UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BOARD OF EDUCATION OF THE HIGHLAND LOCAL SCHOOL DISTRICT,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF EDUCATION; JOHN B. KING, JR., in his official capacity as United States Secretary of Education; UNITED STATES DEPARTMENT OF JUSTICE; LORETTA E. LYNCH, in her official capacity as United States Attorney General; and VANITA GUPTA, in her official capacity as Principal Deputy Assistant Attorney General,

Defendants.

JANE DOE, a minor, by and through her legal guardians JOYCE and JOHN DOE,

Intervenor Third-Party Plaintiff,

vs.

BOARD OF EDUCATION OF THE HIGHLAND LOCAL SCHOOL DISTRICT; HIGHLAND LOCAL SCHOOL DISTRICT; WILLIAM DODDS, Superintendent of Highland Local School District; and SHAWN WINKELFOOS, Principal of Highland Elementary School,

Third-Party Defendants.

16 Civ. 524 (ALM/KAJ)

VERIFIED
COMPLAINT-IN-INTERVENTION

JANE DOE, by and through her legal guardians, JOYCE and JOHN DOE, and her undersigned counsel, for her third-party complaint-in-intervention against the Board of Education of the Highland Local School District and the Highland Local School District (together, "Highland") and the other Third-Party Defendants, avers as follows:

INTRODUCTION

1. Jane Doe is an eleven-year-old transgender girl who attends Highland Elementary School in the Highland Local School District. For the past three years, Highland has refused to treat Jane the same as other girls, causing her to be ostracized and leading to frequent bullying and humiliation by teachers, staff, and students. Following an investigation, the U.S. Department of Education recently concluded that Highland is violating Title IX. But instead of trying to remedy that situation, Highland filed this lawsuit – purportedly concerned about protecting the "dignity and privacy" of other students – seeking court orders to try to ensure that the mistreatment of Jane and the violation of her rights, dignity, and privacy will continue unabated.

2. From a very young age, Jane began asserting her identity as female. Joyce and John Doe initially believed that this was a "phase," but Jane's statements and actions only became more consistent, persistent, and insistent. Those statements were accompanied by an increasing level of psychological distress at being treated like a boy. Uncertain about how to alleviate that distress, Joyce and John sought out the advice of professionals.

3. Prior to Jane's first-grade year, with the guidance of medical and mental health professionals, Joyce and John helped Jane begin living as the girl she has always been. As part of that process, Joyce met with Third-Party Defendant Shawn Winkelfoos, the principal at Highland Elementary School, and Highland administrators to ensure that Jane would be affirmed and respected as a girl and treated the same as other girls throughout the school environment when she returned to first grade. Although Highland alleges that it has "admirably navigated a difficult

and sensitive situation," in fact it has refused to acknowledge Jane's identity as a girl and has repeatedly singled her out for adverse treatment and exposed her to stigma and harassment.

4. Unlike the other girls in her school, Highland refuses to allow Jane to use the girls' restrooms. Instead, she must use specially designated restrooms that are inconvenient, place additional restrictions on her ability to use the restroom, and isolate and stigmatize her. In addition to placing Jane in a discriminatory situation that encourages other students to stigmatize and harass her, Highland refuses to investigate or effectively respond to the harassment, name-calling, and bullying Jane routinely faces and which Jane's legal guardians have brought to the school's attention on numerous occasions. The school refuses to correct teachers and staff who, years after being informed that Jane is transgender, insist on continuing to refer to her by male pronouns. Beyond failing to address the hostile school environment Jane must endure every day, the school has actively contributed to that environment. For example, the school's one attempt at encouraging "sensitivity" involved a male teacher dressing up as a woman during a school assembly, generating raucous laughter and humiliating Jane in front of the entire school community.

5. In short, Highland's treatment of Jane has been anything but "sensitive" or "admirable." Instead, Highland has staunchly refused to respect or acknowledge Jane's female gender, subjecting her to untold pain and anxiety, without any sound reason for doing so. Neither in its lawsuit, nor in its communications with Jane's family, has the school ever articulated a basis for denying Jane's use of the girls' bathrooms, other than suggesting a vague, unsupported notion that such a policy reflects the balancing of privacy interests of all students, despite the policy's ongoing violation of Jane's privacy and the absence of any way in which treating a transgender girl the same as other girls would adversely affect anyone's privacy. Nor has the

school stated why it permits the existence of a hostile school environment in which Jane is continually subjected to harassment due to her transgender status by both school personnel and students.

6. Behind the legal wrangling between the school district and the U.S. Department of Education is a child who is suffering. Last summer, as the school year approached, Jane (then only ten years old) began experiencing severe psychological distress and made serious attempts to end her own life. Jane, through her legal guardians, seeks to intervene in this action to assert her rights and seek appropriate remedies for the deprivation of those rights.

PARTIES

7. Jane Doe is an eleven-year-old resident of Morrow County and a citizen of the State of Ohio. She has been a student at Highland Elementary School in the Highland Local School District since August 2011.

