

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

JOEL DOE, a minor, by and through his  
Guardians JOHN DOE and JANE DOE,

Plaintiff,

v.

BOYERTOWN AREA SCHOOL DISTRICT;  
DR. RICHARD FAIDLEY, in his official  
capacity as Superintendent of the Boyertown  
Area School District; DR. BRETT COOPER,  
in his official capacity as Principal; and DR. E.  
WAYNE FOLEY, in his official capacity as  
Assistant Principal,

Defendants,

Civil Action No. 17-1249-EGS

**MOTION OF AIDAN DESTEFANO AND THE PENNSYLVANIA YOUTH CONGRESS  
FOUNDATION TO INTERVENE AS DEFENDANTS**

Aidan DeStefano and the Pennsylvania Youth Congress Foundation move to intervene as defendants as of right pursuant to Fed. R. Civ. P. 24(a)(2) or, alternatively, for permissive intervention under Rule 24(b)(1). The basis for the Proposed Intervenor-Defendants motion to intervene is set forth in the accompanying Memorandum of Law as well as the accompanying declarations attached thereto.

Respectfully submitted,

Dated: April 3, 2017

*/s Mary Catherine Roper*

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\* *Pro hac vice* admission anticipated.

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CERTIFICATE OF SERVICE

I hereby certify that this Motion to Intervene, along with the proposed order, proposed answer, supporting brief, and supporting declarations, were served counsel for Plaintiff by ECF filing and by email to:

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Dated April 3, 2017

/s/ Mary Catherine Roper  
Mary Catherine Roper

**UNITED STATES DISTRICT COURT  
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JOEL DOE, a minor, by and through his  
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Assistant Principal,

Defendants,

and

AIDAN DESTEFANO and PENNSYLVANIA  
YOUTH CONGRESS FOUNDATION,

Intervenor-Defendants.

Civil Action No. 17-1249-EGS

**PROPOSED ORDER GRANTING MOTION TO INTERVENE**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, upon consideration of Aidan DeStefano and the Pennsylvania Youth Congress Foundation's motion to intervene pursuant to Fed. R. Civ. P. 24(a)(2), or in the alternative, Fed. R. Civ. P. 24(b)(1), it is hereby ORDERED that the motion to intervene as defendants is GRANTED.

The Clerk is directed to file the Proposed Answer attached to the motion to intervene.

BY THE COURT:

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Smith, J.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

JOEL DOE, a minor, by and through his  
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BOYERTOWN AREA SCHOOL DISTRICT;  
DR. RICHARD FAIDLEY, in his official  
capacity as Superintendent of the Boyertown  
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in his official capacity as Principal; and DR. E.  
WAYNE FOLEY, in his official capacity as  
Assistant Principal,

Defendants,

Civil Action No. 17-1249-EGS

**MEMORANDUM OF LAW OF AIDAN DESTEFANO AND THE PENNSYLVANIA  
YOUTH CONGRESS FOUNDATION IN SUPPORT OF THEIR MOTION TO  
INTERVENE AS DEFENDANTS**

Aidan DeStefano and the Pennsylvania Youth Congress Foundation (“PYC”) move to intervene as defendants as of right pursuant to Fed. R. Civ. P. 24(a)(2) or, alternatively, for permissive intervention under Rule 24(b)(1). The basis for the Proposed Intervenor-Defendants’ motion to intervene is set forth below as well as in the accompanying declarations.

**I. INTRODUCTION**

The Boyertown Area School District (the “School District”) has been sued by a student because it has allowed transgender boys to use the restroom and locker facilities used by all other boys. According to the Complaint, when Plaintiff and his guardians informed school officials that he objected to sharing facilities with a transgender boy, he was offered the option of using private facilities. Plaintiff nevertheless asserts that the School District, by allowing transgender

boys to use facilities that he is not required to use, violates his right to privacy and creates a sexually harassing environment.

In this lawsuit, Plaintiff asks this Court to order the School District to prohibit transgender boys from continuing to use the boys' facilities. Because they can't possibly use the girls' facilities any more than other boys could be expected to do so, if Plaintiff were to prevail, transgender students would be excluded from the facilities used by all other students and forced to use separate facilities that other students may *choose* to use, but no other student is *required* to use. This would send the powerfully stigmatizing message to transgender students -- and all other students -- that there is something so wrong with transgender students that their mere presence in the facilities used by their peers is unacceptable.

Aidan DeStefano is a student at Boyertown Area Senior High School. He is a transgender boy. Like other boys at his high school, he uses the boys' restrooms and locker rooms. The Pennsylvania Youth Congress advocates on behalf of LGBTQ youth in Pennsylvania, and its members include the Boyertown Area High School Gay-Straight Alliance, which has members who are transgender boys who use the boys' facilities at school. Because this case directly challenges Aidan and these other students' ability to enjoy full participation in school life and because an adverse ruling would subject them to being banished as outcasts from the facilities used by their peers, they have a profound interest in this litigation that cannot be adequately represented by the existing parties.

## **II. FACTUAL BACKGROUND**

Boyertown Area Senior High School (the "High School") is a public school for grades 10 through 12, with a student body comprised of approximately 1,700 students. The High School

has communal bathrooms and locker rooms that are designated for females and communal bathrooms and locker room that are designated for males. All of the communal bathrooms contain stalls with doors that lock. *DeStefano Decl.* ¶ 15. The communal locker rooms also have bathroom stalls with doors that lock, as well as privacy cubicles with curtains for changing and private showers.<sup>1</sup> *Id.* The High School also has single user facilities available for any students who are uncomfortable using the communal facilities or who otherwise seek greater privacy. *Id.* at ¶ 18.

The proposed intervenors are Aidan DeStefano (“Aidan”) and the Pennsylvania Youth Congress Foundation (“PYC”).

**Aidan**

Aidan is an eighteen-year old transgender student at Boyertown Area Senior High School. *DeStefano Decl.* ¶¶ 1, 2. He, like other boys at his high school, uses the restrooms and locker rooms designated for boys, and has been doing so since August 2016. *Id.* at ¶ 11.

As set forth in greater detail in his declaration, Aidan’s public transition began when entered the High School in 10<sup>th</sup> grade. *Id.* at ¶ 4. The first time he used the girls’ bathroom, he faced stares because it was clear to everyone that he didn’t belong there. *Id.* He spoke to a school counselor and was given the option, at that time, of using the nurse’s bathroom. *Id.* at ¶ 5.

