

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

**ORLANDO DIVISION**

JOHN DOE, a minor, by his parents  
and next friends, SUSAN AND  
JACK DOE,

Plaintiff,

No. 6:18-CV-102-RBD-GJK

v.

**ORAL ARGUMENT REQUESTED**

VOLUSIA COUNTY SCHOOL BOARD,

Defendant.

**PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND  
SUPPORTING MEMORANDUM OF LAW**

Plaintiff John Doe ("John"), by and through his parents and next friends, Susan and Jack Doe, respectfully moves this Court for a Preliminary Injunction against Defendant Volusia County School Board (VCSB), pursuant to Rule 65(a) of the Federal Rules of Civil Procedure and Local Rules 3.01(j) and 4.06. In support of this Motion, John relies upon the following Memorandum of Law and the supporting declarations from himself ("John Decl."), Susan Doe ("Susan Decl."), Diane Ehrensaft, Ph.D. ("Ehrensaft Decl."), and Asaf Orr ("Orr Decl.").

**INTRODUCTION**

John is a typical high school sophomore who is doing his best to finish his education and prepare for his future. Because he is transgender, however, VCSB treats him differently from his peers, excluding him from the restrooms and locker room that

all other boys use and preventing him from participating equally in gym class. VCSB's differential treatment of John stigmatizes and humiliates him, preventing him from obtaining an equal education and putting him at risk of serious long-term negative health consequences. VCSB's discriminatory practice places John in an impossible situation: either he must use the separate facilities VCSB has offered and experience the debilitating stigma of his peers noticing on a daily basis that he is being treated differently; or, he must attempt to avoid using restrooms and participating in gym class at all, placing his physical health at risk and causing his academics to suffer. VCSB's discrimination leaves John unable to fully participate in his education and violates Title IX and the Equal Protection Clause of the Fourteenth Amendment. The Court should preliminarily enjoin VCSB's discrimination so that John may finish high school without experiencing the irreparable harm that VCSB's conduct inflicts on him.

Pursuant to L.R. 3.01(j), Plaintiff respectfully requests oral argument and estimates that no more than an hour total, or 30 minutes for each side, is needed.

#### **FACTUAL BACKGROUND**

John is a fifteen-year-old boy and a sophomore in high school. John Decl. ¶ 1-2. Like many of his peers, he loves sports and playing video games. He is an avid reader. *Id.* ¶ 2. John is also transgender, which means that he was identified as female at birth, but his gender identity is male and he lives his life and interacts with others as a boy. Complaint, Dkt. 1, ¶ 3.

Every person has multiple sex-related characteristics, including chromosomes, hormones, gender identity (also known as neurological sex), and secondary sex

characteristics. Ehrensaft Decl. ¶ 19. Gender identity is a person's internal sense of belonging to a particular sex and is a deeply felt and core component of human identity. *Id.* ¶ 20. A person's gender identity is not a personal decision, preference, or belief. *Id.* ¶ 21. Instead, it is innate or fixed at a young age and is understood to have a biologic component. *Id.* at ¶ 24. Medical science recognizes that when there is a divergence between a person's sex-related characteristics, as there is for transgender individuals, the person's gender identity is the most important factor in determining how a person should be treated by others. *Id.* at ¶ 19. It is medically inappropriate and harmful to treat a transgender person inconsistently with their gender identity. *Id.*

In this case, in addition to having a male gender identity, John has also undergone medical treatment to bring his physical appearance in line with his male identity. As a result of that treatment, John has the same level of circulating testosterone as other boys and his appearance is similar to other boys his age.

John started recognizing that he was a boy around first grade. John Decl. ¶ 3. Several months into his first-grade year, John's parents recognized that he needed help and brought him to a therapist. John Decl. ¶ 3; Susan Decl. ¶ 3. John was eventually diagnosed with gender dysphoria, a condition that refers to the severe distress that can result from the incongruence between a person's gender identity and the sex they were assigned at birth. Susan Decl. ¶ 4; John Decl. ¶ 3.

Treatments for gender dysphoria enable a transgender youth to live in accordance with the young person's gender identity, thereby alleviating the debilitating distress caused by gender dysphoria. Ehrensaft Decl. ¶¶ 30-31. Treatment typically

includes “social transition,” which involves permitting a child to be themselves in everyday life, consistently interacting with peers and the social environment in a manner that matches the child’s gender identity. For a transgender child, the ability to be open about their true gender identity brings great relief and typically enables the child to feel much more comfortable and to interact with others in a much more confident and positive way. Ensuring that a transgender child is in an environment that does not undermine treatment and respects the child’s gender identity is critical to the child’s healthy development. *Id.* ¶ 30. When parents, caregivers, or adult authority figures deny or reject a transgender child’s gender identity, the child experiences psychological distress. *Id.* ¶ 36. Rejection or disapproval can lead to serious mental health consequences for the child, including shame, low self-esteem, anxiety, depression, self-harming behaviors, and suicidal ideation. *Id.* ¶ 37.

At the recommendation of his therapist and with his family’s support, John underwent his social transition the summer prior to second grade. Susan Decl. ¶¶ 4-5. By the next school year, John obtained a legal name change to a traditionally male name. *Id.* ¶ 6. Those changes resulted in John being treated consistently as a boy at school, which greatly decreased his feelings of discomfort and unhappiness. John Decl. ¶ 4. “As a result, John changed dramatically. He became a happy, comfortable, and talkative kid in a way that [his family] had not seen before.” Susan Decl. ¶ 5.

John attends school as a boy and is accepted as a boy by his classmates at school, most of whom are unaware of his private medical history, but VCSB has singled him out and treated him differently from other boys by excluding him from the boys’

facilities. John Decl. ¶ 9; Susan Decl. ¶ 9. Throughout elementary and middle school, VCSB and its school personnel excluded John from facilities used by other boys. This constant differential treatment made John feel increasingly isolated and anxious. John Decl. ¶ 9. He dreaded times that he would have to use a specially designated restroom, *id.*, and his mounting psychological distress caused John to begin pulling out his eyelashes, a medical condition referred to as trichotillomania. Susan Decl. ¶ 18. The comments and questions from John's peers about why he was being treated differently than all the other boys further exacerbated his distress. John Decl. ¶¶ 12, 14-16, 19.

Since beginning his transition, John has continued to receive further medical treatment for gender dysphoria, including puberty-delaying medication and hormone replacement therapy. *Id.* ¶ 7. Those treatments masculinized his appearance in the same way that testosterone masculinized the appearance of other boys his age. *Id.* As a result, John has gained self-confidence and overcome his gender dysphoria and – except for the school's continuing refusal to treat him the same as other boys – to live happily and successfully as the boy he has long known himself to be. *Id.* ¶ 7-8; Susan Decl. ¶ 7-8. John's physical changes have made VCSB's decision to exclude him from the boys' facilities more obvious, stigmatizing, and humiliating. At this point in his medical treatment and social development, being treated differently from other boys on a daily basis at school is causing John irreparable emotional, social, physical, and educational harms.

In John's current school, he is barred from all boys' facilities and is required to use only the single-user facilities located on campus. Of those facilities, only one

remains unlocked throughout the school day. John Decl. ¶ 13. That restroom is located in the media center, a room that is regularly filled with classes of John's peers, and had a sign posted on the door indicating that the restroom was not for students.<sup>1</sup> *Id.* ¶ 15. In order to use that restroom, John has to walk into a room full of his peers, possibly in the midst of an ongoing class session, and use a restroom that was clearly not designated for students to use. To use the other single-user restrooms, John must ask a member of the school staff to unlock the door for him, which he has never done because of how humiliating it would be. *Id.* ¶¶ 13-14. To avoid this humiliation, John has occasionally used the boys' restroom, despite knowing that he will be punished if school staff learn that he has done so. *Id.* ¶ 17.

VCSB has also denied John access to appropriate changing facilities for physical education. During his freshman year, John was at first required to change in the coach's office located in the boys' locker room. *Id.* ¶ 19. The office has a large window that overlooks the main area of the locker room. *Id.* This proposed arrangement would have visibly separated John from the other students in his class, exacerbated John's isolation, and highlighted to his peers that VCSB was treating him differently than other boys. *Id.*

When John raised those concerns, VCSB told John that he must either take an online physical education class or change in the media center restroom. *Id.* ¶ 20. John initially chose to try the online physical education class, but quickly realized that an online course deprived him of the primary benefits of gym class, including playing

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<sup>1</sup> VCSB removed the sign after Ms. Doe complained.

sports and interacting with others. *Id.* Not wanting to miss out on the physical activity and team-building with classmates that are vital components of physical education, John rejoined the regular gym class, even though the school continued to force him to change in the media center restroom. *Id.* Doing so caused John to be chronically late for class. *Id.* ¶ 21. On some days, the humiliation of having to change in a different facility located in a separate building was so great that John went to class but did not change at all, which contributed greatly to his receiving a “D” grade in PE his freshman year. *Id.* ¶ 23.

By treating John differently from other students and denying him equal educational opportunities, VCSB is causing John serious, irreparable harms. In hopes of mitigating his distress while at school, John tries not to use the restroom unless absolutely necessary. John Decl. ¶ 17. He restricts his fluid intake to avoid needing to use the restrooms, placing his health at risk. *Id.*; Susan Decl. ¶ 10. Since starting high school, John has experienced symptoms consistent with urinary tract infections. John Decl. ¶ 18; Susan Decl. ¶ 10. Severely restricting his restroom use also interferes with his ability to pay attention in class, resulting in a steady decline in his grades. John Decl. ¶ 18. Even though John loves sports and would very much like to participate in group PE classes now and for the rest of his high school years, John did not take PE this year to avoid the humiliation of being required to change in a separate facility. *Id.* ¶ 23.

## ARGUMENT

### I. Preliminary Injunction Standard

To obtain a preliminary injunction, a plaintiff must demonstrate: (1) a substantial likelihood of success on the merits; (2) that the plaintiff will suffer irreparable injury absent preliminary relief; (3) that the harms the plaintiff will likely suffer outweigh any harm that defendant will suffer as a result of an injunction; and (4) that preliminary relief is in the public interest. *Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010). Each of those factors weighs strongly in John's favor.

### II. John Is Likely To Succeed On His Title IX Claim.

Title IX provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). To succeed on a Title IX claim, the student “must show that: (1) [he] was excluded from participation in an education program because of [his] sex; (2) the educational institution received federal financial assistance at the time of the exclusion; and (3) the discrimination harmed [him].” *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 865 (S.D. Ohio 2016).

As a recipient of federal financial assistance,<sup>2</sup> VCSB is a covered entity subject to Title IX, and “[a]ccess to the bathroom is . . . an education program or activity under

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<sup>2</sup> See District School Board of Volusia County, *2017-2018 Approved Operating Budget* at 22, available at <http://myvolusiaschools.org/budget/Documents/2017-2018%20Approved%20Operating%20Budget.pdf> (noting federal funding of approximately \$71 million).

Title IX.” *Id.* at 865. VCSB’s exclusion of John from boys’ restrooms discriminates based on his sex under Title IX. Similarly, VCSB’s denial to John of equal access to changing facilities for gym class and of the ability to participate in gym class on the same basis as other students deprives him of the benefit of “an education program or activity” under Title IX.

The Eleventh Circuit has held that discrimination against transgender individuals is a form of sex-based discrimination that violates Title VII of the Civil Rights Act of 1964. *Glenn v. Brumby*, 663 F.3d 1312, 1320 (11th Cir. 2011). Courts rely upon a common body of law in construing federal anti-discrimination statutes and frequently look to Title VII case law to interpret Title IX’s prohibition on discrimination “because of sex.” *See, e.g., Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. Of Educ.*, 858 F.3d 1034, 1047 (7th Cir. 2017) (“Whitaker II”); *see also Glenn*, 663 F.3d at 1315-18 (relying on Title VII cases in analyzing equal protection claim brought by transgender woman); *Shotz v. City of Plantation*, 344 F.3d 1161, 1170 n.12 (11th Cir. 2003) (“We construe Titles VI and IX *in pari materia.*”).

Discrimination based on transgender status is inherently sex-based because being transgender can only be understood with regard to a person’s sex. *See, e.g., Love v. Johnson*, 146 F. Supp. 3d 848, 850–51 (E.D. Mich. 2015). The definition of being transgender rests on there being a difference between a person’s gender identity and the sex assigned to them at birth. *Id.* Since both of these characteristics are sex-related, differential treatment of transgender people requires consideration of a sex-related

characteristic.<sup>3</sup> See *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 285 (W.D. Pa. 2017) (holding that disparate treatment of transgender students discriminates based on sex because “Plaintiffs are the only students who are not allowed to use the common restrooms consistent with their gender identities”).

Settled Eleventh Circuit law also establishes that discrimination against transgender individuals constitutes sex discrimination because it is inherently rooted in sex stereotypes. *Glenn*, 663 F.3d at 1320. Sex discrimination is not limited to favoring one sex over another sex. *Id.* at 1316-17. Instead, it includes any differential treatment on the basis of a sex-based consideration. Classifications based on transgender status are “inextricably intertwined with gender classifications” because they “inherently discriminate[]” based on a person’s “failure to conform to gender stereotypes.” *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 2017 WL 4873042, \*28 (D.D.C. Oct. 30, 2017).

As the Eleventh Circuit explained,

A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes. The very acts that define transgender people as transgender are those that contradict stereotypes of gender-appropriate appearance and behavior. *There is thus a congruence between discriminating against transgender . . . individuals and discrimination on the basis of gender-based behavioral norms.*

*Glenn*, 663 F.3d at 1316 (emphasis added, and citations and quotations omitted). Since “all persons, whether transgender or not, are protected from discrimination on the basis of gender stereotype[s],” such protections “cannot be denied to a transgender

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<sup>3</sup> In addition, discrimination because a person “changes” their sex is sex-based in the same way that discrimination because someone converts religions is religion-based. *Schroer v. Billington*, 577 F. Supp. 2d 293, 306–07 (D.D.C. 2008).

individual.” *Id.* at 1318-19. This result follows from the Supreme Court’s “consistent purpose” in “apply[ing] heightened scrutiny to sex-based classifications,” which “has been to eliminate discrimination on the basis of gender stereotypes.” *Id.* at 1318-20 (discussing cases). Characterizations based on transgender status constitute sex discrimination because they “embody ‘the very stereotype the law condemns.’” *Id.* at 1319-20 (quoting *J.E.B. v. Alabama*, 511 U.S. 127, 138 (1994)).

Like the unlawful termination of a transgender employee in *Glenn*, VCSB’s discriminatory conduct perpetuates sex stereotypes by denying transgender students equal use of facilities that others are permitted to use and equal access to educational opportunities that others enjoy. Echoing *Glenn*’s conclusion that an “individual cannot be punished because of his or her perceived gender-nonconformity,” the Seventh Circuit has held that excluding a student from the restroom conforming to his or her gender identity “punishes that individual for his or her gender non-conformance.” *Whitaker II*, 858 F.3d at 1049; *see also Evancho*, 237 F. Supp. 3d at 293; *Highland*, 208 F. Supp. 3d 850, 877 (S.D. Ohio 2016); *Roberts v. Clark Cty. Sch. Dist.*, 215 F. Supp. 3d 1001, 1016 (D. Nev. 2016); *Lusardi v. McHugh*, EEOC Appeal No. 0120133395, 2015 WL 1607756, at \*9 (EEOC Apr. 1, 2015). That analysis applies with equal force here, both to VCSB’s exclusion of John from boys’ restrooms and its refusal to permit him to participate in gym class on equal terms with other students.

VCSB’s discriminatory conduct harms John in numerous ways. John Decl. ¶¶ 12-26. The single-user restrooms that he is required to use are less accessible than the boys’ restrooms that all others use. *Id.* ¶¶ 13, 16, 21. Simply to use the restroom, John is forced

to suffer the indignity and humiliation of seeking out an administrator and asking the administrator to unlock the door, or, alternatively, to go to the restroom located in the media center, where other students are usually present and may observe him entering a restroom that other students do not ordinarily use. *Id.* ¶ 13-15. Because of the fear and anxiety caused by this unwanted attention, John restricts his fluid intake in an attempt to avoid having to using the restroom at all, which exposes him to health risks including dehydration, urinary tract infections, and other consequences such as stress and difficulty focusing on classwork. *Id.* ¶ 17-18; Susan Decl. ¶ 10; Ehrensaft Decl. ¶ 40; *Whitaker II*, 858 F.3d at 1045 (noting plaintiff was forced into the “unenviable choice between using a bathroom that would further stigmatize him and cause him to miss class time, or avoid use of the bathroom altogether at the expense of his health”).

Similarly, to avoid the humiliation of being required to change in the media center, John has been forced either to forgo the opportunity to participate in group physical education classes that are open to all other students or to undergo the repeated stigma and humiliation of changing separately from his classmates. John Decl. ¶¶ 19-21. Changing for class in the media center caused him to be late, further isolating him from his peers and nearly causing him to fail physical education last year. *Id.* ¶¶ 21-23. Because of the stress and anxiety caused by VCSB’s discrimination, John did not take PE this year even though he wanted to, and he would very much like to do so during his junior and senior years as well. *Id.* ¶ 23.

VCSB’s actions also violate Title IX by stigmatizing transgender students and branding them as unfit to be treated the same as their peers. *See Whitaker II*, 858 F.3d at

1050; *Evancho*, 237 F. Supp. at 294 (observing that Plaintiffs “are being marginalized, which is causing them genuine distress, anxiety, discomfort and humiliation”); *Highland*, 208 F. Supp. 3d at 870-71 (finding harm where student felt “stigmatized and isolated when she [wa]s forced to use a separate bathroom and otherwise not treated as a girl”). Title IX forbids such sex-based exclusion and humiliation.

### **III. John Is Likely To Succeed On His Equal Protection Claim**

By denying John access to the boys’ restrooms and locker rooms at school and the ability to participate in gym class on equal terms as other boys, VCSB also violates the constitutional guarantee of equal protection. VCSB’s conduct facially discriminates against transgender students like John. Unlike other students, who are permitted full and ordinary use of restroom and locker room facilities that match their gender identity, transgender students are singled out and treated differently. Because John is transgender, VCSB bars him from boys’ restroom facilities and permits him to use the boys’ locker room only on the condition that he use a separate changing area in a separate building, which causes him to be chronically late and singles him out as different from his peers. Such denial of equal treatment unconstitutionally discriminates against transgender students based on their transgender identity and based on sex.

#### **A. Strict – or at least intermediate – scrutiny applies to VCSB’s decision to exclude John from the boys’ restrooms**

VCSB’s discrimination against John triggers strict or intermediate scrutiny for two reasons. First, discrimination against transgender people bears all the indicia of a suspect classification and therefore warrants the most searching form of equal

protection review. Second, discrimination based on transgender status necessarily classifies individuals based on sex and relies on gender stereotypes, requiring application of heightened scrutiny. *Glenn*, 663 F.3d at 1319.

