likely conclude that the school did not use overly broad generalizations about either sex. In determining whether the recipient has made this showing, OCR will consider such factors as the methods and strategies historically used by the teacher, and the timing of any changes in the teacher's methods and strategies.

If, however, the methods or strategies were selected because of the sex of the students in the class, the risk of sex stereotypes is at its greatest because methods and strategies that are based on sex ignore the differences among students of the same sex. When a teaching method or strategy is, in fact, selected on the basis of the sex of the students, its use must be directly supported by evidence demonstrating that the particular method or strategy is more effective for one sex than the other or is more effective when used in a single-sex setting. (The response to Question 12 addresses the appropriate way to assess whether



strategies that are purported to be more effective for one sex may be used in a single-sex setting.) It would not be enough to show that there is evidence about differences between boys and girls that does not directly involve that particular teaching method or strategy. For example, while there is, of course, evidence that biological differences between males and females exist,<sup>59</sup> evidence of general biological differences is not sufficient to allow teachers to select different teaching methods or strategies for boys and girls.<sup>60</sup>

- *Example T:* Quiet Elementary School created single-sex fourth-grade classes for both boys and girls. During the school year, the teachers of the single-sex classes became aware of studies that show that girls are born with a significantly more sensitive sense of hearing than boys, and that the differences grow larger as the children grow older. Relying on those studies, the school decided that the boys class would incorporate speaking in a loud tone, while the girls class would not.

A periodic evaluation of the boys class would indicate reliance on overly broad generalizations about the sexes with respect to teaching methods. Use of the specific teaching method (loud talking) would not comply with Title IX because the teachers did not rely on evidence that directly linked that particular teaching method or strategy to improved educational achievement for boys. Instead, they relied on a purported biological difference (that there are, on average, biological differences in the hearing sensitivity of the sexes) to conclude that the particular teaching method or strategy was appropriate. This general difference between the sexes, even if true, does not by itself provide evidence that loud talking will be more effective in teaching for one sex than the other or more effective in a single-sex setting. The leap from the biological differences to the use of a particular teaching method or strategy for students of one sex, without the support of evidence regarding the educational effectiveness of the method or strategy for one sex over the other, resulted in an overly broad generalization (that loud talking would improve boys' ability to learn). Because of the overly broad generalization, the school would have to discontinue its use of this teaching method for the all-boys class.

The teaching method itself is permissible. A recipient is still free to incorporate loud talking in a coeducational class or in single-sex classes for both boys and girls. But a recipient may not limit that method of instruction only to the single-sex class for boys on the basis of the overly broad generalization described above.

**26. How should the evaluations be made available to the public?**

**Answer:** OCR recommends wide distribution of the evaluations, through the recipient's website and otherwise. Like the initial justification, these evaluations could be useful to parents who are deciding whether to enroll their children in single-sex classes and would help ensure the choice is completely voluntary.

**27. How will OCR determine whether a periodic evaluation demonstrates that a single-sex class is still substantially related to the recipient's important objective?**

**Answer:** OCR will consider all relevant sources of evidence in determining whether the single-sex nature of the class remains substantially related to the recipient's important objective. Whether evidence is relevant will depend on the specific facts and circumstances of each case, because each single-sex class seeks to achieve a different objective and may be offered in a different way. The evidence presented in a recipient's periodic evaluation must be related to the recipient's single-sex classes, rather than the evidence relied upon in the justification stage. Possible sources of evidence include, but are not limited to: students' grades; students' scores on standardized statewide or districtwide exams; discipline rates; attendance data; enrollment data; and educators' observation and evaluation of the effectiveness of each class.

Because the biennial evaluations must show that the single-sex nature of the class results in achievement of, or progress toward, the recipient's important objective, a comparison between the students in the single-sex class and the substantially equal coeducational class is appropriate.<sup>61</sup> To best assess the effectiveness of each class, OCR recommends that schools monitor the progress of the individual students in each class from year to year. This will help ensure that any comparison between a single-sex class and a substantially equal coeducational class controls for variations among students. Positive or negative changes related to the recipient's objective for all students in the single-sex class should be averaged together; the same should be done for students in the coeducational class. The school can then compare these averages to see how students in the single-sex class fared in comparison to their peers in the substantially equal coeducational class. The same procedure should be used to assess the single-sex class the following year. If, based on these averages, a coeducational class outperforms a substantially equal single-sex class, it is likely that OCR would find that the single-sex class is not substantially related to the recipient's objective. Of course, the evidence will vary based on the school's objective. For example, if the school implemented a single-sex class in an attempt to lower discipline rates, discipline statistics should be analyzed.

- *Example U:* A middle school offers three substantially equal sections of tenth-grade American Literature: an all-girls class, an all-boys class, and a coeducational class. The school's objective is to increase proficiency on the State English exam. At the end of the first school year, to gather information for the periodic evaluation required at the end of the second school year, each student's score on the state English exam is compared to his or her score on the previous year's exam. The school averages the change in scores of students in the all-girls class, the all-boys class, and the coeducational class, respectively. The proficiency rate of students in the coeducational class increased slightly. By contrast, the proficiency rates of the students in the all-boys and all-girls classes both increased significantly. The difference in average increases between the single-sex classes and the coeducational class is statistically significant. The averages are similar the following year. Under these circumstances, the evidence in this periodic evaluation would suffice to show a continuing substantial relationship between the single-sex nature of the classes and the objective to increase student's proficiency on the State English exam. Note, however, that the school must continue to conduct biennial evaluations to show that a substantial relationship between the single-sex nature of the classes and the school's objective persists.

Every recipient's ability to continue each single-sex class will depend on the recipient's circumstances, the particular objective articulated in the recipient's justification, and whether the comparative class data over time demonstrate a substantial relationship between that objective and the single-sex nature of the class. A recipient's evaluation should analyze and explain all factors that influenced the achievement of, or failure to achieve, the recipient's objective.

**28. What is the role of the recipient's Title IX coordinator in conducting these evaluations?**

**Answer:** Every recipient must designate an employee to coordinate its efforts to comply with Title IX.<sup>62</sup> The Title IX coordinator is responsible for overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. The Title IX coordinator must also track and review complaints to identify and correct any systemic compliance issues. This would include any complaints that single-sex classes are being offered in violation of Title IX. Because of these responsibilities, OCR recommends that the Title IX coordinator be involved in assessing the compliance of the

recipient's single-sex classes, both when determining whether and how single-sex classes can be offered and during the recipient's periodic review of single-sex offerings.

### ***Employment***

#### **29. May a recipient assign teachers to single-sex classes based on the sex of the teacher?**

**Answer:** No. A recipient must not assign teachers to single-sex classes on the basis that boys should be taught by men and girls should be taught by women or vice versa.<sup>63</sup> Title IX prohibits recipients from discriminating on the basis of sex in: employment; recruitment; compensation and benefits; job assignment, classification, and structure; and consideration and selection of individuals for jobs in any education program or activity operated by a recipient.<sup>64</sup> Although Title IX allows employment decisions based on sex "provided it is shown that sex is a bona-fide occupational qualification for that action,"<sup>65</sup> a school may not, for example, assign a male teacher, on the basis of his sex, to teach an all-boys class because the school thinks male students will prefer, respond better to, or learn more effectively from, a man.<sup>66</sup>

### ***Other Federal Protections for Students in Single-Sex Classes***

#### **30. May a recipient exclude students with disabilities or English language learners from a single-sex class so long as it permits them to participate in the substantially equal coeducational class?**

**Answer:** No. Students with disabilities or English language learners may not be excluded from single-sex classes because of their need for special education or related aids and services or English language services.<sup>□</sup> Schools must ensure that students with disabilities participating in single-sex classes receive needed special education and related services in accordance with their individualized education programs, developed under Part B of the Individuals with Disabilities Education Act<sup>□</sup> (including, if applicable, the Part B educational placement provisions), or their plans developed under Section 504 of the Rehabilitation Act of 1973. Likewise, the school must provide the same English language services in single-sex classes as in coeducational classes.

#### **31. How do the Title IX requirements on single-sex classes apply to transgender students?**

**Answer:** All students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX. Under Title IX, a recipient generally must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes.

### ***Additional Topics***

#### **32. Which set of regulations governs a school within a school—the regulations governing single-sex schools or the regulations governing single-sex classes?**

**Answer:** If a recipient operates a single-sex school within another school or two single-sex academies, OCR will consider these to be single-sex classes within a coeducational school unless the two entities are administratively separate from each other.<sup>69</sup> This is a fact-specific inquiry and will depend on the specific organization of the school within a school.

- *Example V:* A district operates dual single-sex academies that are housed in the same facility and share the same principal and certain support staff. The district claims that it need not comply with the Department's Title IX regulations on single-sex classes because each academy is a single-sex school. Because the two academies are not administratively separate, OCR would instead view the academies as one coeducational school offering single-sex classes in every subject.

#### **33. How can I contact OCR to get additional information or to file a complaint?**

**Answer:** A recipient, parent, student, or other member of the public who has a question or concern about a particular single-sex offering may contact the appropriate OCR regional enforcement office. To determine which OCR regional enforcement office handles inquiries and complaints in your State, please call 1-800-421-3481 or 1-800-877-8339 (TDD) or check OCR's website at <http://wdcrocolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

**OTHER FEDERAL LEGAL RESOURCES RELATED TO SINGLE-SEX EDUCATION:**

Department of Education Title IX regulations: 34 C.F.R. part 106, available at  
<http://www2.ed.gov/policy/rights/reg/ocr/34cfr106.pdf>

OCR Dear Colleague Letter on Single-Sex Title IX Regulations, dated January 31, 2007, available  
at <http://www.ed.gov/ocr/letters/single-sex-20070131.pdf>

Final Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving  
Federal Financial Assistance, 71 Fed. Reg. 62,530 (October 25, 2006), available at  
<http://www2.ed.gov/legislation/FedRegister/finrule/2006-4/102506a.pdf>

Brief for the United States as *Amicus Curiae*, *Doe v. Vermilion Parish Sch. Bd.*, No. 10-30378 (5th  
Cir.) (filed June 4, 2010), available at  
[http://www.justice.gov/crt/about/app/briefs/vermillion\\_brief.pdf](http://www.justice.gov/crt/about/app/briefs/vermillion_brief.pdf)

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<sup>1</sup> 20 U.S.C. §§ 1681-1688.

<sup>2</sup> *Id.*; see also 34 C.F.R. § 106.34.

<sup>3</sup> Private elementary and secondary schools are subject to the Department's regulatory requirements for single-sex classes if they receive Federal financial assistance directly from the Department or indirectly through an intermediary. Private elementary and secondary schools are not considered recipients of Federal financial assistance if the only form of assistance that they receive is through their students' participation in programs conducted by public school districts that are funded under Federal programs such as Title I of the Elementary and Secondary Education Act of 1965 or the Individuals with Disabilities Education Act. These private schools are not subject to these regulations, but public school districts must ensure that their programs, including services to private school students, are consistent with Title IX. See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Final Regulations, 71 Fed. Reg. 62,530, 62,530 n.7 (Oct. 25, 2006).

<sup>4</sup> U.S. CONST. amend. XIV, § 1; see also *United States v. Virginia*, 518 U.S. 515, 531, 533 (1996) (holding, in a challenge to an all-male public postsecondary institution, that a party "seek[ing] to defend gender-based government action" under the Equal Protection Clause "must demonstrate an exceedingly persuasive justification for that action," which means the government "must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives" (citations, brackets, and internal quotation marks omitted)).

<sup>5</sup> 42 U.S.C. §§ 2000c to c-9.

<sup>6</sup> 20 U.S.C. §§ 1703(c), 1705, 1720(c); see also 71 Fed. Reg. at 62,533 n.18 (referencing same).

<sup>7</sup> 34 C.F.R. § 106.71 (incorporating by reference 34 C.F.R. §§ 100.6-100.11 and 34 C.F.R. part 101).

<sup>8</sup> 34 C.F.R. § 106.6(b); see also 71 Fed. Reg. at 62,533 n.18 ("Public school and private school recipients also may be subject to State or local laws prohibiting single-sex classes or schools.").

<sup>9</sup> 34 C.F.R. § 106.34(c).

<sup>10</sup> 34 C.F.R. § 106.35; 34 C.F.R. § 106.2(o) (defining "institution of vocational education").

<sup>11</sup> 34 C.F.R. § 106.15(c)-(e).

<sup>12</sup> 20 U.S.C. §§ 1681-1688; 34 C.F.R. § 106.34(a).

<sup>13</sup> In addition to these exceptions, the Department's Title IX regulations do not prohibit schools from employing the following facially neutral tests or criteria even if they have a disproportionate effect on persons on the basis of sex: the grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex; and the use of requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex. 34 C.F.R. § 106.34(a)(2) and (4).

<sup>14</sup> 34 C.F.R. § 106.34(a)(1).

<sup>15</sup> 34 C.F.R. § 106.34(a)(3).

<sup>16</sup> 34 C.F.R. § 106.34(b).

<sup>17</sup> 34 C.F.R. § 106.34(b)(5).

<sup>18</sup> 34 C.F.R. § 106.35; 34 C.F.R. Appendix A to Part 106; *see also* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Notice of Proposed Rulemaking, 69 Fed. Reg. 11,276, 11,278 (Mar. 9, 2004) (“Even in these elementary and secondary schools that are not vocational schools, the proposed amendments do not change the applicability of the current general regulatory prohibition against single-sex vocational education classes.”).

<sup>19</sup> This document refers to vocational classes because the Department’s Title IX regulations refer to “nonvocational” classes. The Department currently prefers the term “career and technical” courses.

<sup>20</sup> The Department’s Title IX regulations governing athletics appear at 34 C.F.R. §§ 106.41 and 106.37(c).

<sup>21</sup> 34 C.F.R. § 106.36(c).

<sup>22</sup> 34 C.F.R. § 106.34(b)(1)(i).

<sup>23</sup> 71 Fed. Reg. at 62,533 (citing *Virginia*, 518 U.S. at 533) (“The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation.”).

<sup>24</sup> *Id.*

<sup>25</sup> 34 C.F.R. § 106.34(b)(1)(i)(A).

<sup>26</sup> “For example, a recipient may seek to achieve an educational benefit for its students such as improvement in class work.” 71 Fed. Reg. at 62,534 n.26.

<sup>27</sup> 71 Fed. Reg. at 62,535.

<sup>28</sup> 34 C.F.R. § 106.34(b)(1)(i)(B).

<sup>29</sup> 71 Fed. Reg. at 62,535 & n.30.

<sup>30</sup> 71 Fed. Reg. at 62,536.

<sup>31</sup> 71 Fed. Reg. at 62,535 (citing *Wengler v. Druggists Mut. Ins. Co.*, 446 U.S. 142, 151-52 (1980) and *Frontiero v. Richardson*, 411 U.S. 677, 689-90 (1973)).

<sup>32</sup> 71 Fed. Reg. at 62,533 (citing *Virginia*, 518 U.S. at 533).

<sup>33</sup> The 2005 Department-commissioned survey of research on single-sex schooling found that for “many outcomes, there is no evidence of either benefit or harm.” OFFICE OF PLANNING, EVALUATION AND POLICY DEVELOPMENT, U.S. DEPARTMENT OF EDUCATION, SINGLE-SEX VERSUS COEDUCATIONAL SCHOOLING: A SYSTEMATIC REVIEW x (2005), *available at* <http://www2.ed.gov/rschstat/eval/other/single-sex/single-sex.pdf>.

<sup>34</sup> The WWC Procedures and Standards Handbook is available at [http://ies.ed.gov/ncee/wwc/pdf/reference\\_resources/wwc\\_procedures\\_v3\\_0\\_standards\\_handbook.pdf](http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v3_0_standards_handbook.pdf).

<sup>35</sup> This example, like all the examples provided in this document, is based on hypothetical facts to help readers understand how OCR would evaluate a recipient’s single-sex class for compliance with the Department’s Title IX regulations. A recipient cannot rely on the hypothetical research described in this example to show a substantial relationship between its important objective and the single-sex nature of the class.



<sup>36</sup> 34 C.F.R. § 106.34(b)(1)(ii).

<sup>37</sup> 71 Fed. Reg. at 62,536 (citing *Virginia*, 518 U.S. at 554).

<sup>38</sup> 71 Fed. Reg. at 62,536.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 62,536-37 (“[A]lthough a single-sex class would not be required in that subject, evenhanded implementation of the recipient’s objective does require the recipient to determine, based on its assessment of educational needs of students, whether a class in another subject should be offered on a single-sex basis to meet the particular, identified needs of the students of the excluded sex.”).

<sup>41</sup> 34 C.F.R. § 106.34(b)(1)(iii).

<sup>42</sup> 71 Fed. Reg. at 62,537.

<sup>43</sup> *Id.*; *Doe v. Wood Cnty. Bd. of Educ.*, 888 F. Supp. 2d 771, 776 (S.D. W. Va. 2012) (“An opt-out provision is insufficient to meet the requirement that single-sex classes be ‘completely voluntary.’”).

<sup>44</sup> 71 Fed. Reg. at 62,537; *Doe*, 888 F. Supp. 2d at 776 (“[T]he Department of Education regulations require an affirmative assent by parents or guardians before placing children in single-sex classrooms.”).

<sup>45</sup> 71 Fed. Reg. at 62,537; *Doe*, 888 F. Supp. 2d at 776 (“Such affirmative assent would preferably come in the form of a written, signed agreement by the parent explicitly opting *into* a single-sex program.”).

<sup>46</sup> 71 Fed. Reg. at 62,537.

<sup>47</sup> *Doe*, 888 F. Supp. 2d at 777 (“The close proximity of the notices to the beginning of the school year, after students have already enrolled, suggest[s] that their choice was not fully voluntary.”).

<sup>48</sup> 71 Fed. Reg. at 62,537.

<sup>49</sup> 34 C.F.R. § 106.34(b)(1)(iv).

<sup>50</sup> 34 C.F.R. § 106.34(b)(2).

<sup>51</sup> 34 C.F.R. § 106.34(b)(3); 71 Fed. Reg. at 62,538.

<sup>52</sup> 71 Fed. Reg. at 62,538.

<sup>53</sup> 34 C.F.R. § 106.34(b)(3); *see also* 71 Fed. Reg. at 62,538.

<sup>54</sup> 71 Fed. Reg. at 62,538 (“[There are] situations in which geographic accessibility will be relevant for classes. For example, if a recipient operates a consortium of schools whereby students at three neighboring high schools [take classes at all three schools, the] location, *i.e.*, geographic accessibility, of the classes in the same subject, would be relevant to the issue of substantial equality.”).

<sup>55</sup> 34 C.F.R. § 106.34(b)(4).

<sup>56</sup> 71 Fed. Reg. at 62,539.

<sup>57</sup> 34 C.F.R. § 106.34(b)(4)(i).

<sup>58</sup> *Id.*

<sup>59</sup> *United States v. Virginia*, 518 U.S. 515, 533 (1996) (“Physical differences between men and women, however, are enduring . . .”).

<sup>60</sup> See *J.E. B. v. Alabama*, 511 U.S. 127, 139 n.11 (1994) (“We have made abundantly clear in past cases that gender classifications that rest on impermissible stereotypes violate the Equal Protection Clause, even when some statistical support can be conjured up for the generalization.”).

<sup>61</sup> 71 Fed. Reg. at 62,539 (“Part of the periodic evaluation requirement involves an assessment of the degree to which the recipient’s important objective has been achieved and an assessment of whether the single-sex nature of the class is substantially related to achievement of the recipient’s objective.”).

<sup>62</sup> 34 C.F.R. § 106.8(a).

<sup>63</sup> 71 Fed. Reg. at 62,534 (“Among other things, the Title IX regulations prohibit recipients from making job assignments on the basis of sex, § 106.51(b)(4), and from classifying jobs as being for males or females, § 106.55(a). Both of these provisions would prohibit schools from assigning teachers to single-sex classes based on their sex.”).

<sup>64</sup> 34 C.F.R. part 106, subpart E.

<sup>65</sup> 34 C.F.R. § 106.61.

<sup>66</sup> *Id.* (“A recipient shall not take action pursuant to this section [regarding bona-fide occupational qualifications] which is based upon . . . preference based on sex of the recipient, employees, students, or other persons.”).

<sup>67</sup> 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973) and 34 C.F.R. part 104; 42 U.S.C. §§ 12131-12165 (Title II of the Americans with Disabilities Act of 1990) and 28 C.F.R. part 35; 42 U.S.C. §§ 2000d to d-7 (Title VI of the Civil Rights Act of 1964) and 34 C.F.R. part 100. OCR enforces Section 504 as it applies to recipients of Federal financial assistance from the Department and shares enforcement responsibility with the U.S. Department of Justice for Title II in the education context. Title II prohibits discrimination on the basis of disability by public entities, including public school districts, in their services, programs, and activities, regardless of receipt of Federal funds.

<sup>68</sup> 20 U.S.C. §§ 1411-1414; 34 C.F.R. part 300.

<sup>69</sup> 34 C.F.R. § 106.34(c)(4).

# EXHIBIT 19

U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS,  
QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL  
VIOLENCE 5 (APR. 29, 2014)



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Questions and Answers on Title IX and Sexual Violence<sup>1</sup>

Title IX of the Education Amendments of 1972 (“Title IX”)<sup>2</sup> is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal financial assistance (hereinafter “schools”, “recipients”, or “recipient institutions”) must comply with Title IX.<sup>3</sup>

On April 4, 2011, the Office for Civil Rights (OCR) in the U.S. Department of Education issued a Dear Colleague Letter on student-on-student sexual harassment and sexual violence (“DCL”).<sup>4</sup> The DCL explains a school’s responsibility to respond promptly and effectively to sexual violence against students in accordance with the requirements of Title IX.<sup>5</sup> Specifically, the DCL:

- Provides guidance on the unique concerns that arise in sexual violence cases, such as a school’s independent responsibility under Title IX to investigate (apart from any separate criminal investigation by local police) and address sexual violence.

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<sup>1</sup> The Department has determined that this document is a “significant guidance document” under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at [www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf). The Office for Civil Rights (OCR) issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR’s legal authority is based on those laws and regulations. This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to [OCR@ed.gov](mailto:OCR@ed.gov), or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

<sup>2</sup> 20 U.S.C. § 1681 et seq.

<sup>3</sup> Throughout this document the term “schools” refers to recipients of federal financial assistance that operate educational programs or activities. For Title IX purposes, at the elementary and secondary school level, the recipient generally is the school district; and at the postsecondary level, the recipient is the individual institution of higher education. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that the law’s requirements conflict with the organization’s religious tenets. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a). For application of this provision to a specific institution, please contact the appropriate OCR regional office.

<sup>4</sup> Available at <http://www.ed.gov/ocr/letters/colleague-201104.html>.

<sup>5</sup> Although this document and the DCL focus on sexual violence, the legal principles generally also apply to other forms of sexual harassment.

- Provides guidance and examples about key Title IX requirements and how they relate to sexual violence, such as the requirements to publish a policy against sex discrimination, designate a Title IX coordinator, and adopt and publish grievance procedures.
- Discusses proactive efforts schools can take to prevent sexual violence.
- Discusses the interplay between Title IX, the Family Educational Rights and Privacy Act (“FERPA”),<sup>6</sup> and the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (“Clery Act”)<sup>7</sup> as it relates to a complainant’s right to know the outcome of his or her complaint, including relevant sanctions imposed on the perpetrator.
- Provides examples of remedies and enforcement strategies that schools and OCR may use to respond to sexual violence.

The DCL supplements OCR’s Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, issued in 2001 (2001 Guidance).<sup>8</sup> The 2001 Guidance discusses in detail the Title IX requirements related to sexual harassment of students by school employees, other students, or third parties. The DCL and the 2001 Guidance remain in full force and we recommend reading these Questions and Answers in conjunction with these documents.

In responding to requests for technical assistance, OCR has determined that elementary and secondary schools and postsecondary institutions would benefit from additional guidance concerning their obligations under Title IX to address sexual violence as a form of sexual harassment. The following questions and answers further clarify the legal requirements and guidance articulated in the DCL and the 2001 Guidance and include examples of proactive efforts schools can take to prevent sexual violence and remedies schools may use to end such conduct, prevent its recurrence, and address its effects. In order to gain a complete understanding of these legal requirements and recommendations, this document should be read in full.

Authorized by

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Catherine E. Lhamon  
Assistant Secretary for Civil Rights

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April 29, 2014

<sup>6</sup> 20 U.S.C. §1232g; 34 C.F.R. Part 99.

<sup>7</sup> 20 U.S.C. §1092(f).

<sup>8</sup> Available at <http://www.ed.gov/ocr/docs/shguide.html>.



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## A. A School's Obligation to Respond to Sexual Violence

### A-1. What is sexual violence?

Answer: Sexual violence, as that term is used in this document and prior OCR guidance, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

### A-2. How does Title IX apply to student-on-student sexual violence?

Answer: Under Title IX, federally funded schools must ensure that students of all ages are not denied or limited in their ability to participate in or benefit from the school's educational programs or activities on the basis of sex. A school violates a student's rights under Title IX regarding student-on-student sexual violence when the following conditions are met: (1) the alleged conduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program, i.e. creates a hostile environment; and (2) the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.<sup>9</sup>

### A-3. How does OCR determine if a hostile environment has been created?

Answer: As discussed more fully in OCR's 2001 Guidance, OCR considers a variety of related factors to determine if a hostile environment has been created; and also considers the conduct in question from both a subjective and an objective perspective. Specifically, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. Indeed, a single or isolated incident of sexual violence may create a hostile environment.

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<sup>9</sup> This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See 2001 Guidance at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Onty Bd. of Educ.*, 526 U.S. 629, 643 (1999).

A-4. When does OCR consider a school to have notice of student-on-student sexual violence?

Answer: OCR deems a school to have notice of student-on-student sexual violence if a responsible employee knew, or in the exercise of reasonable care should have known, about the sexual violence. See question D-2 regarding who is a responsible employee.

A school can receive notice of sexual violence in many different ways. Some examples of notice include: a student may have filed a grievance with or otherwise informed the school's Title IX coordinator; a student, parent, friend, or other individual may have reported an incident to a teacher, principal, campus law enforcement, staff in the office of student affairs, or other responsible employee; or a teacher or dean may have witnessed the sexual violence.

The school may also receive notice about sexual violence in an indirect manner, from sources such as a member of the local community, social networking sites, or the media. In some situations, if the school knows of incidents of sexual violence, the exercise of reasonable care should trigger an investigation that would lead to the discovery of additional incidents. For example, if school officials receive a credible report that a student has perpetrated several acts of sexual violence against different students, that pattern of conduct should trigger an inquiry as to whether other students have been subjected to sexual violence by that student. In other cases, the pervasiveness of the sexual violence may be widespread, openly practiced, or well-known among students or employees. In those cases, OCR may conclude that the school should have known of the hostile environment. In other words, if the school would have found out about the sexual violence had it made a proper inquiry, knowledge of the sexual violence will be imputed to the school even if the school failed to make an inquiry. A school's failure to take prompt and effective corrective action in such cases (as described in questions G-1 to G-3 and H-1 to H-3) would violate Title IX even if the student did not use the school's grievance procedures or otherwise inform the school of the sexual violence.

A-5. What are a school's basic responsibilities to address student-on-student sexual violence?

Answer: When a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E). If an investigation reveals that sexual violence created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its

effects. But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

Title IX requires a school to protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation.<sup>10</sup> The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. If the school determines that the sexual violence occurred, the school must continue to take these steps to protect the complainant and ensure his or her safety, as necessary. The school should also ensure that the complainant is aware of any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. For additional information on interim measures, see questions G-1 to G-3.

If a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to a hostile environment. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately. For example, if a school's ignoring of a student's complaints of sexual assault by a fellow student results in the complaining student having to remain in classes with the other student for several weeks and the complaining student's grades suffer because he or she was unable to concentrate in these classes, the school may need to permit the complaining student to retake the classes without an academic or financial penalty (in addition to any other remedies) in order to address the effects of the sexual violence.

A-6. Does Title IX cover employee-on-student sexual violence, such as sexual abuse of children?

Answer: Yes. Although this document and the DCL focus on student-on-student sexual violence, Title IX also protects students from other forms of sexual harassment (including sexual violence and sexual abuse), such as sexual harassment carried out by school employees. Sexual harassment by school employees can include unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, including but not limited to sexual activity. Title IX's prohibition against

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<sup>10</sup> Throughout this document, unless otherwise noted, the term "complainant" refers to the student who allegedly experienced the sexual violence.

sexual harassment generally does not extend to legitimate nonsexual touching or other nonsexual conduct. But in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment. Early signs of inappropriate behavior with a child can be the key to identifying and preventing sexual abuse by school personnel.

A school's Title IX obligations regarding sexual harassment by employees can, in some instances, be greater than those described in this document and the DCL. Recipients should refer to OCR's 2001 Guidance for further information about Title IX obligations regarding harassment of students by school employees. In addition, many state and local laws have mandatory reporting requirements for schools working with minors. Recipients should be careful to satisfy their state and local legal obligations in addition to their Title IX obligations, including training to ensure that school employees are aware of their obligations under such state and local laws and the consequences for failing to satisfy those obligations.

With respect to sexual activity in particular, OCR will always view as unwelcome and nonconsensual sexual activity between an adult school employee and an elementary school student or any student below the legal age of consent in his or her state. In cases involving a student who meets the legal age of consent in his or her state, there will still be a strong presumption that sexual activity between an adult school employee and a student is unwelcome and nonconsensual. When a school is on notice that a school employee has sexually harassed a student, it is responsible for taking prompt and effective steps reasonably calculated to end the sexual harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects. Indeed, even if a school was not on notice, the school is nonetheless responsible for remedying any effects of the sexual harassment on the student, as well as for ending the sexual harassment and preventing its recurrence, when the employee engaged in the sexual activity in the context of the employee's provision of aid, benefits, or services to students (e.g., teaching, counseling, supervising, advising, or transporting students).

A school should take steps to protect its students from sexual abuse by its employees. It is therefore imperative for a school to develop policies prohibiting inappropriate conduct by school personnel and procedures for identifying and responding to such conduct. For example, this could include implementing codes of conduct, which might address what is commonly known as grooming – a desensitization strategy common in adult educator sexual misconduct. Such policies and procedures can ensure that students, parents, and

school personnel have clear guidelines on what are appropriate and inappropriate interactions between adults and students in a school setting or in school-sponsored activities. Additionally, a school should provide training for administrators, teachers, staff, parents, and age-appropriate classroom information for students to ensure that everyone understands what types of conduct are prohibited and knows how to respond when problems arise.<sup>11</sup>

## B. Students Protected by Title IX

### B-1. Does Title IX protect all students from sexual violence?

Answer: Yes. Title IX protects all students at recipient institutions from sex discrimination, including sexual violence. Any student can experience sexual violence: from elementary to professional school students; male and female students; straight, gay, lesbian, bisexual and transgender students; part-time and full-time students; students with and without disabilities; and students of different races and national origins.

### B-2. How should a school handle sexual violence complaints in which the complainant and the alleged perpetrator are members of the same sex?

Answer: A school's obligation to respond appropriately to sexual violence complaints is the same irrespective of the sex or sexes of the parties involved. Title IX protects all students from sexual violence, regardless of the sex of the alleged perpetrator or complainant, including when they are members of the same sex. A school must investigate and resolve allegations of sexual violence involving parties of the same sex using the same procedures and standards that it uses in all complaints involving sexual violence.

Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation. Similarly, the actual or perceived sexual orientation or gender identity of the parties does not change a school's obligations. Indeed, lesbian, gay, bisexual, and transgender (LGBT) youth report high rates of sexual harassment and sexual violence. A school should investigate and resolve allegations of sexual violence regarding LGBT students using the same procedures and standards that it

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<sup>11</sup> For additional informational on training please see the Department of Education's Resource and Emergency Management for Schools Technical Assistance Center – Adult Sexual Misconduct in Schools: Prevention and Management Training, available at [http://rems.ed.gov/Docs/ASM\\_Marketing\\_Flyer.pdf](http://rems.ed.gov/Docs/ASM_Marketing_Flyer.pdf).

uses in all complaints involving sexual violence. The fact that incidents of sexual violence may be accompanied by anti-gay comments or be partly based on a student's actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy those instances of sexual violence.

If a school's policies related to sexual violence include examples of particular types of conduct that violate the school's prohibition on sexual violence, the school should consider including examples of same-sex conduct. In addition, a school should ensure that staff are capable of providing culturally competent counseling to all complainants. Thus, a school should ensure that its counselors and other staff who are responsible for receiving and responding to complaints of sexual violence, including investigators and hearing board members, receive appropriate training about working with LGBT and gender-nonconforming students and same-sex sexual violence. See questions J-1 to J-4 for additional information regarding training.

Gay-straight alliances and similar student-initiated groups can also play an important role in creating safer school environments for LGBT students. On June 14, 2011, the Department issued guidance about the rights of student-initiated groups in public secondary schools under the Equal Access Act. That guidance is available at <http://www2.ed.gov/policy/elsec/quid/sectetter/110607.html>.

B-3. What issues may arise with respect to students with disabilities who experience sexual violence?

Answer: When students with disabilities experience sexual violence, federal civil rights laws other than Title IX may also be relevant to a school's responsibility to investigate and address such incidents.<sup>12</sup> Certain students require additional assistance and support. For example, students with intellectual disabilities may need additional help in learning about sexual violence, including a school's sexual violence education and prevention programs, what constitutes sexual violence and how students can report incidents of sexual

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<sup>12</sup> OCR enforces two civil rights laws that prohibit disability discrimination. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits disability discrimination by public or private entities that receive federal financial assistance, and Title II of the American with Disabilities Act of 1990 (Title II) prohibits disability discrimination by all state and local public entities, regardless of whether they receive federal funding. See 29 U.S.C. § 794 and 34 C.F.R. part 104; 42 U.S.C. § 12131 et seq. and 28 C.F.R. part 35. OCR and the U.S. Department of Justice (DOJ) share the responsibility of enforcing Title II in the educational context. The Department of Education's Office of Special Education Programs in the Office of Special Education and Rehabilitative Services administers Part B of the Individuals with Disabilities Education Act (IDEA). 20 U.S.C. 1400 et seq. and 34 C.F.R. part 300. IDEA provides financial assistance to states, and through them to local educational agencies, to assist in providing special education and related services to eligible children with disabilities ages three through twenty-one, inclusive.



violence. In addition, students with disabilities who experience sexual violence may require additional services and supports, including psychological services and counseling services. Postsecondary students who need these additional services and supports can seek assistance from the institution's disability resource office.

A student who has not been previously determined to have a disability may, as a result of experiencing sexual violence, develop a mental health-related disability that could cause the student to need special education and related services. At the elementary and secondary education level, this may trigger a school's child find obligations under IDEA and the evaluation and placement requirements under Section 504, which together require a school to evaluate a student suspected of having a disability to determine if he or she has a disability that requires special education or related aids and services.<sup>13</sup>

A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner that is accessible to students and employees with disabilities, for example, by providing electronically-accessible versions of paper forms to individuals with print disabilities, or by providing a sign language interpreter to a deaf individual attending a training. See question J4 for more detailed information on student training.

B-4. What issues arise with respect to international students and undocumented students who experience sexual violence?

Answer: Title IX protects all students at recipient institutions in the United States regardless of national origin, immigration status, or citizenship status.<sup>14</sup> A school should ensure that all students regardless of their immigration status, including undocumented students and international students, are aware of their rights under Title IX. A school must also ensure that any school reporting forms, information, or training about sexual violence be provided in a manner accessible to students who are English language learners. OCR recommends that a school coordinate with its international office and its undocumented student program coordinator, if applicable, to help communicate information about Title IX in languages that are accessible to these groups of students. OCR also encourages schools to provide foreign national complainants with information about the U nonimmigrant status and the T nonimmigrant status. The U nonimmigrant status is set

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<sup>13</sup> See 34 C.F.R. §§ 300.8; 300.111; 300.201; 300.300-300.311 (IDEA); 34 C.F.R. §§ 104.3(j) and 104.35 (Section 504). Schools must comply with applicable consent requirements with respect to evaluations. See 34 C.F.R. § 300.300.

<sup>14</sup> OCR enforces Title VI of the Civil Rights Act of 1964, which prohibits discrimination by recipients of federal financial assistance on the basis of race, color, or national origin. 42 U.S.C. § 2000d.

aside for victims of certain crimes who have suffered substantial mental or physical abuse as a result of the crime and are helpful to law enforcement agency in the investigation or prosecution of the qualifying criminal activity.<sup>15</sup> The T nonimmigrant status is available for victims of severe forms of human trafficking who generally comply with a law enforcement agency in the investigation or prosecution of the human trafficking and who would suffer extreme hardship involving unusual and severe harm if they were removed from the United States.<sup>16</sup>

A school should be mindful that unique issues may arise when a foreign student on a student visa experiences sexual violence. For example, certain student visas require the student to maintain a full-time course load (generally at least 12 academic credit hours per term), but a student may need to take a reduced course load while recovering from the immediate effects of the sexual violence. OCR recommends that a school take steps to ensure that international students on student visas understand that they must typically seek prior approval of the designated school official (DSO) for student visas to drop below a full-time course load. A school may also want to encourage its employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence to approach the DSO on the student's behalf if the student wishes to drop below a full-time course load. OCR recommends that a school take steps to ensure that its employees who work with international students, including the school's DSO, are trained on the school's sexual violence policies and that employees involved in handling sexual violence complaints and counseling students who have experienced sexual violence are aware of the special issues that international students may encounter. See questions J-1 to J-4 for additional information regarding training.

A school should also be aware that threatening students with deportation or invoking a student's immigration status in an attempt to intimidate or deter a student from filing a Title IX complaint would violate Title IX's protections against retaliation. For more information on retaliation see question K-1.

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<sup>15</sup> For more information on the U nonimmigrant status, see <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/questions-answers-victims-criminal-activity-u-nonimmigrant-status>.

<sup>16</sup> For more information on the T nonimmigrant status, see <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>.

B-5. How should a school respond to sexual violence when the alleged perpetrator is not affiliated with the school?

Answer: The appropriate response will differ depending on the level of control the school has over the alleged perpetrator. For example, if an athlete or band member from a visiting school sexually assaults a student at the home school, the home school may not be able to discipline or take other direct action against the visiting athlete or band member. However (and subject to the confidentiality provisions discussed in Section E), it should conduct an inquiry into what occurred and should report the incident to the visiting school and encourage the visiting school to take appropriate action to prevent further sexual violence. The home school should also notify the student of any right to file a complaint with the alleged perpetrator's school or local law enforcement. The home school may also decide not to invite the visiting school back to its campus.

Even though a school's ability to take direct action against a particular perpetrator may be limited, the school must still take steps to provide appropriate remedies for the complainant and, where appropriate, the broader school population. This may include providing support services for the complainant, and issuing new policy statements making it clear that the school does not tolerate sexual violence and will respond to any reports about such incidents. For additional information on interim measures see questions G-1 to G-3.

### C. Title IX Procedural Requirements

#### Overview

G-1. What procedures must a school have in place to prevent sexual violence and resolve complaints?

Answer: The Title IX regulations outline three key procedural requirements. Each school must:

(1) disseminate a notice of nondiscrimination (see question G-2);<sup>17</sup>

(2) designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX (see questions G-3 to G-4);<sup>18</sup> and

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<sup>17</sup> 34 C.F.R. § 106.9.

<sup>18</sup> Id. § 106.8(a).

(3) adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee sex discrimination complaints (see questions C-5 to C-6).<sup>19</sup>

These requirements apply to all forms of sex discrimination and are particularly important for preventing and effectively responding to sexual violence.

Procedural requirements under other federal laws may also apply to complaints of sexual violence, including the requirements of the Clery Act.<sup>20</sup> For additional information about the procedural requirements in the Clery Act, please see <http://www2.ed.gov/admins/lead/safety/campus.html>.

### Notice of Nondiscrimination

C-2. What information must be included in a school's notice of nondiscrimination?

Answer: The notice of nondiscrimination must state that the school does not discriminate on the basis of sex in its education programs and activities, and that it is required by Title IX not to discriminate in such a manner. The notice must state that questions regarding Title IX may be referred to the school's Title IX coordinator or to OCR. The school must notify all of its students and employees of the name or title, office address, telephone number, and email address of the school's designated Title IX coordinator.<sup>21</sup>

### Title IX Coordinator

C-3. What are a Title IX coordinator's responsibilities?

Answer: A Title IX coordinator's core responsibilities include overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. This means that the Title IX coordinator must have knowledge of the requirements of Title IX, of the school's own policies and procedures on sex discrimination, and of all complaints raising Title IX issues throughout the school. To accomplish this, subject to the exemption for school counseling employees discussed in question E-3, the Title IX coordinator must be informed of all

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<sup>19</sup> Id. § 106.8(b).

<sup>20</sup> All postsecondary institutions participating in the Higher Education Act's Title IV student financial assistance programs must comply with the Clery Act.

<sup>21</sup> For more information on notices of nondiscrimination, please see OCR's Notice of Nondiscrimination (August 2010), available at <http://www.ed.gov/ocr/docs/nondisc.pdf>.

reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. The school should ensure that the Title IX coordinator is given the training, authority, and visibility necessary to fulfill these responsibilities.

Because the Title IX coordinator must have knowledge of all Title IX reports and complaints at the school, this individual (when properly trained) is generally in the best position to evaluate a student's request for confidentiality in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students. A school may determine, however, that another individual should perform this role. For additional information on confidentiality requests, see questions E-1 to E-4. If a school relies in part on its disciplinary procedures to meet its Title IX obligations, the Title IX coordinator should review the disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX as discussed in question C-5.

In addition to these core responsibilities, a school may decide to give its Title IX coordinator additional responsibilities, such as: providing training to students, faculty, and staff on Title IX issues; conducting Title IX investigations, including investigating facts relevant to a complaint, and determining appropriate sanctions against the perpetrator and remedies for the complainant; determining appropriate interim measures for a complainant upon learning of a report or complaint of sexual violence; and ensuring that appropriate policies and procedures are in place for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers, including rape crisis centers. A school must ensure that its Title IX coordinator is appropriately trained in all areas over which he or she has responsibility. The Title IX coordinator or designee should also be available to meet with students as needed.

If a school designates more than one Title IX coordinator, the school's notice of nondiscrimination and Title IX grievance procedures should describe each coordinator's responsibilities, and one coordinator should be designated as having ultimate oversight responsibility.

G-4. Are there any employees who should not serve as the Title IX coordinator?

Answer: Title IX does not categorically preclude particular employees from serving as Title IX coordinators. However, Title IX coordinators should not have other job responsibilities that may create a conflict of interest. Because some complaints may raise issues as to whether or how well the school has met its Title IX obligations, designating

the same employee to serve both as the Title IX coordinator and the general counsel (which could include representing the school in legal claims alleging Title IX violations) poses a serious risk of a conflict of interest. Other employees whose job responsibilities may conflict with a Title IX coordinator's responsibilities include Directors of Athletics, Deans of Students, and any employee who serves on the judicial/hearing board or to whom an appeal might be made. Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest.

### Grievance Procedures

C-5. Under Title IX, what elements should be included in a school's procedures for responding to complaints of sexual violence?

Answer: Title IX requires that a school adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints of sex discrimination, including sexual violence. In evaluating whether a school's grievance procedures satisfy this requirement, OCR will review all aspects of a school's policies and practices, including the following elements that are critical to achieve compliance with Title IX:

- (1) notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- (2) application of the grievance procedures to complaints filed by students or on their behalf alleging sexual violence carried out by employees, other students, or third parties;
- (3) provisions for adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence;
- (4) designated and reasonably prompt time frames for the major stages of the complaint process (see question F-8);
- (5) written notice to the complainant and alleged perpetrator of the outcome of the complaint (see question H-3); and
- (6) assurance that the school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the school processes complaints, a school's Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX:

- (1) a statement of the school's jurisdiction over Title IX complaints;
- (2) adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- (3) reporting policies and protocols, including provisions for confidential reporting;
- (4) identification of the employee or employees responsible for evaluating requests for confidentiality;
- (5) notice that Title IX prohibits retaliation;
- (6) notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
- (7) notice of available interim measures that may be taken to protect the student in the educational setting;
- (8) the evidentiary standard that must be used (preponderance of the evidence) (i.e., more likely than not that sexual violence occurred) in resolving a complaint;
- (9) notice of potential remedies for students;
- (10) notice of potential sanctions against perpetrators; and
- (11) sources of counseling, advocacy, and support.

For more information on interim measures, see questions G-1 to G-3.

The rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights. Procedures that ensure the Title IX rights of the complainant, while at the same time according any federally guaranteed due process to both parties involved, will lead to sound and supportable decisions. Of course, a school should ensure that steps to accord any due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.

A school's procedures and practices will vary in detail, specificity, and components, reflecting differences in the age of its students, school size and administrative structure, state or local legal requirements (e.g., mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

C-6. Is a school required to use separate grievance procedures for sexual violence complaints?

Answer: No. Under Title IX, a school may use student disciplinary procedures, general Title IX grievance procedures, sexual harassment procedures, or separate procedures to resolve sexual violence complaints. However, any procedures used for sexual violence complaints, including disciplinary procedures, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution (as discussed in question C-5), including applying the preponderance of the evidence standard of review. As discussed in question C-3, the Title IX coordinator should review any process used to resolve complaints of sexual violence to ensure it complies with requirements for prompt and equitable resolution of these complaints. When using disciplinary procedures, which are often focused on the alleged perpetrator and can take considerable time, a school should be mindful of its obligation to provide interim measures to protect the complainant in the educational setting. For more information on timeframes and interim measures, see questions F-8 and G-1 to G-3.

D. Responsible Employees and Reporting<sup>22</sup>

D-1. Which school employees are obligated to report incidents of possible sexual violence to school officials?

Answer: Under Title IX, whether an individual is obligated to report incidents of alleged sexual violence generally depends on whether the individual is a responsible employee of the school. A responsible employee must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee, subject to the exemption for school counseling employees discussed in question E-3. This is because, as discussed in question A-4, a school is obligated to address sexual violence about which a responsible employee knew or should have known. As explained in question C-3, the Title IX coordinator must be informed of all reports and complaints raising Title IX issues, even if the report or

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<sup>22</sup> This document addresses only Title IX's reporting requirements. It does not address requirements under the Cery Act or other federal, state, or local laws, or an individual school's code of conduct.



complaint was initially filed with another individual or office, subject to the exemption for school counseling employees discussed in question E-3.

D-2. Who is a “responsible employee”?

Answer: According to OCR’s 2001 Guidance, a responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.<sup>23</sup>

A school must make clear to all of its employees and students which staff members are responsible employees so that students can make informed decisions about whether to disclose information to those employees. A school must also inform all employees of their own reporting responsibilities and the importance of informing complainants of: the reporting obligations of responsible employees; complainants’ option to request confidentiality and available confidential advocacy, counseling, or other support services; and complainants’ right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement.

Whether an employee is a responsible employee will vary depending on factors such as the age and education level of the student, the type of position held by the employee, and consideration of both formal and informal school practices and procedures. For example, while it may be reasonable for an elementary school student to believe that a custodial staff member or cafeteria worker has the authority or responsibility to address student misconduct, it is less reasonable for a college student to believe that a custodial staff member or dining hall employee has this same authority.

As noted in response to question A-4, when a responsible employee knows or reasonably should know of possible sexual violence, OCR deems a school to have notice of the sexual violence. The school must take immediate and appropriate steps to investigate or otherwise determine what occurred (subject to the confidentiality provisions discussed in Section E), and, if the school determines that sexual violence created a hostile environment, the school must then take appropriate steps to address the situation. The

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<sup>23</sup> The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. *Gebser v. Lago Vista Ind. Sch. Dist.*, 524 U.S. 274, 290 (1998), and *Davis*, 524 U.S. at 642. The concept of a “responsible employee” under OCR’s guidance for administrative enforcement of Title IX is broader.

school has this obligation regardless of whether the student, student's parent, or a third party files a formal complaint. For additional information on a school's responsibilities to address student-on-student sexual violence, see question A-5. For additional information on training for school employees, see questions J-1 to J-3.

D-3. What information is a responsible employee obligated to report about an incident of possible student-on-student sexual violence?

Answer: Subject to the exemption for school counseling employees discussed in question E-3, a responsible employee must report to the school's Title IX coordinator, or other appropriate school designee, all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location. A school must make clear to its responsible employees to whom they should report an incident of alleged sexual violence.

To ensure compliance with these reporting obligations, it is important for a school to train its responsible employees on Title IX and the school's sexual violence policies and procedures. For more information on appropriate training for school employees, see question J-1 to J-3.

D-4. What should a responsible employee tell a student who discloses an incident of sexual violence?

Answer: Before a student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the student understands (i) the employee's obligation to report the names of the alleged perpetrator and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator or other appropriate school officials, (ii) the student's option to request that the school maintain his or her confidentiality, which the school (e.g., Title IX coordinator) will consider, and (iii) the student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (e.g., sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers). As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request.

and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

- D-5. If a student informs a resident assistant/ advisor (RA) that he or she was subjected to sexual violence by a fellow student, is the RA obligated under Title IX to report the incident to school officials?

Answer: As discussed in questions D-1 and D-2, for Title IX purposes, whether an individual is obligated under Title IX to report alleged sexual violence to the school's Title IX coordinator or other appropriate school designee generally depends on whether the individual is a responsible employee.

The duties and responsibilities of RAs vary among schools, and, therefore, a school should consider its own policies and procedures to determine whether its RAs are responsible employees who must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee.<sup>24</sup> When making this determination, a school should consider if its RAs have the general authority to take action to redress misconduct or the duty to report misconduct to appropriate school officials, as well as whether students could reasonably believe that RAs have this authority or duty. A school should also consider whether it has determined and clearly informed students that RAs are generally available for confidential discussions and do not have the authority or responsibility to take action to redress any misconduct or to report any misconduct to the Title IX coordinator or other appropriate school officials. A school should pay particular attention to its RAs' obligations to report other student violations of school policy (e.g., drug and alcohol violations or physical assault). If an RA is required to report other misconduct that violates school policy, then the RA would be considered a responsible employee obligated to report incidents of sexual violence that violate school policy.

If an RA is a responsible employee, the RA should make every effort to ensure that before the student reveals information that he or she may wish to keep confidential, the student understands the RA's reporting obligation and the student's option to request that the school maintain confidentiality. It is therefore important that schools widely disseminate policies and provide regular training clearly identifying the places where students can seek confidential support services so that students are aware of this information. The RA

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<sup>24</sup> Postsecondary institutions should be aware that, regardless of whether an RA is a responsible employee under Title IX, RAs are considered "campus security authorities" under the Clery Act. A school's responsibilities in regard to crimes reported to campus security authorities are discussed in the Department's regulations on the Clery Act at 34 C.F.R. § 668.46.

should also explain to the student (again, before the student reveals information that he or she may wish to keep confidential) that, although the RA must report the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location to the Title IX coordinator or other appropriate school designee, the school will protect the student's confidentiality to the greatest extent possible. Prior to providing information about the incident to the Title IX coordinator or other appropriate school designee, the RA should consult with the student about how to protect his or her safety and the details of what will be shared with the Title IX coordinator. The RA should explain to the student that reporting this information to the Title IX coordinator or other appropriate school designee does not necessarily mean that a formal complaint or investigation under the school's Title IX grievance procedure must be initiated if the student requests confidentiality. As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request and should evaluate the request in the context of the school's responsibility to provide a safe and nondiscriminatory environment for all students.

Regardless of whether a reporting obligation exists, all RAs should inform students of their right to file a Title IX complaint with the school and report a crime to campus or local law enforcement. If a student discloses sexual violence to an RA who is a responsible employee, the school will be deemed to have notice of the sexual violence even if the student does not file a Title IX complaint. Additionally, all RAs should provide students with information regarding on-campus resources, including victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. RAs should also be familiar with local rape crisis centers or other off-campus resources and provide this information to students.

## E. Confidentiality and a School's Obligation to Respond to Sexual Violence

- E-1. How should a school respond to a student's request that his or her name not be disclosed to the alleged perpetrator or that no investigation or disciplinary action be pursued to address the alleged sexual violence?

Answer: Students, or parents of minor students, reporting incidents of sexual violence sometimes ask that the students' names not be disclosed to the alleged perpetrators or that no investigation or disciplinary action be pursued to address the alleged sexual violence. OCR strongly supports a student's interest in confidentiality in cases involving sexual violence. There are situations in which a school must override a student's request

for confidentiality in order to meet its Title IX obligations; however, these instances will be limited and the information should only be shared with individuals who are responsible for handling the school's response to incidents of sexual violence. Given the sensitive nature of reports of sexual violence, a school should ensure that the information is maintained in a secure manner. A school should be aware that disregarding requests for confidentiality can have a chilling effect and discourage other students from reporting sexual violence. In the case of minors, state mandatory reporting laws may require disclosure, but can generally be followed without disclosing information to school personnel who are not responsible for handling the school's response to incidents of sexual violence.<sup>25</sup>

Even if a student does not specifically ask for confidentiality, to the extent possible, a school should only disclose information regarding alleged incidents of sexual violence to individuals who are responsible for handling the school's response. To improve trust in the process for investigating sexual violence complaints, a school should notify students of the information that will be disclosed, to whom it will be disclosed, and why. Regardless of whether a student complainant requests confidentiality, a school must take steps to protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. For additional information on interim measures see questions G-1 to G-3.

For Title IX purposes, if a student requests that his or her name not be revealed to the alleged perpetrator or asks that the school not investigate or seek action against the alleged perpetrator, the school should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. The school should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate

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<sup>25</sup> The school should be aware of the alleged student perpetrator's right under the Family Educational Rights and Privacy Act ("FERPA") to request to inspect and review information about the allegations if the information directly relates to the alleged student perpetrator and the information is maintained by the school as an education record. In such a case, the school must either redact the complainant's name and all identifying information before allowing the alleged perpetrator to inspect and review the sections of the complaint that relate to him or her, or must inform the alleged perpetrator of the specific information in the complaint that are about the alleged perpetrator. See 34 C.F.R. § 99.12(a) The school should also make complainants aware of this right and explain how it might affect the school's ability to maintain complete confidentiality.

and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary. See question K-1 regarding retaliation.

If the student still requests that his or her name not be disclosed to the alleged perpetrator or that the school not investigate or seek action against the alleged perpetrator, the school will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. As discussed in question C-3, the Title IX coordinator is generally in the best position to evaluate confidentiality requests. Because schools vary widely in size and administrative structure, OCR recognizes that a school may reasonably determine that an employee other than the Title IX coordinator, such as a sexual assault response coordinator, dean, or other school official, is better suited to evaluate such requests. Addressing the needs of a student reporting sexual violence while determining an appropriate institutional response requires expertise and attention, and a school should ensure that it assigns these responsibilities to employees with the capability and training to fulfill them. For example, if a school has a sexual assault response coordinator, that person should be consulted in evaluating requests for confidentiality. The school should identify in its Title IX policies and procedures the employee or employees responsible for making such determinations.

If the school determines that it can respect the student's request not to disclose his or her identity to the alleged perpetrator, it should take all reasonable steps to respond to the complaint consistent with the request. Although a student's request to have his or her name withheld may limit the school's ability to respond fully to an individual allegation of sexual violence, other means may be available to address the sexual violence. There are steps a school can take to limit the effects of the alleged sexual violence and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; changing and publicizing the school's policies on sexual violence; and conducting climate surveys regarding sexual violence. In instances affecting many students, an alleged perpetrator can be put on notice of allegations of harassing behavior and be counseled appropriately without revealing, even indirectly, the identity of the student complainant. A school must also take immediate action as necessary to protect the student while keeping the identity of the student confidential. These actions may include providing support services to the student and changing living arrangements or course schedules, assignments, or tests.

E-2. What factors should a school consider in weighing a student's request for confidentiality?

Answer: When weighing a student's request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, a school should consider a range of factors.

These factors include circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of sexual violence or other violence (e.g., whether there have been other sexual violence complaints about the same alleged perpetrator, whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence, whether the alleged perpetrator threatened further sexual violence or other violence against the student or others, and whether the sexual violence was committed by multiple perpetrators). These factors also include circumstances that suggest there is an increased risk of future acts of sexual violence under similar circumstances (e.g., whether the student's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group). Other factors that should be considered in assessing a student's request for confidentiality include whether the sexual violence was perpetrated with a weapon; the age of the student subjected to the sexual violence; and whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

A school should take requests for confidentiality seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. For example, if the school has credible information that the alleged perpetrator has committed one or more prior rapes, the balance of factors would compel the school to investigate the allegation of sexual violence, and if appropriate, pursue disciplinary action in a manner that may require disclosure of the student's identity to the alleged perpetrator. If the school determines that it must disclose a student's identity to an alleged perpetrator, it should inform the student prior to making this disclosure. In these cases, it is also especially important for schools to take whatever interim measures are necessary to protect the student and ensure the safety of other students. If a school has a sexual assault response coordinator, that person should be consulted in identifying safety risks and interim measures that are necessary to protect the student. In the event the student requests that the school inform the perpetrator that the student asked the school not to investigate or seek discipline, the school should honor this request and inform the alleged perpetrator that the school made the decision to go forward. For additional information on interim measures see questions G-1 to G-3. Any school officials responsible for

discussing safety and confidentiality with students should be trained on the effects of trauma and the appropriate methods to communicate with students subjected to sexual violence. See questions J-1 to J-3.

On the other hand, if, for example, the school has no credible information about prior sexual violence committed by the alleged perpetrator and the alleged sexual violence was not perpetrated with a weapon or accompanied by threats to repeat the sexual violence against the complainant or others or part of a larger pattern at a given location or by a particular group, the balance of factors would likely compel the school to respect the student's request for confidentiality. In this case the school should still take all reasonable steps to respond to the complaint consistent with the student's confidentiality request and determine whether interim measures are appropriate or necessary. Schools should be mindful that traumatic events such as sexual violence can result in delayed decisionmaking by a student who has experienced sexual violence. Hence, a student who initially requests confidentiality might later request that a full investigation be conducted.

- E-3. What are the reporting responsibilities of school employees who provide or support the provision of counseling, advocacy, health, mental health, or sexual assault-related services to students who have experienced sexual violence?

Answer: OCR does not require campus mental-health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, or who is supervised by such a person, to report, without the student's consent, incidents of sexual violence to the school in a way that identifies the student. Although these employees may have responsibilities that would otherwise make them responsible employees for Title IX purposes, OCR recognizes the importance of protecting the counselor-client relationship, which often requires confidentiality to ensure that students will seek the help they need.

Professional counselors and pastoral counselors whose official responsibilities include providing mental-health counseling to members of the school community are not required by Title IX to report any information regarding an incident of alleged sexual violence to the Title IX coordinator or other appropriate school designee.<sup>26</sup>

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<sup>26</sup> The exemption from reporting obligations for pastoral and professional counselors under Title IX is consistent with the Clery Act. For additional information on reporting obligations under the Clery Act, see Office of Postsecondary Education, Handbook for Campus Safety and Security Reporting (2011), available at <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. Similar to the Clery Act, for Title IX purposes, a pastoral counselor is a person who is associated with a religious order or denomination, is recognized by that religious



OCR recognizes that some people who provide assistance to students who experience sexual violence are not professional or pastoral counselors. They include all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers ("non-professional counselors or advocates"), including front desk staff and students. OCR wants students to feel free to seek their assistance and therefore interprets Title IX to give schools the latitude not to require these individuals to report incidents of sexual violence in a way that identifies the student without the student's consent.<sup>27</sup> These non-professional counselors or advocates are valuable sources of support for students, and OCR strongly encourages schools to designate these individuals as confidential sources.

Pastoral and professional counselors and non-professional counselors or advocates should be instructed to inform students of their right to file a Title IX complaint with the school and a separate complaint with campus or local law enforcement. In addition to informing students about campus resources for counseling, medical, and academic support, these persons should also indicate that they are available to assist students in filing such complaints. They should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials. When a school knows or reasonably should know of possible retaliation by other students or third parties, including threats, intimidation, coercion, or discrimination (including harassment), it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and ensure his or her safety as necessary.

In order to identify patterns or systemic problems related to sexual violence, a school should collect aggregate data about sexual violence incidents from non-professional counselors or advocates in their on-campus sexual assault centers, women's centers, or

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order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. A professional counselor is a person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification. This definition applies even to professional counselors who are not employees of the school, but are under contract to provide counseling at the school. This includes individuals who are not yet licensed or certified as a counselor, but are acting in that role under the supervision of an individual who is licensed or certified. An example is a Ph.D. counselor-trainee acting under the supervision of a professional counselor at the school.

<sup>27</sup> Postsecondary institutions should be aware that an individual who is counseling students, but who does not meet the Clery Act definition of a pastoral or professional counselor, is not exempt from being a campus security authority if he or she otherwise has significant responsibility for student and campus activities. See fn. 24.

health centers. Such individuals should report only general information about incidents of sexual violence such as the nature, date, time, and general location of the incident and should take care to avoid reporting personally identifiable information about a student. Non-professional counselors and advocates should consult with students regarding what information needs to be withheld to protect their identity.

- E-4. Is a school required to investigate information regarding sexual violence incidents shared by survivors during public awareness events such as “Take Back the Night”?

Answer: No. OCR wants students to feel free to participate in preventive education programs and access resources for survivors. Therefore, public awareness events such as “Take Back the Night” or other forums at which students disclose experiences with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the survivor initiates a complaint. The school should instead respond to these disclosures by reviewing sexual assault policies, creating campus-wide educational programs, and conducting climate surveys to learn more about the prevalence of sexual violence at the school. Although Title IX does not require the school to investigate particular incidents discussed at such events, the school should ensure that survivors are aware of any available resources, including counseling, health, and mental health services. To ensure that the entire school community understands their Title IX rights related to sexual violence, the school should also provide information at these events on Title IX and how to file a Title IX complaint with the school, as well as options for reporting an incident of sexual violence to campus or local law enforcement.

## F. Investigations and Hearings

### Overview

- F-1. What elements should a school’s Title IX investigation include?

Answer: The specific steps in a school’s Title IX investigation will vary depending on the nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements (including mandatory reporting requirements for schools working with minors), and what it has learned from past experiences.

