

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

**DREW ADAMS, a minor, by and through  
his next friend and mother, ERICA  
ADAMS KASPER,**

**Plaintiff,**

**v.**

**Case No.: 3:17-cv-00739-TJC-JBT**

**THE SCHOOL BOARD OF ST. JOHNS  
COUNTY, FLORIDA,**

**Defendants.**

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**DEFENDANT’S MOTION IN LIMINE**

Defendant, **THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA** (“Defendant”), through its undersigned counsel, requests this Court to exclude from trial any and all testimony or argument relating to any testimony of Michaelle Valbrun-Pope, Michelle Keffort, and Dr. Thomas A. Aberli. In support, Defendant states as follows:

1. In this action, Plaintiff self-identifies as a transgender male and alleges Defendant is violating his rights under the Equal Protection Clause of the Fourteenth Amendment (Count I) and Title IX of the Educational Amendments of 1972 (“Title IX”)(Count II) by not allowing him to use the group or multi-user bathrooms designated for “male” occupants. [Doc. 60]. Plaintiff’s Amended Complaint seeks declaratory and injunctive relief, as well as compensatory damages.

2. Much of this case centers on the Defendant’s longstanding policy segregating bathrooms according to a student’s biological sex. With the emergence of issues related to

transgender students, the Defendant, using a task force, a focus group, and administrators and staff, researched and studied literature, articles and policies used throughout Florida and other parts of the country. Ultimately, the Defendant drafted and implemented “Guidelines for LGBTQ students – Follow Best Practices” (“Best Practices”) for use in all of its schools. Exhibit 1.

3. The centerpiece of this litigation focuses on the Plaintiff’s use of restrooms at his high school. The “Restrooms” provision of the Best Practices provides, “Transgender students will be given access to a gender-neutral restroom and will not be required to use the restroom corresponding to their biological sex.” Exhibit 1.

4. As it went through the process of developing the Best Practices, and specifically on the issue of which restrooms transgender students should be given access, the Defendant encountered and reviewed policies from other school districts, which, unlike the Defendant, allowed transgender students to use the restroom of the gender with which they identified. In depositions in this case, Plaintiff has questioned District witnesses about some of these other school districts, such as Broward County, Washington D.C., San Francisco and model policies from the States of California and Massachusetts.

5. The Defendant has not and cannot deny the existence of these other policies; in fact, the Defendant readily admits it reviewed them at the time it was drafting and finalizing the Best Practices. Instead, the Defendant chose not to follow the choices made by these other districts, nor was it compelled to by state law, as was the case in California and Massachusetts.

6. On its witness list for trial, Plaintiff has listed three individuals, Michaëlle Valbrun-Pope, Michelle Keffort, and Dr. Thomas A. Aberli. Ms. Valbrun-Pope and Ms.

Keffort reside in Ft. Lauderdale while Dr. Aberli resides in Louisville, Kentucky. Presumably, Plaintiff intends to call each of these witnesses live at trial.

7. In his last-amended Rule 26(a) disclosure, Plaintiff described the testimony from these three individuals as follows:

Michaelle Valbrun-Pope

Ms. Valbrun-Pope is the Executive Director of Student Support Initiatives for the Broward County Public Schools, and oversees various aspects of the school administration including those related to the Board County policy relating to transgender students. She is expected to have knowledge regarding the creation and implementation of that policy in Broward County Public Schools, including the use of restrooms by transgender students. She will be able to testify as to whether there have been issues, complaints or other negative implications surrounding the implementation of these policies.

Michelle Kefford

Principal Kefford is the Principal at Charles W. Flanagan High School in Broward County, Florida. Principal Kefford is expected to have knowledge regarding the Broward County Public Schools' creation and implementation of its policies relating to transgender students including those relating to restroom use. She is expected to have knowledge regarding the training provided in Broward County about these policies and the experience that her particular school has had in implementing these policies.

Dr. Thomas A. Aberli (Highland Middle School, 1700 Norris Pl., Louisville, KY)

Dr. Aberli is a Principal at Highland Middle School in Louisville, Kentucky for a temporary two-year assignment, after which he will return to his post as Principal of Atherton High School ("Atherton") in Louisville, Kentucky. Dr. Aberli oversaw the creation and implementation of policies regarding transgender students at Atherton, including those relating to restroom use. He is expected to testify regarding the research and other activities he performed in any effort to develop Atherton's policies, and the work he has performed since that time to educate others about the need to have policies that are inclusive to all students. He is expected to provide testimony on the impact of school policies that provide equal access to facilities in accordance with gender identity, including for transgender students.