**1. Discrimination against transgender people is subject to strict equal protection scrutiny**

The Fourteenth Amendment's equal protection guarantee "is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Certain governmental classifications are inherently suspect because they are more likely to reflect historical patterns of discrimination than to serve a legitimate governmental purpose. *Id.* at 441; *Mass. Bd. of Retirees v. Murgia*, 427 U.S. 307, 312-13 (1976); *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973). In determining whether a particular classification is suspect, the Supreme Court has considered:

- 1) Whether the class has been historically "subjected to discrimination," *Lyng v. Castillo*, 477 U.S. 635, 638 (1986);
- 2) Whether the class has a defining characteristic that "frequently bears no relation to ability to perform or contribute to society," *Cleburne*, 473 U.S. at 440-41;
- 3) Whether the class exhibits "obvious, immutable, or distinguishing characteristics that define them as a discrete group," *Lyng*, 477 U.S. at 638; and
- 4) Whether the class is "a minority or politically powerless." *Id.*

No single factor is dispositive, and each can serve as a warning sign that a particular classification "provides no sensible ground for differential treatment," *Cleburne*, 473 U.S. at 440, or is "more likely than others to reflect deep-seated prejudice

rather than legislative rationality in pursuit of some legitimate objective,” *Plyler v. Doe*, 457 U.S. 202, 216 n.14 (1982). Transgender status readily satisfies all of these factors, as many federal courts have concluded. *See, e.g., Evancho*, 237 F. Supp. 3d at 288; *Highland*, 208 F. Supp. 3d at 873-74; *Adkins v. City of N.Y.*, 143 F. Supp. 3d 134, 139-40 (S.D.N.Y. 2015); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015).

**History of discrimination.** Courts across the country have recognized that transgender people have long “face[d] discrimination, harassment, and violence because of their gender identity.” *Whitaker II*, 858 F.3d at 1051; *see also Norsworthy*, 87 F. Supp. 3d at 1119 n.8; *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 2017 WL 4873042, at \*27; *Adkins*, 143 F. Supp. 3d at 139; *Evancho*, 237 F. Supp. 3d at 288; *Highland*, 208 F. Supp. 3d at 874. Transgender people experience pervasive discrimination in schools: “78% of students who identify as transgender or as gender non-conform[ing] report being harassed while in grades K-12 . . . with 35% reporting physical assault and 12% reporting sexual assault.” *Whitaker II*, 858 F.3d at 1051 (citation omitted). Transgender people are twice as likely to live in poverty and three times more likely to be unemployed, and nearly half (47%) of transgender people have experienced sexual assault at some point in their lifetime.<sup>4</sup> In recent years, transgender people have been targeted by an unprecedented wave of state legislative attempts to deny transgender people access to public accommodations, restrict the ability of counties and municipalities to pass non-

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<sup>4</sup> Sandy E. James *et al.*, *The Report of the 2015 U.S. Transgender Survey*, Nat’l Ctr. for Transgender Equal. (Dec. 2016), at 5-6, available at, <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>.

discrimination ordinances protecting transgender people, and exclude transgender students from protections at school.<sup>5</sup>

***Bearing on one's ability to contribute to society.*** Transgender people also “have a defining characteristic that frequently bears no relation to an ability to perform or contribute to society.” *Evancho*, 237 F. Supp. 3d at 288; *see also Doe 1*, 275 F. Supp. 3d 167, 2017 WL 4873042, at \*1; *Highland*, 208 F. Supp. 3d at 874; *Norsworthy*, 87 F. Supp. 3d at 1119 n.8. As courts have recognized, there is “no argument or evidence suggesting that being transgender in any way limits one’s ability to contribute to society.” *Doe 1*, 275 F. Supp. 3d 167, 2017 WL 4873042, at \*27; *see also Adkins*, 143 F. Supp. 3d at 139.

***Discrete group with distinguishing characteristics.*** Transgender people “exhibit immutable or distinguishing characteristics that define them as a discrete group.” *Evancho*, 237 F. Supp. 3d at 288; *Doe 1*, 275 F. Supp. 3d 167, 2017 WL 4873042, at \*27; *see Highland*, 208 F. Supp. 3d at 874; *Norsworthy*, 87 F. Supp. 3d at 1119 n.8. Being transgender is “fundamental” and a “basic component of a person’s core identity.” *Hernandez-Montiel v. I.N.S.*, 225 F.3d 1084, 1093-94 (9th Cir. 2000) (internal citations omitted). Transgender people’s gender identities are integral and immutable because they are “inherent in who they are as people.” *Evancho*, 237 F. Supp. 3d at 288. Gender identity is a “deeply ingrained” characteristic that is not susceptible to voluntary

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<sup>5</sup> *See, e.g.*, Nat’l Conference of State Legislatures, *2017 State Legislation*, <http://www.ncsl.org/research/education/-bathroom-bill-legislative-tracking635951130.aspx> (listing dozens of anti-transgender bills being actively considered by state legislatures).

change.<sup>6</sup> *Id.* at 289. That transgender people constitute a discrete group also is apparent from the fact that the discrimination they face often results directly from others becoming aware of their transgender status. *See Adkins*, 143 F. Supp. 3d at 139 (citing *Windsor v. U.S.*, 699 F.3d 169, 182-185 (2d Cir. 2012), *aff'd*, 570 U.S. 744 (2013)).

***Relative political powerlessness.*** “[T]ransgender people as a group represent a very small subset of society lacking the sort of political power other groups might harness to protect themselves from discrimination.” *Doe 1*, 275 F. Supp. 3d 167, 2017 WL 4873042, at \*27. “[R]ecent estimates suggest that transgender individuals make up approximately 0.6 percent” of the American population. *Id.*; *see also Evancho*, 237 F. Supp. 3d at 288. “[A]s a tiny minority of the population, whose members are stigmatized for their gender non-conformity in a variety of settings,” transgender people lack the strength to politically protect themselves from wrongful discrimination. *Highland*, 208 F. Supp. 3d at 874; *see also G.G. v. Gloucester Cty. Sch. Bd.*, 853 F.3d 729, 730 (4th Cir. 2017) (Davis, J., concurring); *Adkins*, 143 F. Supp. 3d at 140.

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<sup>6</sup> The U.S. Department of Health and Human Services’ Substance Abuse and Mental Health Services Administration (“SAMHSA”) recognizes the overwhelming consensus of medical and mental health organizations that “efforts to change a child’s or adolescent’s gender identity, gender expression, or sexual orientation are not an appropriate therapeutic intervention” and that “[n]o evidence supports the efficacy of such interventions to change sexual orientation or gender identity, and such interventions are potentially harmful.” SAMHSA, *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth*, at 51 (Oct. 2015), <http://store.samhsa.gov/shin/content//SMA15-4928/SMA15-4928.pdf>.

Accordingly, discrimination based on transgender status meets all of the Supreme Court's criteria for a suspect classification, warranting strict scrutiny under the Equal Protection Clause.

**2. At a minimum, discrimination against transgender people constitutes sex discrimination subject to heightened scrutiny**

The Eleventh Circuit has held that discrimination against transgender people "is a form of sex-based discrimination that is subject to heightened scrutiny under the Equal Protection Clause." *Glenn*, 663 F.3d at 1319. Numerous courts outside the Eleventh Circuit have similarly applied intermediate scrutiny to equal protection claims involving transgender people. *See, e.g., Whitaker II*, 858 F.3d at 1051-52; *Smith v. City of Salem*, 378 F.3d 566, 574-75, 577 (6th Cir. 2004); *Evancho*, 237 F. Supp. 3d at 288; *Highland*, 208 F. Supp. 3d at 872-74; *Adkins*, 143 F. Supp. 3d at 140; *Doe 1*, 275 F. Supp. 3d 167, 2017 WL 4873042, at \*28; *Stone v. Trump*, --- F. Supp. 3d ---, 2017 WL 5589122, at \*15 (D. Md. Nov. 21, 2017); *Stockman v. Trump*, No. 5:17-cv-01799-JGB-KK, Dkt. No. 79, at 19 (C.D. Cal. Dec. 22, 2017); *Karnoski v. Trump*, No. C17-1297-MJP, 2017 WL 6311305, at \*7 (W.D. Wash. Dec. 11, 2017); *Norsworthy*, 87 F. Supp. 3d at 1119. As explained below, VCSB's discriminatory conduct cannot survive even rational basis review, let alone strict or intermediate scrutiny, and John's claims are likely to succeed on the merits.

**3. VCSB's conduct fails any level of equal protection scrutiny**

Under strict scrutiny, a government policy survives review under the Equal Protection Clause only if it is narrowly tailored to advance compelling state interests. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Under the heightened scrutiny

applicable to sex-based classifications, the government must demonstrate “an exceedingly persuasive” justification for a discriminatory policy. *U.S. v. Virginia*, 518 U.S. 515, 531 (1996). “The burden of justification is demanding and rests entirely on” the government. *Id.* at 533. “The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation,” and “it must not rely on overbroad generalizations.” *Id.* VCSB’s conduct cannot satisfy strict or intermediate scrutiny. Indeed, it cannot survive even the most deferential form of review, because it lacks any rational connection to a legitimate governmental objective.

Any justification VCSB may offer for its discrimination either is not a legitimate aim of government or bears no rational connection to its exclusion of John from the same facilities and educational opportunities available to other boys. The lack of any rational connection to a legitimate purpose is particularly apparent in light of the alternative arrangements that VCSB has offered. For example, VCSB has permitted John to change in the coach’s office, an area that has a window open to the rest of the locker room. John Decl. ¶ 19. That arrangement cannot possibly be related to any interest in protecting privacy or avoiding harm to John or other students. Instead, it serves only to segregate John from his peers, singling him out as different and inviting questions about why he is not using the same facilities as others. The incoherence of VCSB’s treatment of John demonstrates that it cannot possibly have been intended to advance a legitimate, let alone important or compelling, interest, and any privacy-related *post hoc* rationalization VCSB may offer in response to this litigation should be disregarded. *See Virginia*, 518 U.S. at 533.

In any event, courts have rejected the argument that allowing transgender students to share multi-user restrooms invades other students' privacy. *See, e.g., Whitaker II*, 858 F.3d at 1052 (holding that a policy excluding transgender students from such facilities "ignores the practical reality of how [plaintiff], as a transgender boy, uses the bathroom: by entering a stall and closing the door."); *Doe v. Boyertown Area Sch. Dist.*, 276 F. Supp. 3d 324, 2017 WL 3675418 at \*56 (E.D. Pa. 2017); *Students & Parents for Privacy v. U.S. Dep't of Educ.*, 2016 WL 6134121. \*2, \*21-30 (N.D. Ill. Oct. 18, 2016). Here, as in other cases, there is no evidence that John ever "did, or threatened to do, anything to actually invade the physical or visual privacy of anyone else." *Evancho*, 237 F. Supp. 3d at 280; *see also Highland*, 208 F. Supp. 3d at 874. Indeed, VCSB's actions actually *undermine* privacy by singling out transgender students and drawing unwanted attention to them, raising questions in the minds of their peers about why they are using separate facilities. John Decl. ¶ 16, 19.

Courts across the country also have rejected the baseless suggestion that allowing transgender students equal access to school facilities raises any safety concerns. *See, e.g., Evancho*, 237 F. Supp. 3d at 291 (noting the lack of any evidence that treating transgender students equally would encourage improper behavior in restrooms); *Highland*, 208 F. Supp. 3d at 877 n.15 (rejecting the argument that equal access to facilities by transgender students will "lead to disruption or safety incidents"). VCSB's policy therefore cannot be justified by any purported safety-related concerns.

Finally, any suggestion that relegating John to separate facilities is necessary to avoid discomfort for other students cannot justify VCSB's discrimination under any

standard of review. “Mere negative attitudes or fear” are not legitimate justifications to survive rational basis review, let alone any form of heightened scrutiny. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985). Moreover, the opposition of parents or community members to equal treatment of transgender persons cannot justify a violation of the Equal Protection Clause. “Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.” *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984).

#### **IV. John Will Suffer Irreparable Harm If VCSB’s Discrimination Is Not Enjoined**

This Court has recognized that discriminating against students and separating them from their peers interferes with their education and constitutes irreparable harm meriting injunctive relief. *See Ray v. Sch. Dist. of DeSoto Cty.*, 666 F. Supp. 1524, 1535 (M.D. Fla. 1987) (holding that separating hemophiliac, HIV-positive students into a different classroom, and denying access to integrated classroom, constituted irreparable harm). This Court has likewise held that an allegation of ongoing unequal treatment in violation of Title IX demonstrates irreparable injury. *Daniels v. Sch. Bd. of Brevard Cty.*, 985 F. Supp. 1458, 1461-62 (M.D. Fla. 1997) (holding that various unequal facilities for girls’ softball team versus boys’ baseball team warranted preliminary injunctive relief and that “[e]qual access to restroom facilities is such a clearly established right as to merit no further discussion”).

As a result of VCSB’s conduct, John is forced to choose between risking his health by limiting his fluid intake to avoid using the restroom, or engaging in the humiliating and stigmatizing exercise of using a separate restroom. John Decl. ¶¶ 17-18. As other

courts have recognized, forcing John to “spend[] the [remaining years of high school] trying to avoid using the restroom, living in fear of being disciplined, feeling singled out and stigmatized” cannot be “rectified by a monetary judgment, or even an award of injunctive relief, after a trial that could take place months or years from now.” *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, No. 16-CV-943-PP, 2016 WL 5239829, at \*6 (E.D. Wis. Sept. 22, 2016) (“Whitaker I”). Moreover, VCSB’s denial to John of the ability to use the locker room on an equal basis with his peers has driven him out of PE class entirely, negatively and irreparably affecting his educational development and opportunities. Only an injunction can remedy these harms.

Even apart from impeding John’s education – which itself is irreparable harm – the stigma of separation and exclusion causes non-compensable harm. No amount of money can restore the loss of dignity or remedy the daily humiliation VCSB is inflicting on John. “Courts have long recognized that disparate treatment itself stigmatizes members of a disfavored group as innately inferior.” *Evancho*, 237 F. Supp. 3d at 294; *Whitaker II*, 858 F.3d at 1045; *Highland*, 208 F. Supp. 3d at 878. Research also shows that children exposed to this type of discrimination experience negative health outcomes that last into adulthood, including academic difficulties, increased drug and alcohol use, anxiety, and suicidality. Ehrensaft Decl. ¶¶ 38-40; *see also* American Academy of Pediatrics (AAP) Statement on Protecting Transgender Youth, *available at* <https://www.aap.org/en-us/about-the-aap/aap-press-room/pages/AAP-Statement-on-Protecting-Transgender-Youth.aspx> (“Policies excluding transgender youth from facilities consistent with their gender identity have detrimental effects on their physical

and mental health, safety and well-being. No child deserves to feel this way, especially within the walls of their own school.”).

**V. The Balance Of Equities And Public Interest Weigh Heavily In Favor Of An Injunction**

In contrast to the severe and irreparable harm VCSB’s conduct imposes on John, granting the requested preliminary injunction would cause no harm to VCSB or any other party. It would not require the expenditure of any funds or the construction of new facilities; indeed, it would require nothing other than allowing John to use the existing facilities and participate in gym class in the same way as all other boys. *See Whitaker I*, 2016 WL 5239829, at \*6. Additionally, as shown above, VCSB cannot credibly argue that there are any potential privacy violations or safety risks. There is no evidence that John invaded others’ privacy or posed a safety risk to other students when using the coach’s office in the boys’ locker room to change for gym class, or at any other time. No one is harmed when John uses the boys’ restroom or locker room; in contrast, the harms inflicted on John from being excluded from common spaces and separated from his peers are profound. John Decl. ¶¶ 12-26; Ehrensaft Decl. ¶¶ 35-40.

The “public has no interest in enforcing an unconstitutional” policy such as VCSB’s treatment of John. *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). Similarly, “the overriding public interest lay[s] in the firm enforcement of Title IX.” *Cohen v. Brown Univ.*, 991 F.2d 888, 906 (1st Cir.1993); *accord Dodds v. United States Dep’t of Educ.*, 845 F.3d 217, 222 (6th Cir. 2016).

The public interest also is served when public schools ensure all their students an equal opportunity to learn and prepare for their future. Treating transgender students as valued and equal members of the school community promotes a better learning environment for all. For this reason, many schools in Florida and other states allow access to facilities in accordance with gender identity, including Broward County Public Schools in Florida. Orr Decl., Exs. A-B. The Broward school district is one of the largest districts in Florida and the sixth largest school district in the United States.<sup>7</sup> See also *Whitaker II*, 858 F.3d at 1054-55; *Highland*, 208 F. Supp. 3d at 875 (noting *amici*, school administrators from 21 states and the District of Columbia, “agreed that although some parents opposed the policies at the outset, no disruptions in restrooms had ensued nor were there any complaints about specific violations of privacy”).<sup>8</sup> Indeed, concerns about ensuring equitable school environments for all students led the National Association of Secondary School Principals to issue a Position Statement regarding transgender students. Orr Decl., Ex. C (“transgender students have the right to use the restroom and locker room consistent with their gender identity.”).

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<sup>7</sup> See <http://www.browardschools.com/About-BCPS> (Broward school district “is the sixth largest school district in the nation and the second largest in the state of Florida” serving “more than 271,500 students and approximately 175,000 adult students”).

<sup>8</sup> This amicus brief has been filed in several similar cases across the country. See, e.g., Brief of School Administrators from 19 States and the District of Columbia in Support of Intervenor Third-Party Plaintiff Jane Doe’s Motion for Preliminary Injunction, 2016 WL 9990729, *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850 (S.D. Ohio Sept. 15, 2016).

**VI. No Bond Should Be Required**

VCSB will incur no financial damage if John is afforded equal access to the boys' restroom and locker room. *See Whitaker I*, 2016 WL 5239829, at \*7 (holding no bond required because defendants did not demonstrate any financial damage from allowing transgender student to use boys' restrooms). In fact, requiring no bond is "particularly appropriate" where important federal rights are involved, as here. *Cf. Complete Angler, LLC v. City of Clearwater*, 607 F. Supp. 2d 1326, 1335-36 (M.D. Fla. 2009) (involving alleged infringement of a fundamental right).

**CONCLUSION**

For the foregoing reasons, John respectfully requests that this Court preliminarily enjoin VCSB from denying John equal access and use of the boys' restrooms and locker room.

Date: February 22, 2018

Respectfully Submitted,

/s/ Asaf Orr

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*Attorneys for Plaintiff*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 22th day of February, 2018, by CM/ECF electronic filing to the Clerk of Court and to the following:

Thomas M. Gonzalez  
Nathan J. Paulich  
Thompson, Sizemore, Gonzalez & Hearing, P.A.  
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Date: February 22, 2018

/s/ Asaf Orr

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

**ORLANDO DIVISION**

JOHN DOE, a minor, by his parents  
and next friends, SUSAN AND  
JACK DOE,

Plaintiff,

No. 6:18-CV-102-RBD-GJK

v.

VOLUSIA COUNTY SCHOOL BOARD,

Defendant.

**DECLARATION OF JOHN DOE**

I, John Doe, under penalty of perjury, hereby state as follows:

1. I am fifteen years old and am the plaintiff student in this case. I have personal knowledge of the matters stated in this declaration.

2. I live with my parents, Susan and Jack Doe, and my siblings in Volusia County, Florida. I am a sophomore in a high school in the Volusia County Schools. I love to read and play sports and video games. Two recent pictures of me are included with this declaration as Exhibit A.

3. I have known that I am a boy since I was five or six years old. I knew this even before I could really talk about it. At first, my family was unsure what I was going through and thought it might just be a phase. I always knew it was not a phase, though, and that this is who I truly am. I learned later that when I was younger, my mom started doing research to figure out what I might be going through. It made me happy when she

started to understand me. I started seeing a therapist when I was in first grade and after several months, that therapist diagnosed me with gender dysphoria. I couldn't really understand what those words meant, but I remember feeling like it was the first step to becoming who I really am. My parents have understood for many years who I am and they support me with everything I do.