For the purposes of this document the term “investigation” refers to the process the school uses to resolve sexual violence complaints. This includes the fact-finding investigation and any hearing and decision-making process the school uses to determine: (1) whether or not the conduct occurred; and, (2) if the conduct occurred, what actions

the school will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include imposing sanctions on the perpetrator and providing remedies for the complainant and broader student population.

In all cases, a school's Title IX investigation must be adequate, reliable, impartial, and prompt and include the opportunity for both parties to present witnesses and other evidence. The investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing.<sup>28</sup> Furthermore, neither Title IX nor the DCL specifies who should conduct the investigation. It could be the Title IX coordinator, provided there are no conflicts of interest, but it does not have to be. All persons involved in conducting a school's Title IX investigations must have training or experience in handling complaints of sexual violence and in the school's grievance procedures. For additional information on training, see question J-3.

When investigating an incident of alleged sexual violence for Title IX purposes, to the extent possible, a school should coordinate with any other ongoing school or criminal investigations of the incident and establish appropriate fact-finding roles for each investigator. A school should also consider whether information can be shared among the investigators so that complainants are not unnecessarily required to give multiple statements about a traumatic event. If the investigation includes forensic evidence, it may be helpful for a school to consult with local or campus law enforcement or a forensic expert to ensure that the evidence is correctly interpreted by school officials. For additional information on working with campus or local law enforcement see question F-3.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without additional remedies, likely will not be sufficient to eliminate the hostile environment and prevent recurrence as required by Title IX. If a school typically processes complaints of sexual violence through its disciplinary process and that process, including any investigation and hearing, meets the Title IX requirements discussed above and enables the school to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, then the school may use that process to satisfy its Title IX obligations and does not need to conduct a separate Title IX investigation. As discussed in question C-3, the Title IX coordinator should review the disciplinary process

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<sup>28</sup> This answer addresses only Title IX's requirements for investigations. It does not address legal rights or requirements under the U.S. Constitution, the Clery Act, or other federal, state, or local laws.

to ensure that it: (1) complies with the prompt and equitable requirements of Title IX; (2) allows for appropriate interim measures to be taken to protect the complainant during the process; and (3) provides for remedies to the complainant and school community where appropriate. For more information about interim measures, see questions G-1 to G-3, and about remedies, see questions H-1 and H-2.

The investigation may include, but is not limited to, conducting interviews of the complainant, the alleged perpetrator, and any witnesses; reviewing law enforcement investigation documents, if applicable; reviewing student and personnel files; and gathering and examining other relevant documents or evidence. While a school has flexibility in how it structures the investigative process, for Title IX purposes, a school must give the complainant any rights that it gives to the alleged perpetrator. A balanced and fair process that provides the same opportunities to both parties will lead to sound and supportable decisions.<sup>29</sup> Specifically:

- Throughout the investigation, the parties must have an equal opportunity to present relevant witnesses and other evidence.
- The school must use a preponderance-of-the-evidence (i.e., more likely than not) standard in any Title IX proceedings, including any fact-finding and hearings.
- If the school permits one party to have lawyers or other advisors at any stage of the proceedings, it must do so equally for both parties. Any school-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in the proceedings must also apply equally.
- If the school permits one party to submit third-party expert testimony, it must do so equally for both parties.
- If the school provides for an appeal, it must do so equally for both parties.
- Both parties must be notified, in writing, of the outcome of both the complaint and any appeal (see question H-3).

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<sup>29</sup> As explained in question C-5, the parties may have certain due process rights under the U.S. Constitution.

## Intersection with Criminal Investigations

F-2. What are the key differences between a school's Title IX investigation into allegations of sexual violence and a criminal investigation?

Answer: A criminal investigation is intended to determine whether an individual violated criminal law; and, if at the conclusion of the investigation, the individual is tried and found guilty, the individual may be imprisoned or subject to criminal penalties. The U.S. Constitution affords criminal defendants who face the risk of incarceration numerous protections, including, but not limited to, the right to counsel, the right to a speedy trial, the right to a jury trial, the right against self-incrimination, and the right to confrontation. In addition, government officials responsible for criminal investigations (including police and prosecutors) normally have discretion as to which complaints from the public they will investigate.

By contrast, a Title IX investigation will never result in incarceration of an individual and, therefore, the same procedural protections and legal standards are not required. Further, while a criminal investigation is initiated at the discretion of law enforcement authorities, a Title IX investigation is not discretionary; a school has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for all students, free from sexual harassment and sexual violence. Because the standards for pursuing and completing criminal investigations are different from those used for Title IX investigations, the termination of a criminal investigation without an arrest or conviction does not affect the school's Title IX obligations.

Of course, criminal investigations conducted by local or campus law enforcement may be useful for fact gathering if the criminal investigation occurs within the recommended timeframe for Title IX investigations; but, even if a criminal investigation is ongoing, a school must still conduct its own Title IX investigation.

A school should notify complainants of the right to file a criminal complaint and should not dissuade a complainant from doing so either during or after the school's internal Title IX investigation. Title IX does not require a school to report alleged incidents of sexual violence to law enforcement, but a school may have reporting obligations under state, local, or other federal laws.

F-3. How should a school proceed when campus or local law enforcement agencies are conducting a criminal investigation while the school is conducting a parallel Title IX investigation?

Answer: A school should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, it is important for a school to understand that during this brief delay in the Title IX investigation, it must take interim measures to protect the complainant in the educational setting. The school should also continue to update the parties on the status of the investigation and inform the parties when the school resumes its Title IX investigation. For additional information on interim measures see questions G-1 to G-3.

If a school delays the fact-finding portion of a Title IX investigation, the school must promptly resume and complete its fact-finding for the Title IX investigation once it learns that the police department has completed its evidence gathering stage of the criminal investigation. The school should not delay its investigation until the ultimate outcome of the criminal investigation or the filing of any charges. OCR recommends that a school work with its campus police, local law enforcement, and local prosecutor's office to learn when the evidence gathering stage of the criminal investigation is complete. A school may also want to enter into a memorandum of understanding (MOU) or other agreement with these agencies regarding the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations. Any MOU or other agreement must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably, and must comply with the Family Educational Rights and Privacy Act ("FERPA") and other applicable privacy laws.

The DCL states that in one instance a prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances. OCR understands that this example may not be representative and that the law enforcement agency's process often takes more than ten days. OCR recognizes that the length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

## Off-Campus Conduct

F-4. Is a school required to process complaints of alleged sexual violence that occurred off campus?

Answer: Yes. Under Title IX, a school must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an education program or activity or had continuing effects on campus or in an off-campus education program or activity.

A school must determine whether the alleged off-campus sexual violence occurred in the context of an education program or activity of the school; if so, the school must treat the complaint in the same manner that it treats complaints regarding on-campus conduct. In other words, if a school determines that the alleged misconduct took place in the context of an education program or activity of the school, the fact that the alleged misconduct took place off campus does not relieve the school of its obligation to investigate the complaint as it would investigate a complaint of sexual violence that occurred on campus.

Whether the alleged misconduct occurred in this context may not always be apparent from the complaint, so a school may need to gather additional information in order to make such a determination. Off-campus education programs and activities are clearly covered and include, but are not limited to: activities that take place at houses of fraternities or sororities recognized by the school; school-sponsored field trips, including athletic team travel; and events for school clubs that occur off campus (e.g., a debate team trip to another school or to a weekend competition).

Even if the misconduct did not occur in the context of an education program or activity, a school must consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity because students often experience the continuing effects of off-campus sexual violence while at school or in an off-campus education program or activity. The school cannot address the continuing effects of the off-campus sexual violence at school or in an off-campus education program or activity unless it processes the complaint and gathers appropriate additional information in accordance with its established procedures.

Once a school is on notice of off-campus sexual violence against a student, it must assess whether there are any continuing effects on campus or in an off-campus education program or activity that are creating or contributing to a hostile environment and, if so, address that hostile environment in the same manner in which it would address a hostile environment created by on-campus misconduct. The mere presence on campus or in an

off-campus education program or activity of the alleged perpetrator of off-campus sexual violence can have continuing effects that create a hostile environment. A school should also take steps to protect a student who alleges off-campus sexual violence from further harassment by the alleged perpetrator or his or her friends, and a school may have to take steps to protect other students from possible assault by the alleged perpetrator. In other words, the school should protect the school community in the same way it would had the sexual violence occurred on campus. Even if there are no continuing effects of the off-campus sexual violence experienced by the student on campus or in an off-campus education program or activity, the school still should handle these incidents as it would handle other off-campus incidents of misconduct or violence and consistent with any other applicable laws. For example, if a school, under its code of conduct, exercises jurisdiction over physical altercations between students that occur off campus outside of an education program or activity, it should also exercise jurisdiction over incidents of student-on-student sexual violence that occur off campus outside of an education program or activity.

### Hearings<sup>30</sup>

F-5. Must a school allow or require the parties to be present during an entire hearing?

Answer: If a school uses a hearing process to determine responsibility for acts of sexual violence, OCR does not require that the school allow a complainant to be present for the entire hearing; it is up to each school to make this determination. But if the school allows one party to be present for the entirety of a hearing, it must do so equally for both parties. At the same time, when requested, a school should make arrangements so that the complainant and the alleged perpetrator do not have to be present in the same room at the same time. These two objectives may be achieved by using closed circuit television or other means. Because a school has a Title IX obligation to investigate possible sexual violence, if a hearing is part of the school's Title IX investigation process, the school must not require a complainant to be present at the hearing as a prerequisite to proceed with the hearing.

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<sup>30</sup> As noted in question F-1, the investigation may include a hearing to determine whether the conduct occurred, but Title IX does not necessarily require a hearing. Although Title IX does not dictate the membership of a hearing board, OCR discourages schools from allowing students to serve on hearing boards in cases involving allegations of sexual violence.



F-6. May every witness at the hearing, including the parties, be cross-examined?

Answer: OCR does not require that a school allow cross-examination of witnesses, including the parties, if they testify at the hearing. But if the school allows one party to cross-examine witnesses, it must do so equally for both parties.

OCR strongly discourages a school from allowing the parties to personally question or cross-examine each other during a hearing on alleged sexual violence. Allowing an alleged perpetrator to question a complainant directly may be traumatic or intimidating, and may perpetuate a hostile environment. A school may choose, instead, to allow the parties to submit questions to a trained third party (e.g., the hearing panel) to ask the questions on their behalf. OCR recommends that the third party screen the questions submitted by the parties and only ask those it deems appropriate and relevant to the case.

F-7. May the complainant's sexual history be introduced at hearings?

Answer: Questioning about the complainant's sexual history with anyone other than the alleged perpetrator should not be permitted. Further, a school should recognize that the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence. The school should also ensure that hearings are conducted in a manner that does not inflict additional trauma on the complainant.

### Timeframes

F-8. What stages of the investigation are included in the 60-day timeframe referenced in the DCL as the length for a typical investigation?

Answer: As noted in the DCL, the 60-calendar day timeframe for investigations is based on OCR's experience in typical cases. The 60-calendar day timeframe refers to the entire investigation process, which includes conducting the fact-finding investigation, holding a hearing or engaging in another decision-making process to determine whether the alleged sexual violence occurred and created a hostile environment, and determining what actions the school will take to eliminate the hostile environment and prevent its recurrence, including imposing sanctions against the perpetrator and providing remedies for the complainant and school community, as appropriate. Although this timeframe does not include appeals, a school should be aware that an unduly long appeals process may impact whether the school's response was prompt and equitable as required by Title IX.

OCR does not require a school to complete investigations within 60 days; rather OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is prompt and equitable. Whether OCR considers an investigation to be prompt as required by Title IX will vary depending on the complexity of the investigation and the severity and extent of the alleged conduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks. A school may need to stop an investigation during school breaks or between school years, although a school should make every effort to try to conduct an investigation during these breaks unless so doing would sacrifice witness availability or otherwise compromise the process.

Because timeframes for investigations vary and a school may need to depart from the timeframes designated in its grievance procedures, both parties should be given periodic status updates throughout the process.

#### G. Interim Measures

G-1. Is a school required to take any interim measures before the completion of its investigation?

Answer: Title IX requires a school to take steps to ensure equal access to its education programs and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate. The school should also ensure that the complainant is aware of his or her Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to campus or local law enforcement. If a school does not offer these services on campus, it should enter into an MOU with a local victim services provider if possible.

Even when a school has determined that it can respect a complainant's request for confidentiality and therefore may not be able to respond fully to an allegation of sexual violence and initiate formal action against an alleged perpetrator, the school must take immediate action to protect the complainant while keeping the identity of the complainant confidential. These actions may include: providing support services to the

complainant; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred.

G-2. How should a school determine what interim measures to take?

Answer: The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. A school should consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged perpetrator share the same residence hall, dining hall, class, transportation, or job location; and whether other judicial measures have been taken to protect the complainant (e.g., civil protection orders).

In general, when taking interim measures, schools should minimize the burden on the complainant. For example, if the complainant and alleged perpetrator share the same class or residence hall, the school should not, as a matter of course, remove the complainant from the class or housing while allowing the alleged perpetrator to remain without carefully considering the facts of the case.

G-3. If a school provides all students with access to counseling on a fee basis, does that suffice for providing counseling as an interim measure?

Answer: No. Interim measures are determined by a school on a case-by-case basis. If a school determines that it needs to offer counseling to the complainant as part of its Title IX obligation to take steps to protect the complainant while the investigation is ongoing, it must not require the complainant to pay for this service.

## H. Remedies and Notice of Outcome<sup>31</sup>

H-1. What remedies should a school consider in a case of student-on-student sexual violence?

Answer: Effective remedial action may include disciplinary action against the perpetrator, providing counseling for the perpetrator, remedies for the complainant and others, as well as changes to the school's overall services or policies. All services needed to remedy the hostile environment should be offered to the complainant. These remedies are separate from, and in addition to, any interim measure that may have been provided prior to the conclusion of the school's investigation. In any instance in which the complainant did not take advantage of a specific service (e.g., counseling) when offered as an interim measure, the complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the complainant declined as an interim measure. A refusal at the interim stage does not mean the refused service or set of services should not be offered as a remedy.

If a school uses its student disciplinary procedures to meet its Title IX obligation to resolve complaints of sexual violence promptly and equitably, it should recognize that imposing sanctions against the perpetrator, without more, likely will not be sufficient to satisfy its Title IX obligation to eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. Additional remedies for the complainant and the school community may be necessary. If the school's student disciplinary procedure does not include a process for determining and implementing these remedies for the complainant and school community, the school will need to use another process for this purpose.

Depending on the specific nature of the problem, remedies for the complainant may include, but are not limited to:

- Providing an effective escort to ensure that the complainant can move safely between classes and activities;

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<sup>31</sup> As explained in question A-5, if a school delays responding to allegations of sexual violence or responds inappropriately, the school's own inaction may subject the student to be subjected to a hostile environment. In this case, in addition to the remedies discussed in this section, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately.

- Ensuring the complainant and perpetrator do not share classes or extracurricular activities;
- Moving the perpetrator or complainant (if the complainant requests to be moved) to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;
- Arranging for the complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and
- Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the sexual violence and the misconduct that may have resulted in the complainant being disciplined.<sup>32</sup>

Remedies for the broader student population may include, but are not limited to:

- Designating an individual from the school's counseling center who is specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist students whenever needed;
- Training or retraining school employees on the school's responsibilities to address allegations of sexual violence and how to conduct Title IX investigations;
- Developing materials on sexual violence, which should be distributed to all students;
- Conducting bystander intervention and sexual violence prevention programs with students;
- Issuing policy statements or taking other steps that clearly communicate that the school does not tolerate sexual violence and will respond to any incidents and to any student who reports such incidents;

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<sup>32</sup> For example, if the complainant was disciplined for skipping a class in which the perpetrator was enrolled, the school should review the incident to determine if the complainant skipped class to avoid contact with the perpetrator.

- Conducting, in conjunction with student leaders, a campus climate check to assess the effectiveness of efforts to ensure that the school is free from sexual violence, and using that information to inform future proactive steps that the school will take;
- Targeted training for a group of students if, for example, the sexual violence created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team; and
- Developing a protocol for working with local law enforcement as discussed in question F-3.

When a school is unable to conduct a full investigation into a particular incident (i.e., when it received a general report of sexual violence without any personally identifying information), it should consider remedies for the broader student population in response.

H-2. If, after an investigation, a school finds the alleged perpetrator responsible and determines that, as part of the remedies for the complainant, it must separate the complainant and perpetrator, how should the school accomplish this if both students share the same major and there are limited course options?

Answer: If there are limited sections of required courses offered at a school and both the complainant and perpetrator are required to take those classes, the school may need to make alternate arrangements in a manner that minimizes the burden on the complainant. For example, the school may allow the complainant to take the regular sections of the courses while arranging for the perpetrator to take the same courses online or through independent study.

H-3. What information must be provided to the complainant in the notice of the outcome?

Answer: Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal. OCR recommends that a school provide written notice of the outcome to the complainant and the alleged perpetrator concurrently.

For Title IX purposes, a school must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence. The perpetrator should not be notified of the individual remedies offered or provided to the complainant.

Sanctions that directly relate to the complainant (but that may also relate to eliminating the hostile environment and preventing recurrence) include, but are not limited to, requiring that the perpetrator stay away from the complainant until both parties graduate, prohibiting the perpetrator from attending school for a period of time, or transferring the perpetrator to another residence hall, other classes, or another school. Additional steps the school has taken to eliminate the hostile environment may include counseling and academic support services for the complainant and other affected students. Additional steps the school has taken to prevent recurrence may include sexual violence training for faculty and staff, revisions to the school's policies on sexual violence, and campus climate surveys. Further discussion of appropriate remedies is included in question H-1.

In addition to the Title IX requirements described above, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the institution's final determination and any disciplinary sanctions imposed on the perpetrator in sexual violence cases (as opposed to all harassment and misconduct covered by Title IX) not just those sanctions that directly relate to the complainant.<sup>33</sup>

## I. Appeals

### I-1. What are the requirements for an appeals process?

Answer: While Title IX does not require that a school provide an appeals process, OCR does recommend that the school do so where procedural error or previously unavailable relevant evidence could significantly impact the outcome of a case or where a sanction is substantially disproportionate to the findings. If a school chooses to provide for an appeal of the findings or remedy or both, it must do so equally for both parties. The specific design of the appeals process is up to the school, as long as the entire grievance process, including any appeals, provides prompt and equitable resolutions of sexual violence complaints, and the school takes steps to protect the complainant in the educational setting during the process. Any individual or body handling appeals should be trained in the dynamics of and trauma associated with sexual violence.

If a school chooses to offer an appeals process it has flexibility to determine the type of review it will apply to appeals, but the type of review the school applies must be the same regardless of which party files the appeal.

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<sup>33</sup> 20 U.S.C. § 1092(f) and 20 U.S.C. § 1232g(b)(6)(A).

- I-2. Must an appeal be available to a complainant who receives a favorable finding but does not believe a sanction that directly relates to him or her was sufficient?

Answer: The appeals process must be equal for both parties. For example, if a school allows a perpetrator to appeal a suspension on the grounds that it is too severe, the school must also allow a complainant to appeal a suspension on the grounds that it was not severe enough. See question H-3 for more information on what must be provided to the complainant in the notice of the outcome.

J. Title IX Training, Education and Prevention<sup>34</sup>

- J-1. What type of training on Title IX and sexual violence should a school provide to its employees?

Answer: A school needs to ensure that responsible employees with the authority to address sexual violence know how to respond appropriately to reports of sexual violence, that other responsible employees know that they are obligated to report sexual violence to appropriate school officials, and that all other employees understand how to respond to reports of sexual violence. A school should ensure that professional counselors, pastoral counselors, and non-professional counselors or advocates also understand the extent to which they may keep a report confidential. A school should provide training to all employees likely to witness or receive reports of sexual violence, including teachers, professors, school law enforcement unit employees, school administrators, school counselors, general counsels, athletic coaches, health personnel, and resident advisors. Training for employees should include practical information about how to prevent and identify sexual violence, including same-sex sexual violence; the behaviors that may lead to and result in sexual violence; the attitudes of bystanders that may allow conduct to continue; the potential for revictimization by responders and its effect on students; appropriate methods for responding to a student who may have experienced sexual violence, including the use of nonjudgmental language; the impact of trauma on victims; and, as applicable, the person(s) to whom such misconduct must be reported. The training should also explain responsible employees' reporting obligation, including what should be included in a report and any consequences for the failure to report and the procedure for responding to students' requests for confidentiality, as well as provide the contact

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<sup>34</sup> As explained earlier, although this document focuses on sexual violence, the legal principles apply to other forms of sexual harassment. Schools should ensure that any training they provide on Title IX and sexual violence also covers other forms of sexual harassment. Postsecondary institutions should also be aware of training requirements imposed under the Clery Act.



information for the school's Title IX coordinator. A school also should train responsible employees to inform students of: the reporting obligations of responsible employees; students' option to request confidentiality and available confidential advocacy, counseling, or other support services; and their right to file a Title IX complaint with the school and to report a crime to campus or local law enforcement. For additional information on the reporting obligations of responsible employees and others see questions D-1 to D-5.

There is no minimum number of hours required for Title IX and sexual violence training at every school, but this training should be provided on a regular basis. Each school should determine based on its particular circumstances how such training should be conducted, who has the relevant expertise required to conduct the training, and who should receive the training to ensure that the training adequately prepares employees, particularly responsible employees, to fulfill their duties under Title IX. A school should also have methods for verifying that the training was effective.

- J-2. How should a school train responsible employees to report incidents of possible sexual harassment or sexual violence?

Answer: Title IX requires a school to take prompt and effective steps reasonably calculated to end sexual harassment and sexual violence that creates a hostile environment (i.e., conduct that is sufficiently serious as to limit or deny a student's ability to participate in or benefit from the school's educational program and activity). But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

OCR therefore recommends that a school train responsible employees to report to the Title IX coordinator or other appropriate school official any incidents of sexual harassment or sexual violence that may violate the school's code of conduct or may create or contribute to the creation of a hostile environment. The school can then take steps to investigate and prevent any harassment or violence from recurring or escalating, as appropriate. For example, the school may separate the complainant and alleged perpetrator or conduct sexual harassment and sexual violence training for the school's students and employees. Responsible employees should understand that they do not need to determine whether the alleged sexual harassment or sexual violence actually occurred or that a hostile environment has been created before reporting an incident to the school's Title IX coordinator. Because the Title IX coordinator should have in-depth knowledge of Title IX and Title IX complaints at the school, he or she is likely to be in a better position than are other employees to evaluate whether an incident of sexual

harassment or sexual violence creates a hostile environment and how the school should respond. There may also be situations in which individual incidents of sexual harassment do not, by themselves, create a hostile environment; however when considered together, those incidents may create a hostile environment.

- J-3. What type of training should a school provide to employees who are involved in implementing the school's grievance procedures?

Answer: All persons involved in implementing a school's grievance procedures (e.g., Title IX coordinators, others who receive complaints, investigators, and adjudicators) must have training or experience in handling sexual violence complaints, and in the operation of the school's grievance procedures. The training should include information on working with and interviewing persons subjected to sexual violence; information on particular types of conduct that would constitute sexual violence, including same-sex sexual violence; the proper standard of review for sexual violence complaints (preponderance of the evidence); information on consent and the role drugs or alcohol can play in the ability to consent; the importance of accountability for individuals found to have committed sexual violence; the need for remedial actions for the perpetrator, complainant, and school community; how to determine credibility; how to evaluate evidence and weigh it in an impartial manner; how to conduct investigations; confidentiality; the effects of trauma, including neurobiological change; and cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds.

In rare circumstances, employees involved in implementing a school's grievance procedures may be able to demonstrate that prior training and experience has provided them with competency in the areas covered in the school's training. For example, the combination of effective prior training and experience investigating complaints of sexual violence, together with training on the school's current grievance procedures may be sufficient preparation for an employee to resolve Title IX complaints consistent with the school's grievance procedures. In-depth knowledge regarding Title IX and sexual violence is particularly helpful. Because laws and school policies and procedures may change, the only way to ensure that all employees involved in implementing the school's grievance procedures have the requisite training or experience is for the school to provide regular training to all individuals involved in implementing the school's Title IX grievance procedures even if such individuals also have prior relevant experience.

J-4. What type of training on sexual violence should a school provide to its students?

Answer: To ensure that students understand their rights under Title IX, a school should provide age-appropriate training to its students regarding Title IX and sexual violence. At the elementary and secondary school level, schools should consider whether sexual violence training should also be offered to parents, particularly training on the school's process for handling complaints of sexual violence. Training may be provided separately or as part of the school's broader training on sex discrimination and sexual harassment. However, sexual violence is a unique topic that should not be assumed to be covered adequately in other educational programming or training provided to students. The school may want to include this training in its orientation programs for new students; training for student athletes and members of student organizations; and back-to-school nights. A school should consider educational methods that are most likely to help students retain information when designing its training, including repeating the training at regular intervals. OCR recommends that, at a minimum, the following topics (as appropriate) be covered in this training:

- Title IX and what constitutes sexual violence, including same-sex sexual violence, under the school's policies;
- the school's definition of consent applicable to sexual conduct, including examples;
- how the school analyzes whether conduct was unwelcome under Title IX;
- how the school analyzes whether unwelcome sexual conduct creates a hostile environment;
- reporting options, including formal reporting and confidential disclosure options and any timeframes set by the school for reporting;
- the school's grievance procedures used to process sexual violence complaints;
- disciplinary code provisions relating to sexual violence and the consequences of violating those provisions;
- effects of trauma, including neurobiological changes;
- the role alcohol and drugs often play in sexual violence incidents, including the deliberate use of alcohol and/or other drugs to perpetrate sexual violence;
- strategies and skills for bystanders to intervene to prevent possible sexual violence;
- how to report sexual violence to campus or local law enforcement and the ability to pursue law enforcement proceedings simultaneously with a Title IX grievance; and
- Title IX's protections against retaliation.

The training should also encourage students to report incidents of sexual violence. The training should explain that students (and their parents or friends) do not need to determine whether incidents of sexual violence or other sexual harassment created a

hostile environment before reporting the incident. A school also should be aware that persons may be deterred from reporting incidents if, for example, violations of school or campus rules regarding alcohol or drugs were involved. As a result, a school should review its disciplinary policy to ensure it does not have a chilling effect on students' reporting of sexual violence offenses or participating as witnesses. OCR recommends that a school inform students that the school's primary concern is student safety, and that use of alcohol or drugs never makes the survivor at fault for sexual violence.

It is also important for a school to educate students about the persons on campus to whom they can confidentially report incidents of sexual violence. A school's sexual violence education and prevention program should clearly identify the offices or individuals with whom students can speak confidentially and the offices or individuals who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. It should also identify the school's responsible employees and explain that if students report incidents to responsible employees (except as noted in question E-3) these employees are required to report the incident to the Title IX coordinator or other appropriate official. This reporting includes the names of the alleged perpetrator and student involved in the sexual violence, as well as relevant facts including the date, time, and location, although efforts should be made to comply with requests for confidentiality from the complainant. For more detailed information regarding reporting and responsible employees and confidentiality, see questions D-1 to D-5 and E-1 to E-4.

## K. Retaliation

K-1. Does Title IX protect against retaliation?

Answer: Yes. The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual violence or filing a sexual violence complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an OCR or school's investigation or proceeding. Therefore, if a student, parent, teacher, coach, or other individual complains formally or informally about sexual violence or participates in an OCR or school's investigation or proceedings related to sexual violence, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way

discriminating against the individual) because of the individual's complaint or participation.

A school should take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses.

Schools should be aware that complaints of sexual violence may be followed by retaliation against the complainant or witnesses by the alleged perpetrator or his or her associates. When a school knows or reasonably should know of possible retaliation by other students or third parties, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires the school to protect the complainant and witnesses and ensure their safety as necessary. At a minimum, this includes making sure that the complainant and his or her parents, if the complainant is in elementary or secondary school, and witnesses know how to report retaliation by school officials, other students, or third parties by making follow-up inquiries to see if there have been any new incidents or acts of retaliation, and by responding promptly and appropriately to address continuing or new problems. A school should also tell complainants and witnesses that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation, but will also take strong responsive action if it occurs.

#### L. First Amendment

- L-1. How should a school handle its obligation to respond to sexual harassment and sexual violence while still respecting free-speech rights guaranteed by the Constitution?

Answer: The DCL on sexual violence did not expressly address First Amendment issues because it focuses on unlawful physical sexual violence, which is not speech or expression protected by the First Amendment.

However, OCR's previous guidance on the First Amendment, including the 2001 Guidance, OCR's July 28, 2003, Dear Colleague Letter on the First Amendment,<sup>35</sup> and OCR's October 26, 2010, Dear Colleague Letter on harassment and bullying,<sup>36</sup> remain fully in effect. OCR has made it clear that the laws and regulations it enforces protect students from prohibited discrimination and do not restrict the exercise of any expressive activities or speech protected under the U.S. Constitution. Therefore, when a school works to prevent

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<sup>35</sup> Available at <http://www.ed.gov/ocr/firstamend.html>.

<sup>36</sup> Available at <http://www.ed.gov/ocr/letters/colleague-201010.html>.

and redress discrimination, it must respect the free-speech rights of students, faculty, and other speakers.

Title IX protects students from sex discrimination; it does not regulate the content of speech. OCR recognizes that the offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a hostile environment under Title IX. Title IX also does not require, prohibit, or abridge the use of particular textbooks or curricular materials.<sup>37</sup>

M. The Clery Act and the Violence Against Women Reauthorization Act of 2013

M-1. How does the Clery Act affect the Title IX obligations of institutions of higher education that participate in the federal student financial aid programs?

Answer: Institutions of higher education that participate in the federal student financial aid programs are subject to the requirements of the Clery Act as well as Title IX. The Clery Act requires institutions of higher education to provide current and prospective students and employees, the public, and the Department with crime statistics and information about campus crime prevention programs and policies. The Clery Act requirements apply to many crimes other than those addressed by Title IX. For those areas in which the Clery Act and Title IX both apply, the institution must comply with both laws. For additional information about the Clery Act and its regulations, please see <http://www2.ed.gov/admins/lead/safety/campus.html>.

M-2. Were a school's obligations under Title IX and the DCL altered in any way by the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, including Section 304 of that Act, which amends the Clery Act?

Answer: No. The Violence Against Women Reauthorization Act has no effect on a school's obligations under Title IX or the DCL. The Violence Against Women Reauthorization Act amended the Violence Against Women Act and the Clery Act, which are separate statutes. Nothing in Section 304 or any other part of the Violence Against Women Reauthorization Act relieves a school of its obligation to comply with the requirements of Title IX, including those set forth in these Questions and Answers, the 2011 DCL, and the 2001 Guidance. For additional information about the Department's negotiated rulemaking related to the Violence Against Women Reauthorization Act please see <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/vawa.html>.

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<sup>37</sup> 34 C.F.R. § 106.42.

## N. Further Federal Guidance

N-1. Whom should I contact if I have additional questions about the DCL or OCR's other Title IX guidance?

Answer: Anyone who has questions regarding this guidance, or Title IX should contact the OCR regional office that serves his or her state. Contact information for OCR regional offices can be found on OCR's webpage at <https://wdcroboolp01.ed.gov/CFAPPS/OCR/contactus.cfm>. If you wish to file a complaint of discrimination with OCR, you may use the online complaint form available at <http://www.ed.gov/ocr/complaintintro.html> or send a letter to the OCR enforcement office responsible for the state in which the school is located. You may also email general questions to OCR at [ocr@ed.gov](mailto:ocr@ed.gov).

N-2. Are there other resources available to assist a school in complying with Title IX and preventing and responding to sexual violence?

Answer: Yes. OCR's policy guidance on Title IX is available on OCR's webpage at <http://www.ed.gov/ocr/publications.html#TitleIX>. In addition to the April 4, 2011, Dear Colleague Letter, OCR has issued the following resources that further discuss a school's obligation to respond to allegations of sexual harassment and sexual violence:

- Dear Colleague Letter: Harassment and Bullying (October 26, 2010), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>
- Sexual Harassment: It's Not Academic (Revised September 2008), <http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>
- Revised Sexual Harassment Guidance: Harassment of Students by Employees, Other Students, or Third Parties (January 19, 2001), <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

In addition to guidance from OCR, a school may also find resources from the Departments of Education and Justice helpful in preventing and responding to sexual violence:

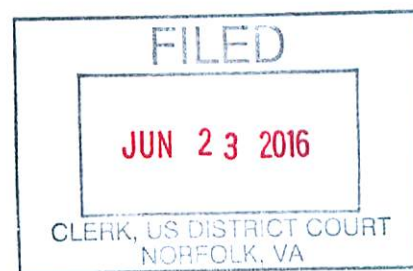
- Department of Education's Letter to Chief State School Officers on Teen Dating Violence Awareness and Prevention (February 28, 2013)  
<https://www2.ed.gov/policy/gen/guid/sectletter/130228.html>
- Department of Education's National Center on Safe Supportive Learning Environments  
<http://safesupportivelearning.ed.gov/>
- Department of Justice, Office on Violence Against Women  
<http://www.ovw.usdoj.gov/>



# EXHIBIT 20

G.G. V. GLOUCESTER CNTY. SCH. BD., DOC. 69, NO. 4:15-CV-54  
(JUNE 23, 2016)

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.

CIVIL NO. 4:15cv54

GLOUCESTER COUNTY SCHOOL  
BOARD,

Defendant.

**ORDER**

This matter is before the Court on Plaintiff G.G.’s Motion for Preliminary Injunction. ECF No. 11. On September 4, 2015, this Court denied the Motion. ECF No. 53. On appeal, the Court of Appeals vacated this denial and remanded the case for reevaluation of the Motion under a different evidentiary standard. Op. of USCA, ECF No. 62 at 33. The Court of Appeals also reversed this Court’s dismissal of G.G.’s claim under Title IX. Id. at 26. In a concurrence, Judge Davis explained why the Preliminary Injunction should issue in light of the Court of Appeals’ analysis of Title IX. Id. at 37–44. It appears to the Court from the un rebutted declarations submitted by the parties that the plaintiff is entitled to use the boys’ restroom. Therefore, for the reasons set forth in the aforesaid concurrence and based on the declarations submitted by the parties, the Court finds that the plaintiff is entitled to a preliminary injunction.

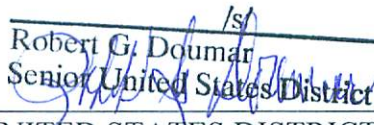
As noted in the Opinion of the Court of Appeals, this case is only about G.G.’s access to the boys’ restrooms; G.G. has not requested access to the boys’ locker rooms. Id. at 7 n. 2 (“G.G.

does not participate in the school's physical education programs. He does not seek here, and never has sought, use of the boys' locker room. Only restroom use is at issue in this case."). Accordingly, this injunction is limited to restroom access and does not cover access to any other facilities.

Based on the evidence submitted through declarations previously proffered for the purpose of the hearing on the Preliminary Injunction, this Court, pursuant to Title IX, hereby **ORDERS** that Gloucester County School Board permit the plaintiff, G.G., to use the boys' restroom at Gloucester High School until further order of this Court.

The Clerk is **DIRECTED** to forward a copy of this Order to all Counsel of Record.

**IT IS SO ORDERED.**

  
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Robert G. Doumar  
Senior United States District Judge  
UNITED STATES DISTRICT JUDGE

Newport News, VA  
June 23, 2016

# EXHIBIT 21

Jaime M. Grant et al., Injustice At Every Turn: A Report of the National Transgender Discrimination Survey, National Center for Transgender Equality and National Gay and Lesbian Task Force (NCTE Study)



# Injustice at Every Turn

A Report of the National Transgender Discrimination Survey

*Lead authors in alphabetical order:*

**Jaime M. Grant, Ph.D.**  
**Lisa A. Mottet, J.D.**  
**Justin Tanis, D.Min.**

with **Jack Harrison**  
**Jody L. Herman, Ph.D.**  
and **Mara Keisling**



# INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY

*Lead authors in alphabetical order:*

Jaime M. Grant, Ph.D.

Lisa A. Mottet, J.D.

Justin Tanis, D.Min.

with Jack Harrison, Jody L. Herman, Ph.D., and Mara Keisling

**HARASSMENT AND ASSAULT**

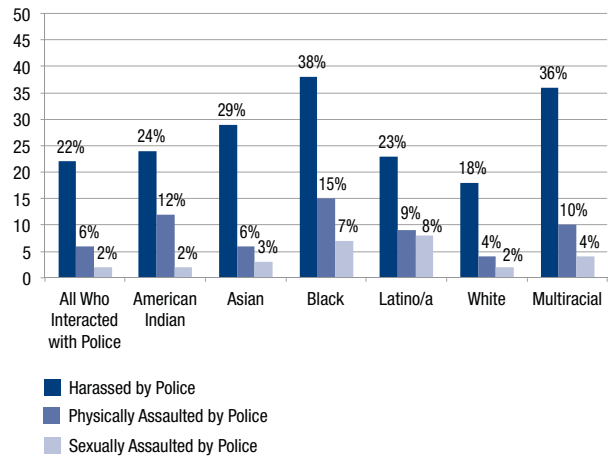
We asked respondents whether they were harassed,<sup>1</sup> physically assaulted, or sexually assaulted by police officers because they were transgender or gender non-conforming. There were notable differences between reported frequency of harassment compared to reported frequency of physical and sexual assault.

Twenty-two percent (22%) of respondents interacting with police reported harassment by officers. Higher rates of harassment were reported by Black (38%), multiracial (36%) and Asian (29%) respondents. Higher household income and educational attainment made it less likely that a person experienced harassment. Female-to-male and gender non-conforming respondents reported higher rates of police harassment than their MTF and transgender counterparts. Looking at whether harassment was also directed at those who had never worked in the underground economy and had never been incarcerated, we found still high rates of harassment, with 15% reporting that officers harassed them, compared to the 22% overall rate for all respondents who interacted with police.

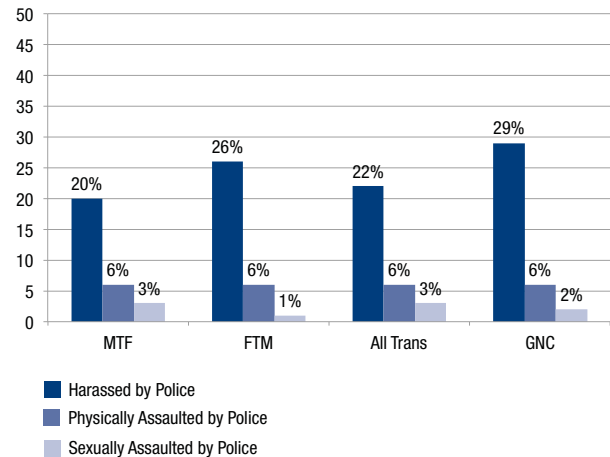
Six percent (6%) of study participants who had interacted with police reported physical assault, and 2% reported sexual assault because of being transgender or gender non-conforming. Fifteen percent (15%) of Black respondents interacting with police reported physical assault and 7% reported sexual assault. Those who have worked in the underground economy experienced high rates of physical (15%) and sexual assault (8%). Two percent (2%) of those who have never worked in the underground economy and have never been incarcerated reported physical assault.

*“After I was raped, the officer told me that I got what I deserved.”*

Police Harassment and Assault, Due to Bias, by Race



Police Harassment and Assault, Due to Bias, by Gender



# EXHIBIT 22

Memorandum to Regional Administrators and State Designees from  
John B. Miles, Jr., Director of Compliance Programs, Regarding  
OSHA's Interpretation of 29 C.F.R. 1910.141(c)(1)(i): Toilet Facilities  
(Apr. 6, 1998)



UNITED STATES  
DEPARTMENT OF LABOR



## OSHA



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• **Standard Number:** 1910.141(c)(1)(i)

April 6, 1998

**MEMORANDUM FOR:** REGIONAL ADMININSTRATORS  
STATE DESIGNEES  
  
**FROM:** JOHN B. MILES, JR., Director  
Directorate of Compliance Programs  
  
**SUBJECT:** Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities

OSHA's sanitation standard for general industry, 29 CFR 1910.141(c)(1)(i), requires employers to provide their employees with toilet facilities:

Except as otherwise indicated in this paragraph (c)(1)(i), **toilet facilities**, in toilet rooms separate for each sex **shall be provided** in all places of employment in accordance with Table J-1 of this section .... [emphasis added]

This memorandum explains OSHA's interpretation that this standard requires employers to make toilet facilities available so that employees can use them when they need to do so. The employer may not impose unreasonable restrictions on employee use of the facilities. OSHA believes this requirement is implicit in the language of the standard and has not previously seen a need to address it more explicitly. Recently, however, OSHA has received requests for clarification of this point and has decided to issue this memorandum to explain its position clearly.

### Background

The sanitation standard is intended to ensure that employers provide employees with sanitary and available toilet facilities, so that employees will not suffer the adverse health effects that can result if toilets are not available when employees need them. Individuals vary significantly in the frequency with which they need to urinate and defecate, with pregnant women, women with stress incontinence, and men with prostatic hypertrophy needing to urinate more frequently. Increased frequency of voiding may also be caused by various medications, by environmental factors such as cold, and by high fluid intake, which may be necessary for individuals working in a hot environment. Diet, medication use, and medical condition are among the factors that can affect the frequency of defecation.

Medical studies show the importance of regular urination, with women generally needing to void more frequently than men. Adverse health effects that may result from voluntary urinary retention include increased frequency of urinary tract infections (UTIs), which can lead to more serious infections and, in rare situations, renal damage (see, e.g., Nielsen, A. Waite, W., "Epidemiology of Infrequent Voiding and Associated Symptoms," *Scand J Urol Nephrol Supplement* 157). UTIs during pregnancy have been associated with low birthweight babies, who are at risk for additional health problems compared to normal weight infants (see, Naeye, R.L., "Causes of the Excess Rates of Perinatal Mortality and the Prematurity in Pregnancies Complicated by Maternity Urinary Tract Infections," *New England J. Medicine* 1979; 300(15): 819-823). Medical evidence also shows that health problems, including constipation, abdominal pain, diverticuli, and hemorrhoids, can result if individuals delay defecation (see National Institutes of Health (NIH) Publication No. 95-2754, July 1995).

OSHA's field sanitation standard for Agriculture, 29 CFR 1928.110, based its requirement that toilets for farmworkers be located no more than a quarter mile from the location where employees are working on similar findings. This is particularly significant because the field sanitation standard arose out of the only OSHA rulemaking to address explicitly the question of worker need for prompt access to toilet facilities.

### The Sanitation Standard

The language and structure of the general industry sanitation standard reflect the Agency's intent that employees be able to use toilet facilities promptly. The standard requires that toilet facilities be "provided" in every workplace. The most basic meaning of "provide" is "make available." See *Webster's New World Dictionary, Third College Edition*, 1988, defining "provide" as "to make available; to supply (someone with something);" **Borton Inc. v. OSHRC**, 734 F.2d 508, 510 (10th Cir. 1984) (usual meaning of provide is "to furnish, supply, or make available"); **Usery v. Kennecott Copper Corp.**, 577 F.2d 1113, 1119 (10th

Cir, 1978) (same); **Secretary v. Baker Concrete Constr. Co.**, 17 OSH Cas. (BNA) 1236, 1239 (concurring opinion; collecting cases); **Contractors Welding of Western New York, Inc.**, 15 OSH Cas. (BNA) 1249, 1250 (same).<sup>1</sup> Toilets that employees are not allowed to use for extended periods cannot be said to be "available" to those employees. Similarly, a clear intent of the requirement in Table J-1 that adequate numbers of toilets be provided for the size of the workforce is to assure that employees will not have to wait in long lines to use those facilities. Timely access is the goal of the standard.

The quoted provision of the standard is followed immediately by a paragraph stating that the toilet provision does not apply to mobile work crews or to locations that are normally unattended, "provided the employees working at these locations have transportation immediately available to nearby toilet facilities which meet the other requirements" of the standard (29 CFR 1910.141(c)(1)(ii) (emphasis supplied). Thus employees who are members of mobile crews, or who work at normally unattended locations must be able to leave their work location "immediately" for a "nearby" toilet facility. This provision was obviously intended to provide these employees with protection equivalent to that the general provision provides to employees at fixed worksites. Read together, the two provisions make clear that all employees must have prompt access to toilet facilities.

OSHA has also made this point clear in a number of letters it has issued since the standard was promulgated. For example, in March 1976, OSHA explained to Aeroil Products Company that it would not necessarily violate the standard by having a small single-story building with no toilet facilities separated by 90 feet of pavement from a building that had the required facilities, so long as the employees in the smaller building had "unobstructed free access to the toilet facilities." Later that year, it explained again, in response to a question about toilet facilities at a U-Haul site, "reasonableness in evaluating the availability of sanitary facilities will be the rule." Again in 1983, OSHA responded to a request for a clarification of the standard by stating, "[i]f an employer provides the required toilet facilities ... and provides unobstructed free access to them, it appears the intent of the standard would be met."

In light of the standard's purpose of protecting employees from the hazards created when toilets are not available, it is clear that the standard requires employers to allow employees prompt access to sanitary facilities. Restrictions on access must be reasonable, and may not cause extended delays. For example, a number of employers have instituted signal or relief worker systems for employees working on assembly lines or in other jobs where any employee's absence, even for the brief time it takes to go to the bathroom, would be disruptive. Under these systems, an employee who needs to use the bathroom gives some sort of a signal so that another employee may provide relief while the first employee is away from the work station. As long as there are sufficient relief workers to assure that employees need not wait an unreasonably long time to use the bathroom, OSHA believes that these systems comply with the standard.

### Citation Policy

Employee complaints of restrictions on toilet facility use should be evaluated on a case-by-case basis to determine whether the restrictions are reasonable. Careful consideration must be given to the nature of the restriction, including the length of time that employees are required to delay bathroom use, and the employer's explanation for the restriction. In addition, the investigation should examine whether restrictions are general policy or arise only in particular circumstances or with particular supervisors, whether the employer policy recognizes individual medical needs, whether employees have reported adverse health effects, and the frequency with which employees are denied permission to use the toilet facilities. Knowledge of these factors is important not only to determine whether a citation will be issued, but also to decide how any violation will be characterized.

It is important that a uniform approach be taken by all OSHA offices with respect to the interpretation of OSHA's general industry sanitation standard, specifically with regard to the issue of employee use of toilet facilities. Proposed citations for violations of this standard must be forwarded to the Directorate of Compliance Programs (DCP) for review and approval. DCP will consult with the Office of Occupational Medicine. DCP will approve citations if the employer's restrictions are clearly unreasonable, or otherwise not in compliance with the standard. **(NOTE: See 08/11/00 Memorandum to RAs attached below.)---Added this note**

State Plan States are not required to issue their own interpretation in response to this policy, however they must ensure that State standards and their interpretations remain "at least as effective" as the Federal standard. Regional Administrators shall offer assistance to the States on this issue, including consultation with the Directorate of Compliance programs, at the State's request.

If you have any questions, contact Helen Rogers in the Office of General Industry Compliance at (202) 219-8031/41 x106.

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**Footnote(1)** This decision was later vacated pursuant to a settlement, but the Commission has continued to cite it. See **Secretary v. Baker Concrete Constr. Co.**, supra. The issue in **Contractors Welding** and the other cited cases has been whether the meaning of the term "provide," in various standards requiring employers to provide certain equipment or other materials, is not limited to making something available, but may also mean that the employer must pay for what it provides and must require it to be used. Those broader meanings are not relevant to this issue, however, where the sanitary facilities the employer is required to provide are a physical part of its workplace, and the question is not whether employees must be required to use those facilities, but whether they will be allowed to do so. (Back to Text)

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August 11, 2000---**Added this memo**

MEMORANDUM FOR: REGIONAL ADMININSTRATORS

FROM: RICHARD E. FAIRFAX, Director  
Directorate of Compliance Programs

SUBJECT: Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities

On April 6, 1998 we issued an interpretation of 1910.141(c)(1)(i), which requires employers to make toilet facilities available so that employees can use them when they need to do so. A copy of that memorandum is attached.

The 1998 memorandum states that proposed citations for violations of this standard are to be forwarded to the Directorate of Compliance Programs (DCP) for review and approval. Shortly after the interpretation was issued, it was decided that the review and approval was to be at the Regional Office level, but that copies of any citations issued based on the April 6, 1998 interpretation should still be sent to DCP.

This topic continues to generate interest from the public. Early this year we had a Freedom of Information Act (FOIA) request for copies of citations issued. Therefore, please continue to send copies of any citations issued pursuant to the 1998 interpretation to the National Office. If you have any questions, please contact Helen Rogers at (202) 693-1850. The copies should be sent to the following address:

Richard E. Fairfax, Director  
Directorate of Compliance Programs  
U.S. Department of Labor - OSHA  
200 Constitution Avenue, NW Room N-3603  
Washington, DC 20210

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# EXHIBIT 23

HUD, APPROPRIATE PLACEMENT FOR TRANSGENDER  
PERSONS IN SINGLE-SEX EMERGENCY SHELTERS AND  
OTHER FACILITIES (FEB. 20, 2015)



OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

1  
2 Special Attention of:  
3  
4 ESG recipients and subrecipients  
5 CoC recipients and subrecipients  
6 HOPWA Grantees

**Notice:** CPD-15-02  
Issued: February 20, 2015

This notice remains effective until amended,  
superseded, or rescinded.

\_\_\_\_\_  
Cross References: 24 CFR 5.105(a)(2); 24  
CFR parts 574 and 576; 77 FR 5662

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**SUBJECT: Appropriate Placement for Transgender Persons in Single-Sex Emergency  
Shelters and Other Facilities**

**I. Purpose**

On February 3, 2012, HUD published the *Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity* final rule (Equal Access Rule) (77 FR 5662). This final rule requires that HUD’s housing programs be made available to individuals and families without regard to actual or perceived sexual orientation, gender identity, or marital status. The rule defines “gender identity” to mean “actual or perceived gender-related characteristics.” 24 CFR 5.100; 77 FR at 5665. The final rule also prohibits owners and administrators of HUD-assisted or HUD-insured housing, approved lenders in an FHA mortgage insurance program, and any other recipients or subrecipients of HUD funds from inquiring about sexual orientation or gender identity to determine eligibility for HUD-assisted or HUD-insured housing. The rule does not, however, prohibit voluntary self-identification of sexual orientation or gender identity, and it provides a limited exception for inquiries about the sex of an individual to determine eligibility for temporary, emergency shelters with shared sleeping areas or bathrooms, or to determine the number of bedrooms to which a household may be entitled. 24 CFR 5.105(a)(2).

In response to public comments, HUD stated in the preamble to the final rule that it was not mandating a national policy on placement of transgender persons in single-sex shelters, but would instead monitor its programs to determine whether additional guidance or setting a national policy may be necessary or appropriate. 77 FR at 5666, 5669. Following the issuance of the Equal Access Rule, HUD has determined that it is necessary to provide additional guidance on how best to provide shelter to transgender persons in a single-sex facility. HUD is continuing to evaluate whether setting a national policy through rulemaking is necessary.

1 After evaluating practices of HUD recipients, reviewing research on transgender  
2 discrimination in shelter settings,<sup>1</sup> hearing about both client and provider experiences and  
3 concerns, and reviewing the gender-identity nondiscrimination policies of several other federal  
4 agencies, HUD is providing this guidance to recipients and subrecipients that place eligible  
5 persons in single-sex emergency shelters or other facilities receiving Emergency Solutions  
6 Grants (ESG), Continuum of Care (CoC) or Housing Opportunities for Persons with AIDS  
7 (HOPWA) funds.<sup>2</sup> This notice also provides guidance on appropriate and inappropriate inquiries  
8 related to a potential or current client's sex for the purposes of placing transgender persons in  
9 temporary, emergency shelters or other facilities with shared sleeping areas or bathrooms.  
10  
11

## 12 **II. Guidance from Other Federal Agencies**

13 Earlier this year, the Office for Civil Rights in the Office of Justice Programs at the U.S.  
14 Department of Justice (DOJ) published guidance entitled "Frequently Asked Questions:  
15 Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of  
16 2013"<sup>3</sup> (VAWA 2013 FAQs). VAWA 2013 authorizes certain grants administered by DOJ,  
17 including grants to provide housing assistance for victims of domestic violence. VAWA 2013  
18 also imposes a new grant condition that prohibits discrimination on the basis of sexual  
19 orientation and gender identity. VAWA 2013 FAQ number 14 addresses how a recipient of DOJ  
20 funds can operate a single-sex facility funded through VAWA and not discriminate on the basis  
21 of gender identity. The DOJ guidance states:  
22

23 A recipient that operates a sex-segregated or sex-specific program should  
24 assign a beneficiary<sup>4</sup> to the group or service which corresponds to the  
25 gender with which the beneficiary identifies, with the following  
26 considerations. In deciding how to house a victim, a recipient that provides  
27 sex-segregated housing may consider on a case-by-case basis whether a  
28 particular housing assignment would ensure the victim's health and safety.  
29 A victim's own views with respect to personal safety deserve serious  
30 consideration. The recipient should ensure that its services do not isolate or  
31 segregate victims based upon actual or perceived gender identity. A  
32 recipient may not make a determination about services for one beneficiary  
33 based on the complaints of another beneficiary when those complaints are  
34 based on gender identity.  
35

---

<sup>1</sup> Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011.

<sup>2</sup> This guidance does not address the legality of single-sex facilities except to point out that all facilities must comply with applicable civil rights laws, including the Fair Housing Act, and HUD regulations. The Fair Housing Act broadly prohibits discrimination in housing on the basis of race, color, religion, sex, familial status, disability, and national origin.

<sup>3</sup> The guidance is dated April 9, 2014, and can be found at <http://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf>.

<sup>4</sup> The beneficiary is the individual seeking services from the recipient or service provider.

1 For the purpose of assigning a beneficiary to sex-segregated or sex-specific  
 2 services, best practices dictate that the recipient should ask a transgender  
 3 beneficiary which group or service the beneficiary wishes to join.  
 4 The recipient may not, however, ask questions about the beneficiary's  
 5 anatomy or medical history or make burdensome demands for identity  
 6 documents.<sup>5</sup>

7  
 8 Other agencies have similarly addressed how to provide equal access to transgender  
 9 persons in single-sex facilities. In the employment context, the Office of Personnel Management  
 10 (OPM) has issued Guidance Regarding the Employment of Transgender Individuals in the  
 11 Federal Workplace, which says that "once an employee has begun living and working full time  
 12 in the gender that reflects his or her gender identity, the employees should have access to  
 13 restrooms and . . . locker room facilities consistent with their gender identity. While a reasonable  
 14 temporary compromise may be appropriate in some circumstances, transitioning employees  
 15 should not be required to have undergone or to provide proof of any particular medical procedure  
 16 . . . in order to have access to facilities designated for use by a particular gender."<sup>6</sup>

17  
 18 In December 2014, the U.S. Department of Education's Office of Civil Rights issued  
 19 guidance providing that "under Title IX [of the Education Amendments of 1972], a recipient  
 20 generally must treat transgender students consistent with their gender identity in all aspects of the  
 21 planning, implementation, enrollment, operation, and evaluation of single-sex classes."<sup>7</sup>

### 22 23 24 **III. HUD Guidance for Single-Sex Emergency Shelters or Other Facilities that** 25 **Receive ESG, HOPWA, or CoC Funds**

#### 26 27 Assignments

28  
 29 HUD assumes that a recipient or subrecipient ("provider") that makes decisions about  
 30 eligibility for or placement into single-sex emergency shelters or other facilities will place a  
 31 potential client (or current client seeking a new assignment) in a shelter or facility that  
 32 corresponds to the gender with which the person identifies, taking health and safety concerns  
 33 into consideration. A client's or potential client's own views with respect to personal health and  
 34 safety should be given serious consideration in making the placement. For instance, if the  
 35 potential client requests to be placed based on his or her sex assigned at birth, HUD assumes that  
 36 the provider will place the individual in accordance with that request, consistent with health,  
 37 safety, and privacy concerns. HUD assumes that a provider will not make an assignment or re-  
 38 assignment based on complaints of another person when the sole stated basis of the complaint is  
 39 a client or potential client's non-conformance with gender stereotypes.  
 40

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<sup>5</sup> See Department of Justice, Frequently Asked Questions: Nondiscrimination Grant Conditions in the Violence Against Women Reauthorization Act of 2013 (Apr. 9, 2013), available at <http://www.ovw.usdoj.gov/docs/faqs-ngc-vawa.pdf>.

<sup>6</sup> See OPM Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace, available at <http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance>.

<sup>7</sup> Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities (Q&A 31), available at <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

1           Appropriate and Inappropriate Inquiries Related to Sex

2  
3           For temporary, emergency shelters with shared sleeping areas or bathrooms, the Equal  
4 Access Rule permits shelter providers to ask potential clients and current clients seeking a new  
5 assignment their sex.<sup>8</sup> Best practices suggest that where the provider is uncertain of the client's  
6 sex or gender identity, the provider simply informs the client or potential client that the agency  
7 provides shelter based on the gender with which the individual identifies. There generally is no  
8 legitimate reason in this context for the provider to request documentation of a person's sex in  
9 order to determine appropriate placement, nor should the provider have any basis to deny access  
10 to a single-sex emergency shelter or facility solely because the provider possesses identity  
11 documents indicating a sex different than the gender with which the client or potential client  
12 identifies. The provider may not ask questions or otherwise seek information or documentation  
13 concerning the person's anatomy or medical history. Nor may the provider consider the client or  
14 potential client ineligible for an emergency shelter or other facility because his or her appearance  
15 or behavior does not conform to gender stereotypes.

16  
17           Privacy

18  
19           If a client expresses safety or privacy concerns, or if the provider otherwise becomes  
20 aware of privacy or safety concerns, the provider must take reasonable steps to address those  
21 concerns. This may include, for example: responding to the requests of the client expressing  
22 concern through the addition of a privacy partition or curtain; provision to use a nearby private  
23 restroom or office; or a separate changing schedule. The provider must, at a minimum, permit  
24 any clients expressing concern to use bathrooms and dressing areas at a separate time from  
25 others in the facility. The provider should, to the extent feasible, work with the layout of the  
26 facility to provide for privacy in bathrooms and dressing areas. For example, toilet stalls should  
27 have doors and locks and there should be separate showers stalls to allow for privacy. Note: ESG  
28 and HOPWA funds may be used to renovate an emergency shelter to maximize privacy and  
29 safety. The provider should ensure that its policies do not isolate or segregate clients based upon  
30 gender identity.

31  
32           Training

33  
34           It is the responsibility of the recipient to ensure that it and its subrecipients comply with  
35 the Equal Access Rule. In furtherance of such, recipients and subrecipients should provide this  
36 Notice to staff members and contractors so as to ensure that employees and contractors who  
37 interact directly with potential clients and current clients are aware of it and take prompt  
38 corrective action to address noncompliance. Moreover, they should provide training to staff on  
39 completing intakes consistent with this guidance. If HUD finds a recipient or subrecipient has  
40 failed to meet program requirements, HUD may take actions such as those described in 24 CFR  
41 576.501 or 24 CFR 574.540.

42  
43           **IV. Further information**

---

<sup>8</sup> The Equal Access Rule permits inquiries into sex for temporary, emergency shelter with shared sleeping areas or bathrooms, or to determine the number of bedrooms to which a household may be entitled. 24 CFR 5.105(a)(2).



1  
2 In addition to complying with the requirements of the Equal Access Rule as described above,  
3 recipients and subrecipients must comply with all of HUD's nondiscrimination and equal  
4 opportunity provisions at 24 CFR 5.105.

5  
6 Questions regarding this notice should be submitted to HUD's Ask a Question at  
7 <https://www.hudexchange.info/onecpd-portal/ask-a-question/>. Fair Housing questions may be  
8 directed to local Fair Housing and Equal Opportunity Offices. Complaints of discrimination  
9 based on gender identity may be filed by calling 1-800-669-9777 or electronically at  
10 [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/online-](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint)  
11 [complaint](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint). Persons with hearing or speech impairments may file a complaint via TTY by calling  
12 the Federal Information Relay Service at (800) 877-8339.

# EXHIBIT 24

OPM, GUIDANCE REGARDING THE EMPLOYMENT OF  
TRANSGENDER INDIVIDUALS IN THE FEDERAL WORKPLACE

## U.S. OFFICE OF PERSONNEL MANAGEMENT

## DIVERSITY &amp; INCLUSION REFERENCE MATERIALS

# Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace

## Policy and Purposes

It is the policy of the Federal Government to treat all of its employees with dignity and respect and to provide a workplace that is free from discrimination whether that discrimination is based on race, color, religion, sex (including gender identity or pregnancy), national origin, disability, political affiliation, marital status, membership in an employee organization, age, sexual orientation, or other non-merit factors. Agencies should review their anti-discrimination policies to ensure that they afford a non-discriminatory working environment to employees irrespective of their gender identity or perceived gender non-conformity.

The purpose of this memorandum is to provide guidance to address some of the common questions that agencies have raised with OPM regarding the employment of transgender individuals in the federal workplace. Because the guidance is of necessity general in nature, managers, supervisors, and transitioning employees should feel free to consult with their human resources offices and with the Office of Personnel Management to seek advice in individual circumstances.

## Core Concepts

*Gender identity* is the individual's internal sense of being male or female. The way an individual expresses his or her gender identity is frequently called "gender expression," and may or may not conform to social stereotypes associated with a particular gender.

*Transgender*: Transgender individuals are people with a gender identity that is different from the sex assigned to them at birth. Someone who was assigned the male sex at birth but who identifies as female is a *transgender woman*. Likewise, a person assigned the female sex at birth but who identifies as male is a *transgender man*. Some individuals who would fit this definition of transgender do not identify themselves as such, and identify simply as men and women, consistent with their gender identity. The guidance discussed in this memorandum applies whether or not a particular individual self-identifies as transgender.

*Transition*: Some individuals will find it necessary to transition from living and working as one gender to another. These individuals often seek some form of medical treatment such as counseling, hormone therapy, electrolysis, and reassignment surgery. These treatments may be deemed medically necessary for many individuals, based on determinations of their medical providers. Some individuals, however, will not pursue some (or any) forms of medical treatment because of their age, medical condition, lack of funds, or other personal circumstances, or because they may not feel the treatment is necessary for their well-being. Managers and supervisors should be aware that not all transgender individuals will follow the same pattern, but they all are entitled to the same consideration as they undertake the transition steps deemed appropriate for them, and should all be treated with dignity and respect.