8. John and Joyce Doe are Jane's legal guardians and sue as her next friends.

9. Third-Party Defendant Highland Local School District (the "School District" or the "District") is an education corporation and association in Morrow County, Ohio, existing pursuant to Section 3311 of the Revised Code of the State of Ohio. The School District is a "person" within the meaning of 42 U.S.C. § 1983. Upon information and belief, the School District and each of its component schools are recipients of federal financial assistance. The District operates one elementary school, Highland Elementary School, one middle school, and one high school.

10. Plaintiff/Third-Party Defendant Highland Local School District Board of Education (the "School Board," and collectively with the District, "Highland") is the governing body for the School District. The School Board is a "body politic and corporate" under Ohio law that is amenable to suit for the policies of the School District. Ohio Rev. Code § 3313.17. School

Board members are officers of the State of Ohio. Highland Local School District Bylaws & Policies § 118.

11. Third-Party Defendant William Dodds, sued in both his official and individual capacities, is and was at all relevant times the Superintendent of the School District. Upon information and belief, Superintendent Dodds has final policymaking authority for the School District and the School Board in circumstances not provided for in the School District Bylaws and Policies. This authority includes redressing complaints of discrimination and ensuring compliance with state and federal laws.

12. Third-Party Defendant Shawn Winkelfoos, sued in both his official and individual capacities, is and was at all relevant times the Principal of Highland Elementary School. Upon information and belief, Principal Winkelfoos has final policymaking authority for the School District and School Board with respect to the day-to-day enforcement of equal opportunity and anti-discrimination policies at Highland Elementary. This authority includes the responsibility to redress complaints of discrimination and to forward complaints to appropriately designated individuals in the School District.

JURISDICTION AND VENUE

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

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the School District is located within the Southern District of Ohio and the claims alleged in this complaint arose from events that occurred within this district.

FACTUAL ALLEGATIONS

Gender Identity Development and Gender Dysphoria

15. Gender identity is a person's inner sense of belonging to a particular gender, such as male or female. It is a deeply felt and core component of human identity. Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 451 (5th ed. 2013) (hereinafter "DSM-5"). Everyone has a gender identity, and for most people, their gender identity is consistent with the gender they were assigned at birth. Transgender people have a gender identity, or affirmed gender, that is different from the gender they were assigned or assumed to be at birth.

16. At birth, infants are classified as male or female based on a cursory observation of their external genitalia. This classification becomes the person's birth-assigned gender, but may not be the same as the person's actual gender. Children typically become aware of their gender identity between the ages of two and four years old. DSM-5 at 455. Around this age, transgender children often begin to express their cross-gender identification to their family members and caregivers through statements and actions. The medical diagnosis of gender dysphoria refers to the severe and unremitting emotional pain resulting from this incongruity. People diagnosed with gender dysphoria have an intense and persistent discomfort with the primary and secondary sex characteristics of their assigned gender. Gender dysphoria is a serious medical condition codified in the DSM-5 and the World Health Organization's International Classification of Diseases.

17. The way in which a child with gender dysphoria expresses himself or herself differs greatly from children engaging in age-appropriate imaginative play; children expressing a gender identity that is different than their assigned gender exhibit a strong cross-gender identification that is insistent, persistent, and consistent. Although uncommon, a gender identity that is inconsistent with one's gender assigned at birth is a normal variation of human diversity.

18. Gender dysphoria was previously referred to as gender identity disorder. The American Psychiatric Association changed the name and diagnostic criteria for this condition to reflect that gender dysphoria "is more descriptive than the previous DSM-IV term *gender identity disorder* and focuses on dysphoria as the clinical problem, not identity per se." DSM-5 at 451.

19. When provided with the love, support, and affirmation that all children need, transgender children thrive and grow into healthy adults who have the same capacity for happiness, achievement, and contributing to society as others. For these youth, that means supporting their need to live in a manner consistent with their actual gender, the gender they know themselves to be, as opposed to their assigned gender, which includes using sex-separated facilities that match their gender identity and consistently being referred to by their correct name and pronouns.

20. When parents and caregivers discourage or do not allow a transgender child to express cross-gender identification, or do not validate or accept the child's gender identity, the child experiences psychological distress. Rejection or disapproval by the child's parents, family, and caregivers leads to serious mental health consequences for the child, marked by serious negative health consequences such as low self-esteem, anxiety, depression, self-harming behaviors, and suicidal ideation.

21. These harmful symptoms interfere with the child's healthy development across all domains. As a result, a transgender child whose gender identity is not affirmed will likely have difficulty developing and maintaining healthy interpersonal relationships with family as well as peers. Similarly, once that child enters school, the lack of familial support can have a detrimental effect on the child's ability to focus in class and learn.

22. Given the amount of time that students spend in school, the school environment has a tremendous effect on a transgender student's well-being.