Aidan continued with his transition: beginning hormone therapy; changing his legal name and the gender markers on his legal documents, including his birth certificate; and having chest surgery. *Id.* at ¶¶ 7-10. His counselor told him he could use the boys’ facilities and he began doing so when he started his senior year last August. *Id.* at ¶¶ 9, 11. He has been using the boys’ facilities throughout the year, without incident. *Id.* at ¶¶ 11, 13. Being able to fully be himself in

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<sup>1</sup> Students do not shower or completely undress before or after PE class. *DeStefano Decl.* ¶ 15.

all aspects of school life and to be treated the same as other boys at school has enabled him to thrive at school. *Id.* at ¶¶ 11-12. He is now on track to make honor roll for the third marking period in a row, something he had never achieved before. *Id.* at ¶ 12. He is competing on the boys' track team. *Id.* at ¶ 10. And he enjoys the support of his fellow students, even being elected to Homecoming Court. *Id.* at ¶ 11.

Aidan may have been the first transgender male to use the boys' facilities at the High School, but he is not the only one. He knows that he is not the student described in the Complaint in this case because he does not wear a bra and did not wear one in October of 2016. *Id.* at ¶ 14.

Aidan seeks to intervene in this litigation because it impacts him in a direct, personal, and profound way. *Id.* at ¶ 17. If the Plaintiff prevails, Aidan will be barred from using the boys' facilities. *Id.* at ¶ 18. This would be devastating for him. *Id.* at ¶ 19. He could not use the girls' facilities any more than any other boys could: it would be distressing for him to do so after working so hard to bring his life into alignment, and deeply uncomfortable for the girls in those facilities. *Id.* at ¶¶ 17-19. Even before he began hormones and had chest surgery, he was correctly perceived to be a boy in the girls' room. *Id.* at ¶ 4. Now, he has facial hair, a male chest, a deep voice, and everyone knows he's a guy. *Id.* at ¶ 17. If he is banished from the boys' facilities, he would have to use separate facilities. *Id.* at ¶ 18. There is nothing wrong with choosing to use a more private separate facility; but to be **required** to use separate facilities than those used by the other boys, including his teammates, would be humiliating and stigmatizing. *Id.* at ¶ 18. Aidan also cares about the well-being of other transgender students at school who would similarly be impacted if Plaintiff were to prevail in this litigation. *Id.* at ¶ 20.

**PYC**

PYC is a non-profit organization founded in 2011 by Pennsylvania students for the express purpose of advocating on behalf of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) youth in the Commonwealth of Pennsylvania. *Goodman Decl.* at ¶¶ 3-4. PYC works with students, as well as Gay-Straight Alliances and other LGBTQ youth organizations in schools and universities throughout the Commonwealth. *Id.* at ¶¶ 6-7, 10-12. PYC advocates for policies and practices that make schools safe for LGBTQ students, including transgender students’ access to single-sex facilities that correspond with their gender identity. *Id.* at ¶¶ 7-8. Because Plaintiff is challenging the School District’s practice of inclusion and non-discrimination with respect to single-sex facilities, PYC is forced to devote resources to supporting students at the High School and must direct its advocacy toward this matter, to the exclusion of other matters it might seek to pursue in keeping with its mission. *Id.* at ¶ 9. In addition, the High School’s Gay-Straight Alliance is a member of PYC, and some members of that student organization are transgender students who use facilities that match their gender identity. *Id.* at ¶ 17-20.

**III. ARGUMENT**

Aidan and PYC have timely filed a motion to intervene because their legally cognizable interests may be impaired by this action’s disposition in their absence. Their interests are not adequately represented by any existing party now, and there certainly is no guarantee that they will be adequately represented in the future, when school board membership may change. Movants satisfy the standards for intervention as of right under Rule 24(a)(2) and permissive intervention under Rule 24(b)(1).

**A. MOVANTS SATISFY THE THIRD CIRCUIT’S TEST FOR INTERVENTION AS OF RIGHT**

Intervention is intended to benefit intervening parties, but the Third Circuit has also recognized that timely intervention promotes judicial efficiency:

[O]n balance, intervenors and the public interest in efficient handling of litigation are better served by prompt action on [an] intervention motion. *See Conservation Law Found.*, 966 F.2d at 44 (“An intervenor need only show that representation may be inadequate, not that it is inadequate.”). The early presence of intervenors may serve to prevent errors from creeping into the proceedings, clarify some issues, and perhaps contribute to an amicable settlement. Postponing intervention in the name of efficiency until after the original parties have forged an agreement or have litigated some issues may, in fact, encourage collateral attack and foster inefficiency. In other words, the game may already be lost by the time the intervenors get to bat in the late innings.

*Kleissler v. United States Forest Serv.*, 157 F.3d 964, 974 (3d Cir. 1998).

To intervene as of right, the prospective intervenor must establish: (1) that the application for intervention is timely; (2) that the applicant has a sufficient interest in the litigation; (3) that the asserted interest may be affected or impaired as a practical matter by the disposition of the action; and (4) that the interest is not adequately represented by an existing party in the litigation. Fed. R. Civ. P. 24(a)(2); *In re Community Bank of N. Va.*, 418 F.3d 277, 314 (3d Cir. 2005) (quoting *Harris v. Pernsley*, 820 F.2d 592, 596 (3d Cir. 1987))<sup>2</sup>; *Mountain Top Condo. Ass’n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 365-69 (3d Cir. 1995). *See also Kleissler*, 157 F.3d at 969. Aidan and PYC satisfy every element of the Third Circuit’s test for intervention as of right.

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<sup>2</sup> Prospective intervenors do not have to demonstrate independent Article III standing if the plaintiff who initiated the lawsuit has such standing. *King v. Governor of the State of N.J.*, 767 F.3d 216, 245 (3d Cir. 2014).

**1. Movants' application for intervention is timely.**

Movants' application for intervention is timely because this case has just commenced and the existing parties will not be prejudiced by their intervention at this very early stage.

Timeliness is determined from all the circumstances, including (1) the stage of the proceeding, (2) the prejudice that delay may cause the parties, and (3) the reason for any delay. *Mountain Top*, 72 F.3d at 369. Plaintiff filed his complaint on March 21, 2017, and movants acted quickly to intervene, filing the instant motion within two weeks' time. The complaint has not yet been served on the defendants, the defendants have not yet answered the complaint, no scheduling order has been issued by the Court, and discovery has not yet begun. At this early stage, the intervenors' addition to the case will not delay this matter in any way, nor will it prejudice the existing parties or disrupt the Court's calendar. Aidan and PYC's motion to intervene is timely.