## Transition While Employed

There are several issues that commonly generate questions from managers and employees who are working

with a transitioning employee. In order to assist you in ensuring that transitioning employees are treated with dignity and respect, we offer the following guidance on those issues.

**Confidentiality and Privacy:** An employee's transition should be treated with as much sensitivity and confidentiality as any other employee's significant life experiences, such as hospitalization or family difficulties. Employees in transition often want as little publicity about their transition as possible. They may be concerned about safety and employment issues if other people or employers become aware that he or she has transitioned. Moreover, medical information received about individual employees is protected under the Privacy Act (5 U.S.C. 552a).

Employing agencies, managers, and supervisors should be sensitive to these special concerns and advise employees not to spread information concerning the employee who is in transition: gossip and rumor-spreading in the workplace about gender identity are inappropriate. Other employees may be given only general information about the employee's transition; personal information about the employee should be considered confidential and should not be released without the employee's prior agreement. Questions regarding the employee should be referred to the employee himself or herself. It should be noted, however, that questions regarding a coworker's medical process, body, and sexuality are inappropriate. If it would be helpful and appropriate, employing agencies may have a trainer or presenter meet with employees to answer general questions regarding gender identity. Issues that may arise should be discussed as soon as possible confidentially between the employee and his or her managers and supervisors.

**Dress and Appearance:** Agencies are encouraged to evaluate, and consider eliminating, gender-specific dress and appearance rules. Once an employee has informed management that he or she is transitioning, agency dress codes should be applied to employees transitioning to a different gender in the same way that they are applied to other employees of that gender. Dress codes should not be used to prevent a transgender employee from living full-time in the role consistent with his or her gender identity.

**Names and Pronouns:** Managers, supervisors, and coworkers should use the name and pronouns appropriate to the gender the employee is now presenting at work. Further, managers, supervisors, and coworkers should take care to use the correct name and pronouns in employee records and in communications with others regarding the employee. Continued intentional misuse of the employee's new name and pronouns, and reference to the employee's former gender by managers, supervisors, or coworkers is contrary to the goal of treating transitioning employees with dignity and respect, and creates an unwelcoming work environment. Such misuse may also breach the employee's privacy.

**Sanitary and Related Facilities:** The [Department of Labor's Occupational Safety and Health Administration \(DOL/OSHA\) guidelines](#) require agencies to make access to adequate sanitary facilities as free as possible for all employees in order to avoid serious health consequences. For a transitioning employee, this means that, once he or she has begun working in the gender that reflects his or her gender identity, agencies should allow access to restrooms and (if provided to other employees) locker room facilities consistent with his or her gender identity. Transitioning employees should not be required to have undergone or to provide proof of any particular medical procedure (including gender reassignment surgery) in order to have access to facilities designated for use by a particular gender. Under no circumstances may an agency require an employee to use facilities that are unsanitary, potentially unsafe for the employee, located at an unreasonable distance from the employee's work station, or that are inconsistent with the employee's gender identity. Agencies are encouraged to provide unisex, single-user restrooms when feasible to maximize comfort and access for everyone, including individuals with disabilities and those with young children, however transgender employees should not be limited to using these facilities. Because every workplace is configured differently, agencies with questions regarding employee access to any facilities within an agency

may contact OPM for further guidance.

**Workplace assignments and duties:** In some workplaces, specific assignments or duties are differentiated by gender. For a transitioning employee, once he or she has begun working full-time in the gender that reflects his or her gender identity, agencies should treat the employee as that gender for purposes of all job assignments and duties. Transitioning employees should not be required to have undergone or to provide proof of any particular medical procedure (including gender reassignment surgery) in order to be eligible for gender-specific assignments or duties. Under no circumstances may an agency require an employee to accept a gender-specific assignment or duty contrary to the gender the employee otherwise works as, or limit gender-specific assignments or duties for an employee once the employee's Official Personnel Folder (OPF) has been reconstructed to reflect the new gender.

**Recordkeeping:** Consistent with the Privacy Act, the records in the employee's Official Personnel Folder (OPF) and other employee records (pay accounts, training records, benefits documents, and so on) should be changed to show the employee's new name and gender, once the employee has begun working full-time in the gender role consistent with the employee's gender identity and has submitted a request to update his or her OPF. See 5 U.S.C. 552a(d). Instructions for how to reconstruct an employee's OPF to account for a gender change are set forth in [Chapter 4, How to Reconstruct a Personnel Folder \(PDF file\)](#) .

**Sick and medical leave:** Employees receiving treatment as part of their transition may use sick leave under applicable regulations. Employees who are qualified under the Family Medical Leave Act may also be entitled to take medical leave for transition-related needs of their families.

**Hiring process:** During the hiring process, hiring managers and supervisors should be sensitive to the possibility that applicants have transitioned. The name and gender on the application may correspond with the person's current usage; however, background or suitability checks may disclose a previous name that indicates a gender different from the one the applicant is currently presenting. In such cases, hiring managers should respectfully ask whether the applicant was previously known by a different name, and confirm with the applicant the name and gender that should be used throughout the hiring process.

**Insurance Benefits:** Employees in transition who already have Federal insurance benefits must be allowed to continue their participation, and new employees must be allowed to elect participation, based on their updated names and genders. If the employees in transition are validly married at the time of the transition, the transition does not affect the validity of that marriage, and spousal coverage should be extended or continued even though the employee in transition has a new name and gender. Further information about insurance coverage issues can be found on the web at [OPM's Insure website](#), or by [contacting the relevant OPM insurance program office](#).

**Specific Questions:** For further guidance on these issues, contact the Diversity Program Manager, Office of Diversity and Inclusion, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415, at (202) 606-0020.

# EXHIBIT 25

Equal Employment Opportunity Commission, Order 560.008 Question  
and Answers (June 22, 2016)

<b>EEOC</b>	<b>DIRECTIVES TRANSMITTAL</b>	<b>Number</b> <b>560.008</b>
		<b>Date</b> <b>June 22, 2016</b>

**I. SUBJECT:** Non-Discrimination and Inclusion Policy Regarding Gender Identity and Sexual Orientation

**II. PURPOSE:** This workplace non-discrimination and inclusion policy states that the Commission’s existing internal EEO policies prohibiting sex discrimination against applicants and employees of the agency include discrimination based on gender identity (including transgender status) or sexual orientation.

**III. EFFECTIVE DATE:** Upon issuance

**IV. ORIGINATORS:** Office of the Chair, Office of the Chief Human Capital Officer, Office of Equal Opportunity

**V. PROHIBITION ON DISCRIMINATION AND COMMITMENT TO INCLUSION**

As set forth in a range of statutes and Presidential Executive Orders, as well as the Commission’s existing internal orders and policies, it is the policy of the federal government and the EEOC to maintain a workplace free from any discrimination, including harassment, based on race, color, national origin, religion, sex, pregnancy, gender identity, sexual orientation, age, parental status, disability, genetic information (including family medical history), political affiliation, military service, or other non-merit based factors. These protections also extend to retaliation for EEO activity. These protections extend to all management practices and decisions, including recruitment and hiring, appraisals, promotions, and training and career development.

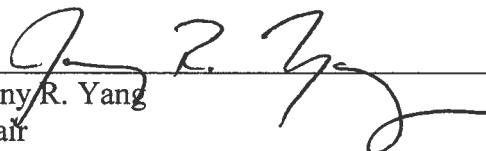
In addition, the Commission has held that under Title VII of the Civil Rights Act of 1964, the prohibition on sex discrimination itself includes discrimination based on gender identity and sexual orientation. *See Macy v. Dep’t of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 (Apr. 20, 2012) (holding that discrimination because an applicant or employee is transgender is, by definition, discrimination based on sex in violation of Title VII); *Jameson v. U.S. Postal Service*, EEOC Appeal No. 0120130992, 2013 WL 2368729 (May 21, 2013) (holding that intentional repeated misuse of a transgender employee’s new name and pronoun may constitute sex based discrimination and/or harassment); *Eric S. v. Dep’t of Veterans Affairs*, EEOC Appeal No. 0120133123, 2014 WL 1653484 (Apr. 16, 2014) (holding that an allegation involving the failure to revise agency records pursuant to changes in gender identity stated a valid Title VII sex discrimination claim); *Lusardi v. Dep’t of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015) (holding that employer restrictions on a transgender woman’s ability to use a common female restroom facility constituted disparate treatment on the basis of sex and that the restroom restrictions combined with hostile remarks, including intentional pronoun misuse, created a hostile work environment on the basis of sex); *Baldwin v. Dep’t of Transportation*, EEOC Appeal No. 0120133080, 2015 WL 4397641 (July

15, 2015) (holding that a claim alleging discrimination on the basis of sexual orientation necessarily states a claim of sex discrimination under Title VII).

The question-and-answer document issued with this Order and incorporated herein provides practical information and advice for our managers, supervisors, and employees in order to support our Agency's nondiscrimination and inclusion efforts with respect to gender identity and sexual orientation. Both this Order and the accompanying question-and-answer document have been issued pursuant to EEOC procedures and in coordination with headquarters program offices.

June 22, 2016

6/22/16  
Date

  
\_\_\_\_\_  
Jenny R. Yang  
Chair



## Questions and Answers: EEOC's Internal Non-Discrimination and Inclusion Policy Regarding Gender Identity and Sexual Orientation

### Introduction

Our Agency's commitment to equal employment opportunity includes not merely creating a workplace free from discrimination as required by law, but also striving to maintain an inclusive workplace where all employees and applicants for employment are evaluated solely on their merits. To ensure compliance with the EEOC's internal *Non-Discrimination and Inclusion Policy Regarding Gender Identity and Sexual Orientation* and to foster an inclusive workplace for all employees, the following frequently-asked questions and answers from the Office of the Chief Human Capital Officer (OCHCO) provide practical information for managers and staff.

Gender identity, gender transition, and sexual orientation are inherently personal matters. Some individuals may request workplace assistance, whereas others will seek no workplace acknowledgement or changes at all. This document does not anticipate every workplace situation that might arise, and the needs of an individual employee should be addressed on a case-by-case basis.

### Common Terms

Common terms used in these questions and answers are defined as follows:

- **Gender identity** is an individual's internal sense of being male, female, or "gender non-binary." **Gender non-binary** is a term that has sometimes been used for an individual who may not have the gender identity of either a male or female, or who may identify as both male and female. Gender non-binary individuals may prefer pronouns other than the traditional male and female pronouns.
- **Gender expression** refers to outward appearance, behavior, and other characteristics that are culturally associated with masculinity and femininity, such as name, pronouns, clothing, haircut, voice, grooming, mannerisms, etc.
- **Transgender** refers to people whose gender identity and/or expression is different from the sex assigned to them at birth (e.g. the sex listed on an original birth certificate). The term **transgender woman** typically is used to refer to someone who was assigned the male sex at birth but who identifies as a female. Likewise, the term **transgender man** typically is used to refer to someone who was assigned the female sex at birth but who identifies as male. A person does not need to undergo any medical procedure to be considered a transgender man or a transgender woman.
- **Gender non-conforming** is a broad term that has sometimes been used to refer to people who do not appear, behave, or identify in conformity with gender norms, stereotypes, expectations, or preferences, or whose gender expression does not fit neatly into commonly-used categories.

- **Gender transition** refers to the process of shifting from living and presenting as one gender to the other. This may, but need not, involve such steps as dressing differently, changing hair styles or other grooming practices, and/or using a different name. Gender transition also may, but need not, involve medical steps such as hormone therapy, and/or surgery.
- **Sexual orientation** is a person's physical, romantic, or emotional attraction to people of the same or opposite sex. Sexual orientation is distinct from gender identity. A person's gender identity does not have anything to do with attraction. For example, transgender individuals (like any individuals) may identify as gay, lesbian, bisexual, asexual, or heterosexual.
- **LGBT** is an acronym often used as an umbrella term referring to lesbian, gay, bisexual, and transgender individuals.

## **Gender Identity and Transition**

### *Transgender Resource Coordinator and Requesting Workplace Changes*

#### ***1. Does the EEOC have a central resource person to assist employees and management with workplace issues relating to gender identity?***

Yes. The Chief Human Capital Officer (CHCO) has designated a Transgender Resource Coordinator in OCHCO to assist with any workplace changes, questions, or concerns that any manager or employee may have regarding a gender transition. **The Coordinator can be reached by e-mail at [TransgenderResourceCoordinator@eoc.gov](mailto:TransgenderResourceCoordinator@eoc.gov); name and contact information for the current Coordinator may be obtained from the OCHCO's InSite Page or by calling OCHCO at 202-663-4306.** The District Resources Managers (DRMs), Administrative Officers (AOs), managers, and supervisors will often need to work with the Coordinator to handle workplace gender transitions. DRMs/Administrative Officers, with appropriate supervisory approvals will initiate and complete related personnel actions.

Because individual circumstances differ, the Coordinator will strive to ensure the agency's process is adaptable. A guide with potential topics for workplace transition discussions between the Coordinator and employee who has requested assistance is included as Attachment A.

#### ***2. How does an EEOC employee request workplace changes related to a gender transition, and how should managers and supervisors respond?***

Employees who want to request workplace-related changes due to a gender transition may contact a supervisor or manager, or the Coordinator. If the transitioning employee notifies a supervisor or manager first of the impending transition or related request, the supervisor or manager should promptly contact the Coordinator, who will directly assist the employee and the supervisor/manager.

Names and Records

**3. Are transgender employees entitled to be addressed by their preferred name and pronoun even if they have not had a legal name or gender change?**

Yes. A legal name or gender change is not required for employees to obtain a change in the name used at work due to transgender status or gender identity. Employees should be addressed by, and referred to, with their preferred name and pronoun, both verbally and in writing.

While co-workers may inadvertently make mistakes in name and pronoun usage after a person's preferred name or pronouns change, the persistent intentional misuse of an employee's name or pronoun could constitute sex-based harassment in violation of Title VII or the agency's internal policy on [Prevention and Elimination of Harassment in the Workplace](#) (2006). See *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015). Therefore, supervisors and managers should ensure that employees are addressed and referred to appropriately.

As a best practice, if unsure of the correct pronoun to use, politely ask what pronoun the person prefers, or simply use the person's preferred first name.

**4. May an EEOC employee obtain a change to the name and gender listed in official personnel records?**

Yes. If an employee requests such a change, the EEOC will work with the employee to identify the records at issue and to arrange requested changes in a timely manner. Managers or supervisors receiving a request should work with the Transgender Coordinator for processing.

The Coordinator, and/or OCHCO staff handling the matter, will advise the employee what documentation the individual should provide, and will coordinate with the individual to determine specifically which documentation the individual seeks to have changed. For federal employees, this process is currently handled as set forth in the Office of Personnel Management's "[The Guide to Personnel Recordkeeping](#)," Chapter 4, *How to Reconstruct a Personnel Folder Due to a Change in Gender Identity* ("OPM Guide").

The employee will be responsible for providing documentation requested by the Coordinator to accomplish the records change (such as completing and submitting to the agency or third parties any necessary forms, or follow up information). The Coordinator will identify, in consultation with the employee, what workplace-related records need to be changed, determine the appropriate individuals to contact for these changes, and act as a liaison to the various offices responsible for changing the records. The Coordinator will follow up with the appropriate individuals, such as OCHCO staff, District/Office Directors, and District Resources Managers/Administrative Officers, to ensure that the requested record changes within their purview are made in a timely manner.

Working with OCHCO, the Office of Information Technology (OIT), the Office of Research, Information and Planning (ORIP), the Office of the Chief Financial Officer (OCFO), the District/Office Director, District Resources Manager/Administrative Officer, and any other applicable office, the Coordinator will maintain a checklist of work-related records an employee might seek to have changed related to a gender transition. The Coordinator will review the checklist with the employee, as necessary, and determine which are applicable. Relevant records may include personnel records, health care records, email addresses, identification tags, door name plates, and software or computer system login information.

A list of examples of workplace records that an individual might request to have changed as a result of a gender transition is included as Attachment B.

**5. Will an EEOC employee have to provide any documentation to obtain a change to the name and gender listed in official personnel records?**

Yes. If an employee requests a change to the name or gender listed in official personnel records, the Coordinator will request that the employee submit acceptable evidence as set forth in the *OPM Guide*.

The Social Security Administration has established a process for individuals seeking to obtain a legal change of sex on their official federal government social security records, <https://secure.ssa.gov/poms.nsf/lnx/0110212200>, so that the employer can then change payroll records. The SSA form provides several documentation options, including obtaining a revised passport from the U.S. State Department reflecting the individual's new name and gender, <http://www.state.gov/r/pa/prs/ps/2010/06/142922.htm>, for submission to SSA.

State and local laws vary as to whether a driver's license or other state-issued forms of identification may be issued to reflect a gender change. The *OPM Guide* provides instructions for human resources on how to reconstruct an official personnel file to reflect a change in gender identity based on a medical certification when revised documents cannot be obtained because of state or local requirements or for any other reason.

If an employee needs agency involvement to effectuate a change in documentation related to health insurance, OCHCO will work with insurance carriers and other benefits providers to ensure that the agency's records reflect the employee's correct name and gender. Current OPM policy provides that during this process, employees in transition who already have federal insurance benefits will be allowed to continue their participation in their insurance plan, and new employees must be allowed to elect participation based on the gender with which they identify.

**6. Will the Coordinator, managers and supervisors, and other EEOC employees involved in changing records or other transition-related workplace changes be expected to keep the information confidential?**

Yes. Employees involved in the record-changing process are expected to maintain confidentiality, as with other matters reflected in official records handled as part of their duties.

Moreover, disclosure by management of information about an employee's transgender status (such as the fact that an individual is undergoing transition-related medical treatment) may result in disclosure of confidential medical information prohibited under laws such as the Rehabilitation Act and/or the Privacy Act. This type of personal information should only be shared with the employee's consent.

**7. What should hiring officials do if an applicant's documentation of past employment references a different name or gender?**

Applicants are not obligated to disclose information related to a transition during the hiring process. Application materials relating to an individual who previously transitioned may indicate a name and/or gender that do not correspond with information gathered during background or reference checks. A hiring official should not automatically assume that the inconsistency is a mistake or the result of deception or intentional misrepresentation, and should not ask an applicant about gender identity. Rather, if a hiring official has any questions or concerns about the inconsistency of names or genders on hiring documentation, the official should contact OCHCO, which will obtain any needed clarification from the applicant.

Access to Facilities

**8. How should EEOC managers and supervisors ensure access to the appropriate restrooms for a transgender employee?**

A transgender employee is not required to have undergone any particular medical procedure, or to provide proof of such a procedure, in order to have access to a restroom that corresponds with the employee's gender identity. A transgender woman must be permitted to use the women's restroom, and a transgender man must be permitted to use the men's restroom. *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015) (holding that denying an employee equal access to a common restroom corresponding to the employee's gender identity is sex discrimination, and that an employer cannot condition this right on the employee undergoing or providing proof of surgery or any other medical procedure); see also *OPM Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace*, <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/> (“[T]ransitioning employees should not be required to have undergone or to provide proof of any particular medical procedure (including gender reassignment surgery) in order to have access to facilities designated for use by a particular gender.”).

**9. *May EEOC managers and supervisors require a transgender employee to use a unisex or individual-user restroom?***

No. If a unisex or individual-user restroom is available for general employee use in an agency facility, along with restrooms designated for a single sex, *any* employee may use the unisex or single stall restroom when it is available. While use of a single stall restroom might be incorporated into a transition plan, the agency will never require that an employee use such a restroom instead of the common restroom designated for a single sex.

More information is available in the EEOC's *Fact Sheet: Bathroom Access Rights for Transgender Employees Under Title VII*, <https://www.eeoc.gov/eeoc/publications/fs-bathroom-access-transgender.cfm>, and in *A Guide to Restroom Access for Transgender Workers*, issued by the Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA), <https://www.osha.gov/Publications/OSHA3795.pdf>.

**10. *If an EEOC facility has locker rooms designated for use by a particular gender, are employees allowed access to locker rooms corresponding to their gender identity?***

Yes. For example, a transgender woman must be permitted to use the women's locker room, and a transgender man must be permitted to use the men's locker room. At no time will the EEOC require a transgender employee to have undergone any particular medical procedure, or to provide proof that the employee underwent any procedure, to have access to a locker room designated for use by a particular gender that corresponds with the employee's gender identity.

Any employee who has a need or desire for additional privacy, for any reason, may request use of an already available private room or the use of a curtain in the locker room, where feasible.

If an access issue arises due to actions of non-EEOC staff in a building in which the Commission as tenant shares or does not have direct control over, the facilities at issue, the affected employee should ask EEOC management or the Coordinator for support and assistance in resolving the matter under the rental agreement's non-discrimination clause and/or other applicable legal protections.

***Dress and Grooming***

**11. *Are there any rules that apply if an EEOC employee begins dressing for work in clothing typically associated with a different gender?***

The EEOC does not restrict employees' clothing, hair style, or other aspects of appearance on the basis of gender or gender stereotypes. Any requirements or expectations imposed regarding appropriate attire will not be applied based on gender.

Leave for Medical Treatment

**12. Is medical leave available for treatment related to a gender transition?**

Employees receiving medical treatment as part of a gender transition may use sick or other leave available under applicable regulations, just as with medical treatment sought for any other reason. Similarly, an employee who wants to request leave through the Family and Medical Leave Act (FMLA) for leave related to transition or for leave related to the transition of family members, must follow the agency's procedures to request FMLA leave and cannot do so through this policy. See [EEOC Order 550.007](#) for more detailed information on the EEOC's Leave Policy.

A transgender employee who wants to request medical leave as a reasonable accommodation for reasons related to a disability must request the accommodation through the agency's reasonable accommodation process. See [EEOC Order 560.003](#) for more detailed information on the EEOC's internal reasonable accommodation process.

**Identifying and Responding to Gender Identity & Sexual Orientation Discrimination in the Workplace-Inclusion and Training**

**13. What are some examples of workplace discrimination issues that might arise with respect to gender identity?**

Sex discrimination based on gender identity may include, for example, harassment or adverse actions such as non-selection, failure to promote, discipline, termination, or discrimination in benefits or other terms, conditions, or privileges of employment that is motivated by an applicant or employee's gender identity.

For example, sex discrimination includes: failing to hire an applicant because she is a transgender woman; firing an employee because he is planning or has made a gender transition; denying an employee equal access to a common restroom corresponding to the employee's gender identity; or harassing an employee because of a gender transition, such as by intentionally and persistently failing to use the name and gender pronoun that correspond to the gender identity with which the employee identifies, as communicated to management and employees.

**14. What are some examples of workplace discrimination issues that might arise with respect to sexual orientation?**

Sex discrimination based on sexual orientation may include, for example, harassment or adverse actions such as non-selection, failure to promote, discipline, termination, or discrimination in benefits or other terms, conditions, or privileges of employment that is motivated by an applicant or employee's sexual orientation. For example, sex discrimination includes: rescinding a job offer because of an applicant's sexual orientation; denying an employee a promotion because he is gay or straight; terminating an employee for entering into a same-sex marriage; denying benefits or privileges of employment to employees for same-sex legal spouses that are made available to employees for opposite-sex legal spouses; or harassing an employee because of his or her sexual orientation by derogatory terms, sexually oriented

comments, or disparaging remarks for associating with a person of the same or opposite sex.

***15. How are contrary personal beliefs reconciled with the LGBT non-discrimination and inclusion policy?***

Like all non-discrimination and inclusion principles, LGBT-related protections address conduct in the workplace, not personal beliefs. Some employees may not agree with the applicable legal protections for transgender status, gender identity, or sexual orientation, just as they may not agree with other workplace policies. However, these protections do not require any employee to change beliefs. Rather, these protections ensure appropriate workplace treatment so that all employees may perform their jobs free from discrimination.

***16. What should a manager or supervisor do who becomes aware of potential workplace mistreatment of an employee relating to gender transition, gender identity, or LGBT status?***

Gender-based stereotypes, perceptions, or comfort level must not interfere with the ability of any employee to work free from discrimination, including harassment. As the Commission has observed: “[S]upervisory or co-worker confusion or anxiety cannot justify discriminatory terms and conditions of employment. Title VII prohibits discrimination based on sex whether motivated by hostility, by a desire to protect people of a certain gender, by gender stereotypes, or by the desire to accommodate other people's prejudices or discomfort.” *Lusardi v. Dep't of the Army*, EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015). Therefore, managers or supervisors who become aware of pejorative remarks or demeaning behavior toward an employee relating to gender identity, transgender status, or sexual orientation should take appropriate steps to immediately and effectively stop these actions, as they would with respect to potential harassment on any other basis. Managers and supervisors should lead by example, and communicate clearly with employees about inappropriate behavior and its consequences.

***17. When will the EEOC provide additional internal training on LGBT non-discrimination and inclusion?***

The agency will incorporate information regarding these issues with new employee orientation materials, in related general agency-wide internal EEO or diversity training, and specific staff training, as appropriate. If a manager or supervisor would like to arrange for delivery of customized training for staff, please contact the OCHCO Transgender Coordinator. The creation of and future changes to this training will be coordinated with the Office of the Chief Human Capital Officer, Office of Equal Opportunity, the Office of Federal Operations, the Office of Field Programs, the Office of General Counsel, and the Office of Legal Counsel. Moreover, when a transgender employee notifies the agency of a planned transition, the Coordinator and the employee's management or supervisory officials can determine with the employee whether training would be beneficial for management, supervisors, and co-workers in the employee's office. Consideration should be given to the transgender employee's perception of the work environment and desire for confidentiality. As an example, training could include



cultural competency education and/or training on sex-based discrimination and harassment under Title VII.

The agency's Coordinator is available to discuss any transition-related concerns with management or any employee, and may refer individuals to the Office of Equal Opportunity (OEO) or the RESOLVE program as appropriate.

### **Further Information and Assistance**

The agency's *Non-discrimination and Inclusion Policy Regarding Gender Identity and Sexual Orientation* creates no new enforceable rights under any law or the collective bargaining agreement. The EEOC has always aspired to treat all employees respectfully. This policy reflects updates in the law ensuring that transgender employees and applicants are protected from discrimination based on sex in the conditions of their employment. If at any time an employee has concerns about planning or implementing a transition, or with any other issue related to this policy, the employee should feel free to bring those concerns directly to management, the Coordinator, or the CHCO. As with discrimination on any other prohibited basis, an applicant or employee who believes discrimination based on gender identity (including transgender status) or sexual orientation has occurred may raise the matter directly to OEO, or as appropriate to the U.S. Merit Systems Protection Board (MSPB) or the U.S. Office of Special Counsel (OSC), within any applicable timeframes.

The following resources may also be helpful for addressing EEOC workplace issues relating to transgender status or gender identity in the EEOC's workplace:

- EEOC policy on [Prevention and Elimination of Harassment in the Workplace](#)
- EEOC Resolve Program at 202-663-4545, 202-663-4897 (TTY), or via internal e-mail at "RESOLVE Program"
- EEOC Office of Equal Opportunity at 202-663-7081 or [contact\\_oeo@eoc.gov](mailto:contact_oeo@eoc.gov)
- EEOC's Union, AFGE National Council of EEOC Locals, No. 216: , [council216lgbtissues@eoc.gov](mailto:council216lgbtissues@eoc.gov)
- Employee Assistance Program at 1-800-222-0364 or 1-888-262-7848 (TTY)
- EEOC Pride, a voluntary employee organization for LGBT employees, allies, and friends [Pride@eoc.gov](mailto:Pride@eoc.gov)
- U.S. Office of Special Counsel at <https://osc.gov/> or 800-872-9855.
- U.S. Office of Personnel Management, *Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace*

<https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/>

- Office of Personnel Management’s “[The Guide to Personnel Recordkeeping](#),” Chapter 4, *How to Reconstruct a Personnel Folder Due to a Change in Gender Identity*
- U.S. Department of Labor/OSHA, *Guide to Restroom Access for Transgender Workers*  
<https://www.osha.gov/Publications/OSHA3795.pdf>
- EEOC Fact Sheet: Bathroom Access Rights for Transgender Employees Under Title VII, <https://www.eeoc.gov/eeoc/publications/fs-bathroom-access-transgender.cfm>
- EEOC Fact Sheet: Processing Complaints of Discrimination by Lesbian, Gay, Bisexual, and Transgender (LGBT) Federal Employees  
[http://www.eeoc.gov/federal/directives/lgbt\\_complaint\\_processing.cfm](http://www.eeoc.gov/federal/directives/lgbt_complaint_processing.cfm)
- OPM-EEOC-OSC-MSPB Guide: *Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment*  
<https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/addressing-sexual-orientation-and-gender-identity-discrimination-in-federal-civilian-employment.pdf>
- *What You Should Know About EEOC and the Enforcement Protections for LGBT Workers*  
[http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement\\_protections\\_lgbt\\_workers.cfm](http://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm)

## **Attachment A – Guide to Developing a Workplace Transition Plan for an EEOC Employee: Potential Topics to Address**

### ***A. Developing a Transition Plan***

If a transitioning employee seeks workplace changes that require extensive employer assistance, the Coordinator may, in consultation with the transitioning employee, develop an individualized transition plan that addresses the workplace changes and assistance the employee seeks and that is tailored to the employee's circumstances and comfort level.

Workplace changes or a workplace transition plan may not be necessary or appropriate in all circumstances. For example, some transgender employees may not request any workplace changes, or may only seek discrete changes that need not be known to other employees. Additionally, if a newly hired or transferred employee presents as the gender identified with when the employee first meets co-workers, managers, and supervisory officials, a gender transition plan and changes may not be requested at all. In this situation, the employee will either disclose the information or not in accordance with the employee's preference.

Examples of items that the workplace transition plan might address, subject to what the employee seeks, include:

- The workplace transition date. This is the date on which the transgender employee will begin to present in the workplace consistent with the employee's gender identity. The date chosen is entirely within the discretion of the transgender employee. An employee is not required to give the agency advance notice of when the employee will begin to present in the gender with which the employee identifies, and the employee may not know for certain. At the same time, transitioning employees are encouraged to consider that giving management and coworkers advance notice may help accomplish any workplace changes the employee requests as part of the transition process.
- The employee's preferred name and pronoun, and the date that the employee would like to begin being called by the preferred name and pronoun. This date should correspond with the date the transgender employee will begin to present in the workplace consistent with the employee's gender identity.
- The date the employee will begin using the bathroom and locker room (if available) of the gender with which the employee identifies. This date should correspond with the date the transgender employee will begin to present in the workplace.
- Information regarding record changes. This may include: the required documentation the employee may need to provide for requested record changes; the date by which the employee should provide the documentation; the planned date by which the agency will change all employee personnel records to reflect the correct name, pronoun, and gender of the employee; and a date for a follow-up to ensure that all record changes have occurred. The agency will coordinate record changes to

coincide with the official transition date or soon thereafter so as not to reveal sensitive information prior to the transgender employee's transition. The employee should expect approximately 60 days between the date the employee initially informed the Coordinator of the transition and when the records will be completely changed.

- Informing others about the transition. The transitioning employee has discretion whether, how, and when to inform others, such as managers or supervisors, co-workers, and external parties (i.e., individuals who do not work for the EEOC but who may interact with the transgender employee on a regular basis for work purposes). The employee may choose to tell others about the transition personally, or may ask the Coordinator or agency management or supervisory official to help communicate transition-related information. Similarly, the employee may choose to tell managers, supervisors, coworkers, and/or external parties individually, or as part of a group. If the employee asks for a manager or supervisor to inform others about the transition, the Coordinator should be present or readily available to help answer any questions. The manager or supervisor should only provide the information that the employee wants to be shared, and should share it in the manner the employee requests.

If an employee asks to have the Coordinator, a manager, or a supervisor inform co-workers about transition-related workplace changes, the following summary of information to be communicated may be of use, subject to the individualized needs of the transitioning employee, office, and situation:

- The employee will be transitioning to the gender the employee identifies with, and will begin presenting in accordance with that gender identity;
- The employee will be using the following name and pronoun (to be used correctly throughout the meeting);
- Management expects employees to treat the individual in a respectful and professional manner;
- The agency's non-discrimination and harassment policies, including the Non-Discrimination and Inclusion Policy on Gender Identity and Transgender and Applicants/Employees are applicable;
- The transition is not expected to change the workplace and everything should go on as it did previously;
- The Transgender Resource Coordinator is available (give name and contact information) if employees have any questions; and
- (Where the employee has explicitly indicated that questions or discussions regarding the transition are welcome) coworkers may discuss the transition

with the employee as long as the discussion is respectful in tone and appropriate in content.

- Leave or Accommodations. The Coordinator will refer the employee to the information for requesting leave or accommodations under existing authorities.
- Training. The transition plan should also address whether training will be provided to coworkers and managers and supervisors, and the date by which the training will be provided.

To help ensure a smooth workplace transition, the Coordinator and the transitioning employee should determine which records should be changed. As records and forms change from time to time, the Transition Resource Coordinator should determine what is currently applicable and should be addressed in the transition plan. This may include, for example, the items listed in Attachment B.

### ***B. Implementing the Plan***

The Coordinator will ensure that the agency timely implements the transition plan. An employee should feel free to raise any concerns about planning or implementing the workplace transition directly to the Coordinator or the CHCO.

### ***C. Follow Up***

The Coordinator will follow up with management and supervisory officials and the transgender employee to ensure that any workplace changes were completed, that all records were changed, that there are no further questions, and that the employee does not allege his or her gender identity is motivating harassment or disparate treatment.

If the Coordinator receives information about potential discrimination, the Coordinator may contact the Director of the Office of Equal Opportunity and/or the Harassment Coordinator, or the Resolve Program, as appropriate. If the information potentially concerns harassment, or conduct that may lead to unlawful harassment if allowed to continue, the Coordinator **MUST** notify the Harassment Coordinator. However, it is the individual's legal obligation to timely raise any potential EEO issue with the appropriate designee under 29 C.F.R. Part 1614.

**Attachment B – Examples of Workplace Records That Employee Might Request Be Changed as a Result of a Gender Transition**

The following are examples of current records that a transitioning employee might seek to change; we note that not all of these records will apply to every individual, and the applicable records will change over time. The Transgender Resource Coordinator will act as a liaison between the employee and the individuals in the various offices responsible for obtaining needed changes to applicable records due to a gender transition. This process is currently handled as set forth in the Office of Personnel Management’s [“The Guide to Personnel Recordkeeping,”](#) Chapter 4, *How to Reconstruct a Personnel Folder Due to a Change in Gender Identity.*

<b>Office of the Chief Human Capital Officer</b>	
<input type="checkbox"/>	Federal Employee Benefit Election Form: FEHB/ Healthcare/ SF2809 <a href="https://www.opm.gov/forms/pdf_fill/sf2809.pdf">https://www.opm.gov/forms/pdf_fill/sf2809.pdf</a>
<input type="checkbox"/>	Notice of Change in Health Benefits Enrollment: FEHB/SF2810 <a href="https://www.opm.gov/forms/pdf_fill/sf2810.pdf">https://www.opm.gov/forms/pdf_fill/sf2810.pdf</a>
<input type="checkbox"/>	FERS Designation of Beneficiary: SF 3102 <a href="https://www.opm.gov/forms/pdf_fill/sf3102.pdf">https://www.opm.gov/forms/pdf_fill/sf3102.pdf</a>
<input type="checkbox"/>	CSRS Designation of Beneficiary/ SF2808 <a href="https://www.opm.gov/forms/pdf_fill/sf2808.pdf">https://www.opm.gov/forms/pdf_fill/sf2808.pdf</a>
<input type="checkbox"/>	Life Insurance Election: FEGLI/ SF 2817 <a href="https://www.opm.gov/forms/pdf_fill/sf2817.pdf">https://www.opm.gov/forms/pdf_fill/sf2817.pdf</a>
<input type="checkbox"/>	Federal Employees’ Group Life Insurance Program: FEGLI Beneficiary/ SF 2823 <a href="https://www.opm.gov/forms/pdf_fill/sf2823.pdf">https://www.opm.gov/forms/pdf_fill/sf2823.pdf</a>
<input type="checkbox"/>	Thrift Saving Plan Election Form: TSP/ TSP-1 <a href="https://www.tsp.gov/PDF/formspubs/tsp-1.pdf">https://www.tsp.gov/PDF/formspubs/tsp-1.pdf</a>
<input type="checkbox"/>	TSP Designation of Beneficiary: TSP-3 <a href="https://www.tsp.gov/PDF/formspubs/tsp-3.pdf">https://www.tsp.gov/PDF/formspubs/tsp-3.pdf</a>
<input type="checkbox"/>	FEDVIP: Dental and Vision <a href="https://www.opm.gov/healthcare-insurance/dental-vision">https://www.opm.gov/healthcare-insurance/dental-vision</a>
<input type="checkbox"/>	FLTCIP: Long Term Care <a href="http://www.ltcfeds.com/">http://www.ltcfeds.com/</a>
<input type="checkbox"/>	FSA: Flexible Spending Account <a href="https://www.fsafeds.com/GEM">https://www.fsafeds.com/GEM</a>
<input type="checkbox"/>	Office of Workers’ Compensation Program (OWCP) <a href="http://www.dol.gov/owcp/">http://www.dol.gov/owcp/</a>
<input type="checkbox"/>	
<b>Office of the Chief Financial Officer</b>	
<input type="checkbox"/>	E-2: Government Travel Access

<input type="checkbox"/>	Government Travel Credit Card
<input type="checkbox"/>	Federal Employee ID & PIV Credentials, and Building Proxy Access Card
<input type="checkbox"/>	Headquarters Transit Benefits
<b>Office of Information Technology</b>	
<input type="checkbox"/>	Service Now: Change Form/ Access to computer (LAN), GroupWise (e-mail), Novell Messenger, telephone, or other system access (i.e. IMS, DMS, etc.) <a href="https://eeoc.service-now.com/">https://eeoc.service-now.com/</a>
<b>Local Office</b>	
<input type="checkbox"/>	Request for Personnel Action SF-52 <a href="https://www.opm.gov/forms/pdf_fill/sf52.pdf">https://www.opm.gov/forms/pdf_fill/sf52.pdf</a>
<input type="checkbox"/>	Notification of Personnel Action SF-50 <a href="https://www.opm.gov/forms/pdfimage/sf50.pdf">https://www.opm.gov/forms/pdfimage/sf50.pdf</a>
<input type="checkbox"/>	Local Building Access Card
<input type="checkbox"/>	Local Transit Benefits
<input type="checkbox"/>	Office Name Plate
<input type="checkbox"/>	Business Cards
<b>Office of Research Information and Planning</b>	
<input type="checkbox"/>	Accruint <a href="http://eeoclib/htdocs/news/extend.php3?idx=415">http://eeoclib/htdocs/news/extend.php3?idx=415</a>
<input type="checkbox"/>	BNA Labor & Employment Law Resource Center (includes the Daily Labor Report, EEOC Compliance Manual, etc) <a href="http://eeoclib.eeoc.gov/htdocs/news/extend.php3?idx=159">http://eeoclib.eeoc.gov/htdocs/news/extend.php3?idx=159</a>
<input type="checkbox"/>	cyberFEDS <a href="http://eeoclib/htdocs/news/extend.php3?idx=415">http://eeoclib/htdocs/news/extend.php3?idx=415</a>
<input type="checkbox"/>	Lexis and Courtlink <a href="http://eeoclib/htdocs/news/extend.php3?idx=415">http://eeoclib/htdocs/news/extend.php3?idx=415</a>
<input type="checkbox"/>	SecureUSA <a href="http://eeoclib/htdocs/news/extend.php3?idx=415">http://eeoclib/htdocs/news/extend.php3?idx=415</a>
<input type="checkbox"/>	Westlaw <a href="http://eeoclib/htdocs/news/extend.php3?idx=415">http://eeoclib/htdocs/news/extend.php3?idx=415</a>

# EXHIBIT 26

OSHA, A GUIDE TO RESTROOM ACCESS FOR  
TRANSGENDER WORKERS, AT 2 (JUNE 1, 2015)





# Best Practices

## A Guide to Restroom Access for Transgender Workers

**Core principle:** All employees, including transgender employees, should have access to restrooms that correspond to their gender identity.

### Introduction

The Department of Labor’s (DOL) Occupational Safety and Health Administration (OSHA) requires that all employers under its jurisdiction provide employees with sanitary and available toilet facilities, so that employees will not suffer the adverse health effects that can result if toilets are not available when employees need them. This publication provides guidance to employers on best practices regarding restroom access for transgender workers. OSHA’s goal is to assure that employers provide a safe and healthy working environment for *all* employees.

### Understanding Gender Identity

In many workplaces, separate restroom and other facilities are provided for men and women. In some cases, questions can arise in the workplace about which facilities certain employees should use. According to the Williams Institute at the University of California-Los Angeles, an estimated 700,000 adults in the United States are *transgender*—meaning their internal *gender identity* is different from the sex they were assigned at birth (e.g., the sex listed on their birth certificate). For example, a *transgender man* may have been assigned female at birth and raised as a girl, but identify as a man. Many transgender people *transition* to live their everyday life as the gender they identify with. Thus, a transgender man may transition from living as a woman to living as a man. Similarly, a *transgender woman* may be assigned male at birth, but transition to living as a woman consistent with her gender identity. Transitioning is a different process for

everyone—it may involve social changes (such as going by a new first name), medical steps, and changing identification documents.

### Why Restroom Access Is a Health and Safety Matter

Gender identity is an intrinsic part of each person’s identity and everyday life. Accordingly, authorities on gender issues counsel that it is essential for employees to be able to work in a manner consistent with how they live the rest of their daily lives, based on their gender identity. Restricting employees to using only restrooms that are not consistent with their gender identity, or segregating them from other workers by requiring them to use gender-neutral or other specific restrooms, singles those employees out and may make them fear for their physical safety. Bathroom restrictions can result in employees avoiding using restrooms entirely while at work, which can lead to potentially serious physical injury or illness.

### OSHA’s Sanitation Standard

Under OSHA’s [Sanitation standard](#) (1910.141), employers are required to provide their employees with toilet facilities. This standard is intended to protect employees from the health effects created when toilets are not available. Such adverse effects include urinary tract infections and bowel and bladder problems. OSHA has consistently interpreted this standard to require employers to allow employees prompt access to sanitary facilities. Further, employers may not impose unreasonable restrictions on employee use of toilet facilities.

## Model Practices for Restroom Access for Transgender Employees

Many companies have implemented written policies to ensure that *all* employees—including transgender employees—have prompt access to appropriate sanitary facilities. The core belief underlying these policies is that all employees should be permitted to use the facilities that correspond with their gender identity. For example, a person who identifies as a man should be permitted to use men’s restrooms, and a person who identifies as a woman should be permitted to use women’s restrooms. The employee should determine the most appropriate and safest option for him- or herself.

The best policies also provide additional options, which employees may choose, but are not required, to use. These include:

- Single-occupancy gender-neutral (unisex) facilities; and
- Use of multiple-occupant, gender-neutral restroom facilities with lockable single occupant stalls.

Regardless of the physical layout of a worksite, all employers need to find solutions that are safe and convenient and respect transgender employees.

Under these best practices, employees are not asked to provide any medical or legal documentation of their gender identity in order to have access to gender-appropriate facilities. In addition, no employee should be required to use a segregated facility apart from other employees because of their gender identity or transgender status. Under OSHA standards, employees generally may not be limited to using facilities that are an unreasonable distance or travel time from the employee’s worksite.

## Other Federal, State and Local Laws

Employers should be aware of specific laws, rules, or regulations regarding restroom access in their states and/or municipalities, as well as the potential application of federal anti-discrimination laws.

The Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), DOL, and several other federal agencies, following

several court rulings, have interpreted prohibitions on sex discrimination, including those contained in Title VII of the *Civil Rights Act of 1964*, to prohibit employment discrimination based on gender identity or transgender status. In April 2015, the DOL’s Office of Federal Contract Compliance Programs (OFCCP) announced it would require federal contractors subject to Executive Order 11246, as amended, which prohibits discrimination based on both sex and gender identity, to allow transgender employees to use the restrooms and other facilities consistent with their gender identity. Also in April 2015, the EEOC ruled that a transgender employee cannot be denied access to the common restrooms used by other employees of the same gender identity, regardless of whether that employee has had any medical procedure or whether other employees’ may have negative reactions to allowing the employee to do so. The EEOC held that such a denial of access constituted direct evidence of sex discrimination under Title VII.

The following is a sample of state and local legal provisions, all reaffirming the core principle that employees should be allowed to use the restrooms that correspond to their gender identity.

**Colorado:** Rule 81.9 of the Colorado regulations requires that employers permit their employees to use restrooms appropriate to their gender identity rather than their assigned gender at birth without being harassed or questioned. 3 CCR 708-1-81.9 (revised December 15, 2014), available at <http://cdn.colorado.gov/cs/Satellite/DORA-DCR/CBON/DORA/1251629367483>.

For more information refer to: “Sexual Orientation & Transgender Status Discrimination—Employment, Housing & Public Accommodations,” Colorado Civil Rights Division, available at: <http://cdn.colorado.gov/cs/Satellite/DORA-DCR/CBON/DORA/1251631542607>.

**Delaware:** Guidance from the Delaware Department of Human Resource Management provides Delaware state employees with access to restrooms that correspond to their gender identity. The guidance was issued pursuant to the state’s gender identity nondiscrimination law.

Delaware’s policy also suggests: Whenever practical, a single stall or gender-neutral restroom may be provided, which all employees may utilize.

However, a transgender employee will not be compelled to use only a specific restroom unless all other co-workers of the same gender identity are compelled to use only that same restroom.

For more information refer to: State of Delaware Guidelines on Equal Employment Opportunity and Affirmative Action Gender Identity, available at: <http://www.delawarepersonnel.com/policies/documents/sod-eeoc-guide.pdf>.

**District of Columbia:** Rule 4-802 of the D.C. Municipal Regulations prohibits discriminatory practices in regard to restroom access. Individuals have the right to use facilities consistent with their gender identity. In addition, single-stall restrooms must have gender-neutral signage. D.C. Municipal Regulations 4-802, "Restrooms and Other Gender Specific Facilities," available at: <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=4-802>.

**Iowa:** The Iowa Civil Rights Commission requires that employers allow employees access to restrooms in accordance with their gender identity, rather than their assigned sex at birth.

For more information refer to: "Sexual Orientation & Gender Identity – An Employer's Guide to Iowa Law Compliance," Iowa Civil Rights Commission, available at: [https://icrc.iowa.gov/sites/files/civil\\_rights/publications/2012/SOGIEmpl.pdf](https://icrc.iowa.gov/sites/files/civil_rights/publications/2012/SOGIEmpl.pdf).

**Vermont:** The Vermont Human Rights Commission requires that employers permit employees to access bathrooms in accordance with their gender identity.

For more information refer to: "Sex, Sexual Orientation, and Gender Identity: A Guide to Vermont's Anti-Discrimination Law for Employers and Employees," Vermont Human Rights Commission, available at: <http://hrc.vermont.gov/sites/hrc/files/pdfs/other%20reports/trans%20employment%20brochure%207-13-12.pdf>.

**Washington:** The Washington State Human Rights Commission requires employers that maintain gender-specific restrooms to permit transgender employees to use the restroom that

is consistent with their gender identity. Where single occupancy restrooms are available, the Commission recommends that they be designated as "gender neutral."

For more information refer to: "Guide to Sexual Orientation and Gender Identity and the Washington State Law Against Discrimination," available at: <http://www.hum.wa.gov/Documents/Guidance/GuideSO20140703.pdf>.

## Additional Information

- American Psychological Association. Answers to your questions about transgender people, gender identity and gender expression, 2011: <http://www.apa.org/topics/lgbt/transgender.aspx>.
- Transgender Law Center's model employer policy, with an extensive section on restrooms, can be found at: <http://transgenderlawcenter.org/wp-content/uploads/2013/12/model-workplace-employment-policy-Updated.pdf>.
- "Restroom Access for Transgender Employees" on Human Rights Campaign website: <http://www.hrc.org/resources/entry/restroom-access-for-transgender-employees>.
- National Gay and Lesbian Task Force and the National Center for Transgender Equality. National Transgender Discrimination Survey, 2011: <http://endtransdiscrimination.org/report.html>.

## How OSHA Can Help

OSHA has a great deal of information to assist employers in complying with their responsibilities under the law. Information on OSHA requirements and additional health and safety information, including information on OSHA's Sanitation standard, is available on the agency's website ([www.osha.gov](http://www.osha.gov)).

Workers have a right to a safe workplace ([www.osha.gov/workers.html#2](http://www.osha.gov/workers.html#2)). The law requires employers to provide their employees with working conditions that are free of known dangers. An employer's duty to provide a safe workplace includes the duty to provide employees with toilet facilities that are sanitary and available, so that employees can use them when they need to do so. Employers also have a duty to protect all

their employees, regardless of whether they are transgender, from any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. For more information on workplace violence, please see OSHA's website at: [www.osha.gov/SLTC/workplaceviolence](http://www.osha.gov/SLTC/workplaceviolence).

Workers who believe that they have been exposed to a hazard or who just have a question should contact OSHA. For example, workers may file a complaint to have OSHA inspect their workplace if they believe that their workplace is unsafe or that their employer is not following OSHA standards. Just contact OSHA at: 1-800-321-OSHA (6742), or visit [www.osha.gov](http://www.osha.gov). Complaints that are signed by an employee are more likely to result in an on-site inspection. It's confidential. We can help.

The *Occupational Safety and Health Act* (OSH Act) prohibits employers from retaliating against their employees for exercising their rights under the OSH Act. These rights include raising a workplace health and safety concern with the employer, reporting an injury or illness, filing an OSHA complaint, and participating in an inspection or talking to an inspector. If workers have been retaliated against for exercising their rights, they must file a complaint with OSHA within 30 days of the alleged adverse action. For more information, please visit [www.whistleblowers.gov](http://www.whistleblowers.gov).

OSHA can also help answer questions or concerns from employers. To reach your closest OSHA regional or area office, go to OSHA's Regional and Area Offices webpage ([www.osha.gov/html/RAmap.html](http://www.osha.gov/html/RAmap.html)) or call 1-800-321-OSHA (6742). OSHA also provides free, confidential on-site assistance and advice to small and medium-sized employers in all states across

the country, with priority given to high-hazard worksites. On-site Consultation services are separate from enforcement activities and do not result in penalties or citations. To contact OSHA's free consultation program, or for additional compliance assistance, call OSHA at 1-800-321-OSHA (6742).

## References:

Department of Labor, Office of Federal Contract Compliance Programs, 2015. "Frequently Asked Questions EO 13672 Final Rule", available at: [http://www.dol.gov/ofccp/lgbt/lgbt\\_faqs.html#Q35](http://www.dol.gov/ofccp/lgbt/lgbt_faqs.html#Q35).

National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011 at 56 (noting that only 22% of transgender people have been denied access to gender-appropriate restrooms), available at: <http://endtransdiscrimination.org/report.html>.

Gates, Gary J., *How many people are lesbian, gay, bisexual, and transgender?* Williams Institute, UCLA School of Law, 2011. Retrieved 5/18/2015 from: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011 at 56 (noting that only 22% of transgender people have been denied access to gender-appropriate restrooms), available at: <http://endtransdiscrimination.org/report.html>.

*Lusardi v. McHugh*, EEOC Appeal No. 0120133395 (Apr. 1, 2015), available at: <http://transgenderlawcenter.org/wp-content/uploads/2015/04/EEOC-Lusardi-Decision.pdf>.

*Macy v. Holder*, EEOC Appeal No. 0120120821 (2012); Attorney General Memorandum, *Treatment of Transgender Employment Discrimination Claims* (Dec. 15, 2015). Retrieved 5/18/2015 from: [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title\\_vii\\_memo.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf).

*Memorandum to Regional Administrators and State Designees of the Occupational Safety and Health Administration on the Interpretation of 29 CFR 1910.141(c)(1)(i): Toilet Facilities* (Apr. 6, 1998), available at: [www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=22932](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22932).

**Disclaimer:** This document is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The *Occupational Safety and Health Act* requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.



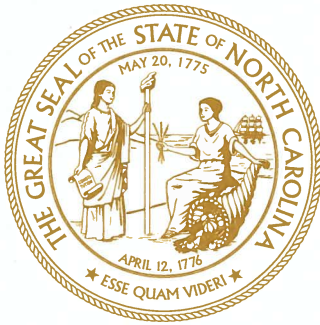
U.S. Department of Labor



Occupational Safety  
and Health Administration

# EXHIBIT 27

N.C. EXEC. ORDER 93 § 3 (33)



# State of North Carolina

**PAT McCRORY**  
GOVERNOR

April 12, 2016

## EXECUTIVE ORDER NO. 93

### TO PROTECT PRIVACY AND EQUALITY

**WHEREAS**, North Carolina's rich legacy of inclusiveness, diversity and hospitality makes North Carolina a global destination for jobs, business, tourists and talent;

**WHEREAS**, it is the policy of the Executive Branch that government services be provided equally to all people;

**WHEREAS**, N.C. Gen. Stat. § 160A-499.2 permits municipalities to adopt ordinances prohibiting discrimination in housing and real estate transactions, and any municipality may expand such ordinance consistent with the federal Fair Housing Act;

**WHEREAS**, N.C. Gen. Stat. § 143-422.2(c) permits local governments or other political subdivisions of the State to set their own employment policies applicable to their own personnel;

**WHEREAS**, North Carolina law allows private businesses and nonprofit employers to establish their own non-discrimination employment policies;

**WHEREAS**, N.C. Gen. Stat. § 143-128.2 requires each city, county or other local public entity to adopt goals for participation by minority businesses and to make good faith efforts to recruit minority participation in line with those goals;

**WHEREAS**, North Carolina law allows a private business or nonprofit to set their own restroom, locker room or shower policies;

**WHEREAS**, our citizens have basic common-sense expectations of privacy in our restrooms, locker rooms and shower facilities for children, women and men;

**WHEREAS**, to protect expectations of privacy in restrooms, locker rooms and shower facilities in public buildings, including our schools, the State of North Carolina maintains these facilities on the basis of biological sex;

**WHEREAS**, State agencies and local governments are allowed to make reasonable accommodations in restrooms, locker rooms and shower facilities due to special individual circumstances;

**NOW, THEREFORE**, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED**:

## **Section 1. Public Services**

In the provision of government services and in the administration of programs, including, but not limited to public safety, health and welfare, public agencies shall serve all people equally, consistent with the mission and requirements of the service or program.

## **Section 2. Equal Employment Opportunity Policy for State Employees**

I hereby affirm that the State of North Carolina is committed to administering and implementing all State human resources policies, practices and programs fairly and equitably, without unlawful discrimination, harassment or retaliation on the basis of race, religion, color, national origin, sex, sexual orientation, gender identity, age, political affiliation, genetic information, or disability.

I also affirm that private businesses, nonprofit employers and local governments may establish their own non-discrimination employment policies.

## **Section 3. Restroom Accommodations**

In North Carolina, private businesses can set their own rules for their own restroom, locker room and shower facilities, free from government interference.

Under current law, every multiple occupancy restroom, locker room or shower facility located in a cabinet agency must be designated for and only used by persons based on their biological sex. Agencies may make reasonable accommodations upon a person's request due to special circumstances.

Therefore, when readily available and when practicable in the best judgment of the agency, all cabinet agencies shall provide a reasonable accommodation of a single occupancy restroom, locker room or shower facility upon request due to special circumstances.

All council of state agencies, cities, counties, the University of North Carolina System and the North Carolina Community College System are invited and encouraged to make a similar accommodation when practicable.

## **Section 4. State Buildings and Facilities Leased to Private Entities**

The Department of Administration shall interpret the application of N.C. Gen. Stat. § 143-760 as follows:

When a private entity leases State real property and the property in the lessee's exclusive possession includes multiple occupancy restrooms, locker rooms or other like facilities, the private entity will control the signage and use of these facilities.

All council of state agencies, cities, counties, the University of North Carolina System and the North Carolina Community College System are invited and encouraged to adopt a similar interpretation of N.C. Gen. Stat. § 143-760.

## **Section 5. Human Relations Commission**

Pursuant to N.C. Gen. Stat. § 143B-391, the Human Relations Commission in the Department of Administration shall promote equality and opportunity for all citizens.

The Human Relations Commission shall work with local government officials to study problems and promote understanding, respect and goodwill among all citizens in all communities in North Carolina.

The Human Relations Commission shall receive, investigate and conciliate fair housing, employment discrimination and public accommodations complaints.

The Human Relations Commission shall submit an annual report by April 1st to the Governor detailing the number of complaints received, the number of investigations completed, and the number of conciliations in the preceding calendar year. This report shall also describe any education and outreach efforts made by the Commission in that same calendar year.

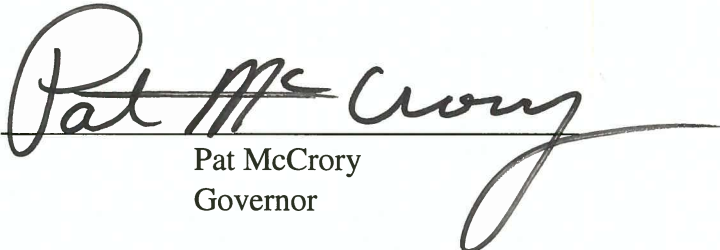
**Section 6. State Cause of Action for Wrongful Discharge**

I support and encourage the General Assembly to take all necessary steps to restore a State cause of action for wrongful discharge based on unlawful employment discrimination.

**Section 7. State or Federal Law**

Nothing in this section shall be interpreted as an abrogation of any requirements otherwise imposed by applicable federal or state laws or regulations.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twelfth day of April in the year of our Lord two thousand and sixteen.

  
Pat McCrory  
Governor



ATTEST:

  
Elaine F. Marshall  
Deputy Secretary of State



# EXHIBIT 28

HUMAN RIGHTS CAMPAIGN, CITIES AND COUNTIES  
WITH NON-DISCRIMINATION ORDINANCES THAT  
INCLUDE GENDER IDENTITY

[hrc.org](http://hrc.org)

# Cities & Counties w/ Non-Discrim Ordinances that Include Gender | Human Rights Campaign

*Human Rights Campaign*

As of January 28, 2016, at least 225 cities and counties prohibit employment discrimination on the basis of gender identity in employment ordinances that governed all public and private employers in those jurisdictions. This list does not include those cities and counties that prohibit discrimination on the basis of gender identity for city and county employees — such policies do not affect private employers in those jurisdictions.

Cities and Counties that Prohibit Discrimination Based on Gender Identity in Public and Private Employment, By State.

## **Alaska**

Anchorage, City of

## **Arizona**

Phoenix, City of

Tempe, City of

Tucson, City of

## **Arkansas**

Fayetteville, City of

Eureka Springs, City of

## **California**

Los Angeles, City of

Oakland, City of

Palm Springs, City of

Sacramento, City of California

San Diego, City of

San Francisco, City of

Santa Cruz County

West Hollywood, City of

## **Colorado**

Boulder, City of

Denver, City of

**District of Columbia**

Washington, City of

**Florida**

Atlantic Beach, City of

Alachua County

Broward County

Gainesville, City of

Gulfport, City of

Key West, City of

Lake Worth, City of

Leon County

Miami Beach, City of

Miami-Dade County

Monroe County

Palm Beach County

Pinellas County

Orlando, City of

Tampa, City of

Volusia County

West Palm Beach, City of

## **Georgia**

Atlanta, City of

## **Idaho**

Boise, City of

Coeur d'Alene, City of

Idaho Falls, City of

Ketchum, City of

Moscow, City of

Pocatello, City of

Sandpoint, City of

Victor, City of

## **Illinois**

Aurora, City of

Carbondale, City of

Champaign, City of

Chicago, City of

Cook County

Decatur, City of

DeKalb, City of

Evanston, City of

Peoria, City of

Springfield, City of

### **Indiana**

Bloomington, City of

Evansville, City of

Indianapolis, City of

Marion County

Monroe County

South Bend, City of

### **Iowa**

Ames, City of

Cedar Rapids, City of

Council Bluffs, City of

Davenport, City of

Des Moines, City of

Iowa City

Johnson County

Sioux, City of

Waterloo, City of

## **Kansas**

Lawrence, City of

Roeland Park, City of

## **Kentucky**

Covington, City of

Danville, City of

Frankfort, City of

Jefferson County

Lexington, City of

Lexington-Fayette County

Louisville, City of

Morehead, City of

Vicco, City of

## **Louisiana**

New Orleans, City of

Shreveport, City of

## **Maryland**

Baltimore, City of

Baltimore County

College Park, City of

Howard County

Hyattsville, City of

Montgomery County

## **Massachusetts**

Boston, City of

Cambridge, City of

Northampton, City of

Salem, City of

Worcester, City of

## **Michigan**

Ann Arbor, City of

Detroit, City of

East Lansing, City of

Ferndale, City of

Grand Rapids, City of

Huntington Woods, City of



Kalamazoo, City of

Lansing, City of

Pleasant Ridge, City of

Saugatuck, City of

Sterling Heights, City of

Traverse, City of

Ypsilanti, City of

### **Minnesota**

Minneapolis, City of

St. Paul, City of

### **Missouri**

Columbia, City of

Clayton, City of

Kansas City

Kirkwood, City of

Olivette, City of

St. Louis County

St. Louis, City of

University City

## **Montana**

Bozeman, City of

Butte-Silver Bow, City of

Helena, City of

Missoula, City of

## **Nebraska**

Omaha, City of

## **New York**

Albany, City of

Binghamton, City of

Buffalo, City of

Ithaca, City of

New York City

Rochester, City of

Suffolk County

Syracuse, City of

Tompkins County

Westchester County

## **North Carolina**

Chapel Hill, City of

**Ohio**

Athens, City of

Bowling Green, City of

Cincinnati, City of

Cleveland, City of

Columbus, City of

Coshocton, City of

Dayton, City of

East Cleveland, City of

Newark, City of

Oxford, City of

Summit County

Toledo, City of

Yellow Springs, Village of

**Oregon**

Beaverton, City of

Bend, City of

Benton County

Corvallis, City of

Eugene, City of  
Hillsboro, City of  
Lake Oswego, City of  
Lincoln City  
Multnomah County  
Portland, City of  
Salem, City of

**Pennsylvania**

Abington Township  
Allegheny County  
Allentown, City of  
Bethlehem, City of  
Cheltenham Township  
Doylestown, City of  
East Norriton, City of  
Easton, City of  
Erie County  
Harrisburg, City of  
Hatboro, City of  
Haverford Township  
Jenkinstown Borough

Lansdowne Borough

Lower Marion Township

New Hope Borough

Newton Borough

Philadelphia, City of

Pittsburgh, City of

Pittston, City of

Scranton, City of

Reading, City of

Springfield Township

State College Borough

Susquehanna Township

Swarthmore, City of

Upper Merion Township

West Chester Borough

Whitemarsh Township

York, City of

## **Rhode Island**

Providence, City of

## **South Carolina**

Myrtle Beach, City of

**Texas**

Austin, City of

Dallas County

Dallas, City of

Fort Worth, City of

Plano, City of

**Utah**

Alta, City of

Grand County

Harrisville, City of

Logan, City of

Midvale, City of

Moab, City of

Murray City

Ogden, City of

Salt Lake City

Salt Lake County

Springdale, City of

Summit County

Taylorsville, City of  
West Valley, City

**Washington**

Burien, City of  
King County  
Seattle, City of  
Spokane, City of  
Tacoma, City of

**West Virginia**

Charleston, City of  
Huntington, City of

**Wisconsin**

Dane County  
Madison, City of  
Milwaukee, City of  
Dane County  
Madison, City of  
Milwaukee, City of

## **Wyoming**

Laramie, City of



# EXHIBIT 29

NATIONAL CENTER FOR TRANSGENDER EQUALITY, *KNOW  
YOUR RIGHTS: PUBLIC ACCOMMODATIONS*

[transequality.org](http://transequality.org)

# Public Accommodations

## What are Public Accommodations?

Public accommodations are establishments that provide goods and services to the general public – which may include (for example) restaurants, theaters, hotels, hospitals, libraries, gas stations, and retail stores. State and federal civil rights laws prohibit covered businesses from discriminating against customers on some grounds, but the range of businesses covered by law varies.