4. By the time I began second grade, I was living as a boy all the time. I cut my hair shorter and started wearing boys' clothes full time. This gave me a great sense of relief. I didn't have to pretend to be something that I wasn't any more and I was a lot happier. I fit in more at school and with my friends and that I finally had people in my life who understood what I was going through.

5. It's difficult to describe the relief I felt when my family realized that I am a boy. Having their support and love means the world to me. I would not be who I am without their support. My family helped me change my first name when I was in third grade. Because of their support everyone I encounter knows me as a boy, including the kids at my school.

6. I look and dress like other boys my age and use the boys' /men's restrooms in public places, including restaurants and shopping centers. I have never encountered any problem using a men's restroom in those places.

7. With support from my family and my doctors, I started hormone therapy when I was in middle school. I was extremely happy when I started taking testosterone because it made me look more and more like the boy I am. I now have facial hair and a

deeper voice. Those changes have also made me more confident and improved how I feel about myself in a really positive way.

8. Last year, I also had chest surgery. Before that, I felt very self-conscious about my body. I would wear layers of clothes to try to hide my chest, including a hoodie, even if it was hot outside. Now I don't have to wear bulky clothes to cover my body. For the first time, I feel like myself. I am confident and free in way I never was before. I have taken all of these steps with full support from my family and medical providers.

9. Although people understand that I am a boy, my experiences at school have been the hardest ones I have ever had. Schools are supposed to be places where kids go to learn and make friends—but for me, school is a constant source of stress, anxiety, and humiliation. In middle school, I was not allowed to use the boys' bathrooms. This was very hard for me—all I wanted to do was go to school like any other kid. Instead, I felt the school singled me out as different, and refused to treat me like other boys. The school told me that I would have to go to the main office to use the restroom, but my class was far away from the office. At the end of 8th grade, when I was about to leave the school, the school built a porta potty close to my classroom, but I still was not allowed to use the nearby boys' restroom like all my male friends.

10. Despite everything that happened in elementary and middle school, I was excited about starting high school. It was a new school and I thought I could make a fresh start with the staff and students. Although some administrators would know that

I am transgender, I figured that the majority would not know that private information about me and I finally would be treated like any other boy.

11. At the beginning of the school year, I went to a meeting with the Dean of Discipline, the Principal, and my parents. The Dean told me that I could never use the boys' or the girls' restrooms and instead would have to use the single-user restroom in the school hallways, the front office, or the media center. We also talked about physical education class ("PE"). The school would not let me change in the boys' locker room, but instead told me to change in the coach's office.

12. I felt horrible after that meeting. I realized that everything would be the same as it was before and I became really upset. I knew that kids would wonder why I wasn't using the same restrooms as they use and I was afraid of all the questions I might get. That fear sometimes makes it hard to get out of bed in the morning. All I wanted was a fresh start but instead I kept thinking about how I will have four more years of stress, anxiety, and humiliation at school.

13. I also realized once I started school that all the single-user restrooms in the school, except for the one in the media center, are always locked. That means that if I want to use them, I have to get a staff member to unlock the door. The only other kids who use these restrooms have adult aides with them who carry a restroom key. I feel embarrassed having to find a staff member to open bathrooms for me, especially since the boys' bathrooms are nearby. I don't think it's fair that the school expects me to go through this humiliating ordeal every time I need to use the restroom.

14. Because of my embarrassment and humiliation, I have never asked a staff member to open a locked restroom for me. I am especially afraid of doing this for the bathroom in the office since it is right next to the boys' restroom that everyone else uses. I am afraid staff will ask me why I want to use a special bathroom and that I will have to either lie or share personal and private information about myself. I am also afraid that other kids at school would wonder why I was doing that.

15. Even though the single-user bathroom in the media center is open, it is not usually used by students. When I first started going to high school, there was a sign posted outside this bathroom saying that students could not use it. During the entire time that sign was up, I was very worried about using the bathroom because I did not want to have to answer questions from students or staff about why I was doing something I wasn't supposed to do. The school did take the sign down after my mother complained, but I still have to use a bathroom that other kids do not usually use and that is far away from my classes. Usually there are other kids in the media center, and sometimes teachers, and I am constantly afraid that I will have to explain myself or that they will think that something is wrong with me because everyone in the media center can see me enter the restroom. I don't understand why I have to do this when no other boys have to.

16. Because of all this, going to the bathroom at school is a horrible experience. I am constantly afraid of what other kids will think about me. I have had some kids in the media center ask me why I always go there and what I was doing there. I told them that I have to use the bathroom or change but I dread having to have these

conversations. Sometimes there are also classes happening in the media center, which means that all the kids in the class see what I am doing.

17. I have to go through this problem every single day. Because of this, I try not to drink a lot of liquids at school so that I don't have to go to the bathroom. If I have to go to the bathroom, I try to just keep holding it until the end of the day. That means not going to the restroom for over nine hours; I leave for school at 6:15 a.m. and do not get home until 3:30 p.m. I usually only use the bathroom at school when it's an emergency and I don't feel that I can hold it anymore. I have also sometimes used the boys' restrooms at school even though I know I'm not allowed to do this and could get in trouble. I am always afraid when I do this and I look around me to make sure there aren't any teachers or administrators around. When I have used the boys' restrooms, I haven't had any problems other than the stress and anxiety I feel about getting in trouble.

18. Not being allowed to use the boys' restroom has also caused problems for my health and concentration. Since starting high school, my mother took me to a doctor who recommended that I drink more water, but I would rather risk getting sick than be seen using bathrooms that the other boys don't use. Sometimes it's hard for me to pay attention in class if I have to use the restroom. I probably spend five to ten minutes almost every class period thinking about how I can avoid using the restroom. It gets even harder to pay attention in class towards the end of the day when I am starting to feel that I really need to use the restroom.

19. I also have a lot of anxiety about PE. Last year, the school allowed me to take PE with other boys, but I could not use the same changing area as them. At first,

they told me to change in the coach's office, which has a large window facing into the boys' locker room. I did not feel comfortable changing there because it would make me stand out. I was afraid that the other students would ask me questions or that I would have to explain why I wasn't changing with them. It was also difficult to be able to see the boys' locker room, knowing that the school would not let me change there with my peers. I wish I could just participate in PE like other boys.

20. In the beginning of my freshman year, my parents complained to the school about my having to change in the coach's office. The school told me that I could instead take gym classes online. I did not understand this at all—the whole point of gym is to get exercise with other kids in your class. I did try to do this for a day or so but it was awful. The part of PE that I love is playing sports and so I couldn't understand the point of taking PE online. I told the Dean that I wasn't going to do that anymore and he told me that I had to change in the media center. I agreed so that I could be back in PE with the other kids.

21. Changing for PE in the media center restroom was also terrible. The media center is in a separate building from the gym and we only have six minutes between periods. It took me about 8 minutes just to get to the media center, change, and then get back to the gym. I was late for PE every day. Once class begins, the door to the gym is locked for safety reasons so you can only get in if you can find an administrator to open it, or get someone to open the door from the inside by banging on the door. It was embarrassing to always be late and I was afraid of what other people are thinking about me. There was one day when I could not get anyone to hear my

knocking so I had to stay outside for the entire class. That experience made me feel terrible – if they had just let me change with everyone else, this would not even have been an issue.

22. Another day when I was late to PE, I went to find a teacher to unlock the locker room so that I could put my backpack and clothes away before class. The teacher didn't understand why I would need that and asked me why I didn't just do that when I was in the locker room. I did not want to have to explain that I'm not allowed in the locker room, so I just took my backpack and all my clothes with me to the football field where we had class that day. I did not want to explain my whole story to a teacher. This put me in a bad mood for the rest of the day and still upsets me when I think about it. I shouldn't have to explain myself all the time, especially because I don't know how other people will react.

23. There were also times when I did not change for or participate in PE at all because I was too embarrassed to change in the media center. I ended up with a "D" in PE my freshman year even though I otherwise love PE. Because the school won't allow me to change in the boys' locker room, I chose not to take PE this school year. If I could use the locker rooms, I would sign up to take PE during my junior and senior years of high school. The whole experience has been really hard for me.

24. I would also try out for the boys' basketball team if I could use the locker room with the rest of the team and if I can improve my grades. If I can't use the locker room, I would rather not play at all since I don't want to have to explain why there are times when I can't be with my teammates.

25. The school's refusal to treat me like all the other boys is causing me a lot of stress and anxiety. When I was younger, my stress became so bad that I started to pull out my eyelashes. I did not understand why I was doing that at the time, but I have come to understand that I do this because of the stress and anxiety I feel.

26. The stress, anxiety, and inability to focus in class has taken a toll on my grades. A few weeks ago, my guidance counselor informed me that I am at risk of failing and may have to repeat my sophomore year. Since then, I have been working hard to bring up my grades, but it is still unclear if I will make it.

27. It is even more upsetting to know that it doesn't have to be like this. Everywhere outside of school and during the summer, when I am recognized and treated like the boy that I am, I don't experience any of this stress and anxiety.

28. The school's refusal to treat me like other boys has put me in an impossible situation. It feels like there is a target on my back. I have changed my name. I have undergone medical treatment including surgery and hormones. I am a boy, but the school is refusing to treat me like other boys. There is no reason for the school to put me in these humiliating situations. Because of this frustrating experience, I have a lot of stress and pent up anger that I don't know what to do with.

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29. I still have more than two years of high school left. I do not want to spend that time feeling angry about school and worrying about how to make people accept me for who I am. I should be thinking about how to go to college and what I want to be when I grow up—not how to hide from other kids and adults when I use the restroom or how I can make it through the day without going to the restroom at all.

This declaration was executed this 22 day of February, 2018, in Volusia County, Florida.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

*John Doe*  
\_\_\_\_\_  
John Doe

# Exhibit A

REDACTED

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

**ORLANDO DIVISION**

JOHN DOE, a minor, by his parents  
and next friends, SUSAN AND  
JACK DOE,

Plaintiff,

No. 6:18-CV-102-RBD-GJK

v.

VOLUSIA COUNTY SCHOOL BOARD,

Defendant.

**DECLARATION OF SUSAN DOE**

I, Susan Doe, under penalty of perjury, hereby state as follows:

1. I am the mother of John Doe, the plaintiff in this case. I have personal knowledge of the matters stated in this declaration.

2. From a very young age John began communicating to us that he is a boy. John gravitated towards boys' clothes and preferred short hair. Initially, my husband and I thought that John was going to be a tomboy so we did not think twice about buying him the clothes that he liked and getting his hair cut the way he wanted.

3. When John continued to be depressed, we recognized that there was something deeper going on with him than the clothing and haircut. Eventually, we took him to a therapist to help figure out what was going on and so that we could get guidance as parents.

4. After meeting with John a number of times, the therapist diagnosed John with gender dysphoria and provided us with ongoing counseling about how we could best support him. We talked with the therapist and she answered all of our questions. Our first priority was to support John and to make sure that he knew we supported him.

5. Over the summer between first and second grade, John began living as a boy in every aspect of his life. We started referring to him with the name that he later chose as his legal first name and introduced him to other people as our son. In public, he was consistently recognized as a boy and used the boy's/men's restrooms without any issues. As a result, John changed dramatically. He became a happy, comfortable, and talkative kid in a way that we had not seen before.

6. We also helped John legally change his first name to one that is more traditionally masculine. I remember that when we filed for the name change, John was very excited that he might get to go to court and planned to wear a tuxedo so that the judge would know he is a boy. Before getting the name change, John worried so much about other kids seeing his name that he would get fixated on hiding it. When he took tests, he would hold one hand up to the computer screen so that other kids could not see his old name. Once he got the name change, he was very relieved that he did not have to worry about this anymore.

7. When John was in middle school, he started hormone therapy under the supervision of his doctor. We talked about this with him extensively and he was very excited—he understood that the hormones would help him to have a body that better matches his true self. I can tell that John is much happier on the hormones and that they

have given him a greater sense of confidence. He has started shaving now and is very excited about it. His voice has also gotten deeper, which makes him happy.

8. John also recently had chest surgery and is beyond the moon about the results. Before he had surgery, he would wear multiple layers of clothes to try to hide his body. He would wear a binder to flatten the contours of his chest, a t-shirt, a button-down shirt, and his hoodie every day to try to hide his chest before surgery. He no longer wears all of that clothing and I can tell that he is much more confident about his appearance.

9. Not being able to use the boys' restrooms and locker rooms at school has been very difficult for John, particularly since starting high school. He is old enough to know that not every other boy goes through what he is going through. John is indistinguishable from other boys, yet the school treats him as if he is not a real boy. This is very hard for him and although he is getting older and more mature, he cannot understand why people can't just see him for who he is.

10. Because the only real option for John is the restroom in the media center, he tries not to use the restroom at all. This means he does not drink enough liquids at school. At the beginning of John's freshman year, I took him to a urologist because he was having back pain. The urologist thought that John's symptoms might be the result of urinary tract infections. The urologist told him to drink more water, but John still refuses to do that at school. At home, John is constantly drinking water and milk. I have no doubt that he would drink more throughout the day, including at school, if he was allowed to use the boys' restrooms.

11. Because John was not permitted to change in the locker room, he changed in the restroom in the media room for PE. That restroom was far away from PE, though, which meant that John was always late. There was one day when John texted me from school because he was locked out of gym class. He knocked on the door, but no one came to open it. He was forced to spend the entire class period in the hallway while his peers played in the gym. I was livid about this and went to the school after this happened. While the administrators agreed not to mark John late for PE or his next period class, they still refused to solve the underlying problem. John just wants to be treated like the other boys, yet the school refuses to do this.

12. It is difficult to describe how hard it is to have a kid who constantly feels targeted at school. I have two other kids who are older than John is and I have never felt so helpless about my ability to help one of my children. Besides being with us at home, John spends most of his time at school. I get a pit in my stomach every time I think about John having to hide from other kids at school when he's just trying to go to the bathroom, or when I think about him avoiding the bathroom at all. I have tried to get the school to treat him like other boys, but they have absolutely refused to let John use the boys' restrooms and locker rooms. I worry about what it will mean for him and my family if the school continues to target him in this way for the rest of high school.

13. John often comes home from school very agitated and upset. The worst days are the ones when John's inability to use the boys' facilities makes him stand out from his peers. This has happened several times since John started high school, from a teacher in the media room asking him why he needed to use that restroom to students

asking him similar questions. He was also very upset one day when he had to bring his clothes and backpack to PE class with him because he could not make it to the boys' locker room in time after having to change in the media center.

14. He was also very upset after the school told him to try online PE because the school would not let him use the boys' locker room. The first time he tried it, he texted me to tell me that he just could not do it. He wanted to be out with his friends and experiencing gym with the class. Within about a week, he went to his guidance counselor to ask to be taken out of online PE. He was miserable during that time and then decided to change in the media room since he had no other choice.

15. This situation has affected our entire family since John is difficult to be around when he is so upset. He either lashes out at me, his father, or his siblings, or he becomes withdrawn.

16. During the summer when school is out, John is much easier to be around. He is very easy-going and much less angry. This change has become so apparent that we have tapered off his therapy appointments for at least the last four summers. During the summer, he only sees his therapist about once a month. We increase his therapy appointments to either weekly or bi-weekly during the school year.

17. John recently asked if we could take him to therapy every week, which we arranged with his therapist and are now doing.

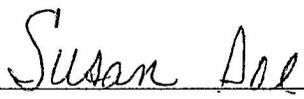
18. When John was younger, he was diagnosed with trichotillomania, which meant that he was pulling out his hair. We understand that this condition results from stress and anxiety. There was one point when he pulled out all of his eyelashes – he did

not have any at all. Because he is now old enough to understand why he does this, I can talk to him about it when I see him doing it.

19. High school has been the worst time so far for John. He is old enough to understand what is happening and to see that it is deeply unfair that he can't just attend school like other boys. As his parent, I can see the anxiety and stress he is under have become intolerable. I do not want to see my son like this for another two years. High school is slipping away for him and that he will never get these years back. High school kids already have a lot of stress in their lives—they have to navigate friendships and relationships, worry about tests, and figure out what they will do when they graduate. John should not have to bear this additional burden of being targeted and stigmatized because he is transgender.

This declaration was executed this 22 day of February, 2018, in Volusia County, Florida.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Susan Doe

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION

JOHN DOE, a minor, by his parents  
and next friends, SUSAN AND  
JACK DOE,

Plaintiff,

No. 6:18-CV-102-RBD-GJK

v.

VOLUSIA COUNTY SCHOOL BOARD,

Defendant.

**DECLARATION OF DIANE EHRENSAFT, Ph.D.**

I, Diane Ehrensaft, declare as follows:

1. I am over the age of eighteen and submit this expert declaration based on my personal knowledge.

2. If called to testify in this matter, I would testify truthfully and based on my expert opinion. The opinions and conclusions I express herein are based on a reasonable degree of scientific certainty.

**Qualifications and Experience**

3. I am a developmental and clinical psychologist. I specialize in working with children and adolescents experiencing gender dysphoria and their families. A true and correct copy of my Curriculum Vitae is attached hereto as Exhibit A.

4. During my thirty-five-year career as a psychologist, I have provided consultation, therapy, and evaluations for more than 500 gender non-conforming children and adolescents and their families.

5. Due to my expertise in this area, a portion of my private practice involves consulting with mental health providers across the United States to assist those providers in working with transgender youth and their families. Over the years, I have consulted with approximately 200 mental health and related providers.

6. In addition to my private practice, I helped found the Child and Adolescent Gender Center ("CAGC") at the University of California, San Francisco ("UCSF") Benioff Children's Hospital in San Francisco, California, along with several colleagues. I have served as CAGC's Director of Mental Health since its inception in July 2009 and was appointed an Adjunct Associate Professor at the UCSF Department of Pediatrics.

7. As part of my work through CAGC, I organize and facilitate a group of local mental health providers that work with children and adolescents experiencing gender dysphoria called "Mind the Gap." The group meets every month to discuss issues we see in our respective practices and provide support to one another so that we can provide the best care possible to our patients. Mind the Gap has developed training materials and assessment protocols, and provides community psychotherapy and evaluation for patients who attend the UCSF Child and Adolescent Gender Center Clinic at Benioff Children's Hospital in San Francisco and San Mateo, and at the Children's Hospital in Oakland. There are approximately 175 providers in the group.

8. I serve on the Board of Directors of Gender Spectrum, a national organization offering educational, training, and advocacy services to schools and youth-serving organizations to become more gender inclusive. The organization also develops resources for parents and schools regarding transgender youth in school. For example, Gender Spectrum was a lead co-author of *Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools*, which was also co-authored by the National Education Association. And, more recently, Gender Spectrum released *Transgender Students and School Bathrooms: Frequently Asked Questions*, a resource endorsed and supported by the American School Counselor Association, the National Association of Elementary School Principals, the National Association of School Psychologists, and the National Association of Secondary School Principals. Furthermore, I am actively involved in designing the organization's training program for healthcare professionals, and regularly conduct trainings as the group's mental health consultant.

9. I am also a senior consultant, founding member, and board member of A Home Within, a national organization focusing on the emotional needs of children and youth in foster care and offering pro bono long-term psychotherapy to children in foster care.