23. The longer these symptoms are allowed to persist without addressing the underlying gender dysphoria, the more significant and long-lasting the negative consequences can become. For example, a recent survey of transgender people revealed *forty-two percent* of transgender women had previously attempted suicide, a rate that is approximately twenty-five times the national average. Ann P. Haas, *et al.*, The Williams Institute, *Suicide Attempts among Transgender and Gender Non-Conforming Adults* 2 (2014); Jaime M. Grant, *et al.*, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 82 (2011); *see also* Arnold H. Grossman, *et al.*, *Transgender Youth and Life-Threatening Behaviors*, 37 Suicide & Life-Threatening Behavior 527, 533-37 (2007). That survey also found that transgender adults who experienced discrimination in schools were more likely to have attempted suicide. Haas, *supra*, at 11. The National Transgender Discrimination Survey found that over one quarter of respondents used drugs and alcohol to cope with the mistreatment they experienced based on their gender identity. Grant, *supra*, at 81; *see also* Caitlyn Ryan, *Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual & Transgender Children* 5-7 (2009).

24. Part of supporting a transgender child is ensuring that the child has access to treatment for their gender dysphoria. The goal of treatment is to enable a transgender person to live authentically, based on their core gender identity, and typically involves bringing the person's body and social presentation into alignment with the person's gender. Treatment does not make a transgender person more of a man or more of a woman; rather, the person's core gender identity already exists. Treatment creates more alignment between the person's identity and the person's appearance, attenuating the dysphoria and symptoms.

25. Health care providers recognize that when a child has strong and persistent cross-gender identification, which is typically associated with gender dysphoria, "social transition" improves that child's mental health and reduces the risk that the child will engage in self-harming behaviors. Kristina Olson, *et al.*, *Mental Health of Transgender Children who are Supported in Their Identities*, 137 Pediatrics 1 (2016). Social transition involves changes that bring the child's outer appearance and lived experience into alignment with the child's core gender. That includes wearing clothes, using a name and pronouns, and interacting with peers and the social environment in a manner that matches the child's core gender. For most children, living and interacting with others consistently with their lived experience of who they are provides tremendous and immediate relief, because prior to puberty, there are few, if any, observable differences between boys and girls apart from the social and cultural conventions such as dress or hairstyle which, while distinct, children can adopt regardless of their birth-assigned gender.

Jane's Gender Identity and Transition

26. Jane is an eleven-year-old transgender girl with disabilities, about to begin fifth grade at Highland Elementary.

27. Despite being assigned male at birth, from at least age four, Jane has asserted her female gender – that is, an innate sense of being female. Even as a young child, Jane would draw portraits of herself as a girl, try on and take Joyce's make up, and wrap blankets and table cloths around herself to create dresses. This eventually grew into insisting on wearing girls' clothing and shopping for girls' toys.

28. Nevertheless, because her parents did not yet understand her transgender identity, Jane spent the majority of each day dressed in boys' clothing with a boys' haircut, an outward

appearance which was at odds with her core gender. This internal conflict caused Jane to experience great distress, which was compounded by the fact that she was not allowed to be herself. Jane's psychological distress manifested itself in tantrums where she would bite, kick, and hit when she was not being affirmed as female.

29. At first, her family thought Jane's identification as female and behavior were merely the passing play of childhood, but after repeated and persistent expressions, Joyce and John sought out the advice of medical and mental health professionals, including Jane's regular pediatrician, a therapist, a psychiatrist, and doctors at the transgender youth clinic at Nationwide Children's Hospital in Columbus, Ohio. Based on their examinations and treatment of Jane, these medical professionals determined that social transition was medically necessary to treat Jane's gender dysphoria. Consequently, Joyce and John ensured that Jane had appropriate clothing, obtained a court-ordered name change, treated her as their daughter in all respects, and advocated that others in the community do the same. This medically supervised transition occurred during the summer between kindergarten and first grade.

30. The impact of the transition on Jane's emotional and mental state was dramatic. Supported by her parents and free from the incongruity of being treated by others as male and able to dress and live consistent with her core female gender, Jane finally felt at ease with herself. She became joyful, more carefree, and her anger subsided.

31. Unfortunately, her social transition into the new school year for first grade was far from smooth. In the summer of 2012, prior to the start of first grade, Joyce informed Principal Winkelfoos about Jane's transition and requested that Jane be treated consistent with her female gender for all educational purposes. In response, Principal Winkelfoos requested a meeting with Joyce. At the meeting, Joyce provided Principal Winkelfoos with a letter from Jane's

pediatrician's office outlining the doctor's diagnosis of gender dysphoria and requesting that the school affirm and respect Jane's female gender. Joyce requested that Jane be addressed and referred to by her chosen name and by female pronouns. Joyce also requested that the school permit Jane to use the girls' bathrooms and generally treat her the same as other girls attending the school.

32. Principal Winkelfoos stated that the school, and its personnel, would begin to address and refer to Jane by her preferred name and with female pronouns. However, Principal Winkelfoos told Joyce that Jane would not be permitted to use the girls' bathrooms, a position reflecting Highland's policy, which, upon information and belief, held that students are assigned sex-segregated bathrooms based on the gender identified on their birth certificates.[1] Instead, Jane would be required to use the office bathroom, a bathroom used generally by school personnel and other adults, and very few students.