**2. Movants have a sufficient interest that may be affected or impaired by the disposition of this action that could be impaired by the disposition of this action.**

An intervenor's interest must be a "significantly protectable" legal interest, as distinguished from interests of a general and indefinite character. *Mountain Top*, 72 F.3d at 366. To this end, the proposed intervenor must demonstrate a tangible threat to a legally cognizable interest to have a right to intervene, and the interest must belong to the proposed intervenor. *Id.*

**a. Aidan has a legally cognizable interest in continuing to use facilities consistent with his gender identity.**

This case poses a tangible threat to Aidan's interest in using restrooms and locker rooms consistent with his gender identity. Plaintiff seeks to enjoin the School District from permitting him to do so pursuant to its current practice. As a practical matter, the disposition of this matter in Aidan's absence may affect or impair his interest in his continued use of facilities consistent with his gender identity. *Mountain Top*, 72 F.3d at 368. As discussed above, the ability to use the

boys' facilities at school is critically important to him and has enabled him to thrive at school. If he were barred from those facilities as a result of this lawsuit, it would be distressing and humiliating and deny him full participation in school life.<sup>3</sup>

As a transgender boy who uses the boys' facilities at the High School, Aidan has a "direct and substantial interest" in a lawsuit aimed at halting his continued use of those facilities.

*Kleissler*, 157 F.3d at 972 ("Timber companies have direct and substantial interests in a lawsuit aimed at halting logging . . ."). In *Board of Educ. of the Highland Local Sch. Dist. v. United States Dep't of Educ.*, No. 2:16-CV-524, 2016 WL 4269080, at \*4 (S.D. Ohio Aug. 15, 2016), another federal district court permitted intervention by a student in analogous circumstances. The proposed intervenor, Jane, a transgender girl and student at Highland Elementary School, sought to intervene in a lawsuit filed by the School District against the Department of Education regarding its conclusion that the School District's treatment of Jane violated Title IX. *Id.* at \*1. The district court granted Jane's motion to intervene under Rule 24(a) because Jane's right to be treated in a non-discriminatory manner by her school was a substantial legal interest. *Id.* at \*3 ("Jane and her guardians have a substantial legal interest in this proceeding and easily satisfy this element of the intervention-as-of-right standard. Jane has a far more compelling interest in the disposition of this case than any number of potential intervenors in other cases whose injuries were 'clearly indirect.'") (internal citations omitted).

There can be no question that Aidan's legal interest may be affected or impaired by the disposition of this matter in his absence given that Plaintiff seeks to halt an existing practice that protects Aidan's well-being.

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<sup>3</sup> In addition, Aidan also has a legally cognizable interest to enjoy non-discriminatory access to equal educational opportunities under Title IX, which prohibits sex discrimination by recipients of federal education funding.

**b. PYC's own interests and its member's interests are sufficiently affected by this litigation to confer associational standing.**

PYC, by its own right and through its associational standing on behalf of its member, the Gay-Straight Alliance at the High School, has a sufficient interest that may be affected or impaired by this litigation. An association may assert claims from injuries it sustains directly or solely as a representative of its members. *PA Prison Soc. v. Cortes*, 622 F.3d 215, 283 (3d Cir. 2010); *Children's Hosp. of Phila. v. Horizon N.J. Health*, No. CIV.A. 07-5061, 2008 WL 4330311, at \*4 (E.D. Pa. Sept. 22, 2008).

**i. PYC has an interest in this litigation because of its mission and the diversion of resources this action necessitates.**

PYC advocates for young LGBTQ Pennsylvanians by advocating for responsible public policies to promote safer schools, including inclusive and non-discriminatory school policies and practices such as the School District's practice of allowing transgender students to use single-sex facilities that correspond to their gender identity. Because Plaintiff is challenging the School District's practice regarding single-sex facilities, PYC is forced to devote resources to supporting students at the High School and must direct its advocacy toward this matter, to the exclusion of other matters it might seek to pursue in keeping with its mission.

**ii. PYC has an interest in this litigation as representative of its member, the Boyertown Gay-Straight Alliance.**

An association has standing to sue on behalf of its members when (a) its members would otherwise have standing to sue in their own right, (b) the interests at stake are germane to the organization's purpose, and (c) neither the claim asserted nor the relief requested requires the individual members' participation in the lawsuit. *PA Prison Soc.*, 622 F.3d at 228 (citing *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). The organization must

make specific allegations that at least one identified member has suffered or will suffer harm. *Id.* (citing *Summers v. Earth Island Inst.*, 555 U.S. 488 (2009)).

PYC's members include Gay-Straight Alliances ("GSAs"), including the Boyertown GSA, which would have standing to sue in its own right. *See, e.g., Gay-Straight All. of Okeechobee High Sch. v. School Bd. of Okeechobee Cty.*, 477 F. Supp. 2d 1246, 1251-52 (S.D. Fla. 2007) (holding that the GSA had associational standing to seek injunctive and declaratory relief under 42 U.S.C. § 1983 and the Equal Access Act); *Gay-Straight All. Network v. Visalia Unified Sch. Dist.*, 262 F. Supp. 2d 1088, 1105 (E.D. Cal. 2001) (holding that the GSA Network had direct standing, even without a club on campus, because its goals were implicated by defendants' conduct and it had devoted significant money and staffing to address the alleged issues on campus). The Boyertown GSA is a recognized extracurricular club at the High School. Its members include current students who are transgender and use the school's restroom and locker room facilities that correspond with their gender identity. Aidan is one such member, but he is not the only student. The Boyertown GSA would have standing to sue in its own right because it and its members, including students like Aidan, have a legally protectable interest in the School District's existing practice. The interest at stake in this litigation in maintaining the School District's existing practices is germane to the Boyertown GSA's purpose, which includes furthering inclusion on behalf of LGBTQ students. The Boyertown GSA's individual participation is not required in this action, as "the Supreme Court has repeatedly held that requests by an association for declaratory and injunctive relief do not require participation by individual association members." *Hospital Council of W. Pa. v. City of Pittsburgh*, 949 F.2d 83, 89-90 (3d Cir. 1991) (distinguishing such relief from requests for individualized damages by association members).