10. As an Adjunct Associate Professor in the Department of Pediatrics at UCSF, I have taught courses including *The Treatment of Gender-Nonconforming Children*; *The Emotional Development of Gender-Nonconforming Children*; *Interdisciplinary Support of Gender-Nonconforming and Transgender Children*; *Parenting a Gender-nonconforming/Transgender Child*. I have also lectured at the

University of California, Berkeley and The Wright Institute, which is a clinical psychology graduate school in Berkeley, California.

11. I am currently working on a five-year study operating at four sites (UCSF, Boston Children's Hospital, Los Angeles Children's Hospital, and Lurie Children's Hospital of Chicago), funded by an NIH grant to study the medical and mental health outcomes of gender-nonconforming youth receiving puberty blockers and/or cross-sex hormones as part of their treatment.

12. My recent publications include *The Gender Creative Child*, The Experiment Press (2016), *Look, Mom, I'm a Boy – Don't Tell Anyone I Was a Girl*, 10 J. of LGBT Youth 1–20 (2013); *From Gender Identity Disorder to Gender Identity Creativity: True Gender Self Child Therapy*, 59 J. of Homosexuality 337-356 (2012); *Gender Born, Gender Made*, The Experiment Press (2011); and *Boys Will Be Girls, Girls Will Be Boys*, 28 Psychoanalytic Psychology 528-548 (2011). A listing of my selected publications is included in my curriculum vitae, attached hereto as Exhibit A.

13. I belong to a number of professional organizations and associations relating to (i) the health and well-being of children and adolescents, including those who are transgender; and (ii) to appropriate medical treatments for transgender individuals. For example, I am a member of the World Professional Association for Transgender Health ("WPATH"), an international multidisciplinary professional association to promote evidence-based care, education, research, advocacy, public policy and respect in transgender health. WPATH publishes the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, which leading medical

and mental health associations, including the American Medical Association, the Endocrine Society, the American Psychiatric Association, and the American Psychological Association, have endorsed as the authoritative standards of care. I also sit on the subcommittee of WPATH tasked with drafting the new version of the standards of care. A complete list of my involvement in various professional associations is located in my Curriculum Vitae, Exhibit A.

14. Attached hereto as Exhibit B is a bibliography of relevant medical and scientific materials related to transgender people and gender dysphoria. I generally rely on these materials when I provide expert testimony, and they include the documents specifically cited as supportive examples in particular sections of this declaration. I have also relied on my years of experience in this field, as set out in my curriculum vitae, Exhibit A, and on the materials listed therein. The materials I have relied on in preparing this declaration are the same type of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

15. I was provided with and reviewed the following case-specific materials: (1) the complaint, and (2) the declarations of Susan Doe and John Doe, in support of John Doe's motion for preliminary injunction.

16. I have not met or spoken with John Doe or his parents for purposes of this declaration. My opinions are based solely on the information I have been provided by John Doe's attorneys as well as my extensive experience studying gender dysphoria and treating transgender patients.

17. I am being compensated at an hourly rate for actual time devoted, at the rate of \$350 per hour for any review of records, or preparation of reports or declarations, and for deposition and trial testimony; and \$1,000 per day for travel time. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

### **Gender Identity Development and Gender Dysphoria**

18. At birth, infants are assigned a sex, either male or female, based solely on the appearance of their external genitalia. For most people, that assignment turns out to be accurate and their birth-assigned sex matches that person's gender identity. However, for transgender people a person's birth-assigned sex does not reflect that person's gender identity.

19. By the beginning of the twentieth century, scientific research had established that external genitalia alone – the critical criterion for assigning sex at birth – are not always an accurate proxy for a person's sex. Instead, a person's sex is comprised of a number of components, including, among others, internal reproductive organs, external genitalia, chromosomes, hormones, gender identity (also known as neurological sex), and secondary-sex characteristics. When there is a divergence between these factors, as there is for transgender and intersex individuals, medical science recognizes that the person's gender identity is the most important and determinative factor. It is medically inappropriate and harmful to treat a transgender person inconsistently with their gender identity.

20. Gender identity is a person's inner sense of belonging to a particular gender, such as male or female. It is a deeply felt and core component of human identity.

21. Like non-transgender people, transgender people do not simply have a "preference" to act or behave consistently with their gender identities. Every person has a gender identity, which is a deep-seated, deeply felt component of human identity for each person. A person's gender identity is not a personal decision, preference, or belief.

22. The only difference between transgender people and non-transgender people is that the latter have gender identities that are consistent with their birth-assigned sex whereas the former do not. A boy who is transgender cannot simply turn off his gender identity like a switch, any more than a non-transgender boy or anyone else could.

23. In other words, a boy who is transgender has always been a boy, regardless of the sex he was assigned at birth. Likewise, a girl who is transgender has always been a girl, regardless of the sex she was assigned at birth.

24. Current science recognizes that gender identity is innate or fixed at a young age and strongly indicates that gender identity has a biological basis. For example, both post-mortem and functional brain imaging studies in living people show that transgender people have areas of the brain that differ from the brains of non-transgender individuals. Additionally, research has found that the probability of a sibling of a transgender person also being transgender is almost five times higher than that of the general public, and that twins have a 33.3% concordance rate, even when raised apart, suggesting a genetic component to the incongruity in the biological markers of gender.

25. The evidence demonstrating that gender identity cannot be altered, either for transgender or for non-transgender individuals, further underscores the innate and immutable nature of gender identity. Past attempts to “cure” transgender individuals by using talk therapy, and even aversive therapy, to change their gender identity to match their birth-assigned sex were ineffective and caused extreme psychological damage. All major associations of medical and mental health providers, such as the American Medical Association, the American Psychiatric Association, the American Psychological Association, and WPATH’s standards of care, consider such efforts unethical.

26. Children typically become aware of their gender identity between the ages of two and four. Once aware that their gender identity does not match the sex they were assigned at birth, transgender children often begin to express their cross-gender identity to their family members and caregivers. The statements and actions transgender children use to communicate their cross-gender identity differ significantly from the occasional adoption of a cross-gender identity, or cross-gender clothing by non-transgender children in imaginative play. Transgender children are insistent, persistent, and consistent over time in their cross-gender identification. They may also show signs of psychological distress as a result of the mismatch between their birth-assigned sex and their gender identity.

27. Gender dysphoria is the medical diagnosis for the severe and unremitting emotional pain resulting from this incongruity. It is a serious medical condition and is listed in both the DSM-5 and the World Health Organization’s International Classification of Diseases, the diagnostic and coding compendia for mental health and

medical professionals, respectively. People diagnosed with gender dysphoria have an intense and persistent discomfort with their assigned sex.

28. Gender dysphoria was previously referred to as gender identity disorder. In 2013, the American Psychiatric Association changed the name and diagnostic criteria to be “more descriptive than the previous DSM-IV term *gender identity disorder* and focus[] on dysphoria as the clinical problem, not identity per se.” DSM-5 at 451.

### **Standards of Care for Working with Transgender Children**

29. Like all children, when loved, supported, and affirmed by their parents and caretakers and by their social environment, transgender children can thrive, grow into healthy adults and have the same capacity for happiness, achievement, and contribution to society as others. For these youth, that means supporting their need to live in a manner consistent with their gender identity.

30. Getting treatment for gender dysphoria and ensuring that a transgender child is in an environment that does not undermine that treatment are critical to a transgender child’s healthy development and well-being. For young transgender children, the treatment of gender dysphoria consists of social transition, which involves changes that bring the child’s outer appearance and lived experience into alignment with the child’s actual identity. Changes often associated with a social transition include changes in clothing, name, pronouns, and hairstyle.

31. Research and clinical experience have shown that social transition for a child with gender dysphoria improves that child’s mental health and reduces the risk that the child will engage in self-harming behaviors. Kristina Olson, *et al.*, *Mental Health of*

*Transgender Children who are Supported in Their Identities*, 137 *Pediatrics* 1 (2016). In fact, undergoing a social transition before puberty often provides tremendous and immediate relief because there are few, if any, observable physical differences between boys and girls at that age.

32. There are no pharmacologic treatments for gender dysphoria until after the onset of puberty. At the onset of puberty, adolescents diagnosed with gender dysphoria may be prescribed puberty-delaying medications to prevent the distress of developing permanent, unwanted physical characteristics that do not align with the adolescent's actual identity. Thereafter, at an appropriate time, the treating provider will prescribe cross-sex hormones to induce the puberty associated with the adolescent's gender identity. For example, a boy who is transgender will receive testosterone and will become more muscular and develop a lower voice as well as facial and body hair, while a girl who is transgender will receive estrogen which result in breast growth and female fat distribution.

33. Surgical treatment is not typically recommended until an adolescent is, at minimum, in his or her mid- to late-teens, depending on the specific procedure. Like cross-sex hormones, the purpose of surgical intervention is to bring a person's body into closer alignment with their gender identity. The need, timing, and nature of the surgical treatment will differ from patient to patient.

34. From a medical and scientific perspective, there is no basis for refusing to acknowledge a transgender person's gender identity based on whether that person has undergone surgery or any other medical treatment. A person's gender identity is an

innate, effectively immutable characteristic. The medical treatments provided to transgender people, including social transition for transgender children, do not “change a girl into a boy” or vice versa; rather, the goal of treatment is to align the person’s body and lived experience with the person’s identity as male or female, which already exists.

### **Supporting the Mental Health of Transgender Youth in Schools**

35. In the school setting, providing appropriate support includes ensuring that teachers and other staff refer to transgender students by their chosen names and correct pronouns, permitting the transgender student to use the facilities that are consistent with their gender identity on the same terms as their peers, and generally treating transgender students in a manner consistent with their gender identity for all purposes. Failing to recognize and support a transgender student’s gender identity sends a message – both to the transgender student and to others – that the transgender student is different from his or her peers and needs to be segregated, causing the transgender student to experience shame.

36. Transgender children experience significant psychological distress when parents/caregivers or school staff repeatedly fail to acknowledge the child’s gender identity. Transgender children who are treated in this way experience that mistreatment as a profound rejection of their core self, which has serious negative consequences for their development and their long-term health and well-being. Rejecting behaviors significantly increase the risk that the child will develop long-term mental health conditions, among other serious negative health consequences such as low self-esteem, anxiety, depression, substance use issues, self-harming behaviors, and suicidal ideation.

37. Rejecting or disapproving of a child's gender identity interferes with the child's healthy development across all domains, including difficulty maintaining healthy interpersonal relationships and developing emotional resilience, among others.

38. Given the amount of time that students spend in school, the school environment has a tremendous impact on a transgender student's development and well-being. Ensuring that schools support a transgender student's gender is critical to their long-term health and well-being. In a study of transgender youth between ages 15 and 21, participants identified school to be the most traumatic aspect of growing up. Experiences of rejection and discrimination from teachers and school personnel led to feelings of shame and unworthiness. The stigmatization to which they were routinely subjected led many to experience academic difficulties and to drop out of school. The longer a child experiences rejection from his or her family, school, or community, the more significant and long-lasting the negative consequences. Research has found that transgender adults who experienced discrimination in schools were more likely to have attempted suicide. Ann P. Haas, *et al.*, *Suicide Attempts among Transgender and Gender Non-Conforming Adults*, The Williams Institute 11 (2014); *see also* Jaime M. Grant, *et al.*, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* 82 (2011); *see also* Arnold H. Grossman, *et al.*, *Transgender Youth and Life-Threatening Behaviors*, 37 *Suicide & Life-Threatening Behavior* 527, 533-537 (2007). Research has also found that a high percentage of transgender people used drugs and alcohol to cope with the mistreatment they experienced based on their gender identity. Grant, *supra*, at 81; *see also* Caitlyn Ryan,

*Supportive Families, Healthy Children: Helping Families with Lesbian, Gay, Bisexual & Transgender Children* 5-7 (2009).

39. The negative mental health effects of rejection can also cause a transgender child to develop co-occurring mental health conditions, such as major depression, anxiety or obsessive-compulsive disorders, and eating disorders. The symptoms associated with those co-occurring conditions typically alleviate significantly once a transgender child's gender identity is affirmed. However, if the child remains in an environment, whether at home or in school, where the child's gender identity is not recognized and supported, that mistreatment can exacerbate those conditions, resulting in lasting harm.

40. A caretaking or school environment that recognizes a child's gender identity in certain respects – such as appropriate pronoun and name use – yet fails to do so in others – such as allowing the child to use the correct restroom – will cause confusion and stress for that child. Research has shown that children who are not treated in a manner consistent with their gender identity in all aspects of their lives are at risk for behavioral problems, generalized anxiety, and psychiatric symptoms.

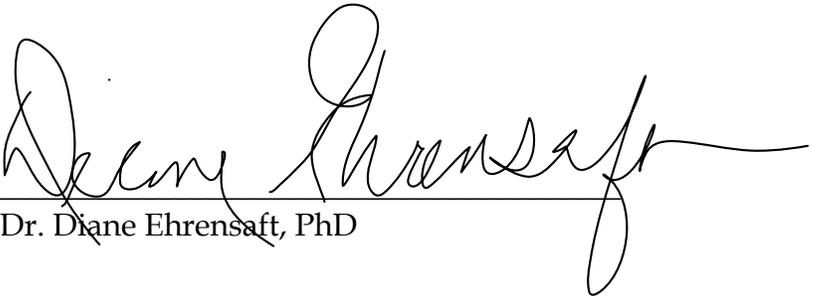
41. I am aware from the case materials I have reviewed that John Doe is not permitted to use the boys' restroom and is instead required to use a specially designated restroom. Additionally, I am also aware that he is not permitted to use the boys' locker room to change for physical education in the same manner that his male peers use that facility.

42. Based on my extensive experience researching and working with transgender children, it would be psychologically damaging for a transgender child to be

forced to use a separate restroom that other students are not required to use or required to abide by different rules for using the boys' locker room than are given to their male peers.

This declaration was executed this 19<sup>th</sup> day of February, 2018, in Alameda County, California.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Dr. Diane Ehrensaft, PhD

# Exhibit A

## **CURRICULUM VITAE**

*NAME:* Diane Ehrensaft, Ph.D.

*ADDRESS:* 445 Bellevue Avenue Suite 302,  
Oakland, California 94610

*TELEPHONE:* 510-547-4147

*FAX:* 510-547-7692

*E-MAIL:* dehrensaft@earthlink.net

### **PRESENT POSITIONS:**

- Adjunct Associate Professor, Child Gender Clinic, Department of Pediatrics, University of California San Francisco, San Francisco, CA
  - Responsibilities: Assessment, Treatment, and Consultation advising with gender-nonconforming children and their families
- Director of Mental Health, Child and Adolescent Gender Center CAGC, San Francisco Bay Area
  - Responsibilities: Coordinating mental health services and directing consortium of child gender specialists
- Faculty, Psychoanalytic Institute Of Northern California, San Francisco, CA
  - Responsibilities: Teaching, Research Development
  - Areas:
    - Gender, Childhood and Adolescence
    - Reproductive Technology
- Clinical Psychologist, Private Practice, Oakland, CA
  - Responsibilities:
    - Psychotherapy with children and adults
    - Psychological evaluations
    - Custody evaluations
    - Mediation
    - Parenting consultations
    - Training and consultation
    - Forensic work: expert witness

### **STATUS:**

- Ph.D. in Psychology
- Licensed Clinical Psychologist (California License # PSY 7342)

**EDUCATION:**

- University of Michigan: B.A. in Psychology 1964-1968
  - Graduated with honors in Honors Psychology Program
- University of Michigan: Ph.D. in Psychology 1968-1974
  - Received Ph.D. in May 1974
  - Course work Concentration: Child development; child psychotherapy; socialization; family
  - Psychology Prelim Exams: Communal child rearing and the social development of the child
  - Dissertation title: “Sex role socialization in a preschool setting”

**EDUCATIONAL AWARDS AND APPOINTMENTS:**

- 1968, 1969, 1970: NIMH Traineeship, University of Michigan
- 1970: Teaching Assistantship, School of Social Work, U. of Michigan
- 1971: Teaching Assistantship, Psychology Department, U. of Michigan
- 1971: Rackham Predoctoral Fellowship, University of Michigan
- 1972: University of Michigan Dissertation Grant
- 2012: Annual Scholarship Award, Section on Gender and Psychoanalysis, Division of Psychoanalysis, American Psychological Association
- 2013: Award for Outstanding Service, Section on Childhood and Adolescence, Division of Psychoanalysis, American Psychological Association
- 2014: Community Service Award, for Commitment to Child and Adolescent Gender Center, Northern California Society for Psychoanalytic Psychology

**GRANTS:**

- 2015 National Institute of Health (NIH)
  - R01HD082554: The Impact of Early Treatment of Transgender Youth
  - 08/01/2015-06/30/2020
  - Role: co-Investigator.

**EMPLOYMENT EXPERIENCE:**

- 2012 to present: Adjunct Associate Professor, Department of Pediatrics, UCSF
- 1980 to present: Clinical Psychologist in private practice
- 1981 to 2004: Professor, The Wright Institute, Berkeley, California
- 1986 to 2005: Expert panel, Family Court, Counties of Alameda & San Francisco
  - Responsibilities: Court-appointed child and custody evaluations
- 1994 to present: Senior clinical faculty, A Home Within
  - Project offering pro bona long-term psychotherapy to children in foster care

- 1999 to present: Faculty, Psychoanalytic Institute of Northern California
- 2000 to present: Clinical Supervisor and Consultant, West Coast Children's Center
  - Responsibility: Supervision of interns, clinical training and consultation
- 1995 to 1999: Member, Mediation Resources
  - Interdisciplinary team of psychologists and lawyers offering mediation, evaluation, and consultation services pertaining to dispute resolution in family and commercial matters
- 1995 to 1999: Clinical faculty, Mt. Zion Psychiatric Department, University of California, San Francisco
  - Responsibilities: Clinical supervision of psychology interns
- 1992 to 1998: Clinical faculty, Ann Martin Children's Center, Piedmont, California
  - Responsibilities: Clinical supervision to psychology interns
- 1986 to 1992: Clinical faculty, Department of Psychiatry, Children's Hospital San Francisco
  - Responsibilities: Clinical supervision of psychology interns
- 1986 to 1990: Clinical consultant, Children's Hospital Medical Center of Northern California, Oakland
  - Responsibilities: Clinical training
- 1985 to 1986: Consulting Psychologist Health America Rockridge, Oakland, California
  - Responsibilities: Consultation to Pediatrics Department
- 1982 to 1988: Independent contractor to Child Development Center, Children's Hospital Medical Center of Northern California
  - Responsibilities: Psychological Evaluations of developmentally disabled children, consultation with staff and parents.
- 1980 to 1983: Mental Health Consultant, Alameda Headstart, Alameda, CA
  - Responsibilities: Clinical consultation and training with Headstart staff in areas of child and family mental health; observation and evaluation of children enrolled in Headstart program; psychological consultations with families enrolled in the program
- 1980 to 1981: Post Doctoral Fellowship Child Guidance Clinic and Adult Psychiatric Services Children's Hospital San Francisco
  - Responsibilities: Psychological testing, evaluation, and treatment Of adults, children, and families; consultation with schools and related hospital services
- 1979 to 1981: Faculty, University of San Francisco Faculty member of the Family Reunification Project, sponsored by the University of San Francisco in conjunction with the San Francisco Department of Social Services
  - Responsibilities: Teaching courses in the area of child psychopathology to Department of Social Service social workers enrolled in in-service Masters of Arts in Public Services program.