33. This discriminatory policy has remained in effect through first, second, third, and fourth grades. As a result of this policy, Jane is singled out due to her status as a transgender girl, continually "outed" and stigmatized as transgender, and made a target for bullying and harassment. Moreover, despite assurances that Highland personnel would refer to Jane by her chosen, and now legal, name and female pronouns, Highland implicitly sanctioned the routine use of Jane's male birth name and male pronouns by Highland personnel and students in addressing and referring to her. Highland has taken no steps to require use of Jane's female name and pronouns and routinely permitted personnel and students to do just the opposite, despite repeated requests that they stop doing so by Jane's parents.

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[1] Ohio law does not permit one to change the gender on one's birth certificate. *See* Ohio Rev. Code § 3705.22.

34. As a result of Highland's refusal to treat Jane as a girl and to treat her the same as other girls at her school, Jane suffers from extreme anxiety and depression, and the joy Jane exhibited after her transition has slowly been sapped away. She suffers from a host of physical conditions that stem, in significant part, from the emotional toll of Highland's policies. Although only eleven years old, Jane has engaged in numerous acts of self-harm and has attempted suicide multiple times, including just days before the start of fourth grade.

Denial of Access to Girls' Bathrooms

35. Although, upon information and belief, Highland attempted to sidestep the bathroom issue for Jane in first grade by assigning her class to a room with a single-user restroom contained in the classroom, this measure fell far short of protecting her or treating her equally to other students. When outside the classroom, Jane still had to use the office restroom while her peers were all able to use the restroom that was consistent with their gender identity. That differential treatment did not go unnoticed by Jane or her peers. In fact, on at least one occasion, Jane attempted to use the girls' restroom but was prevented from doing so by school personnel. As the year progressed, Joyce and John began to notice the signs that this arrangement was taking a toll on Jane's mental health.

36. Unable to simply watch Jane's mental health deteriorate, Joyce renewed her request that Jane be permitted to use bathrooms consistent with her female gender in second grade. Recognizing that Jane is likely the first transgender student to have transitioned while at Highland Elementary, Joyce offered Highland personnel many resources to assist them in learning about the needs of transgender youth in schools including books, such as *The Transgender Child*, and articles, and even connected Principal Winkelfoos with TransYouth Family Allies, an organization that would have provided free or low-cost training to the school

on this issue. All of those offers were declined and, time and again, Highland denied Joyce's request that Jane be permitted to use the girls' bathrooms consistent with her female gender.

37. Throughout second grade, Jane was required to use a separate faculty office bathroom that no other students used. Due to the students' age, the teacher took the entire class for scheduled restroom breaks. To prepare for the restroom break, students would separate into two lines: one for boys and one for girls. While all of the other students waited their turn to use the restroom, Jane would walk, dejected, to the restroom by the school office. As she walked by her peers, some would ask Jane why she used a different bathroom, while others heckled her about her using the restroom by the office and called her a boy. Those comments caused significant internal distress, which often found its release at home in the form of negative and unhealthy behaviors. School personnel failed to effectively intervene to protect Jane from this harassment.

38. Then, after nearly an entire school year of being excluded from the bathroom routine and having her peers watch her go to a separate bathroom, the buildup of psychological distress became too great for Jane to handle. On May 2, 2014, Jane was hospitalized for suicidal ideation and depressed mood.

39. In September 2014, as Jane was preparing for yet another year of being segregated from her female peers, Joyce requested that Superintendent Dodds ask the Board of Education to permit Jane to use the girls' bathrooms. Superintendent Dodds eventually informed Joyce that the Board had refused. Superintendent Dodds did not invite Joyce, John, or Jane to the meeting or, upon information and belief, provide the Board with any educational material about transgender students.

40. For third grade, Jane was required to use a bathroom in the teachers' lounge, because her third-grade classroom was a significant distance from the unisex bathroom Jane was previously assigned. This required Jane to enter the teachers' lounge during the day, even though no other students were permitted to enter. Jane reported that teachers would glare at her and make her feel uncomfortable. She began to express to Joyce that the school was being mean to her, and to express how alone and segregated she felt.

41. Over the summer between third and fourth grades, Jane felt intense anxiety about returning to school. She expressed anger several times concerning the school's refusal to permit her to use the girls' bathrooms. Those emotions continued to build up throughout the summer vacation. Once again, Jane's coping skills were overloaded and Jane decided to end her life, which she attempted to do in the days leading up to her fourth-grade year.

42. This past year, Jane's fourth-grade year, was even more humiliating and demeaning than prior years. Highland required Jane to use a bathroom in the staff room in the fourth-grade hallway. However, the bathroom remained locked, and, in order for Jane to access the bathroom, a staff member had to walk Jane to the bathroom, unlock the bathroom, wait outside the door for Jane to finish, and escort her back to class. By contrast, other students in Jane's fourth-grade class were allowed to ask permission to leave to use the restroom, and could then go to and from the restroom on their own. Only Jane had to be escorted to a separate restroom by a Highland staff member.

43. Jane began refusing to use the bathroom at school during the day because she could not use the girls' bathrooms and she did not want the other children seeing her use the staff or office bathrooms. Jane limited her fluid intake during the day in order to limit her need to use the bathroom at school.