## What Laws Protect Me in Public Accommodations?

Federal nondiscrimination laws covering public accommodations cover only race, color, religion, national origin, and disability. Federal law does not prohibit discrimination based on sex, gender identity or sexual orientation in public accommodations.

The majority of states (44 and the District of Columbia) prohibit discrimination based on sex in public accommodations. Many state courts and enforcement agencies have interpreted these laws to protect transgender people.

Many states and localities also explicitly prohibit discrimination based on gender identity and sexual orientation in public accommodations. The following 17 states have explicit protections: California, Connecticut, Colorado, Delaware, Hawaii, Illinois, Iowa, Maryland, Maine, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington State, as well as the District of Columbia. More than 200 cities and counties also explicitly prohibit gender identity discrimination even if their state does not.

Businesses that are public accommodations may also be covered by other civil rights laws. For example, while the customers of a restaurant are covered by laws regarding public accommodations, the restaurant's employees are covered by laws regarding employment. A hospital may be covered by laws specifically covering health care as well as those covering public accommodations.

## What Are My Rights in Public Accommodations?

Most states and many cities prohibit discrimination in public accommodations based on either sex or gender identity. **If your state or locality has such a law, you have the following rights:**

**You have the right to not to be refused entry, participation, or services because you are transgender or gender nonconforming.** You have the right to enjoy a business's services or goods on an equal basis.

**You have the right to dress and present yourself in a manner consistent with your gender identity.** You cannot be turned away because someone objects to your gender presentation.

**You have the right to be free from harassment.** If the business's management knows of serious harassment by staff or customers and fails to remedy it, this may be discrimination.

Which businesses are covered by these laws varies by state. Even if your state's public accommodations law does not cover sex or gender identity or excludes certain types of businesses, those

businesses may be covered by federal or state laws regarding sex and/or gender identity discrimination in health care, housing, education, credit, or employment. (For more information, see NCTE's other "Know Your Rights" resources.)

## **What About Public Restrooms?**

People sometimes think that "public accommodations" refers to public restrooms. Actually, "public accommodations" are categories of businesses that serve the general public. If a business is covered by a public accommodations law, access to all facilities that are open to the public is covered by that law as well. (Similarly, if a business is covered by an employment law, then an employee's access to the restrooms is covered by that law.)

Denial of access to a public restroom that is consistent with person's gender identity may be discrimination based on sex and/or gender identity. Many state and local laws, or official interpretations of those laws, explicitly protect this right; however, in a few states the laws have been interpreted not to protect this right. While most states currently have no official guidance on this issue, you may file a complaint of discrimination with your state or local human rights

agency if you are denied equal access to restrooms.

## **What Can I Do if I Face Discrimination in Public Accommodations?**

The first step is determining whether your state or locality covers sex or gender identity discrimination in the type of establishment that engaged in the discrimination. This information may be available on the state or local human rights agency's website, or you may have to look up the law online. (See the chart below for citations to state laws.)

Complaint procedures vary. Some states and cities have a standard complaint form, while others do not. Unless you know that your jurisdiction explicitly prohibits discrimination based on gender identity, you should specify that your complaint alleges sex discrimination. Most agencies have deadlines for filing complaints – these vary by jurisdiction, but may be as short as 60 days.

Your complaint will be more effective if you can present solid facts. Write down the date, time, location, witnesses, and people involved in any events that were discriminatory or disrespectful. Also keep

any documents that the discriminating entity gives you. If you present your situation in an organized way, you increase the chance of your complaint getting the attention it deserves.

Once the agency receives your complaint, they may contact you to discuss your situation. In some cases, the agency may ask you and the business that is the subject of the complaint to participate in voluntary mediation. If a complaint cannot be resolved voluntarily, the agency will usually investigate it and make a finding as to whether discrimination occurred and, if so, what corrective action the business must take. In some jurisdictions you may have a right to file a lawsuit – either immediately or after an investigation by the agency – however the available remedies may be limited, for example to a court order preventing the business from discriminating in the future.

For discrimination in housing, health care, credit or loans, education, employment, or air travel, you may file a sex discrimination complaint under federal law. See NCTE's other Know Your Rights resources for details.

## **Who Else Can Help Me?**

Every jurisdiction is different, and this guide is only a general overview. Specific information about state and local laws can be obtained from your state or local human rights agency or local community groups. While complaints can be filed and often resolved without an attorney, don't hesitate to seek help from a local community group or an attorney, or both.

While NCTE does not provide legal services or referrals, there are many other groups that may give you referrals or maintain lists of attorneys. You can try your local legal aid or legal services organization, or national or regional organizations such as Lambda Legal, the National Center for Lesbian Rights, the ACLU, the Transgender Law Center, or others listed on [NCTE's website](#).

## **How Else Can I Help?**

Share your story. If you have faced discrimination, consider sharing your story with NCTE so we can use it in our advocacy efforts to change policies, improve education, and reduce future discrimination. We want to hear from you whether or not the discrimination problem gets resolved, especially if anything we



wrote here was helpful or needs to be improved.

## **Issue Maps**

# EXHIBIT 30

United States Department of Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 2016)

# Examples of Policies and Emerging Practices for Supporting Transgender Students



U.S. Department of Education

Office of Elementary and Secondary Education

Office of Safe and Healthy Students

May 2016

U.S. Department of Education  
Office of Elementary and Secondary Education  
Office of Safe and Healthy Students

Ann Whalen  
*Senior Advisor to the Secretary, Delegated the Duties of the Assistant Secretary, Office of Elementary and Secondary Education*

David Esquith  
*Director, Office of Safe and Healthy Students*

May 2016

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U.S. Department of Education, Office of Elementary and Secondary Education, Office of Safe and Healthy Students, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 2016).

This guide is also available on the Office of Safe and Healthy Students website at [www.ed.gov/oese/osh/emergingpractices.pdf](http://www.ed.gov/oese/osh/emergingpractices.pdf). Any updates to this guide will be available at this website.

If you need technical assistance, please contact the Office of Safe and Healthy Students at: [OESE.Info.SupportingTransgenderStudents@ed.gov](mailto:OESE.Info.SupportingTransgenderStudents@ed.gov)

#### **Availability of Alternate Formats**

Requests for documents in alternate formats such as Braille or large print should be submitted to the Alternate Format Center by calling 202-260-0852 or by contacting the 504 coordinator via e-mail at [om\\_eeos@ed.gov](mailto:om_eeos@ed.gov).

#### **Notice to Limited English Proficient Persons**

If you have difficulty understanding English you may request language assistance services for Department information that is available to the public. These language assistance services are available free of charge. If you need more information about interpretation or translation services, please call 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-437-0833), or e-mail us at [ED.Language.Assistance@ed.gov](mailto:ED.Language.Assistance@ed.gov). Or write to U.S. Department of Education, Information Resource Center, LBJ Education Building, 400 Maryland Ave. SW, Washington, DC 20202.

## **Examples of Policies and Emerging Practices for Supporting Transgender Students**

The U.S. Department of Education (“ED”) is committed to providing schools with the information they need to provide a safe, supportive, and nondiscriminatory learning environment for all students. It has come to ED’s attention that many transgender students (*i.e.*, students whose gender identity is different from the sex they were assigned at birth) report feeling unsafe and experiencing verbal and physical harassment or assault in school, and that these students may perform worse academically when they are harassed. School administrators, educators, students, and parents are asking questions about how to support transgender students and have requested clarity from ED. In response, ED developed two documents:

- ED’s Office for Civil Rights and the U.S. Department of Justice’s Civil Rights Division jointly issued a Dear Colleague Letter (“DCL”) about transgender students’ rights and schools’ legal obligations under Title IX of the Education Amendments of 1972.<sup>1</sup> Any school that has questions related to transgender students or wants to be prepared to address such issues if they arise should review the DCL.
- ED’s Office of Elementary and Secondary Education compiled the attached examples of policies<sup>2</sup> and emerging practices<sup>3</sup> that some schools are already using to support transgender students. We share some common questions on topics such as school records, privacy, and terminology, and then explain how some state and school district policies have answered these questions. We present this information to illustrate how states and school districts are supporting transgender students. We also provide information about and links to those policies at the end of the document, along with other resources that may be helpful as educators develop policies and practices for their own schools.

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<sup>1</sup> 20 U.S.C. §§ 1681-1688; Dear Colleague Letter: Transgender Students (May 13, 2016), [www.ed.gov/ocr/letters/colleague-201605-title-ix-transgender.pdf](http://www.ed.gov/ocr/letters/colleague-201605-title-ix-transgender.pdf).

<sup>2</sup> In this document, the term *policy* or *policies* refers generally to policies, guidance, guidelines, procedures, regulations, and resource guides issued by schools, school districts, and state educational agencies.

<sup>3</sup> ED considers *emerging practices* to be operational activities or initiatives that contribute to successful outcomes or enhance agency performance capabilities. Emerging practices are those that have been successfully implemented and demonstrate the potential for replication by other agencies. Emerging practices typically have not been rigorously evaluated, but still offer ideas that work in specific situations.

Each person is unique, so the needs of individual transgender students vary. But a school policy setting forth general principles for supporting transgender students can help set clear expectations for students and staff and avoid unnecessary confusion, invasions of privacy, and other harms. The education community continues to develop and revise policies and practices to address the rights of transgender students and reflect our evolving understanding and the individualized nature of transgender students' needs.

This document contains information from some schools, school districts, and state and federal agencies. Inclusion of this information does not constitute an endorsement by ED of any policy or practice, educational product, service, curriculum or pedagogy. In addition, this document references websites that provide information created and maintained by other entities. These references are for the reader's convenience. ED does not control or guarantee the accuracy, relevance, timeliness, or completeness of this outside information. This document does not constitute legal advice, create legal obligations, or impose new requirements.

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## **Student Transitions**

### **1. How do schools find out that a student will transition?**

Typically, the student or the student's parent or guardian will tell the school and ask that the school start treating the student in a manner consistent with the student's gender identity. Some students transition over a school break, such as summer break. Other students may undergo a gender transition during the school year, and may ask (or their parents may ask on their behalf) teachers and other school employees to respect their identity as they begin expressing their gender identity, which may include changes to their dress and appearance. Some school district or state policies address how a student or parent might provide the relevant notice to the school.

- Alaska's Matanuska-Susitna Borough School District issued guidelines ("Mat-Su Borough Guidelines") advising that transgender students or their parents or guardians should contact the building administrator or the student's guidance counselor to schedule a meeting to develop a plan to address the student's particular circumstances and needs.
- The guidelines issued by Washington's Superintendent of Public Instruction ("Washington State Guidelines") offer an example of a student who first attended school as a boy and, about midway through a school year, she and her family decided that she would transition and begin presenting as a girl. She prefers to dress in stereotypically feminine attire such as dresses and skirts. Although she is growing her hair out and consistently presents as female at school, her hair is still in a rather short, typically boyish haircut. The student, her parents, and school administrators asked her friends and teachers to use female pronouns to address her.

### **2. How do schools confirm a student's gender identity?**

Schools generally rely on students' (or in the case of younger students, their parents' or guardians') expression of their gender identity. Although schools sometimes request some form of confirmation, they generally accept the student's asserted gender identity. Some schools offer additional guidance on this issue.

- Los Angeles Unified School District issued a policy ("LAUSD Policy") noting that "[t]here is no medical or mental health diagnosis or treatment threshold that

students must meet in order to have their gender identity recognized and respected” and that evidence may include an expressed desire to be consistently recognized by their gender identity.

- The New York State Education Department issued guidance (“NYSED Guidance”) recommending that “schools accept a student’s assertion of his/her/their own gender identity” and provides examples of ways to confirm the assertion, such as a statement from the student or a letter from an adult familiar with the student’s situation. The same guidance also offers the following example: “In one middle school, a student explained to her guidance counselor that she was a transgender girl who had heretofore only been able to express her female gender identity while at home. The stress associated with having to hide her female gender identity by presenting as male at school was having a negative impact on her mental health, as well as on her academic performance. The student and her parents asked if it would be okay if she expressed her female gender identity at school. The guidance counselor responded favorably to the request. The fact that the student presented no documentation to support her gender identity was not a concern since the school had no reason to believe the request was based on anything other than a sincerely held belief that she had a female gender identity.”
- Alaska’s Anchorage School District developed administrative guidelines (“Anchorage Administrative Guidelines”) noting that being transgender “involves more than a casual declaration of gender identity or expression but does not require proof of a formal evaluation and diagnosis. Since individual circumstances, needs, programs, facilities and resources may differ; administrators and school staff are expected to consider the needs of the individual on a case-by-case basis.”

### **3. How do schools communicate with the parents of younger students compared to older transgender students?**

Parents are often the first to initiate a conversation with the school when their child is transgender, particularly when younger children are involved. Parents may play less of a role in an older student’s transition. Some school policies recommend, with regard to an older student, that school staff consult with the student before reaching out to the student’s parents.

- The District of Columbia Public Schools issued guidance (“DCPS Guidance”) noting that “students may choose to have their parents participate in the transition process, but parental participation is not required.” The guidance further

recommends different developmentally appropriate protocols depending on grade level. The DCPS Guidance suggests that the school work with a young student's family to identify appropriate steps to support the student, but recommends working closely with older students prior to notification of family. The guidance also provides a model planning document with key issues to discuss with the student or the student's family.

- Similarly, the Massachusetts Department of Elementary and Secondary Education issued guidance ("Massachusetts Guidance") that notes: "Some transgender and gender nonconforming students are not openly so at home for reasons such as safety concerns or lack of acceptance. School personnel should speak with the student first before discussing a student's gender nonconformity or transgender status with the student's parent or guardian. For the same reasons, school personnel should discuss with the student how the school should refer to the student, *e.g.*, appropriate pronoun use, in written communication to the student's parent or guardian."
- Chicago Public Schools' guidelines ("Chicago Guidelines") provide: "When speaking with other staff members, parents, guardians, or third parties, school staff should not disclose a student's preferred name, pronoun, or other confidential information pertaining to the student's transgender or gender nonconforming status without the student's permission, unless authorized to do so by the Law Department."
- Oregon's Department of Education issued guidance stating, "In a case where a student is not yet able to self-advocate, the request to respect and affirm a student's identity will likely come from the student's parent. However, in other cases, transgender students may not want their parents to know about their transgender identity. These situations should be addressed on a case-by-case basis and school districts should balance the goal of supporting the student with the requirement that parents be kept informed about their children. The paramount consideration in such situations should be the health and safety of the student, while also making sure that the student's gender identity is affirmed in a manner that maintains privacy and confidentiality."

## Privacy, Confidentiality, and Student Records

### **4. How do schools protect a transgender student's privacy regarding the student's transgender status?**

There are a number of ways schools protect transgender students' interests in keeping their transgender status private, including taking steps to prepare staff to consistently use the appropriate name and pronouns. Using transgender students' birth names or pronouns that do not match their gender identity risks disclosing a student's transgender status. Some state and school district policies also address how federal and state privacy laws apply to transgender students and how to keep information about a student's transgender status confidential.

- California's El Rancho Unified School District issued a regulation ("El Rancho Regulation") that provides that students have the right to openly discuss and express their gender identity, but also reminds school personnel to be "mindful of the confidentiality and privacy rights of [transgender] students when contacting parents/legal guardians so as not to reveal, imply, or refer to a student's actual or perceived sexual orientation, gender identity, or gender expression."
- The Chicago Guidelines provide that the school should convene an administrative support team to work with transgender students and/or their parents or guardians to address each student's individual needs and supports. To protect the student's privacy, this team is limited to "the school principal, the student, individuals the student identifies as trusted adults, and individuals the principal determines may have a legitimate interest in the safety and healthy development of the student."
- The Mat-Su Borough Guidelines state: "In some cases, a student may want school staff and students to know, and in other cases the student may not want this information to be widely known. School staff should take care to follow the student's plan and not to inadvertently disclose information that is intended to be kept private or that is protected from disclosure (such as confidential medical information)."
- The Massachusetts Guidance advises schools "to collect or maintain information about students' gender only when necessary" and offers an example: "One school reviewed the documentation requests it sent out to families and noticed that field trip permission forms included a line to fill in indicating the student's gender. Upon consideration, the school determined that the requested information was irrelevant to the field trip activities and deleted the line with the gender marker request."

**5. How do schools ensure that a transgender student is called by the appropriate name and pronouns?**

One of the first issues that school officials may address when a student notifies them of a gender transition is determining which name and pronouns the student prefers. Some schools have adopted policies to prepare all school staff and students to use a student's newly adopted name, if any, and pronouns that are consistent with a student's gender identity.

- A regulation issued by Nevada's Washoe County School District ("Washoe County Regulation") provides that: "Students have the right to be addressed by the names and pronouns that correspond to their gender identity. Using the student's preferred name and pronoun promotes the safety and wellbeing of the student. When possible, the requested name shall be included in the District's electronic database in addition to the student's legal name, in order to inform faculty and staff of the name and pronoun to use when addressing the student."
- A procedure issued by Kansas City Public Schools in Missouri ("Kansas City Procedure") notes that: "The intentional or persistent refusal to respect the gender identity of an employee or student after notification of the preferred pronoun/name used by the employee or student is a violation of this procedure."
- The NYSED Guidance provides: "As with most other issues involved with creating a safe and supportive environment for transgender students, the best course is to engage the student, and possibly the parent, with respect to name and pronoun use, and agree on a plan to reflect the individual needs of each student to initiate that name and pronoun use within the school. The plan also could include when and how this is communicated to students and their parents."
- The DCPS Guidance includes a school planning guide for principals to review with transgender students as they plan how to ensure the school environment is safe and supportive. The school planning guide allows the student to identify the student's gender identity and preferred name, key contacts at home and at school, as well as develop plans for access to restrooms, locker rooms, and other school activities.

## 6. How do schools handle requests to change the name or sex designation on a student's records?

Some transgender students may legally change their names. However, transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to financial limitations or legal restrictions imposed by state or local law). Some school district policies specify that they will use the name a student identifies as consistent with the student's gender identity regardless of whether the student has completed a legal name change.

- The NYSED Guidance provides that school records, including attendance records, transcripts, and Individualized Education Programs, be updated with the student's chosen name and offers an example: "One school administrator dealt with information in the student's file by starting a new file with the student's chosen name, entered previous academic records under the student's chosen name, and created a separate, confidential folder that contained the student's past information and birth name."
- The DCPS Guidance notes: "A court-ordered name or gender change is not required, and the student does not need to change their official records. If a student wishes to go by another name, the school's registrar can enter that name into the 'Preferred First' name field of [the school's] database."
- The Kansas City Procedure recognizes that there are certain situations where school staff or administrators may need to report a transgender student's legal name or gender. The procedure notes that in these situations, "school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information."
- The Chicago Guidelines state: "Students are not required to obtain a court order and/or gender change or to change their official records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity."
- The Massachusetts Guidance also addresses requests to amend records after graduation: "Transgender students who transition after having completed high school may ask their previous schools to amend school records or a diploma or transcript that include the student's birth name and gender. When requested, and when satisfied with the gender identity information provided, schools should amend the student's record."

## Sex-Segregated Activities and Facilities

### **7. How do schools ensure transgender students have access to facilities consistent with their gender identity?**

Schools often segregate restrooms and locker rooms by sex, but some schools have policies that students must be permitted to access facilities consistent with their gender identity and not be required to use facilities inconsistent with their gender identity or alternative facilities.

- The Washington State Guidelines provide: “School districts should allow students to use the restroom that is consistent with their gender identity consistently asserted at school.” In addition, no student “should be required to use an alternative restroom because they are transgender or gender nonconforming.”
- The Washoe County Regulation provides: “Students shall have access to use facilities that correspond to their gender identity as expressed by the student and asserted at school, irrespective of the gender listed on the student’s records, including but not limited to locker rooms.”
- The Anchorage Administrative Guidelines emphasize the following provision: “However, staff should not require a transgender or gender nonconforming student/employee to use a separate, nonintegrated space unless requested by the individual student/employee.”

### **8. How do schools protect the privacy rights of all students in restrooms or locker rooms?**

Many students seek additional privacy in school restrooms and locker rooms. Some schools have provided students increased privacy by making adjustments to sex-segregated facilities or providing all students with access to alternative facilities.

- The Washington State Guidelines provide that any student who wants increased privacy should be provided access to an alternative restroom or changing area. The guidelines explain: “This allows students who may feel uncomfortable sharing the facility with the transgender student(s) the option to make use of a separate restroom and have their concerns addressed without stigmatizing any individual student.”

- The NYSED Guidance gives an example of accommodating all students' interest in privacy: "In one high school, a transgender female student was given access to the female changing facility, but the student was uncomfortable using the female changing facility with other female students because there were no private changing areas within the facility. The principal examined the changing facility and determined that curtains could easily be put up along one side of a row of benches near the group lockers, providing private changing areas for any students who wished to use them. After the school put up the curtains, the student was comfortable using the changing facility."
- Atherton High School, in Jefferson County, Kentucky, issued a policy that offers examples of accommodations to address any student's request for increased privacy: "use of a private area within the public area of the locker room facility (e.g. nearby restroom stall with a door or an area separated by a curtain); use of a nearby private area (e.g. nearby restroom); or a separate changing schedule."
- The DCPS Guidance recommends talking to students to come up with an acceptable solution: "Ultimately, if a student expresses discomfort to any member of the school staff, that staff member should review these options with the student and ask the student permission to engage the school LGBTQ liaison or another designated ally in the building."

**9. How do schools ensure transgender students have the opportunity to participate in physical education and athletics consistent with their gender identity?**

Some school policies explain the procedures for establishing transgender students' eligibility to participate in athletics consistent with their gender identity. Many of those policies refer to procedures established by state athletics leagues or associations.

- The NYSED Guidance explains that "physical education is a required part of the curriculum and an important part of many students' lives. Most physical education classes in New York's schools are coed, so the gender identity of students should not be an issue with respect to these classes. Where there are sex-segregated classes, students should be allowed to participate in a manner consistent with their gender identity."
- The LAUSD Policy provides that "participation in competitive athletics, intramural sports, athletic teams, competitions, and contact sports shall be facilitated in a



manner consistent with the student's gender identity asserted at school and in accordance with the California Interscholastic Federation bylaws." The California Interscholastic Federation establishes a panel of professionals, including at least one person with training or expertise in gender identity health care or advocacy, to make eligibility decisions.

- The Rhode Island Interscholastic League's policy states that all students should have the opportunity to participate in athletics consistent with their gender identity, regardless of the gender listed on school records. The policy provides that the league will base its eligibility determination on the student's current transcript and school registration information, documentation of the student's consistent gender identification (*e.g.*, affirmed written statements from student, parent/guardian, or health care provider), and any other pertinent information.

#### **10. How do schools treat transgender students when they participate in field trips and athletic trips that require overnight accommodations?**

Schools often separate students by sex when providing overnight accommodations. Some school policies provide that students must be treated consistent with their gender identity in making such assignments.

- Colorado's Boulder Valley School District issued guidelines ("Boulder Valley Guidelines") providing that when a school plans overnight accommodations for a transgender student, it should consider "the goals of maximizing the student's social integration and equal opportunity to participate in overnight activity and athletic trips, ensuring the [transgender] student's safety and comfort, and minimizing stigmatization of the student."
- The Chicago Guidelines remind school staff: "In no case should a transgender student be denied the right to participate in an overnight field trip because of the student's transgender status."

## **Additional Practices to Support Transgender Students**

### **11. What can schools do to make transgender students comfortable in the classroom?**

Classroom practices that do not distinguish or differentiate students based on their gender are the most inclusive for all students, including transgender students.

- The DCPS Guidance suggests that “[w]herever arbitrary gender dividers can be avoided, they should be eliminated.”
- The Massachusetts Guidance states that “[a]s a general matter, schools should evaluate all gender-based policies, rules, and practices and maintain only those that have a clear and sound pedagogical purpose.”
- Minneapolis Public Schools issued a policy providing that students generally should not be grouped on the basis of sex for the purpose of instruction or study, but rather on bases such as student proficiency in the area of study, student interests, or educational needs for acceleration or enrichment.
- The Maryland State Department of Education issued guidelines that include an example of eliminating gender-based sorting of students: “Old Practice: boys line up over here.” New Practice: birthdays between January and June; everybody who is wearing something green, etc.”

### **12. How do school dress codes apply to transgender students?**

Dress codes that apply the same requirements regardless of gender are the most inclusive for all students and avoid unnecessarily reinforcing sex stereotypes. To the extent a school has a dress code that applies different standards to male and female students, some schools have policies that allow transgender students to dress consistent with their gender identity.

- Wisconsin’s Shorewood School District issued guidelines (“Shorewood Guidelines”) that allow students to dress in accordance with their gender identity and remind school personnel that they must not enforce a dress code more strictly against transgender and gender nonconforming students than other students.
- The Washington State Guidelines encourage school districts to adopt gender-neutral dress codes that do not restrict a student’s clothing choices on the basis of gender: “Dress codes should be based on educationally relevant considerations, apply

consistently to all students, include consistent discipline for violations, and make reasonable accommodations when the situation requires an exception.”

### **13. How do schools address bullying and harassment of transgender students?**

Unfortunately, bullying and harassment continue to be a problem facing many students, and transgender students are no exception. Some schools make clear in their nondiscrimination statements that prohibited sex discrimination includes discrimination based on gender identity and expression. Their policies also address this issue.

- The NYSED Guidance stresses the importance of protecting students from bullying and harassment because “[the] high rates experienced by transgender students correspond to adverse health and educational consequences,” including higher rates of absenteeism, lower academic achievement, and stunted educational aspirations.
- The Shorewood Guidelines specify that harassment based on a student’s actual or perceived transgender status or gender nonconformity is prohibited and notes that these complaints are to be handled in the same manner as other discrimination, harassment, and bullying complaints.
- The DCPS Guidance provides examples of prohibited harassment that transgender students sometimes experience, including misusing an individual’s preferred name or pronouns on purpose, asking personal questions about a person’s body or gender transition, and disclosing private information.

### **14. How do school psychologists, school counselors, school nurses, and school social workers support transgender students?**

School counselors can help transgender students who may experience mental health disorders such as depression, anxiety, and posttraumatic stress. Mental health staff may also consult with school administrators to create inclusive policies, programs, and practices that prevent bullying and harassment and ensure classrooms and schools are safe, healthy, and supportive places where all students, including transgender students, are respected and can express themselves. Schools will be in a better position to support transgender students if they communicate to all students that resources are available, and that they are competent to provide support and services to any student who has questions related to gender identity.

- The NYSED Guidance suggests that counselors can serve as a point of contact for transgender students who seek to take initial steps to assert their gender identity in school.
- The Chicago Guidelines convene a student administrative support team to determine the appropriate supports for transgender students. The team consists of the school principal, the student, adults that the student trusts, and individuals the principal determines may have a legitimate interest in the safety and healthy development of the student.

**15. How do schools foster respect for transgender students among members of the broader school community?**

Developing a clear policy explaining how to support transgender students can help communicate the importance the school places on creating a safe, healthy, and nondiscriminatory school climate for all students. Schools can do this by providing educational programs aimed at staff, students, families, and other community members.

- The Massachusetts Guidance informs superintendents and principals that they “need to review existing policies, handbooks, and other written materials to ensure they are updated to reflect the inclusion of gender identity in the student antidiscrimination law, and may wish to inform all members of the school community, including school personnel, students, and families of the recent change to state law and its implications for school policy and practice. This could take the form of a letter that states the school’s commitment to being a supportive, inclusive environment for all students.”
- The NYSED Guidance states that “school districts are encouraged to provide this guidance document and other resources, such as trainings and information sessions, to the school community including, but not limited to, parents, students, staff and residents.”

**16. What topics do schools address when training staff on issues related to transgender students?**

Schools can reinforce commitments to providing safe, healthy, and nondiscriminatory school climates by training all school personnel about appropriate and respectful treatment of all students, including transgender students.

- The Massachusetts Guidance suggests including the following topics in faculty and staff training “key terms related to gender identity and expression; the development of gender identity; the experiences of transgender and other gender nonconforming students; risks and resilience data regarding transgender and gender nonconforming students; ways to support transgender students and to improve school climate for gender nonconforming students; [and] gender-neutral language and practices.”
- The El Rancho Regulation states that the superintendent or designee “shall provide to employees, volunteers, and parents/guardians training and information regarding the district’s nondiscrimination policy; what constitutes prohibited discrimination, harassment, intimidation, or bullying; how and to whom a report of an incident should be made; and how to guard against segregating or stereotyping students when providing instruction, guidance, supervision, or other services to them. Such training and information shall include guidelines for addressing issues related to transgender and gender-nonconforming students.”

**17. How do schools respond to complaints about the way transgender students are treated?**

School policies often provide that complaints from transgender students be handled under the same policy used to resolve other complaints of discrimination or harassment.

- The Boulder Valley Guidelines provide that “complaints alleging discrimination or harassment based on a person’s actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination or harassment complaints.”
- The Anchorage Administrative Guidelines provide that “students may also use the Student Grievance Process to address any civil rights issue, including transgender issues at school.”

## Terminology

### **18. What terms are defined in current school policies on transgender students?**

Understanding the needs of transgender students includes understanding relevant terminology. Most school policies define commonly used terms to assist schools in understanding key concepts relevant to transgender students. The list below is not exhaustive, and only includes examples of some of the most common terms that school policies define.

- *Gender identity* refers to a person’s deeply felt internal sense of being male or female, regardless of their sex assigned at birth. (Washington State Guidelines)
- *Sex assigned at birth* refers to the sex designation, usually “male” or “female,” assigned to a person when they are born. (NYSED Guidance)
- *Gender expression* refers to the manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice or mannerisms. (Washoe County Regulation)
- *Transgender* or *trans* describes a person whose gender identity does not correspond to their assigned sex at birth. (Massachusetts Guidance)
- *Gender transition* refers to the process in which a person goes from living and identifying as one gender to living and identifying as another. (Washoe County Regulation)
- *Cisgender* describes a person whose gender identity corresponds to their assigned sex at birth. (NYSED Guidance)
- *Gender nonconforming* describes people whose gender expression differs from stereotypic expectations. The terms *gender variant* or *gender atypical* are also used. Gender nonconforming individuals may identify as male, female, some combination of both, or neither. (NYSED Guidance)
- *Intersex* describes individuals born with chromosomes, hormones, genitalia and/or other sex characteristics that are not exclusively male or female as defined by the medical establishment in our society. (DCPS Guidance)
- *LGBTQ* is an acronym that stands for “lesbian, gay, bisexual, transgender, and queer/questioning.” (LAUSD Policy)

- *Sexual orientation* refers to a person’s emotional and sexual attraction to another person based on the gender of the other person. Common terms used to describe sexual orientation include, but are not limited to, heterosexual, lesbian, gay, and bisexual. Sexual orientation and gender identity are different. (LAUSD Policy)

**19. How do schools account for individual preferences and the diverse ways that students describe and express their gender?**

Some students may use different terms to identify themselves or describe their situations. For example, a transgender male student may identify simply as male, consistent with his gender identity. The same principles apply even if students use different terms. Some school policies directly address this question and provide additional guidance.

- The Washington State Guidelines recognize how “terminology can differ based on religion, language, race, ethnicity, age, culture and many other factors.”
- Washington’s Federal Way School District issued a resource guide that states: “Keep in mind that the meaning of gender conformity can vary from culture to culture, so these may not translate exactly to Western ideas of what it means to be transgender. Some of these identities include Hijra (South Asia), Fa’afafine (Samoa), Kathoey (Thailand), Travesti (South America), and Two-Spirit (Native American/First Nations).”
- The Washoe County Regulation, responding to cultural diversity within the state, offers examples of “ways in which transgender and gender nonconforming youth describe their lives and gendered experiences: trans, transsexual, transgender, male-to-female (MTF), female-to-male (FTM), bi-gender, two-spirit, trans man, and trans woman.”
- The DCPS Guidance provides this advice to staff: “If you are unsure about a student’s preferred name or pronouns, it is appropriate to privately and tactfully ask the student what they prefer to be called. Additionally, when speaking about a student it is rarely necessary to label them as being transgender, as they should be treated the same as the rest of their peers.”

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## Select Federal Resources on Transgender Students

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[foxnews.com](http://foxnews.com)

## **NC Gov. McCrory says he'll answer Justice ultimatum on transgender bathroom issue by Monday deadline | Fox News**

North Carolina Gov. Pat McCrory said Sunday that he will comply with the Justice Department's Monday deadline to either scrap the state's transgender bathroom law or face legal action and risk losing federal funds.

"I'll make a decision in 24 hours," the Republican governor told "Fox News Sunday."

However, McCrory would not say what his decision will be when repeatedly pressed for an answer, saying only that he's exploring "all legal options."

One option would likely be a court challenge.

The state law requires transgender people to use bathrooms that correspond with the sex on their birth certificate. The Justice Department says that's against the federal law.

McCrory says the North Carolina law applies only to government offices, universities and road-side rest stops, not every bathroom in the state.

The Justice Department sent McCrory a letter Wednesday stating that the law violates federal civil rights laws.

The governor also said he asked the department for an extension and was given only until the close of business Monday.

"I don't think that three working days is enough time for such a pretty big threat," he told Fox News. "It's the federal government being a bully, making law."

McCrory also said he doesn't have the legal authority to change laws and that the expectation that he can is "unrealistic."

McCrory, who signed the bill into law in March, said last week that the department seems to be breaking new ground in claiming the North Carolina law violates Civil Rights Act protections against discrimination in education and the workplace.

And he said the administration's warning means the issue is no longer confined to North Carolina and could impact other states.

“This is not just North Carolina,” said McCrory, arguing that every university that accepts federal funding is now in the same situation as those in his state.

Meanwhile, the administration is expected to soon take the bathroom issue further, to ensure that transgender student rights are fully protected under federal law, according to Politico. The move reportedly would be related to a federal law that prohibits sex-based discrimination in federally funded education programs and activities, and multiple agencies are expected to be involved.

*The Associated Press contributed to this report.*

# EXHIBIT 32

Paige Dula Declaration

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
STATE OF NORTH CAROLINA;	)	Case No. 1:16-cv-00425-TDS-JEP
PATRICK MCCRORY, in his official	)	
capacity as	)	
Governor of North Carolina; NORTH	)	
CAROLINA DEPARTMENT OF PUBLIC	)	
SAFETY; UNIVERSITY OF NORTH	)	
CAROLINA; and BOARD OF	)	
GOVERNORS	)	
OF THE UNIVERSITY OF NORTH	)	
CAROLINA,	)	
	)	
Defendants.	)	

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**DECLARATION OF STEPHANIE PAIGE DULA**

I, Stephanie Paige Dula, declare the following:

1. My name is Stephanie Paige Dula.
2. I was born in North Carolina and have lived here my entire life. I love North Carolina. I am over the age of 18.
3. I am currently employed as a technical lead at a Fortune 500 financial institution headquartered in North Carolina.
4. I am a woman.
5. I am transgender. I was assigned the sex of male at birth, but that does not match my gender identity. My gender identity – my deeply held personal sense of who I am – is female. I have known that I am female since I was a young child when I felt different than boys. As a teenager, I saw a documentary about a transgender woman and that was the first time I



knew that there were other people like me and that transition was possible. My preferred pronouns are she/her.

6. I have been living full-time as a woman since 2008 and have not used a men's bathroom since 2008. I struggled for years because I was assigned the gender of male at birth. It caused me great anxiety. During that time I suffered from depression, which led to suicidal thoughts and insomnia, both of which improved after my transition.

7. Prior to my transition in 2008, I worked for a company where I had worked for seven years. Upon informing the company of my intention to transition from male to female, I was not permitted to use the women's bathroom until I had surgery. Initially, I was told that I must use a single-stall bathroom in the basement of the building. When that bathroom was demolished in order to be re-built, I was required to use a single-stall bathroom designated for the company president four floors up from where I worked. This required me to walk past all of the vice presidential offices to the president's private bathroom, drawing attention to me every time I needed to use the bathroom. At this time I was under hormone therapy, which is a diuretic, and it increased the frequency with which I needed to urinate. Having to use a separate bathroom made me feel ostracized, isolated, and not a part of the team. I felt like an "other." I felt that I was scrutinized by others to see whether I was using the appropriate bathroom. Because I was not permitted to use the women's bathroom, I tried to plan my breaks, including lunch, so that I could go to a private restaurant across the street in order to use their bathroom. This period in my life was the most lonely I have ever felt. I ended up leaving this company because of how I was treated simply because I wanted to live my life as the woman I know I am.

8. My current employer allows its employees to use the bathrooms that match their gender identity. From my first day on the job, I used the women's bathroom. I felt the biggest

load fall off of my shoulders and I felt liberated and relieved to finally be able to fully live as myself and stop putting on an act. I no longer had to pretend to be someone I am not. I felt awesome. Up until H.B. 2 was enacted, I no longer suffered from anxiety, depression, or insomnia.

9. Unfortunately, since H.B. 2 was enacted, my anxiety and insomnia have returned. I am now intending to start using Xanax again because of my anxiety which I have not had to take for years. I have started carrying a copy of my birth certificate with me to prove that I am allowed to use the women's bathroom. Prior to H.B. 2, I never carried my birth certificate with me. This makes me feel demeaned to have to carry my birth certificate to use a public bathroom. Even though H.B. 2 does not prohibit me from using the women's bathroom because I have changed my birth certificate, I am scared that someone will harass me for being in the women's bathroom if they think I am transgender.

10. I have begun planning my day to make sure I use the restroom at work or at home where I feel safe and avoid using any public restrooms. I never did this prior to H.B. 2. My wife works for a county government in a county government building covered by H.B. 2. When I am in public, I try to find family bathrooms because I now worry about using the women's bathroom for fear of harassment. I have noticed that many private businesses believe that H.B. 2 applies to them, so no matter where I go outside of work or home, I always have to think about whether I can safely use the bathroom when I can no longer hold it. Over Memorial Day weekend, I went to the beach and was worried that if I needed to stop to use the bathroom I would need to use a public bathroom. I am worried that people will know I am transgender and won't understand that I am a woman.

11. H.B. 2 has also brought back anxieties from when I was previously harassed for being transgender. Once, on my way to a transgender support group, I stopped at a rest stop in North Carolina to use the women's bathroom. On my way in, I passed a small group of women who were leaving the bathroom. I was the only person in the bathroom. While I was in the bathroom, I heard a man near the door say, "When it comes out, we're going to beat the shit out of it." I ran out the back entrance to my car to avoid being assaulted. I was terrified by this incident.

12. In another instance, I was walking through a mall when a couple of young men began chasing me, calling me "faggot" and "queer." I ran into a women's restroom to hide and stayed there for over an hour waiting for them to leave. Again I was terrified by this incident. It also made me feel like a targeted victim, and made me fear that I would never be recognized as a woman.

13. Although those incidents happened long before H.B. 2, and I have not experienced any similar incidents since my full-time transition, I fear the law might embolden people who already harbor animosity against the LGBT community, especially because I know other transgender people who have experienced stressful incidents in using public bathrooms since H.B. 2 was enacted. For example, a couple of months ago, after a transgender woman friend of mine used the women's bathroom in a convenience store near Raleigh, a sheriff's deputy told her that she should not have been in the women's bathroom and that she needed to leave. He then proceeded to follow her car down the road for several minutes until she left the county that she was in. After H.B. 2 and the recent attack at an LGBT nightclub in Orlando, FL, I am afraid to participate in LGBT events, like the June Pride events. Although I have regularly attended these events in the past, I do not plan to attend this year. I worry that some of the

language our elected officials use to defend H.B. 2 encourages violence against the LGBT community. I am a member of an LGBT support group. Since the enactment of H.B. 2, the other support group members and I are afraid to walk by ourselves and make an effort to go out in groups instead of by ourselves because there is more safety in numbers.

14. I loved living in North Carolina before H.B. 2 and have been here all my life. I love my current job and would not want to leave it, but I am considering moving out of the state if the law does not change.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2016



Stephanie Paige Dula

# EXHIBIT 33

D.B.S. Declaration

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
STATE OF NORTH CAROLINA; )  
PATRICK MCCRORY, in his official )  
capacity as )  
Governor of North Carolina; NORTH )  
CAROLINA DEPARTMENT OF PUBLIC )  
SAFETY; UNIVERSITY OF NORTH )  
CAROLINA; and BOARD OF )  
GOVERNORS )  
OF THE UNIVERSITY OF NORTH )  
CAROLINA, )  
)  
Defendants. )

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Case No. 1:16-cv-00425-TDS-JEP

**DECLARATION OF D.S.B.**

I, D.S.B., declare the following:

1. I am a resident of both North Carolina and New Jersey. I am an adult over the age of 18.
2. I am a licensed psychologist and run a support group for transgender individuals which meets every other week in North Carolina.
3. There are approximately 20 transgender individuals who come to this support group, 12 of whom come regularly and all of whom are residents of North Carolina. Both transgender men and women attend the support group. College students and employees have attended the sessions. The students have attended both public and private institutions in North Carolina. And the employees are of varying ages and work in a variety of industries.

4. Since H.B.2 became law, members of the support group expressed during the sessions numerous concerns regarding their safety and anxiety related to H.B.2. The concerns raised are generally set forth in this declaration.

5. One of my clients attended a state university and lived on campus this past year. He expressed that as a result of H.B.2 and the response to the law by the University of North Carolina, he withdrew from the university and instead will enroll in a community college where he will not live on campus and will be able to use a bathroom at home when he is not in school. He expressed concern of staying at the state university where he would be more vulnerable to harassment and was worried that he would not be permitted to access bathrooms consistent with his gender identity.

6. Another individual was not permitted to exercise his right and obligation to serve on jury duty as a result of H.B.2. After H.B.2 was passed, he was required to report for jury duty in a public building. Concerned about what bathroom he would be able to use in the public building, he called ahead of time to inquire about the bathrooms. When he told them he was transgender and inquired about the bathrooms he was told not to serve, not to come in, and excused from jury duty.

7. Since H.B.2, my clients are terrified of using any public bathroom. Many previously used public bathrooms consistent with their gender identity and are afraid to use those bathrooms in violation of the state law and for fear of harassment and danger. But they don't want to use a bathroom that is inconsistent with their gender identity because many of them already present themselves consistent with their gender identity. They do not feel safe using the bathroom which is consistent with their sex assigned at birth and different from how they present themselves. If they enter these bathrooms and no longer look like the gender of the designated

bathroom, they will “out” themselves as transgender to all those in the bathroom and to anyone who sees them enter or exit the bathroom. They fear they will be a target.

8. Many of my clients rely on an app on the phone which lists bathrooms that the transgender community has deemed, for any number of reasons, “safe” to use. However, my clients have expressed that they can’t always find a safe bathroom. In fact, one of my client’s couldn’t find a bathroom he felt safe using and urinated on himself in public because he couldn’t hold it any longer. He expressed that this made him feel totally humiliated by the experience. He also expressed that he felt like a criminal even though he hadn’t done anything wrong.

9. The participants in the group have expressed that they are afraid they will get arrested if they use a bathroom consistent with their gender identity and are afraid they may get charged with a sex offense crime if such an arrest is made.

10. I contacted the police to inquire about what charges would be brought against transgender individuals if caught in a bathroom in violation of H.B.2. The police would not give me a response regarding the possible charges and also did not provide any reassurance that transgender individuals would not be arrested and charged.

11. Several of my clients express fear that if they are arrested for using a public bathroom covered by H.B.2, it could affect their job and they could be fired.

12. As a result of H.B.2, the vast majority of my clients stopped using public restrooms unless they can find family restrooms or a handicap restroom. They also avoid going to state facilities because they don’t want there to be an issue.

13. Since H.B.2 became law, my clients are much more concerned about safety than they were previously. Several of my clients will no longer leave their homes to go out at night because they are too afraid of being attacked. They are literally terrified. Within the last two



weeks, one of my clients, a transgender man, attempted to use a male public restroom in North Carolina which he had been doing consistently for the past 6 months. Upon trying to enter the men's bathroom he was grabbed by the shoulders by a man and physically forced out of the bathroom. Shaken and scared, he then attempted to use a female public restroom in another location. He was then told he was in the wrong bathroom. He was prevented from using any public bathroom. Prior to H.B.2, he hadn't had any problems using public men's bathrooms.

14. This same individual had another incident occur since the enactment of H.B.2 and which he believes occurred because he is transgender. Upon his attempt to cross the street at a cross walk, a car which had been stopped, lurched forward as if to run him over. He was able to quickly get out of the way onto the curb and was able to avoid injury. He expressed that this did not appear to be accidental as the individuals in the car were staring right at him when the car lurched towards him. He, like the others in the support group, feels that H.B.2 has empowered those who harbor hate and animosity against transgender people to more freely act on their hatred.

15. My clients have expressed that they feel alienated, not protected, that they are not a part of society. They feel that H.B.2 has created an environment in which they are now seen as some sort of sexual pervert. H.B.2 has affected their self-esteem and self-worth. They have become a lot quieter. Some of them are in the process of transitioning and feel less willing to continue with their transition to present consistent with their gender identity because they are now hesitant to disclose their transgender status for fear of their safety. They are also concerned about their family's safety.

16. Some of my clients expressed fear about testifying at a city council meeting at which H.B.2 was discussed because they were required to disclose their residential addresses in

order to testify. They worried that they were endangering their family by disclosing their transgender status and their home addresses.

17. I personally witnessed the hatred and fear caused by H.B.2 which has seemed to spread even outside of North Carolina. After H.B.2 was enacted, I was out of the state and driving home to North Carolina and stopped at a gas station in Virginia to use a public bathroom. After I left the bathroom, I saw a small stature male walking toward the bathroom. A group of people outside the bathroom said, "I think that's one of them. That's one of them transsexuals." They said they were going to "beat the crap out of him." The man looked nervous and avoided using the bathroom altogether.

18. I also saw a Facebook post which displayed a building off the state highway in NC with signs on the restroom saying transgender people are not permitted in the building. It said, "no transgender" and below that it said "no dogs." My clients have seen this Facebook post as well. They expressed this made them feel afraid and outraged because this is a public setting on state property. They stated that the sign reminded them of the 1960s when black people were banned from certain public facilities.

19. I have submitted this declaration because I am very concerned about the effect of H.B.2 on my clients and transgender individuals in general.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2016

D.S.B.

# EXHIBIT 34

Alaina Kupec Declaration

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
STATE OF NORTH CAROLINA;	)	Case No. 1:16-cv-00425-TDS-JEP
PATRICK MCCRORY, in his official	)	
capacity as	)	
Governor of North Carolina; NORTH	)	
CAROLINA DEPARTMENT OF PUBLIC	)	
SAFETY; UNIVERSITY OF NORTH	)	
CAROLINA; and BOARD OF	)	
GOVERNORS	)	
OF THE UNIVERSITY OF NORTH	)	
CAROLINA,	)	
	)	
Defendants.	)	

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**DECLARATION OF ALAINA KUPEC**

I, Alaina Kupec, declare the following:

1. I am a resident of North Carolina.
2. I was born in Illinois and am over the age of 18.
3. I am employed as a District Business Director at a biopharmaceutical company. I work in both its North Carolina and Philadelphia offices.
4. I am a woman.
5. I am transgender. I was assigned the sex of male at birth but that does not match my gender identity. My gender identity – my deeply held personal sense of who I am – is female. My preferred pronouns are she/her.
6. I struggled for years because I was assigned the gender of male at birth. It caused me great anxiety and I suffered from depression, shame, and guilt. I began living full-time as a

woman in December 2012. At that time, I told my family, friends, and co-workers that I am female. When I began living full-time as a woman, I stopped using men's bathrooms and began exclusively using the women's bathroom. Once I started living full-time as a woman and using the women's bathrooms, I felt complete and that finally all parts of me matched. After a life of hiding myself, this was an indescribably wonderful feeling. I am not aware of any complaints from anyone regarding my use of the women's bathroom.

7. H.B. 2 has been emotionally crushing for me. I felt as if I climbed a mountain my entire life to gain acceptance of who I am. I recently had my birth certificate changed to list my gender as female. I changed the gender marker on my birth certificate in May 2016 because of H.B. 2's requirement that people use the bathroom consistent with the gender listed on their birth certificate. I would not have changed it otherwise. The process to change the gender marker on my birth certificate was burdensome, time-consuming, and confusing. It involved assistance from my doctor to submit paper work, travel to South Carolina to obtain court documents, and then further submission of documents to Illinois to complete the gender marker change. In addition to the burden, I felt humiliated to have to change my birth certificate in order to be able to use the women's bathroom. I would be horrified if I had to disclose that I am transgender in order to use a women's bathroom.

8. My company has a policy that allows transgender employees to use bathrooms and locker rooms consistent with their gender identity. I am not aware of any issues or complaints from other employees due to my use of the women's bathroom at work. It is gratifying that I am able to use the women's bathroom at work without any anxiety or problems. My workplace feels like a sanctuary because I can use the women's bathroom freely without giving it a second thought. Unlike at work, I am now anxious using public women's bathrooms

because of H.B. 2. I worry that someone will question whether I am transgender, make a scene to call me out publicly, and make a spectacle of me.

9. I travel frequently for work and I am in public airports for business travel three to four times per week. I continue to use the women's bathroom in the airports but am very conscious of my surroundings. I fear that someone could publicly identify me as transgender and call attention to me or physically threaten me. H.B. 2 has brought back anxieties from when I was previously harassed at an airport for being transgender. On one occasion in November 2012, I was rushing to make a flight at the Charlotte airport while I was presenting as a woman. My identification still showed my sex as male. After looking at my identification, the gate agent slammed the door in my face and repeatedly mis-gendered me after I asked him not to. It was humiliating and created a potentially dangerous situation for me, since I was outed as a transgender person in front of a crowd of people. I worried that other people there could gang up on me. H.B. 2 has brought back these painful memories and has taken an unbelievable emotional toll on me. H.B. 2 is degrading and dehumanizing since all I want is to live as the woman that I know I am.

10. Until April 2016, I belonged to a private gym in North Carolina. Since living full-time as a woman, I have used the women's locker room and I never had an issue or problem doing so. I was very discreet about where in the locker room I changed. The last thing that I wanted to do was to draw any attention to myself. I was very aware of my surroundings and being discreet. No one has ever complained to me about being in the women's locker room. No one has ever expressed any discomfort to me in being there. After H.B. 2 was enacted, I felt more anxiety about using the locker room at the gym because I feared that someone might question whether I am transgender and call attention to me. It was daunting to think about the

possibility of any confrontation which could lead to physical threats, especially at a gym that is filled with large men.

11. I am not able to use a men's bathroom or locker room today. It is degrading and emotionally crippling to even think about doing so.

12. My wife is an employee and student at the University of North Carolina. Two to three times per month, on average, I attend events at the university such as women's basketball games or theater performances. It is not clear to me what position UNC has taken on H.B. 2 as I have heard mixed messages from UNC, and I am unsure whether I may use the women's bathroom at UNC.

13. I have owned four lifetime seats to North Carolina State University football games for the past thirteen years, and have attended games with friends and family members during that time. I spent \$8,000 for the right to those seats for the rest of my life but, for the first time ever, I do not feel welcome or able to freely attend. I know that North Carolina State is covered by H.B. 2 and I am concerned about which bathroom I could use if I attend a game. I do not want to be in the position of choosing between breaking the law to use a bathroom consistent with my gender identity and using a family bathroom, which I feel would be humiliating because I would be singled out and treated differently than every other woman. I do not want to risk the possible confrontation of being publicly called out for being transgender and using the wrong bathroom. Because I do not feel comfortable attending games with H.B. 2 in place, I sold my tickets to a friend and am not planning on going to games this fall.

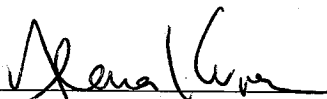
14. Because of H.B. 2, I no longer want to be in the state of North Carolina. I have been trying to stay out of the state as much as possible since H.B. 2 was passed. When I enter North Carolina after traveling outside of the state, it is anxiety-producing. I would like to move

out of North Carolina because of H.B. 2 and am trying to do so. I have applied for one position with my company that would be based outside of North Carolina and am preparing to apply for another position as well. I no longer feel welcome in the state of North Carolina. If H.B. 2 was repealed before I find another job and move out of North Carolina, I might reconsider to stay in the state because my children live nearby in South Carolina, and leaving them would be very difficult.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

July 1<sup>st</sup>, 2016

  
Alaina Kupec



# EXHIBIT 35

George Brown Declaration

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA;  
PATRICK MCCRORY, in his official  
capacity as Governor of North Carolina;  
NORTH CAROLINA DEPARTMENT  
OF PUBLIC SAFETY; UNIVERSITY  
OF NORTH CAROLINA; and BOARD OF  
GOVERNORS OF THE  
UNIVERSITY OF NORTH CAROLINA,

Defendants.

Case No. 1:16-cv-00425

**EXPERT DECLARATION OF GEORGE R. BROWN, MD, DFAPA**

**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. I am a Professor of Psychiatry and Associate Chairman of the Department of Psychiatry at East Tennessee State University in Johnson City, Tennessee. I am board certified in adult psychiatry. I was named a Fellow of the American Psychiatric Association in 1998 and a Distinguished Fellow in 2003. Additional information about my professional background, experience, and publications are detailed in my curriculum vitae, which is attached as Exhibit A to this declaration.

3. I have specialized training and expertise in the diagnosis and treatment of Gender Dysphoria, also known as Gender Identity Disorder. I have authored or coauthored 38 papers in peer-reviewed journals and 19 book chapters on topics related to Gender Dysphoria, including the chapter on Gender Dysphoria in *Treatments of Psychiatric Disorders* (3d ed. 2001), a definitive text on the diagnosis and treatment of psychiatric disorders published by the American Psychiatric Association.

4. I began seeing patients in 1983, and I have been a practicing psychiatrist since 1987. Over the last 33 years, I have evaluated, treated, and/or conducted research with between 600 and 1000 individuals with gender disorders in person, and over 5100 patients with Gender Dysphoria during the course of research-related chart reviews.

5. Since 1987, I have been extensively involved with the World Professional Association of Transgender Health (“WPATH”), an internationally recognized association of medical, surgical, and mental health professionals specializing in the evaluation and treatment of transgender and gender non-conforming people. With over 1000 members worldwide, WPATH is comprised of physicians, psychiatrists, psychologists, social workers, surgeons, and other health professionals who specialize in the diagnosis and treatment of Gender Dysphoria and other gender-related issues. I served on the Board of Directors of WPATH from 1993-1997, 2001-2007, and 2010-2014. I also served on the Executive Committee of WPATH as Secretary-Treasurer from 2007-2009.

6. In addition, I am a coauthor in the development and publication of WPATH’s *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7* (“Standards of Care” or “SOC”) (published in 2011 and currently in use), as I was in the previous two versions (Versions 5 and 6). I served as a member of WPATH’s

Standards of Care Revision Committee from 1990-1998 and have been Co-Chairman or a member of that committee from 2001 to present. The WPATH standards for the medical treatment of Gender Dysphoria represent the consensus of specialists in the field and have been recognized as the definitive standards by a number of jurisdictions in the United States and Canada.

7. My current responsibilities involve conducting the largest studies ever developed concerning the health of, and health disparities in, transgender / gender dysphoric people, as well as providing national training programs on transgender health care on a national basis in the Veterans Health Administration and for the Department of Defense.

8. In preparing this declaration, I relied on my scientific education and training, my research experience, my knowledge of the scientific literature in the pertinent fields (a non-exhaustive list of those references is included as Exhibit B to this document), and my 33 years of clinical experience in evaluating, treating, and conducting research with patients with Gender Dysphoria and other issues related to gender identity. I may wish to supplement these opinions or the bases for them as a result of new scientific research or publications or in response to statements and issues that may arise in my area of expertise.

9. I am being compensated at an hourly rate for actual time devoted, at the rate of \$500 per hour for any clinical services, review of records, or preparation of reports or declarations; \$600 per hour for deposition and trial testimony; \$2000 per half day for travel time (or otherwise); and \$4000 per full day 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.

## OPINIONS AND CONCLUSIONS

### DISCUSSION PART I – SCIENTIFIC UNDERSTANDING OF SEX

10. In most cases, the sex assigned at birth to newborns on their birth certificate is based solely on a cursory examination of their external genitalia. However, this method of assigning sex amounts to nothing more than a “best guess” of a child’s sex. At birth, sex can be recorded as only “male” or “female” and, as such, is an administrative binary terminology that does not take into account the complexity of human experience. “Sex” is much more complicated, as it involves biological constructs that may or may not be readily observed, and includes the important component of gender identity (Richardson, 2013).

11. A person’s “sex” is not exclusively or solely defined by one’s anatomy or ability to procreate as was often believed in the past (Ovesey & Person, 1973). “Biological sex” is a broad and complex concept that consists of a number of variables that includes gender identity, genital anatomy (internal and externally visible), secondary sexual characteristics, brain anatomy, hormonal levels in the brain and body, and chromosomal complement.

12. The American Psychological Association defines “sex” as “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).”

13. Primary sexual characteristics are a factor when determining a person’s sex. Genital anatomy, which includes both internal (not observable) and external (observable) components, is an example of a primary sexual characteristic. The appearance of the observable external genitalia is usually the sole basis for determining whether a baby’s sex is recorded on a birth certificate as either “male” or “female.” As a general category, however, primary sexual characteristics include those features that are not subject to the hormonal changes associated with

puberty: *e.g.*, testes, prostate, seminal vesicles, penis, ovaries, vagina, uterus, fallopian tubes, clitoris, and labia.

14. Secondary sexual characteristics are yet another factor in determining a person's sex. Secondary sexual characteristics are those physical features that develop under the influence of rising levels of sex steroid hormones beginning at puberty. Examples include breasts in women; "Adam's Apple" (enlargement of the front part of the laryngeal cartilage) in men; facial hair in men; widening of the pelvis in women; deepening of the voice in men; and hip-to-waist measurement ratios that are higher in adult females, on average, compared to adult males. The development of secondary sexual characteristics is dependent on production of adequate amounts of estrogens in females and testosterone in males.

15. Brain anatomy is another determinant of a person's sex. As discussed in greater detail below, many areas of the brain are different between males and females ("sexually dimorphic" areas of the brain) due to genetics and the amounts of sex steroid hormones present in the developing fetal brain (from any source, including from the woman carrying the fetus).

16. The relative levels of the hormones estrogen and testosterone (and their metabolites, or what is left after they are processed by the body) present in the brain and body are also factors that determine a person's sex. Both the brain and the body have receptors for estrogen and testosterone, which means that the brain and various organs in the body are changed by the presence, or absence, of these two major hormone classes. For example, both testosterone and estrogen are present in all people, but the relative amount of estrogen compared to testosterone is typically far, far higher in female bodies than in male bodies, whereas the amount of testosterone is typically far greater in male bodies than in female bodies.

17. Variability in the amount of these sex hormones, both before and after birth, can have major consequences on the primary and secondary sexual characteristics and the gender identity of people with these variances. Defects in prenatal sex hormone production can result in ambiguously appearing genitalia at birth, or misassignment of sex at birth (MacGillivray and Mazur 2005). For example, babies with much higher levels of androgens early in life (*e.g.*, congenital adrenal hyperplasia, a genetic absence of an important sex steroid enzyme) may appear to have male genitalia at birth even though they have typically female chromosomes (46XX; see below) and a female gender identity. There are many such conditions, which collectively are referred to as “intersex” conditions, disorders of sex development, or “atypical sexual development” (Mazur et al., 2007).

18. Chromosomes are also a determinant of sex. Typically, most people have 46 total chromosomes, two of which are “sex chromosomes” known as X and Y. Babies assigned the female sex at birth based on the appearance of external genitalia typically have a 46XX pattern; likewise, babies assigned the male sex at birth based on the appearance of their external genitalia typically have a 46XY pattern. Uncommonly (but not rarely), there are genetic abnormalities in the fertilized egg that lead to chromosome patterns that are different from either 46XX or 46XY. Examples are numerous and can be found in Mazur et al., 2007. Classic examples include Turner’s Syndrome, estimated at 1:2500 live births (46XO, where one sex chromosome is missing), and Klinefelter’s Syndrome, where extra chromosomes are present (for example, 47XXY, 48XXYY). This nonheritable genetic abnormality is present in 1:600 live births (Nielsen and Wohlert, 1991).

19. Some, but not all, disorders of the sex chromosomes are associated with atypical sexual organ appearance and higher rates of homosexuality, bisexuality, or asexuality (that is, little to no sexual attraction to anyone or interest in having sexual relations). Some people with disorders of the sex chromosomes, but not all, may have atypical gender identity and/or gender role development as well. The key point is that the presence of a typical 46XX or 46XY chromosome pattern is relevant for determining a person's sex, but not sufficient, in and of itself, to determine a person's sex (Richardson, 2013).