- 1979 to 1980: Post-Doctoral Internship Family Guidance Services, Children's Hospital Medical Center
  - Responsibilities: Evaluation of children and families in a multi- disciplinary mental health clinic serving a broad range of families
- 1979 to 1980: Post-Doctoral Internship Child Development Center, Children's Hospital Medical Center
  - Responsibilities: Psychological screening and evaluation of young children referred for developmental disabilities and related problems; treatment planning; consultation to schools, day care programs, and community agencies
- 1977 to 1979: Faculty, Field Studies Program, University of California, Berkeley
  - Responsibilities: Teaching field based courses in the areas of child rearing, parenting, and the family; women, gender, and social change. Administrative responsibilities involving staff development and program evaluation
- 1974 to 1978: Faculty, Interdisciplinary Program on Day Care and Child Development, University of California, Berkeley Graduate Program funded by the Carnegie and Grant Foundations and sponsored jointly by the Department of Education, School of Social Welfare, and School of Public Health offering advanced training to a selected group of pediatricians, educators, and social workers.
  - Responsibilities: Evaluate effectiveness of graduate training program in day care and child development; program development; teaching
- 1974 to 1978: Faculty, School of Social Welfare, University of California, Berkeley
  - Responsibilities: Teaching in areas of research theory and methods, children and the family; women and mental health; dissertation supervision
- 1972 to 1973: Faculty, Sociology Department, Sir George Williams University, Montreal, Quebec
  - Responsibilities: Teaching courses on the sociology of the family
- 1972: Director, Park Avenue Day Care Center, Montreal, Quebec
  - Government-sponsored preschool program for Greek immigrant families to teach them French and English language skills and prepare them for entrance into Montreal school system.
  - Responsibilities: Program administration; liaison with Quebec and Canadian government; mental health consultation to staff and program families
- 1971: Teaching Assistant, Department of Psychology, University of Michigan
  - Responsibilities: Running the developmental psychology lab for undergraduate and graduate level students; teaching in develop- mental psychology class
- 1970: Teaching Assistant, School of Social Work, University of Michigan
  - Responsibilities: Assistant teaching in course on complex organizations
- 1970: Clinician and research assistant, Project on marital communication and family therapy in a natural setting, School of Social Welfare, University of Michigan

- Responsibilities: Family therapy in office and home setting; compilation and analysis of research data on therapeutic outcome
- 1969: Group therapist, Huron Valley Child Guidance Clinic, Ypsilanti, Michigan  
Nonresidential summer therapy program for emotionally disturbed boys ages 5-14.
  - Responsibilities: Co-led group therapy with a group of 9-10 year old boys.
- 1968 to 1969: Graduate clinical internship, Office of Economic Opportunity Day Care Center, Ecorse, Michigan
  - Responsibilities: Mental health consultation to staff and families, play therapy with children enrolled in program
- 1968 to 1969: Graduate clinical internship, Downriver Child Guidance Clinic, Lincoln Park, Michigan
  - Responsibilities: Therapy with school-age children and families
- 1968: Research Assistant, Department of Psychology, University of Michigan  
Clinical research on aggression and dependency in college students
  - Responsibilities: Analysis of Thematic Apperception Test protocols
- 1967: Research Assistant, Institute for Industrial Relations, University of Michigan  
Project on American ghettos
  - Responsibilities: Library research, document preparation, analysis of data.

**PROFESSIONAL ACTIVITIES:**

- 2015: Co-Chair, APA Division of Psychoanalysis (39) Spring Meeting, Life in Psychoanalysis in Life, San Francisco, CA
- 2014: AbbVie Trans Advisory Board Member
- 2010: President, Professional Advisory Board, A Home Within
- 2009 to present: Member of Professional Advisory Board, A Home Within
- 2008 to present: Board Member, Gender Spectrum
- 2008 to present: Board Member, Section IX, Psychoanalysis and Social Responsibility, Division of Psychoanalysis, American Psychological Association
- 2007 to present: Member of Mental Health mental health professional group of the American Society for Reproductive Medicine
- 2007 to present: Chair, Reproductive Technology Research Group, Psychoanalytic Institute of Northern California
- 2004 to 2009: Vice President, Board of Directors, A Home Within
- 2004 to present: Member of Board of Directors, A Home Within
- 2002 to 2008: Board Member, Section III (Gender and Psychoanalysis), Division 39 (Psychoanalysis), American Psychological Association
- 2001 to 2004: Secretary, Board of Directors, A Home Within
- 2000 to 2003: Board Member, Division 39 (Division of Psychoanalysis) Board of Directors, American Psychological Association

- 1999 to present: Editorial Board Member, *Studies in Gender and Sexuality*, a journal on psychoanalysis, cultural studies, treatment, and research
- 1998 to present: Board Member and Membership Chair, Section II (Childhood and Adolescence) of Division 39 (Division of Psychoanalysis), American Psychological Association
- 1994 to present: Senior clinician, Children's Psychotherapy Project
  - Project established to offer pro bona long-term psychotherapy to children referred through the Department of Social Services Senior clinicians run consultation groups for psychotherapists who provide the therapy services and are also involved on program development, training, administration, and evaluation.
- 1993 to present: Editorial review board, *American Journal of Orthopsychiatry*
- 1992-1993: Co-chair, Education Committee, Northern California Society for Psychoanalytic Psychology
- 1992: Development Committee, Child Care Employee Project
- 1991-1992: Committee Member, Education Committee, Northern California Society for Psychoanalytic Psychology
- 1983 to 1996: Employer and Supervisor to psychological assistants working under my license in my private practice
- 1978: Consultant to Childhood and Government Project, University of California, Berkeley
- 1978: Consultant to Child Care Switchboard, San Francisco
- 1976: Berkeley Child Care Advisory Committee
- 1974 to 1977: Designing and conducting staff training workshops on sex role stereotyping in the preschools
- 1973 to 1976: The Children's Project, A Bay Area women's group investigating the status of women and children in the United States.
- 1973 to 1976: Development, coordination, and participation in parent-run preschool program

**SELECTED LECTURES AND SPEAKING ENGAGEMENTS:**

- 2015: Invited Plenary Speaker, *Different Approaches to Treating gender-nonconforming children*, American Psychological Association Annual Meeting, Toronto, Ontario
- 2015: Speaker, *Gender as Cure*, UCSF Transgender Health Summit, Oakland, CA
- 2015: Grand Rounds: *What's your gender?*, Alta Bates Summit Hospital, Berkeley, CA
- 2014: Grand Rounds: *Treating Gender-Nonconforming Children*, California Pacific Medical Center, San Francisco, CA
- 2014: Invited Speaker, *Controversies in the Treatment of Transgender Children and Adolescents*, American Psychiatric Association Annual Meeting, New York, New York

- 2013: Invited Speaker, *Gender-nonconforming children*, Pediatric Endocrine Society Symposium, Washington, D.C.
- 2013: Invited Speaker, *Found in Translation: Listening and Learning from Gender-nonconforming Children*, William Alanson White Institute, New York, New York
- 2012: Keynote Address: *From Gender Identity Disorder to Gender Creativity*, Gender Creative ids Workshop, Concordia University, Montreal, Quebec
- 2010: Invited Speaker, *A Terrible Thing Happened on the Way to Becoming a Girl*, Division of Psychoanalysis, APA Annual Meeting, Chicago, Illinois
- 2010 Invited Speaker, *Transcending Humpty Dumpty: The Case of an Egg Donor Mother*, International Association for Relational Psychoanalysis and Psychotherapy, San Francisco, CA
- 2010: Invited Speaker, *Outcomes for the Children*, American Psychoanalytic Association Group on Reproductive Technology, The American Psychoanalytic Society's Annual Meeting, New York
- 2010: *Wherefore baby? Searching Beyond Infertility*, Northern California Society for Psychoanalytic Psychology, Scientific Meeting
- 2010: Invited Speaker, *Priuses, Smoothies, and Transys: Transgender Care in the Beginning: The Early Childhood Years*, Northern California Psychiatry Society Annual Meeting, Monterey, California.
- 2009: Invited Speaker, American Psychiatric Association's Annual Meeting, San Francisco: *Gender Made, Gender Nurtured: The Child Shapes the Parent as the Parent Shapes the Child in Families with A Gender Variant Child*, Panel: Symposium: Lesbian, Gay, Transgender Youth: Family Approaches.
- 2009: Division of Psychoanalysis APA Annual Meeting, San Antonio: Panel Presentation: *Boys Will Be Girls, Girls Will Be Boys: Familial Effects on Children's Gender Freedom*, Panel: The Transmission of Sexism and Homophobia within the Family
- 2009: Division of Psychoanalysis APA Spring Meeting, San Antonio: Paper Presentation: *I'm a Prius: A Child Case of a Gender/Ethnic Hybrid*, Panel: The Transmission of Sexism and Homophobia within the Family, Sexualities and Gender Identities Committee Invited Panel
- 2008: Invited Speaker, Seattle Psychoanalytic Society and Institute: *The Stork Didn't Bring You, You Came From a Dish*.
- 2008: Invited Speaker, Harvard Medical School: Treating Contemporary Families: Mental Health Aspects of Alternative Reproduction, Adoption, and Parenting, Boston: *The Psychodynamics of the Contemporary Family: Mothers, Fathers, Donors, Surrogates, and Children*
- 2008: American Psychological Association Annual Convention, Boston: Paper presentation: *One Pill Makes You Boy, One Pill Makes You Girl*, Panel: Doctor, What About Pills? Psychoanalytic Thought and Medication

- 2007: Invited Speaker, St. Louis Psychoanalytic Society, *The Stork Didn't Bring You, You Came From a Dish*
- 2007: Keynote Speaker, ANZICA The Australian and New Zealand Infertility Counsellors Association, Hobart, Tasmania: *When Things Go Pear-Shaped?*
- 2007: Invited Speaker, The Fertility Conference of Australia Annual Conference, Hobart, Tasmania: *Building Strong Donor Families*
- 2006: Invited Speaker, Mothers and Fathers of Invention, IPTAR Conference, New York: *The Stork Didn't Bring Me, I Came from a Dish: Psychological Experiences of Children Conceived through Assisted Reproductive Technology*
- 2001 Invited Speaker, Division 39 Invited Roundtable, APA Annual Meeting, *Growing Up and Growing Old: Continuity and Change in the Wishes and Desires over the Course of Life*
- 2001 Invited Speaker, Division 39 Annual Spring Meeting, Santa Fe: Session on Sex and Gender, *Bending and Blending: A Developmental Perspective*
- 2000: Invited Speaker, Division 39 Annual Spring Meeting, Session on Contemporary Child Psychotherapy: *Who's in the Room and What are We Doing?*
- 1997 to present: Public Speaking, TV and Radio Appearances: Topic: *Spoiling Childhood*
- 1997: Presenter, with Dr. Anne Bernstein at Annual Conference of the Academy of Family Mediators Topic: *When the Parents Aren't the Cleavers and the Children Aren't "The Beaver": Mediation with Non-Traditional Families*
- 1997: Presenter, Round Table Discussion, Northern California Society for Psychoanalytic Psychology Topic: *Whose Oedipus? Development, Dynamics, and Identity in the 1990s.*
- 1996: Presenter, Grand Rounds, Mt. Zion Psychiatric Service Topic: *The New Silent Majority: The Underaggressive Parent*
- 1996: Presenter, Parent Association, Marin Public Schools Topic: *Harried Parents and the Haloed Child*
- 1996: Invited presenter, International Conference: The Costs of Children Sponsored by the city of Bologna, Bologna, Italy, Sept. 27-28. Topic: *The Perils of Parenthood*
- 1995: Faculty, Perspectives on Motherhood: Myths and Realities, Conference sponsored by the San Francisco Institute for Psycho- Analytic Psychotherapy and Psychology, Mills College, and the San Francisco Salon Workshop Leader: *Defining Differences: Parenthood vs. Motherhood*
- 1994: Presentation: *The Perils of Parenting: Psychological Conflicts of Child Rearing in the 1990s*, Sponsored by The Friends of the San Francisco Psychoanalytic Institute
- 1994: Workshop: *Parenting in the 90s: An Impossible Task*, Parenting University, Piedmont Adult Education, Piedmont Unified School District
- 1994: Presentation: *The Things Grandma Never Told Us: Parenting in the 90s*, Sacred Hearts School, San Francisco

- 1994: Grand Rounds: *Sex and Violence in the Nursery: Lessons from the Presidio*, Children's Hospital Medical Center, Oakland
- 1994: Presentation: *Sexual Abuse in a Preschool Setting*, Child and Adolescent Sexual Abuse Resource Center, Department of Public Health, San Francisco
- 1993: Panel member, *Sexualized Transferences: Clinical Considerations and Ethical Implications*, panel presentation at monthly meeting of California Association of Marriage and Family Therapists
- 1993: Workshop: *Disassembling and Reassembling the Family: Psychoanalytic perspectives on Evaluation and Treatment*. Co-led with Toni Heineman, D. M. H., sponsored by the Northern California Society for Psychoanalytic Psychology
- 1992: Grand Rounds: *Sex and Violence in the Nursery*, Alta Bates Medical Center Department of Psychiatry
- 1992: Panel Organizer and Presenter: *Parenting in the 1990s: A Need for a New Psychoanalytic Perspective*, sponsored by the Northern California Society for Psychoanalytic Psychology
- 1992: Discussant, *The lesbian parenting Couple--Cultural and Clinical Issues*, Conference sponsored by The Psychotherapy Institute, Berkeley, California
- 1991: Panel organizer and chair, *Object Relations Theory, Mothers, and children: A Feminist Perspective*, American Psychological Association
- 1991: Paper presentation: *Sex and Violence in the Nursery: Lessons from the Presidio*, Annual Meeting of the American Orthopsychiatric Association
- 1990: Presentation: *Death, Loss, Grief, and Trauma*, Lecture delivered to New Perspectives clinical staff and associates, a school-based mental health delivery agency
- 1990: Guest, Oprah Winfrey Show Topic: *Stressed Out Dads*
- 1989: Community Lecture: *Lessons from the Presidio: Institutional Sexual Abuse*. Sponsored by Alameda Child Abuse Council
- 1989: Community Lecture: *Effects of Removing Children from their Homes*, Sponsored by Bay Area Coalition of Child Abuse Councils
- 1988: Corresponding Faculty, the American Orthopsychiatric Association Annual Meeting
- 1988: Workshop: *Aggression and Anger in Children*, Walden School, Berkeley, California
- 1988: Workshop: *Children's Fears*, Walden School, Berkeley, California
- 1987: Numerous radio and television appearances, local and national Topic: *Men and Women Sharing the Care of their Children*
- 1985: Presentation: *When Women and Men Mother*, Family Forum Lecture Series, College of Marin
- 1984 to 1985: Professional consultation to authors of Redwook and Cosmopolitan magazines in the area of gender and adult relationships

- 1981: Guest Speaker: *Mothers and Fathers, Together and Apart*, University of California Day Care Services, Berkeley
- 1981: Panel speaker: *Motherhood and Feminism*, Conference on Feminism in the 1980s, sponsored by Stanford University
- 1977: Keynote Speaker, Palomar College Topic: *Gender Development in Young Children*
- 1977: Keynote Speaker, California Child Development Association Topic: *Sex Role Stereotyping in Preschools*
- 1974: Colloquium: *Sex Role Socialization in a Preschool Setting*, School of Social Welfare, University of California, Berkeley

**PROFESSIONAL AFFILIATIONS:**

- American Society for Reproductive Medicine
- International Association for Relational Psychoanalysis and Psychotherapy
- California Psychological Association
- Division of Psychoanalysis (Division 39), American Psychological Association
- Section II (Childhood and Adolescence) of Division 39
- Section III (Women, Gender, and Sexuality) of Division 39
- Section IX, (Psychoanalysis and Social Responsibility) of Division 39 Northern California Society for Psychoanalytic Psychology
- Council on Contemporary Families

**PUBLICATIONS AND PAPERS:**

- Gender nonconforming youth: current perspectives *Adolescent Health, Medicine and Therapeutics* 2017:8 57 67
- Promoting children's gender health: a guideline for professionals. *Carlat Report Child Psychiatry*, 7:8: 1-2, Nov/Dec 2016.
- *The Gender Creative Child*. D. Ehrensaft, New York: The Experiment, 2016.
- *The Gender Affirmative Model: A New Approach to Supporting Gender Non-Conforming and Transgender Children*, Colt Meier, Ph.D. & Diane Ehrensaft, Ph.D.(eds.), American Psychological Association Publications, in process.
- "It Takes a Gender Creative Parent" in A. Lev & A. Gottlieb (eds.), *Families in Transition: Parent Perspective in Raising the Gender Nonconforming or Trans Child* (in press).
- "Baby Making: It Takes an Egg and Sperm and a Rainbow of Genders" in Katie Gentile (ed.), *The Business of Being Made: Producing Liminal Temporalities through ARTS*, New York: Routledge, 2015.
- <http://www.wired.com/2015/07/must-put-end-gender-conversion-therapy-kids> (07/06/2015 Wired)

- Found in Transition: Our Littlest Transgender People. *Contemporary Psychoanalysis*, 50:4: 571-592, 2014.
- Psychological and medical care of gender nonconforming youth. Vance S, Ehrensaft D, Rosenthal S. M. *Pediatrics*, 2014.
- Gender Nonconforming/Gender Expansive and Transgender Children and Teens. Sherer I., Baum J., Ehrensaft D., Rosenthal S.M., *Contemp Pediatrics*, 2014.
- Child and Adolescent Gender Center: A multidisciplinary collaboration to improve the lives of gender nonconforming children and teens. Sherer I, Rosenthal SM, Ehrensaft D., Baum J., *Pediatr Rev* 33:273-275, 2012.
- “Listening and Learning from gender-nonconforming children. *The Psychoanalytic Study of the Child*, Vol. 68, 28-56, 2014 .
- “Family complexes and Oedipal circles: mothers, fathers, babies, donors, and surrogates. In M. Mann (ed.) *Psychoanalytic Aspects of Assisted Reproductive Technology*. London: Karnac, 2014.
- “From gender identity disorder to gender identity creativity: The liberation of gender nonconforming children and youth.” In E.J. Meyer and A.P. Sansfacon (eds.), *Supporting Transgender and Gender Creative Youth*. New York: Peter Lang, 2014.
- “A terrible Thing happened on the way to becoming a girl: transgender trauma, parental loss, and recovery.” In P. Cohen, M. Sossin, & R. Ruth (eds.), *Healing after Parent Loss in Childhood and Adolescence*. Lanham: Rowman & Littlefield, 2014.
- “The Gender affirmative model: what we know and what we aim to learn.” Hidalgo, M.A., Ehrensaft, D. Tishelman, A.C., Clark, L.F., Garofalo, R., Rosenthal, S.M., Spack, N.P., & Olson, J., *Human Development*, 56: 285-290, 2013.
- “Look, Mom, I’m a boy don’t tell anyone I was a girl.” *Journal of LGBT Youth*, 10:928, 2013.
- “The ‘Birth Other’ in Assisted Reproductive Technology” In M. O’Reilly-Landry (ed.), *A Psychodynamic Understanding of Modern Medicine*. London: Radcliffe, 2012.
- “From gender Identity disorder to gender identity creativity: True gender self child therapy. *Journal of Homosexuality*, 59:3, 337-356, 2012.
- *Gender Made, Gender Born*, The Experiment Press, 2011.
- “Boys will be girls, girls will be boys.” *Psychoanalytic Psychology*, 28: 4, 2011, 528548, 2011.
- “I’m a Prius.” *Journal of Gay and Lesbian Mental Health*, 15:1, 46-57, 2011.
- One Pill Makes You Boy, One Pill Makes You Girl. *International Journal of Applied Psychoanalytic Studies*, 6:1, 12-24, 2009.
- “Just Molly and Me, and “Donor Makes Three” *Journal of Lesbian Studies*, 12: 2-3, 161-178, 2008.
- “When Baby Makes Three or Four or More” *Psychoanalytic Study of The Child*, Vol. 63, 3-23, 2008.