44. Jane would also return home from school agitated and combative much more regularly than she had in previous years.

45. In May 2016, after the U.S. Department of Education and Department of Justice released its guidance on Title IX's applicability to transgender students, Jane remarked to her teacher escort that President "Obama said I could use the girls' restroom," and asked when she would be allowed to do so. The teacher responded by accusing Jane of "lying" and threatened to discipline her.

46. Despite Highland's policy and practice of refusing Jane use of the girls' bathrooms, Jane has, on several occasions due to exigent circumstances, used girls' bathrooms. On none of these occasions has Jane's use of a girls' bathroom caused any harm or resulted in any incident:

a. In April and May 2014, Jane participated in an afterschool running club. Her coach allowed her to use a girls' bathroom at the school, without incident.

b. In October 2014, Jane began participating in a program called God's Kids afterschool. During this program, the school locks the office and teacher's lounge, and Jane is unable to use the unisex bathrooms. Jane has been permitted to use the girls' bathrooms at the school during this program, without incident.

c. In April 2015, Jane went on a school field trip to the local zoo. Superintendent Dodds and Principal Winkelfoos deferred to Joyce's decision to let Jane use the girls' bathroom at the zoo. Jane used the girls' bathroom, without incident.

d. Jane has used the girls' bathrooms, without incident, during after-school choir practice at the school.

e. Jane used a girls' bathroom in Highland High School during a Highland Elementary summer volleyball camp, without incident.

47. Indeed, it is Jane's forced use of specially designated bathrooms that draws greater attention from the Highland Elementary student body because Jane is otherwise

perceived by her peers as a girl; however, being forced to use a separate bathroom constantly "outs" her as different and causes other students to question her gender and to harass her for being transgender.

48. Despite the serious social, emotional, and academic harms caused by denying Jane use of the girls' bathroom, Highland clings to that discriminatory policy based on nothing more than an unsupported notion that Jane's female classmates would somehow be put at risk by Jane's presence.

Harassment and Bullying by Teachers, Staff, and Students

49. The foundation for the hostile school environment was laid even before Jane's transition. In kindergarten, Joyce informed Principal Winkelfoos that Jane wanted to wear dresses to school. Principal Winkelfoos responded that he would not allow such behavior, without any further justification.

50. Since Joyce first informed the school about Jane's transition in 2012, Joyce has repeatedly offered Highland officials information regarding the importance of affirming a transgender child's chosen name and pronouns, with the goal of making the school environment safe and welcoming for Jane and her peers. Each time Joyce's offer was rebuffed and Highland instead ignored, permitted, and even condoned acts of harassment and bullying by teachers, staff and students.

51. In fact, within a few months of Jane's transition, the school hosted an assembly during which one of the male teachers dressed up like a woman, to pervasive laughter from the school audience. The event made a mockery of Jane's transition and caused Jane significant emotional distress. In the days following that event, Jane reported numerous somatic complaints

(*i.e.*, headaches, stomach aches, general not feeling well) to Joyce and John in an attempt to avoid school.

52. Despite assurances from Principal Winkelfoos that the school, and its personnel, would address and refer to Jane by her chosen name and female pronouns, Jane's male birth name and male pronouns have been repeatedly used in addressing or referring to her, both verbally and in writing (*i.e.*, school-generated records, schoolwork).

53. On numerous occasions, teachers would not permit Jane to use her chosen name on assignments, even though other students were permitted to use nicknames on schoolwork.

54. This practice of deliberately refusing to acknowledge Jane's female gender and insistence upon treating her as a boy was not limited to schoolwork. For example, in January 2013, during Jane's first-grade year, a physical therapist contracted by Highland told Jane that it was her Christian duty to tell Jane that what Jane was doing was wrong, that God made Jane a boy, and that Jane would always be a boy.

55. After repeated attempts to address this problem at the school level, in August 2014, just as Jane started third grade, Joyce complained to Superintendent Dodds that at least four staff members continued to use the wrong pronouns and refer to Jane by her birth sex. Highland failed to effectively respond to that complaint. Now, for example, nearly three years after Jane legally changed her name, Jane's computer lab teacher still insists on using Jane's birth name and refers to her exclusively with male pronouns, and is not the only teacher to do so.

56. Taking cues from teachers and other school personnel, many students consistently refer to Jane by her birth name and are not corrected by school staff or informed that continuing to refer to Jane in that manner is unacceptable and could result in discipline.

57. In addition to creating a hostile school environment for Jane, Highland's continued refusal to acknowledge her female gender and to treat her the same as other girls results in a continual violation of her privacy. Highland's conduct continually discloses the fact that Jane is transgender, which is private medical information, without consent from Jane or Joyce and John. While the circumstances of Jane's transition mean that certain students and staff know that she is transgender, that does not diminish her right to and reasonable expectation of privacy regarding that information with respect to those students and staff who do not know Jane is transgender.

58. Disregarding Jane's interest in keeping the fact that she is transgender private, each time Jane moves up to a new grade, the school informs Jane's new teacher that she is transgender. The result is that Jane's gender immediately becomes an item of discussion for people strange and unfamiliar to her, without any legitimate reason for the disclosure, let alone consent from Jane, Joyce, or John. Joyce has expressly asked Highland to stop this practice, but upon information and belief, it continues.

