

**NO. 16-3522**

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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

ASHTON WHITAKER, a minor, by his mother and next friend,  
MELISSA WHITAKER,

*Plaintiff-Appellee,*

v.

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1 BOARD OF EDUCATION and  
SUE SAVAGLIO-JARVIS, in her official capacity as Superintendent of the  
Kenosha Unified School District No. 1,

*Defendants-Appellants.*

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On Appeal from the United States District Court for the  
Eastern District of Wisconsin, Case No. 2:16-cv-00943-PP  
The Honorable Judge Pamela Pepper, Presiding.

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**SUPPLEMENTAL APPENDIX OF PLAINTIFF-APPELLEE**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSINCourt Minutes

DATE: September 19, 2016  
JUDGE: Pamela Pepper  
CASE NO: 2016-cv-943  
CASE NAME: Ashton Whitaker v. Kenosha Unified School District No. 1 Board of Education, *et al.*  
NATURE OF HEARING: Oral decision on motion to dismiss  
APPEARANCES: Joseph J. Wardenski – Attorney for the plaintiff  
Ilona Turner – Attorney for the plaintiff  
Alison Pennington – Attorney for the plaintiff  
Michael Allen – Attorney for the plaintiff  
Robert Pledl - Attorney for the plaintiff  
Ronald S. Stadler – Attorney for the defendants  
Jonathan E. Sacks - Attorney for defendants  
COURTROOM DEPUTY: Kristine Wrobel  
TIME: 3:34 p.m. – 4:38 p.m.

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The court began by reviewing the standard for determining whether to grant a motion to dismiss under Fed. R. Civ. P. 12(b)(6). A motion to dismiss challenges the sufficiency of the complaint, not its merits. Fed. R. Civ. P. 12(b)(6); Gibson v. City of Chicago, 910 F.2d 1510, 1520 (7th Cir. 1990). When evaluating a motion to dismiss under Rule 12(b)(6), the court accepts as true all well-pleaded facts in the complaint and draws all reasonable inferences from those facts in the plaintiff's favor. AnchorBank, FSB v. Hofer, 649 F.3d 610, 614 (7th Cir. 2011). To survive a Rule 12(b)(6) motion, the complaint must provide the defendant with fair notice of the basis for the claim and also must be facially plausible. Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937 (2009); see also Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

The court then moved on to analyze the plaintiff's claim under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681. This statute 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.

The court noted that Count One alleged that defendant Kenosha Unified School District ("KUSD") is a federal funding recipient, and thus is covered by Title IX. Dkt. No. 1 at 30. Count One of the complaint alleged that KUSD discriminated against the plaintiff by treating him differently from other students "based on his gender identity, the fact that he is transgender, and his non-conformity to male stereotypes." Id.

The court noted that during oral argument on the motion to dismiss, the parties had each discussed what the word “sex” meant in the context of Title IX. No court in this circuit has decided that question. The court recalled that KUSD had argued that “sex” referred to the gender on one’s birth certification, while the plaintiff had argued that “sex” was more than biological, birth gender. The court told the parties that it had looked in three different dictionary definitions of the word “sex.” The *Merriam-Webster Dictionary* defined “sex” as “the state of being male or female.” It defined the word “male” as being “a man or a boy: a male person.” *Webster’s New World College Dictionary* (“*Your Dictionary*”) defined “sex” as “either of the two divisions, male or female, into which persons, animals, or plants are divided, with reference to their reproductive functions.” It provided a secondary definition: “the character of being male or female; all the attributes by which males and females are distinguished.” That dictionary defined the word “male” as being “someone of the sex that produces sperm, or is something that relates to this sex . . . .” The secondary definition added, “as opposed to a female who produces an egg.” The on-line dictionary *Dictionary.com* defined “sex” as “either the male or female division of a species, especially as differentiated with reference to the reproductive functions.” It defined the word “male” as “a person bearing an X and Y chromosome pair in the cell nuclei and normally having a penis, scrotum, and testicles, and developing hair on the face at adolescence; a boy or man.”

In noting the variations among these definitions, the court looked at the Fourth Circuit’s decision in G.G. v. Gloucester County School Board, 822 F.3d 709 (4th Cir. April 19, 2016). The court stated that it was not relying on the G.G. decision; the Supreme Court has stayed the issuance of the preliminary injunction the district court issued as a result of that decision. But the court pointed out that that court, like this one, had found varying definitions of the word “sex”:

Two dictionaries from the drafting era inform our analysis of how the term “sex” was understood at that time. The first defines “sex” as “the character of being either male or female” or “the sum of those anatomical and physiological differences with reference to which the male and female are distinguished . . . .” *American College Dictionary* 1109 (1970). The second defines “sex” as “the sum of the morphological, physiological, and behavioral peculiarities of living beings that subserves biparental reproduction with its concomitant genetic segregation and recombination which underlie most evolutionary change, that in its typical dichotomous occurrence is usu[ally] genetically controlled and associated with special sex chromosomes, and that is typically manifested as maleness and femaleness . . . .” *Webster’s Third New International Dictionary* 281 (1971).

Id. at 721.

Given this array of differing definitions of the word sex, the court agreed with the G.G. court's reasoning that

the definitions . . . suggest that a hard-and-fast binary division on the basis of reproductive organs—although useful in most cases—was not universally descriptive. The dictionaries, therefore, used qualifiers such as reference to the “*sum of*” various factors, “*typical dichotomous occurrence,*” and “*typically manifested as maleness and femaleness.*”

Id. None of these definitions are helpful when some of those various factors—genes, or chromosomes, or character, or attributes—point toward male identity, and others toward female. And, the court noted, none of those definitions describe “sex” as the gender on a person's birth certificate.

The court opined that some of the Seventh Circuit's decisions have acknowledged the difficulties of trying to cram the analysis of the word “sex” in the Title VII context into the binary construct. For example, in Doe v. City of Belleville, 119 F.3d 563 (7th Cir. 1997), Judges Ripple, Manion and Rover (Rovner writing) struggled with the question of why, in a case where a plaintiff claimed to have been harassed under circumstances involving sexual overtones (as in the act of sex), it should matter whether the victim was harassed because of his or her sex. (That decision was vacated and remanded; the final disposition is sealed. City of Belleville v. Doe, 523 U.S. 1001 (1998).) In Hively v. Ivy Tech Community College, South Bend, Case No. 15-1720, 2016 WL 4039703 at \*15 (7th Cir., July 28, 2016), the court stated in the context of discrimination under Title VII based on sexual orientation that it “does not condone” “a legal structure in which employees can be fired, harassed, demeaned, singled out for undesirable tasks, paid lower wages, demoted, passed over for promotions, and otherwise discriminated against solely based on who they date, love, or marry.”

Some cases have discussed the absurd results of trying to cabin people into categories based on gender at birth. In Schroer v. Billington, 577 F.Supp.2d 293, 306-307 (D. D.C. 2008), the court reasoned that a “plain-language” reading of the word “sex” in the Title VII context would, under certain circumstances, mandate a strange result:

Imagine that an employee is fired because she converts from Christianity to Judaism. Imagine too that her employer testifies that he harbors no bias toward either Christians or Jews but only “converts.” That would be a clear case of discrimination “because of religion.” No court would take

seriously the notion that “converts” are not covered by the statute. Discrimination “because of religion” easily encompasses discrimination because of a *change* of religion. But in cases where the plaintiff has changed her sex, and faces discrimination because of the decision to stop presenting as a man and to start appearing as a woman, courts have traditionally carved such persons out of the statute by concluding that “transsexuality” is unprotected by Title VII. In other words, courts have allowed their focus on the label “transsexual” to blind them to the statutory language itself.

The court turned to the Seventh Circuit’s decision in Ulane v. Eastern Airlines, Inc., 742 F.2d 1081 (7th Cir. 1984), upon which the defendants had relied in their moving papers and at oral argument. In finding that Title VII did not provide protection to people who had “sex identity disorder,” the court stated:

It is a maxim of statutory construction that, unless otherwise defined, words should be given their ordinary, common meaning. *Perrin v. United States*, 444 U.S. 37, 42 . . . (1979). The phrase in Title VII prohibiting discrimination based on sex, in its plain meaning, implies that it is unlawful to discriminate against women because they are women and against men because they are men. The words of Title VII do not outlaw discrimination against a person who has a sexual identity disorder, *i.e.*, a person born with a male body who believes himself to be female, or a person born with a female body who believes herself to be male; a prohibition against discrimination based on an individual’s sex is not synonymous with a prohibition against discrimination based on an individual’s sexual identity disorder or discontent with the sex into which they were born.

Id. at 1085.

The court agreed with the defendants that neither the Supreme Court nor the Seventh Circuit had overruled Ulane. But in the context of the struggles the court had outlined above with defining “sex” in evolving contexts, the court noted several things. First, the Ulane conceded that there was little legislative history regarding the decision to include protections against discrimination based on “sex.” The Ulane court explained that the statute originally was “primarily concerned” with race discrimination, and that “sex” was “added as a floor amendment one day before the House approved Title VII, without prior hearing or debate.” Id., quoting Holloway v. Arthur Anderson & Co., 566 F.2d 659, 662 (9th Cir. 1977). The court stated that “[t]his sex amendment was the gambit of a congressman seeking to scuttle adoption of the Civil Rights Act. The ploy failed and sex discrimination was abruptly added

This court observed that Title IX does not share the same legislative history (or lack thereof), and that there may be reasons why a court may interpret the word "sex" more broadly in a Title IX context than in Title VII. The court also stated that the defendants' argument that, because Congress not shed light on the definition of the word "sex" in Title VII in the years since its passage was not necessarily determinative, noting the plaintiffs' reference, in argument and in their supplemental authority, to recent efforts by members of Congress to, among other things, pass the Student Non-Discrimination Act. (Dkt. No. 23).

Second, the court pointed out, as the plaintiffs had discussed at oral argument, that the decision in Ulane predated the Supreme Court's decision in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) by five years, as well as other decisions the parties had discussed at oral argument. As the Seventh Circuit acknowledged in Hively, the Supreme Court stated in Price Waterhouse that "Congress intended to strike at the *entire* spectrum of disparate treatment of men and women resulting from sex stereotypes." Hively, 2016 WL 4039703 at \*13 (emphasis the Seventh Circuit's) (quoting Price Waterhouse, 490 U.S. at at 251).

Third, the court stated, Ulane held that Title VII does not protect transgender persons; it did not interpret Title IX. As the court noted above, at the motion to dismiss stage, the court cannot conclude that there may not be reasons to interpret the word "sex" in the Title IX context differently.

Finally, the court pointed out that the Ulane court had stated that even if it had accepted the district court's finding that the plaintiff was female, the district court had not made factual findings relating to whether the defendant had discriminated against her on that basis. Ulane, 742 F.2d at 1087. The court emphasized that at the motion-to-dismiss stage, it had made no finding as to whether the plaintiff (Ash Whitaker) was male or female, a determination that would need to be made after further litigation before addressing the question of discrimination.

Thus, the court summarized, (1) there was no case providing definition of word "sex" as it appear in Title IX, and the statute does not define the word; (2) no court in the Seventh Circuit has specifically addressed whether Title IX's prohibition of discrimination on the basis of sex encompasses transgender students; (3) the case law considering whether "sex" in the Title VII context includes transgender persons is contradictory; (4) there clearly are factual and legal disputes between the parties, and support for each parties claims in the case law; (5) Ulane does not gut the Title IX cause of action, because it did not interpret the word "sex" under Title IX, it provided no basis for its definition of

The court acknowledged that the plaintiffs had argued that Texas v. USA, 2016 WL 4426495 (N.D. Tex. August 21, 2016) may cast doubt on the reasoning the Fourth Circuit employed in G.G. (although the court opined that that case was unusual in its broad scope of the defendant’s request for national injunctive relief, and noted the fact that it was a district court decision, while G.G. is an appellate decision). The court again emphasized, however, that at the motion-to-dismiss stage, the court need only determine whether the plaintiff’s claims are plausible, not whether the plaintiffs eventually will succeed.

The court also reminded the parties that at oral argument, it had asked the plaintiff about how a student’s inability to use a restroom constituted a denial of educational opportunities. The court stated that, since argument, it had determined that there is support in the case law for the conclusion that a student’s inability to use the restroom of his/her choice impacts his/her educational opportunities. The court reiterated that the facts around that claim would be fleshed out in further litigation, but concluded that there was a sufficient basis for the plaintiffs to make that claim under the law.

The court touched on the defendants’ argument that it owed no deference to the Department of Education’s “Dear Colleague” letter (Dkt. No. 10-6). The court agreed with the defendants that the letter was not a statute (and therefore was not binding law), and that it wasn’t entitled to deference under Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), because it did not constitute an agency regulation. The court agrees with the G.G. court’s reasoning, however, that the letter should be accorded deference under Auer v. Robbins, 519 U.S. 452 (1997). G.G., 822 F.3d at 720.

The defendants first argued that the regulation providing schools with the discretion to segregate bathrooms based on sex was unambiguous. (While the defendants did not specifically identify that regulation, the court expects that they referred to 34 C.F.R. §106.33, which states that “[a] recipient [of federal funding] may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.”) A court does not grant Auer deference to an agency which interprets an unambiguous regulation. G.G., 822 F.3d at 719-720.

The court disagreed, finding that, for the reasons discussed above, the word “sex” in the regulation was ambiguous. It does not address how schools must consider or treat transgender students within the discretionary scheme it provides. Once the court determined that the regulation was ambiguous, the

court then turned to whether the Department of Education's interpretation of that regulation in the "Dear Colleague" letter was plainly erroneous or inconsistent with the regulation or with Title IX. Id. at 721 (citing Auer, 519 U.S. at 461). The "Dear Colleague" letter stated that, "A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identities," and that schools "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." Dkt. No. 10-6 at 5. The court stated that it could not conclude that the Department's interpretation requiring schools to allow transgender persons to use the restroom comporting with their gender identities would prevent schools from exercising their discretion to provide separate bathrooms. Rather, the court indicated, it allowed students identifying as boys to use the bathroom segregated for boys, and those identifying as girls to use the bathroom segregated for girls.

The defendants also argued that the only way the Department's letter would not be at odds with the regulation would be to change Title IX's definition of the word "sex," and that that task was reserved to Congress. The court disagreed, noting—as it had throughout its ruling—that neither the statute nor the regulation define the word "sex."

The defendants argued that to defer to the Department's interpretation would leave schools in the position of trying to "assume gender identity based on appearances, social expectations or explicit declarations of identity," citing the dissent in G.G. The court stated that whether or not that turned out to be the case was not relevant to whether the Department's letter was inconsistent with the regulation, and the court determined that it was not. For those reasons, the court found, it was appropriate to accord the letter Auer deference.

The court also stated that regardless of whether Title IX provides protection for transgender persons, the plaintiffs have alleged sufficient facts to sustain a gender stereotyping claim. See Price Waterhouse, 490 U.S. at 251 ("As for the legal relevance of sex stereotyping, we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for "[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.") (citations omitted). See also, Kastl v. Maricopa Count, 325 F. Appx. 492, 493 (9th Cir. 1009) (finding that after Price Waterhouse and Schwenk v. Harford, 204 F.3d 1187, 1201-02 (9th Cir. 2000), "it is unlawful to discriminate against a transgender (or any other) person because he or she does not behave in accordance with an employer's expectations for men or women.")

In regard to sex stereotyping, the court stated, the defendants clearly treated the plaintiff differently because he did not conform to the gender stereotypes associated with being a biological female. The school suggested that he use bathrooms that other students were not required to use, endure surveillance to police his bathroom use, and initially refused to allow him to stand for prom king (although it later changed that decision).

For all of the above reasons, the court concluded that the plaintiffs had submitted sufficient factual evidence to survive a motion to dismiss, and sufficient legal authority to overcome the defendants' argument that they had no possibility of prevailing as a matter of law. Thus, the court denied the motion to dismiss as to Count One.

The court then turned to the claim in Count Two—that the defendants had violated 42 U.S.C. §1983 by violating the plaintiffs' Fourteenth Amendment right to equal protection. The court began to stating that to state a claim for relief under §1983, a plaintiff must allege that (1) he was deprived of a right secured by the Constitution or laws of the United States; and (2) the deprivation was visited on him by a person or persons acting under color of state law. Buchanan-Moore v. Cnty. of Milwaukee, 570 F.3d 824, 827 (7th Cir. 2009) (citing Kramer v. Village of North Fond du Lac, 384 F.3d 856, 861 (7th Cir. 2004)). The court found that the plaintiff had satisfied these elements—he had alleged that his equal protection rights under the Fourteenth Amendment had been violated by the defendants, who are state actors.

With regard to the Fourteenth Amendment claim, the court stated that “[i]n order to make out an equal protection claim . . . [the plaintiff] had to present evidence that the defendants treated [him] differently from others who were similarly situated. [He] also had to present evidence that the defendants intentionally treated [him] differently because of [his] membership in the class to which [he] belonged.” Hedrich v. Bd. of Regents of Univ. of Wisconsin Sys., 274 F.3d 1174, 1183 (7th Cir. 2001) (citing Personnel Adm’r of Mass. v. Feeney, 442 U.S. 256 (1979); Nabozny v. Podlesny, 92 F.3d 446, 453 (7th Cir. 1996)). The plaintiff alleged in the complaint that the defendants treated him differently from the “other male students based on his gender identity, the fact that he is transgender, and his nonconformity to male stereotypes . . . .” Dkt. No. 1 at 32-33. The court stated that, if one assumed for the purposes of the argument that Ash is male, he had alleged sufficient facts to indicate that he was discriminated against relative to other males, because he had alleged that he was not allowed to use the facilities that the defendants allow other males to use. In the alternative, the court stated, the plaintiff is transgender, and if the court concludes at a later stage in the proceedings that transgender persons constitute a suspect class, then the plaintiff has alleged sufficient facts to show discrimination on that basis. Finally, the court again concluded that the plaintiff had alleged sufficient facts to show discrimination based on gender stereotypes.

The court pointed out that it did not have to decide, at the motion to dismiss stage, whether transgender persons constituted a suspect class. Durso v. Rowe, 579 F.2d 1365, 1372 (7th Cir. 1978) (“A state prisoner need not allege the presence of a suspect classification or the infringement of a fundamental right in order to state a claim under the Equal Protection Clause. The lack of a fundamental constitutional right or the absence of a suspect class merely affects the court's standard of review; it does not destroy the cause of action.”) The court noted that the defendants argued that the court should employ a rational basis standard of review, while the plaintiffs had argued for heightened scrutiny, but the court reiterated that it did not need to make a decision on that issue in order to conclude that the complaint contained sufficient allegations to survive the motion to dismiss.

For all of these reasons, the court also denied the motion to dismiss Count Two.

In light of its decision to deny the motion to dismiss, the court turned to the motion for a preliminary injunction. Counsel for the plaintiff told the court that the plaintiff's application for a legal name change had been granted, and that the relief the plaintiffs were seeking in the injunction consisted of enjoining the defendants from prohibiting the plaintiff from using the boys' restrooms, enjoining the defendants from calling the plaintiff by female names and female pronouns, and enjoining the defendants from identifying the plaintiff as transgender (in ways such as requiring him to wear a colored arm band). Counsel for the defendants acknowledged that the defendants were aware of the official name change and were in the process of changing school records, but indicated that he'd need time to talk with his clients before acceding to any request never to refer to the plaintiff by a female pronoun. He also told the court that there was no wristband policy, that there never had been, and that the plaintiffs' request for relief on that ground was speculative.

Counsel for the plaintiff asked if the court would hear argument right away on the request for injunctive relief as to the restrooms, and reserve for a later time the request regarding pronoun reference. The court, after conferring with counsel for the defense, agreed. The court also stated that it would not entertain a request for injunctive relief regarding the armband at this time, given that no such policy appeared to be in force.

The court scheduled a hearing on the motion for preliminary injunction for September 20, 2016 at 1:00 p.m. in Room 225. Parties wishing to appear by phone may do so by calling the court's conference line at 888-557-8511 and using the access code 4893665#. The hearing will address only the plaintiffs' request for injunctive relief as to the prohibition against his using the boys' restrooms.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

Court Minutes

DATE: September 20, 2016  
JUDGE: Pamela Pepper  
CASE NO: 2016-cv-943  
CASE NAME: Ashton Whitaker v. Kenosha Unified School District No. 1 Board of Education, *et al.*  
NATURE OF HEARING: Oral argument on motion for preliminary injunction  
APPEARANCES: Joseph J. Wardenski – Attorney for the plaintiff  
Ilona Turner – Attorney for the plaintiff  
Alison Pennington – Attorney for the plaintiff  
Michael Allen – Attorney for the plaintiff  
Robert Pledl - Attorney for the plaintiff  
Ronald S. Stadler – Attorney for the defendants  
Jonathan E. Sacks - Attorney for defendants  
COURTROOM DEPUTY: Kristine Wrobel  
TIME: 1:05 p.m. – 3:04 p.m.

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The court had scheduled today's hearing to hear argument from the parties on the plaintiffs' motion for a preliminary injunction. As the parties had agreed at the prior day's hearing, the court considered only the plaintiffs' request that the court enjoin the defendants from prohibiting plaintiff Ash Whitaker from using the boys' restrooms at George Nelson Tremper High School during the pendency of this case; the court had previously declined to enjoin the defendants from wearing an identifying armband (given the lack of evidence indicating that the defendants were enforcing a policy requiring that the plaintiff wear a wristband), and deferred ruling on the plaintiffs' request that it enjoin the defendants from referring to plaintiff Ash Whitaker by a female moniker or by female pronouns (to give counsel for the defendants time to discuss that issue with his clients, in light of the fact that plaintiff Ash Whitaker recently had obtained a legal name-change order, and that the defendants were working on updating school records to reflect that fact).

The court heard argument from both counsel with regard to the issuance of the preliminary injunction. At the conclusion of the hearing, the court granted the plaintiffs' motion to the following extent: It enjoined the defendants from prohibiting Ash Whitaker from using the boys' restrooms at Tremper High School; enjoined the defendants from taking any punitive action against Ash Whitaker for using the boys' restrooms (including taking him out of class to chastise him); and enjoining the defendants from taking any action to monitor Ash Whitaker's restroom usage (such as having staff members surveil the plaintiff, or posting staff members outside boys' bathrooms to watch him).

Counsel for the defendants asked the court to stay its ruling until October 1, to allow the defendants to go to the Seventh Circuit. The court

declined, noting that the defendants could ask the appellate court to stay this court's order. The defendants also asked the court to require the plaintiffs to post a bond pursuant to Fed. R. Civ. P. 65(c). Counsel for the defendants argued that under the Wisconsin Supreme Court's decision in Muscoda Bridge Co. v. Worden-Allen Co., 207 Wis. 22 (Wis. 1931), the court should impose a bond in an amount sufficient to cover the fees and costs the defendants would incur should it turn out that the court improvidently granted the injunction. The plaintiffs responded that the court should not impose a bond, given the modest means of the plaintiffs. The court stated that it would take the issue of bond under advisement.

The court will issue a separate order.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ASHTON WHITAKER, a minor, by his mother and next friend, MELISSA WHITAKER, Plaintiff, vs. KENOSHA UNIFIED SCHOOL DISTRICT NO. 1 BOARD OF EDUCATION and SUE SAVAGLIO-JARVIS, in her official capacity as Superintendent of the Kenosha Unified School District No. 1, Defendants. Case No. CV 16-943 Milwaukee, Wisconsin September 20, 2016 1:05 p.m.

TRANSCRIPT OF ORAL ARGUMENT ON MOTION FOR PRELIMINARY INJUNCTION BEFORE THE HONORABLE PAMELA PEPPER UNITED STATES DISTRICT JUDGE

APPEARANCES:

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U.S. Official Transcriber: JOHN T. SCHINDHELM, RMR, CRR, Transcript Orders: WWW.JOHNSCHINDHELM.COM

Proceedings recorded by electronic recording, transcript produced by computer aided transcription.



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TRANSCRIPT OF PROCEEDINGS

Transcribed From Audio Recording

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THE COURT: Have a seat everyone, please.

THE CLERK: Court calls civil case 2016-CV-943, Ashton Whitaker vs. Kenosha Unified School District No. 1 Board of Education, et al.

Can you state your appearances starting with the attorneys for the plaintiff that are present in the courtroom.

MR. WARDENSKI: Joseph Wardenski for plaintiff.

MR. PLEDL: Robert Theine Pledl, also for the plaintiff.

THE COURT: And now for the attorneys for the plaintiff by phone?

MR. ALLEN: (VIA TELEPHONE) Michael Allen with the firm of Relman Dane & Colfax for the plaintiffs.

MS. TURNER: (VIA TELEPHONE) Ilona Turner with Transgender Law Center for the plaintiff.

MS. PENNINGTON: (VIA TELEPHONE) Allison Pennington with Transgender Law Center for the plaintiff.

MR. STADLER: Good afternoon, Judge. Attorney Ron Stadler appears on behalf of the defendants.

MR. SACKS: Jonathan Sacks for the defendants.

THE COURT: Good afternoon to everyone.

As you know, yesterday when we were together we

1 decided to set the preliminary injunction arguments over until  
2 today to give everybody an opportunity to kind of process  
3 yesterday's decision and to gather your thoughts about any  
4 arguments you wanted to make.

5 And I just want to clarify before we get started, I  
6 think my understanding was correct at the end of the hearing  
7 yesterday, but you all tell me if I'm wrong, that we're  
8 basically confining the arguments today to the bathroom policy  
9 issue.

10 Mr. Stadler wanted to have an opportunity to speak  
11 with his clients with regard to the name change and use of  
12 pronouns issue. There may be some other things as well. And so  
13 the plaintiffs had asked that at least we address the bathroom  
14 issue which it didn't sound like anybody wanted to necessarily  
15 modify their evidence that they had produced.

16 So, my understanding is that that is going to be the  
17 focus of today's arguments unless anybody recalls differently  
18 than I do. Mr. Wardenski?

19 MR. WARDENSKI: Yes, Your Honor, that's correct.

20 THE COURT: Okay. Mr. Stadler?

21 MR. STADLER: The only clarification I would add,  
22 Judge, is again we don't have an issue with the name change  
23 because there is a circuit court order changing the name.

24 THE COURT: Right, sorry.

25 MR. STADLER: It was just the pronoun issue.

1 THE COURT: Use of, right, the pronouns. I apologize.  
2 Okay. Thank you. All right. So this is the plaintiff's motion  
3 for preliminary injunction. So, Mr. Wardenski, I will start  
4 with you.

5 MR. WARDENSKI: So I spent some time at the motion to  
6 dismiss hearing talking about Ash and his experience at school  
7 both last year and the first few days of this school year. His  
8 senior year started about two weeks ago and in terms of the  
9 restroom access issue the situation is essentially unchanged  
10 from what it was at the end of the year, which is that the  
11 school has instructed him not to use the boys' restrooms. He is  
12 given the option of using girls' restrooms or one of several  
13 single-occupancy restrooms and does not feel comfortable using  
14 either of those options.

15 He hasn't used any female-designated facilities  
16 probably for almost over a year and a half of his life in school  
17 or elsewhere. He's only used boys' and men's facilities outside  
18 of school. And is very uncomfortable with using the  
19 gender-neutral single-occupancy options at school because, as  
20 the Court recognized yesterday, he is the only student who has  
21 been given a key to access those restrooms, they are still  
22 somewhat out of the way from his classes, it calls unwanted  
23 attention to himself and causes him feelings of humiliation and  
24 embarrassment even at the idea of having to use a segregated  
25 facility that is limited to him only.

1           So in response, his response has been essentially the  
2 same as it was last year which is to try to avoid using the  
3 restroom as much as possible, which isn't always possible, but  
4 he goes long stretches without using the restroom.

5           He has tried to limit his fluid intake during the day.  
6 And on some of the hot days in the last two weeks that's been  
7 virtually impossible.

8           On top of the medical condition that we've discussed  
9 before, the vasovagal syncope which requires him to stay  
10 hydrated throughout the day, have six to seven glasses of water  
11 and Gatorade. That's a fainting condition that can also result  
12 in, you know, migraines and dizziness.

13           On top of that just the heat has been pretty bad so  
14 it's been hard for him to limit his fluid intake in the way that  
15 he might otherwise do in order to avoid having to use the  
16 restroom at school.

17           All this to say the situation is basically the same.  
18 He's going through a lot of the same distress and stress over  
19 the situation at school. Remains concerned and humiliated about  
20 being treated differently and singled out for this type of  
21 treatment when he uses male-designated facilities everywhere  
22 else in his life and just wants to do so at school so that he  
23 can have a normal year.

24           He's already diving into the school activities like  
25 drama club and other things that we have discussed before. And

1 so his days are long and they're gonna get longer as he gets  
2 further into those activities. And so not using the restroom at  
3 all is -- isn't really an option now, but it's certainly not  
4 going to be an option as he gets further into the school year.

5 So, with that we are seeking a preliminary injunction  
6 on allowing -- well, restraining the school district from  
7 enforcing any policy that might otherwise limit him from using  
8 the boys' restrooms, which includes the use of any discipline,  
9 formal or informal, that can involve pulling him out of class to  
10 discuss his restroom use or to chastise him for using boys'  
11 restrooms on the occasions that he does. But really to enjoin  
12 any policy that would single him out for differential restroom  
13 use and allow him essentially to use the boys' restrooms while  
14 the merits of this case proceed.

15 This is narrowly targeted relief that is more limited  
16 in scope than the ultimate relief Ash will seek in this case  
17 later, but its primary purpose is to prevent harm to him. And  
18 that is, as this district court has recognized in the past,  
19 targeted at the central core purpose of a preliminary injunction  
20 which is to prevent irreparable harm on a party.

21 So, in the Seventh Circuit the analysis, and I'll walk  
22 through a summary of our points under each of these steps in the  
23 analysis, is that a moving party must show irreparable harm for  
24 which there is no adequate remedy at law and show some  
25 likelihood of success on the merits.

1           And as we have stated in our briefs, the threshold for  
2 the likelihood of success is low in this circuit. It just has  
3 to be better than negligible. And assuming that those three  
4 factors are met, the special factors, then the Court may proceed  
5 into a balancing analysis where the Court weighs the irreparable  
6 harms on the moving party versus irreparable harms on the  
7 nonmoving party, if any, and then also considers the effect, if  
8 any, on the public interest.

9           The Seventh Circuit uses a sliding scale that has been  
10 articulated many times including in the *Turnell* case, the *Girl*  
11 *Scouts of Manitou Council* case, and others dating back many,  
12 many years, and that sliding-scale analysis the higher the  
13 likelihood of success the lower the showing of harm has to be,  
14 but conversely the higher the showing of irreparable harm is the  
15 lower the likelihood of success needs to be in order for an  
16 injunction to be granted.

17           Here we think that Ash has both presented a strong  
18 likelihood of success on the merits, but it also has presented  
19 an unquestioned proof of irreparable harm based on the  
20 defendant's conduct over the last year and their ongoing conduct  
21 this year. And I want to walk through that.

22           As we have demonstrated in our motion and supporting  
23 affidavits from Ash himself, from his mother Melissa Whitaker,  
24 from Stephanie Budge who is an assistant professor at the  
25 University of Wisconsin-Madison and a specialist in transgender

1 youth development and also a practicing clinical psychologist  
2 who has treated many transgender youth between at the age of  
3 adolescence and early adulthood over the years. She met with  
4 Ash and his mom for several hours. She also reviewed all of his  
5 medical records including from his pediatrician and from his  
6 psychotherapists. She confirmed a diagnosis made by his  
7 pediatrician that:

8 He meets the criteria for a diagnosis of gender  
9 dysphoria.

10 That he has experienced significant and constant  
11 distress related to the discriminatory conduct by the Kenosha  
12 school district in limiting his restroom use and the other forms  
13 of discrimination we've alleged in our suit.

14 That as a result of the meetings he's had with  
15 administrators and the stigma and humiliation he has suffered as  
16 a result of being singled out with regard to restroom use, he  
17 has demonstrated symptoms of posttraumatic stress disorder which  
18 include flashbacks, panic attacks.

19 And he's also presented symptoms of depression and  
20 anxiety, all of which are certainly unique and specific to him  
21 in this case and have been corroborated by his own medical  
22 providers and by Professor Budge, but are also consistent with  
23 the standards of care under the World Professional Association  
24 of Transgender Health standards and the prevailing medical  
25 consensus that if a transgender person, especially a transgender

1 young person, is denied the ability to live in accordance with  
2 their gender identity, these types of symptoms are highly  
3 related and correlated to gender dysphoria, things like anxiety  
4 and depression.

5           So what he's experiencing himself is very much in line  
6 with what the medical community has concluded are symptoms  
7 related to an individual's inability to live in accordance with  
8 their gender identity.

9           Dr. Budge further concluded that:

10           Limiting his access to restrooms at school has caused  
11 Ash physical discomfort.

12           He's experienced tearful nights after school,  
13 difficulty sleeping, loss of focus on his academics.

14           That his drive and staying a high achiever has been to  
15 get through his senior year and go to a college environment  
16 where he'll be more accepted for who he is, but that he has  
17 nevertheless suffered educational harms and psychological harms  
18 and certainly the medical harms as well with regard to his  
19 medical condition from limiting his fluid intake as a direct  
20 response to the district's policies.

21           I'm going to quote Dr. Budge here. She says that the  
22 district's actions have resulted in "deeply harmful and  
23 stigmatizing effects, causing Ash to feel constant isolation,  
24 shame, humiliation, anxiety and depression." And that while  
25 therapy may be helpful in remediating the effects of that

1 discrimination, it's not sufficient. That unless he -- unless  
2 the discrimination is stopped that these practices will result  
3 in long-term harm.

4 And I'll quote her again. She wrote:

5 "KUSD's treatment of Ash and its policies regarding  
6 his bathroom use and other actions that single him out as  
7 transgender and treat him differently from other boys are  
8 directly causing significant psychological distress," and I want  
9 to emphasize this part, "place Ash at risk for experiencing  
10 life-long diminished well-being and life function."

11 So this finding goes at the heart of why a preliminary  
12 injunction is appropriate in this case; that the harm to Ash is  
13 happening both in real time but it has and will come to create  
14 permanent effects that can't be remediated by damages or therapy  
15 or anything else; that these are affecting his life goals, his  
16 ability to get into college, succeed in college later.

17 And so we presented other evidence from other experts  
18 including Dr. Nick Gorton who is a medical doctor who has  
19 treated many transgender patients. He has written in his  
20 declaration that there is medical consensus that the only  
21 effective and ethical treatment for gender dysphoria is for a  
22 transgender person to live in accordance with their gender  
23 identity, and that an early social transition that is unimpeded  
24 by the negative externalities, things like discrimination when  
25 an individual transgender youth is allowed to live in accordance

1 with their gender identity uninterrupted by harassment or  
2 discrimination or differential treatment, that that results in  
3 better longer term health and medical/mental health outcomes.

4 We also presented social science research evidence in  
5 Dr. Jenifer McGuire's declaration that also confirms that the  
6 type of exclusionary treatment that Ash has experienced at  
7 school creates a negative school environment that hurts both the  
8 students directly affected like Ash, but also has harmful  
9 effects on the school climate and the whole school community.  
10 And she goes on at some length, as does Dr. Budge, about the  
11 research links between school climate and academic performance,  
12 a transgender student's safety and well-being and their  
13 long-term outcomes.

14 So, in sum, Ash has experienced and is experiencing  
15 highly stigmatizing treatment that have exacerbated his symptoms  
16 of gender dysphoria and are continuing to do so this school  
17 year.

18 He's experiencing physical health effects separate  
19 from his gender identity but as a result of the defendant's  
20 actions based on his efforts to try to not use the restroom at  
21 all, to try to comply with the district's policy, and he has  
22 experienced educational effects in terms of loss of focus, lost  
23 class time, less enjoyment in activities that he has previously  
24 enjoyed like orchestra where he has heard some comments from the  
25 adult volunteer last year with regard to his case and his gender

1 identity.

2           So we think and I posit that the irreparable harm on  
3 Ash is clear and the district has not in its briefs rebutted  
4 that that harm is true. They haven't presented any evidence  
5 that that harm isn't happening.

6           And so Ash has, as we've said before, one senior year.  
7 He has, you know, one opportunity this fall to apply to college,  
8 to do well in his AP classes, to be in the school play and  
9 everything else this year, and that's the senior year he wants.  
10 He doesn't want to spend another whole year having to spend a  
11 lot of mental energy and experience a lot of distress around  
12 which bathroom he can use when last year he used it for seven  
13 months before the school district told him he couldn't. And he  
14 continued to use it when absolutely necessary for the rest of  
15 the year and there's never been any evidence and nor has the  
16 district put forth any evidence that any other student has ever  
17 been affected by his use.

18           And that's where we get into the balancing of harms.  
19 The district has mentioned a few, you know, highly speculative  
20 harms, hypothetical harms in its brief including, you know,  
21 undefined financial costs or other things. But they have  
22 offered nothing to bolster that and those claims are undermined  
23 by the experiences of many other school districts in Wisconsin  
24 and across the country who allow and have allowed transgender  
25 students to use restrooms consistent with their gender identity

1 for many years. And we've also presented evidence to you of  
2 that.

3 We've given you a sampling, and it is just a sampling  
4 of transgender-inclusive policies from Wisconsin school  
5 districts that allow/permit transgender students to use  
6 restrooms consistent with their gender identity and make clear  
7 that requiring a transgender student to use a gender-neutral  
8 facility is not acceptable because of the stigmatizing harm that  
9 it poses on that student.

10 We have presented declarations from the principal of  
11 Shorewood High School in Shorewood, Wisconsin, Tim Kenney, as  
12 well as the superintendent of that school district. Shorewood  
13 adopted a transgender-inclusive restroom policy about two years  
14 ago. And while both of those administrators acknowledge that  
15 they themselves had fears about what might happen, whether they  
16 would get complaints from other students, whether families would  
17 complain or that, you know, something else might go wrong, but  
18 those fears have been completely unsubstantiated. And they've  
19 had three transgender students that they know of in their high  
20 school since that policy was adopted and are quite pleased with  
21 the policy and have acknowledged and told the Court that it's  
22 much easier to have an inclusive policy than to have an  
23 exclusive one. That confirms the experience of districts that  
24 have been doing this for much longer.

25 We have a declaration from Judy Chiasson who is the

1 director of the Office of Human Relations Equity and Diversity  
2 for the Los Angeles Unified School District, LAUSD. LAUSD is  
3 the I believe second-largest school district in the country that  
4 has 1200 schools, 732,000 students, and they adopted a  
5 transgender-inclusive policy that Dr. Chiasson helped write in  
6 2005. So for the past 11 years in this tremendously large  
7 school district with hundreds of thousands of students, many  
8 transgender students over the years, they have experienced in  
9 her words "no issues at all." And they've actually revised  
10 their policy several times to become -- to makes it more  
11 inclusive and less case by case as the years have gone on.

12 So the evidence, the clear evidence, the practical  
13 common-sense experiences of other school districts show that  
14 allowing transgender kids to use restrooms consistent with their  
15 gender identity is not a big deal. Allowing Ash to use boys'  
16 restrooms wasn't a big deal for most of last school year. And  
17 the only people that have made it an issue have been the school  
18 administrators at his school and the district itself.

19 There's nothing about the boys' restroom or Ash's use  
20 of the restroom that affects any other student's privacy. Ash  
21 using the restroom to do his business and leave is all he wants  
22 to do, all he has done last year, all he does outside of school,  
23 and that's all he's asking for the Court to do this year.

24 The last piece is the effect on the public interest,  
25 if there is any. And there are several arguments in favor of a

1 preliminary injunction helping the public interest, advancing  
2 the public interest in this case.

3 As Dr. McGuire stated in her declaration, fostering  
4 safe and inclusive nondiscriminatory school environments helps  
5 all students. It helps the academic performance and sense of  
6 well-being both for, as I said, for the LGBT students and others  
7 who feel the effects of living and going to school in a  
8 nondiscriminatory environment.

9 Dr. Chiasson in her declaration provided a useful  
10 example of that from her own experience in Los Angeles where a  
11 new student to the school district who was a transgender boy was  
12 using the girls' rooms because he thought he had to, and the  
13 girls felt uncomfortable, he felt uncomfortable. And when the  
14 school district told him that he could actually use the boys'  
15 restrooms, everyone was happier and it became a nonissue very  
16 quickly.

17 That I think is an experience that's been echoed in  
18 the experiences of many school districts around the country,  
19 including those that have been chronicled in the examples of  
20 emerging practices that the U.S. Department of Education put out  
21 simultaneously with the "Dear Colleague" letter in May. And  
22 it's the experience of school districts that have been under  
23 enforcement actions for Title IX in -- that have been brought by  
24 the federal government, by the Department of Education or by the  
25 Department of Justice.

1           The Arcadia Unified School District in California, for  
2 example, was the first school district to enter into a  
3 settlement agreement with both departments, Education and  
4 Justice, in 2013, for a transgender middle school boy. The  
5 district, though reluctant, entered into a settlement agreement  
6 in which they agreed to treat him as a boy in all respects for  
7 the rest of his time in school restroom access, locker room  
8 access and everything else. And their superintendent now, their  
9 current superintendent, who was an assistant superintendant at  
10 the time the settlement agreement was entered, has spoken  
11 publicly, he has signed onto amicus briefs, he has helped  
12 administrators around California and elsewhere by saying this  
13 was the right thing to do and it has -- you know, it was very  
14 little impact on the school district but he realized that this  
15 was actually -- was good for the school, good for the school  
16 district and good for the student and he has now gone around  
17 making the case to other school districts for how to do this.

18           So, in conclusion, the showing of irreparable harm is  
19 very high. We also think, for all the reasons that we have  
20 discussed and briefed on the motion to dismiss and this present  
21 motion, that our likelihood of success is high.

22           This certainly is, as the Court recognized yesterday,  
23 a matter of first impression in this circuit, but for all the  
24 reasons that we've argued we think that the chance of success on  
25 his Title IX and equal protection claims is strong. And the

1 district has presented nothing other than the hypothetical  
2 speculative harm to the school district which isn't borne out by  
3 their own experience with Ash or by the similar experiences of  
4 other school districts and the public interest would actually be  
5 advanced by an injunction in this case.

6 So for those reasons we ask you, Your Honor, to grant  
7 the injunction permitting Ash to use the boys' restrooms for the  
8 duration of this case.

9 Thank you.

10 THE COURT: Thank you, Mr. Wardenski.

11 Mr. Stadler.

12 MR. STADLER: Thank you, Judge.

13 I would take issue with counsel's statement that this  
14 is not a big deal. This is a big deal. And this is a big deal  
15 in regard to whether a school district can set rules and  
16 policies for its district.

17 And I will submit to you that Kenosha is not  
18 Shorewood. And I will certainly submit to you that Kenosha is  
19 not Los Angeles. And when counsel says that it's just the  
20 administrators in the district that have made this decision,  
21 that's because that's where the decision lies. It's a policy  
22 and policies are set by the school board, not by individual  
23 students, not by plaintiffs in lawsuits. And unless it's  
24 something that's illegal, that policy remains with the district  
25 and not with the court.

1           The burden here is very high for one particular  
2 reason. And counsel kind of glossed over that. They did  
3 address it in their brief. But what they've tried to do is to  
4 paint this that they're seeking to enforce a status quo of Ash  
5 using the boys' restroom. But we know from Ash's affidavit, or  
6 declaration rather, and mom's declaration at paragraph 8, that  
7 they went to the school administration in April of 2015, and  
8 asked if Ash could use the boys' room. Ash and his mother were  
9 told at that point in time that it was district policy that he  
10 could not use the boys' room, he had to continue to use the  
11 restroom.

12           When counsel says that for seven months Ash used the  
13 boys' room and there were no problems, it's because nobody knew  
14 about it. Ash willingly said and counsel even in their brief  
15 says Ash did what he wanted to do, he ignored the directive, he  
16 violated school rules and the policy that the administration had  
17 informed him of and he used the boys' room. When he was caught  
18 doing that again in February of 2016, he was again advised  
19 school policy is that you have to use the girls' restroom and  
20 you can't use the boys' restroom.

21           The status quo in this case is that Ash has not been  
22 allowed to use the boys' room. What plaintiffs seek in this  
23 preliminary injunction is the ultimate relief in this lawsuit.  
24 They are asking this court to order at the front part of the  
25 case that they get what they want at the end of the case, well

1 before the parties have had the opportunity to present a full  
2 case, well before everything has been defined in this case. So  
3 I want that to be absolutely clear that the status quo here is  
4 being changed as a result of the injunction that plaintiff  
5 seeks.

6 The factors that we have to address in dealing with a  
7 preliminary injunction include the reasonable probability of  
8 success on the merits. I know the Court denied the motion to  
9 dismiss yesterday, but I don't think that the denial of the  
10 motion to dismiss means that we gloss over the reasonable  
11 probability of success on the merits.

12 The troubling part for me in this case continues to be  
13 this. And that is, plaintiffs are not claiming that  
14 transgendered status is protected by Title IX. And yet that's  
15 the argument that we see in all the other cases that we've  
16 talked about. Whether it's even the Title VII cases or the  
17 Title IX cases like *Johnston* or *G.G. vs. Gloucester*, all of  
18 those cases have talked about a plaintiff who wants to say  
19 transgender is within the scope of because of sex within the  
20 statute.

21 But that's not what they say here. What they say here  
22 and what they continue to take as a position is that a student  
23 has the unilateral right to declare his or her sex. I am male  
24 or I am female. They don't claim that there's a right to say I  
25 am transgender and, therefore, I am protected under Title IX.

1           And I think that's significant here. Because when you  
2 look at it, it means that a school district must take a look at  
3 a student and say, okay, even though you have a birth  
4 certificate that tells us you are female, and even though you  
5 may have complete female genitalia, you can tell us you are male  
6 and we must honor that. There is simply no support in the law  
7 for that proposition.

8           Even yesterday as we talked about the motion to  
9 dismiss, I think the Court's analysis dug into this issue of  
10 does the term "because of sex" encompass transgender. And I  
11 think that is the issue to be looked at, but that is not what  
12 plaintiff presents in this case.

13           Plaintiff presents this claim of a unilateral right to  
14 declare one's sex. No basis in law for that. There is no case  
15 out there that says someone has the right to tell the world that  
16 their gender is different or is one versus the other. There's  
17 just no basis for that.

18           So I think that's a significant issue here when we  
19 talk about reasonable probability of success on the merits. Do  
20 they have a reasonable probability of success on the merits of  
21 saying to this court or any other court students have the right  
22 to unilaterally declare their sex. I think they're going to  
23 lose on that issue. I think that's a hands-down loser.

24           I think the other issue does "because of sex"  
25 encompass transgender is certainly, as the Court pointed out,

1 it's an open question. There's courts on both sides of the  
2 fence on that issue and it's subject to debate. If that's the  
3 avenue they were going up they might have a little bit more  
4 chance of success. But that is not their avenue. And I would  
5 submit to the Court that there isn't support in the law for the  
6 position that they have taken.

7 I believe that the plaintiff takes that route because  
8 of the logic argument that we've advanced. And I think I  
9 haven't done a good job of explaining that to the Court.

10 But if the term "sex" under Title IX includes male and  
11 female and transgender, transgender is encompassed within that  
12 meaning of sex, which is what *G.G.* and *Johnston* and the other  
13 cases have all talked about, then you have to go and look at the  
14 statutes and the regulations which say that you can provide  
15 separate toilet, locker room and shower room facilities on the  
16 basis of sex as long as they're comparable.

17 If transgender falls within the term "because of sex,"  
18 we can have separate locker rooms, toilets and shower facilities  
19 on the basis of people being male, female, or transgender.  
20 That's the problem plaintiff runs into if they try and say that  
21 the status of being transgender falls within "because of sex."

22 And so they have pushed that away and instead declared  
23 this right to unilaterally say I am either male or female and  
24 you must live with that. I don't think there's a basis in the  
25 law for that.

1 I think if transgender is encompassed within the  
2 meaning of sex, there is still a basis to segregate locker  
3 rooms, toilets and some other facilities on the basis of male,  
4 female or transgender. For that reason I think plaintiffs lose  
5 on the issue of reasonable probability of success.

6 I think that the issue presented by this injunction  
7 also creates problems. If Ash can use the boys' restroom is he  
8 required to? Is he making an irrevocable choice at this point  
9 that moving forward he must use the boys' restrooms, he can't  
10 use the female restrooms, the girls' rooms? Can he change his  
11 mind?

12 It's an interesting question. If the Court says that  
13 Ash has the right to say I can use the boys' restroom, does that  
14 mean that Ash now has the right to say to the district and I can  
15 use the boys' locker room? Because if my right to use the  
16 bathroom is encompassed within Title IX, then certainly that  
17 includes the right to use the locker room.

18 If we have to accept the unilateral declaration that  
19 Ash is male, can he use the female locker room? If we are bound  
20 to accept his designation "I am male," will he be able to go in  
21 the female locker room? Can he be required to use one or the  
22 other? What do we do in the future in regard to a locker room?  
23 Plaintiff wants to take one little issue here out of context in  
24 terms of the overall effect of this, and it just leads to  
25 unanswered questions.

1           The biggest stumbling block I think that plaintiff  
2 faces in terms of requesting this injunction is trying to meet  
3 the standard of irreparable harm. And plaintiff's counsel says,  
4 well, the district hasn't brought forward anybody. True, we  
5 didn't drag Ash in to have an examination by a psychiatrist or a  
6 psychologist. We didn't want to do that. And we didn't want to  
7 do that because when you look at the evidence that the plaintiff  
8 has presented, it doesn't show irreparable harm. There's no  
9 need for us to come forward with anything on irreparable harm  
10 because the plaintiff hasn't.

11           Plaintiff presents a declaration from Ash, a  
12 declaration from Ash's mother, a declaration from Stephanie  
13 Budge, declaration from Dr. Gorton, the declaration from  
14 Ms. McGuire and the declarations from Tim Kenney, Bryan Davis  
15 and Judy Chiasson. Let me start with the last three.

16           Mr. Kenney, Mr. Davis and Ms. Chiasson's declarations  
17 say nothing about Ash Whitaker. They talk about what happened  
18 in their school districts. They talk about policy decisions  
19 they made. They talked about whether the people living in their  
20 school district have had an issue with those policies. But they  
21 say nothing about Ash Whitaker. They don't speak to harm. They  
22 don't speak to irreparable harm. They add nothing to this  
23 analysis.

24           I looked at Dr. Gorton's declaration. He explains the  
25 concept of gender dysphoria. He tries to define the term "sex."

1 Nothing about Ash. He didn't meet Ash. He didn't review Ash's  
2 records. He says nothing about harm. He says nothing about  
3 whether any such harm is irreparable. He contributes nothing to  
4 this.

5 What plaintiff does present is the declarations from  
6 Dr. Budge and Dr. McGuire. I think the most interesting part  
7 about looking at those two declarations is not anything about  
8 either of those declarations, it's what the plaintiff hasn't  
9 presented to the Court. Who knows Ash best from a medical and  
10 psychological perspective? I doubt it's Dr. McGuire who's never  
11 met Ash, never talked to Ash.

12 In fact, the people that probably know Ash best from a  
13 medical and psychological perspective would be Dr. Sheryn  
14 Abraham, who has been Ash's medical doctor since 2014, and Tara  
15 Rullman who has been Ash's therapist since 2014. And Dr. Budge  
16 identifies that both of those hold those roles at paragraph 48  
17 of her declaration.

18 There's no affidavit, there's no testimony from the  
19 medical person and the therapy provider who have worked for Ash  
20 for the last several years. They would be the most logical  
21 people to come into this court and explain to the Court here's  
22 who Ash is; I've known this person for two years; here's where  
23 their psychological and medical history started from; here's  
24 what's happened along the way. They'd be able to correlate kind  
25 of that roadmap of as this happened that happened and to be able

1 to explain those things to the Court. We're left with someone  
2 who's never talked or met Ash and somebody who's spent a grand  
3 total of maybe 12 hours developing a report. So I think it's  
4 critical that we're missing those things.

5 Let's talk about the declarations from Dr. Budge and  
6 Dr. McGuire. I know that on a permanent injunction we're less  
7 rigorous about the admissibility in a declaration. I accept  
8 that.

9 And so when you have declarations, though, that are  
10 filled with double and triple hearsay, the Court can still  
11 consider them, but it certainly affects the credibility of what  
12 has been presented in the declaration. And I would submit to  
13 the Court that the declarations from Dr. Budge and Dr. McGuire  
14 lack a lot of credibility. They lack a lot of personal  
15 knowledge. They speak extensively about generalities and  
16 studies of other people, other schools, other cities, other  
17 countries, but they speak very little of Ash.

18 As I said before, much of what they identify about Ash  
19 is double or triple hearsay. I think Dr. McGuire's declaration  
20 couldn't be any less credible. She states in her declaration at  
21 paragraph 8, that the facts of her declaration are based upon  
22 two things: Number one, the complaint that she assumes to be  
23 true.

24 Now, if she were a judge ruling on a motion to dismiss  
25 that would probably be great, because then we'd have to accept

1 all of the things in the complaint as being true. At no other  
2 time do we accept all the allegations of a complaint as being  
3 true. And that's the factual basis for her knowledge about Ash.

4 She does have one other area where she said she got  
5 information from Ash and his mother. It was in a telephone  
6 interview conducted with two of plaintiff's advocates. They  
7 were plaintiff's attorneys. So to formulate her opinions this  
8 expert called plaintiff's counsel and got their version of what  
9 Ash and/or his mother believed the facts to be. Double hearsay  
10 coming through an advocate. There's a complete lack of  
11 credibility.

12 If we set aside the credibility issue and say, okay,  
13 let's go and take these two experts at what they've opined on,  
14 what do they tell us? I thought it was very interesting that in  
15 counsel's presentation he kinda summarized what Dr. Budge and  
16 Dr. McGuire testified to and then said they talked about  
17 permanent harm that can't be remediated. I wrote that down and  
18 put quote marks around it.

19 And I found that to be extremely significant because  
20 if you look to both of those declarations, there are no words in  
21 there that talk about permanent harm. They certainly both talk  
22 about their perception of harm, and we'll talk about that in a  
23 little bit, they say nothing about permanency. Beyond the  
24 permanency part of it they say nothing about the lack of an  
25 ability to be remediated.

1           Neither of them provides an ounce of testimony through  
2 their declaration about whether any harm is irreparable. On a  
3 motion like this where we're in front of the Court on an  
4 injunction that seeks to change the status quo, I can guarantee  
5 you there will always be harm. If there wasn't harm we wouldn't  
6 be in court. There would have been a motion to dismiss that the  
7 case was moot because nobody had suffered an injury.

8           Of course there is injury. But the standard on  
9 granting an injunction is not whether plaintiff has been harmed,  
10 it's whether plaintiff has suffered irreparable harm. Neither  
11 Dr. McGuire or Dr. Budge say anything about that. Paragraph 37,  
12 Dr. McGuire says: "These things have marginalized and  
13 stigmatized Ash. It's harmful to Ash and other transgender  
14 students."

15           Harmful in what way? I mean, it's a nice conclusion,  
16 but she doesn't say what the harm is, just that it's harm.  
17 What's the quantum of that harm? Don't see that.

18           Same paragraph, Dr. McGuire says that Ash has had  
19 stress over the bathroom issue.

20           Okay. How much? Is it intolerable stress? Can you  
21 quantify it? Again, there's nothing there other than a bald  
22 conclusion of harm, but nothing about how much harm or whether  
23 it's irreparable.

24           Dr. Budge's opinions fair no better. She says Ash  
25 suffers from depression. Okay. She also says that that

1 depression predates any bathroom issue. Goes all the way back  
2 to when Ash began to come out and having the struggles over the  
3 identification issues of her gender -- of his gender -- and  
4 having the internal conflict caused by that.

5 That's a causation issue. What causes the stress.  
6 Certainly if Ash has had stress for four years, the bathroom  
7 issue is not the cause of the stress.

8 Paragraph 47, Dr. Budge says: "There's distress  
9 related to how treated by staff and peers."

10 Well, what part of that is segregated to something  
11 done by staff and what part is segregated to something done by  
12 peers? Because the peers have nothing to do with the bathroom  
13 issue.

14 Dr. Budge talks in her declaration about Ash has faced  
15 criticism and comments from peers at school. Is that the right  
16 thing for peers to be doing? Absolutely not. Is that the  
17 reality of what happens in high schools regardless of what the  
18 issue is? Regardless of what the issue is, peers in high  
19 schools criticize one another.

20 Again, paragraph 47, Dr. Budge talks about the  
21 internal stress from dealing with gender identity issues.

22 Ash does have issues. And I'm sure there are mental  
23 health issues. We don't disagree with that. But do those  
24 relate to the bathroom issue? Dr. Budge doesn't say so and  
25 Dr. McGuire doesn't say so.

1 Paragraph 49, from Dr. Budge: "Ash has PTSD,"  
2 posttraumatic stress disorder, "in part due to verbal harassment  
3 at school."

4 Verbal harassment by whom? Peers? We don't know.  
5 It's simply a conclusion: verbal harassment at school. And  
6 that's what happens when you get hearsay and things of that  
7 nature involved, we get conclusions that aren't necessarily  
8 fleshed out.

9 Paragraph 51, "Ash has anxiety. Ash avoids social  
10 situations. Ash avoids changing in locker rooms. Ash avoids  
11 strangers. Ash has avoided asking anyone on a date."

12 Those aren't tied to the bathroom. The access to the  
13 bathroom isn't causing anxiety, the anxiety is in regard to  
14 having to deal with people in social situations, locker rooms,  
15 strangers, and dating relationships.

16 Also in paragraph 51 from Dr. Budge: "Ash has some  
17 panic issues and has had those for the last four years."

18 Predates the bathroom issue. Doesn't tie panic and  
19 bathroom together.

20 In fact, paragraph 52, Dr. Budge says: "Anxiety and  
21 depression started when he began to internalize shame about  
22 gender identity."

23 The issues that affect Ash are the issues that  
24 everybody with gender identity struggles with. It's not the  
25 bathroom issue that is causing that harm at all. There's no

1 link between the two.

2 We finally get to Dr. Budge's ultimate conclusions.  
3 Dr. Budge talks about the way Ash has been treated. By who?  
4 Students? Teachers? Community members? Does it relate to the  
5 bathroom issue? That's not explained.

6 Dr. Budge says again, paragraph 53: "The way Ash has  
7 been treated has negatively impacted mental health."

8 Okay. How much? Where's the quantified amount of  
9 harm? Is it that it has completely debilitated Ash? Dr. Budge  
10 doesn't say that. What's the cause? Dr. Budge doesn't say  
11 that. How about irreparable? Does Dr. Budge say that the  
12 negative impact on Ash's mental health is irreparable? No.

13 Paragraph 55, Dr. Budge says that when the district  
14 doesn't allow Ash to be treated like all other boys "it's deeply  
15 harmful and stigmatizing."

16 Well, how harmful is deeply harmful? Is that  
17 irreparable? Dr. Budge doesn't say it is.

18 "There may be immediate and long-term consequences,"  
19 according to Dr. Budge. Again, is it quantified? No. Is it  
20 irreparable? Dr. Budge doesn't say that. May be long term.  
21 Well, sometimes harm is long term. It doesn't mean it's  
22 irreparable. Neither of them talk about that. They use words  
23 like "distress," "at risk," all of those things, and "harm," but  
24 they don't talk about irreparable harm.

25 That's the problem in this case. Plaintiff can't show

1 irreparable harm. Since April of 2015, Ash has been required to  
2 use the girls' restroom. Since April of 2015, Ash has excelled  
3 at Kenosha Unified School District; top 5 percent of his class;  
4 active in everything; is going to college to be a biomedical  
5 engineer. If the status quo has not caused irreparable harm,  
6 there is no right for the plaintiff to change the status quo.

7 This is a big deal. There are privacy issues involved  
8 in using restrooms. The Court in *Johnston* did a good job of  
9 documenting that. I would ask the hypothetical question of  
10 whether you've been in a boys' room in the last year or two in  
11 the high school, and I know the Court has not been --

12 THE COURT: You do?

13 MR. STADLER: I assume so. In older school buildings  
14 restrooms are not nice and pretty like they are in a lot of our  
15 newer buildings. I've been in two high schools this week.  
16 There's no dividers between the urinals. There is a line of  
17 urinals and everybody is standing there.