- Guest Editor. Special Issue on Foster Care. *Journal of Infant, Child, and Adolescent Psychotherapy*, 7:2, July 2008.
- “A Child is Being Eaten: Failure, Fear, Fantasy, and Repair in the Lives of Foster Children” *Journal of Infant, Child, and Adolescent Psychotherapy*, 7:2, 100-108, 2008.
- “Raising Girlyboys: A Parent’s Perspective.” *Studies in Gender and Sexuality*, 8(3), 269-302, 2007.
- “The Stork Didn’t Bring Me, I Came From a Dish: Psychological Experiences of Children Conceived through Assisted Reproductive Technology.” *Journal of Infant, Child, and Adolescent Psychotherapy*, 6(2): 124-140, 2007.
- *Mommies, Daddies, Donors, Surrogates: Answering Tough Questions and Building Strong Families*, New York: Guilford Publications, 2005.
- Toni Heineman and Diane Ehrensaft (eds.), *Building A Home Within: Meeting the Emotional Needs of Children and Youth in Foster Care*. Baltimore: Brookes, 2005.
- “Raising Girlyboys: A Parent’s Perspective,” paper presented at the APA Division 39 Spring Meeting, Santa Fe, New Mexico, April 27, 2001.
- “Ode to Anna Freud: Intersubjectivity and Child Psychotherapy,” paper presented at APA Division 39 Spring Meeting, San Francisco, CA, April 6, 2000.
- “Alternatives to the Stork: Fatherhood Fantasies in Donor Insemination Families, *Studies in Gender and Sexuality*, Vol. 1, No. 4, 2000, 371-397.
- “The Kinderdult: The New Child Board to Conflict between Work and Family,” in Rosanna Hertz and Nancy L. Marshall (eds.), *Families and Work: Today’s Realities and Tomorrow’s Possibilities*, Berkeley, CA: University of California Press, 2000, 585-627.
- "Use the Rod/Lose the Child; Spoil the Child/Lose the Parent," paper presented at American Psychological Association Annual Meeting, August 18, 1998.
- "Alternatives to the Stork: Fatherhood Fantasies in Sperm Donor Families," paper presented at APA Division 39 Meetings, Boston, Massachusetts, April 25, 1998.
- *Spoiling Childhood: How Well Meaning Parents Are Giving Children Too Much--But Not What They Need* (Guilford Press, 1997)
- "Child Psychotherapy and Intersubjective Theory: Ode to Anna Freud," *Fort-Da, Journal of the Northern California Society for Psychoanalytic Psychology*. Spring 1998.
- Susan Bernadett-Shapiro, Diane Ehrensaft, & Jerrold Lee Shapiro, "Father Participation in Childcare and the Development of Empathy in Sons: An Empirical Study," *Family Therapy*, Volume 23, No. 2, 1996, 77-93.
- "Bringing in Fathers: The Reconstruction of Mothering," in Jerrold Lee Shapiro, Michael Diamond, & Martin Greenberg (eds.), *Becoming a Father*, New York: Springer, 1995, 43-59.
- Toni V. Heineman & Diane Ehrensaft, "The Children's Psychotherapy Project, *Fort Da, Journal of the Northern California Society for Psychoanalytic Psychology*, Vol. I., No. 2, November 1995.

- "Solomon's Child: Dilemmas in the Joint Custody Family," paper presented at the annual meeting of the American Psychological Association, August, 1993.
- "Your Majesty, the Baby: Normative Narcissism and Confused Parenting," paper delivered at annual meeting of the Division of Psychoanalysis, American Psychological Association, April 15, 1993.
- "Preschool Sexual Abuse: The Aftermath of the Presidio Case," *American Journal of Orthopsychiatry*, 62 (2), April 1992, 234-244.
- "Your Majesty the Baby: Normative Narcissism, Confused Parenting, and the Changing Concept of Childhood, paper delivered at the Northern California Society of Psychoanalytic Psychology Forum, Parenting in the Nineties: The Need for a New Psychoanalytic Perspective, May 9, 1992.
- "Sex and Violence in the Nursery," paper presented at scientific meeting of the Northern California Society for Psychoanalytic Psychology, November 1991.
- "The Reconstruction of Mothering," paper delivered at the annual meeting of the American Psychological Association, August 1991.
- "Sex and Violence in the Nursery: Lessons from the Presidio," paper delivered at the annual meeting of the American Orthopsychiatric Association, April 1991.
- "Feminists Fight (for) Fathers," *Socialist Review*, Vol. 20, No. 4, October - December 1990, 57-80.
- "When Women and Men Mother," in Karen Hansen and Ilene Philipson (eds.), *Women, Class, and the Feminist Imagination*, Philadelphia: Temple University Press, 1990, 399-430.
- "A Parent's Love for a Child: Mother-Father Differences in the Shared Parenting Family," paper presented at the annual meeting of the Division of Psychoanalysis, American Psychological Association, February, 1988.
- "Dual Parenting and the Dual of Intimacy: Mother-Father Dynamics in the Shared Parenting Family," paper delivered at the first annual Children's Hospital Alumni Association Meeting, March 1988.
- "The Experts Who Speak for the Baby Who Can't: What Behooves Them to Prove," paper delivered at the annual meeting of The American Orthopsychiatric Association, March 1988.
- *Parenting Together: Men and Women Sharing the Care of their Children*. New York: The Free Press, 1987.
- "Attachment and Androgyny: The Children of Shared Parenting," paper delivered at The annual meeting of The American Orthopsychiatric Association, March 1987.
- "Gender Issues in Clinical Work: Parenting Issues," paper delivered at the annual meeting of The American Orthopsychiatric Association, March 1987.
- "Dual Parenting and the Duel of Intimacy," in G. Handel (ed.), *The Psychosocial Interior of the Family*, New York: Aldine Press, 1985.

- *"Man, Woman, and Child: the New Shared Parenting Family."* ERIC Publications, Ann Arbor, Michigan, 1985.
- "Androgynous Men and Headstrong women: The Shared Parenting Couple," paper delivered at The Future of Parenting Conference, California State University, Chico, February 1985.
- "Dual Parenting and the Duel of Intimacy," paper delivered at the annual meeting of The American Sociological Association, August 1983.
- "When Women and Men Mother," in Joyce Trebilcot (ed.), *Mothering: Essays in Feminist Theory*, New Jersey: Littlefield, Adams, and Co., 1983.
- Book Review: Myra Liefer, "Psychological Effects of Motherhood," in *Sociology and Social Research*, Vol. 66, No. 2, January 1982.
- "When Women and Men Mother," *Socialist Review*, No. 49, January-February 1980, 3773 (reprinted in *Politics and Power*, London, England).
- "From Sex to Gender: The Hidden Curriculum in the Preschools," 1980.
- Report: Evaluation Report of the Interdisciplinary Program on Day Care and Child Development, 1977-1978, University of California, Berkeley.
- Report: Evaluation of the Interdisciplinary Program on Day Care and Child Development, 1974-1977, University of California, Berkeley.
- "We Followed Them to School One Day: Sex Role Socialization in the Preschool," in Jerome and Evelyn Oremland (eds.). *The Sexual and Gender Development of Young Children*, New York: Ballinger Press, 1977.

# Exhibit B

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- Bockting, W. (2014). The impact of stigma on transgender identity development and mental health. In Kreukels, Steensma, and De Vries (eds), *Gender dysphoria and disorders of sex development: Progress in care and knowledge*. New York: Springer.
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- D'Augelli, A.R., Grossman, A.H. & Starks, M.T. (2006). Childhood gender atypicality, victimization, and PTSD among lesbian, gay, and bisexual youth. *Journal of Interpersonal Violence*, 21:1462–1482.
- de Vries, Annelou L.C., et al. (2014). Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment. *Pediatrics* 134(4):696-704.
- de Vries, A.L. & Cohen-Kettenis, P.T. (2012). Clinical management of gender dysphoria in children and adolescents: The dutch approach. *Journal of Homosexuality*, 59(3):301– 320
- de Vries, Annelou L.C., et al. (2010) Autism Spectrum Disorders in Gender Dysphoric Children and Adolescents, *J. Autism Dev. Disord.* 2010 Aug. 40(8):930-36.

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Ehrensaft, D. (2011). *Gender Born, Gender Made: Raising Healthy Gender-nonconforming Children*. New York: The Experiment.

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Janssen, A., *et al.* (2016). Gender Variance Among Youth with Autism Spectrum Disorders: A Retrospective Chart Review. *Transgender Health* 1:63-68.

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Reisner, S.L., *et al.* (2015). Mental health of transgender youth in care at an adolescent urban community health center: A matched retrospective cohort study. *J. of Adolescent Health*, 56(3):274-279.

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION

JOHN DOE, a minor, by his parents  
and next friends, SUSAN AND  
JACK DOE,

Plaintiff,

No. 6:18-CV-102-RBD-GJK

v.

VOLUSIA COUNTY SCHOOL BOARD,

Defendant.

**DECLARATION OF ASAF ORR, ESQ.**

I, Asaf Orr, under penalty of perjury, hereby state as follows:

1. I represent John Doe and his parents, Susan and Jack Doe, in this action and am admitted *pro hac vice*. I have personal knowledge of the matters stated in this declaration and, if called as a witness, I could and would testify competently to the matters stated herein.

2. Attached hereto as Exhibit A is a true and correct copy of the Broward County Public Schools' "Policy Guidance: Transgender Procedures, Safety and Resilience."

3. Attached hereto as Exhibit B is a true and correct copy of the Montgomery, Maryland County Public Schools' "Guidelines Regarding Student Gender Identity Matters," also available at <http://www.montgomeryschoolsmd.org/uploadedFiles/departments/student-services/gender-identity-matters.pdf>.

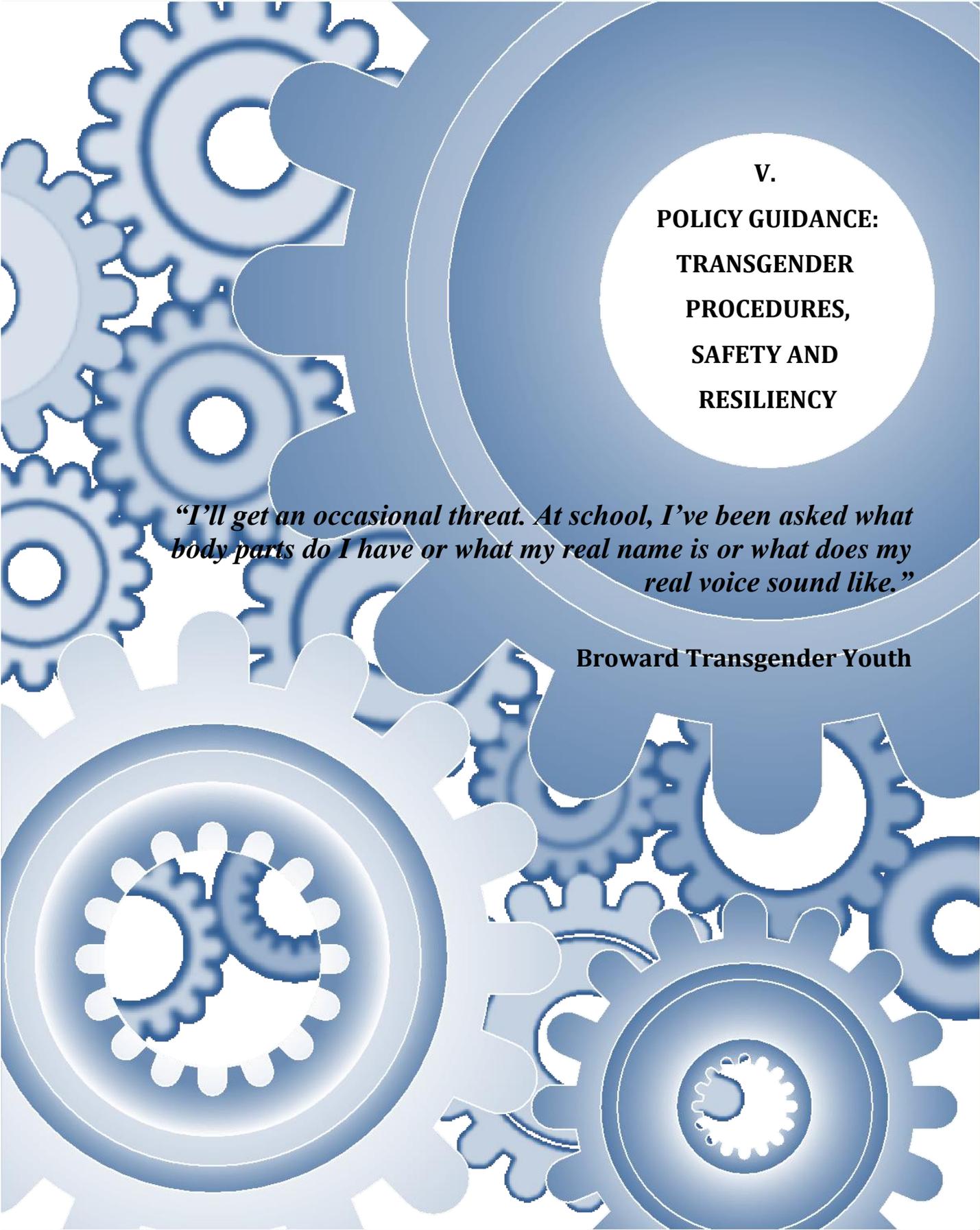
4. Attached hereto as Exhibit C is a true and correct copy of the National Association of Secondary School Principals' Position Statement regarding Transgender Students, also available at <https://nassp.org/who-we-are/board-of-directors/position-statements/transgender-students?SSO=true>.

This declaration was executed this 22nd day of February, 2018, in San Francisco County, California.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

*/s/ Asaf Orr*  
\_\_\_\_\_  
Asaf Orr, Esq.

# Exhibit A



**V.  
POLICY GUIDANCE:  
TRANSGENDER  
PROCEDURES,  
SAFETY AND  
RESILIENCY**

*“I’ll get an occasional threat. At school, I’ve been asked what body parts do I have or what my real name is or what does my real voice sound like.”*

**Broward Transgender Youth**

## Broward County Public Schools LGBTQ Critical Support Guide

**INTRODUCTION**

Broward County Public Schools (BCPS) recognizes that every child deserves an opportunity to thrive in school. We know that every student has the right to learn in a safe and accepting school environment. Supporting transgender students and families of transgender youth gives young people in our schools the equal opportunity that all students need. As visibility and awareness of transgender people increases, more parents, school administrators, support staff, teachers and healthcare providers are learning about the importance of supporting transgender students.

The expression of transgender identity, or any other form of gender-expansive behavior, is a healthy, appropriate and typical aspect of human development. When students are harassed or bullied based on their gender, or others' perceptions of it, learning often takes a backseat. Instead, students may worry about such things as bullying in the hallway, mistreatment on the school bus or which restroom to safely use. Every student who transitions at school is entitled to a safe and supportive environment in which to follow their unique path to being their authentic selves.

According to the Human Rights Campaign's resources on transgender violence ([www.hrc.org/resources/addressing-anti-transgender-violence](http://www.hrc.org/resources/addressing-anti-transgender-violence)) bullying, mistreatment or harassment toward students that are transgender or gender nonconforming is pervasive in schools across the United States. For example:

- 75% of transgender students feel unsafe at school and those who are able to persevere have significantly lower GPA's, were more likely to miss school out of concern for their safety and were less likely to plan on continuing their education
  - 59% have been denied access to restrooms consistent with their affirmed gender identity
  - 9 out of 10 transgender students report being "verbally harassed due to their gender expression" and more than half have also been "physical assaulted"
  - More than one third of transgender students report they have "heard school staff make homophobic statements, sexist remarks or negative remarks about someone's gender expression"
- 42 % of transgender people have attempted suicide

We know that there is a social system that constructs gender according to two discrete and opposite categories – male and female. Yet, this gender binary is being challenged by the population in general and our students whose innate sense of core identity is different from their assigned sex at birth. It is also being challenged by our students who are gender nonconforming and not fitting neatly into the gender binary of female or male.

## Broward County Public Schools LGBTQ Critical Support Guide

Children typically begin expressing their gender identity between the ages of two and four years old. Around this age, transgender children often express their cross-gender identification to their family members or caregivers. However, not all youth who identify as transgender begin the process at an early age; for some, gender identity is a slower, more nuanced process for a variety of personal, social, developmental and societal reasons. Creating a more welcoming environment for students' gender diversity is a more effective and lasting strategy. Broward County Public Schools is working to develop more gender-inclusive environments for all students, knowing that we are also creating more affirming spaces for transgender young people in the process.

Students and families have all kinds of needs, whether they are gifted, speak a first language other than English or are transgender. All educators have a professional, ethical and legal obligation to provide for these unique needs. Dispelling harmful stereotypes and prejudices of all kinds create spaces where every student has the opportunity to both learn and thrive. So is the case for our students who identify as transgender and gender nonconforming.

### **ACKNOWLEDGEMENTS**

The following individuals are both community and staff members of the Broward County Public Schools "Transgender Guidelines Ad Hoc Committee." Their unwavering dedication to our transgender students, staff and families helped formulate this guide's thorough scope and contents:

- Wladimir Alvarez, Director, EEO, ADA, Broward County Public Schools
- Umut Dursun, Outreach Coordinator, YES Institute
- Janette Hameister, Principal, Atlantic West Elementary, Broward County Public Schools
- Mandi Hawke, Director of Youth Services, Sunserve
- Jeanne Jusevic, Parent, Florida PTA Board of Directors, Exceptional Child Committee Chair, LGBTQ Student Inclusion Subcommittee Chair
- Michelle Kefford, Principal, Flanagan High School, Broward County Public Schools
- Darren Khan, Coordinator, Prevention Youth Services, Memorial Healthcare System
- De Palazzo, LGBTQ Coordinator, Broward County Public Schools
- Yezenia Perez, Social Worker, Lauderdale Manors Center, Broward County Public Schools

## Broward County Public Schools LGBTQ Critical Support Guide

- Todd Sussman, Privacy Officer, Risk Management Department, Broward County Schools
- Danny Tritto, Guidance Director, Broward County Public Schools
- Joseph Zolobczuk, Director of Education, YES Institute

Importantly, this guide would not be possible without the forward thinking, wisdom and work products from the following organizations, districts or documents:

- Washington District of Columbia Public Schools
- Los Angeles Unified School District
- San Francisco Unified School District
- Massachusetts Department of Elementary and Secondary Education
- State of California Transgender Guidelines
- “Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools”
- GLSEN’s Model District Policy on Transgender and Gender Nonconforming Students
- Broward County Public Schools – Principals and Assistant Principals

## **FEDERAL STATE AND LOCAL NONDISCRIMINATION AND ANTI-BULLYING POLICIES AND GUIDELINES**

The 14th Amendment guarantees all people equal protection under the law. Public school officials may be held liable for violating LGBTQ students’ constitutional rights or not intervening in anti-LGBTQ harassment.