59. In addition to being frequently referred to by the wrong name and pronoun, Jane suffered many other forms of harassment and abuse at school. In February 2014, a student yelled across the lunchroom, "you ARE a boy!" at Jane, loud enough for all the other students to hear. Just in case anyone missed the message, the student then proceeded to walk around the lunchroom repeating that information to each table. Jane asked the assistant principal for help. The assistant principal simply told Jane to be strong and ignore it.

60. In September 2014, Joyce filed a complaint with Superintendent Dodds against Principal Winkelfoos, describing his harmful attitude and actions towards Jane. Superintendent Dodds replied – following, upon information and belief, a cursory "investigation" which

involved only a "conversation" with Principal Winkelfoos and a review of documents – that Joyce's complaint was without merit and that Principal Winkelfoos would never allow a hostile environment to take place.

61. In Jane's third-grade year alone, she was called a "faggot" and "gay" on a regular basis, mocked because she is a girl who was assigned male at birth, and was frequently told by students that she was a boy and referred to by her former, male name. One student in particular would often comment that Jane looked like a boy with her glasses. As a result of those comments, Jane intentionally broke several pairs of glasses over the past two school years.

62. That mistreatment by her peers continued through Jane's fourth-grade year as well, starting while she waited for the bus and persisting throughout the school day.

63. Highland teachers and staff similarly continued to refer to Jane by her former, male name and use male pronouns.

64. Jane's attendance suffered as a result of the mistreatment to which she was subjected, as she missed days due to the need to attend counseling sessions to help her cope with the emotional and psychological impact of her situation at school.

65. The stigmatizing impact of the harassment and bullying targeted at Jane and of the requirement that she use separate bathrooms treats her differently than other girls and severely undermines her social transition process. Jane therefore suffers severe and persistent emotional and social harms. This harm is compounded by Jane's youth and her fragile health.

Jane's Name and Gender on School and District Records

66. Since Jane's transition, Joyce has requested that the school and district records reflect Jane's chosen name and correct gender marker. The purpose for this request was four-fold: (1) the records would be more accurate; (2) increasing the likelihood, if not ensuring, that

school personnel, especially those unfamiliar with Jane, would refer to her using the correct name and pronouns; (3) safeguarding Jane's privacy by not automatically disclosing that she is transgender to all the school personnel with whom she interacts; and (4) based on all of the above, reducing the likelihood that Jane would be bullied, harassed, and mistreated.

67. As with Joyce's other requests, Highland denied those requests and persisted in using Jane's birth name and assigned gender on all school records. Upon information and belief, Highland requires a student to obtain a court-ordered name change before that name can be used on any school records, and maintains a policy of using the gender listed on a student's birth certificate for the gender marker in the student information system.

68. For example, at Jane's March 2013 Individualized Educational Plan ("IEP") meeting, the first IEP meeting held after Jane's transition, Joyce requested that the IEP reflect Jane's chosen name and correct gender. Representatives from the Ohio Department of Education, who were present at the meeting, said the change was acceptable. Highland's director of special education immediately changed Jane's gender on her IEP. However, several months later, Principal Winkelfoos informed Joyce that the information would have to be changed back to be consistent with Jane's birth certificate.

69. Then, after November 2013, when Jane obtained her court-ordered name change, several documents continued to use her birth name and the male gender marker, including her IEPs, the school e-mail system, and the "scoreboard" link for the typing club. Some of those errors were not corrected until years after Jane's court-ordered name change. Upon information and belief, some Highland records continue to incorrectly state Jane's gender is male.

70. Upon information and belief, Highland uses Powerschool for its student information system. The Powerschool platform permits system administrators to customize the

database, allowing school districts to track additional student data that is not standard. Upon information and belief, other school districts have used that functionality to maintain transgender students' correct name and pronoun as well as the name and pronoun that appears on the student's birth certificate, allowing those districts to generate school records with the correct information while maintaining a student data set that will sync with the student database maintained by the state education agency.

71. Highland's refusal to correct the student information system has directly and indirectly disclosed Jane's transgender status without express permission, and has perpetuated and condoned the continued inappropriate use of Jane's birth name and male pronouns to address and refer to her. As a result, Jane has been exposed to continued harassment, causing and exacerbating her psychological distress regarding school, and impeding her ability to access and benefit from Highland's educational program.

OCR Complaint

72. In December 2013, Joyce filed a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR"). The complaint alleged that Highland discriminated against Jane based on sex by requiring her to use a separate gender-neutral bathroom and denying her access to the same bathrooms used by other female students.

73. Joyce informed OCR that during first and second grades, Jane was subject to frequent and repetitive gender-based harassment by other students. As a result, in August 2014, OCR amended the complaint to include an additional allegation, that school staff members subjected Jane to harassment and that Highland failed to respond appropriately when staff members were made aware of frequent and repetitive incidents of harassment by other students.

74. Highland maintains bylaws and policies including a notice of nondiscrimination that prohibits discrimination on the basis of "[s]ex, including sexual orientation and gender identity." This policy also states that OCR considers gender-based harassment to be a form of sex discrimination. The Superintendent is designated to handle or address any inquiry or complaint of discrimination, but OCR found that he was unaware of Highland's specific policies referencing transgender students.