18 Privacy issues? There are privacy issues. And the  
19 school board represents the community and the community has said  
20 we have issues with allowing somebody to go into the boys' room  
21 whose gender is not that of being a boy. That's a policy  
22 decision, it's not violative of the law. The plaintiff is  
23 trying to force a change on that issue and has simply not shown  
24 that getting that ultimate relief at the beginning of the case  
25 will cause irreparable harm.

1 For all of those reasons we would ask the Court to --

2 THE COURT: I think we lost somebody off the phone,  
3 but so be it.

4 MR. STADLER: For those reasons we would ask the Court  
5 to deny the injunction.

6 To the extent the Court considers granting an  
7 injunction, we would ask the Court to require the plaintiff to  
8 post a bond as is required under Rule 65. Wisconsin common law  
9 clearly provides that if an injunction has been improvidently  
10 issued that the other side is entitled to recover its attorney's  
11 fees and costs in seeking to overcome that injunction.

12 In a case of this magnitude and this importance, I can  
13 easily see attorney's fees in this case running into the 100 or  
14 \$150,000 range. And on that basis we would ask the Court, if  
15 it's going to consider granting the injunction, to require a  
16 bond in the amount of \$150,000. I don't think the Court has to  
17 get there because I think the conclusion in this case is that  
18 plaintiff hasn't shown irreparable harm and the injunction  
19 should be denied.

20 Thank you.

21 THE COURT: Thank you, Mr. Stadler.

22 Mr. Wardenski, response, and then I have a couple of  
23 questions.

24 MR. WARDENSKI: Yes, Your Honor.

25 Mr. Stadler has decided that he is both a medical

1 doctor, clinical psychologist, a social scientist and is an  
2 expert on both Ash Whitaker, Ash Whitaker's life and gender  
3 dysphoria, all of which is belied by his actual comments today.

4 Rather than reading the declarations including from  
5 Ash and Melissa Whitaker themselves, as well as the other  
6 declarations that we have provided in toto, let alone reading  
7 Dr. Budge's declaration from start to finish, he has spent the  
8 last half an hour cherry picking quotes out of context from all  
9 of the declarations to make it seem that irreparable harm is a  
10 nonissue.

11 If you go to paragraph 56, which is right after where  
12 Mr. Stadler stopped in quoting from Dr. Budge's declaration,  
13 I'll reiterate:

14 "It is my professional opinion that the Kenosha  
15 Unified School District's treatment of Ash and its policies  
16 regarding his bathroom use, separating him from other students  
17 during school trips, refusal to require consistent use of his  
18 male name and pronouns by school staff, and other actions that  
19 single him out as transgender and treat him differently from  
20 other boys, are directly causing significant psychological  
21 distress and place Ash at risk for experiencing life-long  
22 diminished well-being and life-functioning."

23 That's the irreparable harm. But on top of the  
24 irreparable harm that's been demonstrated by Dr. Budge's  
25 independent clinical evaluation of Ash, she met with him for

1 several hours, reviewed his entire medical history. If the  
2 Court would like we can submit his medical records under seal,  
3 but Dr. Budge accurately summarizes the diagnoses that he has  
4 made.

5 The school district, in fact, received a letter from  
6 Dr. Abraham, Ash's pediatrician, in the spring recommending that  
7 he use boys' restrooms, stating that he is a transgender boy who  
8 has gender dysphoria, discussing his diagnosis of vasovagal  
9 syncope and recommending that he use boys' restrooms. And we're  
10 happy to provide that further evidence in terms of documents to  
11 the Court if that would be helpful. But Dr. Budge reviewed all  
12 of those records including from his treating therapists and  
13 confirmed those diagnoses and confirmed the harm that he was  
14 suffering.

15 Dr. McGuire had a telephone conversation at some  
16 length with both Ash and his mother with two attorneys present  
17 on the phone. If that was ambiguous in her declaration, which I  
18 concede it might be, we're happy to provide a one-line  
19 supplemental declaration confirming that she did, in fact, speak  
20 with them at length and confirmed both that the allegations in  
21 the complaint are true to Ash's knowledge and talked through  
22 much of those in greater detail including with respect to his  
23 restroom access.

24 All of the expert declarations from Dr. Budge, from  
25 Dr. Gorton, from Dr. McGuire have cited the DSM, the Diagnostic

1 Statistical Manual from the American Psychiatric Association,  
2 the World Professional Association of Transgender Health  
3 Standards of Care, and a wealth, a consensus of social science  
4 and medical research about the effective treatment of  
5 transgender people who suffer from gender dysphoria. And as the  
6 American Psychiatric Association recognized when it changed the  
7 classification in the DSM-V from gender identity disorder to  
8 gender dysphoria, it is not the gender dysphoria itself -- it's  
9 not being transgender itself that results in the problems, it's  
10 gender dysphoria which can be compounded when an individual is  
11 not permitted to live in full accordance with their gender  
12 identity.

13 That is something that courts in this jurisdiction in  
14 the Seventh Circuit have recognized before in the prison context  
15 and others that depriving in the prison context a prisoner of  
16 medical treatment related to the prisoner's gender transition is  
17 both at odds with the standards of care and can amount to  
18 deliberate indifference on the part of a prison.

19 You know, by analogy, a similar principle applies  
20 here, that by depriving Ash the right to undergo his full social  
21 transition, that's where he is in his transition, it's a  
22 critical part of his long-term gender and human development to  
23 live as a boy in all respects. He is a boy. He will continue  
24 to be a boy. He will be a man. And his gender identity is  
25 male. That is who he is. That is how he lives his life. That

1 is how he has lived his life and will continue to live his life  
2 moving forward.

3 Mr. Stadler again quoted an incorrect standard for the  
4 probability of success. He again said "reasonable probability  
5 of success" which is a standard that he had quoted in his -- the  
6 district's brief from the D.C. Circuit, it's not the standard in  
7 the Seventh Circuit. It is "some likelihood of success," and  
8 that that likelihood of success may be low where the showing of  
9 irreparable harm is high. And vice versa.

10 Although we do not dispute that a school district  
11 generally has the ability to set its own rules and policies,  
12 neither a school district itself or a state can enact or enforce  
13 policies that conflict with federal law which is what we are  
14 alleging and expect to prove in this case.

15 As the Eastern District of Wisconsin noted in the  
16 *Praefke Auto Electric* case in 2000, while sometimes status quo  
17 is a useful way to conceive of the relief being sought in a  
18 preliminary injunction, it doesn't always work.

19 Here the status quo is Ash's use of restrooms for  
20 seven months. Mr. Stadler admitted that no one noticed. No one  
21 noticed because it wasn't affecting anyone. The only person who  
22 noticed was a male school teacher who saw Ash washing his hands  
23 in the sink in the restroom and brought it to the  
24 administrator's attention.

25 Ash understood his federal right as a transgender

1 person to use restrooms consistent with his gender identity. He  
2 acted in accordance with that for the first seven months of the  
3 last school year.

4 The present dispute started in February of 2016, when  
5 the school intervened and began to discipline him, called him  
6 out of class repeatedly, scold him for using the boys'  
7 restrooms.

8 But here the -- we can quibble about what the status  
9 quo is, but that's why the *Praefke Auto Electric* case is helpful  
10 in its discussion of the purpose of a preliminary injunction to  
11 prevent irreparable harm. And I think that's much more apt for  
12 the situation that we're -- that we're facing here. That  
13 providers who have treated Ash, providers who have met and  
14 consulted with Ash and others who confirm that his experience is  
15 parallel, consistent with what other transgender youth go  
16 through in analogous circumstances, all show that he risks  
17 life-long permanent harm, he has experienced significant harm,  
18 and that there's a real risk that his ability to enjoy and take  
19 advantage of the full educational opportunities and benefits of  
20 his senior year in high school will forever be jeopardized. He  
21 can't get this year back. No matter what happens in this case  
22 he can't get this year back.

23 But the long-term psychological and emotional and  
24 medical harms will compound on themselves. And while he may be  
25 a successful adult, that doesn't undercut the fact that these

1 are significant harms that he may live with and suffer with and  
2 has, in several experts' opinions, a high likelihood of  
3 experiencing if he every day of this school year has to think  
4 about restroom access, to be reminded every time he has to go to  
5 the bathroom that his school does not think he's a boy, that  
6 they're treating him differently from other boys, that he has to  
7 either hold it in or experience the stigma and humiliation of  
8 being different from other boys. That's [Indiscernible]. That  
9 is real for him.

10 And I think Mr. Stadler used a phrase that we've  
11 turned this little issue into something bigger. This isn't  
12 little for Ash. This is huge for Ash. And that's what this  
13 preliminary injunction is about.

14 And that brings me to the last point which is this  
15 notion that Ash's gender identity isn't real; that it's  
16 capricious; that this opens a can of worms; that a preliminary  
17 injunction in this case would create a host of problems that the  
18 school district would need to deal with. And, in fact, that's  
19 just not true.

20 Ash, in seeking to use the restroom at this juncture,  
21 is not seeking the alternative in this case. As stated in his  
22 complaint, he is seeking injunctive relief, policy changes,  
23 damages, and indeed that may affect facilities and other  
24 treatment beyond restroom access which goes to show that this is  
25 not the ultimate relief that he is seeking in this case. But

1 it's laughable to think that Ash would be going through all this  
2 to only -- go back and say tomorrow that I want to use the  
3 girls' locker rooms or the girls' restrooms.

4 This is his gender identity, it's a gender identity  
5 that has been documented and confirmed. And while we can work  
6 out over the course of this litigation what type of policy would  
7 satisfy federal law as more broadly applied to transgender  
8 students in general, in this case there is no question that this  
9 is a transgendered student who has a male gender identity and  
10 experts and his own treating providers have advised the school  
11 district to give him access to boys' restrooms to prevent harm  
12 and the district in all of that has yet to show how any other  
13 students' privacy would be violated.

14 Practically speaking, Ash uses restroom stalls. And  
15 whether they're pretty or not, they have doors and they lock.  
16 And so the question of any other students' privacy is just  
17 unfounded. And the experiences of Shorewood and Los Angeles and  
18 the State of California and Menasha, Wisconsin and multiple  
19 other school districts including Racine, the school district  
20 next door, all show that trans students can use restrooms every  
21 day, they do use restrooms every day, restrooms there are no  
22 different, no nicer or probably in many cases less nice than the  
23 restrooms that might be at Tremper High School, and uniformly  
24 there has been no documented evidence anywhere in the country of  
25 any student experiencing a problem from using a restroom

1 consistent with their gender identity or that any other student  
2 has their privacy violated as a result of that student's mere  
3 presence and use of the restroom.

4 That's a principle that was affirmed in the Eighth  
5 Circuit case *Cruzan* that I discussed last time and other cases  
6 that mere discomfort with a transgender person in the restroom  
7 is not itself a privacy violation.

8 So with that I'll stop. I would, you know, refer the  
9 Court to the full body of the evidence that we have submitted in  
10 conjunction with our preliminary injunction, including the  
11 statements from Ash and Melissa themselves rather than the  
12 cherry-picked quotes that Mr. Stadler [Indiscernible].

13 Thank you.

14 THE COURT: Mr. Wardenski, if you could comment on  
15 this things.

16 Number one, Mr. Stadler and the district made  
17 reference both in the written pleadings and then in arguments  
18 today about the fact that [Indiscernible] as of April of last  
19 year, the district had indicated that Ash was not supposed to  
20 use the boys' restroom and their request for the injunction came  
21 several months later.

22 So can you comment on that timeframe in relation to  
23 the irreparable-harm piece of the standard for preliminary  
24 injunction.

25 MR. WARDENSKI: So he was actually referring to the

1 previous year, Ash's sophomore year when they first approached  
2 the school and asked him -- asked whether if he could use the  
3 boys' restrooms and the school said no.

4 THE COURT: Okay.

5 MR. WARDENSKI: That was in April or May of 2015. And  
6 then the events of the summer are when Ash discovered the  
7 federal government and others have said, hey, this is my right  
8 to be able to use restrooms consistent with my gender identity  
9 so I don't think I need to ask permission when I go back to  
10 school for my junior year, in September, and he didn't.

11 And that's when he proceeded to use those restrooms  
12 for approximately seven months before the school district again  
13 told him that he couldn't. And then occasionally thereafter  
14 when it was absolutely necessary to use the restroom and he had  
15 no other choice. Using the girls' restrooms was not a choice  
16 and neither, frankly, was using the gender-neutral facilities.

17 And so, but he deliberately took steps as, you know,  
18 we have documented to avoid using the restrooms altogether. And  
19 so his use of restrooms was the exception last year and not the  
20 rule. And that is -- that continues to be true today where he,  
21 you know, spends most if not all of the school day not using the  
22 restroom, limiting his fluid intake, you know, going out of his  
23 way not to use the restrooms in order to avoid being disciplined  
24 because he has still -- although he has not been formally  
25 disciplined, he has been pulled out of class a number of times,

1 he's been threatened with further discipline multiple times, and  
2 he's concerned that that may still occur. And so that -- that  
3 in and of itself is contributing to the distress that he's  
4 experiencing during the school day and after.

5 As I told the Court at the motion to dismiss hearing  
6 two weeks ago, on his third day of school his guidance counselor  
7 and an assistant principal pulled him out of his calculus class  
8 to again talk to him about their expectations for his restroom  
9 use for this school year. It was done during class time where  
10 he was pulled out for a decent portion of that class. And so  
11 his fear that that may recur is real. It happened 10 days ago.  
12 It may happen again. Particularly under the circumstance that  
13 he does use the boys' restroom in an emergency.

14 So that is compounding his distress and fueling his  
15 symptoms of gender dysphoria which are resulting from the  
16 discrimination, not from being transgender. And the gender  
17 dysphoria is a result of him not being allowed to be a boy at  
18 school in all ways. And that is what the medical community, his  
19 own treating providers have recommended that he and every other  
20 transgender person be able to do, to live consistent with one's  
21 gender identity all day long in all aspects of your life.

22 And the restroom issue, although it's not the only  
23 issue that he has faced at school, is the constant, daily,  
24 multiple-times-a-day reminder that my school does not think that  
25 I am a boy, they don't treat me as a boy, they think that I'm

1 something other, they think that it's acceptable to offer me use  
2 of the girls' restrooms, it's embarrassing, it's humiliating, it  
3 is causing a lot of emotional distress.

4 And just because Ash is a good student and a strong  
5 person doesn't mean that he's not going home and crying at  
6 night, losing focus, not able to, you know, devote the attention  
7 that he might to his academics and to his extracurricular  
8 activities. And that's been documented. It's in his  
9 declaration, it's in his mother's declaration, and it's in the  
10 declarations of the others who spoke with him like Dr. Budge.

11 And so, you know, this -- this is real. And it's  
12 happening in real time. But -- but I think Dr. Budge's  
13 conclusion sums it up very clearly that if this is left  
14 unchecked, this is what he will remember from high school.  
15 These are the problems that he will suffer. We don't know how  
16 this is going to distract him from his college application  
17 process or his ability to participate fully in school  
18 activities.

19 Last year was bad. This year, you know, may very well  
20 get worse. And the reason why we are seeking this injunction is  
21 to allow him to have a senior year where he can think about  
22 being a kid, without being a student, without applying for  
23 college. And to have his senior year, not to have to think  
24 about his gender identity all day long every day. He wants to  
25 think about being a boy.

1 THE COURT: And then the second question -- I told you  
2 I had two -- was with regard to bond. Mr. Stadler mentioned  
3 that if the Court was inclined to issue an injunction that the  
4 defendants are requesting \$150,000 bond.

5 MR. WARDENSKI: We would oppose that, Your Honor.  
6 This case is not controlled by Wisconsin common law. Any fees  
7 that would be awarded under federal statutory law are typically  
8 not awarded to defendants. They would be awarded in this case  
9 to Ash. If he prevails on Title IX there's a fee-shifting  
10 provision that would award attorney's fees and costs to him.

11 It would be extraordinary and I think uncalled for to  
12 expect a family of moderate means to post a bond of \$150,000 to  
13 vindicate their statutory and constitutional rights. So we  
14 would absolutely oppose that.

15 THE COURT: Anything further? Mr. Stadler, anything  
16 further?

17 MR. STADLER: If I could just respond to those two.  
18 And I'll take the first question first.

19 The first one I think Mr. Wardenski missed the  
20 question from the Court. The Court's question was: Ash was  
21 told in February of 2016, you must use the girls' restroom. His  
22 attorney, Ms. Turner from the Transgender Law Center, sent a  
23 letter to the district in April of 2016, saying you must allow  
24 him to use the boys' restroom, you can't force him to use the  
25 girls' restroom. And then from April of 2016 to May to June to

1 July to August, the injunction didn't come. So it's the  
2 five-month delay that the Court was asking about.

3 THE COURT: And that was my question.

4 MR. STADLER: I know that --

5 MR. WARDENSKI: If I may respond to that briefly.

6 MR. STADLER: When I'm done, if you don't mind.

7 So, I mean, that is the question. And that is the  
8 delay. When you let five months go by and don't file for  
9 relief, it takes away the issue in regard to irreparable harm.  
10 So I just wanted to get back to that question.

11 And then the second one. And again I think the answer  
12 was kind of different than the question on the bond part. We're  
13 not saying there's a fee-shifting statute. Wisconsin common law  
14 -- and Wisconsin common law does address the things that are not  
15 statutory when we're here in federal court -- says that if an  
16 injunction is improvidently issued the person the injunction was  
17 issued against is entitled to recover their fees and their  
18 costs.

19 So, we're certainly not saying that if the plaintiff  
20 were to prevail in this case ultimately that somehow the  
21 district would be entitled to fees or costs. Our position is  
22 that if the injunction is to be overturned in the future, the  
23 district's fees and costs would be recoverable.

24 The common law case that provides that is *Muscoda*  
25 *Bridge Company vs. Worden*, which is W-O-R-D-E-N, it's a

1 Wisconsin Supreme Court case from 1922. There are other cases  
2 following that --

3 THE COURT: 1922?

4 MR. STADLER: 1922.

5 THE COURT: The Wisconsin Supreme Court -- is it the  
6 Supreme Court? I'm sorry.

7 MR. STADLER: Yes. Wisconsin Supreme Court. I can  
8 provide the Court with the cite. I had it in my notes and I  
9 can't find it at the moment.

10 THE COURT: That's fine.

11 MR. STADLER: It's 270 something Wis, but I'll find  
12 that for the Court. And there have been cases subsequent to  
13 that that have upheld that right as well.

14 So again, we're not saying that there's a fee-shifting  
15 statute that would allow the district to recover its fees. And  
16 certainly even under the *Muscoda Bridge* holding if they  
17 prevailed in the case obviously the injunction wouldn't have  
18 been improvidently issued and there would be no fee issue.

19 But if we are to prevail in the case or to prevail on  
20 an appeal on the injunction issue and get that overturned  
21 because it was improvidently issued, there is common law  
22 precedent for us seeking attorney's fees and costs.

23 Thank you.

24 THE COURT: Now, Mr. Wardenski.

25 MR. WARDENSKI: Thank you. So on the point about

1 irreparable delay -- or, I'm sorry, unreasonable delay. Ash  
2 learned of the district's decision in the 2015-16 school year.  
3 His mother learned of it at the end of March. He learned about  
4 it -- end of February. He learned about it the beginning of  
5 March.

6 THE COURT: Of 2016.

7 MR. WARDENSKI: Of 2016, this most recent decision.  
8 After he had been using the restrooms for seven months. He  
9 reached out to counsel within several weeks. A demand letter  
10 was sent from the Transgender Law Center to the school district  
11 asking for the district to give him access to boys' restrooms.  
12 The school district declined and shortly thereafter the  
13 Transgender Law Center filed a complaint with the U.S.  
14 Department of Education, an administrative complaint, alleging a  
15 Title IX violation.

16 That happened -- I don't have the exact dates in front  
17 of me, but --

18 MR. STADLER: May 13.

19 MR. WARDENSKI: May 13th. And so when you look at  
20 that, between the family learning that the district had doubled  
21 down on a supposed policy they had previously articulated a year  
22 before but hadn't enforced for the first seven months of this  
23 school year, and taking action, filing an administrative  
24 complaint with the Department of Education, less than two months  
25 had gone by. After the school year ended in mid June and the

1 discriminatory actions had continued including with respect to  
2 the overnight accommodations at the orchestra camp in Oshkosh,  
3 the family decided to pursue a Title IX and constitutional  
4 complaint in federal court instead of the administrative action,  
5 administrative complaint through the Department of Education.

6 Those things can't happen simultaneously. And so the  
7 family decided to withdraw their complaint with the Department  
8 of Education and file this lawsuit several days later, in July.

9 And 20 days later, as I believe the district has  
10 calculated, the motion for preliminary injunction was filed,  
11 during which time we, as his attorneys, were marshaling the  
12 affidavits in evidence to make the requisite showings of  
13 irreparable harm and his likelihood of success on the merits.

14 It's worth emphasizing that all of this was happening  
15 over summer break. So his harm between the last day of school  
16 on or around June 10th and the first day of school on September  
17 1st, was abated because he wasn't in school.

18 And so there was no -- I think it's hard to  
19 characterize this as a delay at all, but certainly not an  
20 unreasonable delay given the need to marshal your evidence up  
21 front in a preliminary injunction motion and doing it in advance  
22 of the school year where he would continue to be affected by  
23 this policy.

24 And as we wrote in our briefs, unreasonable delay is  
25 only an issue if the other side was lulled into some sense of

1 security. And the cases that the school district cited were  
2 cases between two businesses, sophisticated players in the  
3 corporate or commercial context. It's certainly not the  
4 circumstances here.

5 And nothing that -- nothing that could have happened  
6 by filing the motion a month or two or three months earlier  
7 would have changed the fact that his -- that he suffered harm  
8 last year. That's been documented and he's continuing to suffer  
9 harm this year. So we think that any delay, if you can even  
10 call it that, is immaterial.

11 As to the bond issue, it's my understanding that  
12 common law only applies in diversity actions, not where there's  
13 a federal claim like this one. And again, the district has made  
14 no showing of harm on itself that would require this family, a  
15 schoolteacher, a single mom and her son to post bond in order to  
16 vindicate their rights which have been articulated by the  
17 federal government and other [Indiscernible].

18 THE COURT: Thank you, Mr. Wardenski.

19 So I'll briefly go over the standard. The parties  
20 both have emphasized it so I don't want to spend too terribly  
21 much time on it.

22 But under *Planned Parenthood of Indiana vs.*  
23 *Commissioner of Indiana State Department of Health*, 669 F.3d 962  
24 at 972, as well as some of the cases that the parties have  
25 cited, *Turnell* and others, the standards for the issuance of a

1 preliminary injunction or the elements for the issuance of a  
2 preliminary injunction are the following:

3           Number one, the plaintiff has to show -- or the  
4 movement I should say has to show a reasonable likelihood of  
5 success on the merits.

6           Number two, that there's no adequate remedy at law.

7           And number three, that in the absence of the issuance  
8 of an injunction there would be irreparable harm.

9           And as the plaintiffs have noted, in the Seventh  
10 Circuit the standard for reasonable likelihood of success on the  
11 merits is relatively low compared to other circuits. If the  
12 plaintiff sustains proof on those three elements, then in the  
13 Seventh Circuit there's a separate consideration only after  
14 reaching those three elements requiring the Court to weigh the  
15 balance of harms to each of the parties if the injunction is  
16 either granted or denied, and also to evaluate the effects of  
17 the injunction on the public interest. Some circuits combine  
18 all that into one test, Seventh Circuit divides it.

19           And finally, as I think the plaintiffs have argued,  
20 the Seventh Circuit has held in several cases that the more  
21 likely it is that the moving party will win its case on the  
22 merits the less the balance of harms need weigh in its favor if  
23 one reaches the balance of harms test. But that's again *Planned*  
24 *Parenthood* quoting *Girl Scouts of Manitou Council vs. Girl*  
25 *Scouts USA*.

1           So in looking at those three, the first three  
2 elements, likelihood of success on the merits, as Mr. Stadler  
3 indicated there are cases that survived a motion to dismiss, does  
4 that mean that the plaintiffs will ultimately be successful?  
5 There's no way to predict that necessarily, other than getting  
6 past the motion to dismiss. However, the standard as the  
7 plaintiffs have argued is a low one here.

8           Mr. Stadler argued that the reason that he believes  
9 that it is unlikely that the plaintiffs will succeed on the  
10 merits is, number one, because as the district interprets Ash's  
11 argument and the plaintiff's argument, the district interprets  
12 it as "I have a right to pick what gender I want to be"  
13 argument. And the plaintiffs have argued that instead, they  
14 characterize the argument as a question of whether or not the  
15 school district has a right to treat a boy differently than  
16 other boys simply because he is transgender as opposed to  
17 perhaps having been born as a boy.

18           So there are different characterizations of the claim.  
19 But the district also argued that it doesn't believe that the  
20 plaintiffs can survive the logic argument. And Mr. Stadler  
21 indicated that he thinks maybe he hasn't been as clear in making  
22 this argument to me. Maybe it's me not being as clear  
23 understanding the argument, I could certainly consider that to  
24 be a likelihood as well.

25           But the argument, as I understand it, is that under

1 the regulations promulgated under Title IX, schools have the  
2 discretion, if they want to, to segregate bathrooms and have a  
3 boys' bathroom and a girls' bathroom. And as I understand  
4 Mr. Stadler's argument, if transgender is protected under  
5 Title IX, then basically the school is going to have to provide  
6 boys' bathroom, girls' bathroom, transgender bathroom, and it  
7 kind of guts the school's -- the discretion that's now granted  
8 under the regulation.

9           Again, we're not talking today about whether or not  
10 the plaintiffs ought to prevail on the merits. As I said  
11 yesterday several times, we're not there yet. However, my  
12 failure in understanding I think probably still exists as  
13 relates to that argument.

14           The grant under the regulations is discretionary.  
15 Schools have the discretion to segregate restrooms. They don't  
16 have to, they're not mandated to. It appears that lots of  
17 schools do. But they're not required to. And allowing a  
18 transgender -- I'm missing the piece where allowing a  
19 transgender student to use the boys' restroom if he identifies  
20 as a boy or the girls' restroom if she identifies as a girl, I'm  
21 missing how that somehow guts the school's discretion to have  
22 boys' and girls' restrooms. So I will totally confess that  
23 perhaps it's my understanding, but I'm not sure that that  
24 argument is one that indicates that there's no way that the  
25 plaintiffs can prevail.

1           We had an extensive discussion -- okay, I singular had  
2 an extensive monologue yesterday about the fact that there is  
3 caselaw on either side of the issue of how Title IX defines or  
4 should define the word "sex" and what it includes. And again I  
5 think because there is a low showing and {Indiscernible} only to  
6 the low standard established by the Seventh Circuit for showing  
7 reasonable likelihood of success on the merits I believe the  
8 plaintiff has met that first standard.

9           Now, that's the first element.

10           The second element of the preliminary injunction  
11 standard is that there is no adequate remedy at law. This is  
12 the factor that the parties have provided the least argument and  
13 information on.

14           The plaintiffs argue basically that if -- if Ash has  
15 to go through this year not being able to use the restroom with  
16 which she identifies, basically he'll never be able to get that  
17 year back, he'll never be able to go back and recoup that. And  
18 even if he wins at the end of the lawsuit, the year will be gone  
19 and that experience will have occurred the way it occurred.

20           So I understand that to be basically the plaintiff's  
21 argument that whatever legal remedy might lie at the end of the  
22 case should the plaintiffs prevail, it won't change whatever Ash  
23 will be dealing with throughout the course of this year if the  
24 injunction doesn't issue.

25           The defendants didn't really address adequate remedy

1 at law in their pleadings. Most of the argument today has been  
2 focused on irreparable harm in the absence of injunction.

3 I should go back and say, therefore, I do find that  
4 the plaintiffs met the standard, met the element of no adequate  
5 remedy at law.

6 So that leaves the question of irreparable harm. And  
7 I will tell you that in preparing for today's hearing most of my  
8 focus was on the declaration that Ash filed. I did also look at  
9 all the other declarations and I'll comment on that in a moment.

10 Let me first address, though, just briefly, from a  
11 legal standpoint Mr. Stadler's argument in which he discussed  
12 the fact that there were some credibility issues he believed  
13 particularly with Dr. McGuire and Dr. Budge's declarations. I  
14 will note, and Mr. Stadler did concede this in his argument,  
15 that under Seventh Circuit law the evidentiary rules in terms of  
16 admissible evidence for a preliminary injunction are different.  
17 And I'm quoting *Ty, Incorporated vs. GMA Accessories, Inc.*, 132  
18 F.3d 1167 at 1171, that's Seventh Circuit 1997.

19 "Affidavits are ordinarily admissible at trials, but  
20 they're fully admissible in summary proceedings, including  
21 preliminary injunction proceedings."

22 I didn't understand Mr. Stadler to argue that these  
23 declarations were not admissible, he was simply commenting on  
24 the weight that the Court should give them. But I did want to  
25 note that the declarations are admissible evidence for the

1 purposes of preliminary injunction proceedings.

2 So I did review those declarations and in particular  
3 in looking at Ash's, there are a number of issues that he raises  
4 in his declaration.

5 Number one, the fear that he has suffered and  
6 continues to suffer of being stigmatized. He's the only person  
7 in the school who has been told he has to use the individual  
8 bathrooms that are locked and to which he's been provided a key.  
9 He's been trying not to use the bathroom at school at all. And  
10 Mr. Wardenski has gone into detail and Ash went into detail even  
11 more than Mr. Wardenski did about the extent to which he's  
12 supposed to keep hydrated because of the condition that he has  
13 with regard to fainting and the dizziness. However -- and I  
14 guess he's supposed to drink six or seven glasses of water a day  
15 plus Gatorade, I assume for electrolytes -- but if he does that  
16 then he has to use the restrooms more frequently and so he  
17 doesn't do that and then when he doesn't do that he suffers  
18 increased episodes of fainting, migraines, dizziness, the  
19 physical effects of the condition that he has.

20 He talks about the fact that he is constantly worried  
21 that he'll be disciplined for using the wrong restroom, at least  
22 in the district's view. And apparently in line with his school  
23 efforts, he's worried that if he is disciplined that that will  
24 somehow show up on his record and will impact his college  
25 application process.

1           He talks about the fact that the school indicated to  
2 him when I believe he and his mother met with the school, with  
3 the administrator, that they were not going to agree to allow  
4 him to use the boys' restroom because the gender that was listed  
5 in all of his school records was female and without legal or  
6 medical documentation to the contrary, they weren't going to  
7 make that change.

8           And he recounts how he provided the school -- or his  
9 mother did provide the school with a letter from his  
10 pediatrician, from Dr. Abraham, but that nonetheless he was not  
11 allowed to use the boys' restrooms.

12           He talks about panic attacks. He talks about anxiety  
13 attacks. He talks about his headaches, dizziness, fainting. He  
14 talks about the fact that he's thinking of transferring to an  
15 online school because of the embarrassment and the humiliation  
16 and the physical problems that he has been suffering as a result  
17 of the policy of not allowing him to use the boys' restrooms.

18           So certainly there is an allegation of harm in that  
19 affidavit. And Mr. Stadler argues, of course, though, that the  
20 standard is not harm, the standard is irreparable harm.

21           And to that end there are the affidavits of Dr. Budge  
22 and Dr. Gorton and there McGuire. I agree that none of them are  
23 Ash's treating physician or therapist or sociologist or whatever  
24 position they hold. Dr. Budge did spend some time with Ash and  
25 with his mother and went over his medical file.

1 I had already -- I knew from the pleadings that  
2 Dr. Abraham had submitted a letter to the school back when this  
3 issue was going on. And so I understand that while Dr. Budge  
4 does not know Ash as well as perhaps his own treating  
5 physicians, her letters based on her view of his treating  
6 physician's file -- I appreciate that plaintiff is indicating  
7 that they can get a copy of Dr. Abraham's letter if we need it,  
8 but I think that despite the fact these individuals, the  
9 professionals, doctors and otherwise who submitted affidavits  
10 may not necessarily know Ash, what their comments go to is, and  
11 what their opinions go to, is the medical likelihood or the  
12 psychological likelihood that someone with gender dysphoria who  
13 is not allowed to be able to live his or her identity will  
14 suffer long-term effects.

15 Now, it is true none of those affidavits said Ash  
16 Whitaker will suffer long-term effects. I think it probably  
17 would have been irresponsible of anybody to say that. They  
18 don't have the ability to say that. What they can predict is a  
19 likelihood of risk that that will occur. And they do. They do  
20 predict that there is a risk involved that will occur.

21 So the question is, has the harm that Ash has already  
22 suffered and will the harm that he presumably will continue to  
23 suffer in the same way irreparable? Can it never be fixed? And  
24 I'm not sure that the word "irreparable" in the context of a  
25 preliminary injunction motion means that something never ever

1 can get better or never ever can be repaired. I think the  
2 question is where the damage be done and it won't be able to go  
3 back and be undone.

4 In other words, you can't put somebody back in the  
5 place where they were before the damage occurred. I think there  
6 is no question, at least there doesn't seem to be any question  
7 based on the affidavits that are on file, that Ash has already  
8 suffered harm; that he has already had physical repercussions  
9 from the policy as well as emotional repercussions from the  
10 policy.

11 So it's safe to assume that if he continues not to be  
12 allowed to utilize the boys' restroom that those same sorts of  
13 harms will continue. And I don't believe under the caselaw that  
14 I need to make a finding that there's no possibility ever in any  
15 world where he could overcome whatever suffering he has in order  
16 to prevail on a request for preliminary relief.

17 For example, in *Washington vs. Indiana High School*  
18 *Athletic Association*, 181 F.3d 840 at 854, the Seventh Circuit  
19 was dealing with a handicapped student, a student with a  
20 physical disability who was arguing that part of the  
21 treatment -- part of the impact of the treatment of that student  
22 was diminished academic motivation. And the Seventh Circuit  
23 recognized that that is, in fact, a harm that could be  
24 suffered -- an irreparable harm that could be suffered in the  
25 context of a preliminary injunction.

1           Certainly from everything that is indicated in the  
2 paperwork Ash has done extremely well in school and is  
3 successful in school, but he's being pulled out of school when  
4 he uses the restrooms, the boys' restrooms and someone sees it.  
5 He's being asked to use different restrooms than those that are  
6 available to the other boys. And he has recounted in his own  
7 affidavit the stress, the depression, the anxiety, the inability  
8 to concentrate. He's recounted all of those things in his  
9 affidavit.

10           So on that basis, on the basis of what Ash has stated  
11 in his own affidavit, as well as the information that's provided  
12 from the professionals who submitted affidavits, I do find that  
13 there has been a sufficient allegation of irreparable harm in  
14 the absence of the injunction.

15           And having made that finding then I'm required under  
16 Seventh Circuit law to move to the next piece of the equation  
17 which is to weigh the balance of the harms to the parties if the  
18 injunction is granted or denied. And I think in discussing  
19 irreparable harm and no adequate remedy at law I've probably  
20 covered the harm to the plaintiffs and to Ash, so balanced  
21 against that is the harm to the defendants if the injunction is  
22 granted.

23           There's been some discussion, both in the pleadings  
24 and today in argument, about whether or not the issuance of an  
25 injunction would preserve the status quo or disturb the status

1 quo.

2 In some respects it appears it would do both under  
3 these factual circumstances. The status quo right now is that  
4 the school has indicated and has been indicating since at least  
5 April that Ash is not to use the boys' restroom. That is the  
6 status quo in terms of the school's policy as to Ash.

7 The status quo also appears to be that Ash has tried  
8 not to use the restrooms if he can help it, and that when he  
9 can't help it he's been using the boys' restrooms even though  
10 he's aware of the policy that the school has told him on several  
11 occasions.

12 So the status quo is yes, there's a policy in place  
13 that says that Ash can't use the restrooms. And also there's a  
14 practice in place where Ash uses them to the extent that he  
15 absolutely has to. So in this instance it is a bit of a  
16 circumstance in which talking about preservation of the status  
17 quo doesn't really get you very far because it's a mixed status  
18 quo and a decision either way would preserve some status quo of  
19 some sort.

20 The school has indicated that again -- and I talked  
21 about this earlier -- the school district has indicated that  
22 this would impinge on the school's right to exercise its  
23 discretion to have separate facilities, but I've indicated that  
24 I'm not entirely clear on how that would happen.

25 A further gloss on that argument, though, is

1 Mr. Stadler's argument that the school has the right -- it's up  
2 to school districts to implement school policies and to be able  
3 to decide how best to implement their educational roles and also  
4 to protect and provide for their students. And I agree with  
5 that.

6 But, of course, that discretion to school districts is  
7 not unfettered. There are all sorts of things that school  
8 districts can't do under the law. There are all sorts of things  
9 that they can't do under Department of Education regulations.  
10 There are all sorts of things that they can't do. There is not  
11 unfettered discretion to set policy or to make decisions on  
12 behalf of students.

13 So the argument that it is their right to make their  
14 policy is absolutely true as far as it goes. Mr. Stadler argued  
15 that as long as there's no violation of the law it is okay for  
16 the school to have separate facilities and they have a right to  
17 have that as their policy. I agree with that statement as  
18 asserted.

19 But one of the purposes of this lawsuit is to  
20 determine whether or not denying a transgender person the  
21 ability to use the restroom with which he or she identifies is  
22 in violation of the law. And second of all, an injunction is  
23 not going to require the school to not have separate facilities,  
24 again going back to that argument that I didn't quite follow.

25 The school argues that there would be financial

1 consequences that would be imposed if the injunction were to be  
2 granted. I don't know what those are. Those have not been  
3 identified.

4 It argues that there would be -- the school wouldn't  
5 have time to implement facility changes. I'm not sure what the  
6 facility changes would be. As I understand this, Ash is asking  
7 to walk into the boys' restroom and use the boys' restroom.  
8 He's not asking to have another restroom built or designated; in  
9 fact, that's what he doesn't want. So I'm not sure what  
10 additional facilities are necessary.

11 The school argues that the injunction would deprive  
12 parents of their rights to protect their children. So far I  
13 have not heard any evidence with regard to injuries to other  
14 children from Ash using the restroom.

15 I also do note that from a practical standpoint it  
16 sounds like there are a number of restrooms around the school,  
17 if a student is uncomfortable if one walks in and finds Ash in  
18 the restroom then, of course, they're free to make other  
19 choices; that's just the choice that Ash doesn't have. Ash is  
20 not free to make those choices.

21 I understand that this will -- the issuance of an  
22 injunction -- a preliminary injunction I should say, will force  
23 the school to think about its policies; however, I'm not sure  
24 that the issuance of the injunction is what would do that. It  
25 sounds like they're already involved in a lawsuit. Clearly the

1 school already has had to consider its policies. Presumably  
2 there are schools all over the country that are considering  
3 their policies given the litigation that's happening around the  
4 country, given the Department of Education's "Dear Colleague"  
5 letter, given the Department of Justice position. So I'm not  
6 sure that issuing the injunction is necessarily what will cause  
7 schools to consider their policies rather than simply the  
8 current activities in the climate.

9           So for those reasons, balancing the harm to Ash versus  
10 balancing the harm to the school district, that balance of  
11 harm -- balance of harms weighs in Ash's favor. That is not to  
12 say that there was some back and forth between Mr. Wardenski and  
13 Mr. Stadler about whether or not this issue, the one that we've  
14 been discussing for the last two days, is, quote, a big deal,  
15 end quote. I'm not sure how one characterizes big deal or not  
16 big deal one way or the other. And perhaps that's legalese to  
17 which I've not been initiated. But if the parties are arguing  
18 that this isn't important to somebody I'm not gonna sit here and  
19 tell either one of you that I don't think it's important to  
20 either one of your clients. You wouldn't be here if it weren't.

21           The school district has reasons and they are expressed  
22 to some extent in the pleadings, but we haven't gotten far  
23 enough to hear them entirely as to why it is taking the  
24 positions that it's taking. And Ash and his mother have reasons  
25 they're taking the positions they're taking. And if this were

1 some minor scuffle I am assuming that talented counsel such as  
2 yourselves wouldn't be here. I've never met anybody during my  
3 entire career as a judge who has said to me "I can't wait to go  
4 in your courtroom and litigate in front of you, I like going to  
5 court."

6 Nobody likes going to court. Nobody wants to be here.  
7 And so the discussion of whether or not what Ash is dealing with  
8 and what the Kenosha school district is dealing with is a big  
9 deal I think is a nonstarter. The question is whether or not  
10 the standards of the preliminary injunction rule have been met.

11 So the last issue after balance of harms is that the  
12 Court has to weigh the -- evaluate the effect of an injunction  
13 on the public interest. And perhaps that is where a big deal  
14 discussion becomes most relevant if there is such a thing. This  
15 is an important thing. People have strong views and strong  
16 feelings on issues like this and they're entitled to have those  
17 strong views and those strong feelings.

18 The question is whether or not at this stage allowing  
19 Ash Whitaker -- and that's all we're talking about right now. I  
20 understand the slippery slope argument. But right now we're  
21 talking about allowing Ash Whitaker to utilize the boys'  
22 restroom without being disciplined or punished or utilizing the  
23 boys' bathroom -- restroom, whether or not that poses a harm to  
24 the public interest. And at this moment I don't see a harm to  
25 the public interest.

1 I certainly see that people will feel strongly about  
2 it, people will have concerns about it. They already have done  
3 and likely already have expressed them even before this lawsuit  
4 was filed. But I don't see at this point in time a negative  
5 impact on the public interest that would outweigh the first  
6 three elements in the preliminary injunction test.

7 The last thing I'll note is that, as the parties are  
8 aware from earlier arguments and discussions, the district court  
9 in Virginia, the lower court in the *G.G. case vs. Gloucester*,  
10 issued -- or, I'm sorry, declined to issue a preliminary  
11 injunction similar to the one that the plaintiffs are requesting  
12 here. The court declined because it understood that the  
13 affidavits that were submitted in that case were not of  
14 sufficient evidentiary value or weren't admissible and,  
15 therefore, didn't consider them.

16 When that issue went up to the Fourth Circuit, as the  
17 parties are aware, the Fourth Circuit concluded that the  
18 district court had erred in its consideration of what  
19 evidentiary standard was necessary at the preliminary injunction  
20 stage and, therefore, overruled the decision not to issue a  
21 preliminary injunction.

22 As Mr. Stadler pointed out at an earlier hearing, the  
23 United States Supreme Court has stayed the issuance of that  
24 injunction. On the one hand I understand the school district, I  
25 believe the school district's argument was if the Supreme Court

1 has said that that injunction shouldn't issue then an injunction  
2 such as this shouldn't issue. I do certainly understand that  
3 there are concerns that are raised by the court's decision to  
4 stay the *G.G.* injunction.

5           Unfortunately, we don't have much way of knowing why  
6 the court decided to do that. There's a two-paragraph decision,  
7 one paragraph is the majority, quote-unquote, which is four  
8 justices -- and now that they're in a four-to-four situation, or  
9 eight justices, four justices voting in favor of stay, three  
10 justices dissenting, and then Justice Breyer adding a paragraph  
11 indicating that because the court was in recess and because  
12 there was a preservation of status quo issue he would vote in  
13 favor as a courtesy.

14           So it's difficult to know at this stage what it is  
15 that the court was concerned about that caused it to stay the  
16 preliminary injunction in that case. I make that note only to  
17 indicate that I am certainly not unaware of the fact that the  
18 Supreme Court has stayed the ruling in that case and that I am  
19 not making this decision in a vacuum or ignoring that. What I  
20 am doing is looking at the factors that have been laid out by  
21 the Seventh Circuit and the evidence that is in front of me  
22 based on -- in this case.

23           And so for those reasons I am going to grant the  
24 request for a preliminary injunction. That injunction, as we  
25 indicated at the beginning of the hearing, relates only to Ash's

1 use of the boys' restroom. It will enjoin the school from  
2 prohibiting Ash from using a boys' restroom. It will enjoin the  
3 school from disciplining him for using the boys' restroom.

4 Now, I'm assuming there are other kinds of trouble he  
5 can get himself into if he tries and the school, of course, has  
6 the right to discipline students for misbehavior. But for using  
7 the boys' restroom, we're enjoining the school from disciplining  
8 him for doing that. And that includes pulling him out of class  
9 to talk to him or taking action to monitor his use of the  
10 restroom or prohibit him from going into a boys' restroom.

11 That is the limit of the injunction. It doesn't go  
12 any more broadly than that. There are a number of other forms  
13 of relief that have been requested in this case, I make no  
14 ruling on any of those. This is solely to do with the use of  
15 the restroom.

16 With regard to the requirement to post a bond, there  
17 wasn't much argument on that until we got in here today and  
18 you've both presented some opposing arguments. I'd like to take  
19 a look at those and then I'll let you know if I'm going to  
20 require a bond and if I am, how much. But I am going to issue  
21 the injunction.

22 So, that being said, Mr. Wardenski, other issues,  
23 questions, things that need to be taken care of?

24 MR. WARDENSKI: No, Your Honor. Thank you. We will  
25 confer with the school district regarding the pronoun use and if

1 that remains an issue we may come back to you for that issue.

2 But otherwise, no, not right now.

3 THE COURT: Okay. And I understand that Mr. Stadler's  
4 gonna talk to the district about that.

5 Mr. Stadler.

6 MR. STADLER: Thank you, Judge. I do have a couple of  
7 issues.

8 THE COURT: Sure.

9 MR. STADLER: One is we would ask the Court to stay  
10 the implementation of the injunction until October 1. That'll  
11 provide us 10 days and that will allow us to take an appeal to  
12 the Seventh Circuit without having to come back to the Court and  
13 filing a motion to stay the injunction while we pursue that  
14 appeal. That's one issue.

15 THE COURT: Okay.

16 MR. STADLER: Second issue is we will submit an order  
17 this afternoon for the Court's signature indicating that it  
18 denied the motion to dismiss yesterday for the reasons stated on  
19 the record yesterday.

20 But we would also include in there and ask the Court  
21 to approve a statement that the issues involved are unsettled,  
22 issues of law and review by the Seventh Circuit will expedite  
23 the litigation. We intend to pursue an interlocutory appeal on  
24 that issue, but we need that language from the Court in order to  
25 pursue the interlocutory appeal.

1 THE COURT: Okay.

2 MR. STADLER: And we'll join those two issues  
3 together.

4 THE COURT: Okay. With regard to the second issue,  
5 what I normally do in a hearing where I make an oral ruling is  
6 to do a minute order which kind of recounts what I said in court  
7 and then -- but in that instance if you're going to submit that  
8 order with that language in it, I hadn't finished editing the  
9 minutes yet so what I'll do is I'll just simply leave them as  
10 minutes. It will say the Court denied the motion to dismiss,  
11 but it won't have the signature line at the bottom and we'll  
12 utilize that order.

13 With regard to the stay until October 1st,  
14 Mr. Wardenski, they have a right to appeal obviously and we're  
15 either gonna get a stay now or come back and ask for one.

16 MR. WARDENSKI: We would oppose the stay right now.  
17 As we've already discussed, Ash, you know, has used the boys'  
18 restrooms even after he, you know, has been told of their  
19 policy. There's simply no harm from him using it pending an  
20 appeal.

21 And we will -- you know, we'll oppose the stay right  
22 now and we'll oppose a stay later if they seek one pending  
23 appeal, with full knowledge that an appeal is likely here.

24 THE COURT: [Indiscernible].

25 All right. I'm going to deny the motion to stay until

1 October 1st, although understanding that the school can come  
2 back and request a stay at the time that it files its notice of  
3 appeal as everybody does, which I assume it will.

4 Mr. Stadler, anything else then?

5 MR. STADLER: I guess the only other issue I have, and  
6 I know the Court has said that its ruling only applies to the  
7 restrooms, it's just a practical issue, which locker room do we  
8 send Ash Whitaker to?

9 THE COURT: I was not asked to rule on that, I have  
10 not been asked to issue an injunction on that, and I -- you've  
11 got a school board and I assume they're going to discuss it and  
12 talk about it and -- but the ruling that I was asked to make was  
13 on the restroom, that's the ruling that I've made. I hear you.

14 MR. STADLER: Nothing further. Thank you.

15 THE COURT: Okay.

16 MR. WARDENSKI: Your Honor, may I ask, will there be a  
17 written decision on either motion or will it be just the  
18 minutes?

19 THE COURT: The minute order is going to -- the  
20 minutes for the motion to dismiss contain the reasoning and  
21 that'll be what will appear on the docket.

22 And then there will be a written order explaining the  
23 factors and why I reached the decision that I did with regard to  
24 the preliminary injunction.

25 MR. WARDENSKI: Thank you, Your Honor.

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THE COURT: Okay. Thank you.

MR. STADLER: Thank you.

THE CLERK: All rise.

(Proceedings concluded at 3:04 p.m.)

\* \* \*

## C E R T I F I C A T E

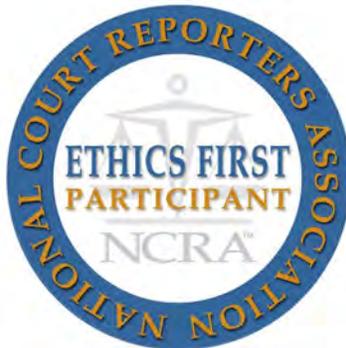
I, JOHN T. SCHINDHELM, RMR, CRR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified October 7, 2016.

/s/John T. Schindhelm

John T. Schindhelm

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ASHTON WHITAKER, a minor,  
by his mother and next friend,  
MELISSA WHITAKER,

Case No. 16-cv-943-pp

Plaintiffs,

v.

KENOSHA UNIFIED SCHOOL DISTRICT  
NO. 1 BOARD OF EDUCATION, and  
SUE SAVAGLIO-JARVIS, in her  
official capacity as Superintendent of  
the Kenosha Unified School District No. 1,

Defendants.

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**ORDER GRANTING PLAINTIFFS' CIVIL L.R. 7(h) EXPEDITED NON-  
DISPOSITIVE MOTION TO RECONSIDER CERTIFICATION FOR  
INTERLOCUTORY APPEAL OF ORDER DENYING MOTION TO DISMISS  
(DKT. NO. 30), AND VACATING CERTIFICATION**

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On September 19, 2016, the court issued an oral ruling denying the defendants' Rule 12(b)(6) motion to dismiss. Dkt. No. 28. At the end of the hearing, the parties briefly discussed scheduling oral argument on the plaintiffs' motion for a preliminary injunction, and settled on September 20, 2016 at 1:00 p.m. *Id.* at 9.

At the conclusion of the September 20, 2016 hearing on the motion for preliminary injunction, counsel for the defendant told the court that he would be submitting a proposed order memorializing the court's denial of the defendants' motion to dismiss. He told the court that he would be including in that proposed order language to the effect that the court's order involving a

opinion, stating that the defendants would “need” that language if they decided to file an interlocutory appeal. The court did not ask counsel for the defendants to argue in support of this request; it simply stated, “okay.” Nor did it give the plaintiffs the opportunity to argue on the question of whether the court should include that language in the order of dismissal.

The defendants submitted the proposed order on September 20, 2016 at 5:28 p.m. (two and a half hours after the conclusion of the preliminary injunction hearing). Dkt. No. 27. After making some edits, the court issued the order at 11:07 a.m. the following day (September 21, 2016); the court’s order included the defendants’ proposed language: “The court concludes that the reasoning supporting this decision, and the decision itself, involve a controlling question of law as to which there is substantial ground for difference of opinion, and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” Dkt. No. 29 at 2.

The plaintiffs then filed the current motion, pursuant to Local Rule 7(h), asking the court to reconsider its inclusion of that sentence in the order denying the motion to dismiss. Dkt. No. 30. They make this request pursuant to Fed. R. Civ. P. 60, “Relief From a Judgment or Order.” The plaintiffs argue that the defendants have not provided argument that would justify the court’s certifying the decision for interlocutory appeal; that such appeals are unusual, and not favored in the Seventh Circuit; and that because the court denied the

issue of law would not serve to advance the litigation as a whole. Id.

Local Rule 7(h) for the Eastern District allows a party to seek non-dispositive relief on an expedited basis by designating the motion under that rule. The rule allows the court to schedule a hearing, or to “decide the motion without a hearing.”

Fed. R. Civ. P. 60 allows a court to relieve a party from an order if one of a list of grounds exists. Those grounds include mistake, inadvertence, surprise, or excusable neglect (Rule 60(b)(1)); newly discovered evidence (Rule 60(b)(2)); fraud (Rule 60(b)(3)); the fact that the judgment from which the movant seeks relief is void (Rule 60(b)(4)) or has been satisfied (Rule 60(b)(5)); or “any other reason that justifies relief,” (Rule 60(b)(6)).

The court finds that under the circumstances the plaintiffs describe (which are supported by the record), relief is justified under Rule 60(b)(6), “any other reason that justifies relief.” The plaintiffs correctly characterize the series of events which led to the court including the interlocutory appeal language in the order denying the motion to dismiss. Defense counsel stated that he would submit a proposed order containing the language, but made no legal or factual argument in support of certification. The court did not ask defense counsel to provide argument in support of certification, nor did it ask the plaintiffs to respond. It simply included the language in the order, without input from either party. The court erred in failing to solicit argument on this issue.

appellate court has jurisdiction to entertain an appeal.” Abelesz v. Erste Group Bank AG, 695 F.3d 655, 658 (7th Cir. 2012). See also 28 U.S.C. §1291 (“The courts of appeals . . . shall have jurisdiction of appeals from all *final decisions* of the district courts of the United States . . . .”) (emphasis added). “A party generally may not take an appeal under § 1291 until there has been a decision by the district court that ‘ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.’” Van Cauwenberghe v. Baird, 486 U.S. 517, 521 (1988). Generally speaking, “[a] district court’s denial of a motion to dismiss is not a final decision.” Cherry v. University of Wisconsin System Bd. Of Regents, 265 F.3d 541, 546 (7th Cir. 2001). This is because when the district court denies the motion to dismiss, the disputed issues remain pending before the court, see United States v. Kashamu, 656 F.3d 679, 681 (7th Cir. 2011), cert. den., Kashamu v. United States, 132 S. Ct. 1046 (2012), and thus the order of denial does not “end the litigation on its merits, Van Cauwenberghe, 486 U.S. at 522. “So long as the matter remains open, unfinished or inconclusive, there may be no intrusion by appeal.” Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546 (1949).

There is a mechanism, however, which allows a party to seek review of a non-final order. Section 1292 of Title 28 allows a district court, under certain circumstances, to certify an order for appeal even though it is not final. Section 1292(b) states:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of

the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of such order: *Provided, however,* That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

(Emphasis in the original.)

When deciding a motion for certification, the district court must consider the following factors: (1) whether the motion to be appealed involves a controlling question of law; (2) whether an immediate appeal from the order may materially advance the ultimate termination of the litigation; and (3) whether there is a substantial ground for difference of opinion on that question of law. Another consideration is whether certification would only prolong the life of the litigation at all the parties' expense. Each element of the section 1292(b) test must be met before certification may be granted.

The party seeking interlocutory review has the burden of persuading the court that "exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment." Courts generally disfavor piecemeal appeals in favor of a single appeal.

Boese v. Paramount Pictures Corp., 952 F. Supp. 550, 560 (N.D. Ill. 1996) (internal citations omitted). "[Section 1292] is to be invoked only in exceptional cases where a decision on appeal may obviate the need for protracted and expensive litigation . . . ." Fed. Deposit Ins. Corp. v. First Nat. Bank of Waukesha, Wis., 604 F. Supp. 616, 620 (E.D. Wis. 1985).

interlocutory certification language in the order denying the motion to dismiss. The defendants did not make a formal motion for certification. At a stretch, one could argue that defense counsel's statement to the court that he was going to submit an order containing the language constituted a motion, and that the court's response—"Okay"—constituted a grant of that motion. Given the requirement, however, that the moving party prove every §1292 element, and that the moving party carry the burden of persuasion as to each of those elements, this court's cursory "granting" of such a cursory "motion" is insupportable.

This conclusion is supported by a review of the §1292 factors. The denial of the motion to dismiss, as discussed above, does constitute "an order not otherwise appealable" under §1291. But as the plaintiffs argue in the current motion, because the court based its denial of dismissal on several grounds, the order is not solely based on resolution of "a controlling question of law as to which there is substantial ground for difference of opinion." "It is generally held that a question of law is not 'controlling' merely because it is determinative of [sic] case at hand; rather, a question is controlling only if it may contribute to the determination, at an early stage, of a wide spectrum of cases." Fed. Deposit Ins. Corp., 604 F. Supp. at 620 (quoting Kohn v. Royall, Koegel & Wells, 59 F.R.D. 515, 525 (S.D.N.Y. 1973), *appeal dismissed*, 496 F.2d 1094 (2d Cir. 1974)). "Moreover, § 1292(b) was not intended merely to provide an avenue for review of difficult rulings in hard case, and the mere fact that there is a lack of

ground for a difference of opinion under the statute.” Id. (citing United States ex rel. Hollander v. Clay, 420 F. Supp. 853, 859 (D.D.C. 1976).

In this case, the court denied the defendants’ motion to appeal on several grounds. First, the court found that neither Title IX nor the regulations promulgated under Title IX nor the case law defined the word “sex” as used in the statute, and that the case law considering that word in the context of transgender students was contradictory. Dkt. No. 28 at 5. The court concluded, therefore, that because there was no controlling law on the issue in the Seventh Circuit, and because there were factual and legal disputes between the parties on the question, dismissal was not appropriate. Id. As to this issue, the court acknowledges that final decision on the merits regarding whether discrimination based on transgender status constitutes discrimination based on sex as defined by Title IX might contribute to the early determination of an issue in a wide spectrum of cases.

But the court also found that, regardless of the answer to the question of whether discrimination against transgender students constituted discrimination based on sex under Title IX, the plaintiff had pleaded sufficient facts to survive a motion to dismiss on a claim of gender stereotyping. Other courts, including one in this district, have refused to grant Rule 12(b)(6) motions to dismiss Title IX gender stereotyping claims. See, e.g., N.K. v. St. Mary’s Springs Academy of Fond Du Lac, Wisconsin, Inc., 965 F. Supp. 2d 1025, 2034 (E.D. Wis. 2013) (citing Hamm v. Weyauwega Milk Products, Inc.,

Supp. 2d 816, 823 (C.D. Ill. 2008); Howell v. North Central College, 320 F. Supp. 2d 717, 720 (N.D. Ill. 2004); Theno v. Tonganoxie Unified School Dist., 377 F. Supp. 2d 952, 964 (D. Kansas 2005)). Even if, therefore, this court (or the Seventh Circuit) ultimately were to find against the plaintiffs on the question of whether transgender discrimination constituted discrimination based on sex under Title IX, the plaintiffs still could prevail on a claim that the defendants' treatment of Ash Whitaker constituted prohibited sex stereotyping under Title IX.

The court also denied the motion to dismiss Count Two, the plaintiffs' equal protection claim. Dkt. No. 28 at 8-9. The court found that the plaintiffs had alleged sufficient facts to survive a motion to dismiss the claim that the defendants had violated his equal protection rights. The court articulated several ways in which the plaintiff could succeed on an equal protection claim: by proving that, as a male, he'd been treated differently from other males with no justification; by proving that, as a transgender person, he was a member of a suspect class, and had been discriminated against with no justification; and by proving that he'd been discriminated against without a rational basis. Id. at 9. See also Decision and Order Granting in Part Motion for Preliminary Injunction, Dkt. No. 33 at 9.

Only one of the above bases for the court's decision to deny the motion to dismiss arguably falls into the "controlling question of law as to which there is substantial ground for difference of opinion"—the question of whether

used in Title IX. The other bases do not.