20. Gender identity is an internal sense of oneself as a particular gender, such as male or female. The American Psychiatric Association (APA) defines gender identity as a "category of social identity and refers to an individual's identification as male, female, or occasionally, some category other than male or female" (APA, Diagnostic and Statistical Manual of Mental Disorders (DSM-5), 2013 at 451). Everyone has a gender identity.

21. Gender identity is usually established early in life, by the age of two to three years old, and displays very little malleability over time for the vast majority of people (Stoller, 1968), especially after the onset of puberty. Children as young as one year old may display gender-specific behaviors readily recognizable as associated with the "opposite" sex (Zucker & Bradley, 1995, at 11).

22. From a medical perspective, gender identity is a critical determinant of a person's sex. From a social perspective (which is also relevant when considering the appropriate medical approach to these issues), the appropriate determinant of sex is gender identity, as that is the underlying basis for how one presents oneself to others in society in ways that typically communicate what sex one is in our culture.



23. The term “transgender” is a relatively recent term used as an umbrella concept for anyone who experiences any significant degree of “mismatch” between gender identity and physical anatomy. The term “transgender” is also used to describe people who have transitioned to living as a gender different from what they were assigned at birth (“birth-assigned sex”). “Transgender,” however, is not a medical or psychiatric diagnosis.

24. Although the precise etiology of such gender identity issues is unknown (Ettner, 2007; Lev, 2004), most experts agree that there is likely a biological, rather than a psychological, basis for gender identity in general, including transgender identity. Even those who espouse the idea that postnatal factors, such as familial interactions, play an important role in gender identity development suspect that biological factors play a role in “inducing a vulnerability that then allows the psychosocial factors within the family to exert their effect” (Bradley, 1985, at 175). The evidence for gender identity arising from strictly, or mostly, postnatal influences (such as family interactions, social factors, maternal/paternal rearing styles) is neither persuasive nor compelling; nor is the notion that being transgender is “a lifestyle choice.”

25. Much of the evidence in support of a biological basis for gender identity is based on comparison studies of the brains of transgender persons<sup>1</sup> using imaging techniques with live subjects or measurements taken post-mortem (after death). Such techniques were not possible a short time ago, but nonetheless, the concept of a “critical period effect” during fetal brain development was espoused decades ago as an explanation for why some (few) individuals develop a gender identity different from the sex assigned at birth (Kimura, 1992). Although it is not

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<sup>1</sup> In some of the research that I am discussing, the subjects have been described as transsexual rather than as transgender. The term “transsexualism” is no longer a diagnostic term, having been replaced by Gender Dysphoria, but the term “transsexual” is still used in professional circles, scholarly works, and treatment guidelines, and is usually used to refer to persons on the extreme end of a continuum of gender dysphoric symptoms (Coleman et al., 2012). To avoid confusion, I will simply refer to such individuals as transgender.

possible to directly study the developing human brain before birth, it was proposed that the hormones present in the bloodstream surrounding the developing brain at certain, undetermined critical periods in brain sexual differentiation was altered to the extent that the “brain sex” did not align with other aspects of physical anatomy (*e.g.*, genitals). This theory more recently received support in a study of fetal testosterone exposures, which showed that the level of testosterone present in the amniotic fluid correlated positively with male-typical play patterns regardless of whether the fetus was female (XX chromosomes) or male (XY chromosomes) (Auyeung et al., 2009).

26. It is well known that the brains of non-transgender men and non-transgender women differ in size in many regions of the brain. These include specific parts of the brain that are visible on MRI studies, including the hippocampus, caudate nucleus, and anterior cingulate gyrus, to name a few, that are larger in non-transgender women and the amygdala and gray matter volumes that are larger in non-transgender men. Most studies of male and female brains in non-transgender subjects also indicate that the right hemisphere is larger in men than in women.

27. Zhou and others reported in 1995 that areas of the brain known to differ in size between men and women generally could be studied in transgender persons. At least one of these sexually dimorphic brain regions in transgender women (referred to in the literature as “male-to-female” or “MtF”) was consistent with the size seen in non-transgender females, rather than non-transgender males.

28. Additional support for a biological basis for gender identity was reported by Luders and colleagues, who analyzed MRI data of 24 transgender women not yet treated with cross-sex hormones in order to determine whether gray matter volumes in their brains more closely resemble people who were assigned the same sex as birth as the transgender women (30 control men), or people who share their gender identity (30 control women). Results revealed that transgender females showed a significantly larger volume of regional gray matter in the right putamen compared to the 30 control group men – non-transgender men assigned the male sex at birth. These researchers concluded that their findings provided new evidence that gender dysphoria (*i.e.*, being transgender) is associated with a distinct cerebral pattern, which supports the assumption that brain anatomy plays a role in gender identity.

29. Savic and Stefan (2011) studied the brains of persons identified as MtF / transgender females compared to non-transgender control groups of the same sexual orientation. The brains of the transgender females subjects differed from the non-transgender male control group in several regions (*e.g.*, smaller volumes in the putamen and thalamus in transgender females). They concluded: “Gender dysphoria is suggested to be a consequence of sex atypical cerebral differentiation.”

30. Additional studies in support of the hypothesis that gender dysphoria is caused by sex atypical differentiation of parts of the brain before birth due to genetic and/or an early organizational effect of testosterone levels during fetal brain development include: Giedd et al., 1997; Green & Keverne, 2000; van Goozen et al., 2002; and Swaab, 2007.

31. Finally, several other post-mortem studies have also found distinctive brain patterns in transgender subjects that differ from what would be expected to be seen in non-transgender subjects assigned the same sex at birth as the transgender subject (*i.e.*, non-transgender males compared to transgender women who were assigned the male sex at birth). Kruijver et al., 2000; Berglund et al., 2008.

32. Consequently, clinical evidence supports the view that transgender females – *i.e.*, individuals who were assigned the male sex at birth but who have a female gender identity – should be considered to be women, and not men, whether or not they have had any surgery to alter the appearance or function of their genitalia. Likewise, transgender men – *i.e.*, individuals who were assigned the female sex at birth but who have a male gender identity – should be considered to be men and not women irrespective of whether they have had any surgical interventions to change their bodies.

## **DISCUSSION PART II – CLINICAL APPROACH TO GENDER DYSPHORIA**

33. When an individual experiences significant incongruity between the sex assigned at birth and one's gender identity, this can result in a set of clinically significant symptoms described in psychiatric manuals as gender dysphoria. Not all people who experience some level of distress resulting from a lack of congruity between gender identity and other aspects of their sex, however, meet the threshold for a clinical diagnosis of Gender Dysphoria.

34. As a set of symptoms, gender dysphoria is a mixture of mood symptoms (irritability, depression, anxiety) and mental distress or discomfort based on the experience of a mismatch between the sex assigned at birth, which (as noted previously) was likely based on the appearance of external genitalia, and the internal sense of gender.

35. Specifically, an individual who experiences gender dysphoria may have been assigned the male sex at birth, but feels female in their mind and emotions. Individuals experiencing gender dysphoria are, in essence, psychologically in the “wrong body” and suffer significant emotional distress as a result.

36. Gender dysphoric persons may live for a significant period of their lives in denial of those symptoms. Many people initially do not understand their cross-gender feelings and do not have a language for such feelings until well into adulthood. It is therefore not uncommon for adults later in life to first “come out” or acknowledge to others their transgender feelings (Lev, 2004).

37. The Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-5) (2013) is the current, generally recognized authoritative handbook on the diagnosis of mental disorders relied upon by mental health professionals in the United States, Canada, and other countries. Its content reflects a non-ideological, science-based, and peer-reviewed process by experts in the field who have varying perspectives.

38. The diagnosis of GD in the DSM-5 (pps. 451-459) involves two major diagnostic criteria for adolescents and adults, synopsized below:

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

1. A marked incongruence between one’s experience/expressed gender and primary and/or secondary 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 experience/expressed gender.
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.
5. A strong desire to be treated as the other gender.
6. A strong conviction that one has the typical feelings and reactions of the other gender.

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

39. Diagnoses of Gender Dysphoria may also be designated by one, or both, of two “specifiers.” One such specifier is “Gender Dysphoria *with a disorder of sex development*” (emphasis added), which is a subcategory for gender dysphoric individuals with one of the disorders of sex development described above. Another is “*Post-transition* gender dysphoria” (emphasis added), which would be used to refer to an individual who has socially transitioned, and either has undergone, or is preparing to have, a medical intervention, such as hormonal treatment or surgery. Like all psychiatric diagnoses, symptoms must be of significant severity to cause notable distress and/or dysfunction in a person’s life. The presence of gender nonconformity alone is insufficient to warrant a psychiatric diagnosis.

40. In spite of research evidence in support of a biological basis for Gender Dysphoria, there are no commercially available or reliable biological, physical examination, or laboratory tests that are used in clinical practice to diagnose Gender Dysphoria. But this is true for virtually all of the mental disorders in the DSM-5 and its predecessors. In fact, Strategic Objective No. 1 of the National Institute of Mental Health (NIMH) is to “define the mechanisms of complex behaviors,” including molecules and genomic factors (NIMH, 2015). This statement is in recognition that even in 2016, we do not know the definitive root cause for mental disorders listed

in DSM-5, and we do not have objective tests of body, brain, or fluids that definitively diagnose any mental disorders.

41. A diagnosis of Gender Dysphoria is made by a mental health professional who has training and experience with gender conditions and who conducts an in-depth evaluation of the patient, preferably with access to past medical records and collateral history from others who know the individual. The American Psychiatric Association and WPATH (Coleman et al, *Standards of Care, Version 7*, 2012) recognize that such diagnoses can be made by a range of trained and experienced mental health professionals.

42. Treatment of Gender Dysphoria is guided by the WPATH Standards of Care. The SOC were first developed in 1979. Currently in their seventh version, the SOC are considered to be authoritative for the evaluation and treatment of Gender Dysphoria and related gender conditions (Coleman et al., 2012). There are no other comprehensive, widely accepted, medical standards of care for treating individuals with these issues. As with all medical standards, the SOC are guidelines that can be modified based on the individualized patient circumstances and the health care professional's clinical judgment. With appropriate treatment, individuals with a Gender Dysphoria diagnosis can be fully cured of all symptoms.

43. A treatment plan for persons diagnosed with Gender Dysphoria involves both psychological and medical aspects. Psychotherapy is often part of a treatment plan. Social transition (*i.e.*, living in a gender role that is congruent with a patient's gender identity) is an important – and often the most important – component of a treatment plan. Social transition has been commonly described as the “real life experience” of living publicly in the gender role consistent with gender identity. Medical aspects of treatment may include hormonal reassignment to the experienced gender identity and surgery to change the genitalia and, in some

cases, secondary sexual characteristics. The combination of hormone therapy, social role transition, and surgical intervention has been referred to as “triadic therapy.” What is required in any individual case, however, may vary. Moreover, other treatments may be sought, including electrolysis, voice therapy, breast augmentation, facial reconstruction, etc. (Coleman et al., 2012).

44. Social role transition is sometimes the first critical step in treatment for transgender people who have the diagnosis of Gender Dysphoria, but even for those without this diagnosis, social role transition is often embarked upon by transgender people who seek to lead an authentic life as who they are rather than what their birth certificate would otherwise dictate. The social role transition occurs in all aspects of a person’s life. The purpose of this transition is to allow the development of an integrated, consolidated identity.

45. Access to sex-segregated bathrooms and changing facilities consistent with gender identity is an essential part of the social role transition, as all people, transgender or not, need to access these facilities multiple times each day. Excluding transgender men from men’s facilities and transgender women from women’s facilities can result in depression, anxiety, trauma, and isolation that exacerbates the mental health issues associated with Gender Dysphoria (Burgess et al., 2008; Grossman & D’augelli, 2008).

46. Under the SOC, hormone therapy and surgery have established eligibility and readiness criteria that should be met prior to approval for these medical interventions. Eligibility criteria generally involve timelines of successful experience with one mode of therapy before the next step should be undertaken. Readiness criteria involve the clinician’s assessment of whether the client has demonstrated sufficient consolidation of an evolving gender identity to move on to the next step of transition.



47. Cross-sex hormone therapy has significant effects on a person's appearance and physiology. In transgender adolescent boys and men, the voice permanently deepens; facial and body hair increase dramatically; body fat is redistributed in a male pattern; and overall muscle mass increases, most noticeably in the arms and chest. For transgender adolescent girls and women, breasts develop; body fat is redistributed to the hips and breasts; the skin softens; muscle mass decreases; and body and facial hair lessens. In addition, as a result of cross-sex hormone therapy, the penis, prostate and testes atrophy, which inhibits the normal functioning of the penis, particularly with respect to penetrative sexual intercourse.

48. Transgender individuals undertaking cross-sex hormone therapy who had not previously begun the process of social transition will often do so after starting cross-sex hormones, due in part to the significant changes in physical appearance that result from this treatment.

49. Most transgender people never undergo sex reassignment surgery (also referred to as gender affirming, or gender confirming, surgery). This is also the case for transgender people who are severely gender dysphoric. Other treatments—*i.e.*, social role transition (including access to gender appropriate facilities), counseling, and, in some cases, hormone therapy—are frequently sufficient to alleviate their gender dysphoria, making invasive, expensive genital surgery unnecessary.

50. Other transgender people who may be appropriate for, and desire, sex reassignment surgery may have medical problems that preclude surgical treatment. Examples include neoplastic disease, severe cardiovascular disease, significant pulmonary disease, blood clotting abnormalities, and other conditions for which lengthy general anesthesia is contraindicated.

51. Even where sex reassignment surgery may be medically appropriate, for many transgender people, surgery is out of the question because of the high cost and the fact that it is frequently not covered by health insurance plans.

52. The minimum criteria for genital reassignment surgery includes the requirement that one have a persistent, well-documented history of gender dysphoria; the capacity to consent to treatment; be of the age of majority; and have any significant medical or mental health care conditions well controlled. Lastly, a person seeking genital surgery must generally undergo 12 continuous months of living in a gender role that is congruent with the patient's identity, and obtain two letters of referral from experienced clinicians in a qualifying mental health discipline. Living in a gender role necessarily includes the use of facilities associated with the gender identity of the person undergoing transition.

53. Early attempts at treatment to change transgender individuals' gender identity to that congruent with the sex assigned to them at birth were demonstrated to be ineffective in most cases, prompting the American Medical Association (AMA) as early as 1972 to support medical and surgical interventions as the treatment of choice for Gender Dysphoria (then called "Transsexualism") (AMA, 1972). Others noted that psychotherapy, often with associated cross-sex hormonal treatment, was of benefit for some gender dysphoric people with respect to life adjustment, but not for changing one's gender identity (Lothstein & Levine, 1981; Seikowski, 2007). In fact, with respect to attempts to change an individual's gender identity to bring it into alignment with the sex assigned at birth, it has been stated that there are no demonstrable, successful "conversions" through the use of a form of psychotherapy (Monstrey et al., 2007, at 89), known today as "reparative therapy" or "conversion therapy." These types of therapy are widely considered to be unethical by professional organizations not only because of their ineffectiveness,

but also because of the emotional harm that has been demonstrated in many who have received such therapies in the past (Daniel et al., 2015).

54. The federal Substance Abuse and Mental Health Services Administration recently issued a report showing that “conversion therapy” is not an appropriate therapeutic approach based on the evidence. The report also included similar consensus statements developed by an expert panel held by the American Psychological Association in July 2015. The professional organization that was arguably the most involved with attempting to convert both homosexual and transgender persons’ identities decades ago has also come out strongly against the use of psychotherapy to attempt to change either sexual or gender identity: “Psychoanalytic technique does not encompass purposeful attempts to ‘convert,’ ‘repair,’ change or shift an individual’s sexual orientation, gender identity, or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes.” (American Psychoanalytic Association, 2012).

55. Many people who identify as transgender do not come to clinical attention and therefore may not have a formal diagnosis of Gender Dysphoria or be under a specific treatment plan. There are many reasons for this, including the fact that many transgender people lack access to health care providers who feel competent to treat gender identity issues. Moreover, some transgender people have a stable gender identity different than the sex assigned at birth, but do not experience clinically significant distress as a result of the discontinuity between their gender identity and their physical anatomy. For these individuals, social transition is all that is required to alleviate any dysphoria that would result from their trying to live according to their sex assigned at birth, rather than consistent with their gender identity.

56. Transgender people, irrespective of whether they have a clinical diagnosis, report enduring discrimination, teasing, bullying and other harmful attacks, including hate crimes that may result in death (Clements-Nolle et al., 2008; Stotzer, 2009; Altschiller, 2015).

Discrimination can have negative and harmful effects on the daily functioning and emotional and physical health of transgender persons, whether or not they have a Gender Dysphoria diagnosis (Bradford et al., 2013; Herman et al., 2014; Nadal & Griffin, 2011; Nadal, 2010; Goldblum et al., 2012). Conversely, transgender people who live in states with antidiscrimination and hate crime legal protections based on gender identity status are less likely to suffer from a variety of mental illnesses and symptoms compared to those who do not live in states with these protections (Blosnich et al., 2016).

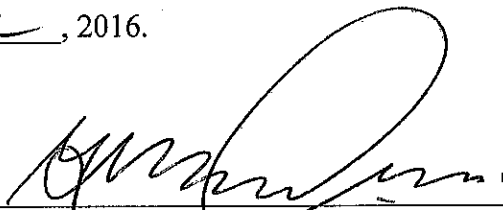
57. Being denied access to gender appropriate single-sex bathrooms and changing facilities is one of the most common and acute forms of discrimination that transgender people experience. As such, restrictive restroom and locker room policies can contribute to negative general health and mental health outcomes for transgender people.

58. In sum, laws and policies that require transgender women to be treated as though they were male (or, conversely, that require transgender men to be treated as though they were female) are psychologically harmful to those individuals, and are inconsistent with evidence-based best practices designed to promote the health and well-being of transgender people (Coleman, 2012).

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

Executed on this 20<sup>th</sup> day of June, 2016.

By:



George R. Brown, MD, DFAPA

# EXHIBIT A

Exhibit A to George Brown Declaration

## CURRICULUM VITAE

GEORGE RICHARD BROWN, MD, DFAPA

Professor of Psychiatry  
Associate Chairman for Veterans Affairs  
East Tennessee State University

Research, Teaching, Consulting Psychiatrist  
James H. Quillen VAMC  
Mountain Home  
Johnson City, TN

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(423) 538-8655 (fax)  
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Date of Preparation: June 29, 2016

### EDUCATION:

Undergraduate: University of Rochester, Rochester, New York, 1975-1979;  
Bachelor of Science with Highest Honors and Distinction in Research, Summa Cum Laude.

Medical School: University of Rochester School of Medicine, Early Acceptance Program  
(Rochester Plan), 1979-1983; Doctor of Medicine with Honors; Health Professions Scholarship  
Program.

Internship: United States Air Force Medical Center, Wright-Patterson Air Force Base, Ohio,  
1983-1984.

Residency: Wright State University - United States Air Force Integrated Residency in Psychiatry,  
Dayton, Ohio, 1984-1987.

### CREDENTIALS:

FLEX, December, 1983 (Behavioral Sciences, 94%; Psychiatry, 93%).

Full licensure to practice medicine, State of Ohio, December, 1983 to present; license  
#50119

Full licensure to practice medicine, State of Texas, August, 1989 to present; license  
#H5847

Full Licensure to practice medicine, Commonwealth of Kentucky, 1993 to 1995,  
#30100; allowed to expire with no intent of practicing in Kentucky.

Full licensure to practice medicine, State of Tennessee, 1994-present, license #25192

Psychiatry Resident In-Training Examinations;  
1986: 98th percentile - all U.S. residents, psychiatry.  
1985: 90th percentile - all U.S. residents, psychiatry.  
1984: 98th percentile - all U.S. residents, psychiatry.

1983: 98th percentile - all U.S. residents, psychiatry.  
American Board of Psychiatry and Neurology, Part I, April 1988 (92nd percentile); Part II,  
June 1989; ABPN Certificate #31377.

Electroconvulsive Therapy Administration Certification,  
1985-1990.

Courtesy Staff Privileges, Charter Real Hospital, San Antonio, Texas, 1990-1994.

Courtesy Hospital Staff, Bexar County Hospital District, San Antonio, Texas, 1988-1994.

Full Admitting Privileges, Wilford Hall Medical Center, San Antonio, Texas, 1987-1993.

Full Admitting Privileges, James H. Quillen VAMC Hospital, Johnson City, TN, 1994-2016

Basic Life Support Certification, renewed March 2015

## **PROFESSIONAL EXPERIENCE:**

Current Positions:

**Professor and Associate Chairman for Veterans Affairs, Department of Psychiatry and Behavioral Sciences, Quillen College of Medicine, East Tennessee State University.** 1995-present. Advisory duties to the Chairman, signature authority in absence of the Chair, contributing to administrative, teaching, and research missions of the Department, liaison between the VAMC and ETSU psychiatry administrations.

**Research, Teaching, and Resident supervision appointment, James H. Quillen VAMC.** February 1, 2016-present. Responsibilities include providing teaching, research services, clinical consultation, and resident supervision/mentoring in the Psychiatry Service.

Past Positions:

**Staff Psychiatrist, Mental Health Outpatient Clinic, James H. Quillen VAMC.** December, 2014-January 31, 2016. Responsibilities included treating veterans with chronic, persistent, mental illnesses in an outpatient setting and providing consultation services to junior staff and residents in psychiatry. Direct supervision of third year psychiatry residents in the Mental Health Clinic.

**Transgender Health Care Facility Lead, Mountain Home Health Care System.** 2014-January 31, 2016. Responsibilities included providing direct patient care for transgender veterans, providing national training for VHA health care providers learning how to provide transgender health care, direct supervision of other health care providers in teaching evaluation and treatment techniques, leading a multidisciplinary team of health care providers assigned to provide transgender health care in our 70,000 patient health care system.

**Program Officer, Health Care Outcomes, Office of Health Equity (10A6), VA Central Office, Washington, D.C.** December, 2012, to December, 2014. Responsibilities included researching medical and psychiatric health disparities in vulnerable populations of Veterans treated by the Veterans Health Administration, and assisting top officials in VHA in the development of policies that lead to elimination of health care outcome disparities in these subpopulations. Continued to see patients at Mountain Home VAMC throughout this appointment.

**Chief of Psychiatry, James H. Quillen VAMC.** November 22, 1995-December 16, 2012. Responsibilities included direct supervision of a staff of 34-42 professional staff, including 24-28 psychiatrists, 2 Clinical Nurse Specialists, and 9-12 psychiatric nurse practitioners. Represented the Department in all meetings requiring the input of the Chief of Service. Attended executive



meetings in the Medical Center and University. Contributed to long range planning of services in the Medical Center.

**Research Appointment (WOC), VHA Center of Excellence for Suicide Prevention,** Canandaigua, New York. 2011-2014. Responsibilities of this position included developing research protocols collaboratively with CoE staff that have national implications related to suicide in VHA.

**Director of Psychiatric Research, James H. Quillen VAMC Dept. of Psychiatry.** 1994-2012. Responsibilities included creating a research program de novo and leading a research team at the VAMC, teaching resident seminars, didactics, research electives, providing direct patient care for inpatients on research protocols (usually those with severe mental disorders), traveling to conferences to present research findings and providing Grand Rounds to other institutions and medical schools. Major focus of research activities has been working with stigmatized/disenfranchised populations and addressing mental health care aspects and disparities in care.

**Staff psychiatrist, Another Chance Recovery Program,** Morristown, Tennessee. March 1995-1996. This is an intensive outpatient drug and alcohol treatment program with a heavy emphasis on dual diagnosis patients, outpatient detoxification from chemical dependency, and a blend of the medical and 12-Step approaches to treatment of the chemically dependent patient. One evening clinic per week.

**Senior Research Scientist and Director of Psychiatric/Neuropsychiatric HIV Research,** Wilford Hall Medical Center, Henry M. Jackson Foundation for the Advancement of Military Medicine, San Antonio, Texas. 1 July 1991 to 1 October 93. Responsibilities included hiring and then directing a team of approximately 15 civilian and military psychiatric researchers conducting HIV-related psychiatric research; Principal Investigator on longitudinal psychiatric natural history study of early HIV infection (males and females), 1989-1993; preparing manuscripts, presenting research findings at national and international meetings; designing and implementing new protocols; interviewing and assisting in the hiring of personnel; managing administrative and personnel issues.

**Private practice** of adult psychiatry. 1991-November 1993. Part-time practice primarily focusing on sexuality and gender concerns, including endocrine care, and adult psychodynamic psychotherapy.

**Consulting Psychiatrist for Quality Assurance and Continuing Quality Improvement Programs:**

- 1) Charter Real Partial Hospitalization Program, San Antonio, Texas. 1990 to 12/93. Responsibilities of this part time position included designing and implementing a medical quality assurance program and assisting Utilization Review personnel with implementing efficient resource utilization procedures.
- 2) Colonial Hills Hospital Inpatient Services and Adult Partial Hospitalization Program, San Antonio, Texas. 1992. Responsibilities of this part time position included custom designing a four part program to address QA/CQI concerns on all inpatient units, coordinating the implementation of the program with hospital QA/UR personnel, and quantifying/ databasing physician charting performance to analyze trends.

**Staff Psychiatrist,** Wilford Hall Medical Center, Lackland Air Force Base, San Antonio, Texas:

1987-1989: Primary responsibility for inpatient ward of 25-33 patients, resident and medical student teaching, and professional presentations. 1040 admissions; average length of stay 13 days.

1989-1991: Outpatient Clinic service, responsible for evaluations and treatment of adult

outpatients; supervision of PGY-3 residents in psychiatry and other staff working in the clinic (social workers, psychologists, and mental health technicians). Medical support for comprehensive Smoking Cessation Clinic.

1989-1991: Director of Psychiatric Research, half-time position; developed a research program primarily targeting psychiatric resident involvement with research and related activities, including presentations at regional and national professional meetings. Active in conducting research, reviewing and approving protocols, research design, editing publications submitted from the Department of Psychiatry, and organizing symposia; interviewing and selecting official for research personnel for multicenter collaborative HIV research grant.

**ACADEMIC APPOINTMENTS:**

Professor of Psychiatry (1998-present), East Tennessee State University, Quillen College of Medicine. VA Academic Faculty appointment.

Adjunct Professor of Psychology, University of Tennessee at Knoxville (1997). Served on doctoral dissertation committee as supervisor and mentor for doctoral candidate in clinical psychology.

Associate Professor of Psychiatry (1994-1998), East Tennessee State University, Quillen College of Medicine. Full time geographic faculty appointment. Renewal of previously awarded academic ranking. Activities include serving on numerous committees (see below), teaching residents, providing electives, working collaboratively with staff to conduct new research projects, interviewing residency and faculty candidates.

Clinical Associate Professor of Psychiatry (1992-1994), University of Texas Health Science Center at San Antonio, San Antonio, Texas. 1987 to 1994. Primary responsibility of this position was teaching medical students and residents in individual, group, and lecture settings; provision of psychodynamic psychotherapy supervision. Lectures and seminars include core material on sexual dysfunction, treatment of paraphilias, gender identity disorders, homosexuality, and psychiatric aspects of HIV infection.

Clinical Associate Professor of Psychiatry (1992-1996), Uniformed Services University for the Health Sciences, School of Medicine, Bethesda, Maryland. Primary responsibility of this position was teaching medical students from the University who travel to San Antonio for clinical rotations in psychiatry and serving as a visiting lecturer for USUHS.

Full time faculty, Department of Psychiatry, Wilford Hall Medical Center, Lackland Air Force Base, San Antonio, Texas, 1987 to 1991. Adjunct clinical faculty, Department of Psychiatry, 1991 to 1993. Responsibilities included supervising psychiatric residents involved in research activities, sponsoring Distinguished Visiting Professors in conjunction with the Department, and teaching core didactic lectures and seminars.

Assistant Clinical Instructor, Wright State University School of Medicine, 1983-1987. Primary responsibility of this position was teaching medical students during clinical rotation in psychiatry.

Chief Resident in Psychiatry, November, 1986 to March, 1987, with administrative, teaching, and research responsibilities.

**CONSULTATION EXPERIENCE:**

Psychiatric Liaison and Consultant to Oncology Unit, Good Samaritan Hospital, Dayton, Ohio,

1985.  
Clinical Supervisor and Psychiatric Consultant to Montgomery County Juvenile Court  
Diversion Program, Dayton, Ohio, 1986-1987.  
Consultation/Liaison Rotation, Keesler AFB, MS, 1986.  
Psychiatric Consultant to the United States Air Force Child Abuse Task Force (convened by  
the Surgeon General of the Air Force), 1989-1991.  
Lorain Correctional Institution, psychiatric consultant for inmate mental health evaluations  
and treatment, July-August 1993.  
State of Tennessee Mental Health and Mental Retardation, appointed as consultant to develop  
Best Practice Guidelines for all State programs for Bipolar Disorder.  
Health Ed, The Patient Education Agency: consultant for development of patient education  
materials for chronic mental illnesses, 2006-2007.  
Consultant to Batavia Independent School District in assisting on-the-job gender transition for a  
transgender high school teacher, 2006.  
Consultant to Port Ewan/Kingston BOCES School Program in assisting on-the-job transition for a  
transgender principal, 2007.  
Consultant to the Federal Bureau of Prisons on policies relating to medical management of  
transgender inmates, 2009, 2014.  
Consultant to Department of Defense on policy and medical issues related to transgender service  
members, 2016-present.

#### **SPECIALIZED TRAINING EXPERIENCES:**

School of Aerospace Medicine, Course I, Brooks AFB, San Antonio, Texas, 1981.  
Administrative Course for Chief Residents, Tarrytown, New York, June, 1985.  
Combat Casualty Care Course, San Antonio, Texas, 1985.  
Consultation and Liaison Psychiatry, Keesler AFB, Biloxi, Mississippi, 1986.  
Center for the Treatment of Impotence, Case Western Reserve University, Cleveland, Ohio,  
July, 1986.  
Forensic Psychiatry Course and associated clinical work, 6 months, 1986-87; ongoing case work  
in forensic psychiatry as expert witness and legal consultant, 1987-present.  
Gender Identity Clinic, Case Western Reserve University, Cleveland, Ohio, July, 1986.  
Paraphilias Clinic, Case Western Reserve University, Cleveland, Ohio, July, 1986.  
Chemical Dependency Program, Samaritan Hall, Dayton, Ohio, August, 1986.  
Advanced Study of Gender and Sexual Disorders, Institute of Living, Hartford, Connecticut,  
April, 1987.  
Electroconvulsive Therapy Administration Training, Jan-June, 1985; June, 1987.  
SCID training seminar, September, 1989.  
American Board of Psychiatry and Neurology Examiner, 1991-present.  
Administrative psychiatry and leadership training, James H. Quillen VAMC, 1996 to 2012.  
Physician Executive Training, American College of Physician Executives, (PIM-I Course,  
31 hours; PIM-II Course, 31 hours, PIM-III Course, 31 hours), 1998-1999.  
Masters and Johnson workshop on trauma, sexual compulsivity/addiction treatment, 11 hours,  
December, 2003.  
Forensic Workshop on sex offenders, National Council on Sexual Addiction and Compulsivity,  
October, 2002  
Forensic workshops, including PREA implementation, managing hunger strikes, mental health  
issues in prison, sponsored by National Commission on Correctional Health Care, 2010,  
2012.  
Forensic workshops, including 3 hours of training on medical and legal aspects of providing  
health care for transgender inmates, sponsored by National Commission on Correctional  
Health Care, 2015.

## **COMMITTEE AND BOARD ACTIVITIES:**

Mohonasen Public School Board Member, Schenectady, New York, 1974-1975.  
Social Chairman, Wright State University Psychiatry Residency, 1984.  
Dayton Representative to the Member-in-Training Committee of the Ohio Psychiatric Association, 1984-1986.  
Chairman, Member-in-Training Committee, Ohio Psychiatric Association, 1986-1987.  
Chairman, Member-in-Training Committee, Dayton Psychiatric Society, 1985-1987.  
Peer Review Committee, Ohio Psychiatric Association, 1986-1988.  
Long Range Planning Committee, Ohio Psychiatric Association, 1986-1987.  
American Psychiatric Association, Area IV Resident Caucus, Ohio Representative, 1987.  
American Psychiatric Association, Committee of Residents of the Council on Medical Education and Career Development, Ohio Representative, 1986-1987.  
Ohio Psychiatrist's Political Action Committee, Board of Directors, 1987.  
Bexar County Psychiatric Society Committee on AIDS, 1990-1993.  
World Professional Association for Transgender Health (WPATH) Committee to Revise the Standards of Care, 1990-present; Cochairman of Standards of Care Revision Committee, 2001-2005.  
Psychiatric Consultant to the Board of Directors, Boulton and Park Society, San Antonio, Texas, 1988-1998.  
President-elect, Society of Air Force Psychiatrists, 1990-1991.  
Board of Directors, Alamo Area Resource Center (AIDS/HIV Service Organization), 1991-1992.  
Board of Advisors, American Educational Gender Information Service (Atlanta, Georgia), 1992-1998.  
Quality Assurance Committee, Texas Society of Psychiatric Physicians, 1992-1993.  
Professional Standards Committee, Texas Society of Psychiatric Physicians, 1992-1993.  
Board of Directors, Harry Benjamin International Gender Dysphoria Association (WPAth), 1993-1997; 2001-2007  
Ethics Committee, Tennessee Psychiatric Association, 1994-present.  
Advisory Committee on Publications and Advertising, Southern Medical Association, 1994-1996.  
Councilor to the Executive Committee, Tennessee Psychiatric Association, East Tennessee Region, 1995-2005.  
Vice-Chairman, Section on Neurology and Psychiatry, Southern Medical Association, 1995-1996.  
President, New Health Foundation, 2001-2003.  
Secretary of the Section on Neurology and Psychiatry, Southern Medical Association, 1997-2000.  
American Psychiatric Association PKSAP and Medical Education Committees, appointed by Herb Sachs, M.D. and Harold Eist, M.D. (APA Presidents), 1997-2001.  
Scientific Affairs Committee, Southern Medical Association, 1997-1999.  
Consultant to the Joint Commission on Public Affairs, American Psychiatric Association, appointed by Rod Munoz, M.D. (APA President), 1998-1999.  
Scientific Program Committee, Southern Psychiatric Association, 1999-2000.  
Resident Award Committee, Southern Psychiatric Association, 1997-2009.  
Ethics Committee; HIV Committee; Harry Benjamin International Gender Dysphoria Association, 1999-2005  
Board of Directors, New Health Foundation, Chicago, IL, 2000-present.  
Tennessee Department of Mental Health and Retardation Adult Committee on Best Practices (responsible for recommending guidelines for treatment of bipolar disorder), 2000-2003.  
Associate Counselor for Tennessee, Southern Medical Association, 2000-2008.  
Resident Award Committee, Southern Psychiatric Association, 2003-2009.  
Board of Directors, James H. Quillen VAMC Research Corporation, 2003-2010.

HBIGDA Biennial Symposium Scientific Meeting Committee, 2006-2007.  
Board of Regents, Southern Psychiatric Association, 2006.  
Southern Medical Association, Section Secretary for Psychiatry and Neurology, 2004-2008.  
Scientific Review Committee, World Professional Association for Transgender Health Symposium, 2007-2009; 2015-present.  
Board of Regents, Second Year, Southern Psychiatric Association, 2007.  
Chairman, Board of Regents, Southern Psychiatric Association, 2009.  
WPATH Board of Directors, 3 terms totaling 13 years, with last term 2014 (mandatory rotation off the board).  
Secretary-Treasurer, World Professional Association of Transgender Health, 2007-2009.  
DSM-V workgroup on Gender Identity Disorders (WPATH advisory work group to American Psychiatric Association DSM-V GID task force), 2009.  
World Health Organization advisory committee for ICD-11 (gender identity disorders), 2011-present.  
Department of Veterans Affairs Transgender Directive Communication Plan Education Group, 2011-2012.  
VHA Transgender Training Workgroup, Patient Care Services, 2012- present.  
Numerous VA Central Office national workgroups and committees, including the workgroup to add birth sex and gender identity data fields to all VA medical records, 2012-present.  
Commissioner, Palm Center Commission on Transgender Military Service, Appointed by Joycelyn Elders, MD, 2013 to 2014.

#### **PROFESSIONAL ORGANIZATIONS:**

American Psychiatric Association (1983-2015); #044933, Fellow, 1998; Distinguished Fellow, 2003  
Association for the Advancement of Psychotherapy (1985-1993)  
World Professional Association for Transgender Health (1986-present)  
Ohio Psychiatric Association (1983-1987)  
Texas Society of Psychiatric Physicians (1988-1994)  
Tennessee Psychiatric Association (1994-present)  
American Medical Students Association (1977-1987)  
American Medical Association (1983-1988; 2015-present)  
Ohio State Medical Association (1983-1987)  
Montgomery County Medical Society (1983-1987)  
Dayton Psychiatric Society (1983-1987)  
Society of United States Air Force Psychiatrists (1983-1991)  
Bexar County, Texas, Psychiatric Society (1987-1990)  
Southern Medical Association (1994-2010)  
Southern Psychiatric Association (1997-2009)  
New Health Foundation (advocacy organization for transgendered health care; 1996-present)  
American Psychological Association Society for the Psychological Study of Men and Masculinity, Division 51, 1996-2000.

#### **AWARDS AND SPECIAL RECOGNITION:**

Valedictorian, Mohonasen High School, Schenectady, New York, 1975.  
New York State Regents Scholarship, 1975-1979.  
Bausch and Lomb Science Award and Scholarship, 1975-1979.  
Phi Beta Kappa, junior year selection, 1977.  
Donald Charles Memorial Award for Research in Biology, 1978.  
Recognition for Highest Grade Point Average, Department of Biology-Geology, University of Rochester, 1979.

Dean's Letters of Commendation for Academic Achievement, University of Rochester, 1975-1983.

Letter of Commendation for Excellence in Pathology, University of Rochester, 1981.

Alpha Omega Alpha Medical Honor Society, University of Rochester, 1983.

Wright State University Department of Psychiatry selectee for fellowship in the Group for the Advancement of Psychiatry (GAP), 1984.

Wright State University Department of Psychiatry nominee for Laughlin Fellowship of the American College of Psychiatrists, 1985, 1986.

Physician's Recognition Award of the American Medical Association, 1986 to present.

President's Award of the Ohio Psychiatric Association for outstanding service to the organization, 1987.

Chairman's Recognition Award For Scholarship and Research, Wright State University Department of Psychiatry, 1987.

Air Force Training Ribbon, 1980.

Air Force Outstanding Unit Decoration, 1987; first oak leaf cluster additional award, 1990.

Air Force Expert Marksman Ribbon, 1988.

Air Force Achievement Medal for research accomplishments, 1990.

1990 American Academy of Psychosomatic Medicine Dlin Fischer Award for Significant Achievement in Clinical Research; corecipient.

Who's Who Among Human Services Professionals, 1990 to present.

West's Who's Who in Health and Medical Services, 1991 to present.

Marquis Who's Who of Board Certified Medical Specialists, 1992-present.

Bexar County Medical Society Certificate of Appreciation, 1991.

Air Force Meritorious Service Medal for distinguished clinical and research service to the Department of Psychiatry, Wilford Hall Medical Center, 1991.

Air Force National Defense Ribbon, Desert Storm Campaign, 1991.

Mohonasen High School Hall of Fame for Lifetime Achievement, 1992 inductee.

Health Care Professional of the Year Award, Boulton and Park Society, San Antonio, Texas, 1992-93.

Special Citation Award, Society of Behavioral Medicine, with Coyle C, et al., for presentation at 1993 Society of Behavioral Medicine Annual Meeting, 1993.

Institute for Legislative Action, 1995 Honor Role.

Sterling Who's Who of Health Care Professionals, 1995.

Southern Medical Association 1995 Award for Medical Excellence (Best Scientific Oral Presentation in Neurology and Psychiatry), \$1,000 Scholarship prize, 1995.

Janssen Clinical Scholar, 1995.

Mountain Home VAMC Group Special Contribution Award, 1995, 1997.

Marquis Who's Who in the South and Southwest, 1996-1998.

Marquis Who's Who in Medicine and Healthcare, 1997-1998.

Certificate of Appreciation, ETSU Psychiatry Residents, 1997, 1998, 1999.

Fellow, American Psychiatric Association, 1998-2002.

Resident Special Recognition Award, June, 2000.

Distinguished Fellow, American Psychiatric Association, January, 2003

Special Group Contribution Award, VAMC, 2003

Secretary of Defense Certificate of Recognition, Cold War Military Service, 2003

VA Performance Award, 2005

First Annual Irma Bland Award for Excellence in Teaching Residents, presented by the American Psychiatric Association, May, 2005

Special Contribution Award, Mountain Home VAMC, for assisting in obtaining over 2.5 million in new program monies from VA Central Office RFP process, April 26, 2006

Top Psychiatrists of 2006, Consumer Research Council selectee

ETSU Resident Recognition Award for "dedication to the Resident's Journal Club", 2006

Fellow, Southern Psychiatric Association, 2006

ETSU Psychiatry Faculty Mentor of the Year Award, 2007

Cambridge Who's Who, Executive and Professional Registry, 2007

Southern Medical Association, Third Place Award for Scientific Poster Presentation, Dallas,

Texas, December 5, 2009  
Twenty-five year U.S. Government service award, January 10, 2010  
Joint Commission recognition : "Top Performers on Key Quality Measures" (contributor), 2011  
Robert W. Carey Quality Performance Excellence Award (contributor), 2011; Department of Veterans Affairs award using Baldrige criteria  
James H. Quillen VAMC selected as VA to be featured in the Commonwealth Fund's article on successful efforts to improve patient safety (contributor), 2011  
Gender Identity Research and Education Society (GIREs) 2011 award to the 34 members of the Standards of Care Revision Committee for their work on the WPATH Standards of Care, 7th Version.  
Robert W. Carey Quality Trophy Award, Mountain Home VAMC. This is the highest level of the Carey Award for those VAMC's seeking performance excellence using the Baldrige Criteria. Awarded by the Secretary of the VA to the leadership team of which I was a Part, 2012.  
Recognized by LGBT Health journal in March, 2016 as having first-authored the #1 and #3 most read articles in that journal since its inception.

#### **UNIVERSITY/VA COMMITTEE ACTIVITIES:**

Learning Resources Advisory Committee (ETSU), 1995-1996.  
Psychiatric Residency Training Committee /Educational Policy Committee (ETSU), 1993-present.  
Peer Review Committee (VAMC), 1995-1996.  
Chairman and Founder, Psychiatric Grand Rounds and Visiting Professor Program (ETSU), 1993-1997; 2003-2004.  
Clinical Executive Board (VAMC), 1995-2012.  
Research and Development Committee, Dean's Appointment (VAMC), 1996-1998.  
Chairman, VAMC Research and Development Committee, 1999-2000.  
Co-Chairman, Mental Health Council (VAMC), 1995-2009.  
Academic Partnership Committee (ETSU), member, 1995-2012.  
Facility Master Plan and Space Utilization Committee (VAMC), 1995-2010.  
Professional Standards Board (VAMC), 1995-2012.  
Safety Committee, Department of Psychiatry, Chairman (VAMC)  
ETSU Psychiatry Promotion and Tenure Committee, 1998-present.  
Resident Selection Committee, ETSU Psychiatry Program, 1998-2012.  
Chairman, VAMC Research and Development Committee, 2001-2002.  
Veterans Health Affairs, VISN 9, Budget and Finance Committee, 2002-2004.  
Institutional Review Board (ETSU/VAMC), member, 1996-2003; served as acting chair as needed.  
Cameron University Department of Psychology, Dissertation Committee Consultant for Beth Ryan, Masters Thesis, 2004-2005 (gender identity disorder research).  
VISN 9 Mental Health Leadership Committee.  
ETSU/VAMC Subcommittee on Graduate Medical Education, 2008-2012.  
Vanderbilt University Department of Nursing, Dissertation Committee member and consultant for Gerald Meredith, 2009-2010.  
VA Transgender Directive Education Workgroup; VACO workgroup to advise the Undersecretary on how to educate and implement the 2011 Directive on providing healthcare to transgender and intersex Veterans, 2011-present.  
Office of Health Equity (VACO) Health Equity Coalition, 2013-2014.  
Numerous research committees and advisory panels for health equity research projects being conducted in VA, 2012-present.  
Chairman, Educational Policy Committee (Residency Training Committee), East Tennessee State University Department of Psychiatry, 2015-present.  
Self-Identified Gender Identity Data Field Training Workgroup (National VA work group to change electronic medical records data collection to include self-identified gender identity)  
Research Committee, East Tennessee State University Department of Psychiatry, 2015-

present.

#### **FORENSIC PSYCHIATRY ACTIVITIES:**

1. Military court proceedings, two occasions as expert witness at trial; U.S. Air Force, U.S. Army, c.1990-1992
2. Military Physical Evaluation Board Proceedings, expert testimony, 2/8/02
3. Farmer v. Hawk, United States District Court for the District of Columbia, expert opinion by affidavit on behalf of plaintiff, 1999
4. Yolanda Burt v. Federal Bureau of Prisons/Moritsugu, United States District Court for the District of Columbia, deposition testimony on behalf of plaintiff, 2000
5. Kosilek v. Maloney, 221 F.Supp 2d 156,186 (D.Mass. 2002), expert witness by trial testimony on behalf of plaintiff, 2001
6. Family Court expert witness trial testimony, Missouri, (custody issues for transgendered parent),1993
7. Thompson v. Idaho Department of Corrections (prison medical care Issues), consultant on behalf of plaintiff, 2002 (citation: Linda Patricia Thompson v. Dave Paskett, et al., Case No. CV00-388-S-BLW)
8. State of Missouri Medical Board, expert opinion by affidavit on behalf of physician, 10/2001
9. State of Tennessee Medical Board, expert opinion by affidavit on behalf of physician, 5/2002
10. Military Administrative Hearing, consultant, U.S. Army, December, 2002
11. Oiler v. Winn-Dixie Louisiana, Inc; USDC, Eastern District of Louisiana, No. 00-3114 "L" (3); consultant on behalf of defendant, 2001-2002
12. Moore v. State of Minnesota, consultant and deposition testimony on behalf of defendant, Attorney General's Office, State of Minnesota, 2003
13. Woods v. US Air Force, administrative discharge board, consultant, San Antonio, TX, 2003
14. Ophelia Azriel De'Lonta vs. Ronald Angelone and Prison Health Services, Inc. (Virginia Department of Corrections) United States District Court, Western District of Virginia, 330 F.3d 630,635 (4<sup>th</sup> Cir 2003) deposition testimony on behalf of plaintiff, 2003
15. Malpractice case, Tennessee, for defendant (primary care physician) consultant, 2004-2005
16. Josef v. Ontario Minister of Health, Attorney General of Ontario representing Her Majesty the Queen in Right of Ontario; Ontario Superior Court of Justice; expert opinion affidavit and consultant on behalf of plaintiff, 2004-2007.
17. Nubel v. New Jersey Board of Nursing, consultant and deposition testimony for defendant, 2004-2005
18. Malpractice case, Tennessee, consultant for defendant (psychiatrist), 2004-2005
19. Malpractice case, Kentucky, consultant for defendants (psychiatrists), 2005-2006
20. Kosilek v. Mass. Department of Corrections/ Kathleen Dennehy, expert witness by trial testimony and consultant on behalf of plaintiff, 2005-2006 ( Kosilek v. Spencer, 889 F.Supp.2d 190 (D. Mass. Sept. 4, 2012); "Kosilek I."
21. Gammett v. Idaho Department of Corrections, expert opinion affidavit and consultant for plaintiff, 2005-2007 (Gammett v. Idaho State Bd. of Corrections, No. CV05-257-S-MHW, 2007 WL 2186896 (D. Idaho July 27, 2007)
22. Isaak v. Idaho Department of Corrections, consultant, and deposition testimony on behalf of plaintiff, 2006-2008
23. May v. State of Tennessee and multiple codefendants; consultant on behalf of defendant, Attorney General's Office, State of Tennessee, 2006
24. Fields/Sundstrom v. Wisconsin Department of Corrections, consultant and deposition testimony on behalf of plaintiff, 2007 ( Fields v. Smith, 653 F.3d 550 (7th Cir. 2011)
25. Palmer v. State of TN; malpractice case; consultant and deposition testimony for defendant, Attorney General's Office, State of Tennessee 2007
26. Spray v. Temp Agency, consultant and expert opinion affidavits on behalf of plaintiff, 2007



27. O'Donnabhain v. Internal Revenue Service/Department of the Treasury, expert witness by trial testimony on behalf of plaintiff, 2007 (O'Donnabhain v. Commissioner, 134 T.C. No. 4 (Feb. 2, 2010).
28. Battista v. Mass. Department of Corrections/Kathleen Dennehy, consultant and expert opinion affidavit for plaintiff, 2008-2011.
29. Plumley v. State of TN; malpractice case; consultant for defendant, 2009.
30. Kolestani v. State of Idaho, capital murder case, consultant and expert opinion affidavit for public defender's office, 2009.
31. Smith v. St. Mary's Medical Center, medical malpractice case, consultant for defendant, 2009-2011, expert witness by jury trial testimony, 2011.
32. Finch aka Destiny v. Idaho Department of Corrections, consultant for plaintiff, 2010-2011.
33. Soneeya v. Clarke, Civil Action No. 07-12325 (NG), Massachusetts, consultant for plaintiff, 2011. (see also Soneeya v. Spencer, 851 F.Supp.2d 228 (D. Mass. 2012)
34. Hoyle v. Saha, malpractice case; consultant for defendant, 2011- 2014.
35. Champouillon v. State of TN; malpractice case; consultant for defendant, 2012-present.
36. Equivel v. State of Oregon; access to transgender health care for Oregon State employees; consultant to Lambda Legal, 2012.
37. Kosilek v. MA DOC, expert witness for plaintiff, 2012-present; ("Kosilek II").
38. Binney v. South Carolina DOC, consultant and expert opinion by affidavit for plaintiff, 2013-present.
39. De'Lonta v. Harold W. Clarke et al. (Virginia Department of Corrections), consultant and expert opinion by affidavit to plaintiff, 2013-2014.
40. U.S. and Tudor v. Southeastern Oklahoma State University, expert consultant for plaintiff and the Department of Justice (Title VII discrimination case), by declaration for plaintiff, 2015-present.
41. Mott v. State of Kansas, consultant and expert opinion by affidavit for plaintiff (birth certificate change), 2015-present.
42. Fuller v. MA Department of Corrections; expert opinion by affidavit and deposition, for plaintiff, 2015-present.
43. Franklin v. Hardy, et al. (Illinois Department of Corrections); expert opinion by affidavit, for plaintiff, 2015-present.
44. Dunn et al. v. Dunn et al. (Alabama Department of Corrections), expert consultant for plaintiff, 2016-present.

#### **PUBLICATIONS:**

1. Brown G R: Morphologic complexity and its relationship to taxonomic rates of evolution. J Undergrad Res, 3:139-168, 1978.
2. Brown G R: Stadol dependence: another case. JAMA, 254(7):910, 1985.
3. Brown G R: Letter to the Editor. Newsletter of the Ohio Psychiatric Association, 10(1):8, 1986.
4. Brown G R: Resident Rounds. Column for Newsletter of the Ohio Psychiatric Association. 10(2), 10(3), 11(1),11(2), 1986-1987.
5. Brown G R: Anorexia nervosa complicated by Mycobacterium xenopi pulmonary infection. J Nerv Ment Dis, 175(10):629-632, 1987.
6. Brown G R: Mycobacterium xenopi infection complicating anorexia nervosa. Proceedings of the 29th Annual Meeting of American College of Physicians (Air Force Regional Meeting), 22-25 March, 1987.
7. Brown G R: Buspar, a new anxiolytic. Letter to the Editor, Journal of the Ohio State Medical Association, Spring, 1987.
8. Brown G R: Transsexuals in the military: flight into hypermasculinity. Abstract. Proceedings of the 10th International Symposium on Gender Dysphoria (Amsterdam, The Netherlands) 7 June, 1987.
8. Brown G R: Transsexuals in the military: flight into hypermasculinity. Arch Sex Behav, 17(6):527-537, 1988.
10. Brown G R: Therapeutic effect of silence: application to a case of borderline personality

- disorder. Current Issues in Psychoanalytic Practice, 4(3-4):123-131, 1988.
11. Brown G R: Bioethical issues in the management of gender dysphoria. Jefferson J Psychiatry, 6(1):33-44, 1988.
  12. Brown G R, Rundell J R: Psychiatric disorders at all stages of HIV infection. Proceedings of the 1988 Annual Session of the Texas Medical Association (San Antonio, Texas), May, 1988.
  13. Brown G R, Rundell J R: Suicidal tendencies in HIV-seropositive women. Am J Psychiatry, 146(4):556-557, 1989.
  14. Brown G R, Collier L: Transvestites' women revisited: a nonpatient sample. Arch Sex Behav, 18(1):73-83, 1989.
  15. Brown G R, Pace J: Hypoactive sexual desire disorder in HIV-seropositive individuals. JAMA, 261(17):2305, 1989.
  16. Brown G R: Prospective study of psychiatric morbidity in HIV-seropositive women. Psychosom Med, 51:246-247, 1989.
  17. Brown G R: Current legal status of transsexualism in the military. (Letter) Arch Sex Behav, 18(4):371-373, 1989.
  18. Rundell J R, Brown G R: Use of home test kits for HIV is bad medicine. JAMA, 262(17):2385-2386, 1989.
  19. Rundell J R, Brown G R, Paolucci S L: Psychiatric diagnosis and attempted suicide in HIV-infected USAF personnel. Abstract. Proceedings of the Fifth International Conference on AIDS (Montreal, Canada), June, 1989.
  20. Brown G R: Current legal status of transsexualism in the military. Abstract. Proceedings of the Eleventh Inter-national Symposium on Gender Dysphoria (Cleveland, Ohio), September, 1989.
  21. Brown G R: A review of clinical approaches to gender dysphoria. J Clin Psychiatry, 51(2):57-64, 1990.
  22. Pace J, Brown G R, Rundell J R, et al.: Prevalence of psychiatric disorders in a mandatory screening program for infection with human immunodeficiency virus: A pilot study. Milit Med, 155:76-80, 1990.
  23. Rundell J R, Brown G R: Persistence of psychiatric symptoms in HIV seropositive persons. Am J Psychiatry, 147(5):674-675, 1990.
  24. Praus D, Brown G R, Rundell J R, et al.: Associations between CSF parameters and high degrees of anxiety or depression in USAF personnel infected with HIV. J Nerv Ment Dis, 178(6):392-395, 1990.
  25. Brown G R, Rundell J R: Prospective study of psychiatric morbidity in HIV-seropositive women without AIDS. Gen Hosp Psychiatry, 12:30-35, 1990.
  26. Brown G R: The transvestite husband. Med Aspects Human Sexuality, 24(6):35-42, 1990.
  27. Drexler K, Brown G R, Rundell J R: Psychoactive drug use and AIDS. JAMA, 263(3):371, 1990.
  28. Brown G R, Rundell J R: Psychiatric morbidity in HIV-seropositive women without AIDS. Proceedings of the 143rd Annual Meeting of the American Psychiatric Association, pages 75-76 (New York, New York), May, 1990.
  29. Rundell J R, Ursano R, Brown G R: HIV infection and perception of social support. Proceedings of the 143rd Annual Meeting of the American Psychiatric Association, page 76 (New York, New York), May, 1990.
  30. Rundell J R, Brown G R, McManis S, et al.: Psychiatric predisposition and current psychiatric findings in HIV-infected persons. Proceedings of the Sixth International Conference on AIDS (San Francisco, California), June, 1990.
  31. Drexler K, Rundell J R, Brown G R, et al.: Suicidal thoughts, suicidal behaviors, and suicide risk factors in HIV-seropositives and alcoholic controls. Proceedings of the Sixth International Conference on AIDS (San Francisco, California), June, 1990.
  31. Brown G R: The inpatient database as a technique to prevent junior faculty burnout. Acad Psychiatry, 14(4):224-229, 1990.
  32. Rundell J R, Wise M, Brown G R, et al: Relative frequency of HIV disease as a cause of mood disorder in a general hospital. Proceedings of the 1990 Update on Neurological and Neuropsychological Complications of HIV Infection, page PSY-4 (Monterrey,

- California), June, 1990.
33. Rundell J R, Praus D, Brown G R, et al: CSF parameters, immune status, serum viral titers, anxiety, and depression in HIV disease. Proceedings of the 1990 Update on Neurological and Neuropsychological Complications of HIV Infection, page PSY-5 (Monterrey, California), June, 1990.
  34. Brown G R: Clinical approaches to gender dysphoria. Abstract. Psychiatry Digest, 5:9-10, 1990.
  35. Brown G R, Rundell J R, Temoshok L, et al: Psychiatric morbidity in HIV-seropositive women: Results of a three year prospective study. Proceedings of the 37th Annual Meeting of the American Academy of Psychosomatic Medicine, 1990.
  36. Rundell J R, Brown G R, Kyle K, et al: Methods employed by and length of knowledge of HIV-seropositivity of HIV-infected suicide attempters. Proceedings of the 37th Annual Meeting of the American Academy of Psychosomatic Medicine, 1990.
  37. Brown G R: Unzufriedenheit mit dem eigenen Geschlecht: Klinische Behandlungsmöglichkeiten. Abstract for European readership. Psychiatry Digest, 10:3-4, 1990.
  38. Brown G R, Anderson B W: Credibility of patients in psychiatric research. Amer J Psychiatry, 148(10):1423-1424, 1991.
  39. Brown G R, Anderson B: Psychiatric morbidity in adult inpatients with childhood histories of physical and sexual abuse. Amer J Psychiatry, 148(1):55-61, 1991.
  40. Plotnick E, Brown G R: Use of intravenous haloperidol in nonviolent severely regressed adult psychiatric inpatients. Gen Hosp Psychiatry, 13:385-390, 1991.
  41. Brock I, Brown G R, Jenkins R: Affect and health locus of control in early HIV infection. Proceedings of the 144th Annual Meeting of the American Psychiatric Association, 79, 1991.
  42. Brock I, Brown G R, Jenkins R: Early HIV infection and health locus of control. Proceedings of the 144th Annual Meeting of the American Psychiatric Association, 79, 1991.
  43. Brown G R, Pace J, Brock I, et al: Psychiatric morbidity in HIV-seropositive military women. Proceedings of the 144th Annual Meeting of the American Psychiatric Association, 208, 1991.
  44. Pace J, Brown G R: Factors associated with length of inpatient psychiatric hospitalization in a military medical center. Proceedings of the 144th Annual Meeting of the American Psychiatric Association, 95, 1991.
  45. Plotnick E, Brown G R: Sexual functioning in HIV-positive women without AIDS. Proceedings of the 144th Annual Meeting of the American Psychiatric Association, 80-81, 1991.
  46. Hicks D, Stasko R, Rundell J, Norwood A, Brown G R: Psychiatric treatment in early HIV disease. Proceedings of the 144th Annual Meeting of the American Psychiatric Association, 208, 1991.
  47. McManis S, Brown G R, Rundell J, et al: Subtle, early cognitive impairment in HIV disease. Proceedings of the 144th Annual Meeting of the American Psychiatric Association, 77-78, 1991.
  48. McManis S, Brown G R, Rundell J, et al: Cognitive impairment and CSF values in HIV disease. Proceedings of the 144th Annual Meeting of the American Psychiatric Association, 78, 1991.
  49. McManis S, Brown G R, Zachary R, et al: Cognitive impairment and gender in HIV-positive persons. Proceedings of the 144th Annual Meeting of the American Psychiatric Association, 78, 1991.
  50. Carey M, Jenkins R, Brown GR, et al: Gender differences in psychosocial functioning in early stage HIV patients. Proceedings of the 7th International Conference on AIDS, M.B. 4230, 1:447, 1991.
  51. McManis S, Brown G R, Zachary R, et al: Neuropsychiatric impairment early in the course of HIV infection. Proceedings of the 7th International Conference on AIDS, M.B. 2064, 1:198, 1991.
  52. Brown G R, Rundell J, Pace J, et al: Psychiatric morbidity in early HIV infection in women: results of a 4 year prospective study. Proceedings of the First International Conference

- on Biopsychosocial Aspects of HIV Infection, p 22, 1991.
53. Brown G R, Kendall S, Zachary R, et al: Psychiatric and psychosocial status of US Air Force HIV-infected personnel. Proceedings of the First International Conference on Biopsychosocial Aspects of HIV Infection, p 121, 1991.
  54. Brown G R, Zachary R, McManis S, et al: Gender effects on HIV-related neuropsychiatric impairment. Proceedings of the First International Conference on Biopsychosocial Aspects of HIV Infection, p 125, 1991.
  55. Temoshok L, Smith M, Brown G R, Jenkins R: Perceptions of zidovudine (AZT) and cooperation with treatment or clinical trials. Proceedings of the First International Conference on Biopsychosocial Aspects of HIV Infection, p 198, 1991.
  56. Jenkins R, Patterson T, Brown G R, Temoshok L: Social functioning in early stage HIV patients. Proceedings of the First International Conference on Biopsychosocial Aspects of HIV Infection, p P12, 1991.
  57. Zachary R, Coyle C, Kendall S, Brown G R: Living with HIV: Mechanisms for coping with psychological distress. Proceedings of the First International Conference on Biopsychosocial Aspects of HIV Infection, p P13, 1991.
  58. Brown G R, Rundell J, McManis S, Kendall S, Jenkins R: Neuropsychiatric morbidity in early HIV disease: Implications for military occupational function. Proceedings of the Aerospace Medicine Symposium on Allergic, Immunological, and Infectious Disease Problems in Aerospace Medicine, NATO Advisory Group for Aerospace Research and Development, AGARD-CP-518, (paper 16):1-14, 1992.
  59. Brown G R: Single USAF AIDS center offers unique opportunity to research biopsychosocial aspects of HIV infection. San Antonio, M.D., 1(4):8-9,14-15, 1991.
  60. Rundell J, Mapou R, Temoshok L, Brown G R: An overview of the U.S. military HIV testing policy. Proceedings of the American Psychological Association Annual Meeting, August, 1991, page 277.
  61. Brown G R: The transvestite husband. J Gender Studies, 13(1):14-19, 1991.
  62. Rundell J R, Kyle K, Brown G R, Thomasen J: Factors associated with suicide attempts in a mandatory HIV-testing program. Psychosomatics, 33(1):24-27, 1992.
  63. Beighley P, Brown G R: Medication refusal in psychiatric inpatients in the military. Military Med, 157:47-49, 1992.
  64. McManis S, Brown G R, Zachary R, et al: Screening for subtle neuropsychiatric deficits early in the course of HIV infection. Psychosomatics, 34(5):424-431, 1993.
  65. Brown G R, Kendall S, Ledsy R: Sexual dysfunction in HIV-seropositive women without AIDS. J Psychol Human Sexuality, 7(1-2):73-97, 1995.
  66. Brock I, Brown G R: Psychiatric length of stay determinants in a military medical center. Gen Hosp Psychiatry, 15(6):392-398, 1993.
  67. Brown G R, Rundell J, McManis S, Kendall S, Jenkins R: Neuropsychiatric morbidity in early HIV disease: Implications for military occupational function. Vaccine, 11(5):560-569, 1993.
  68. Brown G R, Rundell J: Prospective study of psychiatric aspects of early HIV infection in women. Gen Hosp Psychiatry, 15:139-147, 1993.
  69. Brown G R, Rundell J, McManis S, Kendall S, Zachary R, Temoshok L: Prevalence of psychiatric disorders in early stages of HIV infection in United States Air Force Personnel. Psychosomatic Medicine, 54:588-601, 1992.
  70. Beighley P, Brown G R, Thompson J: DSM-III-R brief reactive psychosis among Air Force recruits. J Clin Psychiatry, 53(8):283-288, 1992.
  71. Brown G R: Letter to the editor. Amer J Psychiatry, 149(4):541, 1992.
  72. Lothstein L M, Brown G R: Sex reassignment surgery: current concepts. Integ Psychiatry, 8(1):21-30, 1992.
  73. Brown G R, Zachary R, Rundell J R: Suicidality before and after HIV seroconversion in men with early stage disease. Proceedings of the 50<sup>th</sup> Anniversary International Meeting of the American Psychosomatic Society, 43, 1992.
  74. Brock I, Brown G R, Butzin C: Predictors of psychiatric inpatient length of stay. Proceedings of the 145th Annual Meeting of the American Psychiatric Association, New Research Volume, 101, 1992.