75. On March 29, 2016, OCR notified Highland that its investigation concluded that Highland's actions failed to comply with Title IX regulations. Consistent with its operating procedures, OCR attempted to reach a mutually agreed-upon resolution, but negotiations broke down in June 2016.

76. Shortly thereafter, on June 26, 2016, OCR issued its letter of findings detailing the results of its investigations. On the issue of restroom access, OCR noted that Highland acknowledged it prohibits Jane from using the girls' restrooms and instead requires her to use a single-user facility. A Highland administrator further confirmed that Jane could use the girls' bathrooms only if her birth certificate indicated her gender identity. OCR concluded that by prohibiting Jane from using the girls' restroom, Highland denied her equal access to and enjoyment of the facilities in the school in violation of Title IX.

77. In respect of the allegations regarding bullying and harassment, OCR's investigation revealed that at least two teachers in the school acknowledged their continued refusal to use Jane's name and female pronouns when referring to her. Moreover, the investigation found that, despite knowing about many incidents of bullying and harassment, Highland did not adequately investigate those incidents. For example, Highland failed to interview key witnesses in its investigations of bullying and harassment. The letter of findings

also noted that although Highland claimed to have responded appropriately to those incidents, it failed to produce evidence to corroborate those claims. Consequently, OCR concluded that Highland failed to investigate whether Jane experienced a hostile environment in violation of Title IX.

CLAIMS FOR RELIEF

COUNT I
Fourteenth Amendment to the United States Constitution

(Brought Pursuant to 42 U.S.C. § 1983 Against the School Board, the School District, William Dodds, and Shawn Winkelfoos)

78. Jane repeats and realleges each and every allegation above as if fully set forth herein.

79. The Third-Party Defendant School District is a person for purposes of Section 1983.

80. The Third-Party Defendant School Board is a person for purposes of Section 1983.

81. Third-Party Defendants Superintendent Dodds and Principal Winkelfoos possess final policymaking authority for the School District and Highland Elementary School, respectively, with respect to at least some of the discriminatory actions described herein.

82. By excluding Jane – a transgender girl – from the same restrooms used by other girls, the Third-Party Defendants, under color of state law, have treated and continue to treat Jane differently from other students based on her gender and her perceived non-conformity with gender stereotypes, including the expectation that a person's gender must conform to the gender assigned to the person at birth.

83. By failing to appropriately investigate and address reported incidents of bullying and harassment Jane was subjected to by staff and students due to her perceived gender non-

conformity and transgender status, the Third-Party Defendants have treated and continue to treat Jane differently from similarly situated students based on her gender.

84. Despite repeated reports of the bullying and harassment and requests that Highland personnel address the misconduct, the Third-Party Defendants acted with deliberate indifference by failing to investigate and remedy those incidents of bullying and harassment because Jane is transgender. In so doing, the Third-Party Defendants have violated Jane's clearly established constitutional right to equal protection of the laws and to be free from official gender-based discrimination.

85. Similarly, by refusing to correct Jane's name and gender marker on student records and other school- and District-generated information (*e.g.* student e-mails, ID cards) to be consistent with Jane's identity, some of which were not changed until years after she obtained a legal name change, the Third-Party Defendants have impermissibly discriminated against Jane on the basis of gender by singling her out for differential treatment.

86. The Third-Party Defendants' discrimination against Jane based on her gender denies her the equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution.

87. The Third-Party Defendants' discrimination against Jane based on her gender is not substantially related to any important government interest.

88. The Third-Party Defendants' discrimination against Jane based on her gender is not rationally related to any legitimate government interest.

89. The Third-Party Defendants' discrimination against Jane based on her gender has injured Jane and has caused her severe psychological distress.

90. The Third-Party Defendants are liable for their violations of Jane's Fourteenth Amendment rights under 42 U.S.C. § 1983, and Jane is entitled to declaratory, injunctive, and monetary relief.

COUNT II

Title IX of the Education Amendments of 1972

(Brought Pursuant to 42 U.S.C. § 1681, *et seq.*,
Against the School Board and the School District)

91. Jane repeats and realleges each and every allegation set forth above as if fully set forth herein.

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

93. Under Title IX, discrimination "on the basis of sex" encompasses discrimination based on a person's gender identity, transgender status, or failure to conform to sex stereotypes.

94. Third-Party Defendant School District is an education program receiving federal financial assistance.

95. By requiring Jane – a transgender girl – to use a separate restroom, and by prohibiting her from using the same restrooms as other girls, the School Board and School District have, on a continuous and continuing basis, excluded Jane from participation in, denied her the benefits of, and subjected her to discrimination in educational programs and activities at Highland Elementary School "on the basis of sex."

96. By refusing to enforce consequences and discipline against staff and students who harass and bully Jane because she is a transgender girl, the School Board and School District have made the school environment hostile and unwelcoming to Jane.

97. The School Board's and School District's actions and omissions amount to deliberate indifference, which permitted the bullying and harassment to become so severe and pervasive as to exclude Jane from participation in, deny her the benefits of, and subject her to discrimination in educational programs and activities at Highland Elementary School "on the basis of sex."