That conclusion dictates the conclusion as to the second element of the interlocutory injunction test—whether “an immediate appeal from the order may materially advance the ultimate termination of the litigation.” This prong of the interlocutory appeal test “properly turns on pragmatic considerations.” Federal Deposit Ins. Corp., 604 F. Supp. at 620. In a situation like this one, where the appellate court’s resolution of the one arguably controlling question of law would not end the litigation as to the other grounds, the appellate court’s decision would not materially advance the ultimate termination of the litigation. The court emphasized several times in its oral ruling on the motion to dismiss that the plaintiffs had, at this early stage in the litigation, alleged sufficient facts and law to proceed. The court acknowledged that there were many factual issues yet to be fleshed out by both parties, and legal issues to be expanded upon. The defendants’ stated intention to seek interlocutory appeal as to the merits of the entire case only two months after the complaint was filed is an attempt to side-step that litigation.

Certainly there are cases in which an interlocutory appeal is an appropriate way to avoid drawn-out and costly litigation. But if that were the only basis for granting a motion for an interlocutory appeal—avoiding drawn-out and costly litigation—federal district courts would grant such motions daily. The fact, standing alone, that further district court litigation will take time, and will impose costs on both sides, is not the “exceptional case” for

process disfavored by the Seventh Circuit and other courts.

To sum up: The defendants did not properly move for certification under §1292(b). The court erred in failing to solicit argument justifying certification under §1292(b). The court’s review of the §1292(b) standard leads the court to conclude that there is no basis for certification under §1292(b).

Accordingly, the court **GRANTS** the plaintiff’s Civil Rule 7(h) Expedited Non-Dispositive Motion to Reconsider Certification of Interlocutory Appeal of Order Denying Motion to Dismiss. Dkt. No. 30. The court **VACATES** the following language in the order denying the motion to dismiss (Dkt. No. 29): “The court concludes that the reasoning supporting this decision, and the decision itself, involve a controlling question of law as to which there is substantial ground for difference of opinion, and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” Dkt. No. 29 at 2. The court will issue an amended order of dismissal.

Dated in Milwaukee, Wisconsin this 24<sup>th</sup> day of September, 2016.

**BY THE COURT:**

  
\_\_\_\_\_  
**HON. PAMELA PEPPER**  
**United States District Judge**

ASHTON WHITAKER,  
By his mother and next friend,  
Melissa Whitaker,

Case No. 16-cv-943-pp

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1  
BOARD OF EDUCATION and  
SUE SAVAGLIO-JARVIS,

Defendants.

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**ORDER DENYING DEFENDANTS' CIVIL L.R. 7(h) EXPEDITED, NON-  
DISPOSITIVE MOTION TO STAY PRELIMINARY INJUNCTION (DKT. NO. 33)  
PENDING APPEAL (DKT. NO. 44)**

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The plaintiff filed his complaint on July 19, 2016, Dkt. No. 1, and less than a month later, filed a motion for preliminary injunction, Dkt. No. 10. A day after the plaintiff filed the motion for preliminary injunction, the defendants filed a motion to dismiss the complaint. Dkt. No. 15. A few days later, they filed a brief in opposition to the motion for preliminary injunction. Dkt. No. 17.

On September 6, 2016, the court heard oral argument on the motion to dismiss. Dkt. No. 26. On September 19, 2016, the court issued an oral ruling denying the defendants' motion to dismiss. Dkt. No. 28. The court scheduled a hearing on the motion for preliminary injunction for the following day, September 20, 2016. *Id.* at 9.

the motion for preliminary injunction. Dkt. No. 31. In considering the question of whether the plaintiffs had a likelihood of success on the merits, the court relied in good part on its decision from the previous day denying the motion to dismiss.<sup>1</sup> At the conclusion of the hearing, the court granted in part<sup>2</sup> the plaintiff's motion for a preliminary injunction, and enjoined the defendants from prohibiting the plaintiff from using the boys' restrooms at his high school; from taking punitive action against the plaintiff for using the boys' restrooms; and from taking any action to monitor his restroom usage. Dkt. No. 31 at 1.

Counsel for the defendants asked the court to stay the injunction until October

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<sup>1</sup> There is a bit of a procedural morass surrounding that decision. Counsel for the defendants informed the court at the end of the hearing that he would be submitting a proposed order, denying his motion to dismiss but containing the necessary findings for certification of an interlocutory appeal. He did not make any argument in support of that proposal; the court did not elicit any, nor did it ask for the plaintiff's position. The court entered the order, with the interlocutory appeal certification language, on September 21. Dkt. No. 29. The next day, the plaintiff filed a motion asking the court to reconsider including the interlocutory appeal certification language. Dkt. No. 30. On September 23, 2016, before the court ruled on that motion, the defendants filed a notice of appeal with the Seventh Circuit, appealing both the order denying the motion to dismiss and the order granting the preliminary injunction (an order the court had issued on September 22, 2016, Dkt. No. 33). Dkt. No. 34. On September 25, 2016, the court issued an order granting the plaintiff's motion to reconsider, Dkt. No. 36, and entered an amended order denying the motion to dismiss but removing the interlocutory appeal certification language, Dkt. No. 35. The next day, the Seventh Circuit ordered the plaintiff to respond to the defendants' request for interlocutory appeal by October 11, 2016.

<sup>2</sup> The plaintiff's complaint requests other relief: it asks the court to prohibit the defendants from referring to the plaintiff by his birth name, and from using female pronouns to identify him; to require the school to allow him to room with other boys on school trips; to prohibit the school from requiring the plaintiff to wear identifying markers, such as a colored wristband; and other relief. The court did not grant injunctive relief on those requests—some were not ripe, and others speculated actions that had not yet occurred.

The defendants also asked the court to require the plaintiff to post a bond; the court took that request under advisement. Id.

On September 22, 2016, the court issued its written order granting in part the motion for preliminary injunction. Dkt. No. 33. In particular, the court weighed the balance of harms, and concluded that the harms suffered by the plaintiff if the court did not grant the injunctive relief outweighed any potential harms suffered by the defendant if the court were to impose the injunction. Id. at 13-15. The court also found that the issuance of the injunction would not negatively impact the public interest. Id. at 15. Finally, the court declined to require the plaintiff to post a bond. Id. at 15-17.

The defendants again have asked the court to stay the preliminary injunction. Dkt. No. 44. The defendants point out that they have appealed the court's decision to the Seventh Circuit (both appealed as of right regarding the order granting the motion for preliminary injunction, and sought interlocutory appeal regarding the court's denial of the motion to dismiss the complaint). Id. at 2. They argue, as they did in their motion to dismiss, that the Seventh Circuit's decision on Ulane v. Eastern Airlines, Inc., 742 F.2d 1081) (7th Circuit) mandates a ruling in their favor on the Title IX issue (despite conceding that the court has not decided the precise issue in question in this case). Id. at 1-2. They argue that they will suffer irreparable harm from the injunction, because the injunction "threatens the constitutionally protected privacy interest of the approximately 22,000 students in the school district." Id. at 2-3.

because a stay would maintain the *status quo* and would not worsen the plaintiff's health. *Id.* at 3. Finally, they argue that the public interest would be served by a stay of the injunction, because it will prevent the school district's students and parents from being "subjected to an injunction that perpetuates a policy that the federal government is unable to enforce," citing State of Texas v. United States, Case No. 16-cv-54, 2016 WL 4426495 (N.D. Tex., August 21, 2016).<sup>3</sup>

As the defendants state in their motion, the factors a movant must satisfy to obtain a stay pending appeal are similar to the factors a movant must satisfy to obtain injunction relief. Hinrichs v. Bosma, 440 F.3d 393, 396 (7th Cir. 2006) (citing Hilton v. Braunskill, 481 U.S. 770, 776 (1987)). The moving party must demonstrate that "1) it has a reasonable likelihood of success on the merits; 2) no adequate remedy at law exists; 3) it will suffer irreparable harm if it is denied; 4) the irreparable harm the party will suffer without relief is greater than the harm the opposing party will suffer if the stay is granted; and 5) the stay will be in the public interest." *Id.* (citing Kiel v. City of Kenosha, 236 F.3d 814, 815-16 (7th Cir. 2000)).

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<sup>3</sup> The defendants' statement that Texas district court's injunction prohibits the federal government from enforcing its policies at all is overbroad. The Texas court's order prohibits the federal government from enforcing certain Department of Education policies (relevant to this case) against the plaintiffs in that case "until the Court rules on the merits of this claim, or until further direction from the Fifth Circuit Court of Appeals." Texas v. United States, 2016 WL 4426495 at 17.

pending appeal was raised in their objection to the motion for preliminary injunction, and the parties argued every one of those issues at the September 20, 2016 hearing. The court found in favor of the plaintiff, and against the defendants, on each factor. The defendants give no explanation for why the court should find in their favor now, when eight days prior to their filing this motion to stay, the court found against them on exactly the same issues they raise here.

The court **DENIES** the defendants' motion Civil L.R. 7(h) Expedited, Non-Dispositive Motion to Stay Preliminary Injunction. Dkt. No. 44.

Dated in Milwaukee, Wisconsin this 3<sup>rd</sup> day of October, 2016.

**BY THE COURT:**



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**HON. PAMELA PEPPER**  
**United States District Judge**

# **EXHIBIT 1**

## **DECLARATION OF ASHTON WHITAKER**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

ASHTON WHITAKER, a minor, by his  
mother and next friend, MELISSA  
WHITAKER,

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT  
NO. 1 BOARD OF EDUCATION and SUE  
SAVAGLIO-JARVIS, in her official capacity  
as Superintendent of the Kenosha Unified  
School District No. 1,

Defendants.

Civ. Action No. 2:16-cv-00943-PP  
Judge Pamela Pepper

**DECLARATION OF ASHTON WHITAKER**

1. My name is Ashton (“Ash”) Whitaker. I am the plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I was born on August 24, 1999. I live in Kenosha, Wisconsin with my mother, Melissa Whitaker.

3. I am a student at George Nelson Tremper High School (“Tremper”). I will begin my senior year of high school on September 1, 2016. I am ranked in the top five percent of my high school class and hope to attend the University of Wisconsin-Madison and study biomedical engineering after graduation. In school, I am involved in a lot of activities: orchestra, theater, tennis, National Honor Society, and Astronomical Society. Outside of school, I work part-time as an accounting assistant in a medical office.

4. I was designated “female” on my birth certificate, but I realized I am a boy in middle school and began to experience growing discomfort with being viewed as a girl by others.

5. At the end of eighth grade, in spring 2013, I told my parents that I am transgender

and a boy. Not long after that, I told my older brothers.

6. During the 2013-2014 school year, my freshman year at Tremper, I began telling my close friends that I am a boy. At that point, I began transitioning more publicly: I cut my hair short, began wearing more masculine clothing, and began to go by a masculine name and pronouns.

7. In fall 2014, the beginning of my sophomore year, I told my classmates and teachers that I am a boy and requested that they refer to me with male pronouns and by my new name. On Christmas Day of 2014, I told my extended family that I am a boy.

8. Around the time of my public transition, I began seeing a therapist, who diagnosed me with Gender Dysphoria. In April 2016, I began seeing an endocrinologist at Children's Hospital of Wisconsin to discuss hormonal therapy. In July 2016 I started hormone replacement therapy (testosterone).

9. On August 2, 2016, I submitted a petition for a legal name change to the Kenosha County Circuit Court to change my name to my traditionally masculine first name, Ashton. I have a court date of September 15, 2016 at which I expect the petition will be granted.

10. My transition has been accepted and respected by most people at Tremper. My friends and classmates have been very supportive and treat me as a boy. To my knowledge most of my teachers also respect my gender identity. For example, at an orchestra performance on January 17, 2015, I wore a tuxedo, just like all the other boys, and was supported by my orchestra teacher, Helen Breitenbach-Cooper. It was accepted without incident and has never been a problem even amongst the audience.

with my guidance counselor, Debra Tronvig. At these meetings, we asked that I be allowed to use the boys' restrooms at school. At a meeting in March 2015, I was told by Ms. Tronvig that school administrators had decided that I could only use the girls' restrooms or a gender-neutral restroom in the school's main office. This meeting was very upsetting to me. I did not want to use the girls' restroom, because I had publicly transitioned in school and using the girls' restroom would communicate to other people that I am "really" a girl—which isn't true—and should be treated like a girl. If I used the office restroom, other students and office staff would ask me questions about why I was using it. The office restroom is also far from my other classes and I would miss class time if I used it.

12. I was also worried that I would be disciplined if I used the boys' restroom, which would hurt my chances of getting into college. Because of this, I did my best to avoid using any restrooms at school for the rest of the school year.

13. In order to avoid using the restrooms, I drank less liquid than I normally would. I have been diagnosed by my pediatrician with vasovagal syncope, which means I am susceptible to fainting and/or having seizures upon certain physical or emotional triggers. If I am dehydrated, my condition is triggered, so my doctor requires that I drink 6-7 bottles of water a day and a bottle of Gatorade. I also get stress-related migraines.

14. When I avoided using the restrooms, I had more symptoms of vasovagal syncope and more migraines. I also felt increasingly depressed and anxious.

15. In July 2015, I went to Europe with my school orchestra group. I asked if I could room with boys, but my orchestra teacher, Ms. Breitenbach-Cooper, told me school administrators had decided I would have to room with girls. We were at times divided by gender

this trip, feeling a bit freer because of being in another country and knowing I was less scrutinized than at school, I began using men's restrooms. On that trip I also saw a news story about a lawsuit against the Gloucester County School District in Virginia brought by another transgender student who was not allowed to use the boys' restroom. In that story I learned that the U.S. Department of Justice had said that transgender students have the right to use restrooms in accordance with their gender identity under Title IX. I was thrilled to learn that I had this legally protected right.

16. When my junior year started in September 2015, I only used boys' restrooms. No one said anything, and for seven months, I had no issues with other students or staff when I used the restrooms. I did not discuss my decision to use the boys' restrooms with any teachers or administrators because I knew that using the boys' restrooms was my legal right.

17. One day in late February 2016, I was washing my hands in the sink in the boys' restroom when a teacher walked in who had known me my freshman year. He gave me a funny look. A week or two later, just after I finished taking the ACT test, my mom told me that administrators had decided that I would only be permitted to use the girls' or single-user gender-neutral restrooms. Never before had I felt scrutinized and degraded to such an extent in just using the boys' restroom.

18. Hearing that news, I was incredibly upset, uncomfortable, and embarrassed. I am not a girl, and because of that I hadn't used a girls' restroom in months anywhere. If I used the girls' restrooms, that would totally confuse classmates who see me as the boy that I am, and make them think that I'm not a "real" boy and they don't need to respect my identity. I knew they would look at me strangely, ask me intrusive questions, and some would probably laugh at

me and bully me. The idea of using the girls' restroom was humiliating and there was no way I could do it. If I were to use the gender-neutral restrooms, I would also stand out from everyone else with a big label on me that said "transgender." It was humiliating to think of being singled out in that way, which I knew would make other students look at me strangely, ask me intrusive questions, and some would make fun of me and bully me. Having to use a single-user restroom separate from all other students would send the message that I am so different from other students that I need to be separated from everyone else. I was also afraid of getting in trouble if I didn't go with one of the school's options. I had never experienced any disciplinary trouble at school and I was very worried about that possibility.

19. Despite these fears, for the rest of the school year, I kept using the boys' restrooms when I needed to go, because to me, the only other option was to never use any restrooms at school. With my after-school activities, a typical school day for me is about 10 hours. I also know that using the boys' restroom is my legal right. Feeling trapped and having no choice but to break the school's rules or do things I knew were putting my health at risk (trying not to drink liquids during the school day) made me more anxious and depressed. I had trouble completing my schoolwork and sleeping at night. I felt so hopeless, I even had thoughts about suicide.

20. Around March 10, 2016, my mother and I met with my counselor, Ms. Tronvig, and Holly Graf, an assistant principal. During this meeting, Ms. Graf would only call me by my birth name. She told us that I couldn't use the boys' restrooms because my gender is listed as female in the school's official records. She said they wouldn't change that unless they received legal or medical documentation. My mother explained that I was too young for transition-related surgery, but had my pediatrician fax a letter stating that I am a transgender boy and I should be

restrooms.

21. Around March 17, 2016, when I went into the boys' restroom, I saw an assistant principal, Mr. Geiger, watch me. When I exited the restroom, I saw Mr. Geiger typing an email. I assumed that he was emailing the other administrators to report me. A short time later Ms. Graf called me in to her office to meet with her, and proceeded to lecture me for half an hour about my restroom use. Ms. Graf told me that I would be subject to disciplinary action if I kept using the boys' restrooms—she said I would have to “go down to 109 or 203” which could lead to in-school suspension. 109 and 203 are discipline offices at school. She asked me why I was not using the girls' or a single-user restroom, and I told her that I wouldn't use the girls' restroom because that would not be appropriate because I'm not a girl. She asked me to compromise and use the single-user restroom in the office. I refused because it was still far from my other classes and it would still make me stand out as different from my classmates. I also told her that the school's policy violated my rights under Title IX.

22. At this meeting and in general, Ms. Graf has almost exclusively referred to me by my female birth name and female pronouns even when I asked that my new name and male pronouns be used instead. When I became upset in our March 17 meeting, she said condescendingly, using my birth name, “S-----, calm down.” I felt angry and humiliated by this and I left the office.

23. After this meeting, I started crying in the hallway. The rest of the day, I couldn't focus in any of my classes, and just kept having flashbacks about how awful that meeting was and fighting back tears. After school, I skipped work and just lay in bed, exhausted and depressed and not wanting to move, because of the stressful situation I had been forced into.

year. I met with Ms. Graf alone or with my mother several times because I kept using the boys' restroom. The meetings with Ms. Graf felt invasive and embarrassing. I was mortified that school staff were clearly watching and reporting on my every move. Since these meetings happened during class time, I knew other students and teachers were wondering why I was getting pulled out of class so much, and I felt embarrassed having to explain it to them when they asked. I was also worried that being pulled out of class so much would hurt my performance in school. I was also worried about disciplinary action hurting my ability to get into college.

25. I also learned from my mother that the school security guards had been asked to monitor my restroom use. I felt so embarrassed and stressed by this scrutiny and surveillance.

26. On April 6, 2016, I attended a meeting with my mother, Ms. Graf, Susan Valeri from KUSD, and Richard Aiello, Tremper's principal. At this meeting, I was given the further option of using two single-gender restrooms on the opposite sides of campus. They had installed new locks and I would be the only student who had a key to open them. These restrooms were not near my classes and I would have had to miss class time to use them. I was also embarrassed frustrated at the idea of needing to be assigned personal, separate restrooms, unlike any other students at Tremper. I knew that other students would be curious and annoyed that I was the only person who had access to these locked restrooms. I knew if I used those restrooms some students would not just ask questions but talk about me, make fun of me and bully me.

27. At the April 6 meeting, I asked Ms. Valeri what the school's reason was for not letting me use the boys' restrooms that did not have anything to do with my anatomy. Ms. Valeri essentially said, "Well, we've never had a student who identifies as male but was born female." I told them that Title IX prohibits discrimination based on sex, and that this protects transgender

students and means that schools have to let students use restrooms consistent with students'

gender identity. Ms. Valeri said that Title IX did not protect transgender students' access to restrooms consistent with their gender identity. When I asked Valeri to explain what she thought Title IX meant, she refused. When I asked why, she said something like, "I don't think I'm going to give you any reasons."

28. After this meeting, I continued to avoid using the restrooms as much as possible. I have never used the single-user restrooms that I was given special keys for because I did not want to call attention to myself by using them.

29. My depression, anxiety, and gender dysphoria have become worse because of these experiences of negotiating using the bathroom at school, and all the other ways that they school has refused to acknowledge or respect my gender identity and treat me differently just because I am transgender. A lot of times I didn't even want to get out of bed in the morning and go to school, even though I always used to love school. I also have experienced more migraines, fainting, and dizziness because I was attempting to avoid using any school restrooms. I considered withdrawing from Tremper and finishing high school online, but decided not to because I would miss out on my after school activities and because transferring would make me fall even more behind on classwork.

30. In March 2016, I learned that Tremper's junior prom advisor had nominated me to be on the prom court for prom king. At Tremper, nominations for prom court are based on students' community service hours.

31. Around March 22, 2016, my mom was called in to meet with Mr. Aiello and Ms. Graf. They told her that they would allow me to be a candidate for prom court, but only as prom queen, not prom king. When my mom told me about their decision, I was humiliated by the idea

of running for prom queen when my classmates know me as the boy that I am. I felt disrespected by the administration and angry that they did not seem to realize how hurtful they were being.

32. On April 4, 2016, my friends and I showed administrators a MoveOn.org petition demanding that I be allowed to run for prom king and use the boys' restrooms. The petition was signed by thousands of people around the country and many members of the Tremper community. The following day, on April 5, 2016, 70 students had a sit-in at Tremper's main office to show their support for me and for equal rights for transgender students.

33. After the sit-in and the media attention it received, I was told that I would be allowed to run for prom king after all. I was glad to have this opportunity and grateful for the support of my classmates, but I continue to feel upset about the way I was treated by the administration and the fact that they only backed down because of that public attention.

34. Throughout my time at Tremper, most of my teachers have referred to me by my male name, but since KUSD has not changed my name on official records, I have to tell my teachers at the beginning of each term about my preferred name and pronouns. Every time I have a substitute teacher, I have to tell that teacher before class starts that my real name is Ash and that they should call me by that name, not the name on the roster. Even then, some substitute teachers still refer to me by my birth name in class. Sometimes I forget to tell a substitute teacher before class starts about my name, and those teachers will almost always use my birth name in front of other students. Having to correct this in front of everyone reveals to everyone or reminds them of my birth name and is humiliating.

35. At an orchestra rehearsal at school on May 11, 2016, I was approached by the orchestra's volunteer pianist, who put her hands on my shoulders and said something like, "Ash, honey, this isn't about you, this is bigger than you. I'm praying for you." This volunteer also

transgender students’ rights and has mentioned me by name numerous times. My mother and I brought this incident to Mr. Aiello, who requested that the orchestra teacher call the volunteer and tell her not to talk to students like that. It didn’t seem like anything changed, though. That woman is still a regular volunteer with the orchestra, and I feel awkward and embarrassed and angry when she’s around, because it felt like she got away with deliberately attacking me online, even though Mr. Aiello had explicitly said that was unacceptable.

36. In May 2016, I learned from my mother that school administrators had told guidance counselors to distribute bright green wristbands to transgender students so that their use of the restrooms could be monitored more easily. This made me feel sick and scared. I told my mom there was no way I would agree to wear one, but I was afraid that the school would make me do so. I knew that wearing something like that would single me out for more questions, harassment, or even violence for being transgender.

37. From June 12-16, 2016, I participated in a five-day, school-sponsored summer orchestra camp at the University of Wisconsin-Oshkosh campus. I signed up to stay in a boys’ suite with one of my best friends, who is a boy. I was told by Ms. Breitenbach-Cooper that school administrators had decided that I had to either stay in a suite with girls or stay alone. I was definitely uncomfortable staying with girls, so I reluctantly agreed to stay in a double-bedroom suite alone so that I could participate in the program.

38. Staying in a suite alone meant that I could not socialize often with other students in the evenings, since students were not allowed to enter each other’s suites. Each evening while everyone else was having fun with their friends, I stayed in my room, either sleeping or practicing my violin. That whole trip I felt lonely and depressed, and disappointed that I wasn’t

able to share those fun experiences with my classmates and have happy memories of my last year

at camp. I was also hurt and embarrassed. Even though the school did not explain why I could not stay with boys, I understood that they still did not consider me a real boy—and it was degrading and humiliating to think that my teachers and administrators were thinking of me—and no other students—in those terms.

39. I have suffered both physically and emotionally by being separated from and being treated differently than my male classmates. Physically, I have experienced dehydration, dizziness, fainting or nearly fainting, and migraines as a result of limiting my liquid intake to try not to have to use the restroom at school. I have felt increasingly depressed and anxious over the last months due to the discriminatory actions taken by Tremper's administration. These have hurt my ability to focus in class and perform well in school.

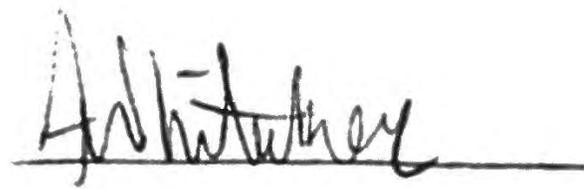
40. The level of attention and scrutiny has made me feel unsafe and scared being outside of my house. I'm constantly afraid that I will be targeted for an assault by someone who knows I am transgender. I try to avoid ever going out alone or even with just one other friend, only going out in groups, so that I'll be protected.

41. If I am not allowed to use the boys' restrooms during my senior year of high school, I know I will experience the same embarrassment, anxiety, and depression as I did last year. I am also worried that my symptoms of vasovagal syncope—fainting and migraines—will continue to get worse. I am continuing to think seriously about transferring to an online school if Tremper and KUSD keep refusing to respect my identity and doing things that single me out and label me as different from all the other boys.

42. I just want to live as who I am—a boy—and go to school without being harassed, discriminated against, demeaned, and humiliated by my school.

United States of America that the foregoing is true and correct.

Executed on August 14, 2016

A handwritten signature in black ink, appearing to read "Ashton Whitaker", written over a horizontal line.

By:

Ashton Whitaker

## **EXHIBIT 2**

### **DECLARATION OF DR. STEPHANIE L. BUDGE, Ph.D.**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

ASHTON WHITAKER, a minor, by his  
mother and next friend, MELISSA  
WHITAKER,

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT  
NO. 1 BOARD OF EDUCATION and SUE  
SAVAGLIO-JARVIS, in her official capacity  
as Superintendent of the Kenosha Unified  
School District No. 1,

Defendants.

Civ. Action No. 2:16-cv-00943

**Declaration of Stephanie L. Budge, Ph.D.**

**PRELIMINARY STATEMENT**

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

2. The information provided regarding my professional background, experiences, publications, and presentations are detailed in my curriculum vitae. This is included as an accurate and true copy and is attached as Exhibit A to this declaration.

3. I received my Ph.D. in Counseling Psychology from the University of Wisconsin-Madison in 2011, with focuses on lesbian, gay, bisexual, and transgender (“LGBT”) issues and psychological assessment. I am a tenure-track Assistant Professor of Counseling Psychology at the University of Wisconsin-Madison (“UW-Madison”) in the School of Education’s Department of Counseling Psychology. I was a visiting assistant professor at UW-Madison from 2014-2016 and received a tenure-track appointment in 2016. I was previously an assistant professor at the

Counseling, and College Student Personnel from 2011 to 2014. I have been a mental health professional since 2006 and I hold a license to practice psychology in the State of Wisconsin. The focus of my academic and clinical work is on the emotional and coping mechanisms of transgender adolescents and adults.

4. I have expertise working with adolescents and adults whose assigned sex at birth is incongruent with their gender identity (hereafter referred to as transgender or trans individuals). Many of these individuals have met the criteria for Gender Dysphoria. I have been a mental health provider to transgender individuals since 2007 and the majority of my caseload over the 10 years since I have been a mental health professional has been trans-identified individuals. The majority of my caseload (around 80%) since 2011 has included transgender youth (ages 13-24). In 2008, I received a year of specialized training in a forensic setting to evaluate adolescents. I also sought and received specialized training as a graduate student in psychological assessment and teach psychological assessment courses to graduate students.

5. I have published 53 peer-reviewed journal articles and book chapters, with the majority of these focusing on transgender individuals. Notably, several of these publications are specifically focused on evaluating transgender individuals to assess their eligibility for transition-related care, including hormone treatment and surgery; how to engage in clinical decision-making related to mental health care for transgender individuals; and effective psychotherapeutic treatment for transgender individuals.

6. I am on the editorial board for three peer-reviewed academic journals: *Psychology of Sexual Orientation and Gender Diversity*; *Archives of Sexual Behavior*; and the *International*

assistance as an expert reviewer for research focused on transgender individuals.

7. I have been involved in over 97 academic presentations (internationally, nationally, and locally). The majority of these presentations have been focused on transgender individuals.

8. I have conducted and analyzed research with over 8,000 transgender individuals. I am currently completing a longitudinal study focused on transgender youth and their families, specifically focusing on their mental health and emotional/coping processes when experiencing discrimination, harassment, and barriers in institutional settings, including schools. The co-principal investigator (Sabra Katz-Wise, PhD) and I have two publications under review that highlight the experiences of these youth and their families. I am also conducting research with the Pediatric and Adolescent Transgender Health clinic in Madison, Wisconsin focusing on transgender youth access to mental and physical health care and the barriers involved in the process of obtaining treatment.

9. I am a member of the World Professional Association of Transgender Health (WPATH). WPATH (formerly known as the Harry Benjamin International Gender Dysphoria Association) is an interdisciplinary professional and educational organization of individuals worldwide who specialize in research and practice on transgender health and with transgender individuals. The organization's mission includes supporting clinical and academic research to develop evidence-based, high quality health care for transgender and gender-nonconforming individuals. WPATH's leadership and many of its members are widely considered experts in this field. As explained further in paragraph 23 below, WPATH publishes the Standards of Care (SOC) for the Health of Transsexual, Transgender, and Gender Nonconforming People, which

member, I attend conferences that focus on transgender adults and transgender youth and present my own research to provide trainings to other professionals.

10. I am also a member of the Society for Lesbian, Gay, Bisexual, and Transgender Issues (Division 44) within the American Psychological Association (APA) (of which I am also a member). I am co-chair of the Science Committee for Division 44. The Science Committee is charged with ensuring that the most relevant and up-to-date research regarding LGBT individuals is disseminated through Division 44 and to full membership of the APA. We provide programming at the annual APA convention to disseminate cutting edge research on the best psychological practices and evidence-based treatments with LGBT individuals. At the 2016 APA annual convention, I was charged with disseminating information about evidence-based treatments for transgender individuals, as part of my role as co-chair of this committee.

11. I have received several awards for my expertise in the science and practice of working with transgender individuals, including the 2015 American Psychological Association Early Career Award for work with LGBT populations from the Society for Counseling Psychology and I was the first recipient of the APA Transgender Research Award in 2010. Locally, I am also a member of the Wisconsin Trans Health Coalition, which is an organization focused on decreasing violence and discrimination against transgender individuals within Wisconsin. As such, I am routinely sought out by school districts, service providers, and others as an expert on mental health and transgender issues within Wisconsin.

12. In preparing this declaration, I reviewed A.W.'s medical and therapy records. I also reviewed the seminal and influential psychological and public health research on

research published as recently as this year. A bibliography is attached as Exhibit B.

13. I personally met with A.W. and his mother, Melissa Whitaker, on August 2, 2016, to conduct a clinical assessment of A.W. The purpose of this meeting was to administer psychological testing and to review records from his pediatrician and therapists. Based on that assessment, I render the following opinions, with a reasonable degree of professional certainty in my field of psychology.

14. I understand that this declaration will be submitted in support of A.W.'s motion for preliminary injunction in this case. I am prepared to testify about the information and conclusions contained in this report at a hearing. I may prepare a full expert witness report, as appropriate, during this litigation.

15. I am being compensated at an hourly rate of \$150/hour for actual time devoted for my expert services and testimony in this case, as well as expenses and costs. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

#### **SEX, GENDER IDENTITY, AND GENDER DYSPHORIA**

16. "Gender identity" is a term that has broad psychological and medical consensus to mean a person's internal sense of one's own gender. All human beings have a gender identity. Gender identity is innate and generally considered an immutable characteristic. Gender identity for all human beings usually begins to become clear around the age of three (with some variation around this age), although many transgender individuals may not begin to recognize or express their gender identity until later in life.

clitorises, vulvas), internal female reproductive organs (i.e., ovaries, uteruses), and XX chromosomes, will identify as women and experience themselves as female. Conversely, the majority of individuals born with penises, testes, and XY chromosomes will identify as men and experience themselves as male. However, there are many variations that may differ from that typical course, such as transgender people and those with intersex conditions and sex chromosome conditions (e.g., Turner Syndrome, Klinefelter Syndrome).

18. There is no single anatomical or physiological characteristic that defines a person's sex. When sex-related characteristics such as internal or external genitalia, reproductive capacity, chromosomes, or gender identity are inconsistent—as with many transgender people and people with intersex conditions—it is most appropriate to define sex based on the person's gender identity.

19. A transgender person is someone whose experienced gender identity differs from, or is incongruent with, their sex assigned at birth.

20. Gender Dysphoria is the medical and psychiatric term for that gender incongruence. The psychiatric diagnosis is codified within the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5), and the medical diagnosis is included within the World Health Organization's International Classification of Diseases (ICD-10) (under the now-outdated name Gender Identity Disorder). Individuals who are diagnosed within these classifications present with a variety of symptoms, and typically indicate an intense need to present themselves and be viewed by others in accordance with their gender identity (that differs from their sex assigned at birth). When clients with gender incongruence do not obtain competent and necessary treatment, serious and debilitating

occurs. True and correct copies of the relevant portions of DSM-5 and ICD-10 are attached to this declaration as Exhibits B and C, respectively.

21. Under the DSM-5, the criteria for identifying Gender Dysphoria in adolescents and adults (302.85) are:

- a. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:
  - (1) A marked incongruence between one's experienced/expressed gender and primary and or/secondary sex characteristics (or in young adolescents, the anticipated 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 experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics)
  - (3) A strong desire for the primary and/or secondary sex characteristics of the other gender.
  - (4) A strong desire to be of the other gender (or some alternative gender different from one's assigned gender)
  - (5) A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender)

(6) A strong conviction that one has the typical feelings and reactions of the

other gender (or some alternative gender different from one's assigned gender)

22. Gender Dysphoria is associated with clinically significant distress or impairment in social, occupational, educational, or other important areas of functioning.

23. WPATH publishes the Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People ("SOC") that are considered the international standards for medical and mental health treatment for transgender individuals. The foremost medical and mental health organizations within the United States, and internationally, recognize the SOC as the authoritative standards for treatment of Gender Dysphoria. Those include the American Psychological Association, the American Psychiatric Association, the American Counseling Association, and the American Medical Association. WPATH has published the SOC since 1979. The Seventh Version of the SOC was published in 2012. A true and correct copy of the SOC, Seventh Version, is attached to this declaration as Exhibit D.

24. The SOC provide evidence-based protocols for mental health and medical providers to follow in determining the specific treatment regimen that will best fit the needs of the transgender individual. It has been well-established from the SOC and experts in the health care of transgender individuals that each transgender person has their own specific transition needs and that not every transition will look the same. Treatment generally consists of social, psychological, and/or medical support, as needed, that allows the individual to live and be integrated into society in accordance with their gender identity, thus relieving the distress that results from gender incongruence. Treatment interventions do not "prove" a person's gender

identity; instead, they help to bring the person's external appearance and gender role in line with who the person really is.

25. For most transgender individuals an important piece of treatment to reduce dysphoria is to engage in a social transition—i.e., non-medical processes taken to ensure that the individual can live in the world in a manner fully consistent with the individual's gender identity. As part of a social transition, an individual will typically tell others of their gender identity, go by a new name, use pronouns congruent with their gender identity, wear clothing typically associated with their gender identity, change their hairstyle, and use restrooms that fit their gender identity, among other things. To be clinically effective at alleviating the distress associated with Gender Dysphoria, a social transition must be respected consistently across all aspects of a trans individual's life—for example, at home, in school, and at work.

26. Psychotherapy to reduce the harmful effects of stigma and improve resiliency, hormone therapy, and/or surgeries can all be very effective ways to treat an individuals' dysphoria; as noted, however, there is no "one size fits all" medical regimen. In addition, individuals may be constrained by practical limitations—for instance, age, medical contraindications, or cost—on the ability to obtain medical treatment such as hormones or surgeries. Surgeries and other treatments related to gender transition are frequently excluded from coverage under health insurance plans.

27. Before transgender identity and Gender Dysphoria were well understood by the medical community, there had been a short history of considering these as disorders to be "cured" through therapy that attempted to reverse the individual's gender identity. This has been referred to as "reparative therapy" in much of the academic and clinical literature. There is a

harm) and ineffective.

28. Under the SOC, medical transition is not appropriate for pre-pubertal transgender children. For transgender adolescents, hormone therapy may be prescribed—either puberty-blocking hormones designed to delay the onset of physical changes associated with puberty and/or hormones designed to masculinize or feminize the individual’s appearance. Genital surgery is not advised by the SOC until after the adolescent has reached the age of majority.

29. Virtually all transgender adolescents, however, will undergo some type of social transition. Current evidence-based treatment indicates that mental health/medical providers and social supports should affirm an adolescent through a social transition to ensure that their gender identity is part of their lived experience in all aspects of their lives. It is the aim of treatment to assist the adolescent in successfully integrating their internal identity into a life that allows them to function consistently in accordance with that identity and not feel shame for who they are. It is inconsistent with evidenced-based practice to discourage or impede an adolescent from moving forward with any aspect of their transition; if clinically-indicated aspects of transition are impeded, it is likely that critical levels of distress will result. For example, impeding access to a restroom that is in alignment with an adolescent’s gender identity will likely result in clinical distress. For transgender adolescents, it is critical that all aspects of social transition are supported by their family, school, work, and community.

#### **IMPACT OF EXCLUSION AND NON-AFFIRMATION**

30. In the United States, public restrooms are often separated based on gender (women’s and men’s restrooms), unlike most other spaces. When restrooms are gendered and a transgender individual is restricted to the restroom based on their assigned sex at birth, they are

being told unmistakably that their understanding of their own gender is invalid. In addition, when

“accommodations” are offered to transgender individuals that allow them to either use the restroom of their assigned sex at birth or a restroom that is not usually designated for their group (e.g., sending a high school student to a faculty restroom), that individual is being told not only that their gender is invalid, but that they are something “other” and must be separated from all their peers. Numerous research studies have confirmed the negative psychological impact of being invalidated and “othered” in this way. Specifically, for transgender individuals, such exclusion fundamentally impedes the process of social transition because it prevents the positive integration of their gender identity through affirmation and instead sends a strong message to the individual—that this is a shameful aspect of their identity—that they are likely to internalize.

31. The *gender minority stress and resilience* model provides an explanation for the mental and physical health disparities between transgender and non-transgender populations. This model identifies four common external stressors: gender-based victimization (verbal or physical acts of hostility based on transgender status), gender-based rejection, gender-based discrimination, and identity non-affirmation. These external gender minority stress factors can lead to three types of internal stressors: negative expectations for future events, internalized transphobia, and non-disclosure of one’s identity. Negative expectations for future events represent the belief that one may experience prejudice events, discrimination, and social rejection. These beliefs may be based on prior similar personal experiences and/or awareness of general societal stigma against transgender individuals. Internalized transphobia is the adoption and internalization of negative societal attitudes toward transgender individuals. Identity non-disclosure is an effort to conceal one’s transgender status.

demonstrated that transgender people face high levels of discrimination and victimization and that exposure to these external stressors is associated with serious psychological harms including anxiety, depression, suicidal ideation, and suicide attempt. For example, one study (Boza & Perry, 2014) found that nearly 70% of transgender and gender non-conforming people had experienced at least one form of victimization or discrimination related to their gender identity, including social discrimination (55%) and harassment (43%). These types of discrimination events are strongly related to suicidality. For example, Goldblum et al. (2012) and Testa et al. (2012) found that individuals who have experienced prejudice events such as these are three to four times more likely to have a history of suicide attempt compared to those who have not had experiences of gender-related victimization and violence. Studies show that rates of ideation for transgender and gender non-conforming individuals with histories of victimization ranged from to 33-47% in the past year (Scanlon et al., 2010) and 82-97% over the lifetime (Testa et al., 2012). These rates are consistently and strikingly higher than the estimated lifetime prevalence of suicidal ideation and suicide attempts in the general population of 13.5% and 4.6%, respectively (Kessler, Borges, & Walters, 1999).

33. One study examined the relationship between suicidal behavior and gender-based hostility and insensitivity experienced in high school (Goldblum, Testa, Pflum, Hendricks, Bradford, & Bongar, 2012). Transgender and gender non-conforming participants were asked if they had experienced hostility or insensitivity from fellow students, teachers, or school administrators in their high school as a result of their gender identity or expression. Those who reported having been the victim of gender-based hostility were approximately four times more likely to have made a suicide attempt than those who did not report being so victimized.

allowed to use restrooms corresponding to their gender identity. Most transgender individuals begin using restrooms consistent with their identity after completing other aspects of social transition (wearing clothing associated with their gender, changing their hair, etc.). Transgender and gender non-conforming people regularly face harassment and victimization in restrooms when they are perceived not to belong (Herman, 2013). Excluding transgender individuals from restrooms that correspond to their gender identity following a social transition thus subjects those individuals to increased risk of actual victimization as well as the realistic fear of such victimization, with the attendant harms resulting from that stress.

35. Predictably, to avoid the harmful effects of non-affirmation or fear of victimization, transgender individuals will often avoid using the bathroom in any public space. This can lead to significant health consequences. First, transgender individuals will often avoid an intake of fluids to avoid the necessity to urinate; this can have significant health consequences related to dehydration. Even if transgender individuals do not avoid fluid intake, they will often hold urine in their bladders to avoid using the bathroom; this can also cause negative health consequences such as urinary tract or kidney infections. Transgender individuals may also avoid eating certain foods (or restrict food in general) to circumvent defecation, leading to constipation and muscle damage/weakness.

36. Although many transgender individuals report negative consequences when they are restricted from using bathrooms consistent with their identity, this exclusion may be particularly damaging during adolescence. Adolescence is marked by a time of development where individuals' attention and awareness are particularly heightened related to looks, "fitting in," and navigating complex social interactions. Transgender adolescents are typically acutely

gender. An internal consequence of that “not fitting in” is often internalized shame and sometimes diagnosable social anxiety and depression. External consequences can include experiences of bullying, harassment, and discrimination by peers and adults within school institutions.

37. Research shows that the mental health consequences of discrimination and disaffirmation for transgender youth are dire: transgender adolescents experience depression, anxiety, self-harm, and suicidal ideation/attempt(s) at two to three times the rates of cisgender (non-transgender) adolescents (Reisner et al., 2015). Indeed, research released in 2013 indicates that more than 50% of transgender youth report attempting suicide at least once in their lifetime (Mustanski & Liu, 2013).

38. Numerous retrospective and contemporaneous studies have noted the difficulties that transgender adolescents experience while in school. For example, a 2009 report (Greytek et al., 2009) noted that two-thirds of transgender youth feel unsafe at school because of their gender identity and almost all (89%) transgender youth reported being verbally harassed at school. The report indicates that 39% of school staff had commented negatively about someone’s gender expression over the past year. Participants also indicated that it was rare for school personnel to intervene when seeing transgender adolescents victimized at school—no intervention occurred 89% of the time. These negative experiences can cause feelings of shame, stigma, and unworthiness, and can lead to psychological distress. This stress can be overwhelming, distracting transgender students from the ability to concentrate on schoolwork, and can even lead students to drop out of school. A study published just prior to the writing of this report indicates that experiences of discrimination and stigmatization related to transgender identity can

trans-related trauma (Reisner et al., 2016).

39. In addition to the links between harassment and discrimination from peers and clinical distress in transgender adolescents, it can be even more harmful when adults in power perpetuate notions that isolate and stigmatize transgender adolescents. Research on *social identity theory* describes the harm that results when people of higher status—usually people in power such as, in the case of students, school administrators—fail to affirm or actively disaffirm lower-status individuals with a marginalized identity. This often leads to external forms of harm such as ostracizing and discrimination against the individual by peers and others, as well as internal harms such as internalized shame and self-hatred. These internal and external factors can be directly related to psychological distress, such as post-traumatic stress disorder, depressive disorders, anxiety disorders, and hypertension, amongst myriad other health concerns.

#### **CLINICAL ASSESSMENT OF A.W.**

40. I met with A.W. and his mother, Melissa Whitaker, on August 2, 2016 to conduct a psychological assessment.

41. I used the following Instruments used for the clinical assessment of A.W.: Schedule for Affective Disorders and Schizophrenia for School Age Children (K-SADS-PL), Kutcher Adolescent Depression Scale, Kutcher Generalized Social Anxiety Disorder Scale for Adolescents (K-GSADS-A), Severity of Posttraumatic Stress Symptoms-Child Ages 11-17 (NSESSS), Severity Measure for Social Anxiety Disorder (Social Phobia)-Child Ages 11-17, Severity Measure for Generalized Anxiety Disorder-Child Ages 11-17, Patient Health Questionnaire for Adolescents (PHQ-9), Multidimensional Scale of Perceived Social Support (MSPSS), and Transgender Outness Inventory (TOI).

“female-to-male,” or “FTM”).

43. A.W. reported a lack of significant psychological history until he reached 6th and 7th grade. He reported that he began experiencing bullying around 7th grade and also began to “feel different.” Around that time he stated he began experiencing symptoms congruent with Major Depressive Disorder, specifically feeling down, losing interest in usual activities, difficulty concentrating, feeling a lack of motivation, having difficulty sleeping, and experiencing suicidal ideation. He indicated that as he began to learn more about transgender identity, toward the end of middle school, he felt motivated to come out to his parents. He said he “tested the waters” with his mother in July 2013 by asking about insurance coverage for treatments for transgender individuals. A.W. reported that his distress increased at this time, primarily due to expectations of rejection from peers and loved ones.

44. A.W. stated that once he was able to start transitioning and started experiencing more family support, he began to experience increased psychological well-being. He indicated that he was feeling less anxiety and depression, as well as a complete lack of suicidal ideation during this time. Once he was specifically instructed to not use the boys’ bathroom at school, however, his distress increased again, dramatically.

45. Based on the clinical assessment, A.W. meets criteria for several mental health diagnoses.

46. First, he meets all 6 of the criteria under category A in the Gender Dysphoria diagnosis.

- The first symptom under category A includes a marked incongruence between one’s experienced/expressed gender and primary and/or secondary sex

characteristics. A.W. reported that he experiences a marked incongruence

between his sex assigned at birth (female) and his internal sense of gender identity (male) and gender expression (masculine).

- Symptoms 2 and 3 include the desire to be rid of one's primary/secondary sex characteristics from one's sex assigned at birth and to obtain the primary/secondary sex characteristics typically associated with one's gender identity. A.W. indicated that he experiences discomfort with his chest and with menstruation and strongly desires male secondary sex characteristics (e.g., deep voice, facial hair, redistribution of body fat).
- The fourth symptom in the DSM-5 is a strong desire to be of the other gender. He stated that he has had a strong desire to identify as a boy—and understanding that he is a boy—since 2013, far exceeding the 6-month minimum in the DSM-5 criteria.
- Symptoms 5 and 6 within this diagnosis are a strong desire to be treated as the other gender and a strong conviction that one has the typical feelings and reactions of the other gender. He stated that it is essential for others to see him and treat him as a boy, otherwise he experiences an increase in dysphoria. He said that he clearly feels that he is like any other boy and relates to others as a boy. He recently started hormone therapy (testosterone) and reported that this momentarily assisted with some gender dysphoria, but that his experiences of external rejection often increase his dysphoria.

47. He meets the criteria for category B on three levels: 1) he experiences significant and constant distress related to how he has been treated by school staff and peers related to his

and 3) he experiences distress related to barriers in accessing local trans-competent medical and mental health care.

48. In addition to my assessment that A.W. meets the criteria for Gender Dysphoria, according to his records, he was also diagnosed with Gender Dysphoria by his medical provider (Sheryn Abraham, MD) on 06/30/14 and by his therapist (Tara Rullman, MA, LPC) on 09/06/14.

49. The overarching diagnosis that subsumes several of the diagnoses that will be discussed below is post-traumatic stress disorder (PTSD with panic attacks; 309.81). During the diagnostic interview, A.W. endorsed 8 out of the 8 criteria in the DSM-5 for a diagnosis of PTSD. He reported experiencing several traumatic events, the majority of which include verbal harassment and discrimination at school. These experiences have led to intrusion symptoms, such as recurrent, involuntary, and distressing memories of these events; several flashbacks; and intense distress in situations that remind him of experiences of verbal harassment and discrimination. Primarily he reports persistent avoidance of thoughts and memories as well as avoiding people, places, and situations that remind him of these experiences (or avoiding these situations due to a very real fear that the harassment and discrimination may occur again). Out of the seven criteria focused on negative alterations in mood, where a minimum of two is needed for diagnosis, A.W. endorsed all seven. For the criteria relating to alterations in reactivity, where a minimum of two is needed for diagnosis, he endorsed five out of six criteria. Those included irritability and anger, self-destructive behavior, hypervigilance around using restrooms or going out in public, problems with concentration on schoolwork, and sleep disturbance.

50. Depression and anxiety are often comorbid disorders when an individual meets criteria for PTSD. A.W. meets criteria for Major Depressive Disorder (moderate; 296.33). He

endorsed experiencing 8 out of 9 symptoms. Many of these symptoms overlap with his PTSD symptoms, such as feelings of worthlessness, lack of concentration, difficulty with motivation, psychomotor agitation, and loss of interest in things. He reported that he often has difficulty getting out of bed and feels tired “all of the time.” He also indicated that he has lost interest in things he used to find enjoyable and that his level of irritability is much higher than usual. He reported current thoughts of suicide, but does not have any plan or intent. He reported that his suicidal thoughts are passive and that they are usually thoughts that “come up” when he is feeling particularly hopeless. He indicated that he copes with many of these symptoms (but most specifically his suicidal ideation) by talking with a friend about them. He stated that his depressive symptoms for his most recent depressive episode began around four months prior to this assessment. He indicated that his depressive symptoms worsen each time he meets with school officials and is confronted with a similar outcome about his bathroom access, when he is treated “like a girl,” or when school staff see how he is being treated and do not step in.

51. A.W. also meets criteria for several anxiety disorders, such as Social Anxiety Disorder (300.23) and Generalized Anxiety Disorder. (300.02) He reported complete avoidance of social gatherings, changing/showering in locker rooms, initiating conversations with strangers, and asking someone out on a date. He also reported in the last week, that he has “all of the time” felt: anxious/worried/nervous, spent a lot of time making decisions/putting off decisions/ preparing for situations due to worry, and sought reassurance from others due to worry. In the last week, he reported having moments of sudden terror, heart racing, sweating, trouble breathing, and feeling faint. He also reported that over the last four years, he has had several incidences of panic, some of which meet criteria for a panic attack; he does not report concern or worry about having panic attacks or changing his behaviors because of the panic attacks.

Because of the comorbid nature of PTSD and these symptoms, it is my clinical opinion that these experiences of anxiety are directly attributable to PTSD and are not derived from other isolated events. According to the DSM-5, individuals with PTSD are 80% more likely than those without PTSD to present with symptoms for depression and anxiety; thus it is often a complex process of determining the course and nature of these disorders. Although it is possible for a transgender person to experience these diagnoses without the cause of the diagnoses being focused on how one is treated as a transgender person, it is my clinical opinion that A.W. meets criteria for these diagnoses based on his hypervigilance around how he will be treated as a transgender person. In order to navigate the world to stay safe, it is actually protective for A.W. to be mindful and somewhat fearful of social situations, due to a high likelihood of experiencing rejection or discrimination. A.W.'s fears have been reinforced by school administrators making clear their view that he does not belong in situations where any other boy would be allowed, thus creating a situation where he constantly has to notice his own level of difference and to read social situations to find out if he will be treated with respect.

52. Because A.W.'s anxiety and depression first started based on his experiences of bullying and continued when he began to experience internalized shame related to his gender identity, this can be conceptualized within the Cultural Formulation of Stress (DSM-5) model: when individuals from marginalized groups experience discrimination based on their marginalized identity, PTSD can result.

53. It is my assessment that the specific ways that A.W. has been treated have significantly and negatively impacted his mental health and overall well-being. A.W. described symptoms of trauma, depression, and anxiety that related to being treated differently because he is a transgender boy. A.W. reported that he lives in fear at school and that this fear has started to

translate to other areas outside of school. He stated that he avoids using the bathroom during the day. He stated that this causes physical discomfort, but also perceives that this is not good for his physical health. After leaving meetings with school staff regarding his treatment, A.W. indicates he has spent tearful nights at home and regularly has difficulty sleeping, especially on evenings when an incident at school has occurred. A.W. reported, “It is a miracle that I have been able to keep my grades up” and said that his only motivation to be successful in school is so he can leave school to attend a university environment that will accept him fully for who he is, as a boy.

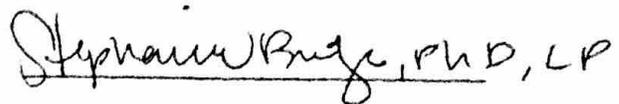
54. In addition to the negative psychological effect of not being able to use the boys’ bathroom at school, A.W. related that he experienced psychological distress directly related to school staff not using he/him/his pronouns, not using his male name, isolating him to a gender-neutral single room on a school trip, and refusing to let him run as prom king (despite his stellar grades and meeting all required criteria). In contrast to his psychological distress experienced from not being able to use the restrooms, A.W. indicated that he experiences some anxiety, but primarily experiences depression from being misgendered. He stated that it causes him to feel like there is something “wrong with me” and further perpetuates his feelings of shame.

55. Based on the assessment results, it is my strong recommendation that A.W. be allowed to use the boys’ restrooms at school and otherwise be allowed to participate like any other boy at gender-segregated events, without being singled out or marked as different from other students. The school’s persistent messages to A.W. that he is not a “real” boy in their eyes—excluding him A.W. from the boys’ restrooms, requiring him to room with girls or alone on school trips, barring him from running for prom king, and repeatedly calling him by his birth name and female pronouns—are having deeply harmful and stigmatizing effects, causing him to feel consistent isolation, shame, humiliation, anxiety, and depression, as well as fear for his

safety. These actions and policies contribute to his anxiety, depression, and PTSD, and directly undermine the social transition that is medically necessary to treat his Gender Dysphoria. It is my clinical opinion that, while psychotherapy can assist transgender individuals in coping with discrimination and being ostracized, it is difficult (if not impossible) to improve mental health in the wake of concurrent trauma. It is my clinical opinion, based on clinical experiences and scientific findings, that if these exclusionary, isolating, and stigmatizing practices are allowed to continue, there will be immediate and long-term significant consequences for A.W.'s mental health.

56. It is my professional opinion that the Kenosha Unified School District's treatment of A.W. and its policies regarding his bathroom use, separating him from other students during school trips, refusal to require consistent use of his male name and pronouns by school staff, and other actions that single him out as transgender and treat him differently from other boys, are directly causing significant psychological distress and place A.W. at risk for experiencing life-long diminished well-being and life-functioning.

57. 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 8/11/2016.

# **EXHIBIT**

## **A**

Department of Counseling Psychology, School of Education, Room 309, University of Wisconsin-Madison, Madison, WI 53706, 608-262-4807, [budge@wisc.edu](mailto:budge@wisc.edu)

## **PROFESSIONAL EXPERIENCE**

- 8/2016- **Assistant Professor**, tenure-track, Department of Counseling Psychology, University of Wisconsin-Madison
- 8/2014-7/2016 **Assistant Professor**, visiting, Department of Counseling Psychology, University of Wisconsin-Madison
- 8/2011-8/2014 **Assistant Professor**, tenure-track, Department of Educational and Counseling Psychology, Counseling, and College Student Personnel, University of Louisville
- 9/2011-6/2014 **Postdoctoral Clinical Training**, University of Louisville Counseling Center (9/2011-8/2012) and University of Louisville Transgender Project (7/2013-6/2014)
- 8/2010-8/2011 **Predoctoral Internship**, University of Minnesota, University Counseling and Consulting Services, APA-Accredited, APPIC listed predoctoral internship

## **LICENSURE**

- 2/2015-current Licensed Psychologist in Wisconsin—3244-57
- 8/2011-6/2014 Licensed Psychologist (under supervision to gain hours for Health Service Provider status) in Kentucky—2012-42

## **EDUCATION**

- 8/2006-8/2011 **Doctor of Philosophy**. University of Wisconsin-Madison. APA Accredited Counseling Psychology Program. Dissertation Title: *Distress in the transition process for transgender individuals: The role of loss, community, and coping*. Dissertation successfully defended in April, 2010.  
Minor: Psychological Assessment.
- 8/2004-5/2006 **Master of Arts**. University of Texas at Austin. Degree in Educational Psychology. Thesis Title: *Sexual pressure in gay, lesbian, and bisexual relationships*.

## RESEARCH GRANTS

- 06/2016 Wisconsin Partnership Program, Community Opportunity Grant, \$50,000—**funded**, *Transgender Health—A New Horizon in Equity in Health Care*. Role: Contributor.
- 06/2016 UW Institute for Clinical Research (ICTR) Health Equity and Diversity (AHEAD) research pilot award, \$10,000--**funded**, *Advancing Wisconsin Survey of Transgender Youth: An Assessment of Resources and Needs*. Role: Collaborator
- 05/2016 Patient Centered Outcome Research Initiative (PCORI) Engagement Award, \$250,000—**submitted**, *Collective for Integrating Psychological Health, Education, and Research for LGBTQ Therapies (CIPHER LGBTQ)*. Role: Co-PI.
- 03/2016 National Institute of Health, NICHD, K23, \$666,769—**scored** grant. *The effects of pubertal suppression on affect and emotion regulation for transgender youth*. Role: PI.
- 10/2012 College of Education and Human Development Faculty Research Development Grant, \$2,200—**funded**. PI on research project testing psychotherapy process and outcomes for transgender individuals.
- 9/2011 College of Education and Human Development Faculty Research Development Grant, \$2,260—**funded**. PI on research project regarding positive experiences of transgender identity and intersectionality of identities with genderqueer individuals.
- 6/2010 Charles J. Gelso Research Grant, \$2,000—**funded**. PI on a research project regarding personality disorders and treatment effectiveness.

## EDITORIAL RESPONSIBILITIES

**Associate Editor:** Psychotherapy

**Editorial Board:** Psychology of Sexual Orientation and Gender Diversity, Archives of Sexual Behavior, International Journal of Transgenderism

**Ad Hoc Reviewer:** Journal of Consulting and Clinical Psychology, Clinical Psychology Review, Journal of Counseling Psychology, The Counseling Psychologist, Feminism and Psychology, Psychology of Religion and Spirituality, Psychology of Women Quarterly, Journal of GLBT Family Issues, BioMed Central Journal, The Cognitive Behavior Therapist, Psychotherapy Research, Routledge Publishers, Harvard University Press

**JOURNAL PUBLICATIONS**

\*Denotes student

1. **Budge, S.L.**, Orovecz, J.\*, Owen, J.J., & Sherry, A.R. (In Press). The Relationship Between Conformity to Gender Norms, Sexual Orientation, and Gender Identity for Sexual Minorities. *Counselling Psychology Quarterly*.
2. **Budge, S.L.** (In press). To err is human: An introduction to the special issue on clinical errors. *Psychotherapy*.
3. **Budge, S.L.** & Pankey, T.L.\* (In press). Ethnic differences in gender dysphoria. *Current Psychiatry Reviews*.
4. **Budge, S.L.** & dickey, l.m. (In press). Barriers, challenges, and decision-Making in the letter writing process for gender transition. *Psychiatric Clinics*.
5. Katz-Wise, S.L., Reisner, S.L., White, J.M., & **Budge, S.L.** (In press). Sexual fluidity and social determinants of mental health in gender minority adults in Massachusetts. *Archives of Sexual Behavior*.
6. dickey, l.m., **Budge, S.L.**, Katz-Wise, S.L., & Garza, M.V. (2016). Health disparities in the transgender community: Exploring differences in insurance coverage. *Psychology of Sexual Orientation and Gender Diversity*.
7. Barr, S.M.\*, **Budge, S.L.**, & Adelson, J.L. (2016) Transgender community belongingness as a mediator between strength of transgender identity and well-being. *Journal of Counseling Psychology*.
8. Nienhuis, J. B.\*, Owen, J., Valentine, J. C., Black, S. W.\*, Halford, T. C.\*, Parazak, S. E.\*, **Budge, S.**, & Hilsenroth, M. J. (2016). Therapeutic alliance, empathy, and genuineness in individual adult psychotherapy: A meta-analytic review. *Psychotherapy Research*.
9. **Budge, S.L.**, Thai, J.L.\*, Tebbe, E., & Howard, K.H. (2016) The intersection of socioeconomic status, race, sexual orientation, transgender identity, and mental health outcomes. *The Counseling Psychologist*.
10. Tebbe, E.A. & **Budge, S.L.** (2016) Research with transgender communities: Applying a process-oriented approach to methodological considerations and research recommendations. *The Counseling Psychologist*.
11. Moradi, B., Tebbe, E., Brewster, M., **Budge, S.L.**, Lenzen, A., Enge, E...Painter, J. (2016). A content review of transgender research: 2002-2012. *The Counseling Psychologist*.
12. Tebbe, E.A., Moradi, B., & **Budge, S.L.** (2016). Introduction to the Major Contribution on Research with Transgender Populations. *The Counseling Psychologist*.
13. **Budge, S.L.** (2015). Psychotherapists as gatekeepers: An evidence-based case-study highlighting the role and process of letter-writing for transgender clients. *Psychotherapy*.
14. Kopta, M., Owen, J.J., & **Budge, S.L.** (2015). Measuring psychotherapy outcomes with the Behavioral Health Measure-20: Efficient and comprehensive. *Psychotherapy*.
15. Watkins, C.E., **Budge, S.L.**, & Callahan, J.L. (2015). Common and specific factors converging in psychotherapy supervision: A supervisory extrapolation of the Wampold/Budge psychotherapy relationship model. *Journal of Psychotherapy Integration*, 25, 214-235.