75. Rundell J R, Brown G R, Jenkins R, Temoshok L: Social support, psychiatric morbidity, and HIV disease. CME Syllabus and Proceedings of the 145th Annual Meeting of the American Psychiatric Association, 281, 1992.
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## **BOOK REVIEWS:**

Garner D M, Garfinkel P E (eds.): Diagnostic Issues in Anorexia Nervosa and Bulimia Nervosa. Reviewed for Journal of Nervous and Mental Diseases, 177(5):307-308, 1989.

Kanas N: Group Therapy for Schizophrenic Patients. Reviewed for Psychiatric Times, June, 1997.

## **PROFESSIONAL PUBLICATIONS REVIEWED/EDITED:**

Reviewer, Journal of Clinical Psychiatry, 1987 to present  
Reviewer, Psychosomatics, 1989 to present  
Reviewer, Journal of AIDS, 1990 to 2001  
Reviewer, Psychology and Health, 1992  
Editorial Board, San Antonio M.D., 1991-1993  
Reviewer, International Journal of Psychiatry in Medicine, 1994-2006  
Reviewer, CNS Drugs, 1995-2002.  
Reviewer, Southern Medical Journal, 1995-2013  
Reviewer, AIDS Patient Care, 1996-2003  
Editorial Board, International Journal of Transgenderism, 1997-present  
Reviewer, Federal Practitioner, 2000-present  
Reviewer, Journal of the American Geriatrics Society, 2000-2003  
Reviewer, Bipolar Disorders, 2005-present  
Reviewer, Journal of Sexual Medicine, 2009-present  
Reviewer, European Psychiatry, 2010-present  
Reviewer, International Journal of Sexual Health, 2011-present  
Reviewer, American Journal of Public Health, 2011-present  
Editorial Board, LGBT Health, 2013-present  
Reviewer, Canadian Medical Association Journal, 2013-present  
Reviewer, Suicide and Life-Threatening Behavior, 2015-present  
Editorial Board, Transgender Health, 2015-present

## **PRESENTATIONS:**

Behavioral Medicine Lecture Series, Kettering Medical Center, Kettering, Ohio. Ten parts. January 24-June 25, 1985.  
"Sex Reassignment Surgery: Surgical Cure or Well-Meaning Mutilation?", Good Samaritan Hospital, Dayton, Ohio. March 5, 1985.  
"The Difficult Patient: Recognition, Understanding, and Management", The Marriott Hotel, Dayton, Ohio. March 6, 1985, (Category I, CME credit).  
"Transsexualism: Literature Review and Case Report", Wright State University, Dayton, Ohio. March 19, 1985.  
"Pseudoseizures: When is a Jerk not a Fit?", Bergamo Conference Center, Kettering, Ohio. April 19, 1985. (Category I, CME credit).  
"Transsexualism: What Sex am I?", University Center, Wright State University, Dayton, Ohio. September 17, 1985.  
"Transsexualism and the Military", Good Samaritan Hospital, Dayton, Ohio. March 18, 1986.  
"Clinical Utility of the House-Tree-Person Test", Diversion Program, Dayton, Ohio. April 9, 1986.  
"The Silent Mitwelt", Bergamo Conference Center, Kettering, Ohio. April 18, 1986. (Category I, CME credit).  
"Clinical Recognition of Alexithymia", Diversion Program, Dayton, Ohio. June 3, 1986.  
"Male-to-Female Transsexualism - Case Study", Case Western Reserve University,

Cleveland, Ohio. July 18, 1986.

"Zoophilia: Literature Review and Case Study", Case Western Reserve University, Cleveland, Ohio. July 31, 1986.

"Neuropsychiatry of Alexithymia", Good Samaritan Hospital, Dayton, Ohio. October 14, 1986.

"Penile Auto-Injection: New Treatment for Organic Impotence", Diversion Program, Dayton, Ohio. August 12, 1986.

"Gender Identity Development in Children and Adolescents", Diversion Program, Dayton, Ohio. August 26, 1986.

"Paraphilias", Good Samaritan Hospital Seminar, Dayton, Ohio. November 17, 1986.

"Introduction to Gender Disorders", Good Samaritan Hospital, Dayton, Ohio. December 15, 1986, January 5, 1987.

"Strategic Psychotherapy, Part I", Wright State University, Department of Psychiatry, Dayton, Ohio. December 23, 1986.

"Strategic Psychotherapy, Part II", Wright State University, Department of Psychiatry, Dayton, Ohio. December 30, 1986.

"Transsexualism: Dilemmas in Diagnosis", Good Samaritan Hospital, Dayton, Ohio. January 19, 1987.

"Transsexualism: Live Interview Presentation", Wright State University, Department of Psychiatry, Dayton, Ohio. January 20, 1987.

"Anxiety Disorders: New Treatment Approaches", Wright State University, Department of Family Practice, Dayton, Ohio. January 29, 1987.

"Gender Dysphoria", Wright State University Medical School, Dayton, Ohio. February 10, 1987.

"Bioethical Issues in Sex Reassignment", Good Samaritan Hospital, Dayton, Ohio. February 2, 1987.

"Mycobacterium xenopi Pulmonary Infection Complicated by Anorexia Nervosa", presentation at the 29th Annual Meeting of the Society of Air Force Physicians, New Orleans, Louisiana. March 23, 1987.

"The Transsexual Flight into Hypermasculinity", presentation at the Tenth International Symposium on Gender Dysphoria, Amsterdam, The Netherlands. June 10, 1987.

"Grand Rounds: Gender Disorders", Institute of Living, Hartford, Connecticut, April 30, 1987.

"Affective Disorders", three hour lecture series, Wilford Hall Medical Center, San Antonio, Texas, September, 1987.

"Grand Rounds: Transsexualism", Maine Medical Center, Portland, Maine, November 4, 1987.

"Opportunistic Infection in Anorexia Nervosa", 34th Annual Meeting of The Academy of Psychosomatic Medicine, Las Vegas, Nevada, November 14, 1987.

"Grand Rounds: Gender Disorders, An Overview", Wilford Hall Medical Center, San Antonio, Texas, December 17, 1987.

"Women Who Marry Transvestites", accepted for presentation at XXI Annual Meeting of AASECT, San Francisco, California, April 26, 1988 (no funding available).

"Psychiatric Manifestations of HIV Infection", Texas Medical Association Annual Session, San Antonio, Texas, May 13, 1988.

"Introduction to Gender Disorders", University of Texas Health Science Center, San Antonio, Grand Rounds, September 27, 1988.

"Transsexualism and Gender Disorders", Bexar County Psychiatric Society, San Antonio, Texas, October 18, 1988.

"Psychiatric Diagnoses in HIV-seropositive Air Force Personnel", Maine Medical Center, Portland, Maine, November 5, 1988.

"Symposium on HIV-seropositivity and Psychiatry", Program Coordinator, Behavioral Health Sciences Symposium, Sheppard AFB, Wichita Falls, Texas, November 8, 1988.

"Childhood Gender Disorders", Laurel Ridge Hospital, San Antonio, Texas, January 24, 1989.

"Prospective Study of Psychiatric Morbidity in HIV-seropositive Women", Annual Meeting of the American Psychosomatic Society, San Francisco, California, March 10, 1989.

- "Psychiatric Findings in HIV-seropositive Air Force Women", Walter Reed Army Institute of Research, Bethesda, Maryland, March 31, 1989.
- "Psychiatric findings in HIV-seropositive persons in a mandatory HIV screening program", (abstract and poster session, with J Rundell, S Paolucci), Fifth International Conference on AIDS, Montreal, Canada, June 5, 1989.
- "Alcohol Use and HIV-seropositivity", (poster presentation, with K Drexler, J Rundell), American Psychiatric Association Annual Meeting, San Francisco, California, May, 1989.
- "Current Legal Status of Transsexualism in the Military Setting", Eleventh International Symposium on Gender Dysphoria, Cleveland, Ohio, September, 1989.
- "Grand Rounds: Transsexualism in the Military", Wilford Hall Medical Center, December 14, 1989 (videotape available on request).
- "Psychosexual and Gender Disorders", 6 session advanced seminar for psychiatric residents, University of Texas Health Science Center, San Antonio, January to February, 1990.
- "Update on HIV Psychiatric Research in the USAF: 1990", Behavioral Health Sciences Symposium, Wichita Falls, Texas, 25 April, 1990.
- "Psychiatric Morbidity in HIV-seropositive Women without AIDS", 143rd Annual Meeting of the American Psychiatric Association, New York, May 14, 1990.
- "HIV Infection and Perception of Social Support", (Rundell, Ursano, Brown), 143rd Annual Meeting of the American Psychiatric Association, New York, May 14, 1990.
- "Relative Frequency of HIV Disease as a Cause of Mood Disorder in a General Hospital", (Rundell, Brown), Neurological and Neuropsychological Complications of HIV Infection Conference, Monterrey, California, June 17, 1990.
- "CSF Parameters, Immune Status, Serum Viral Titers, Anxiety, and Depression in HIV Disease", (Rundell, Praus, Brown), Neurological and Neuropsychological Complications of HIV Infection Conference, Monterrey, California, June 17, 1990.
- "CSF Findings and Request for Psychiatric Examination in HIV-Infected Patients", (Rundell, Brown, et al.), poster presentation, Neurological and Neuropsychological Complications of HIV Infection Conference, Monterrey, California, June 17-19, 1990.
- "Methods Employed by and Length of Knowledge of HIV-Seropositivity of HIV-infected Suicide Attempters", (Rundell, Brown, Kyle, et al.), 37th Annual Meeting of the Academy of Psychosomatic Medicine, Phoenix, Arizona, November 18, 1990.
- "Psychiatric Morbidity in HIV-seropositive Women: Results of a Three Year Prospective Study", (Brown, Rundell, Temoshok, et al.), 37th Annual Meeting of the Academy of Psychosomatic Medicine, Phoenix, Arizona, November 16, 1990.
- "Psychiatric Issues in the Evaluation of Spouses of Cross-dressers," Fairfax Hospital, Falls Church, Virginia, November 30, 1990.
- "Measurement of Negative Affect in HIV-seropositive Individuals," (Jenkins, Carey, Temoshok, Brown, et al.), 12th Annual Meeting of The Society of Behavioral Medicine, Washington, D.C., March 20, 1991.
- "Psychiatric and Neuropsychiatric Morbidity in Early HIV Disease," Grand Rounds presentation with S. McManis, University of Texas Health Science Center, San Antonio, Texas, April 30, 1991.
- "Neuropsychiatric Impairment Early in the Course of HIV Infection," (McManis, Brown, Zachary, et al.), 7th International Conference on AIDS, Florence, Italy, June 17, 1991.
- Nine presentations/new research posters/symposia presented at the 144th Annual Meeting of the American Psychiatric Association, New Orleans, Louisiana, May 11-15, 1991 (see Publications section, #50-58, for titles).
- Two presentations at the 7th International Conference on AIDS, Florence, Italy, June 15-17, 1991 (see Publications section, #59-60, for titles).
- "Methodological Advantages of Comprehensive Multidisciplinary Consultation-Liaison Psychiatry Research: HIV Research as a Model," (Rundell, Temoshok, Brown, et al.), Annual Meeting of the Academy of Psychosomatic Medicine, Atlanta, Georgia, October 17, 1991.

- "HIV Psychiatric Research in the Air Force," Grand Rounds presentation, Mayo Clinic, Rochester, Minnesota, July 9, 1991.
- "Neuropsychiatric Morbidity in early HIV Disease: Implications for Military Occupational Function," (Brown, Rundell, McManis, Kendall), Aerospace Medicine Symposium on Allergic, Immunological, and Infectious Disease Problems in Aerospace Medicine, NATO Advisory Group for Aerospace Research and Development Conference, Rome, Italy, October, 1991; presented by J. Rundell in my absence due to lack of funding.
- Four oral presentations and two poster presentations at the First International Conference on the Biopsychosocial Aspects of HIV Infection, Amsterdam, The Netherlands, 22-25 September, 1991 (see Publications section, #61-66, for titles).
- "Biopsychosocial HIV Research in the U.S. Military," Invited Grand Rounds presentation, University of South Dakota School of Medicine, Sioux Falls, South Dakota, October 25, 1991.
- "Biopsychosocial Issues in Treating HIV-seropositive Women," Fairfax Hospital Evening CME Lecture Series, Falls Church, Virginia, December 11, 1991.
- "Psychiatric Issues in Women with HIV," Fairfax County Health Department, Falls Church, Virginia, December 12, 1991.
- "Suicidality in Men with Early HIV Disease," American Psychosomatic Society 50th Annual Meeting, New York, New York, April 1, 1992.
- USAF HIV "Train-the-Trainer" Course; course organizer, presenter, and comprehensive course assessment (pretest, posttests), San Antonio, Texas, April 7-9, 1992.
- "Clinical Utility and Diagnostic Sensitivity of the Michigan Alcoholism Screening Test in Patients with HIV Disease," (Rundell, Brown), Annual Meeting of the Academy of Psychosomatic Medicine, San Diego, CA, October 31, 1992.
- "Longitudinal Neuropsychological Findings in HIV Positive Males," (Goethe, Richie, Brown, et al), 8th International AIDS Conference, Amsterdam, The Netherlands, July 20, 1992.
- "HIV and Women: Challenge for the 90's," Grand Rounds presentation, Geisinger Medical Center, Danville, PA, August 6, 1992.
- "Psychosocial Dimensions of Depression in Early HIV Disease," (Jenkins R, Rundell J, Brown G, Law W, Temoshok L), Annual Meeting of the American Psychological Association, Washington, D.C., August 15, 1992.
- "Psychiatric Presentations of HIV Disease," AIDS and Mental Health Program sponsored by San Antonio VA and UTHSC-SA, Corpus Christi, TX, September 18, 1992.
- "Major Depression in HIV Disease Before AIDS: Clinical Features and Associated Factors," (Rundell J, Brown G, Jenkins R, Kendall S, Temoshok L), Annual Meeting of the Academy of Psychosomatic Medicine, San Diego, CA, 29 October, 1992.
- "HIV Risk Behavior Surveys in the U.S. Military -- What Have We Learned?," Wilford Hall Medical Center Scientific Group Meeting, San Antonio, TX, 16 November 1992.
- "Biopsychosocial Aspects of Early HIV Disease in Women," Grand Rounds, Michigan State University/St. Lawrence Hospital, Lansing, MI, 18 December 1992.
- "Methodological Issues in Assessing Risk Behaviors in an HIV Sero-positive Military Sample," (Coyle C, Blake S, Brown GR, Ledsky R, Temoshok L), Special Citation Poster Presentation, Proceedings of the Fourteenth Annual Meeting of the Society of Behavioral Medicine, San Francisco, CA, March 10, 1993.
- "Gender differences in transmission risk behavior, affect, and social support in HIV-positive individuals," (Nannis E, Temoshok L, Jenkins R, Blake S, Sharp E, Jenkins P, Brown G, Patterson T, Coyle C, Brandt U, Johnson C), Proceedings of the Fourteenth Annual Meeting of The Society of Behavioral Medicine, San Francisco, CA, March 10, 1993.
- "Psychosocial stressors and vulnerability to psychiatric distress in early-stage HIV," (Zachary R, Brown GR, Kendall S, Coyle C, McManis S), Proceedings of the Fourteenth Annual Meeting of The Society of Behavioral Medicine, San Francisco, CA, March 10, 1993.

"Establishing databased research in an academic department of psychiatry," invited address to the Department of Psychiatry, Jefferson Medical College, College of Physicians, Philadelphia, PA, April 30, 1993.

Two Workshops, three poster sessions, 1993 Annual Meeting of the American Psychiatric Association, San Francisco, CA, May 22-24, 1993.

"Treating Depression in Early HIV Disease," Grand Rounds, Oklahoma University School of Medicine, Oklahoma City, OK, December 1, 1993.

"Diagnosis and Treatment of Transvestism," Tulane University School of Medicine, Department of Psychiatry presentation, December 2, 1993.

"Psychiatric Disorders in Early HIV Disease," Grand Rounds, Tulane University School of Medicine, New Orleans, LA, December 3, 1993.

"Diagnosis and Treatment of Gender Identity Disorders," invited presentation at Keesler Air Force Base Medical Center, Biloxi, MS, January 13, 1994.

"Personality Disorders in HIV-positive Persons: Association with Other Measures of Psychiatric Morbidity," poster presentation, (Richards J, McManis S, Brown G), Annual Meeting of the American Psychiatric Association, Philadelphia, PA, May 23, 1994.

"Psychiatric Issues in HIV/AIDS," invited presentation, Huntsville Mental Health Community, Huntsville Space and Science Center, Huntsville, AL, November 12, 1994.

"Diagnosis and Treatment of Gender Identity Disorders," Grand Rounds, Tulane University School of Medicine, New Orleans, LA, April 29, 1994.

"Management of Depression in Early HIV Disease," Upper East Tennessee Psychiatric Association Meeting, Kingsport, TN, June 2, 1994.

"Sertindole in the Treatment of Chronic Schizophrenia: a Phase III Controlled Trial," Grand Rounds, East Tennessee State University, Johnson City, TN, September 30, 1994.

"New Onset of Sexual Dysfunction in HIV-seropositive Women: Results of a Prospective Study," 88th Annual Scientific Assembly of the Southern Medical Association, Orlando, Florida, November 3, 1994.

"Gender Identity Disorders in the VAMC Setting," Grand Rounds, Atlanta VAMC, December 13, 1994.

"Managing Depression in Early Stage HIV Disease," Grand Rounds, Salem VAMC, December 22, 1994.

"Biopsychosocial Aspects of HIV Disease in Men," Invited Speaker, Mississippi Pharmacists Association MidWinter Meeting, Jackson, MS, February 12, 1995.

"Biopsychosocial Aspects of HIV Disease in Men," Invited Speaker, Mississippi Pharmacists Association MidWinter Meeting, Oxford, MS, February 19, 1995.

"Biopsychosocial Aspects of HIV Disease in Women," Grand Rounds, East Tennessee State University, Johnson City, TN, March 17, 1995.

"Managing Insomnia," primary care provider educational meeting, Bristol, TN, May 22, 1995.

"Diagnosis and Treatment of Gender Identity Disorders: DSM-IV Approach," Grand Rounds, Geisinger Medical Center, Danville, PA, June 15, 1995.

"Psychosocial Characteristics of 739 Transgendered Men," (Brooks G, Brown GR, Askew J), 41st Annual Meeting of the Southeastern Psychological Association, Savannah, GA, March 12, 1995.

"Personality Characteristics and Sexual Functioning of 188 American Transgendered Men: Comparison of Patients with Nonpatients." 14th Harry Benjamin International Gender Dysphoria Symposium, Irsee/Ulm Germany, September 9, 1995.

"Sertindole HCl: A Novel Antipsychotic With a Favorable Side Effect Profile." 89th Scientific Assembly of the Southern Medical Association, Kansas City, Missouri, November 17, 1995.

"Long term Safety of Treatment with Sertindole, a Novel Antipsychotic." (Radford M, Brown GR, Matthew H) poster, 89th Scientific Assembly of the Southern Medical

Association, Kansas City, Missouri, November 17, 1995.

"Diagnosis and Newer Treatments for Schizophrenia." Invited Presentation. Central Appalachia Services, Kingsport, TN, December 7, 1995.

"Personality and Sexuality in Transvestism." Grand Rounds, University of Texas Health Sciences Center, San Antonio, Texas, December 12, 1995.

"HIV/AIDS and Sexuality." Grand Rounds, Wilford Hall Medical Center, San Antonio, Texas, December 14, 1995.

"How Research Can Enhance Your Career." Invited Presentation to Department of Psychiatry, Wilford Hall Medical Center, San Antonio, Texas, December 13, 1995.

"Conducting Research With Stigmatized Populations." Journal Club Presentation, University of Texas Health Sciences Center, Department of Psychiatry, San Antonio, Texas, December 12, 1995.

"Sexuality in HIV/AIDS." Grand Rounds, Bowman Gray Medical School, Department of Psychiatry, Wake Forest University, Winston-Salem, North Carolina, January 19, 1996.

"Gender Identity Disorders." Grand Rounds, Lakeshore Mental Health Institute, Knoxville, Tennessee, February 14, 1996.

"New Approaches to the Management of Schizophrenia," Helen Ross McNabb Center, Knoxville, Tennessee, February 14, 1996.

"Diagnosis and Management of Gender Dysphoria," Grand Rounds, University of Alabama at Birmingham, March 5, 1996.

"Depression and Primary Care," Morristown, TN Primary Care Provider's CE Group, Morristown, TN, June 27, 1996.

"Personality and Sexuality in Transgendered Men," paper presentation, American Psychological Association, Toronto, Canada, August 13, 1996.

"Gender Identity Disorders," paper presentation at Southern Psychiatric Association Annual Meeting, Santa Fe, New Mexico, September 25, 1996.

"Sleep Disorders," Grand Rounds, Salisbury VAMC, Salisbury, North Carolina, August 21, 1996.

"Depression in Primary Care Settings," Nurse Practitioner-Physician Assistant Association of Northeast Tennessee, Johnson City, Tennessee, September 11, 1996.

Visiting Professorship, Menninger Clinic and Foundation; included Grand Rounds, case presentation and discussion, meetings with residents and staff; Topeka, KS, October 10-11, 1996.

"New Approaches to the Treatment of Schizophrenia," Grand Rounds, Lakeshore Mental Health Institute, Knoxville, Tennessee, October 30, 1996.

"HIV Disease in Women: Sexual Manifestations," symposium presentation at Academy of Psychosomatic Medicine Annual Meeting, San Antonio, Texas, November 14, 1996.

"HIV and Sexuality," Grand Rounds, Atlanta VAMC/Emory University, Atlanta, Georgia, December 3, 1996.

"Santa Claus is a Cross-Dresser (and so are his little elves)," invited address for the Upper East Tennessee Psychiatric Association, a component of the Tennessee District Branch of the American Psychiatric Association, Johnson City, TN, December 9, 1996.

"Depression and Sexuality," Tazewell County Medical Society, Richlands, Virginia, March 25, 1997.

"Identifying and Treating Depression in Primary Care," Annual Meeting of the Nurse Practitioner's and Physician's Assistants of East Tennessee, Johnson City, TN, March 25, 1997.

"Managing Sexual Side Effects of Antidepressant Treatment," Harlan County Medical Society, Harlan, Kentucky, March 11, 1997.

"Depression and Intimacy," Chatanooga Psychiatric Society, Chattanooga, TN, April 21, 1997.

"Depression and Sexuality," Lakeshore Mental Health Institute Grand Rounds, Knoxville, TN, April 9, 1997.

"Managing Sexual Side Effects of Antidepressants," Southern Highlands Pharmacist's



Society, Abingdon, Virginia, April 29, 1997.

"Transgendered Families," Lakeshore Mental Health Institute Grand Rounds, Knoxville, TN, April 30, 1997.

"Depression and Intimacy," Buchanan County Medical Society, Grundy, VA, May 8, 1997.

"Depression, Sexuality, and Treatment," Highlands Psychiatric Society, Abingdon, VA, May 9, 1997.

"Managing Sexual Side Effects of Antidepressants in Primary Care," Chatanooga Family Practice Association, Chatanooga, TN, May 20, 1997.

"Double Trouble: Depression and Anxiety in Primary Care," LeFlore County Medical Center, Greenwood Mississippi, May 29, 1997.

"HIV and Sexuality," ETSU Medicine and Sexuality Symposium, Johnson City, TN, June 13, 1997.

"Depression and Sexuality," ETSU Medicine and Sexuality Symposium, Johnson City, TN, June 13, 1997.

"Transgenderism," Grand Rounds, Overlook Mental Health Center, Knoxville, TN, June 25, 1997.

"Managing Sexual Side Effects of Antidepressants in Primary Care," Wise County Medical Society, Norton, Virginia, July 11, 1997.

"APA Guideline on the Treatment of Schizophrenia," Smoky Mountain Chapter of the Tennessee Psychiatric Association, Knoxville, TN, July 22, 1997.

"Nicotine Dependence: Kicking the Habit," August Monthly Meeting of the Tricities Nurse Practitioner-Physician Assistants Association, Johnson City, TN, August 14, 1997.

"Biopsychosocial Issues in Women with HIV Disease," Monthly Meeting of OB-GYN Society of Tricities, Johnson City, TN, August 26, 1997.

"Revision of the HBGDA Standards of Care: Opportunities and Controversies," Biannual Meeting of the Harry Benjamin International Gender Dysphoria Association, Vancouver, British Columbia, Canada, September 11, 1997.

"Anxiety and Depression in Primary Care: Double Trouble," Primary Care Grand Rounds, Fort Campbell, KY, October 1, 1997.

"Treatment Guidelines for Schizophrenia," Psychiatry Grand Rounds, Lexington VAMC, Lexington, KY, September 17, 1997.

"Gender Dysphoria in the Military Setting," Grand Rounds, Wilford Hall Medical Center, San Antonio, TX, December 18, 1997.

"Clinical Issues in Transgendered Families," Grand Rounds, University of Texas Health Sciences Center, San Antonio, December 16, 1997.

"Depression and Sexuality," Southwest Virginia Counsel of Nurse Practitioners, Abingdon, Virginia, November 1, 1997.

"Depression and Anxiety Disorders in Primary Care," Annual Meeting of the Nurse Practitioner Physician Assistant Association of Northeast TN, Johnson City, TN, February 23, 1998.

"Differentiating SSRI's in Clinical Practice," Richmond Psychiatric Society Meeting, Richmond, VA, January 22, 1998.

"Gender Identity Disorders," Grand Rounds, University of VA, Roanoke, VA, February 19, 1998.

"Smoking Cessation: Modern Approaches," Monthly Meeting of the East TN Hospital Pharmacists Association, Kingsport, TN, February 24, 1998.

"Identification and Treatment of Gender Dysphoria Syndromes," Grand Rounds, University of Mississippi, Jackson, MS, February 27, 1998.

"Gender Dysphoria Syndromes in Primary Care," Nurse Practitioner Physician Assistant Association of Northeast TN, Kingsport, TN, March 19, 1998.

"Treatment Guidelines for Schizophrenia," Grand Rounds, University of Kentucky, Louisville, KY, April 23, 1998.

"Gender Identity Disorders," Grand Rounds, University of Alabama at Huntsville, Huntsville, AL, May 21, 1998.

"Nicotine Reduction Strategies," Grand Rounds, Southwest Virginia Mental Health

Institute, Marion, VA, May 27, 1998.

"Depression and Anxiety Management in Primary Care," East Tennessee State University Dept. of Psychiatry Symposium on "Psychiatry in the Trenches", Johnson City, TN, June 12, 1998.

"Managing Depression in Primary Care," Grand Rounds, Internal Medicine Department, East Tennessee State University, Johnson City, TN, June 16, 1998.

"Mood Disorders in Women," Roanoke Psychiatric Society, Roanoke, VA, June 17, 1998.

"Gender Identity Disorders," Grand Rounds, Loyola University Strich School of Medicine, Chicago, IL, June 18, 1998.

"Standards of Care for Gender Identity Disorders," Grand Rounds, University of Louisiana, Baton Rouge, LA, July 21, 1998.

"Depression and Sexuality," Fall Symposium of the Mental Health Association of Knoxville, September 11, 1998.

"Pharmacotherapy of Agitation in the Elderly," Kentucky Pharmacists' Association, Lexington, Kentucky, September 20, 1998.

"Women and Mood/Anxiety Disorders," monthly meeting of the Nurse Practitioners-Physician Assistants, Johnson City, TN, October 1, 1998.

"Killing the Bore: How to Give Effective Medical Presentations That Keep an Audience Awake," Grand Rounds, ETSU Dept. of Psychiatry, Johnson City, TN, October 16, 1998.

"Pharmacologic Management of Agitation in the Elderly," Detroit Psychiatric Society, Detroit, Michigan, December 22, 1998.

"Nicotine Dependence: Kicking the "Habit," Wise County Medical Society, Wise, Virginia, January 14, 1999.

"Mood Disorders in Women," Chatanooga Psychiatric Society, Chattanooga, TN, January 18, 1999.

"From Menarche to Menopause: Mood and Anxiety Disorders in Women," Greene County Medical Society, Greeneville, TN, February 2, 1999.

"From Menarche to Menopause: Mood and Anxiety Disorders in Women," Annual Meeting of the TriCities Nurse Practitioner-Physician Assistant Association, Johnson City, TN, February 23, 1999.

"Comparison of Risperidone and Olanzapine: RIS-112 Study," Upper East TN Psychiatric Society, Johnson City, TN, March 4, 1999.

"New Directions in Treating Schizophrenia," CME, Inc. sponsored faculty member, Los Angeles, California, March 27, 1999.

"Pharmacologic Management of Agitation in Dementia," University of Alabama Pharmacotherapeutics Conference, Huntsville, AL, April 24, 1999.

"Mood and Anxiety Disorders in Women," University of Alabama Pharmacotherapeutics Conference, Huntsville, AL, April 24, 1999.

"Behavioral Problems in Dementia," Grand Rounds, Alvin York VAMC, Murfreesboro, TN, April 29, 1999.

"Pharmacological Management of Agitation in Dementia," Grand Rounds, Lakeshore Mental Health Institute, Knoxville, TN, May 7, 1999.

"Psychiatric Disorders in Women," Women's Health Symposium, University of Alabama, Huntsville, AL, May 14, 1999.

"Loxitane: A New Look at an Old Drug," Lakeshore Mental Health Institute, Knoxville, TN, June 4, 1999.

"Psychiatric Disorders in Women," University of Tennessee at Knoxville, OB-GYN Grand Rounds, June 4, 1999.

"Working With Transgendered Clients," workshop presented at A Search for New Understanding of Lesbian, Gay, and Bisexual Issues, East Tennessee State University, Johnson City, TN, September 24, 1999.

"Optimizing Treatment for Schizophrenia", CME, Inc. Symposium, Cleveland, Ohio, September 25, 1999.

"Diagnosis and Treatment of Depression in Primary Care," Grand Rounds, James H. Quillen VA

Medical Center-ETSU Department of Medicine, Johnson City, TN, September 28, 1999

"Gender Identity Disorder," Annual Meeting of the Southern Psychiatric Association, Hot Springs, Virginia, September 30, 1999.

"Management of Insomnia," Annual Meeting of the Tennessee Association of Physicians' Assistants, Gatlinburg, TN, October 12, 1999.

"Sexual Dysfunction in Primary Care Practice," Behavioral Health in Primary Care Symposium, East Tennessee State University, Johnson City, TN, October 16, 1999.

"Management of Insomnia: New Directions," monthly meeting of the Upper East Tennessee Psychiatric Association, Bristol, TN, October 19, 1999.

"Depression and Anxiety in Women Through the Life Cycle," Johnson City Women's Health Center Grand Rounds, Johnson City, TN, October 27, 1999.

"Selecting Antidepressant Treatment," invited presentation and panel discussion, New Orleans Academy of Internal Medicine, January 10, 2000.

"Managing Insomnia in Primary Care," Grand Rounds, Holston Valley Medical Center, Kingsport, TN, January 31, 2000.

"Gender Identity Disorders." Grand Rounds, University of Cincinnati, Cincinnati, OH, January 26, 2000.

"Selecting Antidepressants in Primary Care," Rural Health Cooperative, Kingsport, TN, February 7, 2000.

Visiting Professor, Loyola University Medical School, Chicago, IL (two presentations), February 10, 2000.

"Managing Insomnia in the New Millennium," Annual Meeting of the East TN Nurse Practitioner's and Physicians' Assistants Association, Johnson City, TN, February 22, 2000.

"Sexual Dysfunction in Primary Care," Annual Meeting of the East TN Nurse Practitioner's and Physicians' Assistants Association, Johnson City, TN, February 22, 2000.

"Depression and PTSD in Women," Grand Rounds, Department of OB-GYN, University of Tennessee, Knoxville, March 17, 2000.

"Depression and Anxiety in Primary Care Practice," Grand Rounds, Department of Internal Medicine, University of Tennessee, Knoxville, March 16, 2000.

"Diabetes, Glucose Regulation, and Schizophrenia," Upper East Tennessee Psychiatric Society, Johnson City, TN, April 13, 2000

"Sexual Dysfunction in Primary Care Practice," Annual Meeting of the Tennessee Osteopathic Medicine Association, Chattanooga, TN, May 7, 2000.

"Diabetes, Weight Gain, and Schizophrenia," Grand Rounds, Lakeshore Mental Health Institute, Knoxville, TN, July 20, 2000.

"Bipolar Disorder: Monotherapy versus Combination Therapy", national CME Category I lecture series sponsored by Medical Education Resources and Curry, Martin, and Schiavelli, to 17 cities between May and November, 2000.

"Managing Depression and Anxiety Disorders," invited presentation to the Annual Meeting of the Tennessee Academy of Family Practice, Jackson, TN, August 19, 2000.

"Managing Insomnia," monthly meeting of the Tazwell County Medical Society, Richlands, Virginia, August 23, 2000.

"Sexual Dysfunction," Grand Rounds, ETSU Department of OB/GYN, Johnson City, TN, September 6, 2000.

"Depression and Sexuality," Grand Rounds, Holston Valley Hospital, Bristol, TN, September 25, 2000.

"Depression and Anxiety in Primary Care: Case Conference/Grand Rounds," Southern Medical Association Annual Meeting, Orlando, Florida, November 2, 2000.

"Depression in Primary Care Settings," Hamblen County Medical Society, Morristown, TN, November 21, 2000.

"Sleep Disorders," Nurse Practitioners-Physicians Assistant Association Monthly Meeting, Johnson City, TN, December 7, 2000.

"CD-ROM Workshop, Anxiety and Depression", Annual Meeting of the Holston Valley Nurse Practitioners-Physicians Assistants Association, Johnson City, TN, February 26, 2001.

"The Harry Benjamin Standards of Care in Prison: Benefits for Transsexual Healthcare," International Foundation for Gender Education Annual Symposium, Chicago, IL, March

24, 2001.

"Why Internists Should Care About Treating Depression," Grand Rounds, Department of Internal Medicine, ETSU, Johnson City, TN, April 3, 2001.

"Antidepressants: Effective Side Effect Management," Annual Meeting of the Tennessee Osteopathic Medicine Association, Memphis, TN, April 21, 2001.

"Gender Identity Disorder: Management," invited presentation, Smokey Mountain Chapter of the Tennessee Psychiatric Association, Knoxville, TN, April 24, 2001.

"Gender Identity Disorder," Grand Rounds, Department of Psychiatry, Memphis VAMC, May 24, 2001.

"Antipsychotic Efficacy Uncompromised by Side Effects," Grand Rounds, Department of Psychiatry, UT Memphis, May 25, 2001.

"Sexual Dysfunctions in Primary Care," International Medical Update Symposium, Johnson City, TN, August 2, 2001.

"Diagnosis and Treatment of Gender Dysphoria," Grand Rounds, Department of Psychology, James H. Quillen VAMC, August 3, 2001.

"Management of Bipolar Disorder," Grand Rounds, Meharry Medical College, Nashville, TN, August 21, 2001.

"Medical Treatment of Agitation in Dementia," Fall Symposium of the Mental Health Association of Knoxville, September 13, Knoxville, TN.

"Monotherapy vs. Combination Therapy in the Management of Mania," Fall Symposium of the Mental Health Association of Knoxville, September 14, Knoxville, TN

"Optimizing Treatment for Bipolar Disorder," quarterly meeting of the Upper East Tennessee Psychiatric Association, Johnson City, TN, September 20, 2001.

"Gender Identity Disorders: Diagnosis and Management," Grand Rounds, Institute of Living/Hartford Hospital Departments of Psychiatry and Psychology, Hartford, CT, October 17, 2001.

"Gender Identity Disorder Complicated by Dissociative Identity Disorder: Report of a Successful Case," XVII Symposium of the Harry Benjamin International Gender Dysphoria Association, Galveston, TX, November 3, 2001.

"Mood Disorders in Women," monthly meeting of the TriCities Nurse Practitioners Association, Johnson City, TN, December 10, 2001.

"Substance Use Disorders Complicating Common Psychiatric Disorders," Grand Rounds, Holston Valley Hospital, Bristol, TN, December 18, 2001.

"Women's Health Issues in Psychiatry," OB-GYN Grand Rounds, East Tennessee State University, Johnson City, TN, May 8, 2002.

"Matching the Neurotransmitter to the Patient," ½ day CME presentation, World Medical Conferences, Jackson, Mississippi, May 18, 2002.

"Matching the Neurotransmitter to the Patient," ½ day CME presentation, World Medical Conferences, Albany, New York, June 1, 2002.

"Killing the Bore: How to Give Effective Medical Presentations That Keep People Awake," Grand Rounds, Dept. of Psychiatry, ETSU, Johnson City, TN, August 9, 2002.

"Current Issues in Treatment of Dementia," Roanoke Psychiatric Society, Roanoke, VA, June 26, 2002.

"Comfort Foods: Should We Just Surrender Now?," Northeast Tennessee Nurse Practitioner's Association Annual Meeting, Bristol, TN, September 14, 2002.

"Gender Identity Disorders: Diagnosis and Management," Psychiatry Grand Rounds, University of Florida, Gainesville, Florida, September 20, 2002.

"Gender Identity Disorders: Diagnosis and Management," Psychiatry Grand Rounds, Meharry Medical College, Nashville, TN, October 9, 2002.

"New Issues in the Management of Bipolar Disorder," Grand Rounds, Lakeshore Mental Health Institute, Knoxville, TN, October 5, 2002.

"Pharmacological Management of Dementia," Psychiatry Grand Rounds, Western State Hospital, Staunton, Virginia, March 19, 2003.

"Appropriate Use of Antipsychotics in Primary Care Practice," Tricounty Medical Society Meeting, Johnson City, TN, April 3, 2003.

"Appropriate Use of Antipsychotics in Primary Care Practice," 2003 Primary Care Conference,

- Johnson City, TN, April 1, 2003.
- "Pharmacological Management of Dementia," Grand Rounds, Gaston Memorial Hospital, Gastonia, NC, May 13, 2003.
- "Brown G R, McBride L, Williford W, Bauer M: Impact of childhood sexual abuse on bipolar disorder. Proceedings of the 5<sup>th</sup> International Conference on Bipolar Disorders, Pittsburgh, PA, 2003 (poster presented by Dr. Bauer in my absence).
- "Aripiprazole Use in Psychiatry," Grand Rounds, Lakeshore Mental Health Institute, Knoxville, TN, August 22, 2003.
- "Use of Anticonvulsants in Psychotic Disorders," Tennessee Psychiatric Association, Smoky Mountain Chapter Meeting, Knoxville, TN, August 28, 2003.
- "Application of the Harry Benjamin International Gender Dysphoria Association's Standards of Care to the Prison Setting: Recent Victories for Transgender Healthcare in the USA," 18<sup>th</sup> Biennial Symposium of the HBIAGDA, Gent, Belgium, September 11, 2003.
- "Family and Systems Aggression Towards Therapists Working with Transgendered Clients," 18<sup>th</sup> Biennial Symposium of the HBIAGDA, Gent, Belgium, September 12, 2003.
- "Impact of Childhood Abuse on Disease Course in Veterans with Bipolar Disorder," 97<sup>th</sup> Annual Meeting of the Southern Medical Association, Atlanta, Georgia, November 8, 2003.
- "Gender Dysphoria: Diagnosis and Management," Grand Rounds presentation, Marshall Medical School, Huntington, West Virginia, January 9, 2004.
- "Gender Dysphoria: Diagnosis and Management," Grand Rounds presentation, Catawba State Hospital, Roanoke, Virginia, March 17, 2004.
- "Treatment Resistant Schizophrenia," Grand Rounds presentation, Broughton State Hospital, Morganton, North Carolina, March 25, 2004.
- "Antipsychotic Use in Geriatric Populations," Grand Rounds presentation, Tampa VAMC, Tampa, Florida, April 23, 2004.
- "Gender Identity Disorders," Grand Rounds presentation, University of TN College of Medicine, Memphis, TN, May 14, 2004.
- "Overcoming Barriers to Treatment Success in Chronic Mental Illnesses," Grand Rounds, Salisbury VAMC, Salisbury, NC, June 3, 2004.
- "Dissociative Identity Disorder Comorbid with Gender Identity Disorder: Review of the Literature and Long-term Case Presentation," Southern Psychiatric Association, Savannah, Georgia, October 2, 2004.
- "Bipolar Disorder in Primary Care," CME Cat 1 presentation, Knoxville, TN, December 1, 2004.
- "Bipolar Disorder and Impulsive Aggression in Primary Care Settings," CME Cat 1 presentation to Tricities Nurse Practitioner Association, December 16, 2004.
- "Overcoming Barriers to Treatment in Chronic Mental Illnesses," North Carolina Advanced Practice Nurses Association, Greensboro, NC, February 13, 2005.
- "Bipolar Disorder in the Primary Care Setting: What to do?," 9<sup>th</sup> Annual Update for Nurse Practitioners, Johnson City, TN, March 21, 2005.
- "Current Controversies in the Use of SSRI's," TriCounty Medical Society, Johnson City, TN, May 5, 2005.
- "Transgender client aggression towards therapists," XIX Biennial Symposium of the Harry Benjamin International Gender Dysphoria Association, Bologna, Italy, April 9, 2005.
- "Gender identity disorder comorbid with dissociative identity disorder: review of the literature and 7 year followup case presentation. XIX Biennial Symposium of the Harry Benjamin International Gender Dysphoria Association, Bologna, Italy, April 9, 2005.
- "Current Controversies in the Use of SSRI's," CME symposium, Southern Medical Association 9<sup>th</sup> Annual Scientific Symposium, San Antonio, TX, November 12, 2005.
- "Gender Identity Disorder: Diagnosis and Management," Grand Rounds, University of South Florida, Tampa, Florida, January 6, 2006 (Videotaped version of presentation available at [www.TheCJC.com](http://www.TheCJC.com)).
- "Gender Identity Disorders," East Tennessee State University Women's Health Program, CME Cat 1 symposium, Johnson City, TN, March 24, 2006.
- "Update on Bipolar Disorder," Millennium Center, CME Cat I program, Johnson City, TN, March 31, 2006.
- "Dealing with Chronic Mental Illness: Barriers to Treatment Success," Southside Virginia

- Psychiatric Society Quarterly Meeting, Richmond, Virginia, April 3, 2006.
- "Management of Gender Identity Disorders," Intermountain Psychological Association, invited presentation, Johnson City, TN, June 8, 2006.
- "Transgender Health Issues," Emory and Henry Lyceum Series, Emory, Virginia, September 18, 2006.
- "Impact of Childhood Abuse in Veterans with Bipolar Disorder," 65<sup>th</sup> Annual Scientific Meeting of the Southern Psychiatric Association, Baltimore, Maryland, September 29, 2006.
- "Appropriate Use of Antipsychotics in Primary Care Settings," 100<sup>th</sup> Annual Meeting of the Southern Medical Association, Charlotte, NC, October 14, 2006.
- "Impact of Childhood Abuse on the Course of Bipolar Disorder," Keynote speaker, Perspectives In Health, Texas Department of State Health Services Annual CME Symposium, Austin, Texas, October 27, 2006.
- "Autocastration as Surgical Self-Treatment in Incarcerated Persons with Gender Identity Disorder," Southern Psychiatric Association Annual Meeting, Memphis, TN, August, 2007.
- "Autocastration as Surgical Self-Treatment in Incarcerated Persons with Gender Identity Disorder," XX Biennial Symposium of the World Professional Association for Transgender Health, Chicago, Illinois, September, 2007.
- "Gender Identity Disorders in the Military and VA," Panel discussion and presentation. XX Biennial Symposium of the World Professional Association for Transgender Health, Chicago, Illinois, September, 2007.
- "Diagnosis and Treatment of Gender Identity Disorders," Mountain Update on Psychiatry, ETSU CME Symposium, October 19, 2007.
- "Voice Parameters That Result in Identification or Misidentification of Biological Gender in Male-to-Female Transgender Veterans," poster presentation at the First Annual Gender Spectrum Health Fair, Sponsored by the Alliance for Gender Awareness, Inc and Rutgers Office of Social Justice Education LGBT Communities Rutgers University College, New Brunswick, NJ, November 8, 2007 (with R King et al, coauthors).
- "Voice Parameters That Result in Identification or Misidentification of Biological Gender in Male-to-Female Transgender Veterans," poster presentation at the XX Biennial Symposium of the World Professional Association for Transgender Health, Chicago, Illinois, September, 2007 (with R King, et al, coauthors).
- "Voice Parameters That Result in Identification or Misidentification of Biological Gender in Male-to-Female Transgender Veterans," poster presentation at the Southern Medical Association Annual Scientific Meeting, Nashville, TN, September, 2008 (presented by E McDuffie on behalf of Brown, King, et al, coauthors).
- "Evaluation and Management of Gender Identity Disorders," Cat I, 1.5 hour CME program, Annual Meeting of the Alaska Psychiatric Association, Alyeska, Alaska, April 18, 2009.
- "Forensic Issues and Case Presentations on GID," Cat I, 1.5 hour CME program, Annual Meeting of the Alaska Psychiatric Association, Alyeska, Alaska, April 18, 2009.
- "70 Veterans with Gender Identity Disturbances: A Descriptive Study," XXI Biennial Symposium of the World Professional Association for Transgender Health, Oslo, Norway, June 18, 2009.
- "70 Veterans with Gender Identity Disturbances: A Descriptive Study", Annual Scientific Meeting of the Southern Medical Association, Dallas , Texas, December 4, 2009.
- "Overview of Autocastration and Surgical Self Treatment in Prisons", National Commission on Correctional Healthcare Annual Meeting, October 10, 2010, Las Vegas, Nevada (invited two hour CME CAT I program)
- "Autocastration- Overview and Case Series Presentation," Grand Rounds, East Tennessee State University, Johnson City, TN, April 29, 2011.
- "Providing Healthcare for Transgender and Intersex Veterans," Live Meeting Series broadcast nationally by VA Talent Management System. Co-Presenters Leonard Pogache, MD, Meri Mallard, RN; CME category I credit for each of 3 programs completed, November 22 (2 programs) and November 30, 2011.
- "PBM Guidelines for Providing Care for Transgender and Intersex Veterans," copresenter with Lisa Longo, Pharm.D, Live Meeting Series broadcast nationally by VA Talent

- Management System, May 10 and May 14, 2012.
- "Providing Culturally Competent Care for Transgender Veterans," invited Keynote address at Houston VAMC for symposium (CEU accredited) on LGBT Veteran healthcare, Houston, TX, August 17, 2012.
- "Update on Version 7 of the WPATH Standards of Care," invited Keynote address for Mountain Area Health Education Center's Southeastern Summit on Transgender Healthcare, Category 1 CME accredited, Asheville, NC, August 24, 2012.
- "History of Transgender Healthcare in the Department of Veterans Affairs," invited Keynote address for Mountain Area Health Education Center's Southeastern Summit on Transgender Healthcare, Category 1 CME accredited, Asheville, NC, August 25, 2012.
- "Qualitative Analysis of Transgender Inmates' Correspondence: Implications for health Services in Departments of Correction", National Commission on Correctional Healthcare Annual Meeting, October 14, 2012, Las Vegas, Nevada (invited one hour CME CAT I program).
- "Cross Sex Hormonal Treatment for Transgender Veterans," national Live Meeting for Women's Health Program, Department of Veterans Affairs, July 16, 2013.
- "Transgender Health Care Training for VA Health Care Providers", 3 hours Category 1 CME accredited , Minneapolis, MN, September 26, 2013.
- "Sex Reassignment Options", national presentation to VA SCAN-ECHO and regional consultation teams responsible for VA transgender health consultations, July 2, 2013.
- "Access to Care for Gender Dysphoric Inmates: Issues and Cases," Invited plenary speaker for the 21<sup>st</sup> Annual Forensic Rights and Treatment Conference, sponsored by Drexel University College of Medicine, Category 1 CME credit (1.5 hours), Harrisburg, PA, December 5, 2013.
- "Forensic Aspects of Transgender Health Care in Prison," Grand Rounds, East Tennessee State University, Category 1 CME, March 7, 2014.
- "Health Disparities Research: Suicidality in Gender Minorities as a Research Model," Grand Rounds, East Tennessee State University, Category 1 CME credit, May 20, 2014.
- "Sex reassignment surgeries: female-to-male," national presentation to VA SCAN-ECHO and regional consultation teams responsible for VA transgender health consultations, Cat I CME, June 24, 2014.
- "Sex reassignment surgeries: male-to-female," national presentation to VA SCAN-ECHO and regional consultation teams responsible for VA transgender health consultations, Cat I CME, July 8, 2014.; December 2, 9, 16, 23, 2014; February 24, 20-15.
- "Medico-Legal Aspects of Providing Transgender Healthcare for Inmates," invited 2.5 hour presentation for national training program in LGBT healthcare for the Federal Bureau of Prisons, September 4, 2014.
- "Mental health and medical outcome disparities in 5,135 transgender veterans: a case-control study," 32nd Annual Conference of the Gay and Lesbian Medical Association, Category 1 CME credit, Baltimore, MD, September 11, 2014.
- "Mental health and medical outcome disparities in 5,135 transgender veterans: a case-control study," Vanderbilt University Grand Rounds, Department of Psychiatry, Cat 1 CME credit, Nashville, TN, September 26, 2014.
- "Mental health and medical outcome disparities in 5,135 transgender veterans: a case-control study," Drexel University Grand Rounds, Department of Psychiatry, Cat 1 CME credit, Philadelphia, PA, October 23, 2014.
- "Pharmacotherapy issues with gender dysphoria," College of Psychiatric and Neuropsychiatric Pharmacists, Annual Meeting, Cat I CME credit, Tampa, FL, April 19, 2015.
- "Lesbian, gay, bisexual, and transgender (LGBT) sociopolitical indicators and mental health diagnoses among transgender Veterans receiving VA care. Blosnich, J.R., Marsiglio, M.C., Gao, S., Gordon, A.J., Shipherd, J.C., Kauth, M., Brown, G.R., Fine, M.J. (2015, July). Department of Veterans Affairs Health Services Research & Development/Quality Enhancement Research Initiative National Conference, Philadelphia, PA, July, 2015.

- “Killing the Bore: How to Give Effective Medical Presentations,” East Tennessee State University Department of Psychiatry and Behavioral Sciences Grand Rounds (Cat I CME), May 1, 2015.
- “Sex reassignment surgeries: male-to-female,” national presentation to VA SCAN-ECHO and regional consultation teams responsible for VA transgender health consultations, Cat I CME, July 21, July 28, 2015
- “Sex reassignment surgeries: female-to-male,” national presentation to VA SCAN-ECHO and regional consultation teams responsible for VA transgender health consultations, Cat I CME, September 15, September 22, 2015.
- “Transgender military service: Moving past ignorance in DoD and VHA,” invited Keynote Address, Rush Medical University, Cat I CME credit, Chicago, IL, October 9, 2015.
- “Health correlates of criminal justice involvement in 4,793 transgender veterans. Poster Presentation at the Annual National Conference on Correctional Health Care, Denver, CO, October 18, 2015.
- “Open Transgender Military Service: Health Considerations,” presentation to medical leadership of the USMC, Washington, DC, by videolink, January 27, 2016.
- “Sex reassignment surgeries; masculinizing and feminizing,” national presentations to VA SCAN-ECHO and regional consultation teams responsible for VA transgender health consultations, Cat I CME, June 7 and 28, 2016.
- “Orange is not the new black—yet,” Symposium on prison transgender mental health care and update on recent court cases supporting access to transgender health care in US prisons, 24<sup>th</sup> Biennial Scientific Symposium of the World Professional Association for Transgender Health, Amsterdam, The Netherlands, Cat I CME (1.5 hours), June 20, 2016.
- “Harry Benjamin Plenary Lecture,” invited Keynote address for the 24th Biennial Scientific Symposium of the World Professional Association for Transgender Health, Amsterdam, The Netherlands, Cat 1 CME, June 18, 2016. Available at [www.wpath2016.com](http://www.wpath2016.com), timer marker 4:20.
- “Health correlates of criminal justice involvement in 4,793 transgender veterans. Poster Presentation at the 24th Biennial Scientific Symposium of the World Professional Association for Transgender Health, Amsterdam, The Netherlands, June 18, 2016.
- “Breast cancer in a cohort of 5,135 transgender veterans over time,” 24th Biennial Scientific Symposium of the World Professional Association for Transgender Health, Amsterdam, The Netherlands, Cat 1 CME, June 20, 2016.

**SYMPOSIA ORGANIZED AND/OR MODERATED:**

1. Psychosocial Aspects of HIV Disease in the Military, organizer/moderator/ presenter, Wichita Falls, Texas, 25 April, 1990.
2. Full Day Roundtable Symposium on Atypical Antipsychotics, organizer/moderator, Excerpta Medica, Asheville, North Carolina, 22 April, 1995.
3. Mountain Update on Anxiety Disorders, Course Director, East Tennessee State University, Blowing Rock, North Carolina, 28-29 April, 1995.
4. Medicine and Sexuality Course, Course Director, East Tennessee State University and James H. Quillen VAMC, Johnson City, TN, 13 June, 1997.



5. Half Day audiotaped symposium moderater/organizer on Innovative Uses of Atypical Antipsychotics, Excerpta Medica, Blackberry Inn, Townsend, TN, 16 November, 1997.
6. Novel Uses of Atypical Antipsychotics, Symposium Moderator, Marriot Griffin Resort, Janssen Research Foundation, Lexington, KY, 4 December, 1998.
7. Novel Uses of Atypical Antipsychotics, Symposium Moderator, Blackberry Inn, Townsend, TN, 10 April, 1999.
8. Psychiatry and Neurology Poster Session Moderator for Southern Medical Association's 97<sup>th</sup> Annual Scientific Assembly, Atlanta, Georgia, November 6, 2003.
9. Moderator for East Tennessee State University Department of Psychiatry monthly Journal Club/Critical Evaluation of the Literature series, 2002-2011.

**TELEVISED and TAPED MEDIA EVENTS:**

WKPT local television interview on sleep disorders, Johnson City, 1995.

TNN (The Nashville Network), filmed winning an international revolver competition and then interviewed on silhouette handgun shooting, Oakridge, TN, 1998.

CME, Inc. audiotaped faculty presentations as advertised in "Psychiatric Times," various cities and topics.

Channel 5, London, England; documentary on psychiatric aspects of firearms, 2004.

"Cruel and Unusual", documentary on transgender health care issues in the prison setting, 2005 release, available from [jbaus@aol.com](mailto:jbaus@aol.com); aired on Women's Entertainment channel on July 2, 2007

ABC 20/20, "Becoming Diane" segment on gender identity disorders, October 12, 2005.

The Carter Jenkins Center, [www.thecjc.org](http://www.thecjc.org), taped CME cat I lecture available on the internet, "Evaluation and Management of Gender Identity Disorder," January 6, 2006.

CNN, Kosilek Trial testimony/interview, June 1, 2006.

CNBC, "The Big Idea with Donny Deutsch," interview, June 6, 2006.

PBS News Hour, Transgender Soldiers Gain Ground as US Military Transitions, May 9, 2016, <http://www.pbs.org/newshour/bb/transgender-soldiers-gain-ground-as-u-s-military-transitions/>

**RESEARCH PROJECTS AND GRANT SUPPORT:**

Principal Investigator, "Phase III Comparison of Two Doses of Risperidone For Acute Exacerbations of Chronic Schizophrenia." Inpatient setting, grant support from Janssen Pharmaceutica, approximately \$50,000. Completed 1996.

Principal Investigator, Sexual Functioning and Personality Characteristics of Transgendered Men in a Nonclinical Setting. Collaboration with Tom Wise, M.D. (Chair, Dept. of Psychiatry, Fairfax Hospital, Falls Church, VA), Peter Fagan, Ph.D. (Johns Hopkins Sexual Behaviors Consultation Unit), and Paul Costa, Ph.D. (NIMH). Completed 1990-1995.

DSM-IV Reliability Field Trials, Site Coordinator, 10 investigators, completed in 1995.

Principal Investigator, Psychosocial Adjustment of Spouses of Transgendered Men; study involving long-term support group work and nationwide questionnaire data collection from 1986 to 1997. Completed. Private non-profit organization grant support received.

Coinvestigator, International Study of 800 Transgender Men: The Boulton and Park Experience. 1988-1992. This was the largest community based survey study of transgender people in the U.S. conducted to date. Completed.

Principal Investigator, "A Double-Blind, Placebo-Controlled, Dose-Response Comparison of the Safety and Efficacy of Three Doses of Sertindole and Three Doses of Haloperidol in Schizophrenic Patients." Phase III trial, inpatient setting. Grant support by Abbott Laboratories, approximately \$60,000 over one year. Completed 1994-1995. Contributed to FDA consideration of Serlect for U.S. marketing, 1996-1997.

Principal Investigator, "An Open Label, Long Term, Safety Study of Sertindole in Schizophrenic Patients." Phase II trial, outpatient setting. Grant support from Abbott Laboratories, approximately \$50,000 over two years. Completed 1996.

Principal Investigator, "Biopsychosocial Natural History Study of HIV Infection in the USAF." RO-1 equivalent grant from Henry M. Jackson Foundation for the Advancement of Military Medicine, approximately \$2,000,000. Completed 1987-1993, including pilot data collection.

Unrestricted Educational Grants, \$19,000, for Mountain Update on Anxiety Disorders CME conference (SKB, Lilly, Mead-Johnson), 1995.

Unrestricted Educational Grants totaling approximately \$30,000 annually in support of the VAMC/ETSU Psychiatry Grand Rounds and Visiting Professor Program, 1994-2000; 2002-2006. Grant funding following CME guidelines and administered through the ETSU Office of Continuing Education.

Principal Investigator, "Double-Blind Crossover Study of Zolpidem and Temazepam in Elderly, Hospitalized Patients." Funded through Psychiatry Research Fund, Mountain Home VAMC, and Chair of Excellence in Geriatrics, ETSU. Approved study, ultimately closed due to lack of appropriate subjects available for recruitment.

Principal Investigator, "A Randomized, Double-Blind Placebo Controlled Study of Risperidone for Treatment of Behavioral Disturbances in Subjects with Dementia." Collaboration with R. Hamdy, Cecile Quillen Chair of Excellence in Geriatrics, approximately \$100,000 at full recruitment, 1995-1997; completed.

Associate Investigator, "Use of Nefazodone in Depressed Women with Premenstrual Amplification of Symptoms: a Pilot Study." Principal Investigator: Merry Miller, M.D. \$5,000 pilot study grant, 1996-1999; completed.

Associate Investigator, "Voice Characteristics Associated with Gender Misidentification: A Pilot Study." Principal Investigator: Robert King, M.A. Unfunded study in data analysis phase, 2001-2005; completed in 2007.

Principal Investigator, Johnson City site, VA Cooperative Study #430, "Reducing the Efficacy-Effectiveness Gap in Bipolar Disorder." Health services research conducted at 12 sites nationwide. Grant for this site's operations total \$435,000 over five years of study, 1997-2003; completed.

Coinvestigator, "Treatment for Erectile Disorder with Viagra in a VA Population: Efficacy and

Patient and Partner Satisfaction." Principal Investigator: William Finger, Ph.D. Approximately \$30,000 total grant over two year period, 2000-2001; study concluded.

Principal Investigator, Johnson City site, "A Multicenter, Randomized, Double-Blind, Placebo Controlled Study of Three Fixed Doses of Aripiprazole in the Treatment of Institutionalized Patients with Psychosis Associated with Dementia of the Alzheimer's Type." Phase III clinical trial, sponsored by Bristol-Meyers Squibb, 2000-2001, \$174,000 at full recruitment. Extension phase, 42 weeks, separate grant at maximum of \$232,800. Approved April, 2000; completed.

Coinvestigator, "Effects of zaleplon on postural stability in the elderly." Principal Investigator: Faith Akin, Ph.D. \$1000 grant for subject recruitment expenses, 2000-2001.