**3. Movants' interests are not adequately represented by an existing party.**

Prospective intervenors must show that the representation of their interests by existing parties is inadequate, but the burden of making that showing is minimal. *Mountain Top*, 72 F.3d at 368. Even if an applicant's interest may be similar to an existing party's, representation is considered inadequate when those interests "diverge sufficiently that the existing party cannot devote proper attention to the applicant's interests." *Brody v. Spang*, 957 F.2d 1108, 1123, 1125 (3d Cir. 1992).

The presumption of government adequacy of representation does not apply in this case and has not applied to school districts in similar litigation. Where a proposed intervenor seeks to advance the same position as a government entity "charged by law" with advancing a particular policy, the government entity is generally "presumed adequate for the task . . . particularly when the concerns of the proposed intervenor, *e.g.*, a 'public interest' group, closely parallel those of the public agency. In that circumstance, the would-be intervenor [must make] a strong showing of inadequate representation." *Kleissler*, 157 F.3d at 972 (internal quotations and citations omitted). However, "when an agency's views are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it, the burden [to show inadequacy of representation] is comparatively light." *Id.* (citing *Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992) and *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996) ("when the proposed intervenors' concern is not a matter of 'sovereign interest,' there is no reason to think the government will represent it")).

No such presumption of government adequacy applies here, nor has it applied to school districts in similar cases. *See, e.g., Students & Parents for Privacy v. United States Dep't of*

*Educ.*, No. 16 C 4945, 2016 WL 3269001, at \*1 (N.D. Ill. June 15, 2016). In *Students & Parents for Privacy*, plaintiffs sued the school district and four federal defendants regarding the school district's inclusive bathroom policies and the Department of Education's then-guidance to that effect. *Id.* at \*1. In that case, the Court found that intervenors had not "overcome the presumption that the **federal defendants** adequately represented their interests," *id.* at \*3, but observed that there "does not appear to be any dispute that the **District** inadequately represents the movant's interest." *Id.* at \*2 (emphases added). Even with the federal defendants' participation, the Court ultimately granted permissive intervention to the transgender students and the organizational plaintiff. *Id.* at \*3.

Here, there is no federal entity charged by law with advocating for Aidan and PYC's position: there is only the School District. In addition to the guidance from *Students & Parents for Privacy* that a school district, unlike certain federal government entities, does not adequately represent transgender students' or organizational plaintiffs' interests in similar litigation, there are three additional reasons that the School District does not adequately represent Aidan and PYC's interests in this specific case.

First, the School District's position is not that its practice is compelled by established law, but rather that "the law remains unsettled due to pending litigation in the Federal courts."<sup>4</sup> Unlike the federal defendants in *Students & Parents for Privacy*, the School District itself does not say it is "charged by law" to allow every transgender student to use single-sex facilities that correspond to that student's gender. Rather, the School Board takes the position that "[b]ecause

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<sup>4</sup> See "Boyertown Area School District Frequently Asked Questions About Issues Regarding Doe vs. BASD," (March 27, 2017), available at <https://www.boyertownasd.org/cms/lib/PA01916192/Centricity/Domain/1395/FAQs%20rev%202.10%203.27%20Final%20%20%20BOYERTOWN%20AREA%20SCHOOL%20DISTRICT.pdf>

of the failure of the Federal executive branch, Congress and the Pennsylvania legislature to address issues such as transgender rights, the Boyertown Area School Board is ultimately left with the difficult choice in balancing the rights of a minority group of transgender students and the balance of the school community.”<sup>5</sup>

Second, the School District’s charge is clearly to represent the interests of all students -- including Plaintiff Joel Doe -- whereas Aidan and PYC are representing the interests and priorities particular to them. Aidan’s interests and the School District’s interests, to the extent they may align now because the School District is maintaining its policy, are not guaranteed to align in the future. The School District may alter, abandon, or reverse its current position. Notably, in response to this lawsuit, the School Board members were not unanimous in supporting the current practice, and the composition of the Board may change after this year’s election.

Both Aidan and PYC represent interests that are “parochial” and “personal,” and not merely broad policy positions. A ruling in Plaintiff’s favor would directly affect Aidan in a personal and immediate way: he would be barred from using the boys’ facilities, which for him would be devastating, humiliating, and stigmatizing.

Third, the School District does not even nominally represent PYC’s interests. PYC represents LGBTQ students and GSAs across the state and seeks to empower LGBTQ students and GSAs to advocate for LGBTQ-inclusive policies. The fact that PYC supports the current School District practice does not mean that the District can speak for PYC. It cannot.

As the Third Circuit has recognized, “the government represents numerous complex and conflicting interests” and “it is not realistic to assume that the agency’s programs will remain

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<sup>5</sup> See footnote 4 *supra*.

static or unaffected by unanticipated policy shifts.” *Kleissler*, 157 F.3d at 973-74. The presence of a government party does not alter the fact that the “central purpose of the 1966 amendment [to Rule 24] was to allow intervention by those who might be practically disadvantaged by the disposition of the action and to repudiate the view, [under the former rule], that intervention must be limited to those who would be legally bound as a matter of res judicata.” *Kleissler*, 157 F.3d at 970 (citing 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure: Civil 2d* § 1908, at 301 (1986)). Aidan and PYC face real and personal consequences in this case. They will both be “practically disadvantaged” if Plaintiff obtains the relief he seeks, and that disadvantage is not the same as that faced by the School District. These are precisely the kinds of interests that are intended to be protected through Rule 24.

**B. AIDAN AND PYC ALSO MEET THE REQUIREMENT FOR PERMISSIVE INTERVENTION**

Aidan and PYC also satisfy the requirements for permissive intervention under Rule 24(b)(1). On a timely motion, the Court may permit anyone to intervene who has a claim or defense that shares a common question of law or fact with the main action. Fed. R. Civ. P. 24(b)(1). In exercising its discretion, the Court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights. *King*, 767 F.3d at 245.

Aidan and PYC easily satisfy this test. As noted above, the motion is timely, being filed shortly after commencement of the litigation and before substantive proceedings. In addition, Aidan and PYC’s defenses -- that the existing practice is consistent with the law and does not infringe the rights of any student -- relate directly to the claims raised by Plaintiff. Allowing Aidan and PYC to intervene will preserve judicial economy, as it will obviate the need for either party to file a separate action in the future to protect their interests. As such, if this Court declines

to find intervention warranted under Rule 24(a)(2), it is respectfully requested that intervention be permitted under Rule 24(b)(1).