16. Owen, J.J., Adelson, J.L., **Budge, S.L.**, Wampold, B.E., Kopta, M., Minami, T., & Miller, S.D., (2015). Trajectories of change in short-term psychotherapy. *Journal of Clinical Psychology, 71*, 817-827.
17. **Budge, S.L.** (2015). The effectiveness of psychotherapeutic treatments for personality disorders: A review and critique of current research practices. *Canadian Psychology, 56*, 191-196.
18. Owen, J.J., Adelson, J.L., **Budge, S.L.**, Reese, R.J., & Kopta, M.M. (2015). Good-Enough Level and Dose-Effect Models: Variation Among Outcomes and Therapists. *Psychotherapy Research*.
19. Katz-Wise, S.L. & **Budge, S.L.** (2015). Cognitive and interpersonal identity processes related to mid-life gender transitioning in transgender women. *Counselling Psychology Quarterly, 28*, 150-174.
20. **Budge, S.L.**, Orovecz, J.\* & Thai, J.L.\* (2015). Transgender men's positive emotions: The interaction of gender identity and emotion labels. *The Counseling Psychologist*.
21. **Budge, S. L.**, Keller, B.L.\*, & Sherry, A. (2015) A qualitative investigation of lesbian, gay, bisexual, and queer women's experiences of sexual pressure. *Archives of Sexual Behavior*.
22. **Budge, S.L.** (2014). Navigating the balance between positivity and minority stress for LGBTQ clients who are coming out. *Psychology of Sexual Orientation and Gender Diversity, 1*, 350-352.
23. **Budge, S.L.**, Rossman, H.K.\* & Howard, K.H. (2014). Genderqueer individuals' mental health outcomes: The impact of gender socialization, coping, and perceived loss. *Journal of LGBT Issues in Counseling, 8*, 95-117.
24. **Budge, S.L.**, Moore, J.T.\* & Del Re, A.C., Wampold, B.E., Beardseth, T.P., & Nienhuis, J.B.\* (2013). The effectiveness of evidence-based treatments for personality disorders when comparing treatment-as-usual and bonafide treatments. *Clinical Psychology Review, 33*, 1057-1066.
25. **Budge, S.L.** (2013). Interpersonal psychotherapy with transgender clients. *Psychotherapy, 50*, 356-359.
26. Katz-Wise, S.L., **Budge, S.L.**, & Hyde, J.S. (2013). Objectified body consciousness and the mother adolescent relationship. *Psychology of Women Quarterly, 37*, 366-380.
27. **Budge, S.L.**, Adelson, J.L., & Howard, K.H. (2013). Anxiety and depression in transgender individuals: The roles of transition status, loss, social support, and coping. *Journal of Consulting and Clinical Psychology, 81*, 545-557.
28. **Budge, S.L.**, Owen, J.J., Kopta, S.M., Minami, T., Hanson, M.R., & Hirsch, G (2013). Differences among trainees in client outcomes associated with the Phase Model of Change. *Psychotherapy, 50*, 150-157.
29. **Budge, S. L.**, Katz-Wise, S. L., Tebbe, E., Howard, K.A.S., Schneider, C. L., & Rodriguez, A. (2013). Transgender emotional and coping processes: Use of facilitative and avoidant coping throughout the gender transition. *The Counseling Psychologist, 41*, 601-647.
30. Valdez, C. R. & **Budge, S.L.** (2012). Addressing adolescent depression in schools: Effectiveness and acceptability of an in-service training for school staff in the United States. *International Journal of Educational Psychology, 1*, 228-25.

31. Wampold, B.E., & **Budge, S.L.** (2012). The relationship—and it's relationship to the common and specific factors of psychotherapy. *The Counseling Psychologist, 40*, 601-623.
32. Wampold, B.E., **Budge, S.L.**, Laska, K. M., Del Re, A.C., Baardseth, T.P., Fluckiger, C., Minumi, T., Kivlighan, M., & Gunn, W. (2011). Evidence-based treatments for depression and anxiety versus treatment-as-usual: A meta-analysis of direct comparisons. *Clinical Psychology Review, 31*, 1304-1315.
33. Valdez, C. R., Dvorscek, M., **Budge, S.L.**, & Esmond, S.L. (2011). Provider perspectives of Latino patients: Determinants of care and implications of treatment. *The Counseling Psychologist, 39*, 497-526.
34. Wampold, B.E., Benish, S.G., Imel, Z.E., Miller, S.D., Laska, K., Del Re, A.C., Baardseth, T.P., & **Budge, S.L.** (2010). What works in the treatment of PTSD? A response to Ehlers et al. *Clinical Psychology Review, 30*, 269-276.
35. **Budge, S. L.**, Tebbe, E. N. & Howard, K. A. S. (2010). The work experiences of transgender individuals: Negotiating the transition and coping with barriers. *Journal of Counseling Psychology, 57*, 377-393.
36. Howard, K. A. S., **Budge, S. L.**, Gutierrez, B., Lemke, N. T., & Owen, A. D. (2010) Academic and career goals of high school youth: processes and challenges. *Journal of Career Development, 57*, 377-396.
37. **Budge, S. L.**, Baardseth, T. P., Wampold, B. H., & Fluckiger, C. (2010). Researcher allegiance and supportive therapy: Pernicious affects on results of randomized clinical trials. *European Journal of Counselling and Psychotherapy, 12*, 23-39.
38. Howard, K. A. S., **Budge, S. L.**, & McKay, K. M. (2010). Youth exposed to violence: The role of protective factors. *Journal of Community Psychology, 38*, 63-79.
39. **Budge, S. L.** (2006) Peer mentoring in post-secondary education: Implications for research and practice. *Journal of College Reading and Learning, 37* (1), 71-85.

## BOOK CHAPTERS

1. **Budge, S.L.** & Orovecz, J.J.\* (In press). Gender Fluidity. In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.
2. **Budge, S.L.** (In press). Genderqueer. In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.
3. **Budge, S.L.** & Pankey, T. L.\* (In press). Interpersonal therapies and gender. In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.
4. **Budge, S.L.** & salkas, s.\* (In press). Experiences of transgender people within the LGBT community. In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.
5. **Budge, S.L.** & Thai, J.L.\* (In press). Coming out processes for transgender people. In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.
6. **Budge, S.L.** & Sinnard, M.\* (In press). Trans\*. In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.
7. **Budge, S.L.** & Snyder, K.E. (In press). *Sex-related differences research*. Encyclopedia of Gender and Sexuality Studies.

8. **Budge, S. L.**, & Wampold, B. E. (2015). The relationship: How it works. In O. C. G. Gelo, A. Pritz, & B. Rieken (Eds.), *Psychotherapy research: Foundations, process, and outcomes* (pp. 213-228). Dordrecht: Springer.
9. Akinniyi, D.\* & **Budge, S.L.** (In press). Biological sex and mental health outcomes. In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.
10. Lam, J.\* & **Budge, S.L.** (In press). Help-seeking behaviors and men. In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.
11. Jones, T.\* , Chin, M.Y.\* , & **Budge, S.L.** (In press). Sororities. In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.
12. Sun, S.\* & **Budge, S.L.** Women's group therapy. (In press). In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.
13. Sun, S.\* , Minero-, L.\* , & **Budge, S.L.** (In press). Multiracial People and Gender. In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.
14. Alexander, D.\* , Hunter, C.\* , & **Budge, S.L.** (In press). Experiences of women in religious leadership. In K. Nadal (Ed.) *The SAGE Encyclopedia of Psychology and Gender* (pp. xx). Thousand Oaks, CA: SAGE.

## PUBLICATIONS IN REVISION AND UNDER REVIEW

\*Denotes student

1. **Budge, S.L.**, Chin, M.Y., & Minero, L.P. (In Revision). *Transgender individuals' facilitative coping: An analysis of internal and external processes.*
2. **Budge, S.L.**, Katz-Wise, S. L., & Owen, J.J. (Under Review) *Sexual minorities' sexual communication, internalized homophobia, and conformity to gender norms.*
3. Hambrick, M., Cintron, A., Apegoraro, L., & **Budge, S.L.** *I Am Cait: An analysis of the top-down and bottom-up framing of Caitlyn Jenner's ESPY Awards speech.*
4. Thai, J.L.\* , **Budge, S.L.**, & Adelson, J. L. (In Revision) *The impact of family and identity on suicidality and substance abuse in trans\* Asian and Pacific Islander individuals*
5. Katz-Wise, S.L., **Budge, S. B.**, Orovecz, J.O., Ngyuen, B., & Thompson, K. (Under Review). *Imagining the Future: Qualitative Findings of Future Orientation from the Transgender Youth Family Study.*
6. Walinsky, D. & **Budge, S.L.** (Under Review) *Gender Binaries, Workplace Discrimination and Satisfaction, and Delayed Gender Transition*

## MANUSCRIPTS IN PROGRESS

1. **Budge, S.L.**, Sinnard, M.T.\* , & Rossman, H.K.\* *Queering emotions: A content analysis of non-binary and genderfluid individuals' experiences of affect*
2. **Budge, S.L.**, Rossman, H.K.\* , & Sinnard, M.T.\* *A grounded theory analysis of the relationship between emotions and internal identity processes for non-binary and genderfluid individuals*

3. **Budge, S.L.**, Katz-Wise, S.L., Conniff, J.,\* Braden, T.\* , Belcourt, W.S.\* , Parks, R. L. *Coping processes for transgender youth.*
4. Rossman, H.K.\* , Sinnard, M.T.\* , Salkas, s.\* , & **Budge, S.L.** Genderfluid and non-binary individuals' experiences of external identity processes and emotion labels.
5. **Budge, S.L.**, Orovecz, J.O.\* , Barr, S.M.\* , & Keller, B.L.\* *Affirmative emotional processes for transgender women: A qualitative analysis.*
6. **Budge, S.L.**, Stahl, A.\* , Alexander, D.\* , salkas, s.\* , Orovecz, J.\* . *The identity formation of genderqueer individuals.*
7. **Budge, S.L.**, Akinniyi, D.\* , Alexander, D.\* , Stahl, A\*., Salkas, S\*., Orovecz, J\* . Analyzing the understanding of multiple identities for genderqueer individuals.
8. **Budge, S.L.** Barr, S.M.\* , & Snyder, K. & *A dynamic systems approach to exploring the development of transgender identity.*
9. Rossman, H.K.\* , Eleazer, J.\* , Gervasi, C.\* , & **Budge, S.L.** *A qualitative analysis of transgender individuals' perceptions of privilege.*
10. Hunter, C.\* & **Budge, S.L.** *The moderating effect of race related to discrimination for transgender individuals.*
11. Alexander, D.\* & **Budge, S.L.** *The impact of partner support on symptoms of anxiety for transgender women, transgender men, and genderqueer individuals.*
12. Eleazer, J.\* & **Budge, S.L.** *Transgender military service-members' experiences of identity and vocational integration.*
13. Solberg, V.S., **Budge, S.L.**, Phelps, A., Durham, J., Haakenson, K., & Timmons, J. *The perceived utility and value of Individualized Learning Plans: Parent, educator, and student perspectives.*
14. Solberg, V.S., **Budge, S.L.**, & Halverson, E. *Identifying the nature of career decision-making patterns and their impact on career, academic and social/emotional outcomes: A mixed-methods approach.*

## MINOR PUBLICATIONS AND TECHNICAL REPORTS

1. Solberg, V. S., Gresham, S. L., & **Budge, S. L.** (2009, December). *ECDM validation study-II*. Center on Education and Work (CEW), University of Wisconsin – Madison. Submitted to Guidance Branch, Singapore Ministry of Education
2. Solberg, V. S., Gresham, S. G., **Budge, S. L.**, Phelps, A. L., Haakenson, K., & Durham, J. (2009, September). *NCWD/Youth research and demonstration project on Individualized Learning Plans*. Center on Education and Work (CEW), University of Wisconsin-Madison. Submitted to the National Collaborative on Workforce and Disability/Youth.
3. Solberg, V. S., Lindwall, J., **Budge, S. L.**, Schneider, C. L., Deloya, J., Halley, K., & Hatfield, P. (2009, August). *Report on the Mental Health Concerns among the Students in the Madison Metropolitan School District*. Center on Education and Work (CEW), University of Wisconsin – Madison. Submitted to the Madison Metropolitan School District.
4. Solberg, V. S., **Budge, S. L.**, Phelps, L. A. (2009, August). *Phase II Portal: Focus Group Discussion*. Center on Education and Work (CEW), University of Wisconsin – Madison. Submitted to Guidance Branch, Singapore Ministry of Education

5. Valdez, C. R., & **Budge, S. L.** (2008). *Program evaluation of "It's Time! Adults Addressing Youth and Teen Depression."* InHealth Wisconsin, Milwaukee, WI.
6. Lin, M. & **Budge, S.** (2007). Exploring the impact of race and class on the First Year in Counseling Psychology 115. *Our First Year Experience*, 2, 3-4.

#### **INTERNATIONAL PRESENTATIONS (Peer-reviewed)**

1. **Budge, S.L.** & Katz-Wise, S.L. (July, 2016). *Emotional expression of transgender youth and their families: A cross-comparison of familial cultures for gender and emotions.* Paper to be presented at the International Congress of Psychology Conference, Yokohama, Japan.
2. Chin, M.Y.\*, Minero, L. \*, & **Budge, S.L.** (July, 2016). *"This is me, and I am happy. I love it": Understanding Internal Coping Processes of Trans-identified Individuals using Grounded Theory.* Paper to be presented at the International Congress of Psychology Conference, Yokohama, Japan.
3. **Budge, S.L.**, Katz-Wise, S.L., Conniff, J.\*, Belcourt, S. \*, & Parks, R\*. (June, 2016). *Developmental processes of coping for transgender youth: Results from the Transgender Youth and Family Study (TYFS).* Paper to be presented at the World Professional Association for Transgender Health Biannual Conference, Amsterdam, The Netherlands.
4. Sinnard, M.\*, Raines, C. \*, & **Budge, S.L.** (June, 2016). *Effects of location and transition status on anxiety and depression in transgender individuals.* Paper to be presented at the World Professional Association for Transgender Health Biannual Conference, Amsterdam, The Netherlands.
5. Salkas, S.\* & **Budge, S.L.** (June, 2016). *An Overview of Non-binary gender identities in the National Transgender Discrimination Survey,* Paper to be presented at the World Professional Association for Transgender Health Biannual Conference, Amsterdam, The Netherlands.
6. Orovecz, J.\*, Salkas, S.\*, & **Budge, S.L.** (June, 2016). *External Identity Processes for Individuals with Non-Binary Identities.* Paper to be presented at the World Professional Association for Transgender Health Biannual Conference, Amsterdam, The Netherlands.
7. Rossman, K.\*, Sinnard, M.\*, & **Budge, S.L.** (June, 2016). *The Externalization of Affect for Individuals with Non-binary Gender Identities.* Paper to be presented at the World Professional Association for Transgender Health Biannual Conference, Amsterdam, The Netherlands.
8. **Budge, S.L.** (February, 2014). *Developmental processes of positive emotions for trans\* individuals: The interplay of interpersonal emotions and transition appraisal.* Paper presented at the World Professional Association for Transgender Health Biannual Conference, Bangkok, Thailand.
9. **Budge, S.L.**, Adelson, J.L., & Howard, K.A.S. (February, 2014). *Transgender and Genderqueer individuals' mental health concerns: A moderated mediation analysis of social support and coping.* Paper presented the World Professional Association for Transgender Health Biannual Conference, Bangkok, Thailand.

#### **NATIONAL PRESENTATIONS (Peer-reviewed)**

1. **Budge, S.L.** (August, 2016). *Psychotherapy Interventions, Process, and Outcome with Transgender and Gender Non-Conforming Clients*. Chair of invited symposium for Division 29 at the Annual Meeting for the American Psychological Association, Denver, Colorado.
2. **Budge, S.L.** (August, 2016). *The impact of minority stress interventions on psychotherapy outcomes with a transgender client*. Paper to be presented at the Annual Meeting for the American Psychological Association, Denver, Colorado.
3. Minero, L.M., Chin, M.Y., & **Budge, S.L.** (August, 2016). *Transgender Clients Reports of Characteristics of Effective and Trans- Competent Therapists*. Paper to be presented at the Annual Meeting for the American Psychological Association, Denver, Colorado.
4. **Budge, S.L.** (August, 2016). *The State and Future of Psychotherapy Research with Transgender Clients*. Paper to be presented at the Annual Meeting for the American Psychological Association, Denver, Colorado.
5. Minero, L.M., Chin, M.Y., & **Budge, S.L.** (August, 2016). *Understanding External Coping Processes of Trans-identified Individuals using Grounded Theory*. Poster to be presented at the Annual Meeting for the American Psychological Association, Denver, Colorado.
6. Salkas, S. & **Budge, S.L.** (August, 2016). *An overview of US population-based data on individuals with non-binary gender identities*. Paper to be presented at the Annual Meeting for the American Psychological Association, Denver, Colorado.
7. Alexander, D., Orovecz, J., Salkas, S., Stahl, A., & **Budge, S. L.** (August, 2016). *Internal Identity Processes for Individuals with Non-Binary Identities*. Paper to be presented at the Annual Meeting for the American Psychological Association, Denver, Colorado.
8. Rossman, K., Sinnard, M., & **Budge, S.L.**, (August, 2016). *The "Queering" of Emotions-Using Non-binary Gender Identity to Label Emotional Processes*. Paper to be presented at the Annual Meeting for the American Psychological Association, Denver, Colorado.
9. Barr, S. M. & **Budge, S.L.** (August, 2016). *Experiences of self esteem and well-being for individuals with non-binary gender identities*. Paper to be presented at the Annual Meeting for the American Psychological Association, Denver, Colorado.
10. Chase, A., Lam, J., & **Budge, S.L.** (August, 2016). *Culture and Masculine Ideology: Measuring Masculinity Among Japanese American Men*. Poster to be presented at the Annual Meeting for the American Psychological Association, Denver, Colorado.
11. Akinniyi, D. & **Budge, S.L.** (August, 2016). *The Student-Athlete Experience: Multiple Minority Statuses and Discrimination*. Poster to be presented at the Annual Meeting for the American Psychological Association, Denver, Colorado.
12. **Budge, S.L.** (August, 2016). *Identity Processes, Well-being, and Emotional Processes for Individuals with Non-Binary Identities*. Chair of symposium at the Annual Meeting for the American Psychological Association, Denver, Colorado.
13. Akinniyi, D.A.\* and **Budge, S.L.** (August, 2015). *Genderqueer individuals' conceptualizations of multiple identities: A qualitative investigation using identity maps*. Paper presented at the Annual Meeting for the American Psychological Association, Toronto, Canada.
14. Sinnard, M.\* and **Budge, S.L.** (August, 2015). *Effects of Location and Transition Status on Anxiety and Depression in Transgender Individuals*. Poster presented at the Annual Meeting for the American Psychological Association, Toronto, Canada.

15. Watkins, C.E., **Budge, S.L.**, & Wampold, B.E. (August, 2015). *Extrapolating the Wampold/Budge Psychotherapy Relationship Model to Psychotherapy Supervision*. Paper presented at the Annual Meeting for the American Psychological Association, Toronto, Canada.
16. **Budge, S.L.** (June, 2015). *The effectiveness of psychotherapeutic treatments for personality disorders: A review and critique of current research practices*. Paper presented at the Annual Meeting for the Society for Psychotherapy Research, Philadelphia, PA.
17. Kring, M.\* & **Budge, S.L.** (June, 2015). *Re-evaluating outcomes in psychotherapy: Considerations beyond self-report*. Paper presented at the Annual Meeting for the Society for Psychotherapy Research, Philadelphia, PA.
18. Owen, J. J., Wampold, B.E., Miller, S.D., **Budge, S.L.**, & Minami, T. (June, 2015). *Trajectories of change in short-term psychotherapy: Lessons from growth curve mixture modeling*. Paper presented at the Annual Meeting for the Society for Psychotherapy Research, Philadelphia, PA.
19. Katz-Wise, S.L. & **Budge, S.L.** (April, 2015). *Imaging the future: qualitative findings of future orientation from transgender youth and parents/caregivers in the Transgender Youth Family Study*. Paper presented at the Annual Transgender Health Summit, Oakland, CA.
20. **Budge, S.L.** (August, 2014). *The Other Side of the Story: Trans\* Individuals' Experiences of Positivity and Resilience*. Symposium chair for the Annual Meeting for the American Psychological Association, Washington, DC.
21. **Budge, S.L.** (August, 2014). *Lessons learned from NIH-grant submission for LGBTQ research*. Invited panelist for the Annual Meeting for the American Psychological Association, Washington, DC.
22. **Budge, S.L.** & Katz-Wise, S.L. (August, 2014). *Emotional and interpersonal experiences of trans\* youth and their caregivers*. Paper presented at the Annual Meeting for the American Psychological Association, Washington, DC.
23. Eleazer, J.L.\*, Ngyuen, Y.\*, **Budge, S.L.** (August, 2014). *"I'm afraid of my therapist": Military Policy and Access-to-Care for Transgender US Service Members*. Paper presented at the Annual Meeting for the American Psychological Association, Washington, DC.
24. Thai, J.L.\* & **Budge, S.L.** (August, 2014). *Mental health outcomes for trans\* Asian American, Asian, and Pacific Islander populations*. Paper presented at the Annual Meeting for the American Psychological Association, Washington, DC.
25. Alexander, D.\* & **Budge, S.L.** (August, 2014). *The impact of partner support on symptoms of anxiety for transgender women, transgender men, and genderqueer individuals*. Poster presented at the Annual Meeting for the American Psychological Association, Washington, DC.
26. Barr, S.M.\* & **Budge, S.L.** (August, 2014). *Transgender identity salience as a predictor for well-being and body control beliefs for trans\* individuals*. Poster presented at the Annual Meeting for the American Psychological Association, Washington, DC.
27. Keller, B.L.\*, Barr, S.M.\*, & **Budge, S.L.** (August, 2014). *Trans\* women's emotional resilience: Reactions to the intersection of sexism and transphobia*. Paper presented at the Annual Meeting for the American Psychological Association, Washington, DC.

28. Rossman, H.K.\*, Sinnard, M.\*, **Budge, S.L.** (August, 2014). *Adapting a three-tiered model of emotions to genderqueer individuals' identity processes*. Paper presented at the Annual Meeting for the American Psychological Association, Washington, DC.
29. Thai, J.L.\*, Orovecz, J.\*, **Budge, S.L.** (August, 2014). *Trans\* men's experiences of positive emotions: An examination of gender identity and emotion labels*. Paper presented at the Annual Meeting for the American Psychological Association, Washington, DC.
30. Tebbe, E.N., Brewster, M., **Budge, S.L.** (August, 2014). *A content analysis of transgender psychological literature*. Poster presented at the Annual Meeting for the American Psychological Association, Washington, DC.
31. Thai, J.L.\* & **Budge, S.L.** (March, 2014). *Family relationships and outness for transgender Asian Pacific Islander individuals*. Paper presented at the Society of Counseling Psychology Conference, Atlanta, GA.
32. Hunter, C.\* & **Budge, S.L.** (March, 2014). *The moderating effect of race related to discrimination for transgender individuals*. Paper presented at the Society of Counseling Psychology Conference, Atlanta, GA.
33. Alexander, D.\* & **Budge, S.L.** (March, 2014). *The impact of partner support on symptoms of anxiety for transgender women, transgender men, and genderqueer individuals*. Paper presented at the Society of Counseling Psychology Conference, Atlanta, GA.
34. Barr, S.M.\* & **Budge, S.L.** (March, 2014). *Validation of the Objectified Body Consciousness Scale for transgender individuals*. Paper presented at the Society of Counseling Psychology Conference, Atlanta, GA.
35. **Budge, S.L.** (October, 2013). *Addressing grief and role transitions for transgender clients experiencing gender identity incongruence*. Paper presented at the Biennial North American Society for Psychotherapy Research Conference, Nashville, TN.
36. **Budge, S.L.**, Barr, S.M.\*, Katz-Wise, S.L., Keller, B.L.\* , & Manthos, M.\* (2013, June). *Incorporating positivity into psychotherapy with transgender clients*. Workshop presented at the Annual Philadelphia Transgender Health Conference, Philadelphia, PA.
37. **Budge, S.L.** & Barr, S.M.\* (2013, April). *Emotional and identity processes of trans\* youth: A developmental approach*. Paper presented at the Biennial Society for Research on Child Development Conference, Seattle, WA.
38. **Budge, S.L.**, Thai, J.\*, Rossman, H.K.\* (2012, August) *Intersecting identities and mental health outcomes for transsexual, cross-dressing, and genderqueer individuals*. Poster presented at the Annual Meeting for the American Psychological Association, Orlando, Florida.
39. **Budge, S.L.** & Keller, B.L.\* (2012, August). *"She felt pressured, I felt neglected": LGBQ individuals' experiences of sexual pressure in relationships*. Poster presented at the Annual Meeting for the American Psychological Association, Orlando, Florida.
40. **Budge, S.L.**, Moore, J.\*, Neinhuis, J.\*, Baardseth, T., & Wampold, B.E. (2012, June). *The relative efficacy of bona-fide psychological treatments for personality disorders: A meta-analysis of direct comparisons*. Paper presented at the Annual Meeting for the Society for Psychotherapy Research, Virginia Beach, Virginia.
41. **Budge, S.L.** & Katz-Wise, S.L. (2012, February). *Trans-Affirmative Therapy: Focusing on Emotional and Coping Processes Throughout Gender Transitioning*. Workshop presented at the Transgender Spectrum Symposium, Annual Meeting of the Gay and Lesbian Affirmative Psychotherapy Association, New York, New York.

42. **Budge, S.L.** & Katz-Wise, S.L. (2011, November). *Transgender emotional and coping processes: Facilitative and avoidant coping throughout the gender transition*. Paper presented at the Annual Meeting for the Society for the Scientific Study of Sexuality, Houston, Texas.
43. **Budge, S.L.** & Howard, K.H. (2011, August). *Gender socialization and gender queer individuals: The impact of assigned sex on coping and mental health concerns*. Paper presented at the Annual Meeting for the American Psychological Association, Washington, D.C.
44. Tebbe, E.L., **Budge, S.L.**, & Fischer, A. (2011, March). *Transforming the research Goliath: Reflections on research with transgender communities*. Roundtable presented at the Bi-Annual Meeting of the Association for Women in Psychology, Philadelphia, Pennsylvania.
45. **Budge, S.L.** & Howard, K.A.S. (2010, August). *Coping, social support, and well-being in the transition process for transgender individuals*. Paper presented at the Annual Meeting for the American Psychological Association, San Diego, California.
46. Baardseth, T.P., **Budge, S.L.**, & Wampold, B.E. (2010, August). *Allegiance and psychotherapy research: The effectiveness of supportive therapy as a control*. Poster presented at the Annual Meeting for the American Psychological Association, San Diego, California.
47. Solberg, V.S., Gresham, S.L., **Budge, S.L.**, & Phelps, A.L. (2010, August). *Impact of Learning Experiences on Students With Disabilities Career Development*. Poster presented at the Annual Meeting for the American Psychological Association, San Diego, California.
48. Katz-Wise, S.L., **Budge, S.L.**, & Hyde, J.S. (2010, August). *Individuation or identification? Objectified body consciousness*. Poster presented at the Annual Meeting for the American Psychological Association, San Diego, California.
49. Solberg, V.S., Gresham, S.L., **Budge, S.L.**, & Phelps, A.L. (2010, August). *Impact of Exposure to Quality Learning Experiences on Career Development*. Paper presented at the Annual Meeting for the American Psychological Association, San Diego, California.
50. **Budge, S.L.** & Fluckiger, C. (2010, June). *Comparison of Evidence-Based-Treatments versus Treatment as Usual: A meta-analysis*. Paper presented at the Annual Meeting for the Society for Psychotherapy Research, Asilomar, California.
51. **Budge, S.L.** & Howard, K.A.S. (2010, April). *Career decision-making in the transgender population: The role of barriers and discrimination*. Paper presented at the Annual Meeting for the American Educational Research Association, Denver, Colorado.
52. **Budge, S.L.**, Solberg, V.S., Phelps, L.A., Haakenson, K., & Durham, J. (2010, April). *Promising practices for implementing Individualized Learning Plans: Perspectives of teachers, parents, and students*. Paper presented at the Annual Meeting for the American Educational Research Association, Denver, Colorado.
53. Solberg, V.S., Gresham, S.L., Phelps, L.A., & **Budge, S.L.** (2010, April). *Identifying decision-making patterns and its impact on career development and workforce readiness*. Paper presented at the Annual Meeting for the American Educational Research Association, Denver, Colorado.
54. Katz-Wise, S.L., **Budge, S.L.**, & Hyde, J.S. (2010, March). *Objectified body-consciousness and the mother-adolescent relationship*. Poster presented at the Biennial Meeting for the Society for Research on Adolescence, Philadelphia, Pennsylvania.

55. **Budge, S. L.**, Tebbe, E. N., Katz-Wise, S. L., Schneider, C. L., & Howard, K. A. S. (2009, August). *Workplace transitions: Work experiences and the impact of transgender identity*. Paper presented at the Annual Meeting of the American Psychological Association, Toronto, Ontario, Canada.
56. Katz-Wise, S. L., **Budge, S. L.**, & Schneider, C. L. (2009, August). *Navigating the gender binary: A qualitative study of transgender identity development*. Paper presented at the Annual Meeting of the American Psychological Association, Toronto, Ontario, Canada.
57. Nelson, M. L., Thompson, M. N., Huffman, K. L., & **Budge, S. L.** (2009, August). *Development and further validation of the social class identity dissonance scale*. Paper presented at the Annual Meeting of the American Psychological Association, Toronto, Ontario, Canada.
58. Dvorscek, M., **Budge, S. L.**, Bluemner, J. L., & Valdez, C. R. (2009, August). *Health care provider perspectives on Latino patients with depression*. Poster presented at the Annual Meeting of the American Psychological Association, Toronto, Ontario, Canada.
59. Neumaier, E. R., **Budge, S. L.**, Bohlig, A. J., Doolin, E. M., & Nelson, M. L. (2009, August). *I feel masculine but they think I'm feminine: Toward measuring experienced gender role*. Poster presented at the Annual Meeting of the American Psychological Association during the Division 17 Social Hour, Toronto, Ontario, Canada.
60. Doolin, E. M., Graham, S. R., Hoyt, W. T., **Budge, S. L.**, & Bohlig, A. J. (2009, January). *Out and about in the South: Defining lesbian communities*. Poster presented at the National Multicultural Conference and Summit, New Orleans, LA.
61. **Budge, S. L.**, Tebbe, E. N. & Howard, K. A. S. (2009, January) *Transgender individuals' work experiences: Perceived barriers, discrimination, and self-efficacy*. Paper presented at the Annual Meeting of the Career Conference, Madison, WI.
62. Howard, K. A. S., **Budge, S. L.**, Jones, J., & Higgins, K. (2009, January). *Future plans of urban youth: A qualitative analysis of influences, barriers, & coping strategies*. Paper presented at the Annual Meeting of the Career Conference, Madison, WI.
63. **Budge, S. L.**, Schneider, C., Rodriguez, A., Katz-Wise, S., Tebbe, E., & Valdez, C. (2008, August). *The emotional roller coaster: Transgender experiences of positive and negative emotions*. Poster presented at the Annual Meeting of the American Psychological Association, Boston, MA.
64. Nelson, M. L., Huffman, K. & **Budge, S. L.**, (2008, August). *Initial validation of the Social Class Identity Dissonance Scale*. Poster presented at the Annual Meeting of the American Psychological Association, Boston, MA.
65. **Budge, S. L.**, Schneider, C., Rodriguez, A., & Howard, K. A. S. (2008, January) *What about the "T"?: Career counseling with transgender populations*. Paper presented at the Annual Meeting of the Career Conference, Madison, WI.
66. Howard, K. A. S., McKay, K. M., & **Budge, S. L.** (2007, August) *Adolescents' use of SOC strategies: The interaction with low-income and high violence contexts*. Poster presented at the Annual Meeting of the American Psychological Association, San Francisco, CA.
67. **Budge, S. L.** & Sherry, A. (2007, August) *The influence of gender role on sexual compliance: A preliminary investigation of LGB relationships*. Poster presented at the Annual Meeting of the American Psychological Association, San Francisco, CA.

68. Howard, K. A. S., Solberg, V. S., & **Budge, S. L.** (2007, August). *Designing culturally responsive school counseling career development programming for youth*. Paper presented at the Annual Meeting of the American Psychological Association, San Francisco, CA.
69. Howard, K. A. S., Jones, J. E., **Budge, S.**, Gutierrez, B., Lemke, N., Owen, A., & Higgins, K. (2007, April). *Academic and Career Goals of High School Youth: Processes and Challenges*. Paper presented at the Annual Meeting of the American Educational Research Association, Chicago, IL.

### REGIONAL PRESENTATIONS (Peer-reviewed)

1. **Budge, S.L.** (November, 2013). *Incorporating an IPT approach with transgender clients*. Paper presented at the Annual Kentucky Psychological Association Conference, Lexington, KY.
2. **Budge, S.L.** (April, 2013). *Using interpersonal therapy with transgender clients*. Workshop provided at the Annual University of Florida Interdisciplinary Conference on LGBT Issues.
3. Barr, S. M.\* & **Budge, S. L.\*** (2013, April). The role of identity integration in the emotional well-being of post-transition individuals. Poster presentation at the Kentucky Psychological Association Student Research Conference, Louisville, KY.
4. Orovecz, J.\*, Thai, J.L.\*, & **Budge, S.L.** (2013, April). I'm stoked about life: The emotional processes of transgender men through a qualitative lens. Poster presented at the Spring Research Conference, Lexington, Kentucky.
5. Rossman, K.\* & **Budge, S.L.** (2013, April). Genderqueer individuals' mental health concerns: The relationship between social support and coping. Paper presented at the Spring Research Conference, Lexington, KY.
6. Barr, S. M.\* & **Budge, S. L.** (2013, April). The role of identity integration in the emotional well-being of post-transition individuals. Poster presented at the Spring Research Conference, Lexington, KY.
7. Rossman, K.\* & **Budge, S.L.** (2013, June). *Just the fact that I commanded that respect - I got the privilege: Qualitative Examination of Privilege in the Trans\* Community*. Paper presented at the Spring Research Conference, Lexington, KY.
8. Keller, B. L.\*, Barr, S. M.\*, & **Budge, S. L.** (2013, April). "For every bad, there's 40 good things that happen: A qualitative approach to understanding the positive emotional experiences of trans\* women. Poster presentation at the Spring Research Conference, Lexington, KY
9. Orovecz, J.\*, Thai, J.L.\*, & **Budge, S.L.** (2013, April). I'm stoked about life: The emotional processes of transgender men through a qualitative lens. Presented at the Spring Research Conference, Lexington, Kentucky.
10. Orovecz, J.\*, Thai, J.L.\*, & **Budge, S.L.** (2013, March). "I'm me, and I'm proud to be me": A grounded theory analysis of transgender men's emotional processes. Presented at the Kentucky Psychological Association Foundation Spring Academic Conference, Louisville, Kentucky.
11. Eleazer, J. R.\* & **Budge, S. L.** (2013, March). "It Would be Better for Them to Have a Dead Hero for a Father than a Freak:" Suicidality and Trans\* Military Service. Poster

12. Sinnard, M.\*, Rossman, K.\*, & **Budge, S. L.** (2013, March). "Positive emotional experiences of gender non-binary identified individuals. Poster presentation at the Kentucky Psychological Association Student Research Conference, Louisville, KY.
13. Barr, S.M.\*, Stahl, A.\*, Manthos, M.\*, & **Budge, S.L.** (2012, November). "*It means there aren't rules and you don't have to ascribe to a specific binary*": A qualitative examination of genderqueer identity. Paper presented at the **Chicago LGBTQ Health and Wellness Conference, Chicago, IL.**
14. Thai, J.L.\*, Orovecz, J.\*, & **Budge, S.L.** (2012, November). *Transgender men and positivity: Emotional processes related to identity*. Paper presented at the **Chicago LGBTQ Health and Wellness Conference, Chicago, IL.**
15. **Budge, S.L.**, Barr, S.M.\*, Orovecz, J.\*, & Rossman, H.K.\* (2012, November). *Clinical work with LGBT youth*. Workshop provided at the Annual Kentucky Psychological Association Conference, Louisville, KY.
16. **Budge, S.L.**, Lee, S., & Monahan-Rial, V. (2011, February). *Bridging institutional gaps: Utilizing transgender-affirmative therapy with college students*. Workshop presented at the Annual Meeting for the Big 10 College Counseling Center Conference, Minneapolis, Minnesota.
17. Lee, J., **Budge, S.L.**, Wilson, J.L., & Roper, J.M. (2011, February). *The Korean Conundrum: Managing stigma in the recruitment of group counseling members*. Workshop presented at the Annual Meeting for the Big 10 College Counseling Center Conference, Minneapolis, Minnesota.
18. **Budge, S.L.** & Katz-Wise, S.L. (2010, February). *Transition to adulthood: Developmental steps for transgender individuals*. Workshop presented at the Conference on Transgender and Gender Variant Youth, Madison, Wisconsin.
19. **Budge, S.L.** (2009, October). *Individualized Learning Plans: Parent, student, and educator focus groups*. Paper presented at the Fall Institute for the National Collaborative on Workforce and Disability/Youth, Charleston, South Carolina.

#### INVITED KEYNOTE PRESENTATIONS

1. **Budge, S.L.** (March, 2016). *Understanding, acknowledging, and responding to LGBTQ microaggressions in health care settings*. Keynote to be provided at the Florida Area Health Education Center, Gainesville, Florida.
2. **Budge, S.L.** (September, 2014). *Positivity in transgender populations: Implications for vocational psychology*. Boston University, Boston Massachusetts.
3. **Budge, S.L.** (April, 2013). *Future Directions for Research and Therapy with Trans\* and Gender Diverse Individuals*. Keynote Address provided at the Annual University of Florida Interdisciplinary Conference on LGBT Issues.
4. **Budge, S.L.** (March, 2013). *The Psychology of Sexual Orientation and Gender Identity: Future Directions and Implications*. Keynote provided at the East Texas Psi Chi Student Research Conference, Tyler, Texas.

#### NATIONAL RESEARCH BRIEFINGS

1. **Budge, S.L., & Solberg, V.S.**, (2010, March) *Career exploration and the use of career narrative data for high school students' career exploration processes: A United States Sample*. Research briefing presented at the Department of Labor, Washington, D.C.
2. **Budge, S.L., Solberg, V.S., & Phelps., A.L.** (2010, March) *Individualized Learning Plans within a community-oriented approach: The usefulness of focus group data with parents, teachers, and students*. Research briefing presented at the Department of Labor, Washington, D.C.

## **INTERNATIONAL RESEARCH BRIEFINGS**

1. **Budge, S.L., & Solberg, V.S.**, (2010, February) *A three-tiered approach to analyze the career decision making processes using focus group data with Singaporean parents, students, and staff*. Research briefing presented at the Ministry of Education, Singapore.
2. **Budge, S.L., & Solberg, V.S.**, (2010, February) *Use of narrative analysis for high school students' career exploration processes: A Singapore Sample*. Research briefing presented at the Ministry of Education, Singapore.

## **MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS**

American Psychological Association (APA)

Society of Counseling Psychology (Division 17)

Division of Psychotherapy (Division 29)

Society for the Psychology of Women (Division 35)

Society for the Psychological Study of Lesbian, Gay, Bisexual, and Transgender Issues (Division 44)

Society of Clinical Child and Adolescent Psychology (Division 53)

World Professional Association for Transgender Health (WPATH)

Society for Psychotherapy Research (SPR)

## **TEACHING AND INSTRUCTION**

### **University of Wisconsin-Madison Courses:**

CP 805: Microskills of Counselors

CP 806: Pre-practicum

CP 900: Foundational Practicum

CP 903: Advanced Practicum

CP 990: Independent Research

### **University of Louisville Courses:**

ECPY 780: Advanced Practicum

ECPY 648: Intellectual Assessment

ECPY 663: Multicultural Issues

ECPY 629: Theories and Techniques of Counseling

ECPY 621: Differential Diagnosis

ECPY 793: Gender and Queer Issues In Psychology  
ECPY 793: Advanced Multicultural Psychotherapy  
ECPY 700: Supervised Research

**Graduate-Student Teaching:**

**University of Wisconsin-Madison (2006-2009)**

CP 804: Research Methods  
CP 994: Personality Assessment  
CP 650: Interviewing Skills  
CP 115: First Year Experience

**University of Texas at Austin (2005-2006)**

PSY 301: Introduction to Psychology

**DISSERTATION COMMITTEES**

Kinton Rossman (University of Louisville; Chair, Proposed)  
Kathleen Barnett (University of Louisville; Chair)  
Danielle Alexander (University of Louisville; Chair)  
Jake Nienhuis (University of Louisville; Defended)  
Kelley Quirk (University of Louisville; Defended)  
Keldric Thomas (University of Louisville; Defended)  
Johanna Strokoff (University of Louisville; Defended)  
Elise Romines (University of Louisville; Proposed)  
Julia Benjamin (University of Wisconsin-Madison; Proposed)  
Craig Hase (University of Wisconsin-Madison; Proposed)  
Sarah McArdell Moore (University of Wisconsin-Madison, Proposed)  
Noah Yulish (University of Wisconsin-Madison, Proposed)  
Nick Frost (University of Wisconsin-Madison, Proposed)  
Lindsey Houghton (University of Wisconsin-Madison, In preparation)  
Shufang Sun (University of Wisconsin-Madison, Proposed)  
Joe Orovecz (University of Wisconsin-Madison, In preparation)

**MASTERS THESES**

Dylan Hiner (University of Louisville; Chair)  
Dorcas Akinniyi (University of Wisconsin-Madison; Chair)

**UNDERGRADUATE THESES**

Morgan Sinnard (University of Louisville; Chair, defended)

**AWARDS**

- 7/2015 Early Career Award for work with LGBT populations from the Society for Counseling Psychology--Division 17 SLGBTI Group
- 5/2015 Early Career Award for the Society for the Advancement of Psychotherapy (Division 29, APA)
- 1/2014 Runner Up for the Most Valuable Paper Award for a 2013 article published in *Psychotherapy*
- 2/2013 Nominated for the University of Louisville Trustees Award—provided to faculty for excelling in mentoring students.
- 7/2010 Society for Counseling Psychology--Division 17 LGBT Outstanding Graduate Student Award for community contributions with the LGBT population during my doctoral program.
- 7/2010 Society for Vocational Psychology/ACT Graduate Student Research Award, \$500.00 for career research regarding transgender individuals.
- 6/2010 Society for the Psychological Study of Lesbian, Gay, Bisexual, and Transgender Issues—Division 44: Transgender Research Award, \$500.00 for dissertation research.
- 2/2010 John W. M. Rothney Memorial Research Award \$150.00.
- 8/2009 Outstanding Student Poster Award, APA Convention 2009.
- 8/2008-8/2011 APA Student Travel Award, \$300.00 (four years in a row).

#### **WORKSHOPS/TRAININGS PROVIDED**

- 3/2016 Invited to provide a community-based training at the University of Florida to teach balance in being an academic and an activist
- 3/2016 Invited to provide a training to women's and gender studies students at the University of Florida regarding gender and sexuality in psychiatric diagnosis
- 1/2016 Invited to provide a workshop to veterinary students regarding LGBTQ competent care at the University of Wisconsin-Madison
- 11/2015 Provided a workshop on genderqueer and non-binary individuals' gender identity development to the Institute of Sexuality Series at the University of Wisconsin-Madison
- 10/2015 Provided a workshop on transgender adults' facilitative coping mechanisms to the Institute of Sexuality Series at the University of Wisconsin-Madison
- 8/2015 Provided a Transgender 101 workshop to undergraduate students in a multicultural seminar at the University of Wisconsin-Madison
- 4/2014 Provided a workshop for 8-10 year old boys at St. Joseph's Children's Home to provide skills for how to talk about gender and comprehend transgender issues.

- 2/2014 Provided a training to medical students at the University of Louisville for trans-competent medical care.
- 11/2013 Provided a workshop to school psychologists and guidance counselors for cultural competence training working with LGBTQ youth. Continuing Education credits provided.
- 7/2013 Provided a workshop to the Campus Health Services at the University of Louisville to address LGBT-friendly health practices and language for medical practitioners.
- 4/2013 Provided an invited workshop at the University of Florida regarding transgender affirmative therapy and positive emotional processes for gender-diverse clients; located with the Department of Psychology, Gainesville, Florida.
- 3/2013 Provided an invited workshop at the University of Texas-Tyler related to empowering gender-diverse clients; located with the Department of Psychology, Tyler, Texas.
- 11/2012 Provided a workshop to the College of Education and Human Development at the University of Louisville regarding support for transgender students on college campuses
- 10/2012 Provided a workshop regarding specific processes to support transgender clients through the therapeutic process. Workshop provided to the Psychological Sciences Clinic for Continuing Education Credits; located at the University of Louisville
- 1/2012 Provided a workshop regarding transgender-affirmative therapy to the Psychological Sciences Clinic for Continuing Education Credits; located at the University of Louisville
- 12/2011 Provided training to pre-doctoral psychology interns regarding therapeutic work with LGBT youth; training was located at the Department of Child and Adolescent Psychiatry, University of Louisville
- 10/2011 Provided training on stress and anxiety to LGBTQ students for the Center for Health Promotion and Prevention Science at the University of Louisville
- 8/2010-8/2011 GLBTA office liaison from the University Counseling and Consulting Services at the University of Minnesota-Twin Cities.
- 4/2011 Facilitated a 3-hour training to counseling psychology students at the University of Minnesota on how to work clinically with LGBTQ populations
- 1/2011 Provided a 2-hour long training to the psychological staff at the University Counseling and Consulting Services regarding how to conduct trans-positive therapy with transgender clients.
- 10/2010 Facilitated a 2-hour social justice training based on the film "Diagnosing Difference," regarding DSM-IV diagnoses of Gender Identity Disorder.
- 10/2010 Facilitated a 1 ½ hour training for a Career Counseling course at the University of Minnesota-Twin Cities on how to work with transgender individuals in career counseling.

- 9/2010 Facilitated a 2-hour training on conducting intake interviews for first year PhD practicum students at the University Counseling and Consulting Services at the University of Minnesota-Twin Cities.
- 3/2010 Facilitator of an inservice training for pre-doctoral interns completing their internship at the Wisconsin Internship Consortium.
- 11/2008 Co-facilitator for Diversity Dialogues, Madison, Wisconsin.
- 11/2008 Co-Facilitator for LGBT Brownbag for the department of counseling psychology at the University of Wisconsin-Madison
- 11/2008 Guest Speaker for LGBT Support Group, Counseling and Consultation Services, University of Wisconsin-Madison,

**SERVICE**

Department	-Doctoral Training Committee (2015-current) -Master’s Training Committee (2014-2015) -Doctoral Admissions (2015-current) -Master’s Admissions (2014-2015) -Social Justice Committee (2014-current)
SOE	-Technology Committee (2014-current)
University	-Faculty Senate (alternate) (2016-current) -Microaggressions training for the UW Vet school (2016) -Microaggressions training for the School of Social Work (2016)
Community	-Wisconsin Transgender Health Coalition (2015-current) -Data team -Convening team -Transgender Youth Resource Network (2014-current) -Facilitate Transgender Youth Therapy Group at the CPTC (2015-current) -Coordinate Transgender Youth Conference for the greater Wisconsin community (2015-current)

**CONFERENCES ORGANIZED**

- 9/2009-current Co-Coordinator for the Transgender and Gender Non-Conforming Youth Conference, Madison, Wisconsin, Chair: Jeannette Deloya, LCSW.

Responsibilities: Attend meetings for a planning committee to coordinate annual conferences about the concerns of transgender youth. Helped develop an agenda for the conference, planned speakers, coordinated a budget, and decided on special topics for the conference. Introduced the keynote speaker at the conference and provided project

8/2010-2/2011 Co-Coordinator for the Big 10 College Counseling Center  
Conference, Minneapolis, Minnesota. Chair: Glenn Hirsch, Ph.D.

Responsibilities: Attended weekly meetings for a planning committee to coordinate a conference regarding issues related to college counseling centers and counseling college students. Provided ideas for funding and programming. Provided support with logistics of the conference, such as setting up rooms and directing attendees to programming.

# **EXHIBIT**

## **B**

**BIBLIOGRAPHY**

American Psychiatric Association. Diagnostic and statistical manual of mental disorders (DSM-5). American Psychiatric Pub; 2013 May 22.

Boza C, Nicholson Perry K. Gender-related victimization, perceived social support, and predictors of depression among transgender Australians. *International Journal of Transgenderism*. 2014 Jan 2;15(1):35-52.

Coleman E, Bockting W, Botzer M, Cohen-Kettenis P, DeCuypere G, Feldman J, Fraser L, Green J, Knudson G, Meyer WJ, Monstrey S. Standards of care for the health of transsexual, transgender, and gender-nonconforming people, version 7. *International Journal of Transgenderism*. 2012 Aug 1;13(4):165-232.

Goldblum P, Testa RJ, Pflum S, Hendricks ML, Bradford J, Bongar B. The relationship between gender-based victimization and suicide attempts in transgender people. *Professional Psychology: Research and Practice*. 2012 Oct;43(5):468.

Greytak, E. A., Kosciw, J. G., and Diaz, E. M. Harsh realities: The experiences of transgender youth in our nation's schools. New York: GLSEN. 2009.

Herman JL. Gendered restrooms and minority stress: The public regulation of gender and its impact on transgender people's lives. *Journal of Public Management & Social Policy*. 2013 Apr 1;19(1):65.

Kessler RC, Borges G, Walters EE. Prevalence of and risk factors for lifetime suicide attempts in the National Comorbidity Survey. *Archives of general psychiatry*. 1999 Jul 1;56(7):617-26.

Mustanski B, Liu RT. A longitudinal study of predictors of suicide attempts among lesbian, gay, bisexual, and transgender youth. *Archives of sexual behavior*. 2013 Apr 1;42(3):437-48.

Reisner SL, Veters R, Leclerc M, Zaslow S, Wolfrum S, Shumer D, Mimiaga MJ. Mental health of transgender youth in care at an adolescent urban community health center: a matched retrospective cohort study. *Journal of Adolescent Health*. 2015 Mar 31;56(3):274-9.

Reisner SL, White Hughto JM, Gamarel KE, Keuroghlian AS, Mizock L, Pachankis JE. Discriminatory Experiences Associated With Posttraumatic Stress Disorder Symptoms Among Transgender Adults. 2016.

Scanlon K, Travers R, Coleman R, Bauer G, Boyce M. Ontario's trans communities and suicide: transphobia is bad for our health. *Trans PULSE E-Bull* 2010;1 (2):1-2.

Testa RJ, Sciacca LM, Wang F, Hendricks ML, Goldblum P, Bradford J, Bongar B. Effects of violence on transgender people. *Professional Psychology: Research and Practice*. 2012 Oct;43(5):452.



## **EXHIBIT 3**

### **DECLARATION OF DR. R. NICHOLAS GORTON, M.D.**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

ASHTON WHITAKER, a minor, by his  
mother and next friend, MELISSA  
WHITAKER

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT  
NO. 1 BOARD OF EDUCATION and SUE  
SAVAGLIO-JARVIS, in her official capacity  
as Superintendent of the Kenosha Unified  
School District No. 1,

Defendants.

Civ. Action No. 2:16-cv-00943

**Declaration of Dr. R. Nicholas Gorton, M.D.**

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. The information provided regarding my professional background, experiences, publications, and presentations are detailed in my curriculum vitae. This is included as an accurate and true copy and is attached as Exhibit A to this declaration.

3. I received my medical degree from the University of North Carolina, School of Medicine and completed my residency and chief residency in emergency medicine at Kings County Hospital in Brooklyn, New York. I am a licensed physician in California with expertise in the treatment of transgender patients. I am board certified in Emergency Medicine and also have expertise in the primary care and hormonal treatment of transgender people. For the past decade I also have served as a primary care physician at Lyon-Martin Health Services in San Francisco, CA. Lyon-Martin is a historically LGBT clinic that has been serving transgender

transgender patients. Lyon-Martin also has one of just a handful of sites in the United States that trains medical students, residents, and fellows to provide transgender primary care, and I have been a primary clinical instructor for over 75 trainees during my time at the clinic.

4. In addition to providing services at Lyon-Martin, I serve as a consultant for Trans Line, a national transgender medical consultation service for clinicians needing expert advice about the care of their individual patients. I also am an active member of the World Professional Association for Transgender Health (“WPATH”) and serve on the organization’s research committee. The WPATH Standards of Care are the internationally recognized standards for providing health care for transgender people. I formerly served on the medical advisory board of the University of California San Francisco Center of Excellence for Transgender Health and have served on the American Medical Association’s LGBT Advisory Committee.

5. As detailed in the attached curriculum vitae, I have presented lectures and grand rounds at numerous medical school and residency programs throughout the United States as well as national and international conferences. I have published articles in peer-reviewed journals and in professional texts on transgender health.

6. As part of my practice, I stay familiar with the latest medical science, research, and treatment protocols related to transgender people and gender dysphoria. In preparing this declaration, I relied on my experience, training, and review of research over the past decade of treating transgender patients.

7. I have been retained as an expert witness in two cases in the last four years: *Norsworthy v. Beard* (N.D. Cal. 2015) and *Cruz v. Zucker* (S.D.N.Y. 2016).

8. I understand that this declaration will be submitted in support of A.W.’s motion for preliminary injunction in this case. I am prepared to testify about the information and

appropriate, during this litigation.

9. I will receive no compensation for my expert services and opinion in this case, regardless of the outcome.

### **Determination of Sex**

10. “Sex” includes a multitude of factors including one’s chromosomal make-up, hormonal variations, anatomy, and gender identity.

11. Gender identity is each individual’s internal sense of themselves as belonging to a particular gender, such as male or female.

12. For purposes of designating sex on a birth certificate, physicians and midwives almost always base their assessments upon a cursory examination of external anatomy. This assessment is made because it only requires seconds to examine the newborn’s anatomy.

13. This assessment is usually congruent with the individual’s overall sex: most infants who have female external genitalia and are assigned a female sex at birth will grow up to be people who have a female gender identity. However, sometimes the visual assessment is actually incorrect: for example, for individuals with differences of sexual development (DSD)—also known as intersex people—or transgender people.

14. The term “transgender” refers to people whose gender identity does not match the sex that they were incorrectly assigned at birth based on an examination of the external genitals.

15. For example, some infants who have female external genitalia and are therefore assigned a female sex at birth may have a male gender identity and/or other sex-related characteristics not traditionally associated with girls or women. In such a case, the only way to identify the person’s true sex is to know the person’s gender identity.

is the person's gender identity.

17. No assessment other than gender identity can provide an accurate measure of an individual's sex. Attempting to rely on any other sex-related feature would raise intractable problems. For example, relying on chromosomes, while clearly impractical, would also yield inaccurate results in some cases.

18. For example, infants born with Complete Androgen Insensitivity Syndrome (CAIS) have a mutation in the androgen receptor. While they have male typical chromosomes (XY), they are born with female external genitalia (so these newborns are assigned female sex at birth), internal testicles instead of ovaries, and male hormones (testosterone) although their body is unable to respond to testosterone. So despite having testes, XY chromosomes and normal male levels of testosterone, these newborns are assigned female at birth and raised as girls. Children with CAIS are so typically female appearing and acting that they often are only diagnosed at puberty when they fail to develop breasts (because they lack estrogen) and do not menstruate (because they do not have uteruses). Because the disorder is not apparent at birth, despite the presence of testes, XY chromosomes, and testosterone, assignment based on an examination of the external genitals is generally accurate because these children almost always develop female gender identities. The reason this happens is that just as their developing external genitals are unable to respond to testosterone because of a mutation in the testosterone receptor, the developing brain also cannot respond to testosterone and so develops as a normal female brain. Often these girls are only diagnosed when they fail to go through female puberty.

19. Similarly, boys born with severe congenital adrenal hyperplasia (CAH) are born with fully formed penises and typically have a male gender identity. They are only

fact they lack testes and have internal ovaries and XX chromosomes.

20. If we used sex chromosomes as the basis to determine sex we would assign girls with CAIS (who are indistinguishable from girls without the condition until puberty and nearly all of whom identify as female) as male, and would assign boys with CAH (who are indistinguishable from boys without the condition and nearly all of whom identify as female) as female.

21. Therefore, an individual's sex can only be accurately identified by reference to the individual's gender identity.

### **Etiology of Gender Identity and Treatment of Gender Dysphoria**

22. While the research is still developing, a growing body of studies provides significant evidence that gender identity is a biological characteristic of the brain influenced significantly by genes and by the prenatal environment—specifically, what hormones or chemicals the developing brain is exposed to.

23. We have sufficient information from the research to understand that gender identity is fixed at an early age and cannot be changed.

24. We also have sufficient information to understand that attempts to convince or coerce gay and lesbian children and adults to pretend that they are heterosexual or to convince or coerce transgender children and adults that they are cisgender—often referred to as “reparative therapy”—do not work and are highly damaging to these individuals. For this reason, a United Nations report on torture described reparative therapy for LGBT people as “unscientific, potentially harmful and contributing to stigma” and called on member countries to outlaw this

case of transgender, gay, and lesbian children.<sup>2</sup>

25. Rather, medical science now recognizes that when an individual's gender identity does not align with the sex assigned at birth, the only effective and ethical treatment is to re-classify the person's sex to correspond to the person's gender identity. A physician's role is to assist the person in transitioning to living in accordance with their true sex.

26. Gender Dysphoria is the clinical term, defined in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5), to describe transgender people, who may experience clinically significant distress due to the incongruence between their gender identity and birth-assigned sex, if not appropriately treated. Such distress can include depression, suicidal thoughts, or impairment of functioning in their daily lives. Appropriate treatment is therefore critical.

27. Both youth and adults may experience Gender Dysphoria. Studies show that treatment of youth with Gender Dysphoria is significantly more effective than treatment for adults. That is in part because the level of dysphoria is influenced by the multiple large and small traumas that transgender people experience when expression of their gender identity results in negative social and psychological consequences, or when their gender identity is rejected or denied. The accumulation of those traumas throughout childhood and adolescence can be ameliorated by allowing children to socially transition and allowing older youth, if appropriate, to undergo medical treatments that can support a transition.

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<sup>1</sup> See Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, United Nations General Assembly Human Rights Council (2013), [www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf).

<sup>2</sup> See Cal. Bus. & Prof. Code § 865.2; D.C. Code Ann. § 7-1231.14(a); 405 Ill. Comp. Stat. Ann. 48/20; N.J. Stat. Ann. § 45:1-55(a); Or. Rev. Stat. Ann. § 675.850(1); Vt. Stat. Ann. tit. 26, § 3210(13).

28. While my practice is generally limited to those 18 years and older, I have treated a number of young adult patients and have observed the outcomes of those who were able to transition during childhood or adolescence and those who were not. My patients who were allowed to transition at young ages show far more resilience, health, and well-being than those who were forced to live in accordance with their birth-assigned sex.