98. By refusing to correct Jane's name and gender marker on student records and other school- and District-generated information (*e.g.* student e-mails, ID cards), the School Board and School District have impermissibly discriminated against Jane on the basis of sex by singling her out for differential treatment and exposing her to stigma and harassment, including by effectively disclosing her transgender status to others on a continual basis.

99. The School District's and Highland Elementary's violations of Title IX were the actual, direct and proximate cause of injuries suffered by Jane as alleged herein.

100. Jane is entitled to declaratory, injunctive, and monetary relief.

COUNT III

Right to Privacy Under the United States Constitution

(Brought Pursuant to 42 U.S.C. § 1983 Against the School Board, the School District, William Dodds, and Shawn Winkelfoos)

101. Jane repeats and realleges each and every allegation set forth above as if fully set forth herein.

102. Jane's fundamental right to privacy extends to preventing the disclosure of, and in deciding under what circumstances to disclose, highly sensitive, personal information related to

her being transgender, especially as the disclosure of such information would subject her to psychological harm and could additionally expose her to harassment and bodily harm.

103. By refusing to require that Jane be addressed and referred to by her chosen, and now legal, name and female pronouns, the Third-Party Defendants sanction, under color of state law, the disclosure of Jane's transgender status. Each time a teacher stands before the class and refers to Jane by her birth name or by male pronouns, her transgender status is impermissibly disclosed to every student in that class. Each time a Highland administrator looks up Jane's records and sees reference to her birth name or a male pronoun, Jane's transgender status is impermissibly disclosed.

104. The Third-Party Defendants' refusal to require that Jane be addressed and referred to by her legal name and female pronouns is not substantially related to any important government interest.

105. The Third-Party Defendants' refusal to require that Jane be addressed and referred to by her legal name and female pronouns is not rationally related to any legitimate government interest.

106. The Third-Party Defendants' refusal to require that Jane be addressed and referred to by her legal name and female pronouns denies her right to privacy, in violation of the United States Constitution.

107. The Third-Party Defendants' actions were taken with deliberate indifference to Jane's clearly established constitutional rights.

108. The Third-Party Defendants are liable for their violations of Jane's right to privacy under 42 U.S.C. § 1983, and Jane is entitled to declaratory and injunctive relief.

REQUEST FOR RELIEF

For the foregoing reasons, JANE DOE respectfully requests that the Court grant to her the following relief:

A. A declaration that Third-Party Defendants violated Jane's rights under the United States Constitution and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq*.;

B. An injunction requiring Highland to treat Jane as a girl for all purposes, including, but not limited to:

- **i.** Use of the girls' restrooms and other sex-separated activities, programs and facilities;
- **ii.** Addressing and referring to Jane by her legal name and female pronouns;
- **iii.** Correcting Jane's name and gender marker in the student information system;
- **iv.** Retaining a consultant to develop and provide training for all district personnel (i.e., board, district and school administrators, teachers, and staff), students, and community members on issues affecting transgender youth and the importance of affirming transgender students in school;
- **v.** Retaining a consultant to develop protocols for receiving and investigating complaints of gender-based harassment, and to provide training to district and school staff on implementing those protocols; and
- **vi.** Retaining a consultant to develop protocols for affirming and supporting transgender students, including ensuring use of the proper facilities, correcting school records, and privacy, and to provide training to district and school staff on implementing those protocols.

C. Damages in an amount determined by the Court;

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

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

Respectfully submitted,

Dated: July 21, 2016

By: _s/ John Harrison_____

John Harrison (OH Bar No. 0065286)
Linda Gorczynski (OH Bar No. 0070607)
HICKMAN & LOWDER, L.P.A.
1300 East 9th Street, Suite 1020
Cleveland, OH 44199
(216) 861-0360 (tel.)
(216) 861-3113 (fax)
JHarrison@Hickman-Lowder.com
LGorczynski@Hickman-Lowder.com

Jyotin Hamid (*pro hac vice* pending)
Joseph Weissman (*pro hac vice* pending)
Derek Wikstrom (*pro hac vice* pending)
Jennifer Mintz (*pro hac vice* pending)
Matthew Hartz (*pro hac vice* pending)
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
(212) 909-6000 (tel.)
(212) 909-6836 (fax)
jhamid@debevoise.com
jweissman@debevoise.com
dwikstrom@debevoise.com
jfmintz@debevoise.com
mhartz@debevoise.com

Christopher Stoll (*pro hac vice* pending)
Asaf Orr (*pro hac vice* pending)
NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market Street, Suite 370
San Francisco, California 94102
(415) 392-6257 (tel.)
(415) 392-8442 (fax)
cstoll@nclrights.org
aorr@nclrights.org

Attorneys for JANE DOE

Verification

I, Joyce Doe, the legal guardian of proposed intervenor Jane Doe, a citizen of the United States and a resident of the State of Ohio, hereby declare that I have reviewed the foregoing Complaint-In-Intervention, and that the factual statements set forth therein are true to the best of my knowledge, information, and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 20 day of July, 2016, in Morrow County, Ohio.

Joyce Doe

Joyce Doe