**V. CONCLUSION**

For all the foregoing reasons, Aidan and PYC respectfully request that this Court grant their motion to intervene pursuant to Fed. R. Civ. P. 24(a)(2), or in the alternative, Fed. R. Civ. P. 24(b)(1).

Respectfully submitted,

Dated: April 3, 2017

*/s/ Mary Catherine Roper* \_\_\_\_\_

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\* *Pro hac vice* admission anticipated.

\*\* EDPA admission anticipated.

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

	:	
<b>JOEL DOE, a minor; by and through his</b>	:	
<b>Guardians JOHN DOE and JANE DOE,</b>	:	<b>No. 17-cv-1249 - EGS</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>BOYERTOWN AREA SCHOOL</b>	:	
<b>DISTRICT; DR. RICHARD FAIDLEY,</b>	:	
<b>in his official capacity as Superintendent</b>	:	
<b>of the Boyertown Area School District;</b>	:	
<b>DR. BRETT COOPER, in his official capacity</b>	:	
<b>as Principal; and DR. E. WAYNE FOLEY,</b>	:	
<b>in his official capacity as Assistant Principal,</b>	:	
	:	
<b>Defendants</b>	:	

**DECLARATION OF AIDAN DESTEFANO IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE**

I, Aidan Maxwell DeStefano, declare as follows:

1. I am an 18-year-old resident of Pottstown, PA, and a senior at Boyertown Area Senior High, which we students call "BASH".
2. I submit this declaration in support of my motion to intervene, in order to explain my interest in this litigation.
3. I am a transgender male. I have attached two recent photographs of myself to this declaration so you can see who I am. I am, obviously, not a girl.
4. My public transition began when I started 10<sup>th</sup> grade at BASH. The first time I stepped into the girl's bathroom here, everyone stared at me, because I did not look like the girls in

that bathroom. Between the looks and the questions, it was clear to everyone, including me, that I did not belong in that bathroom.

5. I decided to go to my school counselor to find out my options. My counselor told me that I could use the nurse's bathroom.

6. At the time, I competed with the girls cross country team and there, too, I got stares and questions.

7. I had started seeing a psychotherapist who is a gender specialist in May 2014, and as I progressed with my therapy, I took more and more steps to live in a way that reflected my gender identity. In 10<sup>th</sup> grade, I started asking my teachers to call me "A" rather than my birth name, which is female. Most of my teachers agreed right away, which made me feel more accepted and comfortable at school.

8. In the summer of 2015, I began receiving transition-related hormone therapy, and when I returned to BASH for 11<sup>th</sup> grade, I went to my counselor and requested that teachers and school administrators call me Aidan, and use masculine pronouns when referring to me. Again, the BASH teachers and administrators respected my wishes, which was a great feeling. I started the process to legally change my name to Aidan Maxwell DeStefano, which became final in 2016.

9. By then, I was dressing consistently with my male identity in all aspects of my life – at home, school, work, and church. During 11<sup>th</sup> grade, my counselor told me that I could use the male facilities if I wanted to. I still used the nurse's bathroom that year because I was worried that I might get stares or worse in the male facilities. That year I stopped competing with the girls' track team, but I stayed on the team as manager because I still loved the team.

10. Now I am a senior at BASH and have completed my transition. I have changed my legal documents from saying “female” to saying “male,” including my birth certificate. Last summer, I had bilateral mastectomy to further bring my physical appearance in line with my identity as a male. And this year I joined the boys’ cross country team.

11. This school year I started using the male facilities at BASH. That feels so good – I am finally “one of the guys”, something I have waited for my whole life. The other students are really supportive. In fact, I was elected to the homecoming court by my fellow students. And when I ran with the guys for senior night, it felt great to hear the cheers from my male teammates.

12. Being able to be my true self is more important than I can describe. I am on track to make the Honor Roll for the third marking period in a row, something I have never done before because I was too distracted and stressed.

13. I have no trouble in the bathrooms or locker room. Sometimes someone stares, but usually I am treated just like all of the other guys. No one harasses me or questions me. The support from the students is really amazing.

14. I know that I am not the student described in the complaint in this case because I do not wear a bra and did not wear one in October of 2016.

15. There is never any reason for a student at BASH to undress in front of other students. The bathrooms, of course, have stalls with doors that lock. And in the locker rooms, there are also toilet stalls with doors that lock, and in the shower area, there are changing cubicles with curtains you can pull across. No student has to watch other students changing, or be seen by other students while changing. Besides, students do not undress completely or shower before or

after gym class – there isn't time! Sometimes people shower after team practice or competition, but they are in the team locker rooms and showers, which are separate. Both the girls' and the boys' showers and lockers rooms have private areas where people can change, as well as private showers.

16. My success at BASH is not just important to me. There are a number of students who look up to me as an example, and they know from watching me that it is possible for them, whether they are cisgender or transgender, whether they are straight or LGBTQ, to have dignity and respect, and thrive here at BASH.

17. I cannot imagine what it would mean to be told I could no longer use the male restrooms and lockers. It would be devastating for my own school to not recognize me as the man I am (even if it was only because of a court order) and to have to “go backward” in my transition. I could not go back to using the female facilities any more than any other male student could. It would be distressing for me to do so. And it would be deeply uncomfortable for everyone. Even before I began hormones and had chest surgery, it was clear that the girls bathroom was the wrong place for me. Now, I have facial hair, a male chest, a deep voice, and everyone knows I'm a guy. If the aim of the Complaint in this lawsuit is to keep students from sharing restrooms and locker rooms with members of the opposite sex, putting me in the female facilities would accomplish just the opposite.

18. If the Court ruled that I cannot use the male facilities, it would mean that I would not be able to use any of the common facilities that all other students are able to use. I would have to use separate facilities. There is nothing wrong with students choosing to use separate private facilities that the administration has made available to any student who feels uncomfortable using

or wants greater privacy than what is available in the common facilities. That was a choice I made earlier in my transition. But to be told that I am *required* to use separate facilities than those used by the other boys, including my teammates, would be humiliating and stigmatizing. That would send the message to all transgender students – and our classmates—that we are not fit to be among our peers.

19. I want to be part of this lawsuit because for me there is something very personal at stake. I have worked very hard to bring my life into alignment and I cannot stand aside while my dignity and ability to fully participate in school life are under attack. If the Plaintiff prevails and I can no longer use the facilities that match my gender, I will be devastated.