Principal Investigator, James H. Quillen VA site, "ZODIAK study; An International, Multicenter Large Simple Trial (LST) To Compare the Cardiovascular Safety of Ziprasidone and Olanzapine." Pfizer Pharmaceuticals, approximately \$20,000 at full recruitment. Approved April, 2002, recruitment completed and closed in 2004. Results published: Strom B, Eng S, Faich G, et al: comparative mortality associated with ziprasidone and olanzapine in real-world use among 18,154 patients with schizophrenia: The ziprasidone Observational Study of Cardiac Outcomes (ZODIAC). *Amer J Psychiatry* 168(2):193-201, 2011.

Coinvestigator, "Survey of Family and Systems Aggression Against Therapists." Unfunded study, completed between 2002 and 2003; Randi Ettner, Ph.D., Principle Investigator; completed.

Coinvestigator, "Effect of Olanzapine on the Auditory Gating Deficit in Patients with Schizophrenia." Principal Investigator: Barney Miller, Ph.D. Investigator-initiated study funded by Lilly, approximately \$85,000. 2002. Study did not recruit subjects at ETSU and was closed 2003.

Principal Investigator, multicenter study, "The SOURCE Study: Schizophrenia Outcomes, Utilization, Relapse, and Clinical Evaluation." Janssen Research, \$100,000 grant at full recruitment (two year open label followup study of risperidone Consta), 2005-2007; second highest recruitment of 43 centers in multicenter study. Completed. See publications from this study under the Publications section, numbers 128 and 129.

Coauthor on grants to VA Central Office for program enhancements to mental health programs at Mountain Home VAMC; approximately \$2,000,000 received for additional staff and support for residential treatment programs and PTSD clinic expansion, 2006-2007.

Principal Investigator in conjunction with Herbert Meltzer, MD, Vanderbilt University, " High Dose Risperidone Consta for Patients with Schizophrenia with Unsatisfactory Response to Standard Dose Risperidone or Long-Acting Injectable." Phase IV study of outpatients with schizophrenia who are partially responsive to risperidone oral and/or long-acting injectable, using a double-blind methodology to study doses between 50 and 100 mg every two weeks. Site funding of approximately \$100,000. 2008-2010. Approved by ETSU IRB but negotiations between sponsor and Department of Veterans Affairs were not completed on intellectual property rights. Study not initiated at Mountain Home VAMC.

Principal Investigator (Everett McDuffie, MD, coinvestigator), "Descriptive study of veterans with gender identity disturbances: Characteristics and comorbidities, 1987-2007." Unfunded study that is first to characterize a population of 75 U.S. veterans with gender identity disturbances over a 20 year time frame. Completed 2009.

Principal Investigator: "Analysis of State and Federal Prison Directives Related to Transgender Inmate Medical Care and Placement." Unfunded review of existing prison policies through the end of 2007. Completed 2008.

Principal Investigator: "Qualitative Analysis of Concerns of Transgender Inmates in the United States. Unfunded analysis of 129 letters from self-identified transgender inmates across the US." Completed 2012.

Coinvestigator, "Prevalence and Suicidality in Transgender Veterans"; coinvestigator with collaborators at the VA Center of Excellence for Suicide Prevention. 2011-2013. Completed; publication of results in October, 2013.

Principal Investigator, "Assessing Health Outcomes, Health Care Utilization, and Health Disparities in Transgender Veterans Receiving Care in the Veterans Health Administration." Approved by ETSU IRB 7/1/13; protocol remains open. Six manuscripts published; one in preparation.

Consultant, Patient-Centered Outcomes Research Institute grant on transgender healthcare outcomes (STRONG), Michael Goodman, MD, Principal Investigator, Emory University, 2014-present.

**References available upon request.**

# EXHIBIT B

Exhibit B to George Brown Declaration

## Bibliography

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- American Psychological Association, *Transgender, Gender Identity, & Gender Expression Non-Discrimination* (Aug. 2008), available at <http://www.apa.org/about/policy/transgender.aspx>.
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Zhou, Jiang-Ning, et al., *A sex difference in the human brain and its relation to transsexuality*, 378 *Nature* 68 (1995).

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Zurenda, Lauren & Sandberg, David E., *Congenital Adrenal Hyperplasia*, in *Encyclopedia of Clinical Child and Pediatric Psychology* 134 (Ollendick, Thomas H. & Schroeder, Carolyn S., eds., 2003).

# EXHIBIT 36

Lin Fraser Declaration

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA;  
PATRICK MCCRORY, in his official  
capacity as Governor of North Carolina;  
NORTH CAROLINA DEPARTMENT  
OF PUBLIC SAFETY; UNIVERSITY  
OF NORTH CAROLINA; and BOARD OF  
GOVERNORS OF THE  
UNIVERSITY OF NORTH CAROLINA,

Defendants.

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Case No. 1:16-cv-00425

**EXPERT DECLARATION OF LIN FRASER**

**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 of which is attached as Exhibit A to this declaration.

3. I received my Bachelor of Arts in Psychology from Duke University in 1967, my Master's in Counseling from San Francisco State University in 1975, and my doctorate in Counseling Psychology from the University of San Francisco in 1991. I have been in private practice in the same location in San Francisco, California, since 1976.

4. I have expertise working with adults with gender dysphoria. I have been involved in the treatment of gender dysphoric individuals since 1972, when I was an intern at Fort Help, a counseling center in San Francisco. In the course of my career, I have spent approximately 38,000 direct client hours with individuals who experience gender dysphoria and mental health issues related to gender variance, and the families of those individuals. I have also spent approximately 22,000 hours devoted to writing; research; consulting with corporations, educational and health-care facilities; and doing public service over the course of my 44 year-career in the field.

5. I have authored or co-authored numerous articles in peer-reviewed journals regarding the provision of health care to this population. I am a member of the editorial board for the International Journal of Transgenderism.

6. I am the immediate past president of the World Professional Association for Transgender Health ("WPATH") (formerly the Harry Benjamin International Gender Dysphoria Association). I am currently a member of the Executive Committee and Board of Directors. During my presidency, I oversaw two strategic plans for the organization; the WPATH International Classification of Diseases (ICD) consensus process, comprised of international experts for recommendations to the World Health Organization regarding gender dysphoria-related diagnoses in the ICD; the publication of the WPATH Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People

("Standards of Care") (7th version) (2012); and the conceptualization, development, and implementation of the Global Education Initiative ("GEI"), of which I continue to be Co-Chair. GEI is an initiative to increase access to competent, compassionate, and evidence-based healthcare for transgender people worldwide.

7. I am one of the eleven authors of the most recent edition of the WPATH Standards of Care, which I discuss in greater detail below. I am also a co-author of the WPATH recommendation to the American Psychiatric Association ("APA") regarding the adult diagnosis of gender dysphoria in the fifth edition of the APA's Diagnostic and Statistical Manual of Mental Disorders (DSM-5). The APA accepted the WPATH recommendation.

8. I am a full member of the American Psychological Association and belong to several divisions, including Division 44, Society for the Psychological Study of Lesbian, Gay, Bisexual, and Transgender Issues.

9. In preparing this declaration, I relied on my education and training, as well as my knowledge of the literature in the pertinent fields (a non-exhaustive list of those references is included as Exhibit B to this document). I have also relied on my 44 years of experience in this field, as set out in my curriculum vitae, and on the materials listed therein. The materials I have relied upon in preparing this declaration are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject. I may wish to supplement these opinions or the bases for them as a result of new research or publications or in response to statements and issues that may arise in my area of expertise.

10. In the past two years, I have testified in a deposition in the following matter:  
*Domainlor Cabading v. California Baptist University*, No. RIC1302245 (Cal. Super. Ct.).

11. I am being compensated at an hourly rate for actual time devoted, at the rate of \$350 per hour for any clinical services, review of records, or preparation of reports or declarations; \$475 per hour for deposition and trial testimony; \$1250 per half day for travel time; and \$2500 per full day 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.

### OPINIONS AND CONCLUSIONS

12. The term “gender identity” refers to one’s sense of belonging to a particular gender, such as male or female. Every individual has a gender identity. In most cases, gender identity is fixed at a young age and is stable over time.

13. People born with anatomy typically associated with females (*e.g.*, vagina) generally have a female gender identity, and people born with anatomy typically associated with males (*e.g.*, penis) generally have a male gender identity. However, this is not the case for all individuals. Transgender individuals are those who have a gender identity that differs from the sex assigned at birth, a designation that is usually based only on an examination of external genitalia at the time of birth.

14. Gender Dysphoria is the diagnosis used to describe the clinically significant distress experienced by a person whose gender identity does not match the sex assigned at birth. Individuals with gender dysphoria are referred to as transgender. However, not all people whose physical anatomy is misaligned with their gender identity suffer clinically significant distress as a result of that misalignment.

15. WPATH is an interdisciplinary, professional and educational organization devoted to transgender health. As explained on its website, the organization's "professional, supporting, and student members engage in clinical and academic research to develop evidence-based medicine and strive to promote a high quality of care for transsexual, transgender, and gender non-conforming individuals internationally."<sup>1</sup>

16. WPATH publishes internationally accepted Standards of Care, the goal of which is to provide clinical guidance for health professionals to assist transgender people with safe and effective pathways to achieving lasting personal comfort with their gendered selves, in order to maximize their overall health, psychological well-being, and self-fulfillment.

17. While the course of care for any particular individual must be tailored to that individual's specific situation, the Standards of Care identify the following evidence-based protocols for the treatment of individuals with gender dysphoria:

- a. Social transition or changes in gender expression to present consistent with one's gender identity;
- b. Psychotherapy to address the negative psychological impact of gender dysphoria, including depression, the lack of appropriate social feedback during identity formation, stigma, alleviating internalized transphobia, lack of social and peer support, and negative body image;

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<sup>1</sup> See generally Mission and Values, World Professional Association for Transgender Health, available at [http://www.wpath.org/site\\_page.cfm?pk\\_association\\_webpage\\_menu=1347&pk\\_association\\_webpage=3910](http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1347&pk_association_webpage=3910). Out of respect for the various ways in which people in this community self-identify, WPATH uses the phrase "transsexual, transgender and gender non-conforming" to describe the population that is both the subject of its research and the intended beneficiaries of the services provided by its members. To avoid confusion in this document, I use the term "transgender" as the umbrella term encompassing those who would self-identify as transsexual.



- c. Medical intervention where appropriate, including hormone therapy to feminize or masculinize the body and surgery to alter primary and/or secondary sex characteristics; and
- d. Other ancillary treatments, such as voice therapy and electrolysis.

18. The primary goal of treatment for gender dysphoria is to alleviate the distress resulting from an internal sense of gender that is inconsistent with sex assigned at birth. Treatment for gender dysphoria includes the development of an individualized plan with a mental health provider. This plan has both internal and external components and objectives. For some, the internal components of therapy focus on helping the person to simply acknowledge and accept their authentic gender identity. For those who have accepted that they have a gender identity different than the sex that was assigned to them at birth, therapy focuses on exploring what options exist going forward; building the self-confidence necessary to pursue various options; developing a strategy for alleviating the distress caused by the dysphoria; and reducing internalized transphobia (*i.e.*, self-hatred of transgender people because they are transgender). External components include receiving appropriate social feedback during social transition. Medical intervention may be part of an overall treatment plan designed to accomplish both these internal and external objectives, but is not necessarily appropriate or required to accomplish these goals.

19. Social transition is the process by which a transgender individual begins to express and experience the world as his or her true self. Social transition includes changing the name by which one is referred from the name selected for the individual at birth to the name that the individual chooses for himself or herself. It also includes using the preferred pronouns, as well as dressing, grooming, and otherwise outwardly presenting oneself consistently through social signifiers that correspond to one's gender identity in every aspect of life – at home, work, school, and in the broader community.

20. Social feedback is an important part of social transition and is critical to identity consolidation. Identity consolidation is the process by which an individual is able to integrate all aspects of their identity into one life, as opposed to having to maintain an external identity that is at odds with one's internal sense of self.

21. For most people, social feedback affirms their inner experience – when I recognize you as a male and you identify as male, my social feedback confirms that you are who you think you are. For most transgender people (particularly the adults whom I see as part of my practice), their core self in terms of gender develops in secret over time and keeping one's true self a secret is damaging. Their interactions with the social world have undermined, rather than affirmed, their identity. For example, a transgender male, before social transition, is seen by the world as female, and the social feedback he receives tells him that the world does not see him as he sees himself. For transgender individuals, their life before transition is typically dominated by social feedback that is contrary to their own identity. This can lead to feelings of unrealness, numbness, dissociation, depression and anxiety, and other mental health concerns.

22. When a transgender woman begins a social transition, she is seeking affirmative social feedback; she is testing out whether the world will see her as she sees herself. By using sex-segregated spaces, she has the opportunity to receive social feedback that affirms her gender identity. This feedback can be as subtle as going unnoticed in a space designated for women, to as explicit as being called “Miss” or “M’am” by a stranger. The same is true for transgender men.

23. Social feedback that affirms one’s gender identity can have an almost immediate positive impact on the distress associated with gender dysphoria.

24. The importance of a social transition that is affirmed, consistent, and unimpeded once it begins cannot be overestimated. For identity consolidation to occur, this process needs to continue consistently in the outside world. Access to gender identity-appropriate restrooms and locker rooms is a particularly important component of social transition and identity consolidation.

25. By contrast, being denied access to gender identity-appropriate facilities can be traumatizing for transgender individuals who have socially transitioned. Restroom and locker rooms, unlike gender-neutral settings (*e.g.*, the library), categorize people according to gender. Denying transgender individuals access to such facilities in a manner consistent with their identity stigmatizes transgender individuals and prevents them from receiving critical social feedback.

26. To deny a transgender individual access to a facility consistent with that person's gender identity, or to insist that a transgender individual use a separate restroom, communicates to that person, and to the world, that the transgender person is not a "real" man or woman; they are some undifferentiated "other." In my experience, interrupting or impeding an individual's social transition often causes the return of any symptoms that the individual experienced prior to their social transition, including anger, self-hatred, depression, and anxiety.

27. The Standards of Care identify social transition and gender expression consistent with one's gender identity as part of the protocols for treatment. Denying transgender individuals access to sex-segregated spaces consistent with their gender identities would create obstacles to their ability to follow the medically appropriate treatment protocols.

28. While some transgender individuals are more resilient, and thus less susceptible to long-term psychic trauma as a result of denial of access to gender identity-appropriate facilities, any interference with a transgender individual's social transition risks destabilizing a transgender patient and undermining treatment goals.

29. A significant focus of psychotherapy for a transgender client involves the issue of when and how to tell people that the individual is transgender. Revealing this information about oneself requires courage in the face of stigma and rejection. As a result, much time in therapy is spent on developing a plan for "coming out," similar to the process that gay people go through when deciding when to share information about their sexual orientation with others. For transgender people, having control over when, how, and to whom they will reveal information about their gender history is an important part of

maintaining (or regaining) a sense of control over one's identity during a period of tremendous vulnerability.

30. This desire to carefully control when and how others become aware of their gender history often translates into a heightened sense of modesty when a transgender person is in a sex-segregated space such as a locker room. My experience is that transgender adults are hyper aware of the ways in which their bodies are different from the bodies of non-transgender people; thus, they seek to minimize the extent to which their physical differences are noticed by other people. When transgender people use sex-segregated facilities consistent with their gender identity, their goal is to stay invisible, and to avoid doing anything that would suggest that they do not belong in that space. Transgender individuals are very uncomfortable with the idea that someone may notice their anatomical differences, and thus are particularly vigilant about their modesty in such spaces.

31. My experience working with transgender clients for more than 40 years has demonstrated that transgender individuals want to be included in what they perceive to be the inner circle of the gender with which they identify. The last thing they want to do is compromise the opportunity to be accepted in those spaces. Of the thousands of clients with whom I have worked, I have never encountered anyone who wanted to expose their physical differences to others. No one wants to be ridiculed; no one wants to be seen as not belonging. Least of all transgender individuals. Transgender individuals want to be seen as the person they are. They dream that they will be able to use a restroom, go shopping, participate in activities, go to school or work – in short, to live in their gender without drawing undue attention because they don't "look the part." They want to remain invisible

for the most part because that means they are just like every other man or woman walking down the street. Transgender women want to be seen as women because they are women. Transgender men want to be seen as men because they are men.

32. When a transgender person who has already socially transitioned is required to use a sex-segregated facility other than a facility consistent with their gender identity, this may have the effect of revealing the individual's transgender status without that person's consent (often referred to as "outing" a person). This is also true when a transgender person is required to use a gender-neutral facility. Being denied access to the gender identity-appropriate facility is shaming and stigmatizing – marking them as something other than a "real woman" or "real man."

33. Denial of restroom use in accordance with gender identity causes the use of such facilities to become a source of anxiety for transgender individuals. For example, when faced with the possibility of being forced to use facilities based on the sex that they were assigned at birth, some of my clients have tried not to drink anything all day to avoid going to the bathroom and have developed medical complications, such as urinary tract infections, due to lack of voiding. Individuals have limited their social interactions, and in extreme cases, will become home bound, except for short periods, rather than face the shame and danger of using inappropriate facilities. This negatively affects their ability to work, participate in social events, access public services, and engage in civic life generally. In my experience, when transgender individuals fear that they will not be able to use the restroom consistent with their identity, they will take extraordinary steps to plan for how they will operate in the world without access to such facilities. The burdens are real and significant.

34. Based on conversations with my clients, it is clear to me that laws or policies which force transgender individual into spaces designated for their birth-assigned sex and inconsistent with their gender identity can trigger intense emotions ranging from shame and embarrassment to fear of harassment and possibly violence. Even if the risk of actual physical violence is low, in my experience, the fear and anxiety that such policies inspire can result in transgender people removing themselves from work-related or social interactions. Having to forego these important professional and personal opportunities due to fear that an attempt to use the restroom at such an event could result in being outed, harassed, or worse is not only harmful in the moment, but can also have lasting psychological, social, and economic effects (*e.g.*, loss of self-confidence, isolation, professional stagnation).

35. Being required to use a facility where their physical safety may be at risk can trigger acute, and potentially debilitating, anxiety for transgender people. Transgender women, in particular, often fear for their physical safety when forced to use male restroom facilities. Although transgender people are often targeted for harassment and violence, a transgender individual does not have to have personally been a victim of physical violence in order for restrictive restroom laws or policies to trigger such negative, and deeply painful, emotions. Based on my four decades of experience in the field, however, it is clear to me that such fear and anxiety would be even more acute for someone who had previously been accosted, or if they live in an area where the likelihood of harassment and violence in a restroom was viewed as more likely to occur.

36. Laws that limit an individual's access to bathrooms and changing facilities consistent with their gender identity can have the effect of making people feel that they do not belong in the world. The message communicated by policies that deny transgender people access to gender identity-appropriate facilities can be traumatic and exacerbate the depression, anxiety, and isolation that many transgender people experience. Such feelings of rejection and hopelessness can cause symptoms to return which had been alleviated through the gender consolidation process.

37. For example, transgender individuals can experience a resurgence of internalized transphobia, anxiety, depression, anger, stigma, and dissociation. Internalized transphobia is particularly damaging when transgender individuals believe that society views them as sexual deviants, criminals, and exhibitionists. For example, a transgender man forced to use the women's room will be acutely aware that the women in that space may see him as threatening their physical safety because they do not understand why he is using the women's restroom. After such encounters, transgender men may experience tremendous shame, anxiety, and depression. Indeed, research shows that transgender individuals are at far greater risk for severe health consequences, and 41% have attempted suicide, which is an extraordinarily high rate.

38. To the contrary, when transgender individuals feel accepted at work, at school, or in other public spaces, their personalities emerge and they blossom. They can also focus and concentrate better, no longer distracted by gender dysphoria. In many cases, shy people become more friendly, animated, outward-oriented and social. They become their natural selves, whatever that would have been in the first place.



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 this 20 day of June, 2016.

By: Lin Fraser  
Lin Fraser

# EXHIBIT A

Exhibit A to Lin Fraser Declaration

**Curriculum Vitae**  
**Lin Fraser Ed.D.**

2538 California Street  
San Francisco, CA 94115  
415-922-9240  
linfraser@gmail.com

**Current**

Psychotherapist in private practice 1976 - present

**Education**

Duke University, B.A. Psychology (*in 3 years*) 1967 Summer School: Stanford University, Radcliffe College.

San Francisco State University, M.A. Counseling 1975.

University of San Francisco, Ed.D. Counseling Psychology 1991.

**Post-Graduate Training**

*Internships:* Haight-Ashbury Free Clinic, 1972; Fort Help, 1973-1979.

*Postgraduate Professional Training:* Human Sexuality Training, UCSF and San Francisco Psychoanalytic Institute; National Council on Alcoholism Professional Training; Family Therapy Institute of Marin; San Francisco Psychoanalytic Institute Yearlong Program for Professionals; C.G. Jung Institute Seminars for Professionals.

Specialized training and certification in online counseling.

*Consultation:* Group Consultation: Bay Area Gender Associates, 1986-current. Individual consultation: Paul Walker PhD, founding President of HBIGDA, 1983-1986. Jean Shinoda Bolen M.D, Author, Activist and Jungian Analyst, 1986 to present.

**Certification and License**

California Marriage and Family Therapist, MFT8288, 1976.

Licensed Professional Clinical Counselor LPCC1816, 2015

National Certified Counselor, NCC 17402, 1987.

Pupil Personnel Worker, California Community College System, Instructor, Psychology, California Community College System, 1975.

Distance Credentialed Counselor, DCC 553, (*Internet Counseling Credential*), 2006.

Mental Health Facilitator (MHF) from NBCC International, Center for Credentialing & Education, Aug 2015 Kigali, Rwanda

### **Public and Professional Service**

WPATH (*World Professional Association for Transgender Health*):

President 2011-2014, founding professional member

Executive Committee 2009 – 2016

Board of Directors 2007-2016

Global Education Initiative, Co-Chair 2013- present.

Development Committee, Co-Chair- 2013- present. ,

*SOC7 (2012) (Standards of Care) co-author.* Responsibilities include Adult Psychotherapy and Web-Based Transgender Care.

Standards of Care SOC8- Revision committee- current.

Steering Committee – USPATH- United States Chapter of WPATH

Conference Co- Chair, WPATH 23<sup>rd</sup> International Symposium, Bangkok, Thailand. February 2014

Journal of Sexual Medicine- Reviewer, 2013-current.

Asian Pacific Trans Health Blueprint, Reviewer, April 2015

Co-Chair Mental Health Track, National Transgender Health Summit, Oakland, CA, Spring 2013.

Technical Consultation for the development of Blueprint for provision of care to Transgender persons in Latin America and the Caribbean- Group Member, sponsored by PAHO, Washington DC, Dec 19-21-2011. Trinidad, Spring 2013.

International Journal of Transgenderism: Editorial Board, 2006-present; reader and reviewer.

Conference on Family Law: Consultant/Participant, June 2006.

Transgender Mental Health Guidelines: Reviewer 2005.

Cathedral School for Boys: Board of Trustees, 1996-2002, Chair-Education Policy Committee, 1997-2002, Chair and Founder, Gender Issues and Boys Study Committee, 1997-2002, Cathedral School for Boys: Consultant and Co-Chair, Boys Study Committee- 2005-2008.

Duke University: Alumni Admissions Interviewer for Northern California- 2002-present.

The Urban School of San Francisco: Senior Endowment Committee, Chair 2003-2004, Diversity Committee, 2000-2004, Nominating Committee Chair- 2002-2004.

Church Divinity School of the Pacific: reader for doctoral dissertation on "The Spiritual Life of Boys" 2004.

University of California San Francisco, Supervisor of Psychiatry Resident, 1998.

California School of Professional Psychology Adjunct Faculty, 1995-1997, Co-taught course – Gender Identity Issues.

TGSF (*Transgender San Francisco, formerly ETVC*); professional advisor and consultant for phone line for transgender peer counseling, 1990-1992.

Bay Area Gender Associates (*BAGA*): founder and participant: 1986 – current.

Pacific Center, Group Facilitator, TV/TS Rap Group, 1978-1981.

Lone Mountain (*University of San Francisco*) Adjunct Faculty, 1979-1981.

### **Professional Associations**

WPATH (*World Professional Association for Transgender Health*) formerly HBIGDA (*Harry Benjamin International Gender Dysphoria Association*), founding professional member and President (2011-2014).

APA (*American Psychological Association*), clinical member, Division 46

(Media Psychology), Division 52 (International Psychology), Divisions 39 (Psychoanalysis), Division 44 (LGBT), Division 36 (Society for the Psychology of Religion and Spirituality).

CAMFT (*California Association of Marriage and Family Therapists*), clinical member.

ISMHO (*International Society Mental Health Online*)- member.

## **Publications and Internet**

Website <http://www.linfraser.com>

Twitter <http://www.twitter.com/linfraserWPATH>

<http://www.twitter.com/drlinsf>

Fraser, L (2016) *Psychotherapy. Principles of Transgender Medicine and Surgery*. Edited by Randi Ettner & Stan Monstrey (in press)

Fraser, L & Knudson, G (2015) *Gender Dysphoria and Transgender Health in ABC of Sexual Health*, 3<sup>rd</sup> Edition. Wylie, K (ed). Wiley.

Fraser, L (2015). *Gender Dysphoria: Definition and Evolution Through the Years in Management of Gender Dysphoria, A Multidisciplinary Approach*. Eds. Carlo Trombetta, Springer,

Fraser, L (2015) "*Standards of Care, transgender health*", *Encyclopedia of Human Sexuality*, (Edited by Patricia Whelehan and Anne Bolin) Wiley and Co. May 2015.

Coleman et al, *WPATH Standards of Care, Version 7 2011*. I am one of 10 members on the writing committee.

Fraser, L et.al (2010), *Recommendations for Revision of the DSM Diagnosis of Gender Identity Disorder in Adults*. *International Journal of Transgenderism*, 12:80-85 (with Drs. Dan Karasic, Walter Meyer and Kevan Wylie).

Fraser, Lin (2009) *Etherapy: Ethical and Clinical Considerations for Version 7 of the World Professional Association for Transgender Health's Standards of Care*. *International Journal of Transgenderism*; Volume 11, Issue 4, Pages 247-263.

Fraser, Lin (2009) *Depth psychotherapy with transgender people*. *Sexual and Relationship Therapy*, 24:2,126 — 142).

*Fraser, Lin (2009) Psychotherapy in the Standards of Care, International Journal of Transgenderism, 1434-4599, Volume 11, Issue 2, 2009, Pages 110 – 126.*

*Classification, Assessment and Management of Gender Identity Disorders in the Adult Male: A Manual for Counselors, 1991, Doctoral Dissertation, University of San Francisco.*

*Transgender Identity Issues, A Binder for Graduate Students (with William Henkin, Ph.D.), 1996.*

*Therapy with Transgender People Across the Life Span (edited version) <http://www.apadivision44.org/newsletter/2005summer.pdf> APA Division 44 Newsletter, Summer 2005.*

*Therapy with Transgender People Across the Life Span (expanded version) ACA AGLBIC Newsletter 2006.*

*Can Same Sex-Schooling Survive? A Forum at Grace Cathedral [http://www.gracecathedral.org/enrichment/forum/for\\_19990516.shtml](http://www.gracecathedral.org/enrichment/forum/for_19990516.shtml)*

*Addressing Psycho-Social Issues in the Transgender Client, Transgender Care Conference <http://hivinsite.ucsf.edu/InSite?page=cftg-07&ss=xsl%2Fconf-t2> May 2000.*

*Observations About Transgender People, Talk at ETVC, 1991 <http://www.transkids.us/obstg.html>*

## **Media**

### Films/Documentaries

*The Case of John Brown 2007 Form Media, UK, Channel 1.*

*Sex Change, Her to Him 2006 Beyond, Australia.*

*Changing Sexes, Follow-up 2005 Discovery Channel *Changing Sexes, Female to Male* 2003 Discovery Channel.*

*Changing Sexes, Male to Female 2002 Discovery Channel.*

*The Blank Point- What is Transsexualism? 1992 Award-winning Independent Film.*

*A Question of Gender* 1986 Independent Film.

*Easing Stress* 1979 Pan Am Training Film.

### Radio/Television

Interviewed on CNN, Discovery Channel, KPFA, KTVU, Learning Channel, KPIX and others Print Media Interviewed for San Francisco Chronicle, Bay Times, Independent, Guardian, CNN Print Version, Blender, Baltimore Sun, New York Times, XPress and others.

### **Training/ Consulting/ Legal**

Consultant to Dignity Health & St Francis Hospital, San Francisco, CA. I am on the core team to set up a Transgender Health Program from the ground up. Contract runs from May 2016 – May 2017.

Consultant to Benefits Department, Oracle Corporation, May 2015

Expert witness in *Domainlor Cabading vs. Cal Baptist University*, July 2014.

Training for Cal Berkeley Health Care Professionals- Transgender Clinical Care Across the Lifespan June 3, 2014

Training for Stanford Medical Residents, Transgender Care Across the Lifespan, August 2013

Report for Transgender Law Center petitioning nondiscrimination of transgender pilot, December 2010.

Report for Prison Law Project Advocating Treatment for Transgender inmate August 2010.

Training for 3PAR Corporation, informational session regarding a transgender employee transitioning in the workplace, Feb 12, 2010.

All-day seminar for psychotherapists on Gender Variant and Transgender Identities, Clinical and Ethical Issues, in Bakersfield, California, February 27, 2009. For information on this seminar, see <http://sites.google.com/site/transgendertherapyandtraining/>

Training for State Fund, informational session regarding a transgender employee transitioning in the workplace, June 2005.



Training for Primavera Corporation, informational session regarding a transgender employee transitioning in the workplace, Nov 17, 2003.

Staff Training on Transgender Issues, University Health Services, UC Berkeley, Berkeley, CA, Oct. 8, 1999.

Staff Training on Transgender Health Care, Dept. of Veteran Affairs Medical Center, San Francisco, CA, April 15, 1998.

Two-Day Seminar on Gender Identity Issues for doctoral psychology students at CSPP (with Dr. William Henkin), 1995-1997.

Training of members of Episcopal Church regarding transitioning member, Benicia, CA Jan. 1997.

Training for Naval Post Graduate School regarding transitioning TG Employee, May 24 1996.

Training for State Fund regarding transitioning executive employee, San Francisco and Los Angeles, May 1995.

Prior to 1995, I did trainings at San Quentin, Family Therapy Institute of Marin, San Francisco State University Departments of Counseling as well as Psychology among others. Served as professional advisor to lawyers and as expert witness in various court cases relating to trans issues.

## **Lectures**

*Trauma, Complex Cases and the Role of Psychotherapy*, WPATH 24th International Symposium, Amsterdam, June 20, 2016. (with Drs. SJ Langer, Jack Pula & Aron Jansson)

*Symposia- Standards of Care Version 8: Questions for the Next Revision*, Amsterdam, June 21, 2016 (with Drs. Dan Karasic, Eli Coleman, Annelou de Vries, Stan Monstrey, Vin Tangpricha, Griet DeCuypere)

*Transgender Care Across the Lifespan, Psychotherapy and Aging*, California Psychological Association Annual Conference, Los Angeles, April 14, 2016.

*WPATH and the Standards of Care*, Best Practices In Medical and Mental Health Care, WPATH Global Education Initiative, March 30, 2016, Springfield MO.

*Advanced Psychotherapy*, Best Practices In Medical and Mental Health Care,

WPATH Global Education Initiative, March 31, 2016, Springfield MO.

Springfield, MO

*Assessment and Letter Writing*, Best Practices In Medical and Mental Health Care, WPATH Global Education Initiative, April 1, 2016, Springfield MO.

*WPATH History*, Best Practices In Medical and Mental Health Care, WPATH Global Education Initiative, January 20, 2016 Atlanta, GA

*Evolution of The Standards of Care*, Best Practices In Medical and Mental Health Care, Global Education Initiative, Jan 21, 2016, Atlanta, GA

*Psychotherapy and the Standards of Care*, Best Practices In Medical and Mental Health Care, Global Education Initiative, Jan 22, 2016, Atlanta, GA

*WPATH, Yesterday, Today and Tomorrow*, Best Practices In Medical and Mental Health Care, WPATH Global Education Initiative, Chicago, Illinois, Nov 7, 2015 (with Drs. Gail Knudson & Jamison Green)

*Psychotherapy, Transgender Health*, Best Practices In Medical and Mental Health Care, WPATH Global Education Initiative, Chicago, Illinois, Nov 6 2015.

*From Treating Transsexualism to Promoting Transgender Health, WPATH History and Professional Evolution, Transgender Beyond Disorder, New Paradigms and SOC7*. SFSU Summer Institute, San Francisco, CA, June 19, 2015.

*Psychotherapy with the Aging Transgender Client*, National Transgender Health Summit, Oakland, CA, April 18, 2015

*WPATH Perspectives on Major Issues in Trans Health* (Moderator), National Transgender Health Summit, Oakland, CA, April 17, 2015

*Emergent Issues, Controversies and Ethics as we evolve outside the binary*. National Transgender Health Summit, Oakland, CA, April 17, 2015

*Standards of Care 7.x: Questions for the Next Revision*, European Professional Association for Transgender Health 1<sup>st</sup> Symposium, Ghent, Belgium, Mar 13, 2015

*President's Welcome Plenary*, WPATH 23rd International Symposium, Bangkok Thailand, February 15, 2014.

*Long-term Psychotherapy in Advances in Transgender Care*, WPATH 23<sup>rd</sup> International Symposium, Bangkok, Thailand, February 15, 2014

*Psychotherapy from the Heart in the WPATH Standards of Care*, Invited Plenary, World Association for Sexual Health 21<sup>st</sup> Conference, Porto Alegre, Brasil, September 23<sup>rd</sup>, 2013

*Opening Plenary* (delivered via Skype), 1<sup>st</sup> Trans Care Conference for the Confederation of Independent States, Moscow, Russia, November 11, 2013

*Opening Welcome Plenary* at National Transgender Health Summit, Oakland, CA, Spring 2013.

*Interdisciplinary complex cases*, National Transgender Health Summit, Oakland, CA, Spring 2013.

*WPATH Global Education Initiative, Panel on Transgender Education and Training*, National Transgender Health summit, Oakland, CA, Spring 2013.

*Advanced Psychotherapy Cases with Trans People*, Moderator, National Transgender Health Summit, Oakland, CA, Spring 2013.

*Shifting Paradigms: Breaking with Pathology, Affirming Gender Diversity*. Keynote Address, CPATH Biennial Meeting, Winnipeg, Canada Sept 22 2012.

*Transgender Beyond Disorder: WPATH, New Paradigms & Global Connections*, WPATH/UCSF/CENESEX, Forum at SFGH, May 23 2012

*Transgender Care Across the Lifespan: Psychotherapy and Aging*. AAGP Annual Meeting, Washington DC, March 18, 2012

*Transgender Beyond Disorder: New Paradigms and the SOC7 in II Colloquium "Trans Identidades, Género y Cultura"*. The 6<sup>th</sup> Cuban Congress on Sexual Education, Counseling and Therapy, Havana, Cuba, January 24, 2012.

*Meet the Presidents, WPATH Vision and Goals*, with Jamison Green PhD and Walter Bockting PhD, WPATH 2011 International Symposium, Atlanta, GA, September 28, 2011.

*Implementation of version 7 of the WPATH Standards of Care for Transgender Health*, with the SOC7 Writing Committee, WPATH 2011 International Symposium, Atlanta, GA, September 28, 2011.

*Plans for the 2014 WPATH International Symposium in Bangkok, Thailand, WPATH 2011 International Symposium, Atlanta, GA September 26, 2011.*

*Transgender mental health care across the lifespan, Aging and the transgender person, WPATH 2011 Biennial Symposium, Atlanta, GA. September 26, 2011*

*Launch of version 7 of the WPATH Standards of Care for Transgender Health, Plenary with Eli Coleman PhD, WPATH 2011 Biennial Symposium, Atlanta GA, September 26, 2011.*

*WPATH Standards of Care for Transgender Health, with Jamison Green PhD, Eli Coleman, PhD, Jamie Feldman MD, WPATH Sponsored Symposium at Gay and Lesbian Medical Association Site, Atlanta, GA, September 23, 2011*

*Observations about transgender people: 40 Years of Practice as a gender therapist, Presentation at Southern Comfort Conference, Atlanta, GA, September 22, 2011.*

*WPATH Day-to-Day, then and now, Standards of Care and trans men Keynote at the Robert Eads Health Fair, Atlanta, GA. September 22, 2011.*

*WPATH Day-to-Day, Professionals Workshop at Gender Spectrum Conference, Berkeley, CA, July 29, 2011.*

*Mental Health Care Across the Lifespan, Psychotherapy and Aging, American Psychiatric Association Annual Meeting, Honolulu, Hawaii, May 2011*

*Mental Health Care Across the Lifespan, Psychotherapy and Aging, Plenary Lunch, National Transgender Health Summit, San Francisco, CA April 9, 2011.*

*Co-Occurring Mental Health Issues in Transpeople: DID and GID with Dan Karasic MD, National Transgender Health Summit, San Francisco, CA April 9, 2011.*

*WPATH Symposium with Walter Bockting PhD and Jamison Green PhD, National Transgender Health Summit, San Francisco, CA April 9, 2011.*

*Transgender Mental Health Issues. Transgender Health Lecture Series (for medical students), UCSF, February 2, 2011.*

*Transgender Care Across the Lifespan, Aging and the Transgender Person, Northern California Psychiatric Society Annual Meeting, Monterey, CA, Mar 21, 2010.*

*Transition Issues for Transpeople with Dissociative Identity Disorder (with Dan Karasic MD)*, XXI Biennial Symposium, WPATH, Oslo, June 20, 2009.

*Transgender Identity Development and Depression*, Pre-Symposium for CME Credit, XX Biennial Symposium, WPATH, Chicago, Sept 5, 2007.

*2007 Web-Based Transgender Care, Ethical and Clinical Considerations*, Plenary Lecture, XX Biennial Symposium, WPATH, Chicago, Sept 7, 2007.

*Shadow Side of the Paradigm Shift; When Politically Correct is not Psychologically Correct*. Panel presentation at the 19th International Symposium of the Harry Benjamin International Gender Dysphoria Association, Bologna, Italy, April 6-9, 2005.

*The Transgender Phenomenon: Psychodynamic Viewpoint*. Opening Plenary lecture presented at the 18th International Symposium of the Harry Benjamin international Gender Dysphoria Association, Gent, Belgium, Sept. 10-13, 2003.

*Psychotherapy With Transgender People/ Across the Lifespan*. Plenary Lecture presented at Association of Gay & Lesbian Psychiatrists pre APA Conference "Beyond Coming Out, LGBT Mental Health Across the Lifespan", San Francisco, CA, May 17, 2003.

*Providing Therapeutic Care Outside the Binary Gender System*. Plenary Panel at the 17th International Symposium of the HBIGDA, Galveston, Texas, Oct.31-Nov.4, 2001.

*Nurturing the Emotional, Moral, and Spiritual Development of Boys*. Paper presented at the National Association of Episcopal Schools Biennial Conference, San Francisco, CA, Nov. 17, 2000.

*What About Boys? The Case for Single-Sex Education: One School's Perspective*. Paper presented at the 7th Annual Boys School Coalition Conference "Bridge to the Future: Mentoring Boys in the New Millennium". San Francisco, CA. June 25-28, 2000.

*Transgender Identity Development*. Paper presented at Transgender Care Conference, San Francisco, CA, May 5, 2000.

*Normative Transgender Identity Development*. Paper presented at the California Dreamin' Conference, April 2000.

*Can Same-Sex Schooling Survive?* Speaker at the Forum at Grace Cathedral, San Francisco, CA, May 17, 1999.

*Psychotherapy with TG People: A Jungian Perspective.* Paper presented to American Psychological Association Annual Conference, San Francisco, CA, August 1998.

*Observations About Transgender People.* Paper presented at California Dreamin' Conference, San Francisco, CA May 1998.

*A Transgender Issues Consultation Group in the San Francisco Bay Area.* Panel member at the 15th International Symposium of the HBIQDA, Vancouver, Canada, Sept 1997.

*Female-to-Male Transsexuals in Psychotherapy,* Paper presented at the 1st FTM International Conference, San Francisco, Ca. April 1997.

Earlier presentations for the Society for the Scientific Study of Sex, Conference on Sexual Compulsivity, Addiction, ETVC and other trans organizations, Pan American World Airways among others.

### **Nonprofessional training:**

Outward Bound School, Colorado Summer 1976; Yosemite Mountaineering School 1977; Advanced First Aid Teacher and Emergency Medicine Training 1978; Mountain Medicine and Outdoor Survival Skills Training 1979; Private Pilot Instruction & Solo Flight 1972.

### **International/Intercultural/Future Directions**

One of youngest transatlantic commercial airline passengers- America to UK 1947. Expat for many years. Lived in Wales and Brazil as a child. Visited parents in Mexico and Iran as young adult. Much international travel my entire life.

Conversant in Spanish and Portuguese.

Pan American World Airways, 1967-1976. Flight Attendant. Taken off flight status for 2 years to develop training programs in Communication for Pan Am Flight Service, Course Developer, Train the Trainer and Video Producer on Communication and Cross Cultural Communication, 1976-1979.

Foreign Language Institute, Moscow, USSR-Winter-1970.

Tom Dooley Foundation (*now InterMed*): volunteer researcher in remote mountain villages in Nepal, 1974-5.

Kibbutz Menara: volunteer in upper Galilee, Israel, summer 1973

Member-World Affairs Council.

Future plans include continued travel and doing international training and therapy online.

**Personal**

Married, one child.

Primary interests include people, cultures, world affairs, travel, reading, cooking and technology.

# EXHIBIT B

Exhibit B to Lin Fraser Declaration



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# EXHIBIT 37

Scott Leibowitz Declaration

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA;  
PATRICK MCCRORY, in his official  
capacity as Governor of North Carolina;  
NORTH CAROLINA DEPARTMENT  
OF PUBLIC SAFETY; UNIVERSITY  
OF NORTH CAROLINA; and BOARD OF  
GOVERNORS OF THE  
UNIVERSITY OF NORTH CAROLINA,

Defendants.

Case No. 1:16-cv-00425

**EXPERT DECLARATION OF SCOTT F. LEIBOWITZ, MD**

**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. My professional background, experience, and publications are detailed in my curriculum vitae (CV), a true and accurate copy which is attached as Exhibit A to this declaration. I received my medical degree from the Sackler School of Medicine at Tel Aviv University, New York State American Program. I am board certified in adult psychiatry, as well as in child and adolescent psychiatry. I am currently licensed to practice medicine in Illinois.

2. As reflected in my CV, I have specialized training and expertise in the diagnosis and treatment of children and adolescents with gender dysphoria and related psychiatric conditions. I trained at Boston Children's Hospital and Harvard Medical School, where I was subsequently appointed to the faculty and worked to develop a

psychosocial consultative gender identity clinic in conjunction with the nation's first formally named medical gender identity clinic. In a research capacity I am the only psychiatrist currently named as a co-investigator on the first National Institute of Health funded R01 grant for multisite longitudinal research on transgender youth, which involves Boston, Chicago, San Francisco, and Los Angeles sites. I serve as the co-chairman of the Sexual Orientation and Gender Identity Issues Committee for the American Academy of Child and Adolescent Psychiatry and am on the Global Education Initiative Committee for the World Professional Association of Transgender Health (WPATH). I was the only psychiatrist to participate in the development of consensus guidelines on a joint initiative between the Substance Abuse and Mental Health Services Administration (SAMHSA) and the American Psychological Association regarding the mental health approach to children and adolescents with gender identity concerns.

3. I currently serve as an attending psychiatrist at the Ann & Robert H. Lurie Children's Hospital of Chicago. In that and my former role at Boston Children's Hospital, I have directly treated approximately 200 youth from ages 4 through early 20's and have been indirectly involved in the clinical decision making of hundreds more youth through multidisciplinary meetings with endocrinologists, pediatricians, psychologists, social workers, and surgeons. In my current role, I participate in the assessment and treatment planning of these youth, and am directly responsible for helping families understand whether or not certain decision-making aspects of care are in the child or adolescent's best interest according to prevailing standards of care across disciplines.

4. I recently accepted a position as Medical Director of Behavioral Health for the THRIVE Program, the multidisciplinary gender identity clinic at Nationwide Children's Hospital, and a related faculty appointment at Ohio State University.

5. I am being compensated at an hourly rate for actual time devoted, at the rate of \$500 per hour for any clinical services, review of records, or preparation of reports or declarations; \$600 per hour for deposition and trial testimony; \$2000 per half day for travel time (or otherwise); and \$4000 per full day 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.

6. In preparing this declaration, I have reviewed the expert declaration of Dr. George Brown, which describes gender dysphoria and the generally recognized treatment protocols for this condition, which have been promulgated by the World Professional Association for Transgender Health (WPATH). Unless specifically noted otherwise, I agree with the opinions expressed in that declaration, and will not reiterate the material that he has covered in his declaration.

7. In forming my opinions, I have relied on my scientific education and training, my research experience, my knowledge of the scientific literature in the pertinent fields (a non-exhaustive list of those references are included at the end of this document), and my clinical experience in evaluating and treating children and adolescents with gender identity issues, including those with gender dysphoria. My opinions are set forth below. I may wish to supplement these opinions or the bases for them as a result of new scientific research or publications or in response to statements and issues that may arise in my area of expertise.

## OPINIONS AND CONCLUSIONS

8. Gender Dysphoria is the diagnosis used when an individual has clinically-significant distress that results from a lack of alignment between an individual's gender identity and their assigned sex at birth (Diagnostic and Statistical Manual of Mental Disorders (DSM 5; APA, 2013)). Prior to the change in nomenclature adopted by the American Psychiatric Association in the DSM 5, this condition was referred to as Gender Identity Disorder.

9. This change in the DSM from previous iterations reflects the consensus of the scientific community and major medical professional organizations that a transgender identity is inherently not pathological or a mental illness. Rather, the change to the name "Gender Dysphoria" emphasizes that clinically significant distress resulting from the disconnect between a person's gender identity and sex assigned at birth is worthy of diagnostic classification, which will facilitate access to transition-related services.

10. Treatment of Gender Dysphoria, and other issues related to gender identity, is guided by the WPATH Standards of Care, and there are sections that explicitly state how practitioners should approach children and adolescents. Many individuals can be relieved of the distress that is produced by Gender Dysphoria with appropriate treatment.

11. As a child and adolescent psychiatrist, it is part of our practice to do a bio-psycho-social assessment on all children and adolescents that we see to guide our assessment and treatment recommendations. This involves understanding potential biological factors to a person's presentation (e.g., genetic predisposition to certain psychiatric conditions, exposure in utero to certain substances, such as cocaine); psychological factors (e.g., temperament, personality characteristics such as introversion or extroversion); and social factors (e.g., school environment, living situation, socio-economic

status). A bio-psycho-social assessment typically requires many sessions with the child and family members in order to comprehensively understand all of the varying factors that are influencing a specific child's development.

12. In terms of how this relates to gender identity, it is common practice for a child psychiatrist to ask questions about gender identity, and gender expression (i.e., how one conveys their gender to the outside world through, among other things, appearance, clothing, behavior, and mannerisms), and how they relate to emotional functioning, and cognitive capabilities. Gender identity is only one aspect of the human experience, and it is our practice to be able to understand the entire life experience of the child, adolescent, and family when assisting in decision-making related to gender issues.

13. Gender identity becomes more integrated into a child's overall sense of self as they mature. As children grow up, they are presented with dichotomous choices around gender due to societal messages: advertising associates certain genders with certain toys; messages from parents can reinforce social norms around gender; and the presence of sex-segregated facilities (e.g., restrooms).

14. As children develop cognitively, and begin to interpret social messages distinguishing between male and female, some children can begin to understand and articulate that they have a gender identity that does not align with the sex that was assigned to them at birth, and the distress that this misalignment may be causing them. Youth may begin to experience this distress in childhood, adolescence, or later. There are numerous reasons as to why this distress may manifest at different times.

15. Gender dysphoria, as a set of clinical symptoms, presents differently in different ages when it comes to the clinical attention of a mental health provider. Clinical interventions for appropriately assessed children and adolescents with gender dysphoria range from reversible to irreversible, starting with reversible social transition, and potentially to physical interventions in older and more mature youth, such as hormone blockers and hormone therapy.

16. A child's assertion of a certain gender should be viewed through the lens of his or her cognitive development, which becomes more sophisticated over time. It is the role of the child psychiatrist to understand how the child interprets what gender identity means to them (e.g., by asking the child what "being a girl" or "being a boy" means to them). Peer-reviewed research demonstrates that pre-pubertal children asserting a different gender identity from the one they were assigned at birth are cognitively capable enough to be aware of the gender they are asserting.

17. The meaning of a child's gender identity assertion at a younger age is no less valid than the meaning of a gender identity assertion of an older child; however the clinical approach to such a child takes a child's cognitive capacity into account. This is consistent with the treatment of youth for other conditions causing clinically-significant distress.



18. In pre-pubertal children (*i.e.*, children who have not yet entered puberty), gender dysphoria often presents through manifestations of behavior that represent the dichotomous genders (male and female). They typically demonstrate distress by expressing an extreme desire to exclusively participate in activities of another gender and they insistently reject aspects of the gender that they were assigned. For children whose emotional, psychological and social development becomes hampered when they are unable to live as the gender they consistently declare or express they are, that is classified as having Gender Dysphoria of Childhood according to the DSM-5.

19. The treatment of a child with Gender Dysphoria of Childhood will be influenced by the degree of intensity and consistency of the gender identity assertion. Social transition from the gender role associated with the child's birth-assigned sex to the gender role associated with the child's experienced gender identity is a useful and important tool for clinicians treating these youth. It is a reversible intervention that may be used to partially alleviate gender dysphoria and to ascertain whether, and the extent to which, living in the affirmed gender improves the psychological and emotional functioning of the individual. Part of such a social transition may involve using a restroom or locker room – when the individual and the clinician have determined it is clinically appropriate to do so – that is associated with the gender the child most authentically and consistently asserts they are.

20. In children whose bodies have not physically matured, medical professionals do not intervene with irreversible physical interventions. To intervene irreversibly in this age group is not in line with the current WPATH standards of care, Endocrine Society guidelines, the American Psychological Association guidelines, or the American Academy of Child & Adolescent Psychiatry Practice Parameter on LGBT youth. Conversely, there is peer-reviewed evidence showing that pre-pubertal children with gender dysphoria who have socially transitioned show relatively low rates of anxiety and depression that are comparable to those of pre-pubertal non-transgender children.

21. In adolescence, youth begin to go through puberty, which leads to maturing of one's reproductive capacity, as well as the development of secondary sexual characteristics, such as breasts and menstruation in a typically-developing female, and a deepening voice, taller height, broadening shoulders, and facial hair in a typically-developing male.

22. Gender dysphoria sometimes emerges in adolescence with these physical changes to one's body, yet it may also intensify in individuals who have experienced gender dysphoria as younger children. In early puberty, for individuals whose emotional, psychological and social development is impaired as a direct result of the discrepancy between their gender identity and their physical anatomy and the changes to their body, mental health professionals may recommend reversibly suppressing puberty. For adolescents who meet the clinical criteria for such intervention, pubertal suppression has been deemed highly effective in alleviating the distress associated with puberty, and has been approved by every major reputable professional medical organization. The purpose of pubertal suppression is to aid in ascertaining whether irreversible interventions are recommended. Other partial irreversible interventions may be appropriate for certain

adolescents with gender dysphoria, such as hormonal interventions. With the exception of chest surgery for transgender boys (who were assigned the female sex at birth), however, irreversible surgical interventions are generally not recommended for children and adolescents. The WPATH Standards of Care specifically provide that genital surgery is not clinically appropriate for people under the age of 18.

23. Clinically appropriate treatments for children and adolescents with gender dysphoria also include enabling them to dress in clothing stereotypically associated with their gender identity and to be the gender they feel that they are in situations where dichotomous gender options are present, including bathrooms, locker rooms, and sports teams. Using gender-segregated spaces most consistent with one's experienced gender identity is an important process in one's identity consolidation that allows a person to experience societal validation in synchronicity with their internal sense of self.

24. Laws that restrict the ability of individuals to use restrooms and other gender segregated facilities consistent with their gender identities directly interfere with the ability of medical professionals to develop and implement clinically appropriate treatments for gender dysphoria across development.

25. Forbidding individuals from using restrooms and other gender segregated facilities consistent with their gender identities sends the message that their identity is invalid, wrong, or problematic. This negatively impacts their self-esteem, self-worth, ability to trust in others, and willingness to go out into the world.

26. Transgender youth who meet clinical criteria for Gender Dysphoria after comprehensive assessments are far more likely to want to conceal their physical anatomy and are typically extremely hypervigilant within sex segregated situations due to their fear of being discovered. One of the criteria of the diagnostic classification Gender Dysphoria in Childhood and Adolescence is a desire to be perceived as another gender and a rejection of aspects of their body that connote their assigned sex at birth.

27. Through my practice, I have encountered many transgender youth who, because they cannot use the restroom or other facilities consistent with their gender identities for various reasons, have left school and resist leaving home for any reason. As a result, these youth are unable to access opportunities traditionally associated with growing up and maturing into an adult, such as getting a job or exploring educational enrichment opportunities. The loss of these activities during an important developmental stage of youth can have long term consequences on an individuals' financial and employment prospects later in life, which can lead to depression and anxiety.

28. Forcing a transgender youth to use a gender neutral restroom is not typically a clinically appropriate solution. These restrooms can be difficult to access, which can lead to anxiety about restroom use, and is stigmatizing for the individuals using them by reinforcing an inappropriate sense of "otherness."

29. Restrictions on the ability of transgender youth to use gender-identity appropriate facilities undermines my ability to help my patients because in many cases, using a gender-identity appropriate facility is an essential component of any appropriate treatment protocol.

30. The risks associated with not being able to use all of the clinically appropriate tools to manage gender dysphoria in children and adolescents are particularly

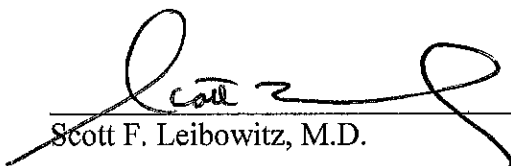
grave. Gender dysphoria, if not addressed, places children at greater risk for mental health problems, including suicide. Transgender youth are at much higher risk for suicidal behavior when compared to youth who are not transgender. Peer review research demonstrates that as many as 45% of gender dysphoric adolescents have had thoughts of suicide compared to the CDC average population suicide rate of 17% in this age group in 2015. For younger children, suicide rates are typically much lower than adolescents. However, for gender dysphoric pre-pubertal children, as many as 30% have had thoughts of suicide. Numerous data from gender clinic referred samples indicate that co-occurring psychiatric diagnoses occur in much higher rates in youths with gender dysphoria, such as depression, anxiety, self-injurious behavior, and suicidal ideation. If extrapolated to the general population, the rates would likely be even higher due to limited access to care.

31. Children and adolescents who experience support – particularly support from family – through this process fare better than those who do not experience support for their declared gender identity. Laws and policies like HB2 are harmful not only in their own right but also because of the way in which they promotes rejection of transgender identities, including by parents of transgender youth.

32. Every professional major medical organization across all disciplines providing care to youth has come out against coercive laws and policies that dictate restroom use based on a person's physical anatomy (i.e., the presence of a penis or a vagina) because such policies ignore, and demand that others ignore, that the human experience is actually far more complex than that. For this reason, my view is that laws like HB2 are harmful to the healthy psychological and emotional functioning of transgender youth, and these negative consequences will have ramifications through adulthood.

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

Executed on this 20 day of June, 2016.

By:  \_\_\_\_\_  
Scott F. Leibowitz, M.D.

# EXHIBIT A

Exhibit A to Leibowitz Declaration

## Scott F Leibowitz, MD

Curriculum Vitae  
Northwestern University  
Feinberg School of Medicine

Date of Preparation: 2-1-2016

Citizenship: United States of America  
DOB: May 20, 1978  
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Home:  
4150 North Kenmore Ave, Unit 405  
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[sleibowitz@luriechildrens.org](mailto:sleibowitz@luriechildrens.org)

### EDUCATION

2000	Cornell University	BS	Human Development
2004	Sackler School of Medicine Tel Aviv University NY State American Program	MD	Medicine

### GRADUATE MEDICAL EDUCATION

<u>Dates</u>	<u>Institution</u>	<u>Specialty</u>
7/04 – 6/08	The Zucker Hillside Hospital, North Shore-	Resident, General Psychiatry
7/07 – 6/08	Long Island Jewish Health System, Albert Einstein College of Medicine	Chief Resident, Psychiatry
7/08 – 6/10	Boston Children's Hospital Harvard University School of Medicine	Child and Adolescent Psychiatry

### BOARD CERTIFICATION and MEDICAL LICENSURE

#### Certification

2009 – present Diplomate of the American Board of Psychiatry and Neurology  
Board Certification in General Psychiatry

2014 – present Diplomate of the American Board of Psychiatry and Neurology  
Board Certification in Child and Adolescent Psychiatry

#### Licensure

2006 – 2010 License to practice medicine in New York

2008 – present License to practice medicine in Massachusetts

2013 – present License to practice medicine in Illinois

### FACULTY APPOINTMENTS

<u>Dates</u>	<u>Title</u>	<u>Institution</u>	<u>Department</u>
7/10 – 10/13	Instructor	Harvard Medical School	Psychiatry
5/12 – present	Faculty member	Fenway Health Center	National LGBT Health Education Center
11/13 – present	Assistant Professor (non-tenure track)	Northwestern Feinberg School of Medicine	Psychiatry



## HOSPITAL APPOINTMENTS and CLINICAL DUTIES

<u>Dates</u>	<u>Title</u>	<u>Hospital</u>
7/10 – 10/13	Assistant in Psychiatry	Boston Children's Hospital
	<ul style="list-style-type: none"><li>• <u>Division of Adolescent and Young Adult Medicine (0.4-0.6 FTE)</u>- integrated into primary care setting, three days a week, as the Division of Adolescent Medicine's only child/adolescent psychiatrist</li><li>• <u>Outpatient Psychiatry (0.2-0.4 FTE)</u>- developed consultative gender identity psychosocial clinic in the Department addressing specific needs of children and youth across development presenting with gender-related concerns in coordination with the Division of Endocrinology's Gender Management Service</li><li>• <u>School-based psychiatry work at Manville School (0.4 FTE)</u>- treated youth within a therapeutic school setting two days a week</li></ul>	
11/13 – present	Attending Psychiatrist	Ann & Robert H. Lurie Children's Hospital of Chicago
	<ul style="list-style-type: none"><li>• <u>Consultation-Liaison team (0.2 FTE)</u>- on service approximately 2-4 times per month from October 2013 – September 2015, serving on the multidisciplinary team</li><li>• <u>Outpatient Psychiatrist (0.6 – 0.8 FTE)</u>- servicing a combination of youth with typical presenting concerns as well as those presenting with gender-related issues</li><li>• <u>Research (0.2 FTE)</u>- one day per week buy-out from Gender and Sex Development Program</li></ul>	

## UNIQUE CLINICAL EXPERIENCE

Profound clinical experience treating the following specific patient populations:

- Eating Disorders in an outpatient setting
- Gender Dysphoria in childhood
- Gender Dysphoria in adolescence
- Gender Dysphoria and other co-occurring mental health concerns (Asperger's/ASD, Mood, Anxiety, ADHD, etc.)

