

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

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

Plaintiffs,

v.

BOYERTOWN AREA SCHOOL DISTRICT,
et al.,

Defendants,

and

PENNSYLVANIA YOUTH CONGRESS
FOUNDATION,

Intervenor-Defendant.

Civil Action No. 17-1249-EGS

**SUPPLEMENTAL MEMORANDUM OF LAW OF AIDAN DESTEFANO IN SUPPORT
OF HIS MOTION TO INTERVENE AS DEFENDANT**

During a conference with the Court held May 19, 2007, Plaintiffs objected orally to the intervention of Aidan DeStefano, currently a student at Boyertown Area Senior High School (the “High School”), on the sole ground that he will be graduating from the High School in June 2017. Mr. DeStefano submits this brief supplement to his motion for leave to intervene to address that objection, based, in part, on the supplemental declaration submitted herewith.¹

¹ As Plaintiffs have not disputed that Aidan meets all of the other requirements for intervention, this brief will address only the nature of his interest in the subject of the litigation.

I. SUPPLEMENTAL FACTS

As Aidan DeStefano explains in his declaration, he expects to return to the High School in the near future – as a family member, to cheer at his younger sister’s graduation exercises next spring, and as an alumnus and supporter, to cheer on his friends on the High School basketball team, and perhaps for other events. *DeStefano Supp. Decl.* ¶ 3. If Plaintiffs obtain the injunction they seek, it would bar any transgender male from using the male facilities at the High School. *See* Dkt. No. 16-3 Proposed Order (“Defendants are enjoined from opening the Boyertown Area School District multi-user locker rooms, showers, and restrooms to persons of the opposite biological sex.”). That means that Aidan could not use the boys’ restrooms, and could not socialize with his friends on the basketball team in their locker room before or after the game. If Aidan needed a restroom while he was at the High School, he, unlike other attendees at graduation or sporting events, would have to seek out a gender-neutral facility, if one is available to non-students, or use the girls’ restroom. For the reasons made quite clear in his first declaration, the latter option would be a disaster. *See DeStefano Decl.* at ¶¶ 4, 17-19. If he could instead find and use a gender-neutral restroom, it would nonetheless be stigmatizing and distressing for him to be compelled to use different facilities than the other visiting alumni, family and friends. *DeStefano Supp. Decl.* ¶ 3.

II. ARGUMENT

Intervention as of right under Fed R. Civ. P. Rule 24(a)(2).

Plaintiffs argue that Aidan will not have “standing” to intervene after he graduates – but that is the wrong analysis. An intervenor need not have standing like that of a plaintiff seeking relief. *See King v. Governor of the State of N.J.*, 767 F.3d 216, 245 (3d Cir. 2014). Instead, an intervenor who seeks to intervene “as of right” must have a legally cognizable interest that may

be impaired by the disposition of the lawsuit in his absence. Although Aidan will be at the High School less often after he graduates, he will still attend events at the High School and will likely need to have access to a restroom, at a minimum. His interest in being able to use the male facilities, like every other male visitor to the High School, is sufficient to support his intervention as of right under Rule 24(a)(2).²

To intervene as of right, an intervenor must have a “significantly protectable” legal interest, as distinguished from interests of a general and indefinite character. *See Mountain Top Condo. Ass’n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366 (3d Cir. 1995). As set forth in his first declaration and opening brief, the ability to use the boys’ facilities at school is critically important to Aidan. 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 the school activities that he plans to attend.³

Permissive Intervention under Fed. R. Civ. P. Rule 24(b)(1).

In addition, Aidan need not demonstrate a legally cognizable interest in order to intervene permissively under Rule 24(b)(1). He only needs to assert a claim or defense that shares a common question of law or fact with the main action, which he certainly does. Plaintiffs have identified no reason why Aidan’s permissive intervention would be less appropriate after he graduates.

² As Plaintiffs have not disputed that Aidan meets all of the other requirements for intervention, this brief will address only the nature of his interest in the subject of the litigation.

³ Although standing is not required to intervene, because the relief sought by Plaintiff would subject Aidan to these harms, he would meet the standing requirements as well.

III. CONCLUSION

For the foregoing reasons, Aidan DeStefano respectfully requests that this Court grant his motion to intervene pursuant to Fed. R. Civ. P. 24(a)(2), or in the alternative, Fed. R. Civ. P. 24(b)(1).

Dated: May 26, 2017

Respectfully submitted,

/s Mary Catherine Roper

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

	:	
JOEL DOE, a minor; by and through his	:	
Guardians JOHN DOE and JANE DOE,	:	No. 17-cv-1249 - EGS
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
BOYERTOWN AREA SCHOOL	:	
DISTRICT, et al,	:	
	:	
Defendants	:	

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

I, Aidan Maxwell DeStefano, declare as follows:

1. I understand that an objection has been raised to my intervention in this case because I will be graduating from Boyertown Area Senior High (“BASH”) in June 2017.
2. I submit this supplemental declaration in support of my motion to intervene, in order to explain why my interest in this litigation will not end with my graduation.
3. In short, I expect to return to BASH, as a graduate, next year for several events. My younger sister will be a senior at BASH next year and I will come back to campus for her graduation and perhaps other events where it is appropriate for family to cheer and support their seniors. In addition, I have close friends who will be seniors on the basketball team next year. I have attended their games in the past and want to continue attending next year to cheer them in their final year. I may want to come back to campus for other events where alumni and visitors are welcome, as I will be attending college in the area and will have many friends still attending BASH.

4. If the Plaintiff prevails and I can no longer use the facilities that match my gender when I return to BASH for my sister's graduation, basketball games and other events—and instead, have to use different facilities than the other visiting alumni, family and friends—I will be devastated.

5. 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: May 26, 2017

/s/ Aidan Maxwell DeStefano
Aidan Maxwell DeStefano

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2017 the foregoing Supplemental Memorandum of Law was filed electronically with the Court and a true and correct copy was served on all counsel of records via the Court's ECF system.

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