20. Besides being a personal loss for me, if the School District were required to stop allowing transgender students to use the facilities that correspond to their gender identities, that would be loss for my peers and for the transgender students who will come after me. I know many transgender students at other schools lack supportive school environments and high school can be a painful and even dangerous experience. I don't want that to happen to me or my transgender friends at BASH.

21. I make this declaration from my own knowledge of the facts and circumstances set forth above. If necessary, I could and would testify to these facts and circumstances.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 3, 2017

/s/ Aidan Maxwell DeStefano  
Aidan Maxwell DeStefano





**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

	:	
<b>JOEL DOE, a minor; by and through his</b>	:	
<b>Guardians JOHN DOE and JANE DOE,</b>	:	<b>No. 17-cv-1249 - EGS</b>
	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>BOYERTOWN AREA SCHOOL</b>	:	
<b>DISTRICT; DR. RICHARD FAIDLEY,</b>	:	
<b>in his official capacity as Superintendent</b>	:	
<b>of the Boyertown Area School District;</b>	:	
<b>DR. BRETT COOPER, in his official capacity</b>	:	
<b>as Principal; and DR. E. WAYNE FOLEY,</b>	:	
<b>in his official capacity as Assistant Principal,</b>	:	
	:	
<b>Defendants</b>	:	

**DECLARATION OF JASON GOODMAN IN SUPPORT OF MOTION BY  
PENNSYLVANIA YOUTH CONGRESS FOUNDATION FOR LEAVE TO INTERVENE**

I, Jason Goodman, declare as follows:

1. I am a 27-year-old resident of Bala Cynwyd, PA. I am the Executive Director, and President of the Board, of the Pennsylvania Youth Congress Foundation (“PYC”). I am also one of the founders of PYC.

2. I submit this declaration in support of PYC’s motion to intervene, in order to explain PYC’s interest in this litigation.

3. The Pennsylvania Youth Congress Foundation is a Pennsylvania nonprofit corporation founded in April 2011. It is tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

4. PYC is dedicated to empowering LGBTQ (lesbian, gay, bisexual, transgender and queer) youth to advocate for their own interests, individually and through youth-led groups and organizations.

5. PYC is proud to be the only recognized youth-led statewide LGBTQ advocacy organization in the nation. While some national and state organizations may have youth “programs,” they may lack authentic and meaningful youth leadership. At PYC, we believe in the full empowerment of ourselves as young people to be leaders of today.

6. PYC has a range of programs designed to inform and empower youth as their own advocates. In addition to the many resources on our website, PYC offers leadership workshops for students and youth, professional trainings for educators and staff, Safe Zone trainings for community members, and policy briefings on LGBTQ youth issues.

7. PYC also works directly with students and school administrators to advocate for policies and practices that make schools safe and inclusive for LGBTQ students. Among other things, PYC advocates for the adoption of policies and practices that allow transgender youth to choose to use single-sex school facilities that correspond with their gender identity.

8. The policies that PYC works to advance in Pennsylvania school districts include non-discrimination protections and anti-bullying provisions. Without comprehensive federal or state-level non-discrimination and anti-bullying policies, local school boards have the discretion on how they protect and support LGBTQ students. The effort to press for the adoption of LGBTQ-inclusive policies has a significant impact on preventing and addressing violence against LGBTQ students.

9. Because Plaintiff has challenged the School District's existing practice of inclusion and non-discrimination with respect to single-sex facilities, PYC is forced to devote resources to supporting students at the Boyertown High School and must direct its advocacy toward this matter, to the exclusion of other matters it might seek to pursue in keeping with its mission.

10. PYC also works to empower LGBTQ youth to form effective youth-led organizations, particularly in high schools and colleges.

11. With 500 school districts in Pennsylvania, there are well over 250 Gay Straight Alliances/Gender and Sexuality Alliances (GSAs) at K-12 public schools in our state. GSAs are most commonly based in high schools but we are increasingly seeing GSAs at public middle schools, faith-based private schools, and regional GSAs being formed.

12. PYC offers advice and support for the formation of new GSAs, as well as the improvement of existing organizations.

13. In addition, PYC offers membership to LGBTQ student and youth organizations in Pennsylvania. To be eligible for membership, an organization must be a local youth-led LGBTQ organization consisting of not less than 10 members. Affiliates are generally a college, university, or high school LGBTQ organization (i.e. GSAs), but affiliation can be granted to any locally convened youth-led LGBTQ organization meeting PYC criteria. PYC has affiliated with more than 40 such organizations.

14. Membership in PYC offers direct connection with counterpart organizations throughout Pennsylvania, as well as affiliation with PYC's advocacy work. Each PYC membership organization must appoint a leader to represent the group at official PYC events. That leader then

serves as liaison between PYC and the group and is responsible for organizing the groups' delegation to attend the annual Pennsylvania Youth Action Conference.

15. The coalition of LGBTQ youth organizations that are members of PYC is housed in the Keystone Pride Alliance (KPA). The essentials of PYC membership that are currently noted on our website are as follows:

PYC Member Organizations Benefits and Opportunities: Have direct access to benefits and opportunities through PYC in their local communities and in statewide advocacy. Member Organizations can access resources and technical support through PYC leaders, and be directly connected into regional and statewide networks of LGBTQ student/youth organizations. Member Organizations will complete the annual Pennsylvania GSA Survey and plan to send a Delegate to the annual Pennsylvania Youth Action Conference. Member Organizations will be provided the opportunity to send leaders to regional and statewide PYC gatherings, meetings, and advocacy days.

16. To become a PYC member organization, the applicant group's leader must fill out an online application, which is then reviewed and approved by PYC youth leaders. The application considers information about the group's history, activities, and interests, as well as the environment in which the group exists.

17. In January 2017, the Boyertown GSA initiated an application to become a member organization in PYC. That application was formally accepted in March 2017.

18. Based on my conversations with members of the Boyertown GSA, I understand there are a several students at Boyertown Area Senior High School who identify as transgender, some of whom use the single-sex restroom and/or locker facilities that correspond with their gender.

19. Regardless how many students take advantage of the district's practice of permitting transgender students to access facilities consistent with their gender, the existence of the

practice is an essential component in establishing a safe and inclusive space for transgender students at Boyertown Area Senior High. Having an inclusive environment for transgender students is one of the primary goals identified by the Boyertown GSA leaders in support of its application to join PYC.