29. In sum, it is my professional opinion that gender identity is the most accurate measure of sex; that gender identity is a biological and immutable characteristic; and that the only ethical and effective treatment for Gender Dysphoria is facilitating a transition to permit the individual to live fully in accordance with the person's gender identity.

30. 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 8/11/16.

AM Godwin MD

# **EXHIBIT**

## **A**

**Ryan Nicholas Gorton, MD, DABEM**

901 Douglass Ave, Davis CA 95616

(504) 261-8379 (mobile)

(530) 297-7880 (home)

[nickgorton@gmail.com](mailto:nickgorton@gmail.com)**Professional Practice**

February 2005 – Current      Emergency Medicine Physician  
Sutter Davis Hospital  
Davis, CA

July 2002 – February 2005      Emergency Medicine Physician  
St Tammany Parish Hospital  
Covington, LA

**Professional Practice: Volunteer Activities**

March 2005 – Current      Primary Care Provider and Clinical Instructor  
Lyon-Martin Health Services  
San Francisco, CA.

August 2005 – February 2006      Acting Medical Director  
Lyon-Martin Health Services  
San Francisco, CA.

September 2008 – Current      Executive Committee Member and Lecturer  
Project HEALTH <http://www.project-health.org/>  
San Francisco, CA.

January 2011 – Current      Consultant TransLine National Clinical Consultation Line

Medical-Legal Consultant:      Sylvia Rivera Law Project, New York, NY  
Lambda Legal Defense and Education Fund, Inc., New York, NY  
Transgender Law Center, San Francisco, CA  
National Center for Lesbian Rights. San Francisco, CA  
Northwest Justice Project, Seattle, WA  
The Legal Aid Society, New York, NY  
National Center for Transgender Equality, Washington, DC  
TGI Justice Project, Oakland, CA.

**Post Graduate Training**

June 2001 – June 2002      Chief Resident, Department of Emergency Medicine  
Kings County Hospital Center/SUNY Downstate  
Brooklyn, NY

July 1998 – June 2002      Emergency Medicine Residency

Kings County Hospital Center/SUNY Downstate  
Brooklyn, NY

### **Education**

August 1994 – May 1998      Doctor of Medicine  
University of North Carolina School of Medicine  
Chapel Hill, NC

August 1988 – August 1991      Bachelor of Science in Biochemistry, Summa Cum Laude  
North Carolina State University  
Raleigh, NC

### **Professional Affiliations**

World Professional Association for Transgender Health (formerly HBGDA)

- ◆ Transgender Medicine and Research Committee
- ◆ Institutionalized Persons Committee

American College of Emergency Physicians

University of California at San Francisco Center of Excellence for Transgender Health

- ◆ Medical Advisory Board 2010-2013 (during development of current publication of Primary Care Protocols)

American Medical Association

- ◆ GLBT Advisory Committee 2009-2011

Gay and Lesbian Medical Association

- ◆ LGBT Medical Experts Panel

### **Licensure/Certification**

Nov 2003 – Present      Diplomate American Board of Emergency Medicine  
Nov 2004 – Present      CA State Medical License A89440  
Feb 2002 – 2009      LA State Medical License 14466R  
June 2001 – 2010      NY State Medical License 221808

### **Publications and Papers**

Gorton, R, and Erickson-Schroth, L. *Hormonal and Surgical Treatment Options for FTMs*. Psychiatric Clinics of North America. (In Press).

Ingram, N., Pratt V., and Gorton, R. *Counting trans\* patients: A Community Health Center Case Study*. TSQ: Transgender Studies Quarterly. 2(1): 136-147. 2015.

Gorton, R and Grubb, M. (2014), General, Sexual, and Reproductive Health In Erickson-Schroth, L (Ed) *Trans Bodies, Trans Selves: A Resource for the Transgender Community*. New York, NY: Oxford University Press.

Gorton R. Transgender as Mental Illness: Nosology, Social Justice, and the

Tarnished Golden Mean. In Stryker S and Aizura A (Eds.), *The Transgender Studies Reader, Vol 2*. New York, NY Taylor and Francis. 2013.

- Ehrbar R, Gorton R, and Winters K. Sugerencias para la revisión de los diagnósticos relacionados con el genero en el DSM y el CIE. In Miquel Missé and Gerard Coll-Planas (Eds.), *El Género Desordenado - Críticas en torno a la patologización de la transexualidad*. Madrid: EGALES. 2010.
- Ehrbar R, and Gorton R. *Exploring Provider Treatment Models in Interpreting the Standards of Care*. International Journal of Transgenderism, 12(4):198-210. 2010.
- Pittsburgh Transgender Health Research Summer Institute: *A Review and Guidance for Future Research—Proceedings from the Summer Institute at the Center for Research on Health and Sexual Orientation, University of Pittsburgh t*. International Journal of Transgenderism, 12(4):211-229. 2010.
- Haraldsen I, Ehrbar R, Gorton R, and Menvielle E. *Recommendations for Revision of the DSM Diagnosis of Gender Identity Disorder in Adolescents*. International Journal of Transgenderism, 12(2):75-79. 2010.
- Gorton R. *Transgender Health Benefits: Collateral Damage in the Resolution of the National Health Care Financing Dilemma*. Sexuality Research and Social Policy: Journal of NSRC. 4(4):81-91. Dec 2007.
- Gorton R. *Health Care and Insurance Issues for Transgender Persons*. American Family Practitioner. 74(12):2022. December 2006.  
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- Gorton R. *Current Summary of the Medical Knowledge Base and Current Clinical Standards Surrounding the Treatment of Patients with Gender Identity Disorder*. Report prepared for the Lambda Legal Defense Fund. May 2005.
- Gorton R, Buth J, and Spade D. *Medical Therapy and Health Maintenance for Transgender Men: A Guide For Health Care Providers*. Lyon-Martin Women's Health Services. San Francisco, CA. 2005. ISBN 0-9773250-0-8 ([www.nickgorton.org](http://www.nickgorton.org))
- Gorton R. *A Critical Analysis of the Hayes Report: "Sex Reassignment Surgery and Associated Therapies for Treatment of GID."* Report prepared for the Lambda Legal Defense Fund. May 2005.
- Greenberg's Text Atlas of Emergency Medicine*, Michael Greenberg Ed. Lippincott Williams & Wilkins. ISBN 0-7817-4586-1 2004. Contributing

Author: Chapter 4 – Eyes/Ophthalmic.

Gorton R. “Toward a Resolution of GID, the Model of Disease, and the Transgender Community.” MAKE. March 2005.  
<http://www.makezine.org/giddisease.htm>

Sinnert R, et al, Gorton R. “The ratio of ionized calcium to magnesium modifies the bronchodilatory effects of magnesium therapy in acute asthma.” *Acad Emerg Med* 2002 9(5) 436-437.

Morris D, Rosamond W, Hinn A, Gorton R. “Time delays in accessing stroke care in the emergency department.” *Acad Emerg Med* 1999 Mar; 6(3) 218-23.

Rosamond W, Gorton R, Hinn A, Hohenhaus S, Morris D. “Rapid response to stroke symptoms: the Delay in Accessing Stroke Healthcare (DASH) study.” *Acad Emerg Med* 1998 Jan; 5(1) 45-51.

#### **Selected Conference Presentations and Invited Talks**

Gorton, R. “Acute and Long Term Complications of Silicone Pumping: Primary, Secondary, and Tertiary Prevention”. WPATH Symposium. Amsterdam, The Netherlands. June, 2016.

Gorton, R, Ettner, R, Brown, G, Bermudez, F, Orthwein, J and Mazur, T. “Orange isn’t the New Black (Yet)”. WPATH Symposium. Amsterdam, The Netherlands. June, 2016.

Gorton R. “Transgender Patient Care in the Emergency Department”. American Academy of Emergency Medicine Scientific Assembly. Las Vegas, Nevada. February 2016.

Gorton R. “Transgender Patients in the Emergency Department”. Stanford University Department of Emergency Medicine SimWars. Stanford, CA. February 2016.

Gorton R. “History of Transgender Medicine”. UCSF School of Medicine Transgender Health elective. San Francisco, CA. February 2016.

Gorton R. “Free Silicone Complications and Management”. National Transgender Health Summit. Oakland, CA. April 2015.

Gorton R. “History of Transgender Medicine”. UCSF School of Medicine Transgender Health elective. San Francisco, CA. March 2015.

Gorton R. “Transgender Healthcare”. UC Davis School of Medicine. Sacramento, CA.

December 2015.

Gorton R. "Engaging and Retaining Transgender Patients in Ongoing Primary Care". National Association of Community Health Centers Health Institute and Expo. San Diego, CA. August 2014.

Gorton R. "Sexual and Reproductive Health: A Focus on Transgender Patients". California Family Health Council. Webinar. March 2014.

Gorton, R, Green, J and Tescher, J. "California Dreaming: Two Decades of Change in Health Insurance Law and Policy". WPATH Symposium. Bangkok, Thailand. February, 2014.

Gorton, R and Chung, C. "From Grassroots Health Advocacy to Expanding Clinician Competency: Project HEALTH (Harnessing Education, Advocacy & Leadership for Transgender Health)". WPATH Symposium. Bangkok, Thailand. February, 2014.

Gorton, R and Tescher, J. "Minding the Gap: Development and Implementation of a Clinical Rotation in Transgender Health". WPATH Symposium. Bangkok, Thailand. February, 2014.

Gorton R and Keenan C. "LGBT Sexual and Reproductive Health Issues". California Family Health Council Women's Health Update. San Francisco, CA. April, 2013.

Gorton R. "Transgender Medicine". California AHEC Webinar. San Francisco, CA. April, 2013.

Gorton R. "Transgender Aging Issues". Institute on Aging Conference on LGBT Aging. San Francisco, CA. November, 2012.

Gorton R and Branning N. "Transgender Primary Care". California Academy of Physician Assistants Annual Conference. Palm Springs, CA. October, 2012.

Gorton R. "Primary care and Hormonal Treatment for Transgender Clients". Samuel Merritt University. Oakland, CA. June 2012.

Gorton R. "Primary care and Hormonal Treatment for Transgender Clients" Grand Rounds for the VA Medical Center. San Francisco, CA. June 2012.

Gorton R and Wertz K. "Transgender Health Care" Webinar for the California Family Health Council. San Francisco, CA. June, 2012.

Eichenbaum J, Gorton R and May A. "Transgender Health, the VA, and Barriers to Care." San Francisco Veterans Administration Mental Health Services Grand Rounds. San Francisco, CA. May, 2012.

Gorton R and Wertz K. "Working With GLBT Clients" California Family Health Council Webinar. Los Angeles, CA. May, 2011.

Gorton R. "Improving Access to Transgender Health Care: Outcomes from Project HEALTH" World Professional Association for Transgender Health. Atlanta, GA. September, 2011.

Gorton R and Wertz K. "Trailblazing for Transgender Health" Southern Comfort Conference. Atlanta, GA. September, 2011.

Gorton R. "Nuts and Bolts of Transgender Primary Care" Gay and Lesbian Medical Association Annual Conference. Atlanta, GA. September, 2011.

Gorton R. "Transgender Medicine and Cultural Competency" Kaiser Department of OB/Gyn Grand Rounds. San Francisco, CA. April, 2011.

Gorton R. "Evidence Based Transgender Medicine" Opening Plenary UCSF National Transgender Health Summit. San Francisco, CA. January, 2011.

Green J and Members of the Center of Excellence for Transgender Health Medical Advisory Board. "Primary Care Protocols" Morning Plenary UCSF National Transgender Health Summit. San Francisco, CA. January, 2011.

Freshel K, Gorton R, Hansom C and Barnes A. "Communities Working Together to Become Culturally Competent" California State Rural Health Association Conference. Sacramento, CA. November, 2010.

Gorton R, Spade D and Wilkinson W. "Transposium: Healthcare Access and Quality For Transgender Individuals" Shaking the Foundations: The West Coast Conference on Progressive Lawyering, Primary Care Associate Program, Stanford School of Law. Stanford CA. October, 2010.

Gorton R. "Improving Access to Transgender Healthcare: Outcomes from Project HEALTH (Harnessing Education, Advocacy, and Leadership for Transgender Health)" Gay and Lesbian Medical Association Annual Conference. San Diego, CA. September 2010.

Gorton R, Gould D and Wertz K. "Trailblazing for Transgender Health" National Gay and Lesbian Task Force Creating Change Conference. March 2010.

- Gorton R. "Grand Rounds: Transgender Medicine" Highland General Hospital Department of Internal Medicine. Oakland, CA. January, 2010.
- Gorton R. "Grand Rounds: Transgender Medicine" Kaiser Permanente Department of Internal Medicine. San Francisco, CA. December, 2009.
- Keatley J and Gorton R. "Transgender Health Care Issues in California Today" Equality California and the California LGBT Legislative Caucus Briefing on LGBTI Health Care Issues. Sacramento, CA. December 2009.
- Ehrbar R, Winters K, and Gorton R. "Revision Suggestions for Gender Related Diagnoses in the DSM and ICD" WPATH XXI Biennial Symposium. Oslo, Norway. June, 2009.
- Gorton R. "A Place at the Table" American College Health Association Annual Meeting. San Francisco, CA. May, 2009.
- Famula M, Hall A, Pardo S, Gorton R. "Providing Trans-Specific Health Care to Transgender Students in the College Setting." American College Health Association Annual Meeting. San Francisco, CA. May, 2009.
- Gorton R. "Transgender Health" American Medical Student Association: Regional Conference. Lubbock, TX. March, 2009.
- Gorton R. "Medical Ethics and Evidence Based Transgender Medicine" Equality and Parity II: A Statewide Action for Transgender HIV Prevention and Care. Los Angeles, CA, January 2009.
- Gorton R. "Transgender Medicine 101" AMSA Regional Conference. Lubbock, TX. December, 2008.
- Gorton R, Djordjevic M, and Brownstein M. "Female to Male (FTM) Health Update" (Provider Session) The 7<sup>th</sup> Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. May 2008.
- Gorton R. "FTM Hormones 201." (Community Session) The 7<sup>th</sup> Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. May 2008.
- Green J, Gorton R, Razza R, and Tamar-Mattis A, "Healthcare and Access Issues Panel." University of California Hastings College of the Law Transposium Conference. April 2008.
- Arkles G, Gorton R, Sanchez D, Suarez C. "Trans Issues in Health Care Panel." Harvard Law School Lambda Legal Advocacy Conference. February

2008.

- Gorton N, Thaler C, and Keisling M. "Drawing the Curtain: An Overview of Medical Privacy Protections and Risks for Transgender Patients and Providers" WPATH Symposium, 2007, Chicago.
- Gorton R. "Transgender Medicine 2007: A Medical Ethics and Evidence Based Paradigm Shift." (Provider Session) The 6<sup>th</sup> Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. April 2007.
- Gorton R. "FTM Hormones 201." (Community Session) The 6<sup>th</sup> Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. April 2007.
- Gorton R. "Medical Ethics and Evidence Based Transgender Medicine." FORGE Forward. Milwaukee WI. March 2007.
- Gorton R. "FTM Hormonal Treatment: Beyond 101." FORGE Forward. Milwaukee WI. March 2007.
- Gorton R. "Transgender Healthcare in 2007: Its Time to Take it Seriously." Humboldt State University 13<sup>th</sup> Annual Diversity Conference and Education Summit. Arcata CA. March 2007.
- Spade D, Gehi P, Arkles G, and Gorton R. "Barriers to health care access for transpeople." UCLA School of Law, Williams Institute Annual Update. Los Angeles, CA. February 2007.
- Marksamer J and Gorton R. "Legal Support and Advocacy for Transgender Youth and Their Families." Gay and Lesbian Medical Association Annual Conference. San Francisco, CA. October 2006.
- Gorton R. "Hormone Therapy 101." FTM-Gender Odyssey 2006. Seattle, WA. September 2006.
- Gorton R. "Hormone Therapy 201." FTM-Gender Odyssey 2006. Seattle, WA. September 2006.
- Gorton R. "Transgender Medicine." California Department of Health Early Intervention Program Statewide Conference. May 2006.
- Gorton R. "Primary Care and Hormonal Therapy for Transgender Males." (Provider Session) The 5<sup>th</sup> Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. March 2006.

Gorton R. "Health Maintenance for Transgender Men." (Community Session) The 5<sup>th</sup> Annual Mazzoni Center Trans-Health Conference. Philadelphia, PA. March 2006.

Gorton R. "Primary Care and Hormonal Therapy for Transgender Males." The 23<sup>rd</sup> Annual Conference of the Gay and Lesbian Medical Association. Montreal, Canada. September, 2005.

Spade, D, and Gorton R. "Medical-Legal Policy Update in the Quest for Trans Health Care and Justice." The 23<sup>rd</sup> Annual Conference of the Gay and Lesbian Medical Association. Montreal, Canada. September, 2005.

Arkles Z, and Gorton R. "Medical-legal Collaboration in the Quest for Trans Health Care and Justice" The 19<sup>th</sup> Biennial Symposium of the Harry Benjamin International Gender Dysphoria Association. Bologna, Italy. April, 2005.

### **Professional Advocacy**

Supported as physician member of the American Medical Association for adoption of inclusive language for transgender people within AMA policy. "Recommendations to Modify AMA Policy to Ensure Inclusion for Transgender Physicians, Medical Students and Patients." Accepted by the AMA Board of Delegates July 2007. See "AMA Meeting: Anti-discrimination policy extended to transgendered." AMA News July 16, 2007.  
<http://www.ama-assn.org/amednews/2007/07/16/prsk0716.htm>.  
Policy amendment available at:  
<http://www.ama-assn.org/ama1/pub/upload/mm/467/bot11a07.doc>

Authored and proposed with Vernon A, and Maxey K. *Resolution to amend the American College of Emergency Physicians 'Code of Ethics for Emergency Physicians.'* Accepted as policy October 2005. Now reads (amended language underlined): "Provision of emergency medical treatment should not be based on gender, age, race, socioeconomic status, sexual orientation, real or perceived gender identity, or cultural background."

### **Awards**

Claire Skiffington Vanguard Award. Transgender Law Center. San Francisco, CA. 2012.

## **EXHIBIT 4**

### **DECLARATION OF MELISSA WHITAKER**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

ASHTON WHITAKER, a minor, by his  
mother and next friend, MELISSA  
WHITAKER,

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT  
NO. 1 BOARD OF EDUCATION and SUE  
SAVAGLIO-JARVIS, in her official capacity  
as Superintendent of the Kenosha Unified  
School District No. 1,

Defendants.

Civ. Action No. 2:16-cv-00943-PP  
Judge Pamela Pepper

**DECLARATION OF MELISSA WHITAKER**

1. My name is Melissa Whitaker. I am the mother of Ashton (“Ash”) Whitaker, the plaintiff in the above-captioned action. I have actual knowledge of the matters stated in this declaration.

2. I live in Kenosha, Wisconsin with my son, Ash Whitaker.

3. I am employed by the Kenosha Unified School District No. 1 as a high school teacher at George Nelson Tremper High School (“Tremper”).

4. Ash was designated “female” on his birth certificate, but in spring 2013, he told me that he is transgender and a boy. After this, he slowly began transitioning publicly by cutting his hair short, wearing more masculine clothing, and going by a masculine name and masculine pronouns. A recent photo of Ash is attached to this declaration as Exhibit A.

5. Ash was diagnosed with Gender Dysphoria by his pediatrician and his therapist, whom he began seeing around the time of his transition. He currently sees a clinical psychologist

Children's Hospital of Wisconsin. He started hormone therapy (testosterone) in July 2016.

6. On August 2, 2016, I took Ash to the Kenosha County Circuit Court and he filed a petition for a legal name change to his traditionally masculine first name, Ashton. He has a court date of September 15, 2016 at which I expect the petition will be granted.

7. Ash's gender transition has been largely accepted and respected by the school community. Many newer students or students who did not know him well, did not even know that Ash was transgender, and just saw him as any other boy, until the school's treatment of him put a spotlight on his transgender status.

8. In spring 2015, during his sophomore year, Ash and I met with his guidance counselor, Debra Tronvig, and requested that he be permitted to use the boys' restrooms. In March 2015, Ms. Tronvig told us that the administration had decided Ash could use either the girls' restroom or a single-user, gender-neutral restroom in the main office. Being offered these two "options" made my son visibly overwhelmed and upset, as either option seemed impossible. As a boy, he cannot use the girls' restrooms. And using the main office restroom would raise too many questions from staff and his peers and is stigmatizing by labeling him as different from all other students.

9. Due to the school's policy, Ash tried to avoid using the restrooms at school for the rest of that school year by restricting the amount of liquids he drinks. This was especially dangerous because Ash suffers from vasovagal syncope, a medical condition that can result in fainting due to certain physical or emotional triggers. His physician has recommended that he drink 6-7 bottles of water and a bottle of Gatorade every day, since dehydration and stress can cause him to faint.

depression and anxiety. These symptoms have gotten worse due to the anxiety caused by the school's policy and how disrespected and humiliated it makes him feel to be treated this way.

11. From September 2015 onwards, during Ash's junior year, he used the boys' restrooms, after having learned during a trip to Europe in the summer of 2015 that it was his legal right to do so.

12. In February 2016, two assistant principals, Brian Geiger and Wendy LaLonde, learned from a Tremper teacher that Ash was using the boys' restroom. They decided that, consistent with the previous year's decision, Ash would not be allowed to use the boys' restroom. I received a call in late February 2016 from Ms. Tronvig letting me know that the school administration had decreed that Ash was not to use the boys' restrooms and could only use the single-user, gender neutral restroom or the girls' restrooms.

13. Around March 10, 2016, Ash and I met with Ms. Tronvig and assistant principal Holly Graf. At this meeting, Ms. Graf referred to Ash by his birth name and used female pronouns. Ms. Graf said that Ash could use the boys' restrooms only if his gender was changed in the school's official records. In order to do that, Ms. Graf told me that she would need to see legal or medical "documentation." She did not explain what she meant by that.

14. I explained to Ms. Graf that Ash was too young for transition-related surgery. Ms. Graf would not give me more guidance on what kind of documentation was needed to change Ash's gender in the school records.

15. After that meeting, I contacted Ash's pediatrician and requested that she send a letter to the school explaining why Ash needs to use the boys' restroom. The pediatrician faxed a letter confirming that Ash is a transgender boy and that he should be allowed to use the boys'

restroom. When Ms. Graf told me that the first letter was not sufficient, I asked the pediatrician to send a second letter reiterating the above, which she did.

16. Despite the letters, I received an email from Richard Aiello, the Tremper principal, stating that Ash would not be allowed to use the boys' restroom because the letter was not acceptable. He did not explain why.

17. When I met with the administrators on March 6 and March 22, 2016, I asked that they change Ash's name and gender in the school records to avoid issues where he had to request at the beginning of every term that teachers change his name in the roster. At both meetings, Ms. Graf told me that medical or legal documentation was needed to do this. After the pediatrician sent the letters, she told me the documentation was not enough, but she would not tell me what would be sufficient.

18. Ash continued to use the boys' restroom, but he generally tried not to use the restrooms at school at all. I became even more worried about his emotional and physical health. He began showing increased anxiety and depression. He experienced more symptoms of vasovagal syncope, including dizziness, fainting, and migraines. In March 2016, I took him to see his pediatrician about these symptoms, and she told him to drink and eat regularly to avoid those symptoms. During the day at school, I would often hand him a bottle of water to drink to avoid dehydration, but he would refuse it because he did not want to have to use the school restroom.

19. Throughout the rest of the school year, Ash continued to use the boys' restroom when he had to, and I was called into multiple meetings with him in Ms. Graf's office. During these meetings, Ms. Graf would repeat that the school's policy was that Ash could not use the

found these meetings intrusive, demeaning, and embarrassing.

20. In April 2016, I learned that the school administrators had emailed the school's security guards and told them to notify administrators if students were seen going into the "wrong restroom." I was told by individual security guards that this was targeted at Ash. When Ash found out about this, he was humiliated that he was being monitored like that.

21. On April 5, 2016, I was pulled out of my classroom and brought to a meeting with Dr. Bethany Ormseth, KUSD's Chief of School Leadership, and Susan Valeri, KUSD's Chief of Special Education and Student Support. I asked them whether KUSD had adopted any policies about transgender student bathroom use, and they told me a policy was being created by a committee. I told them, "You don't need a policy—it's a federal law."

22. Throughout the 2015-2016 school year, I repeatedly requested to see a written policy about transgender students' bathroom use, but have not been provided a policy by any school official. I believe that there is no formal written policy and that the Tremper administration invented one because they are uncomfortable with Ash.

23. On April 6, 2016, Ash and I attended a meeting with Mr. Aiello, Ms. Graf, and Ms. Valeri. At this meeting, Ash was offered the option of using two single-user restrooms on the opposite sides of the campus. Only Ash would have a key to these restrooms, which were far from his classes.

24. During this meeting, Ash asked Ms. Valeri why he wasn't allowed to use the boys' restrooms. She said something like, "Well, we've never had a student who identifies as male but was born female." Ash told her that he is protected by Title IX, which prohibits discrimination based on sex and requires that transgender students be allowed to use school

transgender students' access to bathrooms that match their gender identity. When he asked her to explain what she thought Title IX meant, she said, "I don't think I'm going to give you any reasons."

25. I have observed Ash's physical and emotional health worsen as a result of the school's actions. He has suffered more dizziness and near-fainting as he has continued to avoid using the restrooms. He has also become more anxious and lethargic. There are an increasing number of mornings that he does not want to go to school. He has even been considering transferring to an online high school to get away from the overwhelming scrutiny and stigma he feels from the Tremper administration.

26. Around March 22, 2016, I met with Mr. Aiello and Ms. Graf. At this meeting, I was told that Ash had been nominated for prom court, but could only be a candidate for prom queen, not prom king. When Ash learned about the school's decision, he was devastated by the administrators' disrespect and humiliated by the idea that, as a boy, he would have to run for prom queen.

27. Ash and his friends then started an online petition that generated thousands of signatures urging the school to allow Ash to run for prom king and use the boys' bathrooms. Ash's friends also held a sit-in in to protest the administrators' discriminatory policies. On April 6, 2016, school administrators told us that Ash would in fact be allowed to run for prom king.

28. When I met with the administrators on March 6 and March 22, 2016, I asked that they change Ash's name and gender in the school records to avoid issues where he had to request at the beginning of every term that teachers change his name in the roster. At both meetings, Ms. Graf told me that medical or legal documentation was needed to do this. She told me the letter

we sent—from Ash’s pediatrician—was not enough, but she would not tell me what would be sufficient. She has never told me what, if anything, would change the school’s position.

29. On or about May 11, 2016, Ash told me about an incident at school where the orchestra’s volunteer pianist said to him, “Ash, honey, this isn’t about you, this is bigger than you. I’m praying for you.” This woman’s husband has spoken out against transgender students being able to use the bathroom of their gender identity in KUSD board meetings, and she runs a Facebook group called “KUSD Parents for Privacy,” which is critical of transgender students’ rights. I brought the incident to the attention of Mr. Aiello, but it hasn’t made a difference. I was told that Ash’s orchestra teacher was asked to call the volunteer and to tell her not to talk to students like that. However, the woman is still a volunteer, and having her continue has made it difficult for Ash to enjoy orchestra, which used to be one of his very favorite activities.

30. In May 2016, Ms. Tronvig, Ash’s guidance counselor, showed me what she described as and what I understood to be a neon green wristband that the school was planning to ask transgender students to wear to monitor their bathroom use. She gave me several of the wristbands to keep; they look like strips of neon green stickers. A photograph of one of these strips is attached to this declaration as Exhibit B. To my knowledge, the school’s plan is still in place and guidance counselors will be providing these green labels to transgender students or any student uncomfortable using the public restrooms in the upcoming school year.

31. When I told Ash about the green wristbands, he felt scared and humiliated. He was adamant that he would refuse to wear that kind of label, as it would serve to stigmatize him and mark him out as different from all his peers, and he was also extremely worried and scared that the school might require him to do so anyway.

and Ash's right to attend school free from discrimination. They have not responded.

33. Ash has suffered physically and emotionally from KUSD's actions. I have seen his symptoms of depression and anxiety increase over the past two years as the school's actions have taken more and more of a toll. He has difficulty sleeping and difficulty focusing in class, and feels unsafe leaving the house by himself, as he worries he will be targeted by people who know he is transgender and may target him for violence.

34. I have seen the turmoil my son has going through. I have been heartbroken and angry at the thought that he went through this treatment by the school district, but I fear and stress at the thought that in his senior year, he may once again been subjected to discriminatory, hurtful, and unnecessary treatment by a few who feel justified in doing so. I try to keep a brave front for his sake and bring up only the positives that he should experience in his last year, but I hear him say how much he dreads this year and just wants to move on to the next step where he knows he will not have to endure such treatment. Disheartening is not strong enough to explain what I know he has gone through; what we have both endured is more than we ever expected. I pray for my son to be strong and stay focused on his goals, his friends, his family, and of who he is as a person and not to let the negativity of a few tear him down.

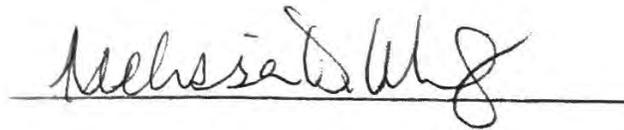
35. Over the summer, when he has not been in school, I have seen his symptoms of anxiety, depression, dehydration, dizziness, fainting, and migraines decrease substantially. I believe this is because he does not face daily scrutiny and stress at home that he does at school and where he is not worried about having to use the bathroom.

and staff continue to refer to him as a girl, I believe Ash will experience the same or worse harm to his health, wellbeing, and ability to learn.

Pursuant to 8 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 August 14, 2016

By:

A handwritten signature in black ink, appearing to read "Melissa Whitaker", is written over a solid horizontal line.

Melissa Whitaker

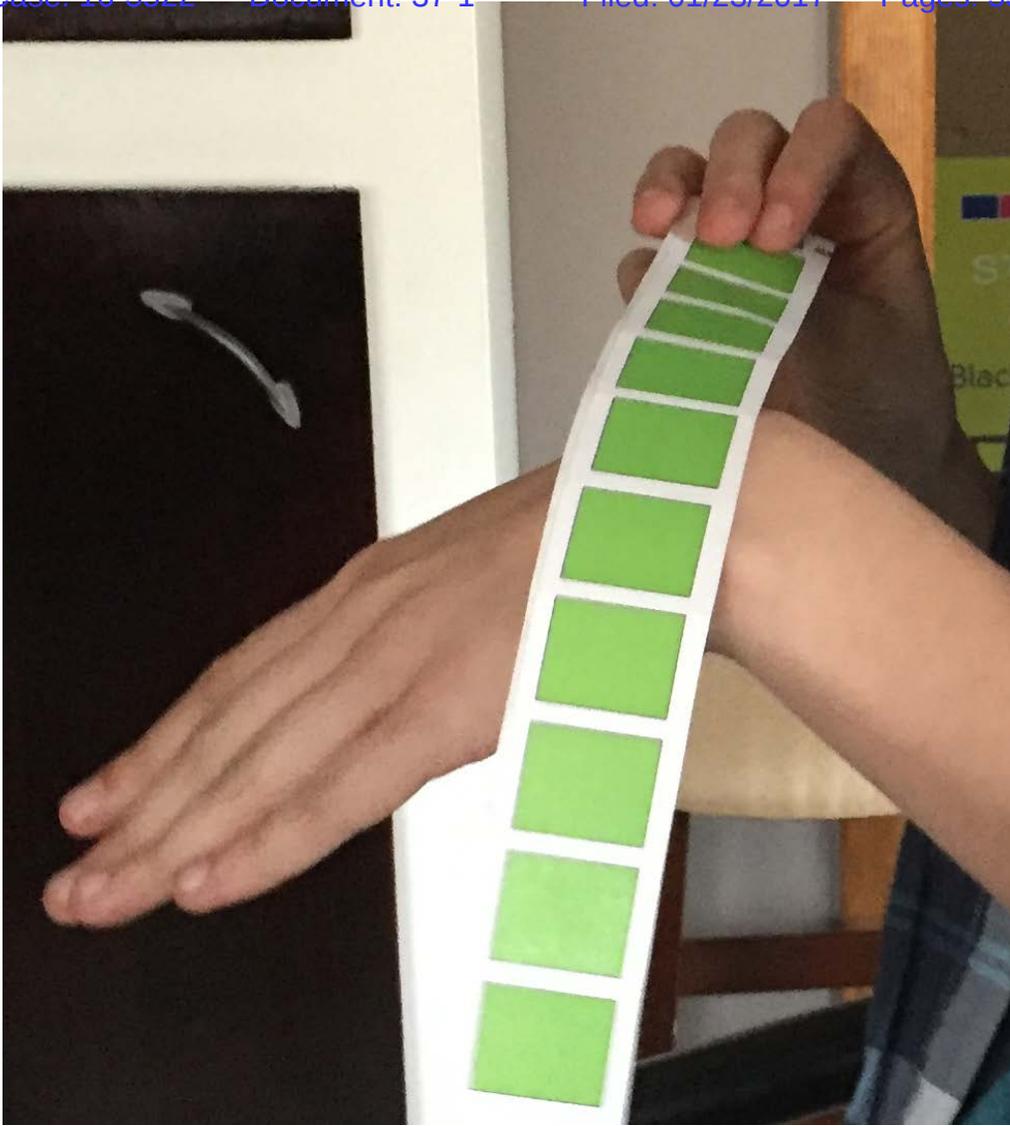
# **EXHIBIT**

## **A**



# **EXHIBIT**

## **B**



## **EXHIBIT 5**

### **DECLARATION OF JENIFER MCGUIRE, Ph.D.**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

ASHTON WHITAKER, a minor, by his  
mother and next friend, MELISSA  
WHITAKER,

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT  
NO. 1 BOARD OF EDUCATION and SUE  
SAVAGLIO-JARVIS, in her official capacity  
as Superintendent of the Kenosha Unified  
School District No. 1,

Defendants.

Civ. Action No. 2:16-cv-00943-PP  
Judge Pamela Pepper

**Declaration of Jenifer McGuire, Ph.D.**

**Preliminary Statement**

1. My name is Jenifer McGuire, Ph.D. I have been an Associate Professor (with tenure) of Family Social Science in the College of Education and Human Development, University of Minnesota, Twin Cities Campus, St. Paul, Minnesota, since July 2014. University of Minnesota, Twin Cities Campus is a leading research-intensive public institution in the United States. I was previously an Associate Professor of Human Development at Washington State University in Pullman, Washington, from 2006 to July 2014. In this research-intensive university, I am a tenured professor engaged in a considerable research agenda, as well as teaching and community extension activities. The information provided regarding my professional background, experiences, publications, and presentations are detailed in my curriculum vitae. This is included as an accurate and true copy and is attached as Ex. A to this declaration.

2. I earned my Ph.D. in Human Development and Family Studies at The University

of Arizona, 2003. I additionally earned a Master's of Science in Human Development and Family Studies, 1998, and a Master's in Public Health, 2001, also at The University of Arizona.

3. I am a social scientist who studies the development of individuals within contexts. I have done extensive research on transgender youth and schools, as described in more detail below. I am not a clinical provider. My empirical research areas include development of the person over the lifespan, adolescent development, parent-adolescent relationships, program evaluation and adolescent sexuality. I employ both qualitative and quantitative research designs using statistics programs such as SAS, SPSS, and M-Plus to analyze large scale data sets.

4. I specifically have extensive research background in transgender youth studies. My post-doctoral position focused on the school climate for lesbian, gay, bisexual, transgender and queer (LGBTQ) youth, and from that I developed a specific focus area on transgender youth. I visited and collected data with transgender youth in community centers in nine U.S. cities, Canada, and Ireland. I also completed a one-year visiting scientist appointment at the Center for Expertise in Gender Dysphoria at the Vrije University Medical Center (VUMC) in Amsterdam, NL. My research specifically with transgender youth has included large school-based surveys, focus groups in community youth centers, work with secondary datasets, in depth individual interviews, and work with medical records data. I have published over 35 journal articles and book chapters, with 20 of those being LGBTQ-specific (and 15 transgender-specific). Recently, I have consulted with the Minnesota Department of Education in research and curricular inclusion for transgender youth, as well as the Center for Sexual Health, Transgender Clinic at the University of Minnesota.

to provide an evaluation of the negative consequences to Ash as a result of his treatment in his school setting in Kenosha Unified School District (KUSD) in relation to Ash's status as a transgender boy based on the social science regarding transgender youth in schools. I have actual knowledge of the matters stated in this declaration. I was compensated \$1,200 to prepare this report and will be paid \$150/hour for any additional services or testimony. My compensation does not depend on the outcome of this case, the opinions I express, or the testimony I provide.

6. My evaluation activities are separate from and unrelated to my position at the University of Minnesota. Evidence in this report in no way reflects the opinion or positions of the University of Minnesota.

7. For this declaration, I reviewed the relevant developmental research literature and applied my knowledge of that literature to the unique developmental concerns of Ash. Research articles are taken from respected, peer reviewed, scientific journals in the areas of lifespan development, family studies, developmental psychology, education and public health. Some studies are specific to transgender or gender nonconforming youth, and other studies examine LGBTQ students as a group. In the text, reference is made to the population of each study using labels of sexual and gender minority (LGBTQ), sexual minority (LGB), transgender, or gender non-conforming. To the greatest extent possible, labels are used consistently with the study they come from, while also working to consistently identify populations throughout this declaration. A list of the research literature I relied upon in preparing this declaration is attached as Ex. B.

#### **Factual Background**

8. I have been provided a copy of the complaint recently filed in the United States District Court, Eastern District of Wisconsin, titled: *A.W. v. Kenosha Unified School District*, Civil Action No. 2:16-cv-00943. This complaint contains an extensive factual summary of Ash's

interview I conducted with two of his attorneys. I have also reviewed the expert declaration and clinical assessment of Ash by Stephanie Budge, Ph.D. I will assume the facts in the complaint, the additional facts obtained from Ash and his mother, and the facts contained in Dr. Budge's report are true for purposes of this analysis.

9. The following report utilizes the facts of this specific case, in conjunction with existing developmental research regarding transgender youth, to render an opinion as to whether KUSD's failure to fully include and support transgender students (including use of restrooms consistent with their gender identity) contributes to developmental harm for those students and specifically Ash, and whether KUSD's policies and practices would impact the functioning of all students. This report also explains the processes of medical intervention with gender-variant youth to clarify why reliance on medical milestones as a prerequisite to providing equal treatment consistent with gender identity is developmentally inappropriate and financially discriminatory.

#### **Relevant Research Findings**

10. My review of the research reveals three general findings:
  - a. Negative school climates are harmful to transgender youth.
  - b. Schools with inclusive practices experience benefits for all students in attendance, achievement, and sense of safety.
  - c. Transgender and gender variant youth may not have access to hormonal medical care due to the exorbitant cost, and are often not eligible for surgical care until age 18.

11. A minority stress framework describes the negative impact that environmental conditions have on a person with a minority (or reduced power) status within a system. Meyer (2003) elucidated this framework for LGB persons. Since then a minority stress framework has dominated the research and understanding of LGBTQ health and well-being disparities. Simply stated, the enacted stigma of discrimination and differential treatment wears away at the resilience of an individual, and becomes internalized through processes such as concealment of identity or internalized shame. These processes put LGBTQ persons at risk for negative outcomes, and explain the discrepancy in well-being between LGBTQ persons and their heterosexual, cisgender (i.e., non-transgender) counterparts. In 2013, Bockting further developed the concepts of minority stress specifically for transgender persons. The minority stress model has proved to be an incredibly powerful and effective tool in helping to understand why LGBTQ persons fare worse than their non-LGBTQ counterparts.

**Educational Harm to Ash Whitaker as a Result of the School's Actions**

12. Ash reports a significant history of punitive and limiting interactions with school personnel including being threatened with discipline, being separated from peers, having unwanted attention drawn to his transgender status, and a social media page hosted by a school volunteer that includes derogatory comments about him and his mother alongside arguments against schools treating transgender students equally.

13. Ash reports specific harm as a result of these actions. For instance, his academics suffer after he is pulled out of class and disciplined, or otherwise singled out. He is made to feel that he does not have the same worth as other students because he is required to walk a good distance out of his way simply to use the toilet. The notoriety of his situation resulting from the

school's actions has caused other students and personnel to start asking him invasive personal and medical questions, which he finds exhausting. He has been directly limited in opportunities for relationships and socialization with other students because he was required to be housed individually at orchestra camp and restricted to single-user restrooms. He is uncomfortable and risking his physical health when he waits hours or all day to use the toilet. Generally, he is also thrust into the position of constantly being a social advocate, which limits his opportunities for social interactions or relationships about things other than his gender identity.

14. School climates are an important contributor to the possible negative outcomes faced by transgender youth, specifically in the risks for mental health problems, victimization, school truancy or dropout, criminal justice involvement and suicide attempts. A growing body of evidence documents the harm caused to transgender students when they experience the kinds of negativity and social stigma to which Ash has been exposed. The National Research Council has concluded from decades of research that a safe learning environment is a key component of positive youth development, (Eccles & Gutman, 2002).

15. Studies have consistently reported a high rate of negative and victimizing behaviors towards transgender youth in schools (McGuire, Anderson, Toomey, & Russell, 2010; Greytak, Kosciw, & Diaz, 2009; Greytak, & Kosciw, 2013, Toomey, Ryan, Diaz, Card, & Russell, 2013). Some studies have also reported that school personnel can often contribute to the negativity and engage in harassment (McGuire, et al., 2010; Greytak & Kosciw, 2013). Evidence shows that adults often engage in harassing or unwelcoming gestures, which contribute to educational disparities (Greytak & Kosciw, 2013). Other sources of negativity from school officials include increased use of disciplinary practices aimed at LGBTQ students (Snapp, Hoenig, Fields, & Russell, 2015; Poteat, Mereish, & Birkett, 2015). Sexual and gender minorities

involvement with the criminal justice system, contributing to what has been termed the school-to-prison pipeline (Snapp et al., 2015). Many experience discipline for gender non-conformity in the form of things like wearing opposite gender clothing or makeup, showing affection to someone who appears as the same gender, or grouping with the preferred gender for activities. (Snapp et al., 2015). Poteat, Scheer, and Chong (2016) found that sexual minority youth experienced disproportionate disciplinary responses from school personnel.

16. Each of these studies is illustrative of and consistent with the experiences Ash reports. Ash described difficulty concentrating on academics after “being pulled out of class and lectured” which is consistent with the inhibited learning students often experience in uncomfortable environments (Eccles and Gootman, 2002). He described being uniquely targeted for discipline in that administrators and security staff were told to carefully watch students’ use of restrooms in a thinly veiled attempt to single him out for scrutiny and surveillance and punish his restroom use. He was threatened with detention and/or suspension if he continued to use the boys’ restroom, despite the fact that he had been using the boys’ restroom for seven months prior with not a single concern or incident. Repeatedly, Ash shared examples of student acceptance contrasted with personnel (administrative or staff) engaging in rejecting, isolating or punitive actions based on his transgender status. Consistent with other reports in the research, Ash reported discipline or generally being singled out for disparate treatment for ordinary student activities such as using the restroom, running for prom king, or wanting to share a suite with people he knows at orchestra camp. He was denied the opportunity to do these typical things based solely on his transgender status, and then faced possible discipline if he did them anyway.

being. In most studies, it is victimization exposure rather than sexual orientation or gender identity alone that accounts for differences in well-being between LGBTQ students and heterosexual cisgender students. More discrimination is associated with more distress. Specifically, discrimination contributes to shame, loneliness, and interferes with close connection to peers and the LGBTQ community, which in turn increases distress. (Mariesh and Poteat, 2015). Another study found differences between LGBTQ and non-LGBTQ students in truancy, achievement and graduation, however, when they included the role of victimization in the model, there were smaller or no differences between LGBTQ and non-LGBTQ students in truancy, achievement or graduation. (Snapp, et al., 2015). Further studies have confirmed that it is victimization that is associated with reduced grades, more truancy, and increased health risk behavior. In fact, when victimization is accounted for, LGBTQ students are similar to their non-LGBTQ counterparts in grades, truancy and health risk behavior (Russell, Ryan, Toomey, Diaz, & Sanchez, 2011). Taken together, the converging evidence reveals that problems that LGBTQ students report in well-being have little to do with being LGBTQ, and more to do with the victimization they experience at school. Longer term studies confirm that it is experiences of victimization that predict young adult psychosocial difficulties as well, and that when adolescent victimization is accounted for there are not differences in psychosocial well-being for gender non-conforming (Toomey et al., 2013) and LGBTQ (Russel, DP) young adults. Viewed from another vantage, these data suggest that if we can eliminate victimization of LGBTQ adolescents, we should see reduction in the young adult mental and physical health problems reported by this population. The most current research is finding a similar pattern of risks based on victimization specifically among transgender and gender non-conforming youth. In a large

use. However, when victimization was accounted for, there were no longer differences in substance use. Thus it is experiences of victimization, and not transgender status that puts someone at risk for substance use (Reisner, Greytak, Parson, & Ybarra, 2015). Current studies report that 41% of transgender adults report a history of a suicide attempt (Haas, Rodgers, Herman, 2014), and increasing evidence finds that this outcome is likely to be a byproduct of the extensive victimization to which transgender people are routinely exposed (Glodblum, Testa, Pflum, Hendricks, Bradford, & Bongar, 2012).

18. The experiences Ash reports regarding social isolation—for example, at the orchestra camp—are consistent with other studies’ findings about missed opportunities for social development. He reports that since the school began to single him out for differential treatment from other boys, many of his peers went from unquestioning acceptance of him as a boy and treating his transgender status as a “non-issue” to significantly greater curiosity and questioning, leading him to feel scrutinized and viewed as notably different from other students. He also reports that he lost “some friends” when he transitioned. When a social group has higher levels of prejudice against LGBTQ people, the social relationships of peer group members become more stressed over time. This means that the overall context of the peer environment matters for the opportunity for all group members to develop strong interpersonal relationships, a critical developmental task of adolescence. (Poteat, et al., 2015). Furthermore, having a stronger positive climate makes it more possible for other school supports to be more useful. (Poteat, et al., 2015) For example, youth in more supportive school contexts reported healthier outcomes in response to participation in further supports such as Gay-Straight Alliance (GSA) clubs.

19. Ash reports a history of significant bullying by another student in middle school, as well as harassing conduct by personnel at Tremper High School (Tremper). He also reports that there is considerable bullying of other students with little or no response by school personnel, at Tremper and elsewhere in KUSD. He reports hearing from other transgender and gender non-conforming students, both at Tremper and elsewhere in KUSD, that significant bullying, and even physical assault were not addressed by administrators.

20. Ash's reports of negative comments regarding LGBT people from students and being singled out by personnel are consistent with other studies of school climate. His report of lack of response from school personnel is also consistent with other studies of schools that are not responsive to safety and climate issues for transgender students. In particular, in one study we found that transgender youth were as likely to hear a teacher or staff person make a negative comment about gender expression as they were to hear a teacher or staff step in to correct a fellow student making such a statement (McGuire, et al., 2010). The bullying Ash experienced in middle school, while not directly related to transgender identity, was associated with other elements of gender expression such as size and appearance, not having a feminine enough gender role, and a masculine body frame.

21. Ash described his efforts to seek support from school personnel in middle school: "In middle school I reported bullying to teachers, the principal and vice principal, and the girl was never punished. I tried moving out of her classes. I wanted to be in the same house [set of students] but they moved me entirely [into a different house]. Nothing was ever done even though she threatened physical abuse. They said, 'It's he said/she said. We can't prove it, so we can't do anything.'"

name and female pronouns, despite his repeated requests to be called Ash and by male pronouns. Additionally, due to his birth name remaining on class rosters, he must approach each new teacher at the beginning of the semester to inform them of his preferred name and appropriate pronouns. He must repeat that process with substitute teachers whenever they fill in for his regular teachers throughout the year. He reported that some of his regular teachers would attempt to spare him that burden by crossing out his birth name on class rosters and hand-writing in the name Ash, but many do not. On one occasion, he reported that he had to repeat that conversation with four substitute teachers in a single day. While substitute teachers often respected his name and pronouns, some would ignore his requests, and call him by his birth name in front of the entire class, embarrassing him and revealing his transgender status to all the other students.

23. Ash reports that a Tremper parent who volunteers as a piano accompanist with the school orchestra formed a Facebook group called “KUSD Parents for Privacy” that has posted derogatory comments aimed at Ash and his mother. These posts are easily publicly accessible. I accessed them, and they clearly make reference to a specific student, Ash. It appears that derogatory comments and posts have been allowed to remain public for weeks or months. For instance one participant posted that “only a sick unloving parent would allow ...” in response to a story about Ash and the lawsuit he had filed. In another case, a story about Ash was shared, and the group’s post to that share was to define the word “pawn.” In both cases, Ash’s identity was an element of the post and derogatory content that personally demeaned him and/or his mother. Ash complained to the school principal about the website, and the principal assured him that “once a website mentions a particular student, it has to be taken down.” When that website

was done.

24. Ash also reports that the same parent volunteer approached him at an orchestra rehearsal toward the end of the school year. She put her hands on his shoulders and said she was “praying” for him. She said that she hoped he understood that comments made at a school board meeting and on her Facebook page that make arguments to deny Ash restroom access were not “personal” and were “bigger than” Ash. He complained to the school administration about her comments and touching him, but it did not appear that anything was done, and the parent continued as a volunteer.

25. Ash’s mother, Melissa Whitaker, who is also a teacher at Tremper, reported receiving corrective intervention by the school principal to ensure that she did not use her classroom to advance her own “agenda,” which she understood to mean discussing Ash or transgender issues with her students—despite the fact that she had been careful never to raise the issue in any of her classes, for fear of exactly that kind of reprimand.

26. All of these factors are consistent with the profile of schools that allow bullying and discriminatory treatment and evade efforts to provide an inclusive and safe environment for all students. Considerable research has found that schools with negative school climates overall are harmful for all students, not just the ones directly targeted by the harassment. This is known as the bystander effect. When students (or anyone) exist in a context where any individual is singled out, treated unequally, harassed, or bullied, the experiences of all students are diminished.

27. Research specifically on school climates for LGBT students has found that when efforts are made to improve the climate for LGBT students, all students in the system benefit.

Specifically, studies have identified five approaches that individually and in combination improve school climates for LGBTQ youth: 1) inclusive non-discrimination and anti-harassment policies, 2) including LGBTQ issues in the curriculum, 3) providing resources specific to LGBTQ students, 4) intervening to stop harassment and bullying, and 5) improving social inclusion with groups like GSAs. Restroom policies that allow students to use the accommodations that match their identities send a message to the entire school that the school is a welcoming and affirming environment for a diverse range of people. Evidence from studies of other sorts of inclusive practices shows overwhelmingly that the student body as a whole benefits from the improved social climate of inclusive policies. Allowing bathroom use that matches a student's identity supports diversity, provides an equitable experience for a diverse range of students, and sends a strong message to the community that the administration respects and supports transgender students and expects that same level of respect from other students. This overall package of school responsiveness has been found time and again to improve the functioning of the entire system (Russell & McGuire, 2008).

28. A growing body of evidence finds that when schools take action to improve circumstances for gender and sexual minorities, all students and the climate as a whole experience the benefit. One study I co-authored found that when teachers step in to stop harassment and negative comments, everyone feels safer, not just LGBTQ students. One way to examine school safety is to consider the average level of safety within a school, and then examine individuals' feelings of safety with regard to how much and in what direction they deviate from the average for their school. This approach takes into account that schools vary in safety, and that individuals' experiences within a school vary. Our studies confirmed that schools vary with regard to how safe they are overall, and that for a given individual, about 10% of their

feelings of safety was determined solely by the overall safety of the school (Russell & McGuire, 2008). When schools enact the five safety strategies described above, the overall reports of anti-LGBTQ slurs goes down. For example, when more students know where to get information, have LGBTQ issues covered in the classroom, see teachers and staff intervening to stop harassment, or know openly LGBTQ teachers and students, the overall report of slurs goes down, even by those students who did not personally experience the protective interventions. In a profile analysis of schools, we identified three distinct profiles of schools, which we referred to as *Hostile High*, *Typical High*, and *Safety High*. *Hostile High*, *Typical High*, and *Safety High* have differences in slurs, LGBTQ curricula, and how many students report knowing an out LGBTQ teacher. A *Hostile High* experiences more slurs, less LGBTQ inclusive curricula, and fewer openly LGBTQ staff. The types of school varied in academic performance and students' feelings of safety. Overall school safety was linked to school level performance: students from a *Safety High* had higher academic performance (API and SAT scores), even after controlling for socioeconomic status and ethnic makeup (Russell, McGuire, & Laub, 2009).

29. Specific aspects of inclusive environments have been linked to different outcomes at the school level in a variety of studies. Schools with GSA clubs report better health outcomes for all students (even those not in the GSA), with an even stronger benefit for LGBTQ students (Poteat, et al., 2015). Horn and Szalach (2009) and Snapp, et al., (2015) likewise reported that overall levels of safety were higher among schools with LGBTQ-inclusive policies. Basically, in schools with inclusive policies, the overall student average for safety is higher than schools without policies. This finding holds true even among students who do not know about the policy, are not LGBTQ, and don't directly experience other aspects of the environment. Schools with LGBTQ-inclusive curricula and GSAs had reports of a safer climate for gender non-conforming

McGuire, Russell, 2012). Russell, et al. (2014) further confirmed this finding that schools with LGBTQ-inclusive policies have a weaker association between bullying and safety, based on teachers' reports, suggesting that such policies provide a protective effect on the climate for LGBTQ students (Russell, et al., 2015). Essentially, when the overall climate is better managed, even students who do get bullied fare better due to the protective factor of the other LGBTQ-supportive structures.

30. Conversely, no published empirical studies have shown any harm to students when schools practice more inclusive policies. Specifically, no studies have found increased reports of bathroom violence in connection with inclusive policies. To the contrary, study after study finds that greater inclusion on the part of the school translates to fewer incidences of violence and improved feelings of safety for all students, with an enhanced benefit for LGBTQ students.

31. Although Tremper High has an active GSA club, the specific actions taken by the administration to limit the access of transgender students to bathrooms, lodging, and school activities concordant with their gender identity, proposal of a system to visibly mark out transgender students for easier identification and scrutiny, and failure to intervene in harassment, anti-LGBTQ slurs, and bullying, render the school climate closer to the profile of a "hostile high." Ash described the curriculum for sexuality education and education in general at Tremper as one that includes no mention of LGBTQ people. Further evidence of a hostile environment exists in the measures needed to ensure that Ash could run for Prom King (instead of Queen). Administrators ignored a petition and finally responded only after a sit in by students that got local and national media attention. Meanwhile, Ash was told by school personnel that he was

a result. This prediction was not borne out, as tickets for prom sold out.

32. Ash and his mother report a particularly disturbing experience regarding a proposed program to offer transgender students green wristbands in order to better monitor their bathroom usage. A guidance counselor told Ms. Whitaker that an administrator had distributed the wristbands to all the school's guidance counselors in a meeting and asked the counselors to distribute them to transgender students so that school personnel could more easily ensure that transgender students were using the "right" bathroom. Such action amounts to a particularly blatant example of enacted stigma, as described in the Minority Stress Model (Meyer, 2003), and is particularly harmful to transgender persons (Bockting, 2013).

33. When schools take action to improve environments, evidence finds that all students benefit. Specifically, with regard to transgender students, interventions to prevent bullying and mistreatment of transgender students are associated with enhanced benefits for transgender students (Greytak, et al., 2009), as well as the entire school community, as described above. My own research found that enacting interventions was particularly important in the ability of transgender youth to develop connections to at least one supportive adult at school—a critical protective factor in development—and ultimately to feelings of safety (McGuire, et al., 2010). Increasingly, specific resources are available to train educators, administrators and other school staff (Greytak, Kosciw, Boesen, & Madelyn, 2013; Russell 2014) and to show the enhanced benefits for students when such training occurs (Greytak, Kosciw, & Boeson, & Madelyn, 2013).

34. Administrators have required documentation of Ash's transgender status as a way to avoid providing accommodations such as changing his gender in the electronic system. Exactly what is required has been unclear and appears to have shifted as Ash and his mother have attempted to comply.

35. In the treatment of children and adolescents with gender dysphoria, it is typical to engage in a period of waiting and support to allow development before attempting medical interventions. Around the time of puberty or after, if an adolescent is identifying as a different gender from that presumed at birth, all available evidence suggests the transition is likely to be long-standing (de Vries, Kreukels, Steensma, & McGuire, 2014; Steensma, McGuire, Kruekels, Beekman & Cohen-Kettenis, 2013). With proper support, transgender adolescents grow up to be psychologically healthy young adults in their gender, with a psychological profile similar to the population at large for the same age group (de Vries, et al., 2014).

36. In the United States, most insurance policies do not cover adolescent or adult treatment for gender reassignment. Ash and his mother report that their insurance does not cover treatments related to gender transition and would not have covered puberty blockers if they had been needed. The management and care for medical treatments related to gender transition can be quite expensive, especially before age 16 when puberty blockers are typically the only intervention available under the standard of care. Puberty blockers cost upwards of \$1,000 per month, a prohibitive cost for many Americans, including Ash's family. Ash has now started taking testosterone, as he has just this year become eligible for this intervention by his age and the prevailing standards of care (WPATH). Any system that requires a young person to "medically prove" their transgender status or gender identity is both medically inappropriate and

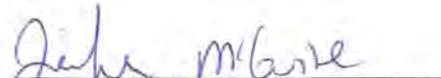
entirely out of reach for many who cannot afford medical treatments. For children under 18, many will not receive any medical intervention, as only the most well-to-do or well-insured Americans can afford such intervention. Moreover, for many transgender people, including adults, medical intervention is not necessary to resolve gender dysphoria; for many people, social transition may be the only step needed to complete the person's gender transition and allows them to live fully and successfully in accordance with their gender identity.

### **Conclusion**

37. In sum, it is my professional opinion, based on the available research, as well my own existing research program on these subjects, and my knowledge of the circumstances related to Ash's educational environment as it relates to his gender identity, that the actions of KUSD have served to marginalize and stigmatize Ash. These actions on the part of the school are harmful to Ash and other transgender students. Additionally, the actions of KUSD to target and treat transgender students differently from their peers create a hostile environment that interferes with the safety, well-being, and achievement opportunity of all youth in the school. Based on available research, the best interests of the school would be served by allowing students full inclusion in activities and access to facilities based on their gender identity, without regard to their birth-assigned gender. Ash has asked repeatedly to be allowed to use the restroom and other accommodations consistent with his experienced gender identity. He reports significant harm due to not being allowed to use the boys' restroom in the form of stress, not using the restroom all day, limiting his water even though he has a medical condition requiring him to hydrate, and being isolated and ostracized by the school personnel. In order to arrest the damage done, and allow Ash to move forward in a developmentally appropriate manner, it is critical that he be

allowed the freedom to fully express his gender identity and use the associated accommodations consistent with it.

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.

  
Jennifer McGuire

Executed on 8/12/2016.

**EXHIBIT A**

**CURRICULUM VITAE OF JENIFER K. MCGUIRE**

**Jenifer K. McGuire**

Associate Professor  
 Family Social Science  
 University of Minnesota  
 jmcguire@umn.edu

Degrees:

2003 Ph.D., University of Arizona, Family Studies and Human Development, Mentor Dr. Bonnie Barber  
 2001 MPH, Public Health, University of Arizona, Mentor Dr. Howard Eng  
 1998 MS., Family Studies, University of Arizona, Mentor Dr. Wendy Gamble  
 1992 BA., *Magna Cum Laude* Comm. & Psychology, University of Colorado, Mentor Dr. Jacquelynne Eccles

Professional Experience:*Twin Cities, Minnesota*

2014-current Associate Professor, Extension Specialist, U of Minnesota, Department of Family Social Sciences

*Amsterdam, the Netherlands*

2012-2013 Visiting Research Scientist, Center for Expertise on Gender Dysphoria

*Pullman, Washington*

2012-2014 Associate Professor, Washington State University, Department of Human Development

2006-2012 Assistant Professor, Washington State University, Department of Human Development

*Tucson, Arizona*

2003-2006 Post-doctoral Researcher - Institute for Children, Youth and Families, Mentor Dr. Stephen Russell, U of A

2002-2003 Research Associate - Division of Family Studies / Human Development, U of A

1998-2002 Evaluation Specialist - LeCroy and Milligan Associates

1998-1999 Internship Coordinator - Institute for Children Youth and Families, U of A

1996-1998 Program Coordinator – Evaluation, Cooperative Extension, U of A

*Boulder, Colorado*

1993-1995 Research Assistant - Institute for Behavioral Sciences, U of C

1993-1995 Director of Extended Day and Summer Programming, Boulder Co. Mental Health

Grants/ contract support:

2015 National Institutes of Health, NICHD, (under review) Supplement, Co-I, Resiliency among transgender persons. \$100,000 direct costs.