Title IX of the Education Amendment Acts of 1972 prohibits gender-biased harassment, such as the harassment of a gender-nonconforming student. Importantly, in May of 2014, the U.S. Department of Education released historic guidelines reaffirming federal civil rights protections to transgender students. Title IX sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. In May of 2016, the Department of Education and the Department of Justice issued a “Dear Colleague Letter on Transgender Students.” This letter summarizes a school’s Title IX obligations regarding transgender students and the Department of Education and the Department of Justice determined that this letter is significant guidance. <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>

## Broward County Public Schools LGBTQ Critical Support Guide

The Florida Department of Education's Code of Ethics and Principles of Professional Conduct stresses the worth and dignity of every person. In addition, it prohibits discrimination based on sexual orientation, among other characteristics. As well, The School Board of Broward County's Policy 1.5 (Diversity Committee) urges that diversity be promoted. Furthermore, it defines "diversity" as being inclusive of sexual orientation, gender identity and gender expression.

Several local Broward County policies and ordinances specifically prohibit harassment and discrimination based on sexual orientation, gender identity and gender expression, such as: the Broward County Human Rights Act, the School Board of Broward County's Non-Discrimination Policy 4001.1 and the School Board of Broward County's Anti-Bullying Policy 5.9.

### **NAMES AND PRONOUNS**

The appropriate use of names and pronouns with transgender students is vital in creating a safe and supportive environment in the school community. Students shall have the right to be addressed by a name and pronoun corresponding to their gender identity as expressed by the individual student.

The parent(s) or guardian with legal custody of a child may also request that their child be addressed by the student's affirmed name and affirmed gender pronoun that corresponds to the student's gender identity. A court-ordered name or court-ordered gender change is not required to call the child by their affirmed name or gender pronoun. If or when there is receipt of documentation that a student has legally changed the name or gender (per Florida's requirements), the student's education records should be updated to reflect the legal change.

School personnel should privately ask a transgender student how they want to be addressed in communications to the home or at conferences with the student's parent(s)/ guardian. In addition, prior to notification of any parent(s)/guardian regarding the transition process, school staff should work closely with the student to assess the degree to which, if any, the parent(s)/guardian will be involved in the process and must consider the health, well-being and safety of the transitioning student.

School personnel should use the student's affirmed name and pronoun appropriate to a student's gender identity, regardless of the student's birth sex or birth name. **It is strongly advised that the transgender student and one designated "trusted adult" review the "Gender Support and Transition Planning Guide" together for initiating use of the**

## Broward County Public Schools LGBTQ Critical Support Guide

**affirmed name and pronoun consistent with the student’s gender identity, as well as ensuring other safety components are in place at school. The guiding questions in the planning guide act as a resource to schools. As a privacy safeguard, any documentation, notes or responses to these questions should remain in the sole possession of the trusted adult and/or school district leadership coordinator. The documentation should not be disseminated or be placed in any education records with identifiable information.**

The “Gender Support and Transition Planning Guide” is located in the appendix of the “LGBTQ Critical Support Guide.” If needed, contact the Diversity, Prevention & Intervention Department at 754.321.1655 for consultation regarding the guiding questions.

As with other related issues involved with creating a safe and supportive environment for transgender students, the best course is to engage the student and the parent(s)/guardian (especially in the case of a younger student), with respect to name and pronoun use and agree on a plan to initiate that name and pronoun use within the school. The “Gender Support and Transition Planning Guide” also could include when and how this is communicated to students and their parent(s)/guardian.

**In order to prevent alienating a student, teachers and schools should respect and work with students on a case-by-case and customized basis to ensure that their individual needs are met and respected.** Keeping in mind that there may be difficulties with making changes to names and pronouns, it is empowering and meaningful to the student who has made, or is in the process of making, the transition.

## **PRIVACY, CONFIDENTIALITY, EDUCATION RECORDS**

Generally, if a student wishes for their name to be changed at school, despite whether or not they have brought in a legal name change, selected nonacademic records should reflect their preferred name. Examples include but are not limited to: yearbook, lunch line rosters, general rosters, substitute plans, and newspapers/newsletters. Furthermore, care should be taken so that the student’s affirmed name is used in instances such as but not limited to calls for early dismissal, reporting to the clinic, etc. so potentially uncomfortable situations where the student could be misnamed or mis-gendered do not take place.

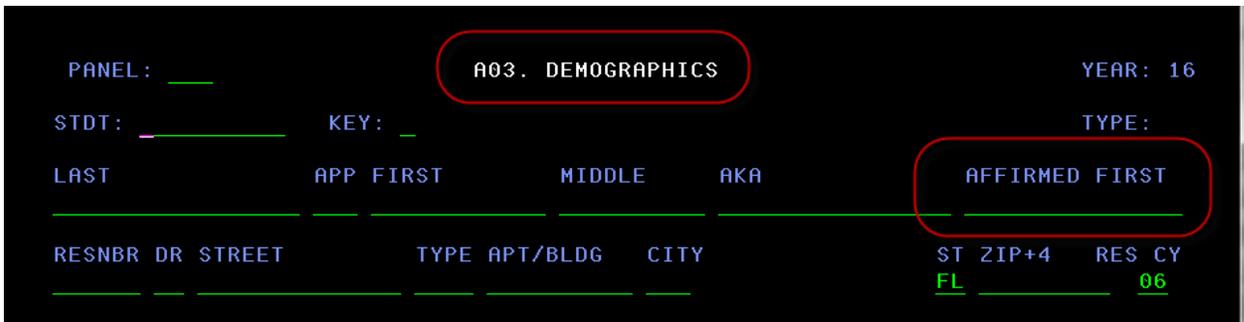
The parent or guardian with legal custody of a child may also request that their child be addressed by the student’s affirmed name and pronoun that corresponds to the student’s gender identity. As stated previously, a court-ordered name or court-ordered gender change is not required and no change is required to the student’s education records.

Broward County Public Schools LGBTQ Critical Support Guide

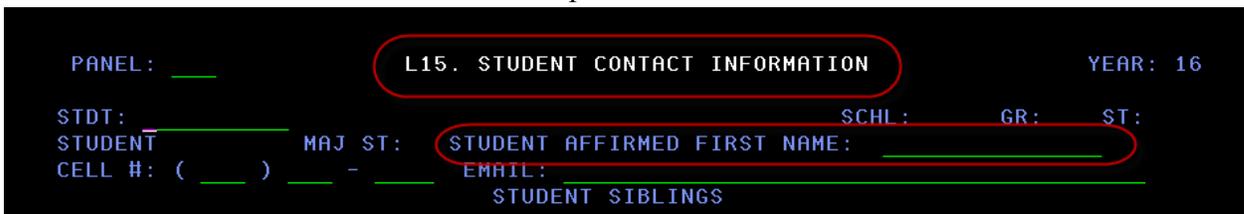
**Privacy and Electronic Databases**

A. TERMS (Total Educational Resource Management System)

If the student requests, and in the case of an elementary-aged student, the student and parent(s)/guardian requests, the affirmed name shall be entered into the District’s Student Information System to inform staff of the name to use when addressing the student. This addition to the Student Information System is facilitated by the Assistant Principal, along with a trusted adult (see Gender Support and Transition Planning Guide) and communicated to the Data Entry Clerk/IMT at the student’s school. The A-03 panel in TERMS will have a field entitled “Affirmed First,” denoting the student’s affirmed first name. See screenshot below.



The same field can also be found on the L-15 panel entitled “Student Affirmed First Name”.



Schools should enter the affirmed name on both the A-03 panel and the L-15 panel.

B. BASIS (Behavioral and Academic Support Information System)

In the student detail grids of BASIS the affirmed first name will be denoted with an asterisk (\*). The asterisk will indicate that the student’s official name is different from the student’s affirmed name. From any student grid, double click on the student’s row to bring up the student’s individual profile screen in BASIS. The Individual Student Profile Screen has a demographic section in the upper left-hand corner. In this section you will find the student’s official/birth name as well as a

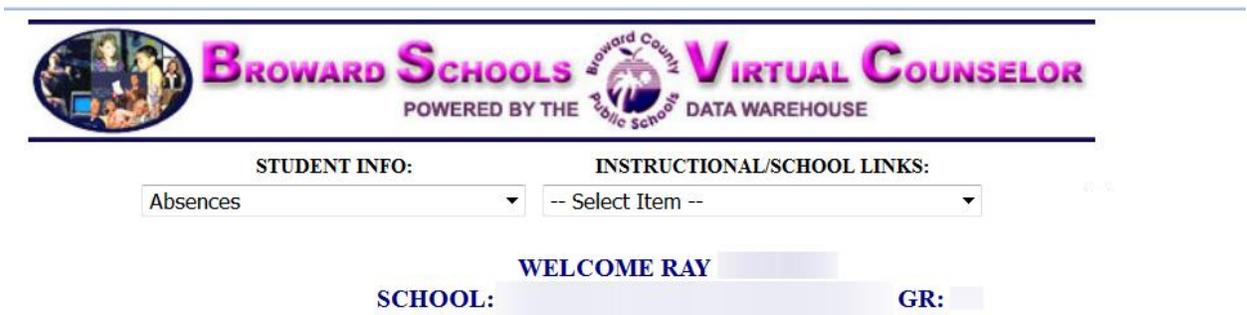
Broward County Public Schools LGBTQ Critical Support Guide

field entitled “Affirmed First Name”, which has been added for this purpose as well. See screenshot below.



C. Virtual Counselor

Virtual Counselor, a portal for students and/or parent(s)/guardian to view student information, will also list the student’s affirmed first name. See screenshot below.



D. Pinnacle

Finally, Pinnacle, an attendance and teacher gradebook tool, has not changed. Pinnacle produces Substitute Teacher Reports for attendance purposes. In order to ensure the affirmed name is a part of any substitute teacher report, the following steps should be followed by the attendance manager producing a substitute teacher report for a substitute: Go to the BCPS Data Warehouse “School Reports Menu.” Click on the “Attendance Folder.” Select the report “ATTI008 – Attendance for Substitute Teacher w/Affirmed Name”. This roster will contain the affirmed first name of the student who identifies as transgender.

**Please inform students who request their affirmed names be added to electronic databases that the parent(s)/guardian may request copies of information found on TERMS, BASIS, Virtual Counselor and Pinnacle, as these are education records.**

## Broward County Public Schools LGBTQ Critical Support Guide

Transgender students have the right to discuss and express their gender identity and expression openly and to decide when, with whom and how much to share private information, including with parent(s)/guardian. The fact that a student chooses to disclose his or her transgender status to staff or other students does not authorize school staff to disclose other medical information about the student. Broward County Public Schools follow federal laws, including The Family Educational Rights and Privacy Act (FERPA). School leadership and/or staff shall not “out” a child (*Sterling v. Borough of Minersville*, 232 F.3d. 190,196 n.4 3d Cir. 2000 and *C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 C.D. Cal. 2005), even to their own parent(s)/guardian. This could endanger both the psychological and physical safety of a child. When contacting the parent(s)/guardian, school staff should use the student’s legal name and the pronoun corresponding to the student’s gender assigned at birth unless the student has specified otherwise.

Remember, the name in the databases (TERMS, BASIS, Pinnacle and Virtual Counselor) are part of the education record and is therefore covered by FERPA. This means if parents/guardian requests access to their child’s records, they will have access to the child’s preferred name. **If a student transitioning at school is not ready to share their transgender status with their family, this should be respected. School staff should make a change socially, meaning calling the student by the affirmed name and pronoun.**

All persons, including students, have a right to privacy and this includes the right to keep one’s gender identity private at school. Information about a student’s transgender status, transition process, legal name or gender assigned at birth also constitute confidential medical information. Disclosing this information to other students and/or other students’ parent(s)/guardian or other third parties without consent of the student may violate privacy laws, such as FERPA.

**Transferring to a New School**

In the case of a transgender student enrolling at a new school, the school must respect the student’s privacy. Information about a student’s assigned birth sex, name change for gender identity purposes and gender transition, medical or mental health treatment related to gender identity, or any other information of a similar nature, is part of the education record, is confidential, and must be kept private and secure, except in limited circumstances. One circumstance is when authorized school personnel require the information to provide administrative, teaching, counseling or other services to the student in the performance of their official duties. Reminder: Please inform the parent(s)/guardian of a transgender student who is transferring to another school within or outside of the District to request the

## Broward County Public Schools LGBTQ Critical Support Guide

affirmed name be either included or deleted from the education record prior to the record being disclosed to the next school.

### **General Knowledge**

Transgender students have the right to discuss and express their gender identity and expression openly and decide when to share information, with whom and how much to share. When contacting the parent or guardian of a transgender student, school staff should use the student's legal name and the pronoun corresponding to the student's gender assigned at birth unless the student, parent, or guardian has specified otherwise. **It is strongly suggested that school personnel privately ask transgender and gender nonconforming students how they want to be addressed in communications to the home or at conferences with the student's parents/legal guardians.**

### **Dress Codes and School Uniforms**

All students shall be allowed to dress in accordance with their gender identity and gender expression, as stated in BCPS Code of Student Conduct Handbook, Section 3, and Dress Code. School dress code and uniform policies shall be gender-neutral neutral (as example, special events, graduation ceremonies, prom, etc.) and should not restrict students' clothing choices on the basis of gender or traditional stereotypes about what males and females "should" wear. All students, regardless of gender identity, shall dress within the constraints of the school's dress code as it relates to health and safety issues (e.g., prohibitions on wearing gang symbols, regalia, drugs, etc.) or the school uniform policy.

Dress code guidelines apply to regular school days as well as any special events, such as graduation ceremonies and prom. For example, schools may require formal attire for all students at a ceremony, but may not specify that girls must wear dresses and boys must wear ties.

### **Restrooms**

Students who identify as transgender shall have access to the restroom that corresponds to their gender identity asserted at school. This means that transgender students are entitled to use the restroom that matches their gender identity. When meeting with the transgender student (or student and parent(s)/guardian if a young student) to discuss transgender safety and care, it is essential the principal and student address student's access to the restroom, locker room and changing facility. Each situation needs to be reviewed, addressed and customized based on the particular circumstances of the student and the school facilities.

## Broward County Public Schools LGBTQ Critical Support Guide

In all cases, the principal should be clear with the student (and parent(s)/guardian, if appropriate) that the student may access the restroom, locker room and changing facility that corresponds to the student's affirmed gender identity.

Some transgender students may not be comfortable using sex-segregated restrooms. If so, using a safe and adequate alternative, such as a single stall, gender-neutral restroom (i.e. the office restroom, staff restroom, health office, etc.) As a proactive action, administrators should take steps to identify gender-neutral restrooms on campus. Note that a gender-neutral restroom may be used by any student at a school, transgender or otherwise, who desires increased privacy, regardless of the underlying reason, however, the single-user bathroom may not be given as the *only* option for transgender students.

### **Locker Rooms, Changing Facilities**

Transgender students can have access to the locker room that corresponds to the gender identity the student asserts at school, considering the available accommodation and the needs and privacy concerns of all students involved.

If any student has a need or desire for increased privacy or safety, regardless of the underlying reason, upon request, the student may be provided access to a reasonable alternative changing area or locker room such as:

- Use of a private area in the public area of the locker room facility (i.e., a nearby restroom stall with a door, an area separated by a curtain, or a P.E. instructor's office in the locker room.)
- A separate changing schedule (either utilizing the locker room before or after other students)
- Use of a nearby private area (i.e., a nearby restroom, office restroom or health office restroom)

School staff as well as students and/or families may find the use of restrooms and changing facilities to be among the more challenging issues presented by gender identity law and policy guidelines. **As emphasized in other sections of this guidance, these issues should be resolved on a customized case-by-case basis, through dialogue with students and/or parent (if needed), and through leadership in creating safe and supportive learning environments via the Broward County Public Schools Gender Support and Transition Planning Guide.**

## Broward County Public Schools LGBTQ Critical Support Guide

### **Day and Overnight Field Trips**

Day field trips and overnight field trips are opportunities for educational endeavors and social engagements and it is important to make sure that transgender students have both components. This can require some planning to ensure affirmed name, gender pronouns, room assignments, chaperones and showers are accurate and aligned with the student's core gender identity.

A transgender student's comfort level with sleeping arrangements will largely dictate the manner in which related issues are addressed. If students are to be separated based on gender, the transgender student should be allowed to room with peers that match their gender identity. As with other students, it is important to pair the student with peers with whom the student feels comfortable, as well as with a rooming student(s) who feels comfortable. A school should honor transgender students' requests whenever possible and make adjustments to prevent the student from being marginalized because of those alternative arrangements. Schools have an obligation to maintain the student's privacy and shall not disclose the student's transgender status to other students or parents if the student is not already out and/or did not give permission. In the case of younger-aged students (elementary), discussion should take place with the student's parent(s)/guardian (for more information see "Privacy, Confidentiality, and Education Records.")

Single stall or private shower facilities are appropriate. If there are communal shower facilities, the school should consider creating a schedule to allow the student to use the communal facilities.

### **Gender Segregation in Other Areas**

As a general rule, in any other circumstances where students are separated by gender in school activities or programs (i.e., class discussions, field trips, etc.), students shall be permitted to participate in accordance with their gender identity as expressed by the student and asserted at school. Activities that may involve the need for accommodations to address student privacy concerns will be addressed on a case by case basis. In such circumstances, staff shall make a reasonable effort to provide an available accommodation that can address any such concerns.

### **Other Gender-Based Activities, Rules, Policies and Practices**

As a general matter, schools should evaluate all gender-based rules, practices and traditions, and maintain only those that have a clear and sound pedagogical purpose. Gender-based policies, rules and practices can have the effect of marginalizing, stigmatizing and

## Broward County Public Schools LGBTQ Critical Support Guide

excluding students, whether they are gender nonconforming or not. In some circumstances, these policies, rules and practices may violate federal and state law. For these reasons, schools should consider alternatives to them. Examples include graduation gowns in different colors for males and females, lining students up by girls and boys for recess, lunch, restroom use, etc. and gender based dress for events at school, to name a few. Simple things such as calling students “students” or “scholars” instead of “boys and girls” may seem insignificant but actually make a notable difference to students who feel alienated because they many not identify as being part of either of the two binaries. Whenever students are separated by gender in school activities or are subject to an otherwise lawful gender-specific rule, policy, or practice, students must be permitted to participate in such activities or conform to such rule, policy or practice consistent with their gender identity.

### **Physical Education, Intramural Sports, Interscholastic Athletics**

Transgender students are to be provided the same opportunities to participate in physical education and sports as are all other students. Transgender students shall be permitted to participate in gender-segregated recreational physical education activities, athletic teams and competition in accordance with the student’s gender identity as expressed by the student and asserted at school.