20. In addition to its own interest in supporting access for all transgender students to facilities that correspond to their gender identity, PYC represents the interest of its member organization, the Boyertown GSA, in preserving these policies and/or practices at Boyertown Area Senior High.

21. I make this declaration from my own knowledge of the facts and circumstances set forth above. If necessary, I could and would testify to these facts and circumstances.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 3, 2017

/s/ Jason Goodman  
Jason Goodman



**JURISDICTION AND VENUE**

2. The averments of this paragraph constitute conclusions of law to which no response is required.

3. The averments of this paragraph constitute conclusions of law to which no response is required.

4. The averments of this paragraph constitute conclusions of law to which no response is required.

5. The averments of this paragraph constitute conclusions of law to which no response is required.

6. The averments of this paragraph constitute conclusions of law to which no response is required.

7. The averments of this paragraph constitute conclusions of law to which no response is required.

8. The averments of this paragraph constitute conclusions of law to which no response is required.

**PARTIES**

***Plaintiff***

9. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

10. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

***Defendant Boyertown Area School District***

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

***Defendant Superintendent Dr. Richard Faidley***

17. Admitted in part and denied in part. It is admitted that Dr. Faidley is the Superintendent of Schools for the Boyertown Area School District. It is denied that Dr. Faidley implemented the policy described in this paragraph. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the remaining allegations of this paragraph.

***Defendant Principal Dr. Brett Cooper***

18. Admitted in part and denied in part. It is admitted that Dr. Cooper is the Principal of Boyertown Area High School. It is denied that Dr. Cooper implemented the policy described in this paragraph. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the remaining allegations of this paragraph.

***Defendant Assistant Principal Dr. E. Wayne Foley***

19. Admitted in part and denied in part. It is admitted that Dr. Foley is the Assistant Principal of Boyertown Area High School. It is denied that Dr. Foley implemented the policy described in this paragraph. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the remaining allegations of this paragraph.

## INTRODUCTION

20. The averments of this paragraph constitute conclusions of law to which no response is required.

21. To the extent that this paragraph alleges that allowing transgender boys to use the boys' facilities violates Plaintiff's right to privacy, these allegations are denied. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the remaining allegations of this paragraph.

22. To the extent this paragraph alleges that Plaintiff was "forced to use multi-user private facilities at school, like locker rooms and restrooms, with students of the opposite sex" based on the presence of transgender boys in those facilities, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

23. The averment in this paragraph constitutes a conclusion of law to which no response is required. To the extent it is a factual allegation, denied.

24. The averment in this paragraph constitutes a conclusion of law to which no response is required. To the extent it is a factual allegation, denied.

25. To the extent this paragraph alleges that allowing transgender boys to use boys' facilities constitutes students of the opposite sex in the boys' facilities, these allegations are denied. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the remaining allegations of this paragraph.

26. To the extent the averments in this paragraph constitute conclusion of law, no response is required. To the extent the averments in this paragraph purports to make factual

allegations, Intervenor-Defendants deny sufficient knowledge of what Plaintiff means by “gender identity theory” to be able to respond.

27. Intervenor-Defendants deny sufficient knowledge of what Plaintiff means by “gender identity theory” to be able to respond.

28. To the extent this paragraph purports to make factual allegations, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of those averments. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

29. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations of this paragraph.

30. To the extent that Plaintiff is alleging that a transgender boy is a student of the opposite sex, denied. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the remaining allegations of this paragraph.

31. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations of this paragraph.

32. To the extent the “actions and policy” referenced by Plaintiff is allowing transgender boys to use the boys’ facilities, these allegations are denied.

33. The averments of this paragraph constitute conclusions of law to which no response is required.

## **FACTUAL BACKGROUND**

34. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations of this paragraph.

35. Admitted.

36. Admitted.

37. Admitted.

38. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations of this paragraph.

39. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

40. To the extent the “member of the opposite sex” referred to in this paragraph is a transgender boy, these allegations are denied. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph.

41. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

42. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

43. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

44. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

45. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

46. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

47. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

48. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities violates Plaintiff's right to privacy, those allegations are denied. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the remaining allegations of this paragraph.

49. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities constitutes "permitting students of one sex to enter locker rooms and bathrooms of students of the opposite sex," those allegations are denied. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the remaining allegations of this paragraph.

50. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities constitutes allowing members of the opposite sex in those facilities, those allegations are denied. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the remaining allegations in this paragraph.

51. To the extent this paragraph alleges that the presence of transgender boys in the boys' facilities means Joel Doe was required to "change with students of the opposite sex", those allegations are denied. After reasonable investigation, Intervenor-Defendants are without

sufficient information to form a belief as to the truth or falsity of the remaining allegations of this paragraph.

52. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities violates Plaintiff's right to privacy, those allegations are denied. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the remaining allegations of this paragraph.

53. After reasonable investigation, Intervenor-Defendants are without sufficient information to form a belief as to the truth or falsity of the allegations of this paragraph.

54. Admit that timely voiding urine can have adverse physiological effects. Denied that allowing transgender boys to use the boys' facilities inhibits Joel Doe from timely voiding.

55. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

56. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

57. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

58. The factual allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

59. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

60. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities violates Plaintiff's right to privacy, those allegations are denied. After reasonable

investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph.

61. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

62. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities constitutes allowing members of the opposite sex in those facilities, those allegations are denied. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph.

63. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities has forced Plaintiff to stop changing for PE class, denied. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph.

64. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities invades Plaintiff's right to privacy, those allegations are denied. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph.

65. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities invades Plaintiff's right to privacy, those allegations are denied. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph.

66. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities invades Plaintiff's right to privacy, those allegations are denied. After reasonable

investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph.

67. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

68. The averments of this paragraph constitute conclusions of law to which no response is required.

### ALLEGATIONS OF LAW

**FIRST CAUSE OF ACTION (ALL DEFENDANTS):**  
**VIOLATION OF THE FUNDAMENTAL RIGHT TO PRIVACY IN**  
**VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED**  
**STATES CONSTITUTION 42 U.S.C. § 1983**

69. Intervenor-Defendants re-allege all responses set forth above and incorporate them herein.

70. The averments of this paragraph constitute conclusions of law to which no response is required.

71. The averments of this paragraph constitute conclusions of law to which no response is required.

72. The averments of this paragraph constitute conclusions of law to which no response is required.

73. The averments of this paragraph constitute conclusions of law to which no response is required.

74. The averments of this paragraph constitute conclusions of law to which no response is required.

75. To the extent this paragraph purports to make factual allegations, Intervenor-Defendants deny sufficient knowledge of what Plaintiff means by “national commitment” to be

able to respond. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

76. The averments of this paragraph constitute conclusions of law to which no response is required.

77. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

78. The averments of this paragraph constitute conclusions of law to which no response is required.

79. The averments of this paragraph constitute conclusions of law to which no response is required.

80. The averments of this paragraph constitute conclusions of law to which no response is required.

81. The averments of this paragraph constitute conclusions of law to which no response is required.

82. The averments of this paragraph constitute conclusions of law to which no response is required.

83. To the extent this paragraph purports to make factual allegations, Intervenor-Defendants deny sufficient knowledge of what Plaintiff means by “national commitment” to be able to respond, but admit that sex-separated restrooms and lockers are common. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

84. Admit, except deny to the extent “sex” is defined as alleged in Paragraph 23.

85. The averments of this paragraph constitute conclusions of law to which no response is required.

86. The averments of this paragraph constitute conclusions of law to which no response is required.

87. The averments of this paragraph constitute conclusions of law to which no response is required.

88. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

89. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

90. The averments of this paragraph constitute conclusions of law to which no response is required.

91. The averments of this paragraph constitute conclusions of law to which no response is required.

92. The averments of this paragraph constitute conclusions of law to which no response is required.

93. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities invades Plaintiff's right to privacy, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

94. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

95. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

96. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities constitutes allowing members of the opposite sex in those facilities, those allegations are denied. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph.

97. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

98. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities constitutes allowing members of the opposite sex in those facilities, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

99. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

100. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

101. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

102. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities invades Plaintiff's right to privacy, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

103. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities invades Plaintiff's right to privacy, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

104. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities invades Plaintiff's right to privacy, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

105. The averments of this paragraph constitute conclusions of law to which no response is required.

106. The averments of this paragraph constitute conclusions of law to which no response is required.

**SECOND CAUSE OF ACTION (ALL DEFENDANTS):**  
**VIOLATION OF TITLE IX**

107. Intervenor-Defendants re-allege all responses set forth above and incorporate them herein.

108. The text of the statute speaks for itself.

109. Admitted.

110. The averments of this paragraph constitute conclusions of law to which no response is required.

111. The averments of this paragraph constitute conclusions of law to which no response is required.

112. To the extent this paragraph makes the factual allegation that allowing transgender boys to use the boys' facilities violates Plaintiff's right to privacy or creates a sexually harassing hostile environment, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

113. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

114. After reasonable investigation, Intervenor-Defendants are without information to form a belief as to the truth or falsity of the averments of this paragraph, but state that allowing transgender boys to use the boys' facilities does not constitute allowing members of the opposite sex to use those facilities.

115. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

116. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities constitutes allowing members of the opposite sex to use those facilities, those allegations are denied.

117. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

118. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

119. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

120. To the extent this paragraph alleges that by encountering a transgender boy in the boys' locker room, Plaintiff has encountered an "opposite sex student," those allegations are denied. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph.

121. To the extent this paragraph alleges that the presence of a transgender boy in the boys' locker room constitutes the presence of an "opposite sex student," those allegations are denied.

122. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

123. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent this paragraph makes factual allegations, those allegations are denied.

124. The averments of this paragraph constitute conclusions of law to which no response is required.

125. Denied.

126. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

127. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

128. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

129. The averments of this paragraph constitute conclusions of law to which no response is required.

130. The averments of this paragraph constitute conclusions of law to which no response is required.

131. The averments of this paragraph constitute conclusions of law to which no response is required.

132. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

133. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

134. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

135. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

136. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

137. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

138. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

139. To the extent this paragraph purports to make factual allegations, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

140. The averments of this paragraph constitute conclusions of law to which no response is required.

141. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities constitutes a hostile environment, those allegations are denied.

142. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

143. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities constitutes a hostile environment, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

144. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities constitutes a hostile environment, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

145. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

146. The averments of this paragraph constitute conclusions of law to which no response is required.

147. The averments of this paragraph constitute conclusions of law to which no response is required.

148. Denied.

149. To the extent this paragraph alleges that Doe has been “effectively denied the use of facilities that are to be provided,” denied. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the remaining averments of this paragraph.

150. To the extent this paragraph alleges that allowing transgender boys to use the boys’ facilities constitutes a hostile environment, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

**THIRD CAUSE OF ACTION (ALL DEFENDANTS):**  
**INVASION OF PRIVACY – INTRUSION UPON SECLUSION**

151. Intervenor-Defendants re-allege all responses set forth above and incorporate them herein.

152. Denied, but admit that Defendants allowed transgender boys to use the boys’ locker room and restroom.

153. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

154. The averments of this paragraph constitute conclusions of law to which no response is required.

155. To the extent this paragraph alleges that allowing transgender boys to use the boys’ facilities constitutes allowing members of the opposite sex in those facilities or that Defendants forced Plaintiff to view or be viewed by anyone, those allegations are denied. The

remaining averments of this paragraph constitute conclusions of law to which no response is required.

156. The averments of this paragraph constitute conclusions of law to which no response is required.

157. The averments of this paragraph constitute conclusions of law to which no response is required.

158. Denied.

159. To the extent this paragraph alleges that allowing transgender boys to use the boys' facilities constitutes allowing members of the opposite sex to use those facilities, and otherwise asserts factual statements, those allegations are denied. The remaining averments of this paragraph constitute conclusions of law to which no response is required.

160. Denied.

161. After reasonable investigation, Intervenor-Defendants are without information sufficient to form a belief as to the truth or falsity of the averments of this paragraph.

## **DEFENSES**

### **FIRST DEFENSE**

Plaintiff has failed to set forth a claim upon which relief may be granted.

### **SECOND DEFENSE**

The relief requested by Plaintiff is barred by Title IX.

### **THIRD DEFENSE**

The relief requested by Plaintiff is barred by the Equal Protection Clause of the Constitution.

WHEREFORE, Intervenor-Defendants, AIDAN DESTEFANO AND PENNSYLVANIA YOUTH CONGRESS FOUNDATION demand judgment in their favor and against Plaintiff, together with reimbursement of all costs.

Respectfully submitted,

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