2014 National Council on Family Relations, Innovative Research Award. Kavalanka, K., Goldberg, A., and McGuire, J.K. The Trans\* Kids Project. Role: co-investigator

2014, National Institutes of Health, NICHD, (Scored at 11<sup>th</sup> percentile, not funded), Principal Investigator R03 Gender Identity Development among Gender Dysphoric Youth, \$100,000 direct costs.

2011, Association of American Colleges and Universities, Bringing Theory to practice, Types and Conditions of Service Learning: Associations with Civic Responsibility, Self-Efficacy, and Wellbeing, Principal investigator, \$7,400 research costs

2010-2011, Alcohol and Drug Abuse Research Program, Washington State University, Principal investigator, \$34,000 research costs

2008-2009, Department of Health and Human Services, Community Based Abstinence Education, Co-Evaluator, Clarkston Washington, \$29,000 total evaluation costs

2007, NICHD Summer Scholars Institute

2004, Society for the Psychological Study of Social Issues, Internship, \$2,500 research costs

Awards:

\*Major intellectual contribution, <sup>1</sup>Student co-authors

- 2014 National Council on Family Relations, Innovative Research Award. Kovalanka, K., Goldberg, A., and McGuire, J.K. The Trans\* Kids Project.
- 2010 Hugo G. Beigel Award, *The Journal of Sex Research* primary author to: McGuire, J. K. & Barber, B. L. (2010). Late adolescent sexual styles: A person centered approach to the multifaceted nature of sexual behavior. *The Journal of Sex Research*, 47, 301-313.
- 2010 Society for Research on Adolescence Social Policy Publication Award: Best Edited Book. Contributing author to: Russell, S. T., McGuire, J. K., & Laub, C. (2008). School climate for Lesbian, Gay, Bisexual, and Transgender (LGBT) students: Within- and between-school variability. In M. Shinn and H. Yoshikawa, (Eds.) *Toward positive youth development: Transforming schools and community programs*. New York: Oxford University Press, pp. 133-149.
- 2009 Leadership Fellows Award: Washington Campus Compact.

#### Associate editing

- McCann, E., Olson, K., Hall, E., Giles, M., McCullough, R. (2015). Children in Common: Ensuring the Emotional Well-being of Children When Parenting Apart. McGuire, J., & Michaels, C. (Eds.) *Children's Mental Health Ereview*. Available at: <http://hdl.handle.net/11299/175941>
- Kreukels, B., de Vries, A. I. c., Steensma, T. D., Eds; McGuire, J. K., Associate editor, (2013) *Gender dysphoria and disorders of sex development*. Springer: New York.

#### Professional articles, refereed:

- Becher, E., Cronin, S., McGuire, J., Powell, S., & McCann, E. (under review). Relational conflict and outcomes from an online divorce education program.
- Dworkin, J., McCann, E., & McGuire, J. (in press). *Coparenting in the digital era: Exploring divorced parents' use of technology*.
- \*McGuire, J. K., Dworkin, J., Borden, L. M., Perkins, D., & Russell, S. T. (under review). *Youth motivations for program participation*.
- \*Chapman, E. N., McGuire, J. K., Whitney, J. (under review) Sexual Identity and Well-Being: A Person-Centered Analyses of Sexual Health. *American Journal of Sex Education*.
- \*McGuire, J.K., Doty, J.L.<sup>1</sup>, Catalpa, J.M.<sup>1</sup>, Ola, C.<sup>1</sup> (2016) Gender Identity, Body Size, and Body Image: A Qualitative Analysis of Transgender Youth. *Body Image*.
- \*Norris, A.<sup>1</sup>, McGuire, J.K., Stolz, C. (under 2<sup>nd</sup> review) University school climate for LGBT students. *Journal of College Student Development*.
- \*McGuire, J.K., Catalpa, J.<sup>1</sup>, Lacey, V., & Kovalanka, K., (in press). Ambiguous loss for trans persons. *Journal of Family Theory and Review*.
- \*McGuire, J. K., Kovalanka, K., Catalpa, J. M.<sup>1</sup>, & Toomey, R. B. (2016). Transfamily theory: How the presence of Trans\* family members informs gender development in families. *Journal of family Theory and Review*, 8, pp. 60-73.
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- \*McGuire, J. K., & Conover-Williams, M. <sup>1</sup>, (2010). Creating spaces to support transgender youth. *The Prevention Researcher*, 17 (4) 17-20.
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- \*McGuire, J. K., Anderson, C. R. <sup>1</sup>, Toomey, R. B. <sup>1</sup>, & Russell, S. T., (2010). School climate for transgender youth: A mixed method investigation of student experiences and school responses. *Journal of Youth and Adolescence*, 39, 1175-1188.
- \*McGuire, J. K., & Doty, V. (2010). Innovations in teaching: Students as practitioners in a service learning context. *Michigan Family Review*, 14, 110-121.
- \*Broberg, D. M. <sup>1</sup>, Broberg, K. A. <sup>1</sup>, & McGuire, J. K. (2009). Policy approaches to offset food insecurity and obesity at the individual, family and community level. *Journal of Family and Consumer Sciences*, 101, 44-49.
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Invited Chapters, Encyclopedia entries, and Book reviews

- \*McGuire, J.K. (2016) Review of Sisterhood is Powerful. *Journal of Family Theory and Review*.
- \*McGuire, J.K. & Chrisler, A. <sup>1</sup> (2016). Body art among transgender youth. In Francisco Villaruel (Ed) *Youth Cultures*.
- \*McGuire, J.K. (2016). Transgender youth well-being. *Encyclopedia of LGBTQ Studies*. Sage: Thousand oaks, CA.
- \*McGuire, J.K. (2016). Puberty suppression for transgender youth. *Encyclopedia of LGBTQ Studies*. Sage: Thousand oaks, CA.
- \*McGuire, J.K. (2016). International and U.S. Gender Clinics. *Encyclopedia of LGBTQ Studies*. Sage: Thousand oaks, CA.
- \*McGuire, J.K. (2016). Sexuality education LGBTQ inclusion mandates. *Encyclopedia of LGBTQ Studies*. Sage: Thousand oaks, CA.
- \*McGuire, J.K., & Brown, M.B. (2015). *Forms and conditions of service learning: Links to student outcomes*. Routledge Press.
- De Vries, A. L. C., Kreukels, B., Steensma, T. D.; & McGuire, J. K. (2013). Gender identity development. In Kreukels, B., de Vries, A. l. c., Steensma, T. D., Eds; McGuire, J. K., Associate editor, (2013) *Gender dysphoria and disorders of sex development*. Springer: New York.
- \*McGuire, J. K. (2012). Transgender youth. *Encyclopedia of Adolescence*.
- \*Russell, S. T., McGuire, J. K., & Laub, C. (2008). School climate for Lesbian, Gay, Bisexual, and Transgender (LGBT) students: Within- and between-school variability. In M. Shinn and H. Yoshikawa, (Eds.) *Toward*

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positive youth development: Transforming schools and community programs. New York: Oxford University Press, pp. 133-149.

- \*Russell, S. T., & McGuire, J. K. (2006). Critical mental health issues for sexual minority adolescents. In F. A. Villaruel, and T. Luster (Eds.) *The crises in youth mental health: Critical issues and effective programs*, Volume 2: Disorders in adolescence. Westport CT, US: Greenwood Publishing Group Inc., pp. 213-238.

Abstracts:

- \*McGuire, J. K., & Russell, S. T. (2007). Health care utilization by sexual minority adolescents. *Journal of Adolescent Health*, 40, S28.

Other scholarly work:

Evaluation reports:

- \*McGuire, J.K., Catalpa, J.M.<sup>1</sup>, Lacey, V. (2015) Transgender youth in Ireland. Fact sheet. University of Minnesota, Department of Family Social Sciences.
- Dworkin, J., & McGuire, J. (2014). *Exploring technology use among divorced parents*. Available: <http://www.cehd.umn.edu/fsos/projects/parent20/pdf/p20report-dec2014.pdf>
- \*McGuire, J. K. (June, September, December, 2012-current). Certified Expert Witness [written] before United States Department of Justice, Executive Office for Immigration Review.
- \*McGuire, J. K.; Stolz, C., & Harris, E. <sup>1</sup> (2012). Diversity exposure and campus connection at Washington State University (GIESO commission).
- \*McGuire, J. K. (March, 2010). Certified Expert Witness [written and oral] before United States Department of Justice, Executive Office for Immigration Review (Tucson Immigration Court).
- \*McGuire, J.K., (2010). Evaluation report: Washington Campus Compact Learn and Serve America 2006-2009 Sub-Grant Program. Washington Campus Compact.
- \*McGuire, J. K., Clarke, T. J. <sup>1</sup>, Anderson, C. R. <sup>1</sup>, & Russell, S. T. (2010). Understanding school safety for transgender youth. (California Safe Schools Coalition Research Brief No. 13). San Francisco, CA: California Safe Schools Coalition.
- \*Russell, S. T., McGuire, J. K., Toomey, R.B. <sup>1</sup>, & Anderson, C. R. <sup>1</sup> (2010). Gender non-conformity and school safety: Documenting the problem and steps schools can take. (California Safe Schools Coalition Research Brief No. 12). San Francisco, CA: California Safe Schools Coalition.
- \*McGuire, J. K., Dixon, A. <sup>1</sup>, Russell, S.T. (2009). School safety for middle school students. (California Safe Schools Coalition Research Brief No. 11). San Francisco, CA: California Safe Schools Coalition.
- \*Russell, S. T., McGuire, J. K., & Laub, C. (2009). Understanding differences between schools in overall LGBT school safety. (California Safe Schools Coalition Research Brief No. 9). San Francisco, CA: California Safe Schools Coalition.
- Hill, L. G., McGuire, J. K., Parker, L. A., Sage, R. <sup>1</sup> (2009). Program evaluation using science-based practices in children's services. *4H Youth Development*.
- \*McGuire, J. K., Russell, S. T., Anderson, C. <sup>1</sup> (2007). Assessment of resources and needs for transgender identified adolescents within the context of sexual minority focused community centers. Society for the Psychological Study of Social Issues: Internship Award Report.
- \*LeCroy and Milligan Associates, Inc (Eds.). (2007) Arizona's Title V Abstinence Only Education Programs: Comparison of births among abstinence program participants and non-participants statewide. LeCroy and Milligan Associates, Inc (Eds.). Phoenix AZ: Arizona Department of Health Services.
- \*Russell, S. T., Toomey, R. <sup>1</sup>, & McGuire, J. K. (2007). Adolescent gender nonconformity, school safety, and adolescent well-being. Written testimony submitted to: Senate Select Committee Hearing on Transgender School Safety Issues. Children's Hospital Los Angeles, October 15, 2007.
- \*Russell, S. T., McGuire, J. K., Laub, C., & Manke, E., O'Shaughnessy, M., Heck, K., Calhoun, C. (2006). Harassment in school based on actual or perceived sexual orientation: Prevalence and consequences. (California Safe Schools Coalition Research Brief No. 2). San Francisco, CA: California Safe Schools Coalition.

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- \*Russell, S. T., McGuire, J. K., Laub, C., & Manke, E. (2006). LGBT student safety: Steps schools can take. (California Safe Schools Coalition Research Brief No. 3). San Francisco, CA: California Safe Schools Coalition.
- \*Russell, S. T., Kostroski, O. <sup>1</sup>, McGuire, J. K., Laub, C., Manke, E. (2006). Safe schools research brief: LGBT issues in the curriculum promotes school safety. (California Safe Schools Coalition Research Brief No. 4). San Francisco, CA: California Safe Schools Coalition.
- \*Russell, S. T., McGuire, J. K., Larriva, J., C. <sup>1</sup>, Manke, E., & Rosen, A. (2006). School Safety for Students with LGBT Parents. (California Safe Schools Coalition Research Brief No. 6). San Francisco, CA: California Safe Schools Coalition
- \*LeCroy & Milligan Associates, Inc. (2003). Evaluation of the Arizona abstinence only education program: Year five. Arizona Department of Health Services: Phoenix.
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- \*Basta, J., Walsh, M., McGuire, J., LeCroy, C., Gamble, W., Harle, K., Adam, M. (2000). Evaluation of the Arizona abstinence only education program: Year two - program process and short term program outcomes. Arizona Department of Health Services: Phoenix.

Conference Presentations:

- Sano, Y., McGuire, J.K., Ontai, L. (2015, November). Parental Mental Health and child Outcomes. Poster Presentation at the 2015 National Council on Family Relationships Annual Conference, Vancouver, BC.
- Dyk, P., Greder, K., Sano, Y., McGuire, J.K., Ontai, L. (2015, November). Psycho-Social Risk and Child Obesity in Low-Income, Rural, Families. Poster Presentation at the 2015 National Council on Family Relationships Annual Conference, Vancouver, BC.
- McGuire, J.K., Bretherson, S., Powell, S., Becher, E., Hall, E.L., Cronin, S., & McCann, E (2015, November). Improving outcomes for families following divorce and separation: Evidence from Minnesota's Parents Forever program. Paper Presentation at the 2015 National Council on Family Relationships Annual Conference, Vancouver, BC.
- Dworkin, J., McCann, E., & McGuire, J. (2015, November). *Coparenting in the digital era: Exploring divorced parents' use of technology*. Paper Presentation at the 2015 National Council on Family Relationships Annual Conference, Vancouver, BC.
- Catalpa, J., Zhang, N. & McGuire, J. K. (2015, November). *Kinship networks among transgender youth; Connecting to and breaking away from queer and trans\* communities*. Paper Presentation at the 2015 National Council on Family Relationships Annual Conference, Vancouver, BC.
- McGuire, J.K & Catalpa, J.M. (2015, June) *Negotiating Kinship Ties for Transgender Young People*. Paper presentation at Queer Kinship and Relationships Conference, Warsaw (Olsztyn), Poland.
- Doty, J.L., McGuire, J.K., & Catalpa, J.M. (2015, May). *Gender, Body Size, and Body Image: A Qualitative Analysis of Transgender Youth*. Paper Presentation at LGBTQ Research Symposium, Urbana-Champaign, IL.
- McGuire, J.K., Catalpa, J.M. & Davison, S. (2015, March). *Resilience among transgender youth who experienced homelessness prior to age 18*. Paper Presentation at the Biennial meeting of the Society for Research on Child Development, Philadelphia, PA.
- McGuire, J.K., Oswald, R., Zvoncovic, A., Allen, K.A. (2014). Incorporating feminist concepts into academic mentoring. Workshop presented at The National Council on Family Relations, Baltimore, MD.
- McGuire, J. K., (2014). Body image among transgender youth. Society for Research on Adolescence, Austin, TX.
- McGuire, J. K. (2013). Family relationships among transgender youth. National Council on Family Relations, San Antonio, TX.
- De Vries, A.L.C., McGuire, J. K., Steensma, T., Cohen-Kettenis, P., (2013). Prospective young adult outcomes of puberty suppression in transgender adolescents. Society for Research on Child Development, Seattle, WA.

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- McGuire, J.K., & Brown, M.B. (2012) Forms and conditions of service learning: Links to student outcomes. Conference on University Lifelong Learning, Graz, Austria.
- \*McGuire, J. K., Beets, N., Glenn, J., & Rash, J. A. (2011). Family relationships as contexts for sexual health among transgender youth. Poster presented at the World Association for Sexual health, Glasgow, UK.
- \*McGuire, J. K., Beets, N., Glenn, J., & Rash, J. A. (2011). Family relationships as contexts for sexual health among transgender youth. Poster presented at the Biennial meeting of the society for Research on Child development, Montreal, CA.
- \*Beets, N.<sup>1</sup>, Wilcox, J. L.<sup>1</sup>, McGuire, J. K., & LeCroy, C. W. (2011) Reservation as a context for Native American youth substance use. Poster accepted for presentation at the biennial meeting of the Society for Research on Child Development, Montreal, CA.
- \*Rash, J. A.<sup>1</sup>, Broberg, D.<sup>1</sup>, & McGuire, J. K., (2010). From policy to outcome: How cognitive changes after a pregnancy prevention program predict adolescent childbearing. Poster presentation at the annual meeting of the National Council on Family Relations, Minneapolis, MN.
- \*Rodgers, K. B., McGuire, J. K., & Ewest, W. C.<sup>1</sup> (2010). Trajectories of support on educational outcomes among adolescent mothers in poverty. Poster presentation at the annual meeting of the National Council on Family Relations, Minneapolis, MN.
- \*McGuire, J. K., & Conover-Williams, M.<sup>1</sup> (2010) Family relationships as contexts for development among transgender youth: Links to internalizing and externalizing risk behaviors. Paper presentation at the biennial meeting of the Society for Research on Adolescence, Philadelphia, PA.
- \*Van Campen, K.<sup>1</sup>, Toomey, R. B.<sup>1</sup>, McGuire, J. K., & LeCroy, C. W., (2010). "I Have What?": How Sexual Self-Efficacy and Sexuality Education Are Associated with STD Risk in Adolescence. Poster presentation at the biennial meeting of the Society for Research on Adolescence, Philadelphia, PA.
- \*McGuire, J. K., (2009). NCFR 2009 Perspectives on Therapy Use within Sexual Minority Populations. Round table presentation at the annual meeting of the National Council on Family Relations, San Francisco, CA.
- \*McGuire, J. K., & Doty, V. (2009). 13 hours: An interactive, broad-based, prevention program for at-risk youth. Paper presentation at the annual Washington Campus Coalition, Continuums of Service Conference, Seattle, WA.
- \*Boyer, C.<sup>1</sup>, Broberg, D.<sup>1</sup>, & McGuire, J. K. (2008 November). Adolescent identity formation and reasons to have sex: Links to sexual risk taking. Poster presentation at the annual meeting of the National Council on Family Relations, Little Rock, AR.
- \*McGuire, J.K., & Russell, S.T., (2008 November). Family relationships among transgender youth. Paper presentation at the annual meeting of the National Council on Family Relations, Little Rock, AR.
- Kaestle, C., Russell, S. T., & McGuire, J. K. (2008 November). Identification and measurement of sexual minority status. Round table presentation at the annual meeting of the National Council on Family Relations, Little Rock, AR.
- \*McGuire, J. K., & Russell, S.T., (2008 June). School climate for transgender students. Invited paper presented at the National Education Association Summer Institute on LGBT issues in the classroom.
- \*McGuire, J.K., Anderson, C.R.<sup>1</sup>, & Russell, S.T., (2008 March). Peer and teacher influences on perceptions of school safety for gender non-conforming students. Paper presentation at the biennial meeting of the Society for Research on Adolescence, Chicago, IL.
- \*Dralle, D.L.<sup>1</sup>, McGuire, J.K., Myers, M.<sup>1</sup> (2008, March). Harassment and teacher intervention in middle and high school: Links to teacher trust and feelings of safety. Paper accepted for presentation at the biennial meeting of the Society for Research on Adolescence, Chicago, IL.
- Kaestle, C., Russell, S. T., & McGuire, J. K. (2007, November). Use of the Add Health Data for family and developmental research. Round table presentation at the annual meeting of the National Council on Family Relations, Pittsburgh, PA.
- \*McGuire, J. K., & Russell, S. T. (2007, March). Health care utilization by sexual minority adolescents. Poster presented at the annual meeting of the Society for Adolescent Medicine, Denver, CO.

\*Major intellectual contribution, <sup>1</sup>Student co-authors

- \*McGuire, J. K., Russell, S. T., & Anderson, C. R. (2007, February). Health care utilization by sexual minority adolescents: Links with young adult well being. Paper presented at the annual meeting of the Society for the Study of Emerging Adulthood, Tucson, AZ.
- \*McGuire, J. K., Russell, S. T., & Anderson, C. R. <sup>1</sup> (2006, November). Transgender youth in community centers for lesbian, gay, bisexual and transgender people. Paper presentation at the annual meeting of the National Council on Family Relations, Minneapolis, MN.
- \*McGuire, J. K., Russell, S. T. & Laub, C. (2006, April). School Climate for Lesbian, Gay, Bisexual, and Transgender (LGBT) students: Within- and between-school variability. Paper presented at the biennial meeting of the Society for Research on Adolescence, San Francisco, CA.
- \*Lee, S. A. <sup>1</sup>, Larriva, J. <sup>1</sup>, McGuire, J.K., & Russell, .T. (2005, November). Perceptions of school safety for students with lesbian, gay, bisexual, and transgender parents. Paper presentation at the annual meeting of the National Council on Family Relations, Phoenix, AZ.
- \*McGuire, J. K., Russell, S. T., Barber, B. L., & Stone, M. R., (2004, November). Parenting styles and early onset of sexual intercourse. Paper presented at the annual meeting of the National Council on Family Relations, Phoenix, AZ.
- \*McGuire, J. K., Russell, S. T., & Laub, C. (2005, March). Adolescent bullying based on sexual orientation and gender presentation. Paper presented at the biennial meeting of the Society for Research on Child Development, Atlanta, GA.
- \*Barber, B. L., McGuire, J. K., Stone, M. R., & Russell, S. T. (2004, November). Parenting styles in early adolescence. Paper presented at the annual meeting of the National Council on Family Relations, Orlando, FL.
- \*McGuire, J. K. & Barber, B. L. (2004, March). Late adolescent sexual styles: Links to concepts of self and others. Paper presented at the biennial meeting of the Society for Research on Adolescence, Baltimore, MD.
- \*McGuire, J. K., & Walsh, M. (2002, November) Ruling in the program: Assessment of curricular components in a multi-site sexuality education program. Paper presented at the American Evaluation Association Conference, Washington DC.
- \*McGuire, J. K., Barber, B. L., & Cota-Robles, S. (2002, April) Parental dating monitoring and communication in late adolescence: Links to age of first intercourse and safer sex during the transition to adulthood. Poster presented at the biennial meeting of the Society for Research on Adolescence, New Orleans, LA.
- \*McGuire, J. K., Walsh M., & Adam, M. (2001, April). Running the bases: Development of pre-coital sexual behaviors in adolescence. Paper presented at the biennial meeting of the Society for Research on Child Development, Minneapolis, MN.
- \*McGuire, J. K., & Cota-Robles, S. (2001, April) What's to notice: Menarcheal status, breast development and delinquent behavior among Hispanic and Caucasian adolescent females. Poster presented at the biennial meeting of the Society for Research in Child Development, Minneapolis, MN.
- \*McGuire, J. K., & Gamble, W. C. (2000, June). Social connection and identity development: A review of theories and a description of process. Paper presented at the International Society for the Study of Behavioral Development, Beijing, China.
- \*Basta, J., & McGuire, J. K. (2000, April) Evaluation of the Arizona abstinence education programs: Lessons learned in a multi-site evaluation. Presentation at the Arizona Evaluation Network, Tucson, AZ.
- \*<sup>1</sup>McGuire, J. K., Collins, D. M., & Gamble, W. C. (1999, April). Intentionality and repeated program exposure as predictors of subsequent onset of sexual intercourse. Poster presented at the biennial meetings of the Society for Research in Child Development, Albuquerque, NM.
- Maggs, J. L., Vesterdal, W. J., McGuire, J. K., & Schulenberg, J. (1999, April). Within person predictors of change in alcohol use across adolescence. Paper presented at the biennial meetings of the Society for Research in Child Development, Albuquerque, NM.
- \*<sup>1</sup>McGuire, J. K., Collins, D. M., & Gamble, W. C. (1998, October). Relation of personal assets to health promotion and risk behaviors among a sample of teen leaders for the Postponing Sexual Involvement Program. Poster Presented at the Adolescent Health and Sexuality Conference, Tucson, AZ.

\*Major intellectual contribution, <sup>1</sup>Student co-authors

- Woulbroun Holmquist, E. J., & McGuire, J. K. (1998, March). The impact of illness burden and family relationships on adjustment: A comparison of children with illnesses and their siblings. Poster presented at the biennial meetings of the Society for Research on Adolescence, San Diego, CA.
- \*<sup>1</sup>McGuire, J. K., Collins, D., & Gamble, W. (1998, March). Social support and sexual self understanding: Prevention program implications for early adolescents. Poster presented at the biennial meetings of the Society for Research on Adolescence, San Diego, CA.
- \*McGuire, J. K. (1997, November). Adolescent community service and clarification of personal sexual values: The mediating role of parent- adolescent communication. Poster presented at the annual meetings of the National Council on Family Relations, Washington, DC.
- Maggs, J.L., McGuire, J.K., Peekson, D.S. & Schulenberg, J. (1997, July). To drink or not to drink: AMPS curriculum effects on developmental trends in motivations to use or avoid alcohol. Poster presented at the annual meeting of the Research Society on Alcoholism, San Francisco, CA.
- \*McGuire, J.K., Gamble, W., & Betts, S. (1997, April). Sexual self-efficacy and sexual behavior: Prevention program effects for early adolescents. Poster presented at the biennial meeting of the Society for Research on Child Development, Washington D.C.
- \*McGuire, J., Eccles, J. & Gamble, W. (1996, August). Mothers' constructions of children's personalities. Poster presented at the biennial meetings of the International Society for the Study of Behavioral Development, Quebec City, Canada.
- Maggs, J.L., Schulenberg, J. & McGuire, J. (1996, June). Altering trajectories of adolescent alcohol misuse: Continuity, change and mediating mechanisms. Paper presented at the meetings of the Family Research Consortium, San Diego, CA.
- \*Cota-Robles, S., McGuire, J. K., & Betts, S. (1996, April). Delinquency and parental monitoring of girls: An intercultural comparison. Poster presented at the 1996 Nebraska Symposium for the Study of Motivation and Delinquency, Lincoln, NB.
- \*McGuire, J. K. & McCarthy, K. (1994). Parent differential treatment and sibling conflict: A longitudinal and within family study. Poster presented at the biennial meetings of The Society for Research on Adolescence, San Diego, CA.

Service to the department, college and university:

- Chair Presidents Commission on Gender Identity/ Expression and sexual Orientation – WSU GIESO, (2009- 2014 except 2012-13 academic year)
- Washington Campus Compact *Leadership Fellow* (2009)
- Center for Civic Engagement Advisory Council (2009-current)
- Scholarship reader- CAHNRS (2009)
- Developed and implemented a service learning component for Advanced Adolescent Development (HD 408)  
Students developed and conducted a prevention program retreat for youth at risk in Whitman county Washington. (2008 - 2010)
- Graduate studies committee – Human Development (2007 – current)
- Scholarship committee- Human Development (2006 – current)
- Recruiting activities (table) at National Council on Family Relations (NCFR) Human Development (2007- current)

Service to professional groups or agencies:

- Washington Campus Compact, consulting in evaluation (2010-2012)
- Reviewer for NICHD Summer Scholars Institute program (2009)
- Reviewer, for several journals- *Journal of Research on Adolescence, Journal of Sex Research, Journal of Youth and Adolescence, Journal of School Health, Journal of Interpersonal Violence, Aggressive Behavior, Social Problems, Journal of Homosexuality, Journal of LGBT family issues* (2005 – current)
- Coordinator of GLBTSA focus group for National Council on Family Relations (2009 – current)
- National Education Association, invited speaker to NEA Summer Summit on LGBT issues in the classroom (2008)
- 4H Healthy Living Initiative- white paper (2008)

\*Major intellectual contribution, <sup>1</sup>Student co-authors

Service to governments or other groups:

Initiated *Rainbow Families* group in Pullman, a group for LGBT families (2008- 2012)  
Consultation with Arizona Department of Health Services Abstinence Only Program Evaluation (2003-2007)  
Member, Board of Directors for Wingspan, Southern Arizona's Lesbian, Gay, Bisexual and Transgender  
Community Center, Chair of program committee (2004-2006)  
City of Tucson, Commission on GLBT Issues, Consulting in research and technical assistance (2002-2006)  
Organization and teaching of comprehensive sexuality education to adolescents in community based programs,  
Tucson AZ (1999-2002)

Professional development activities:

Completion of writing and publication workshops (2009, 2010)  
Completion of Academic Advising Workshops -WSU ACADA, Advising 101, 102 (2010)  
Completion of COACH Women in Leadership program for junior faculty (2008)  
Completion of experiential education workshops, CAHNRS Academic Programs (2008, 2009, 2010)  
Completion of one week training seminar on mixed modeling using MPLUS (2008)  
NICHD Summer Scholars Institute (2007)  
Completion of Productive Proposal Writing seminar series via OGRD, WSU (2006-07)  
Completion of Writing Winning Grants (by Stephen Russell) proposal writing series, via OGRD, (2006-07)  
Completion of training seminar in Item Response Analyses (2005)  
Completion of training seminar in Hierarchical Linear Modeling and Advanced Hierarchical Linear Modeling at the  
University of Michigan's Inter-University Consortium for Social and Political Research (2001)

\*Major intellectual contribution, <sup>1</sup>Student co-authors

**EXHIBIT B**

**LIST OF REFERENCES**

## References

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## **EXHIBIT 6**

**U.S. Department of Education &  
U.S. Department of Justice,  
Dear Colleague Letter on Transgender Students  
(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)。

**Thông báo dành cho những người có khả năng Anh ngữ hạn chế:** Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**영어 미숙자를 위한 공고:** 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일 주소 [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov) 으로 연락하시기 바랍니다.

**Paunawa sa mga Taong Limitado ang Kaalaman sa English:** Kung nahahirapan 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/osh/emergingpractices.pdf](http://www.ed.gov/oese/osh/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/fpc](http://www.ed.gov/fpc).

<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/fpc/doc/censuslettertohighered091609.pdf](http://www.ed.gov/policy/gen/guid/fpc/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 7**

## **DECLARATION OF TIM KENNEY**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

ASHTON WHITAKER, a minor, by his  
mother and next friend, MELISSA  
WHITAKER,

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT  
NO. 1 BOARD OF EDUCATION and SUE  
SAVAGLIO-JARVIS, in her official capacity  
as Superintendent of the Kenosha Unified  
School District No. 1,

Defendants.

Civ. Action No. 2:16-cv-00943

**Declaration of Tim Kenney**

I, Tim Kenney, declare as follows:

1. My name is Tim Kenney. I am the principal of Shorewood High School in the Shorewood School District in Milwaukee, Wisconsin. I am in my fourth year as principal of Shorewood High School and have worked in the district for 20 years as a teacher, assistant principal, and principal.

2. I was principal of Shorewood High School, the only high school in the Shorewood School District, when our transgender inclusive policy was adopted in February 2014, and was responsible for the policy's implementation at Shorewood High school. As the policy was being drafted, I worked closely with the school board's policy committee because I had at least one transgender student at my school at the time and wanted to make sure that the policy would ensure that transgender students have a positive experience in school.

3. Our district's adoption of the policy was very public and received national media

attention. Nevertheless, we have received no pushback or negative feedback from the community or from the students. If anything, we expected a bit of pushback from non-transgender students in our district, but we received none.

4. Prior to the 2014-2015 schoolyear, I introduced the policy to our high school staff at an in-service meeting. Frankly, the staff had a lot of angst around the policy's implementation. Some staff said that we were releasing the floodgates and opening a can of worms. Others said that boys would use this as an opportunity to go into the girls bathrooms. During the meeting, we talked through all of the staff's concerns and addressed the practicalities of transgender students using the restrooms that match their gender. The staff realized that having transgender students use the bathroom does not in any way decrease other students' privacy in the bathrooms. We also reassured staff that we would address any behavioral issues as they arose throughout the year. The focus of the meeting was helping the staff to understand that the policy was not going to be a big deal.

5. Implementation of the policy has been completely positive. We have been aware of three transgender students at our high school since the policy's implementation two years ago. Our transgender students are thriving at school and so are all of our students. We have had no issues in the bathrooms and all of the fears voiced by staff surrounding the policy have been unfounded. We have not had boys pretending to be girls to get into the girls bathrooms. We have had no concerns from students around privacy, i.e., no requests from students to use alternative bathrooms because they are uncomfortable sharing a bathroom with transgender students. I anticipated that any disruption would come from other students bullying the

transgender students, but because we have created an inclusive environment for our diverse student body and modeled equal treatment for everyone, this has not been an issue.

6. An inclusive policy is important because it does not single transgender students out for treatment that is different than their peers. Transgender students do not want extra attention; they are just trying to fit in like everyone else. They just want to use the bathroom. The only thing students should be worried about is their education and I do not want transgender students distracted about which bathroom they should use or not use. The policy is powerful in what it does not do. It does not treat any students differently and does not draw extra attention to transgender students. That is what makes the policy so effective and easy to implement.

7. Before working on our policy and before having our school's first transgender student that was known to us, this issue was completely new to me. But as an educator, I come from a perspective that I need to meet each student where they are and I need to give that student what they need. I remember looking in the mirror one day and thinking that I am 100% certain that I am male. I realized that my transgender student must have the same thought when he looks in the mirror and that we are very much the same. If you can get past your own discomfort and lack of familiarity, it is much easier to begin to treat people equally.

8. 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 August 8, 2016

By:

  
Tim Kenney

# **EXHIBIT 8**

## **DECLARATION OF BRYAN DAVIS, Ph.D.**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

ASHTON WHITAKER, a minor, by his  
mother and next friend, MELISSA  
WHITAKER,

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT  
NO. 1 BOARD OF EDUCATION and SUE  
SAVAGLIO-JARVIS, in her official capacity  
as Superintendent of the Kenosha Unified  
School District No. 1,

Defendants.

Civ. Action No. 2:16-cv-00943

**Declaration of Bryan Davis, Ph.D.**

I, Bryan Davis, declare as follows:

1. My name is Bryan Davis, Ph.D. I am Superintendent of Shorewood School District, which serves approximately 2,200 students from kindergarten through 12th grade. The Shorewood School District is located in Milwaukee County, Wisconsin. I have 20 years of experience in the field of education, including six years as a superintendent and four years as a high school principal. I hold a Ph.D. in Urban Education from the University of Wisconsin – Milwaukee.

2. I have been Superintendent of Shorewood School District for approximately one year. Prior to being Superintendent of Shorewood School District, I was the Superintendent of Columbus School District in Columbus, Wisconsin, for five years.

3. In my previous tenure as Superintendent of Columbus School District, I oversaw the adoption and implementation of an inclusive athletic policy for transgender students that

allows students to participate in sports consistent with their gender identity. Though we were not aware of any transgender students in the Columbus district at the time that we adopted the policy, we decided to move forward with the policy because we saw the policy as an important way to make sure transgender students feel safe getting their rightful education and to send a message that our district is welcoming and inclusive to all students. It was important to me not only that our students would feel safe and welcome, but also that visiting students and athletes would feel the same way

4. Because I did not have any previous experience with transgender students or policies prior to the adoption of the policy, we were acting on faith to a certain extent that our policy would yield that best outcome for all students. The implementation has been very positive and the school district has received no complaints from students, staff, or the community about the policy.

5. Going through the process of adopting and implementing the policy also deepened my understanding of the hurdles and barriers that transgender students face at schools. Because we knew that not everyone would have an understanding of transgender students' needs, it was important to have a policy in place for everyone to follow that would guarantee equal treatment for all students. Having a policy in place also ensures that schools are not in a position of having to adopt impromptu policies when a situation arises.

6. Shorewood School District's transgender-inclusive policy, Policy 411 – Equal Educational Opportunities and Guideline 411 – Nondiscrimination Related to Students Who Are Transgender and Students Nonconforming to Gender Role Stereotypes, was adopted by Shorewood's school board on February 25, 2014, prior to my tenure as Superintendent. Shorewood School District's policy prohibits all forms of discrimination, harassment and

bullying against transgender and gender nonconforming students, allows students to designate their names and gender pronouns to be used and respected to school personnel, and allows transgender students to use bathrooms that match their gender identity. Implementation of the transgender-inclusive policy over the past two years has been extremely smooth. We have found that a clear, inclusive policy actually minimizes the chances of disruption by sending a clear message to the entire school community that we respect every student's gender identity and will treat everyone equally. When we model the message that we are accepting and inclusive of all of our students, our students are then more likely to be accepting and inclusive of each other.

7. Since our inclusive policy was implemented two years ago, we have known of three transgender students at our high school. We have had no complaints from transgender students, from other students, from any staff, or from any parents on the policy. We have received no pushback from the community. In fact, we have had alumni come back to the district and thank us for creating such an inclusive environment at their alma mater.

8. While we have not had any students object to the transgender policy, if a student did show discomfort about sharing a restroom with transgender students, we would offer that student the option of using a single-user restroom. In my professional judgment, however, I think it would be inappropriate to single out the transgender students by forcing them into a restroom separate from their peers. That would invite harassment and bullying against transgender students by sending the message that they should be treated differently.

9. I have been contacted by administrators at other school districts in Wisconsin who are trying to figure out their policies with respect to transgender students. I reassure them that a policy that allows transgender students to be treated consistent with their gender identity in all respects is easy to implement and adds to an inclusive and welcoming environment.

10. 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 August 8, 2016

By:   
Bryan Davis

## **EXHIBIT 9**

### **DECLARATION OF JUDY CHIASSON, Ph.D.**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

ASHTON WHITAKER, a minor, by his  
mother and next friend, MELISSA  
WHITAKER,

Plaintiff,

v.

KENOSHA UNIFIED SCHOOL DISTRICT  
NO. 1 BOARD OF EDUCATION and SUE  
SAVAGLIO-JARVIS, in her official capacity  
as Superintendent of the Kenosha Unified  
School District No. 1,

Defendants.

Civ. Action No. 2:16-cv-00943

**Declaration of Judy Chiasson, Ph.D.**

I, Judy Chiasson, declare as follows:

1. My name is Judy Chiasson, Ph.D. I have been the Program Coordinator for the Office of Human Relations, Diversity, and Equity in the Los Angeles Unified School District (“LAUSD”) since 2005. The Office of Human Relations, Diversity, and Equity provides support services for fostering a safe and respectful district, school and community culture so that all students and staff can lead safe, purposeful and academically successful lives. I hold a Ph.D. in Urban Education from Claremont Graduate University. A true and correct copy of my C.V. is attached to this declaration as Exhibit A.

2. LAUSD is the second largest school district in the country, with 732,000 students attending more than 1,200 schools. According to a 2014 survey conducted by the Centers for Disease Control (CDC), approximately 1% of LAUSD secondary students, self-identify as transgender.

I am responsible for designing, implementing, and evaluating district-wide programs to reduce bullying, bias, and intergroup conflict. I oversee the design, adoption and delivery of evidence-based trainings to end bias, bullying, sexual harassment, and hazing among students and adults. I have developed resources for students, staff and parents on gender identity, student misconduct, and bullying. I also assess the schools' safety climate and conduct needs assessment by collecting and analyzing qualitative and quantitative data.

4. I have provided expert testimony before the California Senate and Assembly in support of LAUSD's positions on critical legislation, including the School Success and Opportunity Act of 2013 (AB 1266), a California state law clarifying that transgender students are entitled to use facilities consistent with their gender identity, and Seth's Law of 2012 (AB 9), a bullying prevention law based on gender identity, gender expression, and sexual orientation. I frequently represent LAUSD in print, radio and television media outlets on matters of inclusive education, bullying, and LGBTQ concerns. I have conducted over 50 media interviews on transgender inclusive policies and practices.

5. Prior to working as Program Coordinator in the Office for Human Relations, Diversity and Equity, I was the Project 10 Specialist in the Office of General Counsel's Educational Equity and Compliance unit at LAUSD. In that role, I responded to incidents of bias, discrimination, or access based on protected categories. Two separate instances of bias involving transgender students came to my attention, which prompted us to realize that LAUSD did not have formal guidelines in place for transgender students. We also noticed that our transgender students were having challenges at school, that they were disengaged from their classes and peers, and that their academics were suffering.

that called for fully recognizing students' gender identity. In 2005, LAUSD adopted a formal policy requiring that transgender students be treated consistent with their gender identity in all aspects of their educational experience. The formal policy strongly recommended that schools grant transgender students full access to facilities that corresponded with their affirmed identity. Based on schools' overwhelming success in implementing that recommendation, we updated our policy in 2011 to require that transgender students have full access to facilities that match their gender identity. We have updated our policies for transgender students regularly to make them clearer and stronger. We last updated the policy in February 2014. A true and correct copy of LAUSD's current transgender student policy is attached as Exhibit B.

7. While we were initially drafting supportive guidance on transgender students, we definitely had our concerns. We asked ourselves whether we were creating unanticipated problems by adopting an inclusive policy. Ultimately, though, we decided that as educators, we needed to manage our fears, and show our transgender students the dignity and respect that they deserve. We would not require someone with a physical disability to use a separate facility because of any discomfort expressed by the staff or other students. This is the same thing. Our job as educators is to give our students the best academic opportunity we can provide, and we should never step back from that charge because of our own fears or discomfort.

8. Since LAUSD's formal policy on transgender students was first implemented, I have overseen the implementation of LAUSD's transgender-inclusive policy and none of our concerns have materialized. Our transgender students use restrooms and locker rooms, participate in gym class, play on sports teams and attend overnight field trips in a way that corresponds with their gender identity. We treat our transgender students – our transgender boys

obligations. In the 11 years that we have had our policy, we have not had any problems with its implementation.

9. I describe our transgender-inclusive policy as solving problems, rather than creating them. Everybody is more comfortable. Transgender boys and girls want to be recognized and treated like all other boys and girls. Forcing a transgender boy to use the female facilities would be extremely uncomfortable for all parties involved. For example, we had a new student who was a transgender boy. He was using the female facilities, incorrectly assuming that he would be required to do so. It was equally uncomfortable for him to use the girls' facilities as it was for the girls in those facilities. When the administration learned of the situation, they told the young man that he could use the boys' facilities. Everyone was relieved by this solution.

10. Our transgender students use the bathrooms for the same reasons that all other students use the restroom: to do their business, fix their hair and make-up, and gossip with friends. Going to the bathroom as a group is very normative behavior for teenagers. We want our transgender students to be fully integrated into the community. We do not want our transgender students to be stigmatized and not have full access to school spaces and social opportunities.

11. While some transgender students request to use single-user, gender-neutral restrooms because they feel more comfortable there, more often transgender students want to be able to blend in just like any other boy or girl, using the same facilities as everyone else. We allow any student – not just transgender students – access to single-user facilities if they desire additional privacy for any reason. But it is important not to force any student, including transgender students, to use a facility separate from everyone else, which would send the

students.

12. There have been no instances of disruption caused by the policy. Disruption occurs when people anticipate that a transgender-inclusive policy is going to be problematic. People's fears – frankly, primarily adult fears – are what are disruptive. Our experience has been that the fears of the adults have not played out. I have yet to be called into a situation to respond to an actual incident; I have only had to respond to fears, and the fears are unfounded.

13. One fear is that a person will pretend to be transgender to be predatory. But being transgender is persistent and consistent throughout the day. A student is transgender in all of their classes, outside of their classes and in their relationships at school. I have never had someone pretend to be transgender for nefarious reasons. It is implausible to think that a presumably male student is going to come to school for months on end, wear female attire, present as female to all of his friends and teachers, just so he can enter a female restroom. In the rare instances that students enter an inappropriate restroom, LAUSD addresses the conduct in the same way we would address other disciplinary issues.

14. Our policy treats all students with the dignity they deserve. A school should have an affirming environment where all students feel they are welcomed members of the community. Schools also need to model the respect that they want the students to demonstrate. In my experience, there's a strong, causal relationship between bias and bullying and bias is highly predictive of bullying. If our schools' actions reflect bias towards a group of students, we are going to see an increase in bullying of those students. On the other hand, when schools model support, the students emulate the supportive behavior and treat each other with greater respect.

15. In 2013, California's legislature passed the School Success and Opportunity Act (AB 1266), a law that clarifies that transgender students must be allowed to use facilities that match their identity. A true and correct copy of AB 1266 is attached as Exhibit C. Since that law took effect, school districts in California and across the country have contacted me to ask for advice about implementing their own transgender-inclusive policies. Those administrators often raise the same questions and fears we initially faced. However, I have learned that those districts have had the same success we have, and none of their fears materialized. On the contrary, those supportive policies have both improved the educational experience for transgender students and created a more positive and inclusive school climate for everyone.

16. 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 August 8, 2016

By:

  
Lady Chiasson

# **EXHIBIT**

## **A**

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## EDUCATION

**Doctor of Philosophy in Urban Education, 2004**

*Claremont Graduate University, Claremont, CA*

**Dissertation Topic:** *Lifting the Veil of Heterosexism*, quantitative study on the efficacy of LGBT bias reduction workshops in post-secondary institutions.

Dissertation Committee: Daryl Smith, Lourdes Argüelles, David Drew

**Master of Science in Educational Therapy, 1995**

*College for Developmental Studies, Los Angeles, CA*

**Bachelor of Science in Special Education 1990**

*Florida International University, Miami, FL*

## UNIVERSITY POSITIONS, Adjunct Faculty

Areas of strong experience: building capacity for culturally rich, relevant, responsive and affirming collaborations built on the intersecting denials of birth and life experiences; change leadership in educational settings.

**California State University Los Angeles**, Charter School of Graduate Educational Leadership, EDAD 536A. Pluralism, Collaboration and Social Justice 2007-2010, 2013, 2015

EDHI 605C. Laboratories of Practice: Community-Based Research with Community Mentor, 2010  
Precept for Masters of Social Work Interns, 2007

**University of California Los Angeles Extension, 2015**

EDUC 437.73. Advanced Culture and Inclusion

**University of Southern California**, Rossier School of Education

Masters of Art in Teaching 2010 – 2011

EDUC 519. Human Differences

**Argosy University, Los Angeles**, Doctoral Program in Education, 2008 - 2011

E7233. Organizational Communication

E703. Leading and Managing Change in a Diverse Society

E713. Issues in Higher Education

R7036. Program Evaluation Methods

**Mount Saint Mary's College**, Los Angeles, Department of Education, 2007 - 2008

EDU 252. Diversity and Schools

## Dissertation Committee Member, Doctorate in Education

**California State University Northridge**

Richard Ungerhill, 2013. *FAIR Education Act: Secondary Teachers Respond to Inclusive Curriculum*

**California State University Los Angeles**

Eric Gates, 2012. *Instrumental Case Study of an After School High School Physical Activity Program*

Dickson Perey, 2015. *Understanding Identity and Advocacy Stances Among School Counselors and Gay Fathers Raising School-Aged Children.*

**California State University Fullerton**

Fausto Barragán Jr., 2013. *The Exploration of Information about the Knowledge of LGBT Issues Among Elementary School Principals*

**PROFESSIONAL EXPERIENCE, Los Angeles Unified School District**

Skilled in Appreciative Inquiry, Mediation, Conflict Resolution, Restorative Practices, Communication Skills, Media Relations. Work effectively to build collaboration among multiple stakeholders. Excellent written and oral communication. Strong research and evaluation skills.

**School Operations, Human Relations, Diversity & Equity, Coordinator, 2006 to present**

Part of a team responsible for designing, implementing and evaluating District-wide programs to reduce bullying, bias, hazing and intergroup conflict, resulting in improved staff relations, student achievement and reduction in school violence and District liability.

Leverage expertise in District policies, legal mandates, and bias reduction to ensure that schools are safe, affirming, and violence-free.

Conduct small and large-group trainings for administrators, teachers, counselors and law enforcement about practical, legal and ethical guidelines of bias, discrimination, and bullying, thereby building capacity among leadership staff.

Critical responder in high impact incidents (intergroup conflicts, school violence, deaths due to natural and unnatural causes). Triage operational and mental health interventions for students, staff, parents and community members, thereby restoring school operations following critical incidents, prepare internal briefings and respond to media.

Represent District as primary respondent and author in high profile audits:

- Los Angeles County Civil Grand Jury Performance Audit of the School Discipline and Law Enforcement Policies at Los Angeles Unified School District, 2014
- California State Audit School Safety and Non Discrimination Laws, 2013

***Implementation Methods:***

- Spearhead district's mandate to end bias, bullying, sexual harassment and hazing among students and adults. Oversee the design, acquisition, and delivery of trainings that are evidence based to increase positive school and work engagement.
- Developed resources for students, staff, and parents on sexual orientation, gender identity, sexual harassment, student misconduct, bully, cyber bullying, sex trafficking, religious intolerance, and child abuse.
- Monitor daily incidents to coordinate delivery of resources in critical incidents such as power outages, evacuations, shelter in place, and violence.
- Mediate conflicts between administrators, students, parents, and school/community stakeholders to build cohesive school and work environments.
- Expert testimony before the California Senate and Assembly in support of the District's positions on critical legislation - FAIR Education Act of 2011 (SB 8); Proposition 8, Marriage Equality; Seth's Law of 2012 (AB 9); School Success and Opportunity Act of 2013 (SB1266).
- Represent the school district in numerous print, radio, and television media outlets on matters of inclusive education, bullying, child abuse, LGBTQ concerns, school unrest, intergroup conflicts, social media, sex trafficking, and other timely topics. Conducted over 50 media interviews on transgender inclusion alone.
- Assess school safety climate and conduct needs assessment through collection and analysis of internal and external qualitative and quantitative data from primary and secondary sources (surveys, interviews, observations and crime data, etc.)

- Conduct and facilitate professional development seminars, discussion groups, parent meetings, colloquia and classes targeting causes of intergroup bias, with an emphasis on positive resolution methods.
- Coordinate three large-scale Human Relations Symposia facilitated by local and national leaders on human relations, bias, child abuse, LAUSD students, staff, parents, and community members, up to 1000 participants at each event.
- Coordinate annual large-scale conferences Models of Pride, facilitated by local and national leaders for educators, counselors, and advocates on addressing LGBTQ concerns in educational settings.
- Part of executive committee for landmark collaboration between LAUSD and the Los Angeles LGBT Center to reduce bullying and suicidality, culminating in conference with critical LAUSD and community stakeholders.
- Facilitate multi-agency interventions to address school and community inter-group conflicts, leveraging resources from the ACLU, Museum of Tolerance, Los Angeles City Attorney's Office, LAPD, Anti-Defamation League, UCLA, and Loyola Law School Center for Conflict Resolution.
- Preceptor for Masters of Social Work interns from CSLA and USC. Oversee projects, establish goals, provide mentorship.
- Member of LAUSD Committee for External Research Review, evaluating proposals of external researchers
- Collaborate with university researchers:
  - Peter Theodore, Alliant International University, *The Efficacy of LGBT-Inclusive Curriculum in Reducing Bias and Bullying*
  - Negin Ghavin, UCLA, *Value-Added of Peer Relationships in Reducing LGBTQ-Bias and Bullying*
  - Paul Kwon, Washington State University, and Peter Theodore, Alliant University, *A Resilience Intervention for Sexual Minority Adolescents and Young Adults*.
  - Shabbar Ranapurwala, University of Iowa, *Assessment of Violence Prevention Curricula Programs in Middle and High Schools*.
- Examined and appraised text books, curricula for sensitive and accurate representations of LGBTQ concerns, prior to adoption.
- Authored chapters on sexual orientation and gender identity for middle school and high school text books, thus making LAUSD the first district to adopt inclusive curriculum.
- Spearhead district wide efforts to create cross-disciplinary curricula that are inclusive of sexual orientation and gender identity.

**Educational Equity Compliance, Project 10 Specialist, 2005 – 2006**

Ensured compliance with District mandates requiring bias-free campus practices and minimized liability by ensuring compliance with educational access in accordance with legal guidelines set forth in IDEA, Title IX, Section 504, Title VI, First Amendment, et al.

***Implementation Methods:***

- Responsible for implementation and monitoring of three-year settlement agreement, Ramirez v. LAUSD that included, among other requirements, the delivery and evaluation of annual comprehensive LGBT diversity trainings for all community stakeholders at four LAUSD schools.
- Interfaced with state, schools, district offices, attorneys, and advocates on complaints alleging discrimination.

- Coordinated implementation of settlement agreement (Ramirez vs. LAUSD), encompassing forty corrective actions, including annual bias reduction trainings for over 5000 students at targeted high school and feeder middle schools.
- Partnered with University of Southern California to measure efficacy of LGBT bias reduction program. Outcomes showed that 97% of participants showed reduction in bias following outreach.
- Assessed and evaluated District policies prior to implementation to ensure protected-class issues were adequately addressed; outreach to affected communities as necessary, including students, families, school personnel, and community agencies.
- Authored chapters on protected-group and discrimination-related issues, particularly with respect to sexual orientation and gender identity in newly-adopted texts and curricula.

#### **Gays & Lesbians Initiating Dialogue for Equity, cofounder, 1984**

GLIDE is Los Angeles' premier speakers bureau, facilitating hundreds of LGBT-diversity trainings in K-12 classrooms throughout Los Angeles, creating safer more affirming schools for all students. GLIDE is an all-volunteer organization and accomplishes its transformative work through small group dialogues.

#### **CREDENTIALS, CERTIFICATIONS & ADVANCED TRAININGS**

Professional Clear Administrative Credential  
National Board Certified, Exceptional Needs, 2000  
Multiple Subject, K-12, LH, SH, RSP, CLAD  
Loyola Law School Center for Conflict Resolution, 2009  
Master's Program Institute, 2010  
Reasonable Accommodations for Supervisors, 2012  
Child Abuse, 2012  
LAPD Community Police Academy, 2012  
Appreciative Inquiry, 2012, 2013, 2014  
GLSEN LGBT Safe School Initiative Professional Development Facilitator, 2013  
Readiness and Emergency Management for Schools Adult Sexual Misconduct Training, 2012  
Restorative Justice, Council in Schools, August 2013, January 2014  
Commercial Sexual Exploitation of Children (CSEC) Training, 2015  
The Sexual Exploitation and Commercial Sexual Exploitation of Gay Males and Transgender Females, 2016  
Active Shooter Response, 2016

#### **RECOGNITIONS AND AWARDS**

Advocate Magazine, 2010 Outstanding National Educator  
Claremont Graduate University, 2011 Outstanding Leadership  
City of West Hollywood, 2011 Outstanding Leadership, Child Abuse and Neglect Prevention  
Associated Administrators of Los Angeles, 2014 Community Leadership Award

#### ***Expert Witness & Testimony***

##### **California Senate and Assembly Education Committees, 2013**

AB 1266 (Ammiano) the School Success and Opportunity Act. Testimonies to Assembly and Senate education committees regarding transgender students.

##### **Los Angeles School Police Department, 2008**

Expert testimony regarding allegations of police harassment based on sexual orientation.

**California Assembly, Judiciary Committees, 2008.**

Proposition 8, Marriage Equality. Testimony regarding Proposition 8's relevance to public school instructional practices.

**Primary or Significant Contributing Author****Board Resolutions and Position Statements:**

- LAUSD School Board Resolution to Eliminate, Address and Prevent Commercial Sexual Exploitation of Children (CSEC) in the Los Angeles Unified School District (LAUSD). 2016
- LAUSD School Board Resolution to recognize June as Gay Pride Month, annually, 2009 to date
- LAUSD School Board position statement supporting FAIR Education Act, 2011
- LAUSD School Board position statement supporting marriage equality, Proposition 8, 2008

**Policies and memoranda:**

- Bullying and Hazing Policy (Student-to-Student and Student-to-Adult), 2010, 2012, 2014
- Calendar of Commemorative Dates and Observances, updated annually to recognize religious, cultural and political dates and observances.
- Child Abuse Awareness Policy, 2016
- Guidelines for Sexual Orientation and Gender Identity Inclusive Education, 2014
- Guidelines for Teaching About Religions, 2011, 2014, 2016
- Social Media Policy for Employees and Associated Persons, 2012, 2014
- Social Media Policy for Students, 2016
- Transgender Students - Ensuring Equity and Nondiscrimination, 2004, 2011, 2015
- Workplace Violence, Bullying and Threats (Adult-to-Adult), 2011, 2012

Populate website for Human Relations, Diversity & Equity with policies, resources, instructional activities and educational materials for students, staff, and parents on a full spectrum of human relations concerns, e.g., discrimination, bullying, bias, conflict resolution, restorative practices, culture, race, religion, sexual orientation, gender identity and expression, and differently-abled. <http://humanrelations.lausd.net>

**Editor/Reviewer/Consultant**

Glencoe Publishers, *Health: Making Life Choices*. 2014

*Journal of Homosexuality*, 2012 - present

*Journal of LGBT Youth*, 2009 - present

Los Angeles County Office of Education, *Addressing the Needs of Sexual Minority Youth in Public Education*, 2012-2014

McGraw Hill Publishers, Health education text books for middle and high school, 2011

Public Health Law Research, *Anti-bullying laws: A blueprint for prevention*. June 2015, [www.http://phlr.org](http://phlr.org).

Rutgers University, Online education, *LGBTQ Issues in Schools*

**Publications**

Morgan, E. & Chiasson, J. (2014). Respecting the rights of transgender students. *National School Public Relations Association*, [http://www.nspr.org/e\\_network/2014-02\\_connecting-communities](http://www.nspr.org/e_network/2014-02_connecting-communities)

Chiasson, (2013). Success and Opportunity for Transgender Students. Huffington Post.com  
Success and Opportunity for Transgender Students. [http://www.huffingtonpost.com/judy-chiasson/success-and-opportunity-for-transgender-students\\_b\\_3744830.html](http://www.huffingtonpost.com/judy-chiasson/success-and-opportunity-for-transgender-students_b_3744830.html)

Chiasson, J. & Sanlo, R. (2013). Putting sexual orientation and gender identity in context: Historical influences and social trends. In E. S. Fisher & K. Komosa-Hawkins (Eds.), *Creating Safe and Supportive Learning Environments: A Guide for Working with Lesbian, Gay, Bisexual, Transgender, and Questioning Youth and Families* (pp. 10-28). New York, NY: Routledge.

Chiasson, J. (2006). Three plaintiffs, nine defendants, twelve allegations. *United Teachers of Los Angeles*

Chiasson, J. (2005). The diversity of human relationships in *Lifetime health: Sexuality and society*, Holt, Rinehart and Winston

Chiasson, J. (2000). Poverty provides wealth of reasons for school's low ranking. *Los Angeles Times*

**Media Spokesperson.** Represent LAUSD in media outreach on topics of bullying, sexting, inclusive education, and LGBTQ concerns

Aljazeera America  
Asheville Citizen Times, July 2016  
Beverly Press, July 2016  
California Educator  
Capital Public Radio  
CBS  
Channel 4 News  
CNN, September 2011, July 2013  
Detroit Free Press, July 2016  
EdSource  
Equality Matters  
ESPN 2016  
Fox News, February 2012, 2013, 2014  
Hoy Newspaper  
Huffington Post, 2013,  
Independent Weekly, 2016  
John McMullen Radio Show  
KCRW, IMRU with Linda Birch, May  
2011  
KNBC TV  
KPFK Air Talk with Larry Mantle *FAIR  
Education Act*, September 2011  
KQED Public Radio  
LA Daily News  
LA Live, Fox TV Morning Show; August  
2011  
LA School Report  
LA Times, 2014, 2015, 2016  
LaOpinion  
Los Angeles Times  
Mercury News

Naked Truth Radio, November 2010  
National Public Radio, *Talk of the Nation*  
2010, 2013, 2016  
National School Board Association,  
August 2016  
NBC Universal  
New York Daily News, 2016  
New York Times, 2011, 2014, 2015  
*On These Shoulders We Stand*, 2011,  
documentary on school bullying  
Orange County Register  
Out in the 562  
Profiled by LAUSD Journal, August 2011  
ProPublica  
Reno Gazette Journal, 2015  
Sacramento Bee  
San Diego Reporter  
San Gabriel Valley Tribune, 2015  
Sheila Kheul Talk Television Show, 2011  
*Teach Your Children Well*, documentary on  
the murder of student Larry King  
Telemundo  
The Daily Breeze, 2016  
The Daily Free Press, 2016  
TIME Magazine, 2016 (cover article)  
TransAdvocate, 2015  
USA Today, 2016  
Wall Street Journal, 2016  
Whittier Daily News  
Yomiuri Shimbun (Japan)

**Represent LAUSD on community partnerships**

Anti Bully Coalition *Founding member, 2011*. Multi-agency collaborations of human relations organizations (LA County and LA City Human Relations; LA County Office of Education; Museum of Tolerance; Anti-Defamation League; et al).