8. The sum and substance of the testimony from these three individuals, therefore, is that two different school districts, one in Florida and one outside Florida, have restroom policies different from that implemented by the Defendant.

9. The Defendant deposed each of these individuals. None of these three witnesses knew anything about the Defendant, its constituency, the process it undertook to develop its Best Practices, or the community's standards. Nor had any of these witnesses ever met or spoken with Plaintiff, his family, or anyone with the Defendant. In fact, the only information these witnesses had about this case had been furnished to them by Plaintiff's counsel. Candidly, these witnesses have no relevance.

#### **MEMORANDUM OF LAW**

Although not authorized by the Federal Rules of Evidence or Civil Procedure, motions in limine are based on the "district court's inherent authority to manage the course of trials." Luce v. United States, 469 U.S. 38, 41 n. 4 (1984). In fact, district judges have broad discretion when ruling on such motions. Hodgetts v. City of Venice, Fla., 2011 WL 2192810 (M.D. Fla. June 6, 2011).

The following rules of evidence warrant excluding the testimony of these three individuals:

#### **Rule 401. Test for Relevant Evidence**

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

**Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons**

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

*See also* Fed.R.Evid. 402 (Irrelevant evidence is not admissible); United States v. Chilcote, 724 F.2d 1498, 1502 (11<sup>th</sup> Cir. 1984) (holding that evidence not relevant to the case was not admissible); United States v. Dothard, 666 F.2d 498, 501 (11<sup>th</sup> Cir. 1982) (“The test of relevancy ... is governed by Federal Rule of Evidence 401 under which the evidence sought to be admitted must tend to make the existence of some fact *to be proved* more or less probably that it would be without the evidence.”) (emphasis added).

The evidence offered by the three individuals identified above is not probative of any fact in this case. In reality, it only proves that two school districts of the thousands within the United States elected to allow transgender students to use the restroom of the gender with which they identify; or that one district within the 67 in Florida implemented such a policy and didn't experience strong opposition. If anything, these “facts” expose the differences between values of residents spread across a state; but such could have been discovered by simply reviewing the election returns in November 2016.

To the extent there is any probative value, it is substantially outweighed by the undue delay, wasting of time and needless presentation of cumulative evidence. Perhaps not as applicable with Dr. Aberli, but there is ample evidence that while the Defendant was

researching other transgender policies, it reviewed the policy used in Broward County. Indeed, the Defendant fully understood what Broward's policy was and elected not to follow it. It would be cumulative and a needless waste of time for the Court to hear from two separate individuals about Broward's policy, in light of the Defendant's knowledge of that policy, especially since that knowledge was gained by the Defendant prior to the final drafting and implementation of its restroom policy.

**Certificate of Conferral**

In compliance with Local Rule 3.01(g), this certifies that the undersigned conferred with Plaintiff's counsel who does not agree with the relief sought herein.

WHEREFORE, for the foregoing reasons, Defendant, the School Board of St. Johns County, Florida, requests this Court grant the instant motion and exclude testimony from Michaelle Valbrun-Pope, Michelle Keffort, and Dr. Thomas A. Aberli, and for such further relief as the Court deems proper.

Dated this 29th day of November 2017.

Respectfully submitted,

/s/ Michael P. Spellman

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 29th day of November, 2017, a true and correct copy of the foregoing was electronically filed in the U.S. District Court, Middle District of Florida, using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Michael P. Spellman