## ADMINISTRATIVE APPOINTMENTS

<u>Dates</u>	<u>Title</u>	<u>Institution</u>
7/10 – 9/12	Director of Psychiatric Services	Manville School, Judge Baker Children's Center, Boston, MA
1/13 – 9/13	Interim Director of Psychiatry	Department of Youth Services, Boston, MA
11/13 – present	Head Child and Adolescent Psychiatrist	Gender and Sex Development Program, Ann & Robert H. Lurie Children's Hospital of Chicago

## COMMITTEE SERVICE

<u>Dates</u>	<u>Name of Committee</u>
2008 – 2010	Graduate Medical Education Committee, Boston Children's Hospital
2008 – 2010	Residency Training Committee, Department of Psychiatry, Boston Children's Hospital

- 2009 – 2010 Sexual Orientation and Gender Identity Issues Committee, American Academy of Child and Adolescent Psychiatry, Resident Member
- 2010 – present Sexual Orientation and Gender Identity Issues Committee, American Academy of Child and Adolescent Psychiatry, Early Career Psychiatrist member  
Liaison to Family Issues Committee, 2011 to present  
Co-chairman, 2013 to present
- 2012 – 2015 Association of American Medical Colleges Advisory Committee on Sexual Orientation, Gender Identity, and Sex Development
- 2012 – present The Trevor Project Advisory Council
- 2013 – present Gender and Sexuality Curriculum Taskforce, Northwestern Feinberg School of Medicine
- 2015 – present SAMHSA and American Psychological Association Taskforce (APA) on Sexual Orientation Change Efforts and Gender Identity Change Efforts
- 2015 – present World Professional Association of Transgender Health: Global Education Initiative

**AWARDS, HONORS, DISTINCTIONS**

<u>Date</u>	<u>Name of Award</u>
2007	Educational Outreach Program for General Psychiatry Residents, American Academy of Child and Adolescent Psychiatry
2009	Farley Fund Fellowship for Clinical Innovation, Boston Children’s Hospital
2009	Dennis Anderson Travel Award, Lesbian and Gay Child and Adolescent Psychiatric Association
2011	Campaign for America’s Kids (CFAK) Junior Scholar, American Academy of Child and Adolescent Psychiatry
2012	Prism Award, GLBT and Friends Committee, Boston Children’s Hospital

**PROFESSIONAL SOCIETY MEMBERSHIPS**

<u>Date</u>	<u>Organization</u>
2005 - 2013	American Psychiatric Association
2006 – present	American Academy of Child and Adolescent Psychiatry (AACAP)
2008 – present	Lesbian and Gay Child and Adolescent Psychiatric Association (LAGCAPA)
2010 – present	Association of Gay and Lesbian Psychiatrists (AGLP)
2013 – present	World Professional Association of Transgender Health (WPATH)

**PROFESSIONAL and SCIENTIFIC SERVICE**

- 2013 Reviewer, International Journal of Transgenderism
- 2014 – present Reviewer, Journal of Gay and Lesbian Mental Health
- 2015 – present Reviewer, American Association of Medical Colleges, MedEdPortal
- 2015 – present Reviewer, Academic Psychiatry

**TEACHING**

Teaching of Students in Courses

2011	Gender and Sexuality Competence: Supporting Students and Creating Safe School Climates for All	Harvard Graduate School of Education/Childhood and Adolescence Practicum: Developmental Interventions for Children In School and Community Settings: Frameworks for Counseling and Prevention
	Masters level Graduate students	Two-hour Seminar, 3/22/11

2011- 2012	Psychopharmacology: Alliance, Compliance, and the Referral Science 1 <sup>st</sup> year medical students	Judge Baker Children’s Center, Harvard Medical School, Boston, MA 2 hour annual seminar 4/8/11, 2/10/12
2012 - 2013	Gender and Sexuality: Developmental Considerations and the Clinical Approach Advanced Nurse Practitioner Students	Boston College William Connell School of Nursing Two-hour seminar, 3/20/12, 4/30/13
2012	Gender and Sexuality: Developmental Considerations and the Clinical Approach Social Work graduate students	Boston College School of Social Work Two hour seminar, 4/18/12
2012	Gender and Sexuality: Developmental Considerations and the Clinical Approach Social Work graduate students	Boston College School of Social Work Two hour seminar, 7/10/12
2012	Gender Nonconforming Children and Adolescents Across the Developmental Spectrum Advanced Clinical Social Work students	Simmons School of Social Work, Boston, MA Two hour seminar, 12/4/12
2013	Gender Identity and Sexual Orientation Across the Developmental Spectrum Social Work graduate students	Boston University School of Social Work Two hour seminar, 6/24/13
2013	LGBT Health Clinical Correlations: Gender and Sexuality in Childhood and Adolescence Second year medical students	Northwestern Feinberg School of Medicine Lecture within a clinical correlations seminar, 12/16/13
2014	Today’s “Genderation” of Youth: Understanding Social Gender Transition and Pubertal Suppression from an Ethical Standpoint Masters-level Bioethics students	Northwestern Feinberg School of Medicine, Medical Humanities and Bioethics Department Lecture within a seminar series, 1/9/14
2014-present	Gender and Sexuality Development Second Year medical students	Northwestern Feinberg School of Medicine Annual lecture within Behavioral Health module
2015-present	Transitioning Genders Second Year medical students	Northwestern Feinberg School of Medicine Plenary coordinator, annual lecture

*Formal Teaching of Residents, Clinical Fellows, and Research Fellows (post-docs)*

2010 – 2013	Psychopharmacology Seminar Course director Leadership in Adolescent Health (LEAH) postgraduate trainees: Adolescent Medicine medical fellows Post-Doctoral Psychology clinical fellows Pre-Doctoral Psychology clinical interns Social Work clinical fellows and interns Nutrition Fellows	Boston Children’s Hospital, Division of Adolescent Medicine Monthly seminar, one hour
2010 – 2012	Introduction to Psychopharmacology Psychology clinical interns and fellows Social Work clinical interns and fellows	Judge Baker Children’s Center, Boston, MA Annual Seminar, three hours

2011 – 2013	Gender Identity and Sexuality in Family Therapy Department of Psychiatry trainees: Child and Adolescent Psychiatry residents Psychology clinical fellows and interns Social Work clinical fellows and interns	Boston Children’s Hospital Department of Psychiatry Annual seminar in Family Therapy course, one hour
2011 – 2013	Gender Identity and Sexuality in the Consultation-Liaison psychiatry setting Department of Psychiatry trainees: Child and Adolescent Psychiatry residents Psychology clinical fellows and interns Social Work clinical fellows and interns	Boston Children’s Hospital, Department of Psychiatry Annual seminar in Consultation-Liaison rounds, one hour
2011, 2013	Gender Identity and Sexuality in the Psychiatric Treatment of Children and Adolescents General Psychiatry residents	Harvard Longwood Psychiatry Training Program  Annual lecture in a seminar series
2011 – 2012	Sexual and Gender Minorities  Leadership in Adolescent Health (LEAH) postgraduate trainees: Adolescent Medicine medical fellows Post-Doctoral Psychology clinical fellows Pre-Doctoral Psychology clinical interns Social Work clinical fellows and interns Nutrition Fellows	Boston Children’s Hospital, Division of Adolescent Medicine Annual lecture in a seminar series
2012 – 2013	Gender Management Service (GeMS) Interdisciplinary Teaching Seminar, Seminar series creator Interdisciplinary trainees in: Adolescent Medicine, Endocrinology, Psychiatry, Psychology, Social Work, Urology	Boston Children’s Hospital, Gender Management Service (GeMS)  Monthly hour-long seminar series
2012	Gender Nonconforming Children and Adolescents Across the Developmental Spectrum Interdisciplinary trainees in: Adolescent Medicine, Endocrinology, Psychiatry, Psychology, Social Work, Urology	Boston Children’s Hospital, Gender Management Service (GeMS)  Presenter in a monthly seminar series
2012 – 2013	Gender Nonconforming Children and Adolescents Across the Developmental Spectrum Advanced Child and Adolescent Psychiatry Fellow trainees	Cambridge Health Alliance Child and Adolescent Psychiatry Residency Training Program Annual lecture in a seminar series
2013	Gender and Sexuality in Children and Adolescents: Developmental Considerations and the Disorder Debate Social work and Psychology trainees	Boston Children’s Hospital, Division of Adolescent and Young Adult Medicine Lecture in a mental health seminar series
2013	Case Based Learning on LGBT issues Co-developer and co-leader of one of six cases in a curriculum  Interdisciplinary trainees in Adolescent	Boston Children’s Hospital, LEAH program (Leadership and Education in Adolescent Health), Division of Adolescent and Young Adult Medicine Six seminars (over 12 hours) that

	Medicine	introduced sexuality and gender issues in adolescence through case-based learning
2013	Gender Identity Across the Developmental Spectrum Social work trainees	Boston Children's Hospital, Social Work training program Annual 1.5 hour lecture in a seminar series
2014 - present	Gender and Sexuality, The Basics: Definitions and Development First-year child and adolescent psychiatry residents	Lurie Children's Hospital of Chicago, Department of Child/Adolescent Psychiatry Lecture within a seminar on child and adolescent development, 1/28/14, 9/24/14
2014	Gender Nonconformity and Dysphoria: Developmental Considerations and the Clinical Approach	University of Arizona child and adolescent psychiatry fellows, Lecture in a series through Webcam, 5/13/14
2014	Gender Nonconformity and Discordance: Developmental Considerations and the Clinical Approach	Feinberg School of Medicine, General Psychiatry residents, Lecture in a course on gender/sexuality, 8/6/14
2015 – present	Gender and Sexuality Development and Clinical Care Multidisciplinary trainees within the Division of Child and Adolescent Psychiatry	Lurie Children's Hospital of Chicago Course director, 4 session annual course

Supervisory and Training Responsibilities

2010 – present	Ambulatory Care Mental Health Team training rounds coordinator/Division of Adolescent Medicine, CHB	Monthly rounds
2013 – present	Consultation-Liaison supervisor of interdisciplinary trainees	Daily rounds, weekly direct clinical supervision

Formally Supervised Trainees

3/11 – 6/11	Karen Jennings, NP candidate, William Connell School of Nursing, Boston College, Boston, MA Advanced clinical psychopharmacology rotation at Judge Baker Children's Center, two days per week
9/11 – 6/12	Jennifer Echo, NP candidate, William Connell School of Nursing, Boston College, Boston, MA Advanced clinical psychopharmacology rotation at Judge Baker Children's Center, two days per week
1/14 – 6/14	Alexander Timchak, MD, Lurie Children's Hospital of Chicago child and adolescent psychiatry fellow, weekly outpatient supervision
7/14 – 6/15	Sarah Steuerman, MD, Lurie Children's Hospital of Chicago child and adolescent psychiatry fellow, weekly outpatient supervision
1/15 – 6/15	Sarah Florence, MD, Lurie Children's Hospital of Chicago child and adolescent psychiatry fellow, weekly outpatient supervision

Formal Teaching of Peers (CME and other continuing education courses)

2/23/2011	Sexual Minority Youth: Clinical Competencies and Training Needs for the 21 <sup>st</sup> Century Sidney Borum Health Center, Staff Development Seminar	Lecture Boston, MA
7/20/2011	Gender and Sexuality Competence: Supporting Students and Promoting Safe	Lecture

	School Climates for All Children's Hospital Neighborhood Partnerships Staff Seminar	Boston, MA
July 23, 2015	Pronouns, Preferred Names, and Parent Dynamics: Understanding Gender Dysphoria/Nonconformity in a Higher Level Psychiatric Setting Inpatient Psychiatry Unit Staff at Lurie Children's	Chicago, IL
July 30, 2015	Pronouns, Preferred Names, and Parents: Meeting the Clinical Needs of Today's 'Generation' of Youth Across Development Lurie Children's Hospital Dept of Social Work	Chicago, IL

**RESEARCH GRANTS/CONTRACTS** (for past five years provide principal investigator status, funding agency, title and type of award, period of support, total direct costs)

Sept 2015 - present	The Impact of Early Medical Treatment of Transgender Youth R01 Co-Investigator, only child and adolescent psychiatrist investigator of the four sites	Multisite NIH RO1 Funding 5% salary
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**ADVOCACY**

3/17/15	Illinois Youth Mental Health Protection Act, HB 217 Illinois General Assembly, House of Representatives	Expert Witness Springfield, IL
5/27/15	Illinois Youth Mental Health Protection Act, HB 217 Bill signed into law on 8/20/15 Illinois General Assembly, Senate	Expert Witness Springfield, IL

**SCHOLARLY BIBLIOGRAPHY**

Original, peer-reviewed research articles

1. Spack N, Edwards-Leeper L, Feldman H, **Leibowitz S**, Mandel F, Diamond D, Vance Stanley R. "Characteristics of Children and Adolescents with Gender Identity Disorder Referred to a Pediatric Medical Center." *Pediatrics*. 2012, 129:418-425.

Chapters- Peer-reviewed and Invited

1. **Leibowitz S**, Spack N. "The Development of a Gender Identity Psychosocial Clinic: Treatment Issues, Logistical Considerations, Interdisciplinary Cooperation, and Future Initiatives." *Child and Adolescent Psychiatric Clinics of North America*. 2011; 20(4):701-724.
2. Stoddard J, **Leibowitz S**, Ton H, Snowdon S. "Improving Medical Education About Gender-Variant Youth and Transgender Adolescents." *Child and Adolescent Psychiatric Clinics of North America*. 2011;20(4):779-791.

Chapters- Invited, Not Peer Reviewed

1. Eckstrand K, **Leibowitz S**, Potter J, and Dreger A. (Chapter Editor, Chapter 3) "Professional Competency Objectives to Improve HealthCare for People who May be LGBT, Gender Nonconforming, and/or Born with DSD" in "Implementing Curricular and Climate Changes to Improve Healthcare for LGBT, Gender Nonconforming, and DSD-Affected Individuals." Association of American Medical Colleges, November 2014.
2. **Leibowitz S**. (Section Editor) "Multi-modal Curricular Integration of Professional Competency Objectives" in "Chapter 4: How to Integrate Competencies Into Medical School Curricula to Improve Health Care for People who Are or May Be LGBT, Gender Nonconforming, and/or Born with DSD," in "Implementing Curricular and Climate Changes to Improve Healthcare for LGBT, Gender Nonconformig, and Individuals Born with DSD." Association of American Medical Colleges, November 2014.
3. Dreger A, **Leibowitz S**, Potter J, Sciolla A. "Clinical Scenarios and Discussion Points for Experiential Learning." Chapter within "Implementing Curricular and Climate Changes to Improve Healthcare for LGBT, Gender Nonconforming, and DSD-Affected Individuals." Association of American Medical Colleges, November 2014.
4. **Leibowitz S**, Adelson S, Telingator C. (2015). "Gender Nonconformity and Gender Discordance in Childhood and Adolescence: Developmental Considerations and the Clinical Approach" In H. Makadon, K. Mayer, J. Potter, & H. Goldhammer (Eds.), *Fenway Guide to LGBT Health 2<sup>nd</sup> edition*, (pp. 421-458). Philadelphia, PA: American College of Physicians.
5. **Leibowitz S**, Chen D, Hidalgo M. "Gender Nonconformity and Dysphoria." In M. Dulcan (Ed), *Dulcan Textbook of Child and Adolescent Psychiatry, 2<sup>nd</sup> edition*, American Psychiatric Association Publishing: Arlington VA: 585-602.

Commentary

1. **Leibowitz S**. "Luna." *Journal of the American Academy of Child and Adolescent Psychiatry*. 2013;52(2):211-212.

Reviews- Peer-reviewed and Invited

1. **Leibowitz S**, Telingator C. "Assessing Gender Identity Concerns in Children and Adolescents: Evaluation, Treatments, and Outcomes." *Current Psychiatry Reports*. 2012;14(2):111-120.
2. Simons LK, **Leibowitz SF**, Hidalgo MA. "Understanding Gender Variance in Children and Adolescents." *Pediatr Ann*. 2014 Jun;43(6)e126.31.
3. Edwards-Leeper L., **Leibowitz S**, & Sangganjanavanich F. (2015) Affirmative Practice with transgender and gender non-conforming the youth: Expanding the model. Manuscript submitted and accepted for publication.
4. **Leibowitz S**, de Vries ALC. (2016): Gender Dysphoria in Adolescence, *Intenernational Review of Psychiatry*, DOI: 10.3109/09540261.2015.114844

Clinical Guidelines and Reports

1. Adelson, S. et al. "Practice Parameter on Gay, Lesbian, or Bisexual Sexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescence." *Journal of American Academy of Child and Adolescent Psychiatry*. 2012;51(9):957-974. **(member of the AACAP committee, Sexual Orientation and Gender Identity Issues Committee, cited in the Attribution section)**

2. Hollenbach A, Eckstrand K, Dreger A. (Eds). "Implementing Curricular and Climate Changes to Improve Healthcare for LGBT, Gender Nonconforming, and DSD-Affected Individuals." Association of American Medical Colleges, November 2014. **(member of the AAMC LGBT and DSD-Affected Patient Care Advisory committee who edited the entire manuscript)**

## PRESENTATIONS

### Local Invited Presentations

- |      |  |
|------|--|
| 2010 | Developing Gender and Sexuality Competence in Meeting the Treatment Needs of Sexual Minority Youth<br>Grand Rounds, Department of Psychiatry, Boston Children's Hospital, 4/14/10  |
| 2010 | "Bridging the Gap: A Discussion on the Future of LGBT Healthcare"<br>Co-panelist, Fenway Community Health Center and the Harvard Gay and Lesbian Caucus  |
| 2011 | Case Presentation/Morbidity and Mortality Rounds<br>Department of Psychiatry, Boston Children's Hospital, 1/26/11  |
| 2011 | Case Presentation/Morbidity and Mortality Rounds<br>Division of Adolescent Medicine, Boston Children's Hospital, 3/8/10  |
| 2011 | Case Presentation/Morbidity and Mortality Rounds<br>Division of Adolescent Medicine, Boston Children's Hospital, 6/14/11   |
| 2011 | The Lives of Gender-Variant Children<br>Co-panelist, University of Toronto, Mark S. Bonham Center for Sexual Diversity Studies   |
| 2011 | Psychopharmacology in the Outpatient Medical Setting: Referring, Refilling, Responding<br>Division of Adolescent Medicine, Quality Improvement, Boston Children's Hospital, 12/13/11   |
| 2012 | Gender Nonconformity in Children and Adolescents: Developmental Considerations and the Clinical Approach<br>Division of Adolescent Medicine, Boston Children's Hospital, 4/10/12   |
| 2012 | Childhood Gender Nonconformity: Developmental Considerations and the Clinical Approach<br>Gay and Lesbian Advocates and Defenders (GLAD), 4/26/12  |
| 2012 | Gender Nonconformity in Children and Adolescents: Developmental Considerations and the Disorder Debate<br>Harvard Medical School Student Psychiatry Interest Group   |
| 2012 | Gender Identity and Sexuality in Children and Adolescents: A Panel Discussion<br>Harvard Medical School Student Psychiatry Interest Group  |
| 2012 | Western Suburban Alliance of Gay and Lesbian Youth (WAGLY)<br>Invited guest to lead a one time meeting for LGBT youth in the community   |
| 2012 | Western Suburban Alliance of Gay and Lesbian Youth (WAGLY), Umbrella Group<br>Invited guest to lead a one time meeting for transgender youth in the community  |
| 2012 | Gender Nonconformity in Children and Adolescents, Complexities and Co-morbidities<br>Gender Management Service, Boston Children's Hospital, day-long conference<br>Part of the expert panel discussion and led a break-out session |
| 2013 | Gender Nonconformity and Discordance: Developmental Considerations and the Clinical Approach<br>Tufts Medical School TUHSQ group, 5/1/13   |
| 2013 | Gender Across the Developmental Spectrum: Working with Gender Minority Youth and Their Families<br>Fenway Community Health Center, Interdisciplinary group of colleagues, 6/25/13  |
| 2013 | Psychopharmacology in the Primary Care Setting<br>Department of Youth Services, Boston Metro Region, Staff training, 7/31/13   |



- 2013 Gender Transition and Family Dynamics: The Clinical Approach to Complex Situations  
Fenway Community Health Center, Interdisciplinary group of colleagues, 9/10/13
- 2013 Gender Nonconformity and Discordance: Developmental Considerations and the Clinical Approach  
Harvard Medical School Student Pediatric Interest Group and LAHMS, 9/20/13
- 2013 Gender Nonconformity and Discordance: Developmental Considerations and the Clinical Approach  
Grand Rounds, Northwestern Feinberg School of Medicine, Department of Psychiatry, 11/20/13
- 2014 Today's 'Generation' Of Youth: A Developmental Approach to Gender Nonconformity  
Northwestern Feinberg School of Medicine LGBT student group lunchtime series, 4/8/14
- 2014 Gender Nonconformity and Discordance: Developmental Considerations and the Clinical Approach  
Grand Rounds, Advocate Lutheran General Hospital, 4/23/14
- 2014 Today's "Generation" Of Youth: Lunchtime Series  
Northwestern Feinberg School of Medicine LGBT student group lunchtime series, 10/6/14
- 2015 Sexual Orientation Conversion "Therapy:" Ethical Considerations of Applying a Fixed Outcome Behavioral Health Approach to Minors  
Northwestern Feinberg School of Medicine, Medical Humanities and Bioethics Program Lunchtime Series, 6/11/15
- 2015 Queer and Allies Safe Space Training Program  
Northwestern Feinberg School of Medicine, 6/12/15

Regional Presentations

- 2011 The Gender Identity Spectrum: Developmental Considerations and the Clinical Approach  
Grand Rounds, Hartford Hospital, Institute of Living, Hartford, CT, 11/10/11
- 2012 Gender and Sexual Minority Youth: Clinical Competence and Practice Considerations  
American Academy of Pediatrics (Connecticut branch) and Our True Colors organization co-sponsored a national teleconference with over 75 registrants, 11/7/12
- 2013 Gender and Sexual Minority youth: Clinical competence and Practice considerations  
True Colors, Inc. Annual Conference, Best Practices Institute, Storrs, CT, 3/21/13
- 2013 When Kids Won't Get in the Box: Working with Gender Nonconforming Children and Transgender Teens  
American Academy of Pediatrics (Connecticut branch) and Our True Colors organization co-sponsored a national webinar with over 100 registrants, 4/11/13
- 2015 Paving the Path: Developing Multidisciplinary Clinical Services for Gender-Variant Children and Adolescents  
North Shore Long Island Jewish Health System, Queens, NY; Child and Adolescent Psychiatry Grand Rounds, 1/15/15
- 2015 Today's "Generation" of Youth: Understanding Gender Across Development  
When Identity and Anatomy Do Not Match: Gender Dysphoria Across Development  
Arkansas Council of Child and Adolescent Psychiatry, Spring Retreat, 5/2/15  
Keynote speaker

National Presentations

- 2009 Sexual Minority Youth: Clinical Competencies and Training Needs for the 21<sup>st</sup> Century/Workshop chairman  
American Academy of Child and Adolescent Psychiatry, 56<sup>th</sup> Annual Meeting, Honolulu,

- HI, 10/31/09
- 2010 Sexual Minority Youth: Clinical Competencies and Training Needs for the 21<sup>st</sup> Century/Workshop chairman  
American Psychiatric Association, 163<sup>rd</sup> Annual Meeting, New Orleans, LA, 5/22/10
- 2010 Sexual Minority Youth: Clinical Competencies and Training Needs for the 21<sup>st</sup> Century/Workshop chairman  
American Academy of Child and Adolescent Psychiatry, 57<sup>th</sup> Annual Meeting, New York, NY, 10/28/10
- 2011 GLBT Youth and Parents: Working with 21<sup>st</sup> Century Families/Workshop co-chairman  
American Association of Directors of Psychiatric Residency Training, 40<sup>th</sup> Annual Meeting, Austin TX, 3/4/11
- 2011 Sexual Orientation and Gender Identity, Challenging Cases/Concurrent Session  
Contemporary Forums, Adolescent Health Care, Boston, MA, 6/4/11
- 2011 The Scope of Suicidality in Sexual and Gender Minority Youth: Risk Factors, Clinical Issues, and Intervention Strategies/Clinical Perspectives chairman  
American Academy of Child and Adolescent Psychiatry, 58<sup>th</sup> Annual Meeting, Toronto, Ontario, Canada, 10/21/11
- 2012 Teens with Depression and Anxiety: Psychopharmacology Interventions  
Division of Adolescent and Young Adolescent Medicine Postgraduate Course, 5/17/12
- 2012 Transgender Adolescents  
Division of Adolescent and Young Adult Medicine, Postgraduate Course, 5/17/12
- 2012 LGBT Youth and Homelessness: Increasing Understanding and Ending Invisibility  
National Health Care for the Homeless Council Regional Training, Seattle, WA, 7/13/12
- 2012 Lesbian/Gay/Bisexual/Transgender Youth and Parents: Navigating Family Acceptance and Rejection in the 21<sup>st</sup> Century, symposium chairman, 10/24/12  
Gender Nonconforming Children and Adolescents: A Developmental Approach to Families with Gender Minority Youth, speaker  
American Academy of Child and Adolescent Psychiatry, 59<sup>th</sup> Annual Meeting, San Francisco, California 10/24/12
- 2013 Psychopharmacology in the Primary Care Setting: Referring, Prescribing, and Collaborating  
Society for Adolescent Health and Medicine Annual Meeting  
Atlanta, GA 3/14/13
- 2013 Gender Nonconforming and Sexual Minority Adolescents: Interdisciplinary Collaboration and Mental Health Issues  
Society for Adolescent Health and Medicine Annual Meeting  
Atlanta, GA 3/16/13
- 2013 Teens With Depression and Anxiety: Psychopharmacology Options  
Division of Adolescent and Young Adult Medicine Postgraduate Course, 5/16/13
- 2013 Gender Dysphoria or Nonconformity: Assessment and Treatment Considerations when Working with Gender Minority Youth  
American Academy of Child and Adolescent Psychiatry, 60<sup>th</sup> Annual Meeting, Orlando, Florida, 10/23/13
- 2013 Transgender Male to Female Adolescents: Clinical Application of the Practice Parameter  
American Academy of Child and Adolescent Psychiatry, 60<sup>th</sup> Annual Meeting, Orlando, Florida, 10/25/13
- 2014 Gender Nonconformity, Dysphoria, and Discordance: Interdisciplinary Collaboration and Mental Health Issues  
Society for Adolescent Health and Medicine Annual Meeting, Austin, Texas, 3/24/14
- 2014 Today's 'Generation' of Adolescents: Fluidity, Identity, and Puberty  
Society for Adolescent Health and Medicine Annual Meeting, Austin, Texas, 3/26/14

- 2014 Psychopharmacology in the Primary Care Setting  
Society for Adolescent Health and Medicine Annual Meeting, Austin, Texas, 3/26/14
- 2014 Gender Nonconformity, Gender Expression, and Sexuality: Meeting the Mental Health Needs of All Adolescents  
Principles of Psychopharmacology in the Primary Care Setting  
Depressed and Anxious Teens: Prescribing SSRI's in the Primary Care Setting  
Psychopharmacology Cases: A Multidisciplinary Perspective  
Contemporary Forums National Conference on Adolescent Health  
Boston MA, May 15-17, 2014
- 2014 Integrating and Applying Competency-Based Medical Education in Advancing LGBT Health Equality  
Gay and Lesbian Medical Association Annual Meeting, Baltimore, MD 9/13/14
- 2014 Gender Nonconformity and Dysphoria in Children and Adolescents: An Overview of the Complex Decisions and Interventions  
American Academy of Child and Adolescent Psychiatry 61<sup>st</sup> annual Meeting, San Diego, presenter and chairman of symposium consisting of four individual presentations, 10/22/14
- 2014 Today's "Generation" of Youth: Why Talking about Gender Matters  
American Academy of Child and Adolescent Psychiatry 61<sup>st</sup> annual meeting, San Diego, presenter, 10/23/14
- 2014 Clinical Consultation Breakfast: Gender Nonconformity and Dysphoria Across Development: What the Child and Adolescent Psychiatrist Needs to Know  
American Academy of Child and Adolescent Psychiatry 61<sup>st</sup> annual meeting, San Diego, co-presenter, 10/23/14
- 2014 Adopting the Physician Competencies Reference Set to Advance the Health of People who are LGBT, Gender Nonconforming, or Born with DSD  
Association of American Medical Colleges Annual Meeting, Chicago, facilitator, 11/11/14
- 2014 A Novel Process for Adopting the General Reference List of Physician Competencies: Advancing the Health of LGBT, Gender Nonconforming, and Those born with DSD  
Summit on Medical School Education on Sexual Health, Minneapolis, MN, 12/8/14
- 2015 Gender, Sex, and Sexuality Competence: Bringing Psychiatry Residency Training into a New Era of Understanding  
American Association of Directors of Psychiatric Residency Training Annual Meeting, 3/6/15
- 2015 LGBT and Differences of Sex Development Patient Care Competencies: Taking Psychiatry into the Next era of Sex, Sexuality, and Gender-Sensitive Care  
American Psychiatric Association Annual Meeting, 5/18/15
- 2015 Psychopharmacology in the Primary Care Setting  
Contemporary Forums, Clinical Trends in Pediatric and Adolescent Health, San Diego
- 2015 Do I Augment or Switch: When Simple Depression Becomes More Complex  
Contemporary Forums, Clinical Trends in Pediatric and Adolescent Health, San Diego
- 2015 Today's "Generation" of Youth: The Clinical Approach to Gender Nonconformity and Dysphoria in Adolescence  
Contemporary Forums, Clinical Trends in Pediatric and Adolescent Health, San Diego
- 2015 Puberty, Pronouns, and the Physical Interventions: Practical Considerations in the Care of Gender Dysphoric Adolescents  
American Academy of Child and Adolescent Psychiatry 62<sup>nd</sup> Annual Meeting, San Antonio, TX, 10/28/15
- 2015 Gender and Sexuality Patient Care Competencies: Relevance to the Child and Adolescent Psychiatrist  
American Academy of Child and Adolescent Psychiatry 62<sup>nd</sup> Annual Meeting, San

- Antonio, TX, 10/31/15
- 2015 Clinical Consultation Breakfast: Gender Nonconformity and Dysphoria Across Development: What the Child and Adolescent Psychiatrist Needs to Know  
American Academy of Child and Adolescent Psychiatry 62<sup>nd</sup> Annual Meeting, San Antonio, TX, 10/31/15
- 2015 Mental Health Care of Transgender Youth and Adolescents  
World Professional Association of Transgender Health, Global Education Initiative, Inaugural training course, Chicago, IL, 11/6/15
- 2015 Multidisciplinary Care and a Clinical Case Presentation  
World Professional Association of Transgender Health, Global Education Initiative, Inaugural training course, Chicago, IL, 11/7/15
- 2015 Today's "Genderation" of Youth: The Clinical Approach to Gender Nonconformity and Dysphoria Across Development  
Rady Children's Hospital of San Diego, Professor Rounds, 12/11/15
- 2016 Paving the Path: Developing Multidisciplinary Services for Gender Nonconforming and Transgender Youth  
University of California San Diego, Dept of Psychiatry, 1/4/16
- 2016 Mental Health Care of Transgender and Gender Nonconforming Children and Adolescents  
World Professional Association of Transgender Health, Global Education Initiative, Inaugural training course, Atlanta, GA, 1/22/16

International Presentations

- 2011 Gender-Variant and Transgender Youth: A Model for an Interdisciplinary, Collaborative Treatment Program in an Academic Children's Hospital/ Panel Presentation chairman  
World Professional Association for Transgender Health, Biennial Symposium, Atlanta, GA, 9/26/11
- 2014 Today's "Genderation" of Children and Adolescents: Assessment and Care  
World Professional Association for Transgender Health, Biennial Symposium, Bangkok, Thailand, 2/15/14
- 2014 Is it Gender Nonconformity, Dysphoria, or Both? Understanding Psychosexual Development and the Clinical Challenges Across Disciplines  
World Professional Association for Transgender Health, Biennial Symposium, Bangkok, Thailand, 2/17/14

# EXHIBIT B

Exhibit B to Leibowitz Declaration

## REFERENCES

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Zucker, Kenneth J., et al., *A Developmental, Biopsychosocial Model for the Treatment of Children with Gender Identity Disorder*, 59 *J. Homosexuality* 369 (2012).

# EXHIBIT 38

Janice Adams Declaration

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA;  
PATRICK MCCRORY, in his official  
capacity as Governor of North Carolina;  
NORTH CAROLINA DEPARTMENT  
OF PUBLIC SAFETY; UNIVERSITY  
OF NORTH CAROLINA; and BOARD OF  
GOVERNORS OF THE  
UNIVERSITY OF NORTH CAROLINA,

Defendants.

Case No. 1:16-cv-425

**DECLARATION OF JANICE ADAMS**

I provide this declaration for Plaintiff United States in connection with the above-captioned litigation. I have actual knowledge of the matters stated in this declaration. I am not being compensated for this declaration. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that:

1. I received a Masters of Arts Degree in Special Education in 1982 from Northern Arizona University, Flagstaff, and a Masters of Arts Degree in Educational Leadership in 1997 from Saint Mary's University in Moraga, California.
2. I have more than forty years of experience working in schools. In 2015, I retired from my position as Superintendent of Benicia Unified School District in California. I served in that position from 2007 through 2015. Benicia Unified enrolls approximately 5000 students and has approximately 450 employees.
3. Prior to serving as Superintendent of Benicia Unified School District, I was Principal of Robert Semple Elementary School from 2000 through 2007. Before that, I held positions as an Assistant Principal, teacher, special education teacher, and resource specialist.

4. The responsibility of a Superintendent is oversight of the operations of the school district. In my capacity as Superintendent, I worked with the Benicia Governing Board to develop and implement district-wide education policies. These responsibilities included developing and implementing nondiscrimination policies that covered, among other things, discrimination based on actual or perceived gender, including gender identity.
5. During my tenure as Superintendent, I was aware of seven (7) transgender students enrolled in District schools, spanning elementary, middle, and high school. I was ultimately responsible for the education and well-being of those students during their time in my District.
6. I first became aware of transgender students in the School District when I became Superintendent in about 2008. Initially, the Administration and I took a case-by-case approach to dealing with students as they transitioned.
7. In the elementary schools, we had a few gender neutral single stall bathrooms. For a short period of time one of our transgender students used those bathrooms, but I quickly learned that limiting transgender students to such bathrooms made them feel singled out. Transgender students do not want to be seen as different. In my experience, transgender girls are typical elementary school girls who want to be with their friends.
8. In 2010, we initiated the practice in the elementary school of allowing a transgender student to use the bathroom consistent with their gender identity. There were some parent complaints. To respond to those complaints, we hosted a parent night with Gender Spectrum, an organization that provides trainings for schools on gender inclusion, to provide information to parents and students. Of those in attendance, about fifteen were parents who disapproved of allowing a transgender girl to use the girls' bathroom. After the meeting these parents were more understanding. For a few of the parents, I had additional conversations. However, they came to accept the practice and knew that they had the option of their child using the gender neutral signal stall bathroom if their child was uncomfortable. I routinely checked in with the principal and to my knowledge, no child chose to use the gender neutral single stall bathroom as an accommodation to experiencing discomfort with transgender students in multiple-use bathroom.
9. Shortly after this, a parent of a transgender student asked a School Board member to codify a policy regarding transgender students. For assistance in drafting the policy, I reached out to Joel Baum of Gender Spectrum who also put me in touch with an attorney experienced in this area. The attorney gave me sample policies from other districts. Using those samples, I developed a policy that prohibited discrimination and bullying or harassment based on gender identity. I then worked with the Governing Board to clarify that the District's sex discrimination policies covered gender identity and expression. In October of 2010, the Governing Board passed a non-discrimination policy regarding transgender students. Thereafter, any transgender student who came to my attention was treated consistent with their gender identities, including in their access to bathrooms and locker rooms.


10. After developing the policy, I worked with Gender Spectrum, to provide training for school administrators on the new policy and our bathroom/locker room practice, as well as training on topics such as history and global culture of transgender persons. The staff at the elementary school received a similar training that included time for questions and answers. Training is now provided to school staff when the Administration learns that a transgender student will or is attending a particular school. There were staff who expressed concerns about working with transgender students, and they struggled with changes we put in place. Ultimately they understood the nondiscrimination policy and specific practices. We required that they followed the policy and practices. As a District, we continually focused on supporting students and doing what was right and our school staff followed our lead.
11. The easiest part for my students who transitioned in elementary school was the acceptance by classmates, who embraced and affirmed the students. One student said to her mom, who worked in the school, "We thought that [Student A] was born a boy but she's really a girl." That statement generally captures how my elementary age students reacted to having a classmate transition.
12. In 2015, a few parents learned that there was a transgender student using the girls' locker room in the middle school and expressed strong concerns about the privacy of their children. The parents believed that they had a right to know that there was a transgender student in the sex-segregated facilities.
13. In response to the parents' concerns, I took a few key steps to ensure that all students felt safe and secure at my schools. First, I helped the concerned parents understand that they had a right to know the District's policies and practices on gender identity discrimination, but they did not have a right to know personal information about another student in the school. I explained that I would not release such information about their children should another parent request it, and would not share personal information about another student in the school with them.
14. Second, I met with the small number of concerned parents individually. Based on those meetings, I realized that this was a new issue for these parents and there was a serious misunderstanding about what it means to be transgender. For example, I addressed the concern that a boy would dress as a girl to get into the girls' locker room. A boy who pretends to be a girl for the sole purpose of entering the girls' locker room is not a transgender child. And while that never happened in my District, if it had, I would have dealt with that student's misconduct. To address this and other misperceptions, I set up another parent night facilitated by Gender Spectrum so that parents could understand what it means to be transgender and how schools can support transgender students.
15. Third, I increased privacy options for all students so that any student who wanted additional privacy could use a gender neutral single stall restroom. I also converted three

shower stalls in the girls' locker room into private changing areas that any student could use. This was a simple solution that involved minimal time and expense.

16. After the middle school parent meetings and training, and the addition of optional private changing areas, I received no additional complaints or concerns raised about transgender students accessing facilities consistent with their gender identity. I routinely checked in with the principals and was not alerted that any such complaints had been raised with them.
17. In the last eight years, I learned of seven transgender students enrolled in the District. In all those instances, of which the Administration was aware, the situation was handled pursuant to the policy and practices I helped draft, much as I just described.
18. In my experience, transgender students do not want to be noticed. They do not want to call attention to themselves. They just want to be left alone to be kids like their peers. They just want to fit in.
19. All kids have a right to feel safe at school and it was my job as Superintendent to ensure that our schools were safe. In my eight years as Superintendent, I did not have one incident involving a transgender student creating a safety issue in a sex-segregated space. In the middle school context described above, I did have some parents express concerns that their child's safety would be implicated by having a transgender student in sex-segregated spaces. But when I asked those parents for concrete concerns, they could not identify a single specific safety issue. Ultimately the parents moved away from suggesting that a transgender child made their child unsafe to a position that being in a sex-segregated space with a transgender student would make their child uncomfortable.
20. Being uncomfortable is not the same as being unsafe, and in my experience, parent concerns were about comfort. The steps I took to address parent concerns in my District were designed to help parents and students feel comfortable, but not at the expense of the comfort, safety, and rights of my transgender students. In my experience as Superintendent, once everyone had a chance to understand what being transgender really is and we took some steps to provide privacy options, the comfort of all students was not in conflict with the comfort and rights of my transgender students.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22<sup>nd</sup> day of June 2016.

  
\_\_\_\_\_  
Janice Adams

# EXHIBIT 39

C.W. Declaration

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA;  
PATRICK MCCRORY, in his official  
capacity as Governor of North Carolina;  
NORTH CAROLINA DEPARTMENT  
OF PUBLIC SAFETY; UNIVERSITY  
OF NORTH CAROLINA; and BOARD OF  
GOVERNORS OF THE  
UNIVERSITY OF NORTH CAROLINA,

Defendants.

Case No. 1:16-cv-00425-TDS-JEP

**DECLARATION OF C.W.**

I, C.W., declare as follows:

1. My name is C.W. I am 20 years old.
2. I was born in Texas but moved to Asheville, North Carolina when I was a toddler.
3. I am a student at the University of North Carolina at Greensboro. I plan to graduate in December 2017.
4. I am a man.
5. I am transgender. I was assigned the sex of female at birth, but that does not match my gender identity. My gender identity is male.
6. My gender identity does not match the gender on my birth certificate.
7. I struggled with my gender identity since puberty. During my early teens, my body began to develop in stereotypically female ways that I did not identify with and that caused me to experience gender dysphoria.



8. I have received counseling on campus for anxiety and depression stemming from my gender dysphoria.

9. I began living full time as a man in summer 2014. In August/September 2014, I told everyone in my life, including my family, peers, and my professors, that I am male, my name is C.W., and my preferred pronouns are he/him or they/them. Generally, everyone uses male pronouns when referring to me.

10. I hope to someday have gender affirming surgery and take testosterone to make my body more masculine, but I cannot afford these things right now.

11. When I stopped living as a woman and began living full time as a man, I stopped using women's restrooms and began exclusively using men's restrooms on campus because that is consistent with my gender identity and I felt safe enough on campus to do so.

12. After H.B. 2 passed in late March 2016, I continued to use men's restrooms on campus through the first two weeks of April. Around April 10, however, this practice changed when I was confronted by two men in the men's room in Elliott Center, the main student union on campus.

13. In this incident, I entered the bathroom and passed two men at the sink washing their hands on my way to the stall. One of the men turned around and stared at me as I entered the stall. After I entered the stall, among other things, I heard the men say: "It's unbelievable," "I can't believe this," "Tranny," "Dyke!" This immediately triggered a panic attack and I froze. I tried to use techniques that I had learned from my campus counselor to calm myself down. I was afraid they might come back or that they were waiting for me outside the door. After I was calm enough to think, I decided that because no one had come back, and about 20-30 minutes had passed, the men had probably left the building.

14. I left the bathroom and went to the nearest place I could sit down, a Starbucks in the Elliott Center. I called my girlfriend to come get me and help me calm down. Soon thereafter I went back to my girlfriend's apartment to take the anti-anxiety medication that I had been prescribed.

15. Although the anti-anxiety medication was something I had already been prescribed by my counselor in the student health center, I have used it much more frequently since this incident, usually hitting the maximum dosage of three tablets per day. I had never used that much before.

16. My anxiety and depression has markedly worsened since this incident, and I felt I needed more counseling, but I wasn't able to see my counselor more because of her lack of availability and the school's limits on the number of free counseling visits that students are allowed.

17. I have not used the men's room on campus since this incident occurred. I either use the restroom in my dorm suite, the restroom in my friends' dorm suites, or as a last resort I use the women's bathroom with a friend accompanying me. The dorms are not convenient to where my classes are located and can take 20 to 40 minutes roundtrip depending on pedestrian traffic and where I am located on campus.

18. I do not consider gender neutral bathrooms on campus a viable alternative. I do not feel safe using the gender neutral bathrooms on campus. First, the Chancellor sent out a list of these bathrooms to the entire student body immediately after H.B. 2 passed, so now everyone, including the men who harassed me and others like them, knows that these bathrooms are where gender nonconforming students are supposed to go. Using them outs me as transgender and makes me a target. Second, a majority of gender neutral bathrooms on campus are off the beaten

path, tucked away in rarely used hallways or hidden behind offices, so I fear being attacked in these remote locations.

19. I did not report this April 10 incident to my University because the whole thing was traumatizing, I was scared, and I didn't think the University would take any action as a result. My belief that no action would be taken was based in part on the University's lack of response to a complaint my friend, "John Doe" a transgender man, made in January 2016. John is also a student, and an employee of the university. While working, he experienced transphobic discrimination by a fellow student employee. Specifically, John's coworker said that John was not a 'real man' and that his gender identity would make other students uncomfortable. Despite several, escalating complaints made by John, the university took no action. My knowledge of John's experience as well as the existence of H.B. 2 made me think any complaint regarding my incident, or any other instance of discrimination I might encounter, would be futile.

20. Since I have been occasionally using the women's room, some women I know have stopped me and asked me why I was in the women's room, as they regard me as a man. I have explained that with the current climate I am not safe using the men's room.

21. Using anything besides the men's room is invalidating to me. I want to use the men's room because that is how I see myself. Because that is not an option for me now, I have learned I have to either live with the physically uncomfortable and distracting process of "holding it" or I have to track my bathroom habits closely. I try to limit my water intake and keep track of the last time I drank by carrying a water bottle and monitoring how much the level in the bottle decreases over a certain period of time so I can plan my bathroom visits. This process is mentally tolling, demoralizing, and distracting.

22. As a general rule, I don't feel safe using any bathrooms anymore. Next semester I

am working as a desk assistant in a dorm, and I am very anxious about what the bathroom situation will be when I am at work.

23. After the Chancellor sent the email about H.B. 2, I was invited to attend a forum to discuss H.B. 2 on campus with students, professors, and representatives from the Chancellor's office. At the forum, the Chancellor's representative's statements about H.B. 2 were unclear, and while they acknowledged that they had no enforcement mechanism, they presented the "solution" as gender neutral bathrooms. In addition, I know the President of the University of North Carolina system said that the system is following the law in complying with H.B. 2.

24. Had my school made clearer statements about protecting students in bathrooms after H.B.2, I absolutely would have reported the April 10 incident.

25. I used to use the gym on campus, but I did not use the men's locker room because I did not feel safe. I stopped using the campus gym shortly before H.B. 2 was passed because I felt the climate was starting to be more hostile. Using the women's locker room triggers my dysphoria so I do not use that. I have investigated using a private gym because I believe it will be more accepting. Since H.B. 2 and my April 10 incident, I am scared that I will be attacked if I use the men's locker room on campus.

26. H.B. 2 makes me feel anxious and scared every day. Because the school has taken no public stance on student safety after H.B. 2, I feel they are implicitly saying it is okay for students to take it upon themselves to enforce H.B. 2.

27. I don't want my name and other identifying information to be public in this case because I am concerned that my safety is at risk, due to the high profile status of the case and the personal nature of the information herein.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on ~~7/1/16~~ 7/1/16

C.W. G.W.

# EXHIBIT 40

A.T. Declaration

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 1:16-cv-00425-TDS-JEP

STATE OF NORTH CAROLINA;  
PATRICK MCCRORY, in his official  
capacity as Governor of North Carolina;  
NORTH CAROLINA DEPARTMENT  
OF PUBLIC SAFETY; UNIVERSITY  
OF NORTH CAROLINA; and BOARD OF  
GOVERNORS OF THE  
UNIVERSITY OF NORTH CAROLINA,

Defendants.

**DECLARATION OF A.T.**

I, A.T., declare as follows:

1. My name is A.T. I am 22 years old.
2. I was born in California but raised in North Carolina.
3. I am a student at the North Carolina State University. I plan to graduate in December 2017.
4. I am a man.
5. I am transgender. I was assigned the sex of female at birth, but that does not match my gender identity. My gender identity is male.
6. My gender identity does not match the gender on my birth certificate.
7. I began living full time as a man around September 2015 after struggling with my gender identity for a few years. I was assigned the gender of female at birth but I did not feel female. Around September 2015, I told almost everyone in my life, including my peers and all

but one of my professors, that I am male, my name is A.T., and my preferred pronouns are he/him.

8. I hope to someday take hormones to make my body more masculine and I am considering surgery, but I cannot afford these things right now.

9. When I began living full time as a man, I stopped using women's restrooms and began exclusively using men's or gender neutral facilities when I need to go to the bathroom.

10. After H.B. 2 passed, I started to feel more anxious in restrooms. Every time I use the restroom on campus I am worried people might follow me in and attack me physically, based in part on what I have read and heard about attacks on transgender people.

11. I now only use restrooms on campus where I know most of the students or professors who might be in them, and I avoid restrooms where I don't know who might be there.

12. Sometimes when I don't know who might be in a restroom and I feel unsafe or uncomfortable, I ask masculine-looking male friends to come into the restroom with me. I didn't do that prior to H.B. 2.

13. One time, after H.B. 2 became law, I was using a men's restroom on campus and I felt very scared because a number of men were in the restroom and stared through the restroom stall door at me. I waited in the stall for over 30 minutes for the men to leave because I was so afraid.

14. I did not report this incident to my university because, despite my extreme fear, I didn't think the university would take action because the men didn't physically attack me.

15. I am afraid that if I am physically attacked in a restroom, I might be the one who gets in trouble because I am violating H.B. 2.

16. My university has not put guards in front of restrooms to enforce H.B. 2, but I do



not know what the university would do if someone reported me for violating H.B. 2 on campus. If that were to happen, I am worried I might be charged with trespassing, which could result in a criminal record that would hurt my future employment and graduate school prospects.

17. I use the gym on campus, but since I transitioned recently, I am not quite ready to use the men's locker room. I would like to try to use the men's locker room soon, but I am afraid to do that. My fear is based on my gender dysphoria and on H.B. 2, because I would be violating State law, and because H.B. 2 might embolden people to act out their transphobia.

18. One time, around April 2016, I used the men's locker room to wash my hands. I was nervous but it felt like a really positive accomplishment.

19. One time, around May 2016, I used the women's restroom to change out of my swimsuit after swimming in the pool on campus. Students sometimes use these restrooms to change after swimming because they are conveniently located next to the pool. Because I heard several men's voices in the men's restroom, that made the men's room not a viable option for me. There were also no conveniently located gender neutral restrooms nearby, and the women's restroom was empty. When I entered the women's restroom, I realized I had to use the open part of the restroom to change because the stalls were too small. Using the women's restroom and not being able to avoid looking at myself in the mirror made me feel embarrassed and self-conscious, and I was afraid someone was going to walk in. That experience triggered my dysphoria so badly that I will never do it again.

20. I have sought counseling for depression and gender dysphoria.

21. If I were able to consistently and safely use the men's restroom and men's locker room I would feel less depressed and experience less dysphoria.

22. H.B. 2 often makes me feel anxious and scared. Because of H.B. 2, I think that it

would be easier for me to live as a woman. But I can't go back to living as a woman. If I had to do that, I would probably commit suicide.

23. I have lived most of my life in North Carolina. The fact that my university is covered by H.B. 2 is hurtful to me. It feels like a punch in the face from the State I love.

24. I want to use my initials in this declaration and keep my full name confidential because I have family members who are employed by the State and I am concerned about retaliation against them based on my involvement in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 2 July 2016      AT  
A.T.

# EXHIBIT 41

A.N. Declaration

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
STATE OF NORTH CAROLINA; )  
PATRICK MCCRORY, in his official )  
capacity as )  
Governor of North Carolina; NORTH )  
CAROLINA DEPARTMENT OF PUBLIC )  
SAFETY; UNIVERSITY OF NORTH )  
CAROLINA; and BOARD OF )  
GOVERNORS )  
OF THE UNIVERSITY OF NORTH )  
CAROLINA, )  
 )  
Defendants. )

Case No. 1:16-cv-00425-TDS-JEP

**DECLARATION OF A.N.**

I, A.N., declare as follows:

1. I was born in Georgia but have lived in North Carolina since 2000. I am over the age of 18.
2. I have two jobs. I work full-time for a private global company as a senior technical systems architect. I have worked there for over twelve years. I also work part-time for a North Carolina county emergency medical service (EMS) that I understand is covered by H.B.2. I have worked for that EMS for fourteen years, eight years working with a county-contracted EMS service, and six years working for the county directly.
3. I love my country. I am a twenty-year veteran of the United States Air Force and a former battalion chief of a fire department. My father was a county deputy sheriff. My mother was a judge. I have been volunteering or working for fire stations and emergency medical

services continuously since I was sixteen years old. Even though I have a full-time job, I continue to work part-time with the county EMS for approximately 72 hours per month. When I have free weekends or time off of my full-time job, I often pick up extra EMS shifts because the county is understaffed. I do so out of a sense of duty to my community and my country.

4. In order for the community to be able to help people in need and respond in an emergency, people like me need to be willing to serve. Even though I am no longer in the Air Force, I want to contribute to protecting my community, serving my country, and defending the sanctity of government, no matter who is in office. This service is the joy and the pride of my life.

5. I am a woman.

6. I am transgender. I was assigned the sex of male at birth, but that does not match my gender identity. My gender identity is female.

7. My gender identity does not match the gender on my Georgia birth certificate. I am working to change my birth certificate, but have not yet been successful.

8. Though I was assigned the gender marker of male at birth, I have known since I was a child that I was female. I remember asking my mother when I would begin to look like her, and standing in the mirror trying as hard as I could to see a female looking back at me and imagine what that would look like.

9. In 2014, after many years of stress about my gender identity, I began living full-time as a woman. My preferred pronouns are she/her.

10. Since I began living full-time as a woman, I am greeted by others with female pronouns. This includes individuals who both do and do not know me.

11. My driver's license has a female gender marker and my female name. My North

Carolina, government-issued emergency medical technician certificate also has my female name.

12. Since I began living as a woman full-time, I have used the women's bathroom exclusively.

13. I have never had any incidents due to my use of the women's bathroom. To my knowledge, no one has complained about me being in the women's bathroom. In fact, the opposite experience influenced me to finally move forward with my full-time transition. In 2012, 2013, and 2014, when I still used the men's bathroom, store clerks would yell things like "ma'am, that's the wrong bathroom." Men who saw me in the bathroom would perceive me as female, be startled, and run to the entrance of the bathroom to double-check that the gender marker sign was male and that they were in the men's bathroom. This happened even when I was dressed in male clothing. These instances happened numerous times. After the last time this happened in 2014, I decided to move forward with my full-time transition.

14. Both of my employers have been supportive and understanding of my transition and neither has required me to use the men's bathroom.

15. When I first told my private employer that I was going to live as a woman, they developed a human resources policy for transgender employees and distributed it to the entire company. The policy explicitly permits me to use the bathroom consistent with my gender identity. My coworkers have been very supportive of my transition, offering gifts, accolades, and well-wishes congratulating me for being able to live as myself.

16. My county employer has been similarly welcoming. Immediately upon learning of my intention to transition to living full-time as a woman, it changed all of my paperwork, my ID, and my computer log-in and email. After transitioning to express myself on a full-time basis as a woman, I went to work and I was in the same uniform and I was the same person I had

always been. Although my hair may have been a little different and my name had changed, my coworkers and supervisors completely accepted me. And they accepted me immediately as a woman even though at that time I had not had sex reassignment surgery. The support I felt from my coworkers and supervisors and the practices put in place, including the permission to use the bathroom consistent with my gender identity, had a significant effect on me. It made my life. I felt included. It was wonderful.

17. After my full-time transition and before H.B.2, my world was perfect because I was finally able to live true to myself after many years of turmoil. Before transitioning I was stressed and jealous of other women, because I wasn't able to live as the person I knew I was. Growing up in the 1960's knowing that I was female, I was afraid to live my life as a woman. I feared that I would be forced into conversion therapy, sent to a mental institution, or told that something was wrong with me. I grew up in a religious family, and I was afraid to be myself because I feared that God would hate me. When I finally learned to be able to accept myself and live as a woman, all of that fear and stress went away. Since my full-time transition, people tell me I am a happier, friendlier, and more energetic person. I have noticed that I get invited to more social outings and have more friends because I am finally happy.

18. But H.B.2 threatens to impose a policy on my county employer which directly affects me and my happiness that I waited so long to achieve.

19. Even though my birth certificate still says that I am male, I do not use the men's bathroom and I would feel horrible if I had to do so. I worked hard to get out of the men's bathroom and I do not want to go back because of H.B.2. H.B.2 puts me in danger because it requires me to go into a men's bathroom even though I am a woman and look like a woman. I am also scared that if I were to use the men's room I could be assaulted or even raped. I cannot

live in compliance with the state law. I cannot put myself in danger.

20. H.B.2 is also confusing. It is not always obvious which buildings or facilities are public and subject to H.B.2. The state has also mentioned using trespass laws to enforce H.B.2. Even if I knew which bathroom to use at every facility, I would have to choose between using the women's bathroom, where I feel safe, and risking a trespass violation, or using the men's bathroom where I am afraid of being assaulted, but where I would be in compliance with H.B.2.

21. Following H.B.2 and using the men's bathroom would also "out" me as a transgender woman. I have worked hard to be able to live as a woman, and others perceive me as a woman. I want to be anonymous, blend in, and be treated the same as any other woman. If I used the men's bathroom to comply with H.B.2, I would be conspicuous and would not blend in.

22. Many of the fire stations that I visit and that serve as a base for EMS services do not have gender-neutral facilities. If the county forced me to comply with H.B.2, I would either have to use the men's bathroom at those stations, or not use the bathroom at all. Neither of those are realistic options for me.

23. If I were required to use only gender-neutral facilities I would feel singled out. It would remind of the 1960s when I grew up in Georgia and saw signs on doors and restaurants where blacks and Jews were not allowed. Such a law is a classification stating to the rest of the world that they can discriminate.

24. Although my transgender status has not been an issue for my county employer, I worry that, if the state forced my county to comply with H.B.2, or if my involvement in this case and my status as a transgender emergency medical technician became public, I would no longer be able to work in EMS in North Carolina. I am concerned that if "outed" some people may not want a transgender employee to provide them with services. This is particularly concerning



given all the negative statements that have been made about transgender individuals since H.B.2 was passed. I am very afraid of losing my job as an EMS worker because public service is such an integral part of me and my life. I do not want H.B.2 to force me to move out of state to continue my service to my community and this country.

25. The idea of having to follow H.B.2 gives me a big ball of stress and anxiety that is difficult to describe. I worry about whether or when someone will call me out or cause trouble for me because I am transgender. Even if I am successful in changing my birth certificate and technically allowed under H.B.2 to use the women's bathroom, someone may challenge me. I should not have to produce my birth certificate to anyone just so that I can use the bathroom.

26. I am just as valuable and effective an employee at both my full-time and part-time jobs as I was before my full-time transition. I did not lose any of my skills, capabilities, or knowledge when I transitioned. I am just more comfortable in my own skin now and finally able to be happy. All I want is to be at peace, left alone, allowed to blend in, be anonymous, and be able to serve my country and community. The world is finally beginning to accept transgender individuals as normal, regular people. Why can't North Carolina?

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 07/01/2016 A.N.  
A.N.

# EXHIBIT 42

Helen Carroll Declaration

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA;  
PATRICK MCCRORY, in his official  
capacity as Governor of North Carolina;  
NORTH CAROLINA DEPARTMENT  
OF PUBLIC SAFETY; UNIVERSITY  
OF NORTH CAROLINA; and BOARD OF  
GOVERNORS OF THE  
UNIVERSITY OF NORTH CAROLINA,

Defendants.

Case No. 1:16-cv-00425-TDS-JEP

**DECLARATION OF HELEN CARROLL**

I provide this declaration for Plaintiff United States in connection with the above-captioned litigation. I have actual knowledge of the matters stated in this declaration. I am not being compensated for this declaration. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that:

1. I received a Bachelor of Science in Physical Education in 1974 from Middle Tennessee State University, located in Murfreesboro, Tennessee, and a Masters of Science in 1976 from Appalachian State University, located in Boone, North Carolina.
2. I was the Head Women's Basketball Coach of the 1984 National Championship Team at the University of North Carolina-Asheville from 1980-1984, and Associate Athletic Director from 1985-1988.
3. I was a National Collegiate Athletic Association (NCAA) and National Association of Intercollegiate Athletics (NAIA) Athletic Director at Mills College located in Oakland, California, from 1988-2000.

4. My responsibilities as a coach included ensuring my athletes' privacy and safety and creating team cohesion. These responsibilities included developing and implementing guidelines that covered, among other things, an atmosphere of inclusion and respect within the team.
5. My responsibility as athletic director included ensuring that all coaches and all teams followed school policies regarding privacy, safety, and inclusion. I was also responsible for ensuring that facilities met the needs of teams and visiting teams. My responsibilities also included developing and implementing nondiscrimination policies designed to ensure the inclusion and safety of all student athletes.
6. I joined National Center for Lesbian Rights ("NCLR") as the Director of the Sports Project in 2001 after spending 30 years as an athlete, coach, and collegiate athletic director. I devote my efforts to helping athletes, athletic programs, and institutions recognize that the inclusion of people who are lesbian, gay, bisexual, and/or transgender or intersex, diversifies and strengthens the sport experience.
7. I have personally assisted at least eight (8) NCAA collegiate institutions develop and adopt policies for the inclusion of transgender student athletes.
8. During my time at NCLR, I have advised at least fifteen (15) transgender student-athletes in selecting colleges that have coaches and administrative staff, policies, and environments supportive of transgender student athletes. I assess the university's climate of acceptance to assist student athletes in selecting an institution that fits their needs.
9. I have worked closely with major national sport organizations including the Women's Sports Foundation and the NCAA. I have also been a featured speaker on panels with Nike, ESPN's 'Outside the Lines', and The New York Times. I am featured in Dr. Pat Griffin's book, "Strong Women, Deep Closets and The Outsports Revolution" by authors Jim Buzinski and Cyd Ziegler Jr.
10. I have assisted at least six (6) state high school athletic associations in developing and adopting policies for the inclusion of their transgender student athletes.
11. I originally became familiar with transgender student athletes after the International Olympic Committee announced a policy in 2005 that included the participation of transgender athletes. After this policy was announced, I worked with several institutions and individuals, including the Professional Golf Association, United States Track and Field Association, Ladies Pro Golf Association, and transgender athletes, to determine the best practices for sports organizations for the inclusion of transgender athletes.
12. In October 2010, I co-authored a report with Dr. Pat Griffin entitled "On the Team: Equal Opportunity for Transgender Student Athletes" ("Report"). The Report was co-sponsored by the Women's Sports Foundation and NCLR, and was the result of a 2009

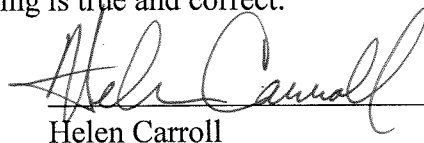
national think tank entitled “Equal Opportunities for Transgender student athletes,” hosted by the NCAA. Think Tank participants included leaders from the NCAA and the National High School Federation, transgender student athletes, and an array of experts on transgender issues from a range of disciplines — law, medicine, advocacy, and athletics. The goals of the initiative were to develop model policies and identify best practices for high school and collegiate athletic programs to ensure the full inclusion of transgender student athletes. The Report also led to the 2011 NCAA Guide for Transgender Athlete Inclusion.

13. I am the co-author of the 2011 NCAA Guide for Transgender Athlete Inclusion.
14. The purpose of the Report is to provide leaders in education and athletics with the information they need to make effective policy decisions about the participation of transgender student athletes in high school and college athletic programs. The Report is intended for everyone involved with high school or collegiate athletics including college presidents, school board members, high school state athletic association leaders, school principals and district superintendents, intercollegiate athletic conference commissioners, and sport governing organization leaders. It is also intended for individual athletic directors, coaches, student athletes, and parents.
15. The Report recommends that transgender student athletes should be able to use the locker room, shower, and toilet facilities in accordance with the student’s gender identity. Every locker room should have some private, enclosed changing areas, showers, and toilets for use by any athlete who desires them. When requested by a transgender student athlete, schools should provide private, separate changing, showering, and toilet facilities for the student’s use, but transgender students should not be required to use separate facilities.
16. School athletic programs are widely accepted as integral parts of the high school and college experience. The benefits of school athletic participation include many positive effects on physical, social, and emotional well-being. Playing sports can provide student athletes with important lessons about self-discipline, teamwork, success, and failure—as well as the joy and shared excitement that being a member of a sports team can bring.
17. Participation in high school athletics shows that a student is well-rounded and can improve a student’s chances of acceptance into college. For some students, playing on high school teams leads to future careers in athletics as competitors, coaches, administrators, and athletic trainers. All students, including those who are transgender, deserve access to these benefits.
18. In my experience as a coach, I witnessed that the benefits that accrue from participation in athletic programs, such as team bonding and community building, takes place not only during public events but also in behind-the-scenes spaces that many times are restricted by gender, such as locker rooms.

19. Through my work with NCLR, I have seen that school athletic programs have recently started developing policies governing the inclusion of transgender student athletes, and coaches are learning how to accommodate transgender students who want to play on sports teams. These policies often address basic accommodations, such as knowing what pronouns or names to use when referring to a transgender student, where a transgender student should change clothes for practice or competition, or what bathroom or locker room that student should use. State laws like H.B. 2 thwart administrators' ability to build positive and affirming athletic climates for every student.
20. In my experience with consulting various athletic programs, proactive efforts by school leaders in adopting policies in athletic programs that are consistent with school non-discrimination policies and federal laws prohibiting discrimination based on gender identity or expression are critical to ensuring equal application of non-discrimination laws across all school-based activities.
21. Athletic leaders who are charged with policy development need guidance to avoid inscribing misconceptions and misinformation in policies that create problems rather than solve them. H.B. 2 perpetuates these misconceptions and misinformation.
22. Failure to adopt inclusive participation policies also hurts non-transgender students by conveying a message that the values of non-discrimination and inclusion are not important. When transgender students are excluded and treated differently than their teammates it develops a barrier between teammates and undermines team unity. The separation of transgender students from the rest of the team sends the message that transgender athletes are not equal or full members of the team.
23. When a school or athletic organization denies transgender students the ability to participate equally, including access to bathrooms and locker rooms, because of their gender identity, that condones, reinforces and affirms their social status as outsiders or misfits who deserve the hostility they experience from peers.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of June 2016.

  
Helen Carroll