California Safe Schools Coalition, San Francisco

Children's Hospital, *Connect to Protect Outreach to MSM Youth of Color*

City of Los Angeles Human Relations LGBT Advisory Council

Division of Adolescent and School Health (DASH), joint venture of Center for Disease Control and American Psychological Association, Washington, DC

Foster Care Project, RISE, *June 2011 to present*. Partnership between LAUSD, Foster Services and LA Gay and Lesbian Center to build permanency with LGBT youth in foster care.

Gay and Lesbian Allied Administrators Association. *Co-founder, 2007*. First LGBT school administrators' association in the nation.

LAUSD Commission on Human Relations, Diversity and Equity, *2009 to present*. Coordinate the council of twenty commissioners representing all board members, bargaining units, and various community stakeholders in identifying ways to support the District's human relations concerns.

LGBT Health and Human Services Network

LGBT Mental Health Disparity Project

LGBT Youth in Detention, *September 2010 to present*. Established by Loyola Law School to address the concerns of incarcerated youth

LGBTQ Child Abuse and Neglect Prevention Council, *Founding member, 2008 to present*. First LGBTQ specific Child Abuse and Neglect Council, founded under auspices of LA County Child Abuse and Neglect Council to reduce over representation of LGBTQ children and youth as targets of abuse and neglect.

Los Angeles County Human Relations Commission

Los Angeles Police Department (LAPD), Community Relations Cadre, graduate, 2012

Los Angeles School Police Department LGBT Working Collaborative

Rainbow Families School Network, *Founder, 2008 to 2010*. First school district-affiliated support group for gay and lesbian parents in the nation.

Sacramento County Office of Education, California Teacher Recruitment Incentive Program

Stonewall Project, *February 2013 to present*, inaugural member of national consortium of school districts addressing needs of sexual minority youth.

Suicide Prevention Intervention Network, SPIN, *Executive Steering Committee, September 2010*  
Partnership between LAUSD, the Los Angeles LGBT Center and community stakeholders to address bullying-related suicides nationwide.

Youth Advocacy Coalition *Founding member, 2009*. Collaboration of community based organizations serving youth

#### CONFERENCE ATTENDANCE

Adult Sexual Misconduct in School, June 2012

Appreciative Inquiry: Building Cohesive Teams, July 2012

Changing Minds and Creating Healthy Trauma-Informed Communities, 2016

Commercial Sexual Exploitation of Children, July 2015

FBI Hate Crimes Training, July 2011

LGBT Sports Summit, Nike #BeTrue, 2013, 2014

Los Angeles County Office of Education Suicide Prevention Summit, "Two Lives a Day Lost in L.A.," September 2012

Office of Civil Rights, Department of Education, Investigative Training, September 2012

Commercial Sexual Exploitation of Children, 2015, 2016

LGBTQI2-S TAY: Safe and Welcoming Environments for Youth, 2016

**SELECTED HUMAN RELATIONS PRESENTATIONS AND MEDIATIONS**

**CONFERENCE PRESENTATIONS**

American Bar Association, Working in Partnership to Advocate for LGBTQ Students, Sept. 2011  
American Psychological Association Annual Conference, Washington, DC, August 2011, 2008  
Association of Chief Human Resources and Equal Employment Officers, February 2011  
Black Probation Officers Association, 2008  
California Association of Bilingual Educators, annual conference, 2014, 2016  
California Association of School Psychologists, annual conference, 2013, 2105  
California Federation of Teachers  
California State University at Northridge, Keynote. *Day of Diversity*, Masters in Social Work, 2010  
Center for Anti-Oppressive Education  
Center for Excellence in School Counseling and Leadership (CESCaL), San Diego, 2011, 2010  
Challenge LA, 2016  
Council of Black Administrators, 2012, 2013 Annual Conferences, *Bullying and Hazing: What Administrators Need to Know* and *Invisible Populations: Sexual Minority Youth of Color*.  
Department of Education, St. Paul, MN, July 2010  
Educational Books and Materials Association, annual conference, 2016  
EDGY Child Abuse Conference, October 2011, 2015  
Education Law Conference, *From the Courtroom to the Classroom: Looking at the Future of Urban Education*, 2007, sponsored by LAUSD General Counsel  
Gay Lesbian Straight Educators Network  
HIV/AIDS Conference, March 2011  
International Criminal Justice & Diversity Symposium  
Jacksonville Sexual Minority Youth Conference, *keynote*, JASMYN, 2012, 2013  
LA County Office of Affirmative Compliance  
LA County Office of Education, School Psychologists, 2007, 2008  
LA County Office of Education, Learning Communities, 2015  
LAUSD Annual Parent Summit, 2011, 2010, 2009, 2008  
LAUSD Health Teachers: *Teaching to the Text*, 2008, 2009, 2010  
LAUSD District-wide, Protecting Students from Sexual Abuse, 2012  
LAUSD Pupil Services and Attendance Counselors, November 2010, January 2011, April 2011  
LGBT Child Abuse Conference, panelist and workshop facilitator, sponsored by LA County Child Abuse and Neglect Conference, 2009, 2010  
Models of Pride, full day conference for educators, annually since 2005  
Museum of Tolerance, Freedom's Sisters, September 2011  
National Association of School Board Administrators, 2013 Annual Conference, *Addressing the needs of transgender students in public education*.  
National Association of School Safety and Law Enforcement Officials, July 2016 Annual conference, *Safe & Affirming Schools for LGBT Students*  
National Gay and Lesbian Task Force  
National LGBT Bar Association, Lavender Law Annual Conference, September 2011  
New Principals Conference, March 2011  
Network Against Hate, LA County Commission on Human Relations, 2015  
NEXUS Conference, Inter-Agency Council on Child Abuse and Neglect, Violence Within the Home and its Effects on Children, *Bullying or Harmless Teasing*. 2008, 2009, 2010  
Parent Community Services Branch  
Parent Empowerment Providers, *Transforming our Communities*  
Principals Training, LD 5, March 2011  
Ready to Learn: Helping Students Survive and Thrive, 2008, 2009, and 2010

School Counselors, LD 1, February 2011  
 School Psychologists, Support Units central and west, March 2011  
 Stonewall Education Project National conference, 2012, 2013, 2014, 2015  
 Summit on Equal Protection and Civil Rights for Students  
 Teaching Respect for All Conference, University of North Florida, keynote October 2011, 2013  
 United Teachers of LA, *Achieving Equity Conference*  
 Ventura County Office of Education, 2014, 2015  
 White House Bullying Summit on Transgender and Muslim Students, August 2016

#### COMMUNITY AND GOVERNMENT ORGANIZATIONS

California State Park Rangers	Bancroft Elementary School, April 2011;
Children's Hospital Adolescent Services	March 2011
City of Santa Monica	Beachy Elementary School
Hilton Hotels, Guest Relations staff	Belmont High School, December 2010
Internal Revenue Service	Berendo Middle School
LA Police Department	Birmingham High School
Los Angeles Unified School Board	Broadway Elementary
Los Angeles School Police	Canoga High School
LA County Human Relations Commission	Canyon Elementary
LA City Human Relations Commission	Charter School of Education
Paraprofessionals Annual State Conference, 2010	Chatsworth Charter High School
Penny Lane Foster Parents	Clay Middle School
Planned Parenthood of Los Angeles	Cleveland High School
Posse Foundation	Daniel Pearl Magnet
Museum of Tolerance, <i>Tools for Tolerance</i> , regular presenter	Drew Middle School
UCLA Medical Group	East Valley High School, every semester since 2008
United Universalist Church	El Dorado Elementary School
White Memorial Hospital	El Sereno Middle School
	Esperanza Middle School
	Euclid Elementary School
	Fairfax High School, June 2011
	Fleming Middle School, January 2011
	Franklin High School, June 2011
	Freemont High School, December 2010
	Frost Middle School
	Garfield High School, November 2010
	Gaskell Middle School, October 2011
	Hamilton High School
	Hart Middle School
	Hobart Elementary School
	Horace Mann Middle School, January 2011
	Ivanhoe Elementary, March 2011
	Jefferson High School, November 2010
	King Elementary School
	King Starr Middle School, January 2011, October 2011
	LA Center for Enriched Studies
	Langdon Elementary, February 2011, October 2010
	Laurel School, March 2011
	Lawrence Middle School, December 2010

#### PROFESSIONAL AUDIENCES

Early Education Teachers  
 LAUSD Beginning Teachers Academy  
 LAUSD Parent Educators  
 LAUSD School Mental Health  
 Options Principals  
 Paraprofessional Annual Conferences  
 Principals Academy, September 2011  
 SPIN Conference, June 2011  
 Student Discipline and Expulsion Unit,  
September 2011  
 Teach for America  
 Teacher Training Academy, December, 2011;  
March 2011

#### STUDENTS, STAFF, PARENTS K-12

Amino High School  
 Audubon Middle School  
 Avalon High School, June 2011  
 Braddock Elementary, October 2011

Lennox Middle School, January 2011  
 Liechty Middle School, January 2011  
 Lincoln High School  
 Los Angeles Academy  
 Los Angeles High School, June 2011  
 Mann Middle School, March 2011  
 Marina Del Rey Middle School  
 Mayberry Elementary School, March 2011  
 Miguel Contreras Learning Center  
 Monroe High School  
 Nimitz Elementary, April 2011  
 Nobel Middle School, November 2010,  
 March 2011  
 Omelveny Elementary School, February 2011  
 Phoenix Continuation  
 Roosevelt High School, 2010, February 2012,  
 March 2012  
 San Fernando High School  
 San Fernando Middle School, February 2011  
 San Pedro High School, September 2001,  
 Santee Learning Complex  
 Serrania Elementary School, Students,  
 November 2011  
 Sherman Oaks Elementary Charter  
 Sun Valley High School, June 2011  
 Sun Valley Magnet, 2016  
 Sunny Brae Elementary School, February  
 2011  
 Taft High School, every semester since 2007  
 Tarzana Elementary School, September 2001  
 Third Street Elementary  
 Thoreau CDS, December 2010  
 University High School  
 Valley Alternative High School  
 Van Nuys High School, March 2011  
 Wadsworth Elementary  
 Washington Prep High School  
 Webster Middle School  
 Westchester High School, June 2011  
 Westport Elementary School

Wiltern Place Elementary School  
 Wooden High School  
 Woodlake Elementary, September 2011

**POST-SECONDARY ACADEMIC INSTITUTIONS:**

Antioch College  
 Argosy University  
 Azusa Pacific College  
 Cal State Dominguez Hills  
 Cal State University, Fullerton, July 2013  
 CSUN Teacher Preparation, April 2011  
 CSUN, School of Social Work, 2011, 2012  
 California Lutheran College  
 California School of Professional  
 Psychology, June 2011, August 2012  
 Chapman College  
 Claremont Graduate University, every  
 semester since 2008  
 CSLA, School Counselors, November 2011,  
 2012; March 2011, 2012, 2013  
 East Los Angeles College  
 Grinnell College, Iowa, 2008  
 Los Angeles Valley College  
 Loyola Marymount University, 2011, 2012  
 Moorpark College  
 National University  
 Occidental College  
 Pasadena City College  
 Pepperdine University, regular presenter  
 Phillips Graduate Institute  
 Principals Academy, September 2011  
 Santa Monica College, regular presenter  
 Stetsun University, Sanford, FL, 2012  
 Torrance Unified School Board  
 UCLA, Law School, October 2011  
 UCLA, School of Social Work, November  
 2011,  
 USC, School of Social Work, August 2011,  
 November 2011

# **EXHIBIT**

## **B**



**TITLE:** Transgender Students -  
 Ensuring Equity and Nondiscrimination

**NUMBER:** BUL-6224.0

**ISSUER:** David Holmquist, General Counsel  
 Office of General Counsel

**DATE:** February 7, 2014

<b>ROUTING</b>
Superintendent
Sr. Deputy Superintendent
Asst. Deputy Superintendent
Administrator of Operations
Operations Coordinator
ESC Superintendents
Administrators of Instruction
Principal Leaders
Principals
All Employees

**PURPOSE:** The Los Angeles Unified School District (District) is committed to providing a safe and supportive learning environment for all students and to ensuring that every student shall have equal access to the District’s educational programs and activities. Additionally, District policy requires that all schools and all personnel promote acceptance and respect among students and staff.

This policy reflects the reality that transgender and gender nonconforming students are enrolled in the District. Its purpose is to advise District staff regarding issues relating to transgender students in order to create and maintain a safe learning environment for all students. The guidelines provided in this Bulletin do not anticipate every situation that might occur with respect to transgender students. The needs of each transgender student are unique. This policy should be interpreted consistent with the goals of reducing stigmatization and ensuring the integration of transgender students in educational programs and activities.

California Education Code §210.7 states that ‘gender means sex,’ and includes a person’s gender identity and gender related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

California Education Code §220 and District policy require that all educational programs and activities should be conducted without discrimination based on actual or perceived sex, sexual orientation, or gender identity and expression.

California Education Code §201 provides that public schools have an affirmative obligation to combat sexism and other forms of bias, and a responsibility to provide an equal educational opportunity to all students.

Title IX of the Education Amendments of 1972 states, “No person...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.”

This Bulletin provides guidelines to ensure protection, respectful treatment, and equal access to educational programs and activities for transgender students.

**MAJOR  
CHANGES:**

This Bulletin replaces REF-1557.1, “Transgender and Gender Variant Students - Ensuring Equity and Nondiscrimination,” dated September 9, 2011, issued by the Office of General Counsel. It provides updated information and guidance to schools regarding issues related to transgender students.

**INSTRUCTIONS:**

- I. Definitions - The following definitions are not meant to label, but are intended as functional descriptors:
  - A. Gender: a person's actual sex or perceived sex, and includes a person's perceived identity, appearance, or behavior, whether or not that identity, appearance or behavior is different from that traditionally associated with a person's sex at birth [Title 5, California Code of Regulations, §4910(k)].
  - B. Gender Identity: a person’s internal, deeply rooted identification as female, male or a non-binary understanding of gender, regardless of one’s assigned sex at birth. The responsibility for determining an individual’s gender identity rests with the individual.
  - C. Gender Expression: A person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth. Students who adopt a presentation that varies from the stereotypic gender expectations sometimes may describe themselves as gender nonconforming, gender queer, or gender fluid.
  - D. Gender Nonconforming: Displaying a gender identity or expression that may differ from those typically associated with one’s sex assigned at birth. A person’s gender expression may differ from stereotypical expectations about how females and males are “supposed to” look or act. Gender nonconforming is not synonymous with transgender; not all gender nonconforming students identify as transgender.
  - E. Transgender: A person whose gender identity differs from their gender assigned at birth, and whose gender expression consistently varies from stereotypical expectations and norms. A transgender person desires to live persistently by a gender that differs from that which was assigned at birth.
  - F. Transition: Each transgender person has a unique process in which they go from living and identifying as one gender to living and identifying as another. Gender transition can occur at any age. It begins internally then



expands to external expression. This can include social, medical and/or a legal transition.

G. LGBTQ: An acronym that stands for “lesbian, gay, bisexual, transgender, and queer/questioning.” Questioning incorporates those who are uncertain or fluid about their sexual orientation and/or gender identity.

H. Sex: The biological condition or quality of being female or male.

I. Sexual Orientation: 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.

## II. Guidelines

The school shall accept the gender identity that each student asserts. There is no medical or mental health diagnosis or treatment threshold that students must meet in order to have their gender identity recognized and respected. The assertion may be evidenced by an expressed desire to be consistently recognized by their gender identity. Students ready to socially transition may initiate a process to change their name, pronoun, attire, and access to preferred activities and facilities. Each student has a unique process for transitioning. The school shall customize support to optimize each student’s integration.

### A. Privacy and Confidentiality

1. All persons, including students, have a right to privacy. This includes keeping a student’s actual or perceived gender identity and expression private. Such private information shall be shared only on a need to know basis.
2. Students have the right to openly discuss and express their gender identity and expression, and to decide when, with whom, and how much information to share.
3. District and school personnel may encounter situations where transgender students have not disclosed their transgender status. School personnel must be mindful of the confidentiality and privacy rights of students when communicating with others, so as to not reveal, imply, or refer to a student’s gender identity or expression.



4. To ensure confidentiality when discussing a particular concern such as conduct, discipline, grades, attendance, or health, school personnel's focus should be specifically school-related and not on the student's gender identity or expression.

B. Official Records

1. The District is required to maintain in perpetuity mandatory permanent pupil records ("official records") which include the legal name of the student and the student's gender as indicated on official government issued documents such as birth certificates, passports and identification cards/permits. The official records may include but are not limited to progress and grade reports, transcripts, assessment data, health records, discipline records, Individualized Education Programs (IEP), Section 504 Plans and the cumulative card and file (folder).
2. The District will change a student's name and gender on official records when the name of the student is changed by the appropriate court action, such as by a change of name proceedings. The new name is the official legal name of the student for all purposes, including school registration. Upon the submission of proper evidence of the court order, the student's official name and gender in all school records shall be changed to reflect the legal name change.

C. Unofficial Records

1. The District shall permit a student to use a preferred name and gender on unofficial records. The unofficial records may include but are not limited to identification badges, classroom and homeroom rosters, certificates, programs, announcements, office summons and communications, team and academic rosters, diplomas, newspapers, newsletters, yearbooks and other site-generated unofficial records. The preferred name shall also appear on the student's cumulative folder (official record) as "Also Known As" (AKA).
2. The District shall input the student's preferred name and gender in the appropriate fields of the District's electronic data system to indicate how the student's name and gender will appear on unofficial records.
3. The District shall permit a student or parent/legal guardian to request a change of name and/or gender so that a student may be registered in school under a name and gender that corresponds with the student's gender identity without obtaining a court order or without



changing the student's official records (See "Names of Pupils for Purposes of School Records," BUL-5703.1, dated February 27, 2012, issued by the Office of Data and Accountability).

4. After the school receives and verifies the contents of the completed form, the school shall change the name and/or gender of the student in the District's electronic data system and enter the preferred name as AKA in the cumulative folder. In the cumulative folder and registration card, name and gender should be cross-referenced.

D. Names/Pronouns

1. Students shall be addressed by the name and pronoun that corresponds to their gender identity asserted at school without obtaining a court order, changing their official records or obtaining parent/legal guardian permission.
2. Students shall be known by their name and gender of identity. However, there may be situations (e.g., communications with the family, official state or federal records, and assessment data) where it may be necessary and recommended for staff to be informed of the student's legal name and gender. In these situations, staff should prioritize the safety, confidentiality, and respect of the student in a manner that affirms the law.
3. If school personnel are unsure how a student wants to be addressed in communications to the home or in conferences with parents/legal guardians, they may privately ask the student. For communications with a student's parent/legal guardian, school personnel should refer to this policy's prior section on "Privacy and Confidentiality."
4. Every effort should be made to use the preferred names and pronouns consistent with a student's gender identity. While inadvertent slips or honest mistakes may occur, the intentional and persistent refusal to respect a student's gender identity is a violation of District policy.

E. Restroom Accessibility

1. Schools may maintain separate restroom facilities for male and female students. Students shall have access to restrooms that correspond to their gender identity asserted at school.
2. If a student desires increased privacy, regardless of the underlying reason, the administrator shall make every effort to provide the



student with reasonable access to an alternative restroom such as a single-stall restroom or the health office restroom. The use of a restroom should be determined by the student's choice; no student shall be compelled to use an alternative restroom.

3. Administrators may take steps to designate single stall "gender neutral" restrooms on their campus.

F. Locker Room Accessibility

1. Schools may maintain separate locker room facilities for male and female students. Students shall have access to the locker room facility that corresponds to their gender identity asserted at school.
2. If there is a request for increased privacy, *any* student shall be provided access to a reasonable accommodation such as:
  - a. Assignment of a student locker in near proximity to the coaches' office or a supportive peer group.
  - b. 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).
  - c. Use of a nearby private area (e.g. nearby restroom or a health office restroom).
  - d. A separate changing schedule.

G. Sports, Athletics, and Physical Education

1. Physical education classes are typically co-gender. In the event that the classes or activities are sex-segregated, transgender students shall participate in physical education by their gender identity asserted at school.
2. When conducting physical education classes and fitness evaluations, the teacher will address and evaluate the student by their gender of identity. Performance on the state physical fitness test (Fitnessgram) is evaluated by the State of California in accordance with the sex reported on the student's initial enrollment, even when the student identifies as transgender. In these events, the physical education teacher shall make every effort to maintain confidentiality of student information.
3. 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 (Gender Identity Participation, 300.D, page 56).

H. School Activities and Programs

Students have the right to equitable access to activities and programs in their school. Students may not be excluded from participation in, be denied the benefits of, or be subjected to harassment or other forms of discrimination on the basis of gender identity in any program or activity. These activities and programs may include but are not limited to cheer class, homecoming, prom, spirit day, celebrations, assemblies, acknowledgments, after school activities/programs and all extra-curricular activities.

I. Course Accessibility and Instruction

Students have the right to equitable learning opportunities in their school. Students shall not be required to take and/or be denied enrollment in a course on the basis of their gender identity in any educational and academic program.

J. Dress Codes/School Uniform Policies

1. A school's dress code and school uniform policy shall be gender-neutral. Schools cannot enforce specific attire based on gender.
2. Students have the right to dress in accordance with their gender identity within the parameters of the dress code, as it relates to the school uniform or safety issues (e.g., prohibiting attire that promotes drugs or violence, or is gang-affiliated).

K. Student Safety

1. School staff must ensure that students are provided with a safe school environment that is free of discrimination, harassment, bullying and/or intimidation.
2. School staff and families should work together to resolve complaints alleging discrimination, harassment, bullying and/or intimidation based on a student's actual or perceived gender identity or expression. Complaints of this nature are to be handled in the same manner as other complaints. Consideration should be given as to whether a Sexual Harassment investigation is warranted. [See the "Related Resources" and the "Assistance" sections of this Bulletin and BUL-3349.0, Sexual Harassment Policy (Student-to-Student,



Adult-to-Student, and Student-to-Adult, dated November 29, 2006, issued by the Office of General Counsel).]

3. School staff shall take all reported incidents of bullying seriously and take appropriate measures to ensure that the bullying stops. [See BUL-5212.1 *Bullying and Hazing Policy (Student-to-Student and Student-to-Adult)*, dated September 17, 2012, issued by the Office of the Superintendent].
4. School administration shall respond immediately to incidents of discrimination, harassment, bullying and/or intimidation by taking actions that include, but are not limited to the following: a) intervening to stop the behavior; b) investigating and documenting the incident; c) determining and enforcing appropriate corrective actions; and d) monitoring to ensure that the behavior does not reoccur.
5. School staff should take all reasonable steps to ensure safety and access for transgender and gender nonconforming students at their school. School staff shall support students' rights to assert their gender identity and expression.
6. Students shall not be disciplined solely on the basis of their actual or perceived gender identity or expression.
7. Students shall be informed that they have the responsibility to report situations/incidents of discrimination, harassment, bullying and/or intimidation to the designated site administrator or Title IX/Bullying Complaint Manager in cases where they may be a target or witness.
8. Students shall be informed of their role in ensuring a school environment that is free from discrimination, harassment, bullying and/or intimidation. Students should consider how others may perceive or be affected by their actions and words.



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**RELATED  
RESOURCES:**

- *Bullying and Hazing Policy (Student-to-Student and Student-to-Adult)*, BUL-5212.1, dated September 17, 2012, issued by the Office of the Superintendent
- *Calendar of Commemorative Dates and Observances*, MEM 5466.3, issued annually by the Office of the Superintendent
- *Code of Conduct with Students - Distribution and Dissemination Requirement*, BUL-5167.0, dated July 1, 2010, issued by the Office of the Superintendent
- *Organizing for Crisis Intervention*, BUL-962.1, dated December 7, 2005, issued by the Office of the Chief Operating Officer
- *Discipline Foundation Policy: School-Wide Positive Behavior Support*, BUL-3638.0, dated March 27, 2007, issued by Educational Services
- *Educating for Diversity*, LAUSD Board Resolution, passed March 16, 1992
- *Ethics Policies*, BUL-4748.0, dated May 18, 2009, issued by the Office of the Superintendent
- *Fair, Accurate, Inclusive and Respectful (FAIR) Education Act*, BUL-5898.0, dated October 9, 2012, issued by Office of Curriculum, Instruction and School Support
- *Gold Book*, Los Angeles City Section, California Interscholastic Federation, "Gender Identity Participation", 300.D, page 56, dated July 24, 2013
- *Guidelines for Student Suspensions*, BUL-5655.2, dated August 19, 2013, issued by School Operations
- *Incident System Tracking Accountability Report (ISTAR)*, BUL-5269.2, dated July 10, 2013, issued by School Operations
- *Intra-district Permits and Student Transfers in Elementary and Secondary Schools*, BUL-5347.1, dated June 10, 2013, issued by Office of the Superintendent
- *LGBT and Sexual Orientation Anti-Bullying Resolution*, LAUSD Board Resolution, passed September 13, 2011
- *LGBT Resource Guide*, dated September 2013, issued by the Educational Equity Compliance Office



- *Names of Pupils for Purposes of School Records*, BUL-5703.1, dated February 27, 2012, issued by Office of Data and Accountability
- *Nondiscrimination Required Notices*, MEM 5818.1 issued annually by the Office of General Counsel
- *Opportunity Transfers (OTs) Policy*, BUL-4478.0, dated December 15, 2008, issued by the Chief Academic Officer
- *Physical Education Programs, Grades K-12*, BUL-2528.1, dated December 21, 2009, issued by Office of Curriculum, Instruction and School Support
- *Responding to and Reporting Hate-Motivated Incidents and Crimes*, BUL-2047.0, dated October 10, 2005, issued by the Office of General Counsel
- *Sex Equity in Physical Education Programs*, BUL-1826.0, dated August 5, 2005, issued by Secondary Instructional Services
- *Sexual Harassment Policy (Student-to-Student, Student-to-Adult, Adult-to-Student)*, BUL-3349.0, dated November 29, 2006, issued by the Office of General Counsel
- *Student Dress Codes/Uniforms*, BUL-2549.1, dated December 15, 2009, issued by the Office of the Chief Operating Officer
- *Title IX Policy/Complaint Procedures*, BUL-2521.1, dated June 7, 2006, issued by the Office of General Counsel
- *To Enforce the Respectful Treatment of All Persons*, LAUSD Board Resolution, passed October 10, 1988
- *Uniform Complaint Procedures (UCP)*, BUL-5159.2, dated February 1, 2013, issued by the Office of the General Counsel.

**AUTHORITY:** Title IX of the Education Amendments of 1972, 42 U.S.C. 1681  
Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c et seq  
California Education Code Sections § 201, § 210.7, § 220, and § 231  
“Gold Book,” Los Angeles City Section, California Interscholastic Federation

**ASSISTANCE:** For further information:

- California Interscholastic Federation, at (818) 767-0800
- Data and Accountability, at (213) 241-2460
- Educational Equity Compliance Office, at (213) 241-7682
- Health Education Programs, at (213) 241-3570

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- Human Relations, Diversity and Equity, at (213) 241-5337
- Interscholastic Athletics, at (213) 241-5847
- Office of General Counsel, Education Legal Services, at (213) 241-7600
- Physical Education, at (213) 241-4556
- School Mental Health, at (213) 241-3841
- School Operations, at (213) 241-5337
- School Police, at (213) 625-6631
- Suicide Prevention, at (213) 241-3516

# **EXHIBIT**

## **C**

CHAPTER 85

An act to amend Section 221.5 of the Education Code, relating to pupil rights.

[Approved by Governor August 12, 2013. Filed with  
Secretary of State August 12, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1266, Ammiano. Pupil rights: sex-segregated school programs and activities.

Existing law prohibits public schools from discriminating on the basis of specified characteristics, including gender, gender identity, and gender expression, and specifies various statements of legislative intent and the policies of the state in that regard. Existing law requires that participation in a particular physical education activity or sport, if required of pupils of one sex, be available to pupils of each sex.

This bill would require that a pupil be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records.

*The people of the State of California do enact as follows:*

SECTION 1. Section 221.5 of the Education Code is amended to read:

221.5. (a) It is the policy of the state that elementary and secondary school classes and courses, including nonacademic and elective classes and courses, be conducted, without regard to the sex of the pupil enrolled in these classes and courses.

(b) A school district may not prohibit a pupil from enrolling in any class or course on the basis of the sex of the pupil, except a class subject to Chapter 5.6 (commencing with Section 51930) of Part 28 of Division 4 of Title 2.

(c) A school district may not require a pupil of one sex to enroll in a particular class or course, unless the same class or course is also required of a pupil of the opposite sex.

(d) A school counselor, teacher, instructor, administrator, or aide may not, on the basis of the sex of a pupil, offer vocational or school program guidance to a pupil of one sex that is different from that offered to a pupil of the opposite sex or, in counseling a pupil, differentiate career, vocational, or higher education opportunities on the basis of the sex of the pupil counseled. Any school personnel acting in a career counseling or course selection capacity to a pupil shall affirmatively explore with the pupil the

possibility of careers, or courses leading to careers, that are nontraditional for that pupil's sex. The parents or legal guardian of the pupil shall be notified in a general manner at least once in the manner prescribed by Section 48980, in advance of career counseling and course selection commencing with course selection for grade 7 so that they may participate in the counseling sessions and decisions.

(e) Participation in a particular physical education activity or sport, if required of pupils of one sex, shall be available to pupils of each sex.

(f) A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil's records.

O

## **EXHIBIT 10**

**U.S. 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

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

This resource is in the public domain. Authorization to reproduce it in whole or in part is granted. The guide's citation should be:

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/oshs/emergingpractices.pdf](http://www.ed.gov/oese/oshs/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."

#### 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."

**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."

### **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.”

**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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## **EXHIBIT C**

### **Shorewood School District, Nondiscrimination Guidelines Related to Students who are Transgender and Students Nonconforming to Gender Role Stereotypes**

SCHOOL DISTRICT OF SHOREWOOD

411 Guideline (2)

NONDISCRIMINATION GUIDELINES RELATED TO STUDENTS WHO ARE  
TRANSGENDER AND STUDENTS NONCONFORMING  
TO GENDER ROLE STEREOTYPES

The following guidelines relate to students who are transgender and students who do not conform to gender role stereotypes. This guideline serves two important purposes. First, significant portions of the guidelines facilitate compliance with the District's legal obligations. Under many circumstances, an individual's transgender or gender nonconforming status serves as a basis for legal rights and protections. Second, even where specific actions may not be required by applicable law, these guidelines are intended to further the District's local goals concerning the creation and maintenance of positive and supportive environments that appropriately provide for the education, safety, and welfare of all students.

While the guidelines established in this rule provide important direction to District employees, students, school families, and other persons, the guidelines do not anticipate every situation that might occur with respect to students who are transgender or gender nonconforming. When an issue or concern arises that is not adequately addressed by these guidelines, the needs and concerns of each student will be assessed on an individualized basis with consultation with parents/guardians where appropriate.

1. Definitions

The definitions below are not intended to label students but rather to assist in understanding these guidelines and the expectations of staff in complying with District policies and legal requirements. Students might or might not use these terms to describe themselves.

- a. "**Transgender**" describes people whose gender identity is different than their biological sex assigned at birth.
- b. "**Gender identity**" is a person's deeply held sense or psychological knowledge of their own gender,

regardless of the biological sex they were assigned at birth. Everyone has a gender identity.

- c. **"Gender nonconforming"** describes people whose gender expression differs from stereotypical or prevailing social expectations, such as "feminine" boys or "masculine" girls, or those who are perceived as androgynous.
- d. **"Gender expression"** refers to the way a person expresses gender, such as clothing, hairstyles, activities or mannerisms.

## **2. Discrimination, Harassment and Bullying**

The District prohibits all forms of discrimination against any transgender student or any student who does not conform to gender role stereotypes. Further, existing District policies that prohibit the harassment and bullying of students apply to any such actions that are based on a student's actual or perceived transgender status or gender nonconformity. This includes ensuring that any incident or complaint of discrimination, harassment, or bullying is given prompt attention, including taking appropriate corrective and/or disciplinary action. Complaints alleging discrimination, harassment or bullying based on a person's actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination, harassment, and bullying complaints.

## **3. Student Privacy, Names and Pronouns, and Official School Records**

Certain records and personally-identifiable information related to the student's gender status or biological sex may be protected not only as an education record, but also as a confidential medical or patient health care record. The District further recognizes that a student may have a strong individual interest in maintaining the privacy of his/her transgender status or his/her gender nonconforming presentation at school. Accordingly, in addition to adhering to all legal standards of confidentiality, school personnel with knowledge of any student's transgender status or gender nonconforming presentation are expected to treat that information as being particularly sensitive, even internally among

school staff and school officials. District employees are expected to refer any questions they may have about student privacy and possible disclosures of a student's transgender or gender nonconforming status to the Executive Director of Curriculum, Instruction and Pupil Services or designee. The District strongly encourages transgender and gender nonconforming students and their families to maintain ongoing communication with the school employees who are working directly with the student in order to address, among other issues, relevant privacy concerns and privacy preferences.

When referring to students at school and in connection with school activities, school personnel will normally use the student's legal name and the pronouns that correspond to the student's biological sex assigned at birth. However, an adult student or the parent/guardian of a minor student may determine the name and gender pronouns that school employees will use to address the student at school and in connection with school-related activities. A court-ordered name change or medical treatment or medical procedure is not required to initiate such a request. Upon being informed that a student intends to regularly use a particular name and/or prefers to be addressed using particular pronouns that correspond to the student's gender identity, school personnel are expected to respect that decision.

The District's approach of respecting a student's decision to regularly use a name and the pronouns that correspond to the student's gender identity is not a commitment to change all existing school records in order to reflect those preferences. Further, there may be situations where the District is required to use or report the legal name or biological sex of the student as that data is reflected in the District's official records. The extent to which official records of the District are modified will depend on a case-by-case evaluation of the information that the District receives and the type(s) of school records affected by the information that is received. For example, when a student changes his/her legal name and that change is sufficiently substantiated, the District will issue a high school transcript under the student's new legal name.

#### **4. Restroom and Locker Room Accessibility**

In most cases, a student who is transgender will be permitted to access the men's/women's segregated restrooms that correspond to the gender identity that the student consistently asserts at school and in other social environments. Any student who has a need or desire for increased privacy, regardless of the underlying reason, may be provided with access to a single-access restroom where such a facility is reasonably available, but no student shall be required to use such a restroom because of the student's transgender or gender nonconforming status.

If a transgender student makes any request regarding the use of locker rooms or any similar type of changing area, the request shall be assessed on a case-by-case basis with the goals of: (a) facilitating the transgender student's access to the District's physical education curriculum and other relevant programs; (b) ensuring adequate student privacy and safety; and (c) minimizing stigmatization of the transgender student. The physical layout of the facility and the degree of undress required when changing for the applicable activity are examples of factors that will be considered in making the arrangements. There is no absolute rule that, in all cases, will require a transgender student to access and use only the locker rooms and other changing areas that correspond to the biological sex that the student was assigned at birth.

Any student who has a need or desire for increased privacy, regardless of the underlying reason, may be provided (to the extent reasonably available) with a reasonable alternative changing area (for example, a nearby restroom stall with a door, an area separated by a curtain, a physical education teacher's office in the locker room, or a nearby single-access restroom) or provided with an alternative changing schedule. Any alternative arrangement should be provided in a way that gives adequate consideration to relevant privacy concerns.

These guidelines related to restrooms and changing areas generally assume that a student has a special concern or

is in some way uncomfortable with consistently using the facilities that correspond to the biological sex that the student was assigned at birth. However, all students have the option of consistently accessing the facilities that correspond to the biological sex that the student was assigned at birth. Accordingly, the District's willingness to address individualized concerns and requests that relate to restroom and changing area access does not mean that any student is required to establish an individualized arrangement or plan with the school.

**5. Participation in Physical Education Classes and Sports Activities**

A student who is transgender shall be permitted to participate in physical education classes and intramural sports in a manner consistent with the gender identity that the student regularly asserts at school and in other social environments.

Students who are transgender shall be permitted to participate in interscholastic athletics in a manner consistent with the requirements and policies of the Wisconsin Interscholastic Athletics Association (WIAA).

**6. Dress Codes**

Within the constraints of the District's dress code policy and dress codes adopted by the school, students may dress in accordance with their gender identity. School personnel shall not enforce a dress code more strictly against transgender and gender nonconforming students than other students.

CROSS REF.: 341.31, Human Growth and Development  
Instruction  
347 Guideline, Guidelines and Confidentiality  
of Student Records  
411.1, Student Harassment  
443.1, Student Dress  
443.71, Bullying  
WIAA Transgender Athlete Policy

REVIEWED: February 25, 2014

## **EXHIBIT D**

### **Monona Grove School District, Nondiscrimination Guidelines Related to Students Who Are Transgender and Students Nonconforming to Gender Role Stereotypes**

**MONONA GROVE SCHOOL DISTRICT**

## Administrative Rule 411 (2)

**Nondiscrimination Guidelines Related to Students Who Are Transgender and Students Nonconforming to Gender Role Stereotypes**

The following guidelines relate to students who are transgender and students who do not conform to gender role stereotypes, and they serve two important purposes. First, significant portions of the guidelines facilitate compliance with the District's legal obligations. Under many circumstances, an individual's transgender or gender nonconforming status serves as a basis for legal rights and protections. Second, even where specific actions may not be required by applicable law, these guidelines are intended to further the District's local goals concerning the creation and maintenance of positive and supportive environments that appropriately provide for the education, safety, and welfare of all students.

While the guidelines established in this rule provide important direction to District employees, students, school families, and other persons, the guidelines do not anticipate every situation that might occur with respect to students who are transgender or gender nonconforming. When an issue or concern arises that is not adequately addressed by these guidelines, the needs and concerns of each student should be assessed on an individual basis.

**1. Definitions**

The definitions below are not intended to label students but rather to assist in understanding these guidelines and the expectations of staff in complying with District policies and legal requirements. Students might or might not use these terms to describe themselves.

- a. **Transgender** describes people whose gender identity is different than their biological sex assigned at birth.
- b. **Gender Identity** is a person's deeply held sense or psychological knowledge of their own gender, regardless of the biological sex they were assigned at birth. Everyone has gender identity.
- c. **Gender nonconforming** describes people whose gender expression differs from stereotypical or prevailing social expectations, such as "feminine" boys or "masculine" girls, or those who are perceived as androgynous.
- d. **Gender expression** refers to the way a person expresses gender, such as clothing, hairstyles, activities, or mannerisms.

**2. Discrimination, Harassment and Bullying**

Discrimination, bullying, and harassment on the basis of sex, sexual orientation, transgender status, gender identity, or gender expression shall be prohibited within the Monona Grove School District. It is the responsibility of each school, the District, and all staff to ensure a safe school environment for all students, including transgender and gender nonconforming students. The scope of this responsibility includes ensuring that any incident of discrimination, harassment, or bullying is given immediate attention, including investigating the incident, taking age- and developmentally-appropriate corrective action, and providing students and staff with appropriate resources. Complaints alleging discrimination or harassment based on a person's actual or perceived transgender status, gender identity, or gender expression are to be taken seriously and handled in the same manner as other discrimination, bullying, or harassment complaints.

**3. Student Privacy, Names and Pronouns, and Official School Records**

Certain records and personally-identifiable information related to the student's gender status or biological sex may be protected not only as an education record, but also as a confidential medical or patient healthcare record. The District further recognizes that a student may have a strong individual interest in maintaining the privacy of the student's transgender status or the student's gender nonconforming presentation at school. Accordingly, in addition to adhering to all legal standards of confidentiality, school personnel are expected to treat that information as being particularly sensitive, even internally among school staff and school officials. School staff shall not disclose information that may reveal a student's transgender or gender nonconforming status to others, including parents and other school staff, unless legally required to do so or unless the student has expressly authorized such disclosure. District employees are expected to refer any questions they may have about student privacy and possible disclosures of a student's transgender or gender nonconforming status to the Director of Student Services. The District strongly encourages transgender and gender nonconforming students and their families to create a "School Plan for Transgender/Gender Nonconforming Students" with the school, and to maintain ongoing communications with school employees who are working directly with the student in order to address, among other issues, relevant privacy concerns and privacy preferences.

When referring to students at school and in connection with school activities, school personnel will normally use the student's legal name and the pronouns that correspond to the student's biological sex assigned at birth. However, students should be referred to by their preferred names and pronouns whenever possible in school and in connection with school-related activities. A court-ordered name or gender change is not required, nor does there need to be a change made to the student's official records. Upon being informed that a student intends to regularly use a particular name and/or prefers to be addressed using particular pronouns, school personnel are expected to respect that decision.

The District's approach of respecting a student's decision to regularly use a name and the pronouns that correspond to the student's gender identity is not a commitment to change all existing school records in order to reflect those preferences. Further, there may be situations where the District is required to use or report the legal name or biological sex of the student as that data is reflected in the District's official records. The extent to which official records of the District are modified will depend on a case-by-case evaluation of the information that the District receives and the type(s) of school records affected by the information that is received. For example, when a student's legal name is changed and the change is sufficiently substantiated, the District will issue a high school transcript under the student's new legal name.

**4. Restroom and Locker Room Accessibility**

In most cases, students shall have access to the restroom or locker room that corresponds to the gender identity that the student consistently asserts at school and in other social environments. The following guidelines related to restroom and changing areas generally assume that the student has a special concern or is in some way uncomfortable with consistently using the facilities that correspond to the biological sex that the student was assigned at birth. The District highly recommends, but does not require, transgender students and/or their parents/guardians create a "School Plan for Transgender/Gender Nonconforming Students" with a school counselor or other student services staff member, with the support of a school administrator, to address restroom/locker room choices. In any gender-segregated facility, any student who is uncomfortable using a shared facility, regardless of the reason, shall, upon the student's request, be provided with a safe and non-stigmatizing alternative. This may include, for example, addition of a privacy partition or curtain, provision to use a nearby private restroom or office, or a separate

changing schedule. However, requiring a transgender or gender nonconforming student to use a separate, nonintegrated space threatens to publicly identify and marginalize the student as transgender and should not be done unless requested by a student. Under no circumstances may students be required to use sex segregated facilities that are inconsistent with their gender identity. Where available, schools are encouraged to designate facilities designed for use by one person at a time as accessible to all students regardless of gender, and to incorporate such single-user facilities into new construction or renovation. However, under no circumstances may a student be required to use such facilities because they are transgender or gender nonconforming.

If a transgender student makes any request regarding the use of locker rooms or any similar type of changing area, the request shall be assessed on a case-by-case basis with the goals of: (a) facilitating the transgender student's access to the district's physical education curriculum and other relevant programs; (b) ensuring adequate student privacy and safety; and (c) minimizing stigmatization of the transgender student. The physical layout of the facility and the degree of undress required when changing for the applicable activity are examples of factors that will be considered in making the arrangements. There is no absolute rule that, in all cases, will require a transgender student to access and use only the locker rooms and other changing areas that correspond to the biological sex that the student was assigned at birth.

**5. Physical Education/Athletics/Clubs**

Students who are transgender shall be permitted to participate in physical education classes and intramural sports in a manner consistent with the gender identity that students regularly assert at school and in other social environments.

Students who are transgender shall be permitted to participate in interscholastic athletics in a manner consistent with the requirements and policies of the Wisconsin Interscholastic Athletics Association (WIAA).

**6. Overnight Field Trips**

Students will be boarded in accordance with their gender identity. It is the responsibility of the adult in charge of the trip to provide for the safety of all students. This may include checking in advance for gender non-specific facilities and room assignments. In any gender-segregated environment, any student who is uncomfortable using a shared facility, regardless of the reason, shall, upon the student's request, be provided with a safe and non-stigmatizing alternative.

**7. Dress Codes**

Within the constraints of the District's dress code policy and dress codes adopted by each school, students may dress in accordance with their gender identity. School personnel shall not enforce a dress code more strictly against transgender and gender nonconforming students than other students.

ADOPTED: August 26, 2015

# **EXHIBIT E**

## **Middleton-Cross Plains Area School District, Nondiscrimination Guidelines**

**MIDDLETON-CROSS PLAINS AREA SCHOOL DISTRICT**

**Administrative Policy and Procedure Manual**

**411.2**

**NONDISCRIMINATION GUIDELINES RELATED TO STUDENTS WHO ARE  
TRANSGENDER AND STUDENTS NONCONFORMING TO GENDER ROLE STEREOTYPES**

**Policy**

The following guidelines relate to students who are transgender and students who do not conform to gender role stereotypes. This guideline serves two important purposes. First, significant portions of the guidelines facilitate compliance with the District's legal obligations. Under many circumstances, an individual's transgender or gender nonconforming status serves as a basis for legal rights and protections. Second, even where specific actions may not be required by applicable law, these guidelines are intended to further the District's local goals concerning the creation and maintenance of positive and supportive environments that appropriately provide for the education, safety, and welfare of all students.

While the guidelines established in this rule provide important direction to District employees, students, school families, and other persons, the guidelines do not anticipate every situation that might occur with respect to students who are transgender or gender nonconforming. When an issue or concern arises that is not adequately addressed by these guidelines, the needs and concerns of each student will be assessed on an individualized basis with consultation with parents/guardians where appropriate.

**1. Definitions**

The definitions below are not intended to label students but rather to assist in understanding these guidelines and the expectations of staff in complying with District policies and legal requirements. Students might or might not use these terms to describe themselves.

- a. "Transgender" describes people whose gender identity is different than their biological sex assigned at birth.
- b. "Gender identity" is a person's deeply held sense or psychological knowledge of their own gender, regardless of the biological sex they were assigned at birth. Everyone has a gender identity.
- c. "Gender nonconforming" describes people whose gender expression differs from stereotypical or prevailing social expectations, such as "feminine" boys or "masculine" girls, or those who are perceived as androgynous.
- d. "Gender expression" refers to the way a person expresses gender, such as clothing, hairstyles, activities or mannerisms.

**2. Discrimination, Harassment and Bullying**

The District prohibits all forms of discrimination against any transgender student or any student who does not conform to gender role stereotypes. Further, existing District policies that prohibit the harassment and bullying of students apply to any such actions that are based on a student's actual or perceived transgender status or gender nonconformity. This includes ensuring that any incident or complaint of discrimination, harassment, or bullying is given prompt attention, including taking appropriate corrective and/or disciplinary action. Complaints alleging discrimination, harassment or

bullying based on a person's actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination, harassment, and bullying complaints.

3. Student Privacy, Names and Pronouns, and Official School Records

Certain records and personally-identifiable information related to the student's gender status or biological sex may be protected not only as an education record, but also as a confidential medical or patient health care record. The District further recognizes that a student may have a strong individual interest in maintaining the privacy of his/her transgender status or his/her gender nonconforming presentation at school. Accordingly, in addition to adhering to all legal standards of confidentiality, school personnel with knowledge of any student's transgender status or gender nonconforming presentation are expected to treat that information as being particularly sensitive, even internally among school staff and school officials. District employees are expected to refer any questions they may have about student privacy and possible disclosures of a student's transgender or gender nonconforming status to the Director of Student Services or designee. The District strongly encourages transgender and gender nonconforming students and their families to maintain ongoing communication with the school employees who are working directly with the student in order to address, among other issues, relevant privacy concerns and privacy preferences.

When referring to students at school and in connection with school activities, school personnel will normally use the student's legal name and the pronouns that correspond to the student's biological sex assigned at birth. However, an adult student or the parent/guardian of a minor student may determine the name and gender pronouns that school employees will use to address the student at school and in connection with school-related activities. A court-ordered name change or medical treatment or medical procedure is not required to initiate such a request. Upon being informed that a student intends to regularly use a particular name and/or prefers to be addressed using particular pronouns that correspond to the student's gender identity, school personnel are expected to respect that decision (which will be noted in the student's electronic record.)

The District's approach of respecting a student's decision to regularly use a name and the pronouns that correspond to the student's gender identity is not a commitment to change all existing school records in order to reflect those preferences. Further, there may be situations where the District is required to use or report the legal name or biological sex of the student as that data is reflected in the District's official records. The extent to which official records of the District are modified will depend on a case-by-case evaluation of the information that the District receives and the type(s) of school records affected by the information that is received. For example, when a student changes his/her legal name and that change is sufficiently substantiated, the District will issue a high school transcript under the student's new legal name.

4. Restroom and Locker Room Accessibility

Generally a student who is transgender and has held the belief deeply, followed the belief consistently over a period of time, is supported by the student's parent or guardian, and for which the student has sought guidance or counseling in coming to the decision, will be permitted to access the segregated restrooms that correspond to the gender identity that the student consistently asserts at school and elsewhere. Any student who does not wish to use the segregated restrooms may be given access to unisex restrooms if such a facility is reasonably available. No student shall be required to use a unisex restroom solely because of the student's transgender or gender nonconforming status.

**411.2**  
**Page Three**

If a transgender student makes any request regarding the use of segregated restrooms, the use of segregated locker rooms, or any similar type of changing area, the request shall be assessed on a case-by-case basis, taking into account all relevant interests of the student, the school district, and other students affected by the request. The school district will consider, in addition to all other relevant factors, such things as the ability of the transgender student to access the District's physical education curriculum and extra-curricular programs and the need to respect the privacy and safety of all students. The district will consider the physical layout of the facility, the availability of single access showers and changing areas, and the degree of undress required when changing for the applicable activity. There is no absolute rule that, in all cases, will require a transgender student to access and use only the restrooms, locker rooms, and other changing areas that correspond to the biological sex that the student was assigned at birth.

Any student who has a need or desire for increased privacy, regardless of the underlying reason, may be provided (to the extent reasonably available) with a reasonable alternative changing area (for example, a nearby restroom stall with a door, an area separated by a curtain, a physical education teacher's office in the locker room, or a nearby unisex restroom) or provided with an alternative changing schedule. Any alternative arrangement should be provided in a way that gives adequate consideration to relevant privacy concerns.

These guidelines related to restrooms and changing areas generally assume that a student has a concern or is in some way uncomfortable with consistently using the facilities that correspond to the biological sex that the student was assigned at birth. However, all students have the option of consistently accessing the facilities that correspond to the biological sex that the student was assigned at birth.

If the District, in its sole discretion, determines that transgender student's request regarding the use of a segregated locker room cannot be accommodated, the transgender students will be provided with a private changing area to accommodate physical education classes, athletics, or other activities that require a comparable changing area. Transgender students will not have access to open locker rooms or changing areas under such circumstances unless governing courts/governing agencies mandate that this access must be granted. This does not preclude the District's creation of locker rooms that provide private changing areas that must be used by all students. The District shall solely determine whether to create such locker rooms or changing areas.

5. Participation in Physical Education Classes and Sports Activities

A student who is transgender shall be permitted to participate in physical education classes and intramural sports in a manner consistent with the gender identity that the student regularly asserts at school and in other social environments.

Students who are transgender shall be permitted to participate in interscholastic athletics in a manner consistent with the requirements and policies of the Wisconsin Interscholastic Athletics Association (WIAA).

6. Dress Codes

Within the constraints of the District's dress code policy and dress codes adopted by the school, students may dress in accordance with their gender identity. School personnel shall not enforce a dress code more strictly against transgender and gender nonconforming students than other students.

LEGAL REF:

CROSS REF: 342.8, Human Growth and Development Curriculum  
347, Student Records  
411, Equal Educational Opportunities  
411.1, Bullying of Students and Staff  
440, Student Rights and Responsibilities  
443.1, Dress Code  
District Non-Discrimination Policy  
WIAA Transgender Athlete Policy

**GUIDANCE FOR ADMINISTRATORS**

**ENSURING EQUAL OPPORTUNITY AND FREEDOM FROM HARASSMENT FOR TRANSGENDER AND GENDER NON-CONFORMING STUDENTS AND STAFF**

The purpose of this guidance sheet is to assist administrators in providing a safe, secure and dignified educational and work atmosphere for the students and staff under their supervision. Please review this guidance in preparation for situations that may arise involving transgender and gender non-conforming students and staff and refer back to it when needed. If issues arise that are not addressed within this guidance sheet or more information and support is desired, please contact the Director of Student Services.

<b>Topic</b>	<b>Guidance<sup>1</sup></b>
<p><b>Safety and Bullying:</b>  Transgender and gender non-conforming students and staff are disproportionately targeted for teasing, bullying, harassment, and physical violence.<sup>2</sup></p>	<p>Confront and report bullying and name calling consistently. This includes name calling and bullying based on gender stereotypes, gender identity and gender expression.</p> <p><i>See Administrative Policy 411.1 Bullying of Students and Staff</i></p>
<p><b>Names and Pronouns:</b>  Frequently transgender and gender non-conforming people are not addressed by appropriate pronouns or names.<sup>3</sup> Having one’s gender identity recognized and validated is important.</p>	<p>Refer to all students by their preferred name and gender pronouns whenever possible. Have conversations regarding preferences with the student in private.</p> <p><i>See Administrative Policy 347 Student Records</i></p>
<p><b>Bathrooms:</b>  Transgender and gender non-conforming people often struggle to find restroom facilities that are safe and that correspond with their gender identity. Having safe and respectful access to restroom facilities is important to the health and well-being of transgender and gender non-conforming people.</p>	<p>Students and staff shall have access to the restroom that corresponds to their gender identity consistently asserted at school. Any student or staff who has a need or desire for increased privacy, regardless of underlying reasons, should be provided access to a single stall restroom, but no student or staff shall be required to use such a restroom.</p>
<p><b>Privacy:</b>  All persons have a right to privacy, which includes the right to keep one’s transgender status private at school. Information about a student’s transgender status, legal name, or gender assigned at birth may constitute confidential medical information. Disclosing this information to other staff, students, their parents or other third parties may violate privacy laws and policies.</p>	<p>Students have a right to keep their personal information private. Staff members should not disclose information about a student’s gender identity or gender expression to others unless legally obligated or expressly given permission by the student. Transgender and gender non-conforming students have the right to discuss and express their gender identity and expression openly. The fact that a student chooses to disclose his or her transgender status to others does not authorize school staff to disclose information.</p> <p><i>See Administrative Policy 347 Student Records</i></p>
<p><b>Physical Education/Athletics/Clubs:</b>  Transgender and gender non-conforming students may find it difficult to participate in extra-curricular activities. There may also be barriers of access and comfort for transgender and gender non-conforming youth regarding physical education.</p>	<p>Using gender to separate and/or identify students in physical education classes is discouraged. In circumstances where gender is used, students should be permitted to participate consistent with their gender identity. Students shall also be permitted to participate in intramural sports and club activities in a manner consistent with their gender identity. Furthermore, unless precluded by state interscholastic association policies<sup>4</sup>, students shall be permitted to participate in interscholastic athletics in a manner consistent with their gender identity.</p>

<sup>1</sup>MCPASD – Administrative Policies 411 Equal Educational Opportunities, 411.1 Bullying of Students and Staff, 511 Equal Opportunity Employment, 512 Harassment – These policies protect all students and staff from discrimination or harassment based on gender, gender identity, gender expression, and sexual orientation. The Federal Family Educational Rights and Privacy Act (FERPA) also may pertain.

<sup>2</sup>Greytak, E.A., Kosciw, J.G. & Diaz, E.M. (2009) Harsh Realities: The experiences of transgender youth in our nation’s schools. New York: GLSEN.

<sup>3</sup>American Psychological Association (APA). (2006). Answers to your questions about transgender individuals and gender identity. Retrieved Aug 9, 2010, from <http://www.apa.org/topics/transgender.html>

<sup>4</sup>WIAA’s last articulated position is to leave it to each District to address the issue of transgender student participation.

## **EXHIBIT F**

### **Menasha Joint School District, Policy 2260 – Nondiscrimination and Access to Equal Educational Opportunity**

Menasha Joint School District  
Bylaws & Policies

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**2260 - NONDISCRIMINATION AND ACCESS TO EQUAL EDUCATIONAL OPPORTUNITY**

The Board of Education is committed to providing an equal educational opportunity for all students in the District.

The Board does not discriminate on the basis of race, color, religion, national origin, ancestry, creed, pregnancy, marital status, parental status, sexual orientation, sex, (including transgender status, change of sex or gender identity), or physical, mental, emotional, or learning disability ("Protected Classes") in any of its student program and activities.

**Nondiscrimination Guidelines Related to Students Who Are Transgender and Students Nonconforming to Gender Role Stereotypes**

The following guidelines relate to students who are transgender and students who do not conform to gender role stereotypes. This guideline serves two important purposes. First, significant portions of the guidelines facilitate compliance with the District's legal obligations. Under many circumstances, an individual's transgender or gender nonconforming status serves as a basis for legal rights and protections. Second, even where specific actions may not be required by applicable law, these guidelines are intended to further the District's local goals concerning the creation and maintenance of positive and supportive environments that appropriately provide for the education, safety, and welfare of all students.

While the guidelines established in this rule provide important direction to District employees, students, school families, and other persons, the guidelines do not anticipate every situation that might occur with respect to students who are transgender or gender nonconforming. When an issue or concern arises that is not adequately addressed by these guidelines, the needs and concerns of each student will be assessed on an individualized basis with consultation with parents/guardians where appropriate.

**Definitions**

The definitions below are not intended to label students but rather to assist in understanding these guidelines and the expectations of staff in complying with District policies and legal requirements. Students might or might not use these terms to describe themselves.

- A. "Transgender" describes people whose gender identity is different than their biological sex assigned at birth.
- B. "Gender identity" is a person's deeply held sense or psychological knowledge of their own gender, regardless of the biological sex they were assigned at birth. Everyone has a gender identity.
- C. "Gender nonconforming" describes people whose gender expression differs from stereotypical or prevailing social expectations, such as "feminine" boys or "masculine" girls, or those who are perceived as androgynous.
- D. "Gender expression" refers to the way a person expresses gender, such as clothing, hairstyles, activities or mannerisms.

**Discrimination, Harassment and Bullying**

The District prohibits all forms of discrimination against any transgender student or any student who does not conform to gender role stereotypes. Further, existing District policies that prohibit the harassment and bullying of students apply to any such actions that are based on a student's actual or perceived transgender status or gender nonconformity. This includes ensuring that any incident or complaint of discrimination, harassment, or bullying is given prompt attention, including taking appropriate corrective and/or disciplinary action. Complaints alleging discrimination, harassment or bullying based on a person's actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination, harassment, and bullying complaints.

### **Student Privacy, Names and Pronouns, and Official School Records**

Certain records and personally-identifiable information related to the student's gender status or biological sex may be protected not only as an education record, but also as a confidential medical or patient health care record. The District further recognizes that a student may have a strong individual interest in maintaining the privacy of his/her transgender status or his/her gender nonconforming presentation at school. Accordingly, in addition to adhering to all legal standards of confidentiality, school personnel with knowledge of any student's transgender status or gender nonconforming presentation are expected to treat that information as being particularly sensitive, even internally among school staff and school officials. District employees are expected to refer any questions they may have about student privacy and possible disclosures of a student's transgender or gender nonconforming status to the Director of Student Services or designee. The District strongly encourages transgender and gender nonconforming students and their families to maintain ongoing communication with the school employees who are working directly with the student in order to address, among other issues, relevant privacy concerns and privacy preferences.

When referring to students at school and in connection with school activities, school personnel will normally use the student's legal name and the pronouns that correspond to the student's biological sex assigned at birth. However, an adult student or the parent/guardian of a minor student may determine the name and gender pronouns that school employees will use to address the student at school and in connection with school-related activities. A court-ordered name change or medical treatment or medical procedure is not required to initiate such a request. Upon being informed that a student intends to regularly use a particular name and/or prefers to be addressed using particular pronouns that correspond to the student's gender identity, school personnel are expected to respect that decision.