**MICHAEL P. SPELLMAN**

**St Johns County School District  
Guidelines for LGBTQ students-Follow Best Practices**

<b>Florida Law</b>	<b>Best Practices</b>
<p><b>Bullying/Harassment</b> The Federal Law Title IX and F.S. 1006.147 prohibits bullying and harassment of all students.</p>	<p><b>Bullying/Harassment</b> Schools will follow the district policy prohibiting bullying and harassment, addressing any incident against an LGBTQ student the same way they would address an incident against any other student, unless the bullying/harassment is based on a student's LGBTQ status, in which case the matter may need to be addressed through the District's anti-discriminatory policy. (contact Student Services or HR)</p>
<p><b>Official Documents</b> Documentation from a Florida court is required to reflect a change in name and/or gender in a student's official school records.</p>	<p><b>Official Documents</b> Schools will only modify student records to reflect a change in name or gender upon receipt of such documentation from a Florida court. While official student records must contain the student's legal name, schools should permit the use of "_____" in unofficial student records to assist staff in calling the student by the preferred name.</p>
<p><b>Names and Pronouns</b> There is no federal or Florida state law that requires schools to call a student by a requested name or use gender pronouns consistent with their gender identity.</p>	<p><b>Names and Pronouns</b> Schools will use the name and gender pronoun corresponding to his/her consistently asserted gender identity upon request of the parent or student.</p>
<p><b>GSA Clubs at School</b> Under the Federal Equal Access Act, a public school permitting any non-curricular club must also allow students to form a GSA. The school must also treat the GSA the same as it does any other non-curricular club in terms of access to facilities, resources, and opportunities to advertise.</p>	<p><b>GSA Clubs at School</b> Schools will permit students to form GSA clubs. The clubs will comply with S.B. Rule 4.06 "Student Clubs and Organizations".</p>
<p><b>Coming Out</b> Federal courts have found students have a constitutional right to be "out" at school if they want to be. Although students have the First Amendment right to free speech, a school can restrict a student's free speech when it causes significant disruption in the classroom.</p>	<p><b>Coming Out</b> Schools will not try to silence students who are open about their sexual orientation or transgender identity, or who question their orientation or gender identity. Restricting a student's free speech may occur if it: (1) causes, substantial disruption with the school's work or material interference with school activities; (2) impinges upon the rights of other students to be secure and let alone; or (3) the school reasonably forecasts it will cause a substantial disruption with the school's work or material interference with school activities.</p>
<p><b>Privacy</b> The U.S. Supreme Court recognizes the federal constitutional right to privacy, which extends to students in a school setting.</p>	<p><b>Privacy</b> School personnel will not unnecessarily disclose any information about a students' sexual orientation, transgender identity or questions they may have about their sexual orientation or gender identity to third parties.</p>
<p><b>Restrooms</b> There is no specific federal or Florida state law that requires schools to allow a transgender student access to the restroom corresponding to their consistently asserted transgender identity.</p>	<p><b>Restrooms</b> Transgender students will be given access to a gender-neutral restroom and will not be required to use the restroom corresponding to their biological sex.</p>

EXHIBIT 1

SJCSD-D.A. 000011

<b>Florida Law</b>	<b>Best Practices</b>
<p><b>Athletics</b>  <b>The Federal law Title IX</b> ensures the safety and inclusion of transgender students in all school-sponsored activities (Department of Education, 2014).</p> <p><b>No federal or Florida state law</b> requires schools to allow a transgender student to play on a team consistent with their gender identity and expression.</p> <p><b>Florida High School Athletics Association (FHSAA) policy</b> provides transgender students with the opportunity to seek review of his/her eligibility through the FHSAA Gender Identify Eligibility Review Process.</p>	<p><b>Athletics</b>                      FHSAA policy was updated stating transgender students should have the opportunity to participate in athletics consistent with their gender identity and expression and a student may seek review of his/her eligibility through the FHSAA Gender Identify Eligibility Review Process.</p>
<p><b>Locker Rooms</b>                      There is <b>no specific federal or Florida state law</b> that requires schools to allow a transgender student access to the locker room corresponding to their consistently asserted transgender identity.</p>	<p><b>Locker Rooms</b>                      Schools will provide a transgender student with available accommodations that best meets the needs and privacy concerns of all students. Transgender students will not be forced to use the locker room corresponding to their biological sex.</p>
<p><b>Dress</b>                      Gender expression is protected by the <b>U.S. Constitution and Title IX</b>. This right to free expression includes choice of clothes. As long as what is worn would be appropriate if worn by other students, then a student should be able to wear that clothing even if it isn't stereotypically associated with their biological gender.</p>	<p><b>Dress</b>                      Schools will allow transgender students to wear clothing in accordance with their consistently asserted gender identity as long as what is worn is in accordance with dress code policy and gender standards.</p>
<p><b>Prom/Dances</b>  <b>The Federal law Title IX and First Amendment Federal court cases</b> prohibits excluding same-sex couples from school-sponsored proms and dances.</p>	<p><b>Prom/Dances</b>                      Schools will allow same-sex couples to attend school sponsored proms and dances.</p> <p>Schools will not dictate that only biological males may wear tuxedos, and only biological females may wear dresses.</p> <p>Schools will review the request for transgender students running for Prom King/Queen, taking into consideration the safety of the student.</p>
<p><b>Gender Segregation</b>                      There is <b>no Federal or Florida state law</b> on the issue of gender segregation for school activities (i.e. classroom activities, field trips, PE class, etc.)</p>	<p><b>Gender Segregation</b>                      It is recommended that teachers separate students alphabetically rather than by sex for school activities.  <b>Note:</b> This does not include gender specific curriculum such as puberty.</p>
<p><b>Overnight Field Trips</b>                      There is <b>no Federal or Florida state law</b> requiring school personnel to adhere to the requests of an LGBTQ student.</p>	<p><b>Overnight Field Study</b>                      Because of the complexity of field study issues, they will be handled on a case by case basis.</p>