The District's approach of respecting a student's decision to regularly use a name and the pronouns that correspond to the student's gender identity is not a commitment to change all existing school records in order to reflect those preferences. Further, there may be situations where the District is required to use or report the legal name or biological sex of the student as that data is reflected in the District's official records. The extent to which official records of the District are modified will depend on a case-by-case evaluation of the information that the District receives and the type(s) of school records affected by the information that is received. For example, when a student changes his/her legal name and that change is sufficiently substantiated, the District will issue a high school transcript under the student's new legal name.

### **Restroom and Locker Room Accessibility**

Generally a student who is transgender and has held the belief deeply, followed the belief consistently over a period of time, is supported by the student's parent or guardian, and for which the student has sought guidance or counseling in coming to the decision, will be permitted to access the segregated restrooms that correspond to the gender identity that the student consistently asserts at school and elsewhere. Any student who does not wish to use the segregated restrooms may be given access to unisex restrooms if such a facility is reasonably available. No student shall be required to use a unisex restroom solely because of the student's transgender or gender nonconforming status.

If a transgender student makes any request regarding the use of segregated restrooms, the use of segregated locker rooms, or any similar type of changing area, the request shall be assessed on a case-by-case basis, taking into account all relevant interests of the student, the School District, and other students affected by the request. The School District will consider, in addition to all other relevant factors, such things as the ability of the transgender student to access the District's physical education curriculum and extra-curricular programs and the need to respect the privacy and safety of all students. The District will consider the physical layout of the facility, the availability of single access showers and changing areas, and the degree of undress required when changing for the applicable activity. There is no absolute rule that, in all cases, will require a transgender student to access and use only the restrooms, locker rooms, and other changing areas that correspond to the biological sex that the student was assigned at birth.

Any student who has a need or desire for increased privacy, regardless of the underlying reason, may be provided (to the extent reasonably available) with a reasonable alternative changing area (for example, a nearby restroom stall with a door, an area separated by a curtain, a physical education teacher's office in the locker room, or a nearby unisex restroom) or provided with an alternative changing schedule. Any alternative arrangement should be provided in a way that gives adequate consideration to relevant privacy concerns.

These guidelines related to restrooms and changing areas generally assume that a student has a special concern or is in some way uncomfortable with consistently using the facilities that correspond to the biological sex that the student was assigned at birth. However, all students have the option of consistently accessing the facilities that correspond to the biological sex that the student was assigned at birth.

### **Participation in Physical Education Classes and Sports Activities**

A student who is transgender shall be permitted to participate in physical education classes and intramural sports in a manner consistent with the gender identity that the student regularly asserts at school and in other social environments.

Students who are transgender shall be permitted to participate in interscholastic athletics in a manner consistent with the requirements and policies of the Wisconsin Interscholastic Athletics Association (WIAA).

**Dress Codes**

Within the constraints of the District's dress code policy and dress codes adopted by the school, students may dress in accordance with their gender identity. School personnel shall not enforce a dress code more strictly against transgender and gender nonconforming students than other students.

The Board is also committed to equal employment opportunity in its employment policies and practices as they relate to students. The Board's policies pertaining to employment practices can be found in Policy [1422](#), Policy [3122](#), and Policy [4122](#) – Nondiscrimination and Equal Employment Opportunity.

In order to achieve the aforesaid goal, the District Administrator shall:

A. Curriculum Content

review current and proposed courses of study and textbooks to detect any bias based upon the Protected Classes ascertaining whether or not supplemental materials, singly or taken as a whole, fairly depict the contribution of both sexes various races, ethnic groups, etc. toward the development of human society;

provide that necessary programs are available for students with limited use of the English language;

B. Staff Training

develop an ongoing program of staff training and in-service training for school personnel designed to identify and solve problems of bias based upon the protected classes in all aspects of the program;

C. Student Access

1. review current and proposed programs, activities, facilities, and practices to ensure that all students have equal access thereto and are not segregated on the basis of the Protected Classes in any duty, work, play, classroom, or school practice, except as may be permitted under State regulations;

2. verify that facilities are made available in a non-discriminatory fashion, in accordance with Board Policy [7510](#) - Use of District Facilities, for non-curricular student activities that are initiated by parents or other members of the community, including but not limited to any group officially affiliated with the Boy Scouts of America or any other youth group listed in Title 36 of the United States Code as a patriotic society;

D. District Support

require that like aspects of the District program receive like support as to staff size and compensation, purchase and maintenance of facilities and equipment, access to such facilities and equipment, and related matters;

E. Student Evaluation

verify that tests, procedures, or guidance and counseling materials, which is/are designed to evaluate student progress, rate aptitudes, analyze personality, or in any manner establish or tend to establish a category by which a student may be judged, are not differentiated or stereotyped on the basis of the Protected Classes.

The District Administrator shall appoint and publicize the name of the compliance officer(s) who is/are responsible for coordinating the District's efforts to comply with the applicable Federal and State laws and regulations, including the District's duty to address in a prompt and equitable manner any inquiries or complaints regarding discrimination or equal access. The Compliance Officer(s) also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, Section 504 of the Rehabilitation Act of 1973 (as amended), is provided to students, their parents, staff members, and the general public.

The District Administrator shall attempt annually to identify children with disabilities, ages 3 - 21, who reside in the District but do not receive public education. In addition, s/he shall establish procedures to identify students who are Limited English Proficient, including immigrant children and youth, to assess their ability to participate in District programs, and develop and administer a program that meets the English language and academic needs of these students. This program shall include procedures for student placement, services, evaluation, and exit guidelines and shall be designed to provide students with effective instruction that leads to academic achievement and timely acquisition of proficiency in English. As a part of this program, the District will evaluate the progress of students in achieving English language proficiency in the areas of listening, speaking, reading and writing, on an annual basis (see AG 2260F).

### Reporting Procedures

Students, parents and all other members of the School District community are encouraged to promptly report suspected violations of this policy to a teacher or administrator. Any teacher or administrator who receives such a complaint shall file it with the District's Compliance Officer at his/her first opportunity.

Students who believe they have been denied equal access to District educational opportunities, in a manner inconsistent with this policy may initiate a complaint and the investigation process that is set forth below. Initiating a complaint will not adversely affect the complaining individual's participation in educational or extra-curricular programs unless the complaining individual makes the complaint maliciously or with knowledge that it is false.

### District Compliance Officers

The Board designates the following individuals to serve as the District's "Compliance Officers" (hereinafter referred to as the "COs").

Peter Pfundtner Director of HR 920-967-1414 P.O. Box 360, Menasha WI 54952 pfundtnerp@mjsd.k12.wi.us	Marci Thiry Director of Special Services 920-967-1429 P.O. Box 360, Menasha WI 54952 thiry@mjsd.k12.wi.us
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The names, titles, and contact information of these individuals will be published annually in the staff handbooks and on the School District's web site.

A CO will be available during regular school/work hours to discuss concerns related to student discrimination in educational opportunities under this policy.

### Investigation and Complaint Procedure

The CO shall investigate any complaints brought under this policy. Throughout the course of the process as described herein, the CO should keep the parties informed of the status of the investigation and the decision making process.

All complaints must include the following information to the extent it is available: a description of the alleged violation, the identity of the individual(s) believed to have engaged in, or to be actively engaging in, conduct in violation of this policy, if any; a detailed description of the facts upon which the complaint is based; and a list of potential witnesses.

If the complainant is unwilling or unable to provide a written statement including the information set forth above, the CO shall ask for such details in an oral interview. Thereafter the CO will prepare a written summary of the oral interview, and the complainant will be asked to verify the accuracy of the report by signing the document.

Upon receiving a complaint, the CO will consider whether any action should be taken during the investigatory phase to protect the Complainant from further loss of educational opportunity, including but not limited to a change of class schedule for the complainant, tentative enrollment in a program, or other appropriate action. In making such a determination, the CO should consult the District Administrator prior to any action being taken. The Complainant should be notified of any proposed action prior to such action being taken.

As soon as appropriate in the investigation process, the CO will inform any individual named by the Complainant in connection with an alleged violation of this policy, that a complaint has been received. The person(s) must also be provided an opportunity to respond to the complaint.

Within five (5) business days of receiving the complaint, the CO will initiate an investigation.

Although certain cases may require additional time, the CO will attempt to complete an investigation into the allegations of harassment within fifteen (15) calendar days of receiving the formal complaint. The investigation will include:

- A. interviews with the complainant;
- B. interviews with any persons named in the complaint;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- D. consideration of any documentation or other evidence presented by the complainant, respondent, or any other witness which is reasonably believed to be relevant to the allegations.

At the conclusion of the investigation, the CO shall prepare and deliver a written report to the District Administrator which summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definitions in this Policy, as well as in State and Federal law as to whether the complainant has been denied access to educational opportunities on the basis of one of the protected classifications, based on a preponderance of evidence standard. The CO's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. The CO may consult with the Board Attorney before finalizing the report to the District Administrator.

Absent extenuating circumstances, within ten (10) business days of receiving the report of the CO, the District Administrator must either issue a final decision regarding or request the complaint further investigation. A copy of the District Administrator's final decision will be delivered to the complainant.

If the District Administrator requests additional investigation, the District Administrator must specify the additional information that is to be gathered, and such additional investigation must be completed within ten (10) business days. At the conclusion of the additional investigation, the District Administrator must issue a final written decision as described above. The decision of the District Administrator shall be final.

If the complainant feels that the decision does not adequately address the complaint s/he may appeal the decision to the State Superintendent of Public Instruction.

The Board reserves the right to investigate and resolve a complaint or report of regardless of whether the member of the School District community or third party chooses to pursue the complaint. The Board also reserves the right to have the complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board.

### **Additional School District Action**

If the evidence suggests that any conduct at issue violates any other policies of the Board, is a crime, or requires mandatory reporting under the Children's Code (Sec. 48.981, Wis. Stat.), the CO or District Administrator shall take such additional actions as necessary and appropriate under the circumstances, which may include a report to the appropriate social service and/or law enforcement agency charged with responsibility for handling such investigations.

### **Confidentiality**

The District will make reasonable efforts to protect the privacy of any individuals involved in the investigation process. Confidentiality cannot be guaranteed however. All complainants proceeding through the investigation process should be advised that as a result of the investigation, allegations against individuals may become known to those individuals, including the complainant's identity.

During the course of an investigation, the CO will instruct all members of the School District community and third parties who are interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose any information that s/he learns or that s/he provides during the course of the investigation.

All public records created as a part of an investigation will be maintained by the CO in accordance with the Board's records retention policy. Any records which are considered student records in accordance with the state or Federal law will be maintained in a manner consistent with the provisions of the law.

118.13 Wis. Stats.

P.I. 9, 41, Wis. Adm. Code

Fourteenth Amendment, U.S. Constitution

20 U.S.C. Section 1681, Title IX of Education Amendments Act

20 U.S.C. Section 1701 et seq., Equal Educational Opportunities Act of 1974

20 U.S.C. Section 7905, Boy Scouts of America Equal Access Act

29 U.S.C. Section 794, Rehabilitation Act of 1973, as amended

42 U.S.C. Section 2000 et seq., Civil Rights Act of 1964

42 U.S.C. Section 2000ff et seq., The Genetic Information Nondiscrimination Act

42 U.S.C. 6101 et seq., Age Discrimination Act of 1975

42 U.S.C. 12101 et seq., The Americans with Disabilities Act of 1990, as amended

Vocational Education Program Guidelines for Eliminating Discrimination and Denial of Services, Department of Education, Office of Civil Rights, 1979

Revised 8/25/14

Revised 4/13/15

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NO. 16-3522

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

ASHTON WHITAKER, a minor, by his mother and next friend,  
MELISSA WHITAKER,

*Plaintiff-Appellee,*

v.

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1 BOARD OF EDUCATION and  
SUE SAVAGLIO-JARVIS, in her official capacity as Superintendent of the  
Kenosha Unified School District No. 1,

*Defendants-Appellants.*

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On Appeal from the United States District Court for the  
Eastern District of Wisconsin, Case No. 2:16-cv-00943-PP  
The Honorable Judge Pamela Pepper, Presiding.

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ADDENDUM OF EXHIBITS

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*Diagnostic and Statistical Manual of Mental Disorders,*  
*Third Edition* (1980).....Add. 18

# **Exhibit A**

**Excerpts from DSM-5**

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DIAGNOSTIC AND STATISTICAL  
MANUAL OF  
MENTAL DISORDERS

FIFTH EDITION

**DSM-5<sup>TM</sup>**

## **American Psychiatric Association**

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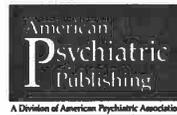
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DIAGNOSTIC AND STATISTICAL  
MANUAL OF  
MENTAL DISORDERS,

FIFTH EDITION

DSM-5™



Washington, DC  
London, England

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# Gender Dysphoria

In this chapter, there is one overarching diagnosis of gender dysphoria, with separate developmentally appropriate criteria sets for children and for adolescents and adults. The area of sex and gender is highly controversial and has led to a proliferation of terms whose meanings vary over time and within and between disciplines. An additional source of confusion is that in English “sex” connotes both male/female and sexuality. This chapter employs constructs and terms as they are widely used by clinicians from various disciplines with specialization in this area. In this chapter, *sex* and *sexual* refer to the biological indicators of male and female (understood in the context of reproductive capacity), such as in sex chromosomes, gonads, sex hormones, and nonambiguous internal and external genitalia. Disorders of sex development denote conditions of inborn somatic deviations of the reproductive tract from the norm and/or discrepancies among the biological indicators of male and female. *Cross-sex* hormone treatment denotes the use of feminizing hormones in an individual assigned male at birth based on traditional biological indicators or the use of masculinizing hormones in an individual assigned female at birth.

The need to introduce the term *gender* arose with the realization that for individuals with conflicting or ambiguous biological indicators of sex (i.e., “intersex”), the lived role in society and/or the identification as male or female could not be uniformly associated with or predicted from the biological indicators and, later, that some individuals develop an identity as female or male at variance with their uniform set of classical biological indicators. Thus, *gender* is used to denote the public (and usually legally recognized) lived role as boy or girl, man or woman, but, in contrast to certain social constructionist theories, biological factors are seen as contributing, in interaction with social and psychological factors, to gender development. *Gender assignment* refers to the initial assignment as male or female. This occurs usually at birth and, thereby, yields the “natal gender.” *Gender-atypical* refers to somatic features or behaviors that are not typical (in a statistical sense) of individuals with the same assigned gender in a given society and historical era; for behavior, *gender-nonconforming* is an alternative descriptive term. *Gender reassignment* denotes an official (and usually legal) change of gender. *Gender identity* is a category of social identity and refers to an individual’s identification as male, female, or, occasionally, some category other than male or female. *Gender dysphoria* as a general descriptive term refers to an individual’s affective/cognitive discontent with the assigned gender but is more specifically defined when used as a diagnostic category. *Transgender* refers to the broad spectrum of individuals who transiently or persistently identify with a gender different from their natal gender. *Transsexual* denotes an individual who seeks, or has undergone, a social transition from male to female or female to male, which in many, but not all, cases also involves a somatic transition by cross-sex hormone treatment and genital surgery (*sex reassignment surgery*).

*Gender dysphoria* refers to the distress that may accompany the incongruence between one’s experienced or expressed gender and one’s assigned gender. Although not all individuals will experience distress as a result of such incongruence, many are distressed if the desired physical interventions by means of hormones and/or surgery are not available. The current term is more descriptive than the previous DSM-IV term *gender identity disorder* and focuses on dysphoria as the clinical problem, not identity per se.

## Gender Dysphoria

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### Diagnostic Criteria

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#### Gender Dysphoria in Children

**302.6 (F64.2)**

- A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least six of the following (one of which must be Criterion A1):
1. A strong desire to be of the other gender or an insistence that one is the other gender (or some alternative gender different from one's assigned gender).
  2. In boys (assigned gender), a strong preference for cross-dressing or simulating female attire; or in girls (assigned gender), a strong preference for wearing only typical masculine clothing and a strong resistance to the wearing of typical feminine clothing.
  3. A strong preference for cross-gender roles in make-believe play or fantasy play.
  4. A strong preference for the toys, games, or activities stereotypically used or engaged in by the other gender.
  5. A strong preference for playmates of the other gender.
  6. In boys (assigned gender), a strong rejection of typically masculine toys, games, and activities and a strong avoidance of rough-and-tumble play; or in girls (assigned gender), a strong rejection of typically feminine toys, games, and activities.
  7. A strong dislike of one's sexual anatomy.
  8. A strong desire for the primary and/or secondary sex characteristics that match one's experienced gender.
- B. The condition is associated with clinically significant distress or impairment in social, school, or other important areas of functioning.

*Specify if:*

**With a disorder of sex development** (e.g., a congenital adrenogenital disorder such as 255.2 [E25.0] congenital adrenal hyperplasia or 259.50 [E34.50] androgen insensitivity syndrome).

**Coding note:** Code the disorder of sex development as well as gender dysphoria.

#### Gender Dysphoria in Adolescents and Adults

**302.85 (F64.1)**

- A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, as manifested by at least two of the following:
1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated 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 experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
  3. A strong desire for the primary and/or secondary sex characteristics of the other gender.
  4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
  5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
  6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

## Gender Dysphoria

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

*Specify if:*

**With a disorder of sex development** (e.g., a congenital adrenogenital disorder such as 255.2 [E25.0] congenital adrenal hyperplasia or 259.50 [E34.50] androgen insensitivity syndrome).

**Coding note:** Code the disorder of sex development as well as gender dysphoria.

*Specify if:*

**Posttransition:** The individual has transitioned to full-time living in the desired gender (with or without legalization of gender change) and has undergone (or is preparing to have) at least one cross-sex medical procedure or treatment regimen—namely, regular cross-sex hormone treatment or gender reassignment surgery confirming the desired gender (e.g., penectomy, vaginoplasty in a natal male; mastectomy or phalloplasty in a natal female).

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## Specifiers

The posttransition specifier may be used in the context of continuing treatment procedures that serve to support the new gender assignment.

## Diagnostic Features

Individuals with gender dysphoria have a marked incongruence between the gender they have been assigned to (usually at birth, referred to as *natal gender*) and their experienced/expressed gender. This discrepancy is the core component of the diagnosis. There must also be evidence of distress about this incongruence. Experienced gender may include alternative gender identities beyond binary stereotypes. Consequently, the distress is not limited to a desire to simply be of the other gender, but may include a desire to be of an alternative gender, provided that it differs from the individual's assigned gender.

Gender dysphoria manifests itself differently in different age groups. Prepubertal natal girls with gender dysphoria may express the wish to be a boy, assert they are a boy, or assert they will grow up to be a man. They prefer boys' clothing and hairstyles, are often perceived by strangers as boys, and may ask to be called by a boy's name. Usually, they display intense negative reactions to parental attempts to have them wear dresses or other feminine attire. Some may refuse to attend school or social events where such clothes are required. These girls may demonstrate marked cross-gender identification in role-playing, dreams, and fantasies. Contact sports, rough-and-tumble play, traditional boyhood games, and boys as playmates are most often preferred. They show little interest in stereotypically feminine toys (e.g., dolls) or activities (e.g., feminine dress-up or role-play). Occasionally, they refuse to urinate in a sitting position. Some natal girls may express a desire to have a penis or claim to have a penis or that they will grow one when older. They may also state that they do not want to develop breasts or menstruate.

Prepubertal natal boys with gender dysphoria may express the wish to be a girl or assert they are a girl or that they will grow up to be a woman. They have a preference for dressing in girls' or women's clothes or may improvise clothing from available materials (e.g., using towels, aprons, and scarves for long hair or skirts). These children may role-play female figures (e.g., playing "mother") and often are intensely interested in female fantasy figures. Traditional feminine activities, stereotypical games, and pastimes (e.g., "playing house"; drawing feminine pictures; watching television or videos of favorite female characters) are most often preferred. Stereotypical female-type dolls (e.g., Barbie) are often favorite toys, and girls are their preferred playmates. They avoid rough-and-tumble play and competitive sports and have little interest in stereotypically masculine toys (e.g., cars, trucks). Some may pretend not to have a penis and insist on sitting to urinate. More

rarely, they may state that they find their penis or testes disgusting, that they wish them removed, or that they have, or wish to have, a vagina.

In young adolescents with gender dysphoria, clinical features may resemble those of children or adults with the condition, depending on developmental level. As secondary sex characteristics of young adolescents are not yet fully developed, these individuals may not state dislike of them, but they are concerned about imminent physical changes.

In adults with gender dysphoria, the discrepancy between experienced gender and physical sex characteristics is often, but not always, accompanied by a desire to be rid of primary and/or secondary sex characteristics and/or a strong desire to acquire some primary and/or secondary sex characteristics of the other gender. To varying degrees, adults with gender dysphoria may adopt the behavior, clothing, and mannerisms of the experienced gender. They feel uncomfortable being regarded by others, or functioning in society, as members of their assigned gender. Some adults may have a strong desire to be of a different gender and treated as such, and they may have an inner certainty to feel and respond as the experienced gender without seeking medical treatment to alter body characteristics. They may find other ways to resolve the incongruence between experienced/expressed and assigned gender by partially living in the desired role or by adopting a gender role neither conventionally male nor conventionally female.

### **Associated Features Supporting Diagnosis**

When visible signs of puberty develop, natal boys may shave their legs at the first signs of hair growth. They sometimes bind their genitals to make erections less visible. Girls may bind their breasts, walk with a stoop, or use loose sweaters to make breasts less visible. Increasingly, adolescents request, or may obtain without medical prescription and supervision, hormonal suppressors ("blockers") of gonadal steroids (e.g., gonadotropin-releasing hormone [GnRH] analog, spironolactone). Clinically referred adolescents often want hormone treatment and many also wish for gender reassignment surgery. Adolescents living in an accepting environment may openly express the desire to be and be treated as the experienced gender and dress partly or completely as the experienced gender, have a hairstyle typical of the experienced gender, preferentially seek friendships with peers of the other gender, and/or adopt a new first name consistent with the experienced gender. Older adolescents, when sexually active, usually do not show or allow partners to touch their sexual organs. For adults with an aversion toward their genitals, sexual activity is constrained by the preference that their genitals not be seen or touched by their partners. Some adults may seek hormone treatment (sometimes without medical prescription and supervision) and gender reassignment surgery. Others are satisfied with either hormone treatment or surgery alone.

Adolescents and adults with gender dysphoria before gender reassignment are at increased risk for suicidal ideation, suicide attempts, and suicides. After gender reassignment, adjustment may vary, and suicide risk may persist.

### **Prevalence**

For natal adult males, prevalence ranges from 0.005% to 0.014%, and for natal females, from 0.002% to 0.003%. Since not all adults seeking hormone treatment and surgical reassignment attend specialty clinics, these rates are likely modest underestimates. Sex differences in rate of referrals to specialty clinics vary by age group. In children, sex ratios of natal boys to girls range from 2:1 to 4.5:1. In adolescents, the sex ratio is close to parity; in adults, the sex ratio favors natal males, with ratios ranging from 1:1 to 6.1:1. In two countries, the sex ratio appears to favor natal females (Japan: 2.2:1; Poland: 3.4:1).

### **Development and Course**

Because expression of gender dysphoria varies with age, there are separate criteria sets for children versus adolescents and adults. Criteria for children are defined in a more con-

crete, behavioral manner than those for adolescents and adults. Many of the core criteria draw on well-documented behavioral gender differences between typically developing boys and girls. Young children are less likely than older children, adolescents, and adults to express extreme and persistent anatomic dysphoria. In adolescents and adults, incongruence between experienced gender and somatic sex is a central feature of the diagnosis. Factors related to distress and impairment also vary with age. A very young child may show signs of distress (e.g., intense crying) only when parents tell the child that he or she is “really” not a member of the other gender but only “desires” to be. Distress may not be manifest in social environments supportive of the child’s desire to live in the role of the other gender and may emerge only if the desire is interfered with. In adolescents and adults, distress may manifest because of strong incongruence between experienced gender and somatic sex. Such distress may, however, be mitigated by supportive environments and knowledge that biomedical treatments exist to reduce incongruence. Impairment (e.g., school refusal, development of depression, anxiety, and substance abuse) may be a consequence of gender dysphoria.

**Gender dysphoria without a disorder of sex development.** For clinic-referred children, onset of cross-gender behaviors is usually between ages 2 and 4 years. This corresponds to the developmental time period in which most typically developing children begin expressing gendered behaviors and interests. For some preschool-age children, both pervasive cross-gender behaviors and the expressed desire to be the other gender may be present, or, more rarely, labeling oneself as a member of the other gender may occur. In some cases, the expressed desire to be the other gender appears later, usually at entry into elementary school. A small minority of children express discomfort with their sexual anatomy or will state the desire to have a sexual anatomy corresponding to the experienced gender (“anatomic dysphoria”). Expressions of anatomic dysphoria become more common as children with gender dysphoria approach and anticipate puberty.

Rates of persistence of gender dysphoria from childhood into adolescence or adulthood vary. In natal males, persistence has ranged from 2.2% to 30%. In natal females, persistence has ranged from 12% to 50%. Persistence of gender dysphoria is modestly correlated with dimensional measures of severity ascertained at the time of a childhood baseline assessment. In one sample of natal males, lower socioeconomic background was also modestly correlated with persistence. It is unclear if particular therapeutic approaches to gender dysphoria in children are related to rates of long-term persistence. Extant follow-up samples consisted of children receiving no formal therapeutic intervention or receiving therapeutic interventions of various types, ranging from active efforts to reduce gender dysphoria to a more neutral, “watchful waiting” approach. It is unclear if children “encouraged” or supported to live socially in the desired gender will show higher rates of persistence, since such children have not yet been followed longitudinally in a systematic manner. For both natal male and female children showing persistence, almost all are sexually attracted to individuals of their natal sex. For natal male children whose gender dysphoria does not persist, the majority are *androphilic* (sexually attracted to males) and often self-identify as gay or homosexual (ranging from 63% to 100%). In natal female children whose gender dysphoria does not persist, the percentage who are *gynephilic* (sexually attracted to females) and self-identify as lesbian is lower (ranging from 32% to 50%).

In both adolescent and adult natal males, there are two broad trajectories for development of gender dysphoria: early onset and late onset. *Early-onset gender dysphoria* starts in childhood and continues into adolescence and adulthood; or, there is an intermittent period in which the gender dysphoria desists and these individuals self-identify as gay or homosexual, followed by recurrence of gender dysphoria. *Late-onset gender dysphoria* occurs around puberty or much later in life. Some of these individuals report having had a desire to be of the other gender in childhood that was not expressed verbally to others. Others do not recall any signs of childhood gender dysphoria. For adolescent males with late-onset gender dysphoria, parents often report surprise because they did not see signs of gender

dysphoria during childhood. Expressions of anatomic dysphoria are more common and salient in adolescents and adults once secondary sex characteristics have developed.

Adolescent and adult natal males with early-onset gender dysphoria are almost always sexually attracted to men (androphilic). Adolescents and adults with late-onset gender dysphoria frequently engage in transvestic behavior with sexual excitement. The majority of these individuals are gynephilic or sexually attracted to other posttransition natal males with late-onset gender dysphoria. A substantial percentage of adult males with late-onset gender dysphoria cohabit with or are married to natal females. After gender transition, many self-identify as lesbian. Among adult natal males with gender dysphoria, the early-onset group seeks out clinical care for hormone treatment and reassignment surgery at an earlier age than does the late-onset group. The late-onset group may have more fluctuations in the degree of gender dysphoria and be more ambivalent about and less likely satisfied after gender reassignment surgery.

In both adolescent and adult natal females, the most common course is the early-onset form of gender dysphoria. The late-onset form is much less common in natal females compared with natal males. As in natal males with gender dysphoria, there may have been a period in which the gender dysphoria desisted and these individuals self-identified as lesbian; however, with recurrence of gender dysphoria, clinical consultation is sought, often with the desire for hormone treatment and reassignment surgery. Parents of natal adolescent females with the late-onset form also report surprise, as no signs of childhood gender dysphoria were evident. Expressions of anatomic dysphoria are much more common and salient in adolescents and adults than in children.

Adolescent and adult natal females with early-onset gender dysphoria are almost always gynephilic. Adolescents and adults with the late-onset form of gender dysphoria are usually androphilic and after gender transition self-identify as gay men. Natal females with the late-onset form do not have co-occurring transvestic behavior with sexual excitement.

**Gender dysphoria in association with a disorder of sex development.** Most individuals with a disorder of sex development who develop gender dysphoria have already come to medical attention at an early age. For many, starting at birth, issues of gender assignment were raised by physicians and parents. Moreover, as infertility is quite common for this group, physicians are more willing to perform cross-sex hormone treatments and genital surgery before adulthood.

Disorders of sex development in general are frequently associated with gender-atypical behavior starting in early childhood. However, in the majority of cases, this does not lead to gender dysphoria. As individuals with a disorder of sex development become aware of their medical history and condition, many experience uncertainty about their gender, as opposed to developing a firm conviction that they are another gender. However, most do not progress to gender transition. Gender dysphoria and gender transition may vary considerably as a function of a disorder of sex development, its severity, and assigned gender.

## **Risk and Prognostic Factors**

**Temperamental.** For individuals with gender dysphoria without a disorder of sex development, atypical gender behavior among individuals with early-onset gender dysphoria develops in early preschool age, and it is possible that a high degree of atypicality makes the development of gender dysphoria and its persistence into adolescence and adulthood more likely.

**Environmental.** Among individuals with gender dysphoria without a disorder of sex development, males with gender dysphoria (in both childhood and adolescence) more commonly have older brothers than do males without the condition. Additional predisposing

factors under consideration, especially in individuals with late-onset gender dysphoria (adulthood), include habitual fetishistic transvestism developing into autogynophilia (i.e., sexual arousal associated with the thought or image of oneself as a woman) and other forms of more general social, psychological, or developmental problems.

**Genetic and physiological.** For individuals with gender dysphoria without a disorder of sex development, some genetic contribution is suggested by evidence for (weak) familiality of transsexualism among nontwin siblings, increased concordance for transsexualism in monozygotic compared with dizygotic same-sex twins, and some degree of heritability of gender dysphoria. As to endocrine findings, no endogenous systemic abnormalities in sex-hormone levels have been found in 46,XY individuals, whereas there appear to be increased androgen levels (in the range found in hirsute women but far below normal male levels) in 46,XX individuals. Overall, current evidence is insufficient to label gender dysphoria without a disorder of sex development as a form of intersexuality limited to the central nervous system.

In gender dysphoria associated with a disorder of sex development, the likelihood of later gender dysphoria is increased if prenatal production and utilization (via receptor sensitivity) of androgens are grossly atypical relative to what is usually seen in individuals with the same assigned gender. Examples include 46,XY individuals with a history of normal male prenatal hormone milieu but inborn nonhormonal genital defects (as in cloacal bladder exstrophy or penile agenesis) and who have been assigned to the female gender. The likelihood of gender dysphoria is further enhanced by additional, prolonged, highly gender-atypical postnatal androgen exposure with somatic virilization as may occur in female-raised and noncastrated 46,XY individuals with 5-alpha reductase-2 deficiency or 17-beta-hydroxysteroid dehydrogenase-3 deficiency or in female-raised 46,XX individuals with classical congenital adrenal hyperplasia with prolonged periods of non-adherence to glucocorticoid replacement therapy. However, the prenatal androgen milieu is more closely related to gendered behavior than to gender identity. Many individuals with disorders of sex development and markedly gender-atypical behavior do not develop gender dysphoria. Thus, gender-atypical behavior by itself should not be interpreted as an indicator of current or future gender dysphoria. There appears to be a higher rate of gender dysphoria and patient-initiated gender change from assigned female to male than from assigned male to female in 46,XY individuals with a disorder of sex development.

## **Culture-Related Diagnostic Issues**

Individuals with gender dysphoria have been reported across many countries and cultures. The equivalent of gender dysphoria has also been reported in individuals living in cultures with institutionalized gender categories other than male or female. It is unclear whether with these individuals the diagnostic criteria for gender dysphoria would be met.

## **Diagnostic Markers**

Individuals with a somatic disorder of sex development show some correlation of final gender identity outcome with the degree of prenatal androgen production and utilization. However, the correlation is not robust enough for the biological factor, where ascertainable, to replace a detailed and comprehensive diagnostic interview evaluation for gender dysphoria.

## **Functional Consequences of Gender Dysphoria**

Preoccupation with cross-gender wishes may develop at all ages after the first 2–3 years of childhood and often interfere with daily activities. In older children, failure to develop age-typical same-sex peer relationships and skills may lead to isolation from peer groups and to distress. Some children may refuse to attend school because of teasing and harass-

ment or pressure to dress in attire associated with their assigned sex. Also in adolescents and adults, preoccupation with cross-gender wishes often interferes with daily activities. Relationship difficulties, including sexual relationship problems, are common, and functioning at school or at work may be impaired. Gender dysphoria, along with atypical gender expression, is associated with high levels of stigmatization, discrimination, and victimization, leading to negative self-concept, increased rates of mental disorder comorbidity, school dropout, and economic marginalization, including unemployment, with attendant social and mental health risks, especially in individuals from resource-poor family backgrounds. In addition, these individuals' access to health services and mental health services may be impeded by structural barriers, such as institutional discomfort or inexperience in working with this patient population.

## Differential Diagnosis

**Nonconformity to gender roles.** Gender dysphoria should be distinguished from simple nonconformity to stereotypical gender role behavior by the strong desire to be of another gender than the assigned one and by the extent and pervasiveness of gender-variant activities and interests. The diagnosis is not meant to merely describe nonconformity to stereotypical gender role behavior (e.g., "tomboyism" in girls, "girly-boy" behavior in boys, occasional cross-dressing in adult men). Given the increased openness of atypical gender expressions by individuals across the entire range of the transgender spectrum, it is important that the clinical diagnosis be limited to those individuals whose distress and impairment meet the specified criteria.

**Transvestic disorder.** Transvestic disorder occurs in heterosexual (or bisexual) adolescent and adult males (rarely in females) for whom cross-dressing behavior generates sexual excitement and causes distress and/or impairment without drawing their primary gender into question. It is occasionally accompanied by gender dysphoria. An individual with transvestic disorder who also has clinically significant gender dysphoria can be given both diagnoses. In many cases of late-onset gender dysphoria in gynephilic natal males, transvestic behavior with sexual excitement is a precursor.

**Body dysmorphic disorder.** An individual with body dysmorphic disorder focuses on the alteration or removal of a specific body part because it is perceived as abnormally formed, not because it represents a repudiated assigned gender. When an individual's presentation meets criteria for both gender dysphoria and body dysmorphic disorder, both diagnoses can be given. Individuals wishing to have a healthy limb amputated (termed by some *body integrity identity disorder*) because it makes them feel more "complete" usually do not wish to change gender, but rather desire to live as an amputee or a disabled person.

**Schizophrenia and other psychotic disorders.** In schizophrenia, there may rarely be delusions of belonging to some other gender. In the absence of psychotic symptoms, insistence by an individual with gender dysphoria that he or she is of some other gender is not considered a delusion. Schizophrenia (or other psychotic disorders) and gender dysphoria may co-occur.

**Other clinical presentations.** Some individuals with an emasculation desire who develop an alternative, nonmale/nonfemale gender identity do have a presentation that meets criteria for gender dysphoria. However, some males seek castration and/or penectomy for aesthetic reasons or to remove psychological effects of androgens without changing male identity; in these cases, the criteria for gender dysphoria are not met.

## Comorbidity

Clinically referred children with gender dysphoria show elevated levels of emotional and behavioral problems—most commonly, anxiety, disruptive and impulse-control, and de-

## Other Specified Gender Dysphoria

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pressive disorders. In prepubertal children, increasing age is associated with having more behavioral or emotional problems; this is related to the increasing non-acceptance of gender-variant behavior by others. In older children, gender-variant behavior often leads to peer ostracism, which may lead to more behavioral problems. The prevalence of mental health problems differs among cultures; these differences may also be related to differences in attitudes toward gender variance in children. However, also in some non-Western cultures, anxiety has been found to be relatively common in individuals with gender dysphoria, even in cultures with accepting attitudes toward gender-variant behavior. Autism spectrum disorder is more prevalent in clinically referred children with gender dysphoria than in the general population. Clinically referred adolescents with gender dysphoria appear to have comorbid mental disorders, with anxiety and depressive disorders being the most common. As in children, autism spectrum disorder is more prevalent in clinically referred adolescents with gender dysphoria than in the general population. Clinically referred adults with gender dysphoria may have coexisting mental health problems, most commonly anxiety and depressive disorders.

## Other Specified Gender Dysphoria

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**302.6 (F64.8)**

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This category applies to presentations in which symptoms characteristic of gender dysphoria that cause clinically significant distress or impairment in social, occupational, or other important areas of functioning predominate but do not meet the full criteria for gender dysphoria. The other specified gender dysphoria category is used in situations in which the clinician chooses to communicate the specific reason that the presentation does not meet the criteria for gender dysphoria. This is done by recording "other specified gender dysphoria" followed by the specific reason (e.g., "brief gender dysphoria").

An example of a presentation that can be specified using the "other specified" designation is the following:

**The current disturbance meets symptom criteria for gender dysphoria, but the duration is less than 6 months.**

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## Unspecified Gender Dysphoria

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**302.6 (F64.9)**

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This category applies to presentations in which symptoms characteristic of gender dysphoria that cause clinically significant distress or impairment in social, occupational, or other important areas of functioning predominate but do not meet the full criteria for gender dysphoria. The unspecified gender dysphoria category is used in situations in which the clinician chooses *not* to specify the reason that the criteria are not met for gender dysphoria, and includes presentations in which there is insufficient information to make a more specific diagnosis.

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## Highlights of Changes From DSM-IV to DSM-5

Changes made to DSM-5 diagnostic criteria and texts are outlined in this chapter in the same order in which they appear in the DSM-5 classification. This abbreviated description is intended to orient readers to only the most significant changes in each disorder category. An expanded description of nearly all changes (e.g., except minor text or wording changes needed for clarity) is available online ([www.psychiatry.org/dsm5](http://www.psychiatry.org/dsm5)). It should also be noted that Section I contains a description of changes pertaining to the chapter organization in DSM-5, the multiaxial system, and the introduction of dimensional assessments.

### Neurodevelopmental Disorders

The term *mental retardation* was used in DSM-IV. However, **intellectual disability (intellectual developmental disorder)** is the term that has come into common use over the past two decades among medical, educational, and other professionals, and by the lay public and advocacy groups. Diagnostic criteria emphasize the need for an assessment of both cognitive capacity (IQ) and adaptive functioning. Severity is determined by adaptive functioning rather than IQ score.

The **communication disorders**, which are newly named from DSM-IV phonological disorder and stuttering, respectively, include **language disorder** (which combines the previous expressive and mixed receptive-expressive language disorders), **speech sound disorder** (previously phonological disorder), and **childhood-onset fluency disorder** (previously stuttering). Also included is **social (pragmatic) communication disorder**, a new condition involving persistent difficulties in the social uses of verbal and nonverbal communication.

**Autism spectrum disorder** is a new DSM-5 disorder encompassing the previous DSM-IV autistic disorder (autism), Asperger's disorder, childhood disintegrative disorder, Rett's disorder, and pervasive developmental disorder not otherwise specified. It is characterized by deficits in two core domains: 1) deficits in social communication and social interaction and 2) restricted repetitive patterns of behavior, interests, and activities.

Several changes have been made to the diagnostic criteria for **attention-deficit/hyperactivity disorder (ADHD)**. Examples have been added to the criterion items to facilitate application across the life span; the age at onset description has been changed (from "some hyperactive-impulsive or inattentive symptoms that caused impairment were present before age 7 years" to "Several inattentive or hyperactive-impulsive symptoms were present prior to age 12"); subtypes have been replaced with presentation specifiers that map directly to the prior subtypes; a comorbid diagnosis with autism spectrum disorder is now allowed; and a symptom threshold change has been made for adults, to reflect the substantial evidence of clinically significant ADHD impairment, with the cutoff for ADHD of five symptoms, instead of six required for younger persons, both for inattention and for hyperactivity and impulsivity.

**Specific learning disorder** combines the DSM-IV diagnoses of reading disorder, mathematics disorder, disorder of written expression, and learning disorder not otherwise specified. Learning deficits in the areas of reading, written expression, and mathematics are coded as separate specifiers. Acknowledgment is made in the text that specific types of reading deficits are described internationally in various ways as *dyslexia* and specific types of mathematics deficits as *dyscalculia*.

[Pages omitted]

## Sleep-Wake Disorders

In DSM-5, the DSM-IV diagnoses named sleep disorder related to another mental disorder and sleep disorder related to another medical condition have been removed, and instead greater specification of coexisting conditions is provided for each sleep-wake disorder. The diagnosis of primary insomnia has been renamed **insomnia disorder** to avoid the differentiation between primary and secondary insomnia. DSM-5 also distinguishes **narcolepsy**—now known to be associated with hypocretin deficiency—from other forms of hypersomnolence (hypersomnolence disorder). Finally, throughout the DSM-5 classification of sleep-wake disorders, pediatric and developmental criteria and text are integrated where existing science and considerations of clinical utility support such integration. **Breathing-related sleep disorders** are divided into three relatively distinct disorders: obstructive sleep apnea hypopnea, central sleep apnea, and sleep-related hypoventilation. The subtypes of **circadian rhythm sleep disorders** are expanded to include advanced sleep phase type and irregular sleep-wake type, whereas the jet lag type has been removed. The use of the former “not otherwise specified” diagnoses in DSM-IV have been reduced by elevating **rapid eye movement sleep behavior disorder** and **restless legs syndrome** to independent disorders.

## Sexual Dysfunctions

In DSM-5, some gender-specific sexual dysfunctions have been added, and, for females, sexual desire and arousal disorders have been combined into one disorder: **female sexual interest/arousal disorder**. All of the sexual dysfunctions (except **substance/medication-induced sexual dysfunction**) now require a minimum duration of approximately 6 months and more precise severity criteria. **Genito-pelvic pain/penetration disorder** has been added to DSM-5 and represents a merging of vaginismus and dyspareunia, which were highly comorbid and difficult to distinguish. The diagnosis of sexual aversion disorder has been removed due to rare use and lack of supporting research.

There are now only two subtypes for sexual dysfunctions: **lifelong** versus **acquired** and **generalized** versus **situational**. To indicate the presence and degree of medical and other nonmedical correlates, the following **associated features** have been added to the text: partner factors, relationship factors, individual vulnerability factors, cultural or religious factors, and medical factors.

## Gender Dysphoria

**Gender dysphoria** is a new diagnostic class in DSM-5 and reflects a change in conceptualization of the disorder’s defining features by emphasizing the phenomenon of “gender incongruence” rather than cross-gender identification per se, as was the case in DSM-IV gender identity disorder. Gender dysphoria includes separate sets of criteria: for children and for adults and adolescents. For the adolescents and adults criteria, the previous Criterion A (cross-gender identification) and Criterion B (aversion toward one’s gender) are merged. In the wording of the criteria, “the other sex” is replaced by “the other gender” (or “some alternative gender”). “*Gender* instead of *sex* is used systematically because the concept “sex” is inadequate when referring to individuals with a disorder of sex development. In the child criteria, “strong desire to be of the other gender” replaces the previous “repeatedly stated desire to be...the other sex” to capture the situation of some children who, in a coercive environment, may not verbalize the desire to be of another gender. For children, Criterion A1 (“a strong desire to be of the other gender or an insistence that he or she is the other gender...”) is now necessary (but not sufficient), which makes the diagnosis more restrictive and conservative. The subtyping on the basis of sexual orientation is removed because the distinction is no longer considered clinically useful. A **posttransition specifier** has been added to identify

individuals who have undergone at least one medical procedure or treatment to support the new gender assignment (e.g., cross-sex hormone treatment). Although the concept of post-transition is modeled on the concept of full or partial remission, the term *remission* has implications in terms of symptom reduction that do not apply directly to gender dysphoria.

## Disruptive, Impulse-Control, and Conduct Disorders

The chapter “Disruptive, Impulse-Control, and Conduct Disorders” is new to DSM-5 and combines disorders that were previously included in the chapter “Disorders Usually First Diagnosed in Infancy, Childhood, or Adolescence” (i.e., oppositional defiant disorder; conduct disorder; and disruptive behavior disorder not otherwise specified, now categorized as other specified and unspecified disruptive, impulse-control, and conduct disorders) and the chapter “Impulse-Control Disorders Not Elsewhere Classified” (i.e., intermittent explosive disorder, pyromania, and kleptomania). These disorders are all characterized by problems in emotional and behavioral self-control. Notably, ADHD is frequently comorbid with the disorders in this chapter but is listed with the neurodevelopmental disorders. Because of its close association with conduct disorder, antisocial personality disorder is listed both in this chapter and in the chapter “Personality Disorders,” where it is described in detail.

The criteria for **oppositional defiant disorder** are now grouped into three types: angry/irritable mood, argumentative/defiant behavior, and vindictiveness. Additionally, the exclusionary criterion for conduct disorder has been removed. The criteria for **conduct disorder** include a descriptive features specifier for individuals who meet full criteria for the disorder but also present with **limited prosocial emotions**. The primary change in **intermittent explosive disorder** is in the type of aggressive outbursts that should be considered: DSM-IV required physical aggression, whereas in DSM-5 verbal aggression and nondestructive/noninjurious physical aggression also meet criteria. DSM-5 also provides more specific criteria defining frequency needed to meet the criteria and specifies that the aggressive outbursts are impulsive and/or anger based in nature, and must cause marked distress, cause impairment in occupational or interpersonal functioning, or be associated with negative financial or legal consequences. Furthermore, a minimum age of 6 years (or equivalent developmental level) is now required.

## Substance-Related and Addictive Disorders

An important departure from past diagnostic manuals is that the chapter on substance-related disorders has been expanded to include **gambling disorder**. Another key change is that DSM-5 does not separate the diagnoses of substance *abuse* and *dependence* as in DSM-IV. Rather criteria are provided for **substance use disorder**, accompanied by criteria for intoxication, withdrawal, substance-induced disorders, and unspecified substance-related disorders, where relevant. Within substance use disorders, the DSM-IV recurrent substance-related legal problems criterion has been deleted from DSM-5, and a new criterion—craving, or a strong desire or urge to use a substance—has been added. In addition, the threshold for substance use disorder diagnosis in DSM-5 is set at two or more criteria, in contrast to a threshold of one or more criteria for a diagnosis of DSM-IV substance abuse and three or more for DSM-IV dependence. **Cannabis withdrawal** and **caffeine withdrawal** are new disorders (the latter was in DSM-IV Appendix B, “Criteria Sets and Axes Provided for Further Study”).

**Severity** of the DSM-5 substance use disorders is based on the number of criteria endorsed. The DSM-IV specifier for a physiological subtype is eliminated in DSM-5, as is the DSM-IV diagnosis of polysubstance dependence. Early remission from a DSM-5 substance use disorder is defined as at least 3 but less than 12 months without meeting substance use disorder criteria (except craving), and sustained remission is defined as at least 12 months without meeting criteria (except craving). Additional new DSM-5 specifiers include “**in a controlled environment**” and “**on maintenance therapy**” as the situation warrants.

# **Exhibit B**

**Excerpts from DSM-III**

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DIAGNOSTIC AND STATISTICAL  
MANUAL OF  
MENTAL DISORDERS  
(THIRD EDITION)

DSM-III

AMERICAN PSYCHIATRIC ASSOCIATION

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# DSM-III

**First Printing, February 1980**  
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**Diagnostic  
and Statistical Manual  
of Mental Disorders**  
(Third Edition)

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A final word of thanks must be given to the many other participants in this effort who have not received formal recognition, but who provided critiques and suggestions that were helpful in the preparation of DSM-III.

Robert L. Spitzer, M.D.  
Chairperson, Task Force on  
Nomenclature and Statistics

# Psychosexual Disorders

The name for this diagnostic class emphasizes that psychological factors are assumed to be of major etiological significance in the development of the disorders listed here. Disorders of sexual functioning that are caused exclusively by organic factors, even though they may have psychological consequences, are not listed in this classification. For example, impotence due to spinal-cord injury is coded on Axis III as a physical disorder, and the psychological reaction to that condition could be coded as an Adjustment Disorder, or some other suitable category, on Axis I.

The Psychosexual Disorders are divided into four groups. The Gender Identity Disorders are characterized by the individual's feelings of discomfort and inappropriateness about his or her anatomic sex and by persistent behaviors generally associated with the other sex. The Paraphilias are characterized by arousal in response to sexual objects or situations that are not part of normative arousal-activity patterns and that in varying degrees may interfere with the capacity for reciprocal affectionate sexual activity. The Psychosexual Dysfunctions are characterized by inhibitions in sexual desire or the psychophysiological changes that characterize the sexual response cycle. Finally, there is a residual class of Other Psychosexual Disorders that has two categories: Ego-dystonic Homosexuality and a final residual category, Psychosexual Disorders Not Elsewhere Classified.

## GENDER IDENTITY DISORDERS

The essential feature of the disorders included in this subclass is an incongruence between anatomic sex and gender identity. Gender identity is the sense of knowing to which sex one belongs, that is, the awareness that "I am a male," or "I am a female." Gender identity is the private experience of gender role, and gender role is the public expression of gender identity. Gender role can be defined as everything that one says and does, including sexual arousal, to indicate to others or to the self the degree to which one is male or female.

Disturbance in gender identity is rare, and should not be confused with the far more common phenomena of feelings of inadequacy in fulfilling the expectations associated with one's gender role. An example would be an individual who perceives himself or herself as being sexually unattractive yet experiences himself or herself unambiguously as a man or woman in accordance with his or her anatomic sex.

### 302.5x Transsexualism

The essential features of this heterogeneous disorder are a persistent sense of discomfort and inappropriateness about one's anatomic sex and a persistent wish

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to be rid of one's genitals and to live as a member of the other sex. The diagnosis is made only if the disturbance has been continuous (not limited to periods of stress) for at least two years, is not due to another mental disorder, such as Schizophrenia, and is not associated with physical intersex or genetic abnormality.

Individuals with this disorder usually complain that they are uncomfortable wearing the clothes of their own anatomic sex; frequently this discomfort leads to cross-dressing (dressing in clothes of the other sex). Often they choose to engage in activities that in our culture tend to be associated with the other sex. These individuals often find their genitals repugnant, which may lead to persistent requests for sex reassignment by surgical or hormonal means.

To varying degrees, the behavior, dress, and mannerisms are those of the other sex. With cross-dressing, hormonal treatment, and electrolysis, a few males with the disorder will appear relatively indistinguishable from members of the other sex. However, the anatomic sex of most males and females with the disorder is quite apparent to the alert observer.

**Associated features.** Generally there is moderate to severe coexisting personality disturbance. Frequently there is considerable anxiety and depression, which the individual may attribute to inability to live in the role of the desired sex.

**Course and subtypes.** The disorder is subdivided according to the predominant prior sexual history, which is coded in the fifth digit as 1 = asexual, 2 = homosexual (same anatomic sex), 3 = heterosexual (opposite anatomic sex), and 0 = unspecified. In the first, "asexual," the individual reports never having had strong sexual feelings. Often there is the additional history of little or no sexual activity or pleasure derived from the genitals. In the second group, "homosexual," a predominantly homosexual (object choice is same anatomic sex) arousal pattern preceding the onset of the Transsexualism is acknowledged, although often such individuals will deny that the behavior is homosexual because of their conviction that they are "really" of the other sex. In the third group, "heterosexual," the individual claims to have had an active heterosexual life.

Without treatment, the course of all three types is chronic and unremitting. Since surgical sex reassignment is a recent development, the long-term course of the disorder with this treatment is unknown.

Individuals who have female-to-male Transsexualism appear to represent a more homogeneous group than those who have male-to-female Transsexualism in that they are more likely to have a history of homosexuality and to have a more stable course, with or without treatment.

**Age at onset.** Individuals who develop Transsexualism often evidenced gender identity problems as children. However, some assert that although they were secretly aware of their gender problem, it was not evident to their family and friends. The age at which the full syndrome appears for those with the "asexual" or "homosexual" course is most often in late adolescence or early

adult life. In individuals with the "heterosexual" course, the disorder may have a later onset.

**Impairment and complications.** Frequently social and occupational functioning are markedly impaired, partly because of associated psychopathology and partly because of problems encountered in attempting to live in the desired gender role. Depression is common, and can lead to suicide attempts. In rare instances males may mutilate their genitals.

**Predisposing factors.** Extensive, pervasive, childhood femininity in a boy or childhood masculinity in a girl increases the likelihood of Transsexualism. Transsexualism seems always to develop in the context of a disturbed parent-child relationship. Some cases of Transvestism evolve into Transsexualism.

**Prevalence.** The disorder is apparently rare.

**Sex ratio.** Males are more common than females among people who seek help at clinics specializing in the treatment of this disorder. The ratio varies from as high as 8:1 to as low as 2:1.

**Familial pattern.** No information.

**Differential diagnosis.** In **effeminate homosexuality** the individual displays behaviors characteristic of the opposite sex. However, such individuals have no desire to be of the other anatomic sex. In **physical intersex** the individual may have a disturbance in gender identity. However, the presence of abnormal sexual structures rules out the diagnosis of Transsexualism.

**Other individuals with a disturbed gender identity** may, in isolated periods of stress, wish to belong to the other sex and to be rid of their own genitals. In such cases the diagnosis Atypical Gender Identity Disorder should be considered, since the diagnosis of Transsexualism is made only when the disturbance has been continuous for at least two years. In **Schizophrenia**, there may be delusions of belonging to the other sex, but this is rare. The insistence by an individual with Transsexualism that he or she is of the other sex is, strictly speaking, not a delusion since what is invariably meant is that the individual *feels like* a member of the other sex rather than a true belief that he or she *is* a member of the other sex.

In both **Transvestism** and **Transsexualism** there may be cross-dressing. However, in Transvestism that has not evolved into Transsexualism there is no wish to be rid of one's own genitals.

#### **Diagnostic criteria for Transsexualism**

- A. Sense of discomfort and inappropriateness about one's anatomic sex.
- B. Wish to be rid of one's own genitals and to live as a member of the other sex.
- C. The disturbance has been continuous (not limited to periods of stress) for at least two years.

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- D. Absence of physical intersex or genetic abnormality.
- E. Not due to another mental disorder, such as Schizophrenia.

**Fifth-digit code numbers and subclassification.** The predominant prior sexual history is recorded in the fifth digit as:

- 1 = asexual
- 2 = homosexual (same anatomic sex)
- 3 = heterosexual (other anatomic sex)
- 0 = unspecified

### 302.60 Gender Identity Disorder of Childhood

The essential features are a persistent feeling of discomfort and inappropriateness in a child about his or her anatomic sex and the desire to be, or insistence that he or she is, of the other sex. In addition, there is a persistent repudiation of the individual's own anatomic attributes. This is not merely the rejection of stereotypical sex role behavior as, for example, in "tomboyishness" in girls or "sissyish" behavior in boys, but rather a profound disturbance of the normal sense of maleness or femaleness.

Girls with this disorder regularly have male peer groups, an avid interest in sports and rough-and-tumble play, and a lack of interest in playing with dolls or playing "house" (unless playing the father or another male role). More rarely, a girl with this disorder claims that she will grow up to become a man (not merely in role), that she is biologically unable to become pregnant, that she will not develop breasts, or that she has, or will grow, a penis.

Boys with this disorder invariably are preoccupied with female stereotypical activities. They may have a preference for dressing in girls' or women's clothes, or may improvise such items from available material when genuine articles are unavailable. (The cross-dressing never causes sexual excitement.) They often have a compelling desire to participate in the games and pastimes of girls. Dolls are often the favorite toy, and girls are regularly the preferred playmates. When playing "house," the role of a female is typically adopted. Rough-and-tumble play or sports are regularly avoided. Gestures and actions are often judged against a standard of cultural stereotype to be feminine, and the boy is invariably subjected to male peer group teasing and rejection, which rarely occurs among girls until adolescence. In rare cases a boy with this disorder claims that his penis or testes are disgusting or will disappear, or that it would be better not to have a penis or testes.

Some children refuse to attend school because of teasing or pressure to dress in attire stereotypical of their sex. Most children with this disorder deny being disturbed by it except as it brings them into conflict with the expectations of their family or peers.

**Associated features.** Some of these children, particularly girls, show no

other signs of psychopathology. Others may display serious signs of disturbance, such as phobias and persistent nightmares.

**Age at onset and course.** Three-fourths of the boys who cross-dress begin to do so before their fourth birthday; playing with dolls begins during the same period. Social ostracism increases during the early grades of school, and social conflict is significant at about age seven or eight. During the later grade-school years, grossly feminine behavior may lessen. An as yet undetermined proportion of boys, perhaps one-third to one-half, become aware of a homosexual orientation during adolescence.

For females the age at onset is also early, but most begin to acquiesce to social pressure during late childhood or adolescence and give up an exaggerated insistence on male activities and attire. A minority retain a masculine identification and some of these develop a homosexual arousal pattern.

**Complications.** In a small number of cases, the disorder becomes continuous with Transsexualism.

**Impairment.** Peer relations with members of the same sex are absent or difficult to establish. The amount of impairment varies from none to extreme, and is related to the degree of underlying psychopathology and the reaction of peers and family to the individual's behavior.

**Prevalence.** The disorder is apparently rare.

**Sex ratio and familial pattern.** No information.

**Predisposing factors.** Extreme, excessive, and prolonged physical and emotional closeness between the infant and the mother and a relative absence of the father during the earliest years may contribute to the development of this disorder in the male. Females who later develop this disorder have mothers who were apparently unavailable to them at a very early age, either psychologically or physically, because of illness or abandonment; the girl seems to make a compensatory identification with the father, which leads to the adoption of a male gender identity.

**Differential diagnosis.** Children whose behavior merely does not fit the cultural stereotype of masculinity or femininity should not be given this diagnosis unless the full syndrome is present. Physical abnormalities of the sex organs are rarely associated with Gender Identity Disorder; when they are present, the physical disorder should be noted on Axis III.

#### Diagnostic criteria for Gender Identity Disorder of Childhood

##### For females:

- A. Strongly and persistently stated desire to be a boy, or insistence that she is a boy (not merely a desire for any perceived cultural advantages from being a boy).

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B. Persistent repudiation of female anatomic structures, as manifested by at least one of the following repeated assertions:

- (1) that she will grow up to become a man (not merely in role)
- (2) that she is biologically unable to become pregnant
- (3) that she will not develop breasts
- (4) that she has no vagina
- (5) that she has, or will grow, a penis

C. Onset of the disturbance before puberty. (For adults and adolescents, see Atypical Gender Identity Disorder.)

**For males:**

A. Strongly and persistently stated desire to be a girl, or insistence that he is a girl.

B. Either (1) or (2):

(1) persistent repudiation of male anatomic structures, as manifested by at least one of the following repeated assertions:

- (a) that he will grow up to become a woman. (not merely in role)
- (b) that his penis or testes are disgusting or will disappear
- (c) that it would be better not to have a penis or testes

(2) preoccupation with female stereotypical activities as manifested by a preference for either cross-dressing or simulating female attire, or by a compelling desire to participate in the games and pastimes of girls

C. Onset of the disturbance before puberty. (For adults and adolescents, see Atypical Gender Identity Disorder.)

**302.85 Atypical Gender Identity Disorder**

This is a residual category for coding disorders in gender identity that are not classifiable as a specific Gender Identity Disorder.

**PARAPHILIAS**

The essential feature of disorders in this subclass is that unusual or bizarre imagery or acts are necessary for sexual excitement. Such imagery or acts tend to be insistently and involuntarily repetitive and generally involve either: (1) preference for use of a nonhuman object for sexual arousal, (2) repetitive sexual activity with humans involving real or simulated suffering or humiliation, or (3) repetitive sexual activity with nonconsenting partners. In other classifications these disorders are referred to as Sexual Deviations. The term Paraphilia is