Title IX of the Education Amendment Acts of 1971 prohibits gender-biased harassment, such as the harassment of a gender-nonconforming student. Importantly, in April of 2014, the U.S. Department of Education released historic guidelines reaffirming federal civil rights protections to transgender students. Title IX sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. This law reminds schools of the obligation to protect transgender students from sexual harassment, and informs schools that they have an obligation to train staff on appropriate interactions with transgender students. In addition, the Department of Education and the Department of Justice conjointly released a “Dear Colleague Letter on Transgender Students” in May of 2016.

Broward County Public Schools athletics are under the auspices of the Florida High School Athletics Association (FHSAA.) The FHSAA supports the participation of transgender and gender nonconforming students in all athletic activities in alignment with the Florida Department of Education’s Code of Ethics and Principles of Professional Conduct related to the worth and dignity of every person.

The FHSAA Handbook year 2012-2013 forward includes specification entitled “Gender Identity Participation” including the eligibility to participate in interscholastic athletics in a manner that is consistent with a student’s gender identity and expression, irrespective of

## Broward County Public Schools LGBTQ Critical Support Guide

the gender listed on a student's birth certificate and/or records. Review procedures are outlined in the FHSAA Handbook (<http://www.fhsaa.org/rules/fhsaa-handbook>.)

### **Student Transitions**

Not all gender-nonconforming students identify as being transgender, so transition may look very different for each student and not all people who undergo a transition desire the same outcome.

In most cases, transitioning is a very private matter. Students may choose to have their parent(s)/guardian participate in this process; however, parental/guardian participation is not required. Sometimes older students (high school or middle school) are navigating familial challenges with acceptance of a child's gender affirmation. As well, young students (typically elementary-aged, but not always) navigate the transition process with their parent/guardian.

When appropriate, schools, in particular one "trusted adult," should work closely with the student or the student and parent(s)/guardian in reviewing the "Gender Support and Transition Planning Guide" regarding the confidentiality of the student's transgender status and other safety components. The Planning Guide's guiding questions are a comprehensive tool that can assist this process. These questions provide a list of topics for a transitioning student to review with a trusted adult in the school and/or with a school administrator. Privacy considerations also may vary with the age of the student. Please see below for additional guidance specific to elementary-aged students. The responses generated from the "Gender Support and Transition Planning Guide" should be discussed only with the persons who are responsible for implementing the plan. As one example, the PE teacher should be notified that a student who had previously used a boy's locker room would move into the girl's area. The "Gender Support and Transition Planning Guide" can be found in the appendix of the "LGBTQ Critical Support Guide." **As a privacy safeguard, any generated documentation, notes or responses to the questions within the planning guide should remain in the sole possession of the trusted adult and/or school leadership team coordinator. The documentation should not be disseminated or placed in any education records with identifiable information.**

### **Developmentally Appropriate Protocols**

In order to maintain privacy and confidentiality regarding transition and gender identity, transgender students may wish—but are not required—to transition over a summer break or between grades. Regardless of the timing of a student's transition, the school shall act

## Broward County Public Schools LGBTQ Critical Support Guide

in accordance with the following developmentally appropriate protocols. **These protocols are guidelines, but each student situation should be handled according to the maturity of each individual student and the contextual situation, while still respecting that student's rights.**

### **Grades PK-5**

Generally, the parent or guardian will inform the school of an impending transition. However, it would be appropriate to approach the family of an elementary school student if school staff believes that a gender identity or expression issue is presenting itself at school and creating difficulty for the student. Together, the family and school can then identify appropriate steps to support the student. A guide of community as well as District resources can be found in the resources section of the BCPS "LGBTQ Critical Support Guide," <http://www.browardprevention.org/diversity/lgbtq>.

### **Grades 6-12**

Notifying parent(s)/guardians who are unaware or not on board carries risks for the student. For example, some parents who are not accepting may force the child to leave home. **Prior to notification of any parent or guardian regarding the transition process, school staff should work closely with the student to assess the degree to which, if any, the parent(s) or guardian will be involved in the process and must carefully consider the health, well-being and safety of the transitioning student.**

When a student transitions during the school year, the school shall hold a meeting with the student and parent(s)/guardian, if they are involved in the process, to ascertain their desires and concerns. The school should discuss a timeline for the transition in order to create the conditions supporting a safe and accepting environment at the school. Finally, it is recommended that the school sensitize and train school administrators and any educators that interact directly with the student on the transition plan, timelines for transition and any relevant legal requirements.

### **Education and Training**

In order to further facilitate a safe and supportive school environment for all students, the BCPS Diversity, Prevention & Intervention Department will incorporate education and training about transgender and gender nonconforming students into their anti-bullying curriculum, student leadership trainings and staff professional development.

## Broward County Public Schools LGBTQ Critical Support Guide

As with other efforts to promote positive school culture, professional development for school staff could include topics on gender identity and gender nonconformity such as the detailed information in BCPS “ Policy Guidelines: Transgender Procedures, Safety and Resiliency” located in the “LGBTQ Critical Support Guide,” key terms related to gender identity and expression and the development of gender identity. As well, professional development could include experiences of transgender and other gender nonconforming students, risk and resilience data regarding transgender and gender nonconforming students, ways to support transgender students and to improve the school climate for gender nonconforming students and gender-neutral language and practices.

An exemplary guide for understanding and supporting students who identify as transgender is “Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools” and can be found at [http://www.nea.org/assets/docs/Schools\\_in\\_Transition\\_2015.pdf](http://www.nea.org/assets/docs/Schools_in_Transition_2015.pdf). Also, [www.genderspectrum.org](http://www.genderspectrum.org) has information about transgender and gender nonconforming children. These sites may offer you more knowledge about transgender and gender variant children, both in school and in general.

### **A Note about Adults (Staff, Parent/Guardians and Caretakers) Who May Be Transgender**

As with young people, there may be adults who identify as transgender and transition may look very different for each staff member, parent(s)/guardian or school visitor. Not all people who undergo a transition desire the same outcome. Staff members, parents, guardians or caretakers in our schools also have the right to keep their transgender identity private and confidential, be addressed by the name and pronoun that correspond to their gender identity and dress in accordance with their gender identity. They also have the right to use the bathrooms and locker rooms that match their gender identity.

### **Outside Media and Community Communication**

Media inquiries about issues related to gender identity should be referred to the BCPS Public Information Office. Rather than directly commenting on the issue, BCPS staff should direct inquiries from families or the immediate school community to the principal.

## Broward County Public Schools LGBTQ Critical Support Guide

### **Conclusion**

One cannot anticipate every situation in which questions may come up in the implementation of transgender procedures. The needs of each transgender or gender nonconforming student should be assessed and addressed on a case-by-case basis. Broward County Public Schools Diversity, Prevention & Intervention Department will continue to provide assistance, support and resources as we work together to create a safe and supportive school environment for all students.

- For further information or questions about the content of this guidance, contact the BCPS Diversity, Prevention & Intervention Department, 754.321.1655.
- For questions regarding privacy of education records, contact the Privacy Officer, BCPS Risk Management Department, 754.321.1900
- For questions that a school-based Data Entry Clerk/IMT may have about entering information in BCPS Student Information System, contact your school's Assistant Principal.
- For questions regarding consultation about LGBTQ and transgender needs, contact the LGBTQ Coordinator, BCPS Diversity, Prevention & Intervention Department at 754.321.1655.

The School Board of Broward County's Non Discrimination Policy Statement 4001.1 states, in part: The School Board of Broward County, Florida...shall not discriminate against students, parents or guardians of students, employees, applicants, contractors, or individuals participating in School Board sponsored activities. The School Board is committed to the provision of equal access...This policy is established to provide an environment free from discrimination and harassment based upon age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation.

Broward County Public Schools LGBTQ Critical Support Guide

Broward County Public Schools LGBTQ Critical Support Guide

## **GENDER SUPPORT AND TRANSITION PLANNING GUIDE**

### **Introduction**

Our district is committed to honoring the rights of transgender students. Indeed, our own Nondiscrimination Policy Statement (Policy 4001.1) includes gender identity, gender expression, sex and sexual orientation in the list of categories for which discrimination and harassment are prohibited.

These questions, a resource to schools, can be used as a planning guide for school leadership teams or a trusted adult to create shared understanding about the ways in which a student's authentic gender will be supported at school. As a privacy safeguard, any documentation, notes or responses to these questions should remain in the sole possession of the trusted adult and/or school leadership team coordinator. These guiding questions should not be disseminated or placed in any education record (hard copy or electronic) unless the student gives consent.

This is our first version of the "Gender Support and Transition Planning Guide" As the needs and safety of transgender individuals evolve and future versions of these guiding questions are written, we ask that you share your feedback and any other information you might find helpful to include in this document. For further questions or comments, contact Diversity, Prevention & Intervention Department, LGBTQ Coordinator, 754.321.1655.

U.S. Department of Justice and U.S. Department of Education "Dear Colleague Letter on Transgender Students" May 13, 2016

### **Parent/Guardian Involvement**

#### **Does the student or has the student:**

- Have a parent/guardian who is aware and supportive of the student's gender transition?
- Discussed how communication will take place with parent/guardian when using student's name and gender?
- Have siblings at the school?

### **Confidentiality, Privacy, Disclosure**

#### **Does the student or has the student:**

- Agreed to disclose her/his transgender identity?
- With whom? (Parent/guardian, school site level leadership, support staff, direct contact teachers, teachers and staff, some students, all students, other)

## Broward County Public Schools LGBTQ Critical Support Guide

### **Student Safety**

#### **Does the student or has the student:**

- Have a “trusted adult” on campus?
- Have a person to go to if the “trusted adult” is not available?
- Have a support group on campus (e.g. Gay-Straight Student Alliance, Counseling Support Group, etc.)?
- Have a process for periodically checking in with an adult?

### **Names, Pronouns, Student Records**

#### **Does the student or has the student:**

- Asked for affirmed name to be used when addressing the student?
- Asked for affirmed gender pronoun be used when addressing the student?
- Verbally agreed to allow her/his “Affirmed Student First Name” be a part of TERMS, BASIS, Pinnacle and Virtual Counselor. Note: Please inform the student that parent(s)/guardian have the right under The Family Educational Rights and Privacy Act (FERPA) to review education records, including information stored on electronic databases
- Have a “trusted adult” who will ensure these adjustments are made and communicated as needed?

As a reminder, the District maintains birth name on education records, including:

- Registration
- Report cards
- Diploma
- Standardized tests
- Student cumulative file
- IEPs
- Before and after school program forms

Schools post or distribute other types of information as communication tools. These documents are allowed to contain the student’s affirmed name. They include:

- Substitute teacher’s roster
- School photos
- Lunch line
- Taking attendance
- Yearbook
- Student ID and library cards
- Posted lists
- Newspapers and newsletters

## Broward County Public Schools LGBTQ Critical Support Guide

- Calling student to office
- PA announcements
- Announcements at assemblies

### **Have the student and you spoke about:**

- Whether or not the parent(s) guardian is aware of the student's gender status?
- Whether or not the student's gender status is supported by the parent(s)/guardian?

### **Use of Restrooms**

#### **Does the student or has the student:**

- Spoken with you about the restroom(s) s/he will use on campus?
- Know who to go to if there are questions or concerns about the restrooms?

### **Extracurricular Activities**

#### **Does the student or has the student:**

- Spoken with you about activities or programs such as after school, theatre, sports, clubs, etc.?
- Know the steps for gaining support, if needed?

### **Overnight Field Trips**

#### **Does the student or has the student:**

- Spoken with you about if the student is out at school, out with particular students only, or out with parent(s)/guardian?
- Spoken with you about which roommates are being requested for field trips, if any?

Information in this document was adapted from:  
"Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools"  
by *Gender Spectrum*

The School Board of Broward County's Non Discrimination Policy Statement 4001.1 states, in part: The School Board of Broward County, Florida...shall not discriminate against students, parents or guardians of students, employees, applicants, contractors, or individuals participating in School Board sponsored activities. The School Board is committed to the provision of equal access...This policy is established to provide an environment free from discrimination and harassment based upon age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation.



Broward County Public Schools LGBTQ Critical Support Guide

# Exhibit B

## **Montgomery County Public Schools Guidelines Regarding Student Gender Identity Matters<sup>1</sup>**

It is important that all staff members and students recognize and respect matters of gender identity including students who identify as transgender or gender nonconforming, and such students should feel comfortable expressing their gender identity. To the extent practicable, Montgomery County Public Schools (MCPS) will accommodate requests regarding gender identity and endeavor to protect student privacy and confidentiality. MCPS is committed to a safe, welcoming school environment where students are engaged in learning and are active participants in the school community because they feel accepted and valued. In accordance with the Montgomery County Board of Education's core values, the following guidelines, which are aligned with recently issued guidance from the Maryland State Department of Education<sup>2</sup> and Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*, set forth the systemwide expectation that discrimination, stigmatization, and bullying will not be tolerated. These guidelines cannot anticipate every situation which might occur. Consequently, the needs of each student must be assessed on a case-by-case basis.

### **Goals**

- Support students so they may participate in school life consistent with their asserted gender identity;
- Respect the right of students to keep their gender identity or transgender status private and confidential;
- Reduce stigmatization and marginalization of transgender and gender nonconforming students;
- Foster social integration and cultural inclusiveness of transgender and gender nonconforming students; and
- Provide support for staff members to enable them to appropriately and consistently address matters of student gender identity.

### **Definitions**

The definitions provided here are not intended to label students but rather to assist in understanding transgender and gender-nonconforming students. Students might or might not use these terms to describe themselves.<sup>3</sup>

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<sup>1</sup> Related Montgomery County Board of Education Policies and MCPS Regulations: ACA, ACF, JHF, JHF-RA, ACA-RA, ACF-RA.

<sup>2</sup> For more information and lists of additional resources, see: Maryland State Department of Education, *Providing Safe Spaces for Transgender and Gender Non-Conforming Youth: Guidelines for Gender Identity Non-Discrimination* (October 2015), available at: [marylandpublicschools.org/about/Documents/DSFSS/SSSP/ProvidingSafeSpacesTransgendergenderNonConformingYouth012016.pdf](http://marylandpublicschools.org/about/Documents/DSFSS/SSSP/ProvidingSafeSpacesTransgendergenderNonConformingYouth012016.pdf).

<sup>3</sup> Definitions were informed by the following sources: American Psychological Association; Maryland State Department of Education; Maryland Public Secondary Schools Athletic Association; National School Boards Association; National Collegiate Athletic Association; Massachusetts Department of Elementary and Secondary Education; New York City Department of Education; California School Boards Association; Howard County Public Schools; District of Columbia Public Schools; Chicago Public Schools; Gay, Lesbian & Straight Education Network; Lambda Legal; and American Civil Liberties Union.

- Agender: Without a gender (also nongendered, genderless).
- Sex assigned at birth: the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- Gender identity: A person's deeply held internalized sense or psychological knowledge of the person's own gender. One's gender identity may be the same as or different from the sex assigned at birth. Most people have a gender identity that matches their sex assigned at birth. For some, however, their gender identity is different from their sex assigned at birth. All people have gender identity, not just transgender people. For the purposes of this guidance, a student's gender identity is that which is consistently asserted at school.
- Gender expression: The manner in which a person represents or expresses gender to others, often through behavior, clothing, hairstyles, activities, voice, speech and word choices, or mannerisms.
- Transgender: An adjective describing a person whose gender identity or expression is different from that traditionally associated with the person's sex assigned at birth. Other terms that can have similar meanings are "transsexual" and "trans."
- Gender-nonconforming: A term for people whose gender expression differs from conventional or stereotypical expectations, such as "feminine" boys, "masculine" girls, and those whose gender expression is androgynous. This includes people who identify outside traditional gender categories or identify as two or more genders. Other terms that can have similar meanings include "gender diverse" or "gender expansive."
- Transition: The process in which a person changes the person's gender expression to align with the person's gender identity. In order to feel comfortable and to express their gender identity to other people, transgender people may take a variety of steps (e.g., using a nickname or legally changing their names and/or their sex designation on legal documents; choosing clothes and hairstyles that reflect their gender identity; and generally living, and presenting themselves to others, consistently with their gender identity). Some, but not all, transgender people take hormones or undergo surgical procedures to change their bodies to align with their gender identity.
- Cisgender: A person whose gender identity and gender expression align with the person's sex assigned at birth; a person who is not transgender or gender-nonconforming.

### ***Proactively Working with Transgender and Gender-Nonconforming Students***

- The principal (or designee) in collaboration with the student, and the student's family (if the family is supportive of the student), should develop a plan to ensure that a student has equal access and equal opportunity to participate in all programs and activities at school and is otherwise protected from gender-based discrimination at school. Schools should use MCPS Form 560-80: *Intake Form: Supporting Students, Gender Identity* (Attachment A-1) to support this process.
- Each student's needs should be evaluated on a case-by-case basis, and all plans should be evaluated on an ongoing basis and revised as needed. As a part of the plan, schools should identify staff members who will be the key contact(s) for the student. The plan should delineate how support will be provided and how and to whom information will be disseminated. In addition, each plan should address preferred name, pronouns, athletics, extracurricular activities, locker rooms, bathrooms, safe spaces, zones and other safety supports, and formal events such as graduation.

- Prior to contacting a student's parent/guardian, the principal or identified staff member should speak with the student to ascertain the level of support the student either receives or anticipates receiving from home. In some cases, transgender and gender-nonconforming students may not openly express their gender identity at home for reasons such as safety concerns or lack of acceptance. Matters of gender identity can be complex and may involve familial conflict; if this is the case and support is required, the Office of School Support and Improvement or the Office of Student and Family Support and Engagement (OSFSE) should be contacted.

### ***Privacy and Disclosing Information***

- All students have a right to privacy. This includes the right to keep private one's transgender status or gender-nonconforming presentation at school.
- Information about a student's transgender status, legal name, or sex assigned at birth may constitute confidential medical information. Disclosing this information to other students, their parents/guardians, or third parties may violate privacy laws, such as the federal Family Educational Rights and Privacy Act (FERPA).
- Schools should ensure that all medical information relating to transgender students are kept confidential in accordance with applicable state, local, and federal privacy laws.
- Please note that medical diagnosis, treatment or other documentation are **not** required in order for a school to accommodate requests regarding gender identity.
- Transgender and gender-nonconforming students have the right to discuss and demonstrate their gender identity and expression openly and decide when, with whom, and how much to share private information. The fact that students choose to disclose their status to staff members or other students does not authorize school staff members to disclose students' status to others, including parents/guardians and other school staff members, unless legally required to do so or unless students' have authorized such disclosure.

### ***Names/Pronouns***

- Students should be addressed by school staff members by the name and pronoun corresponding to the gender identity that is consistently asserted at school. Students are not required to obtain a court-ordered name and/or sex designation change or to change their student records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity. To the extent possible, and consistent with these guidelines, school personnel should make efforts to maintain the confidentiality of the student's transgender status.
- Whenever schools are not legally required to use a student's legal name or sex assigned at birth on school records and other documents, the school should use the name and gender preferred by the student, including using students' preferred name for classroom rosters, identification badges, announcements, certificates, newspapers, newsletters, and yearbooks.

### ***Official Records***

- Schools are required to maintain a permanent student record for each student, which includes the legal name and gender of the student. In situations where schools are required the use the legal name and gender from a student's permanent record, such as for standardized tests or reports to the Maryland State Department of Education (MSDE), school staff members and administrators shall adopt practices to avoid the inadvertent disclosure of the student's legal name and gender when it differs from the student's preferred name and gender.

- A student's permanent record should be changed to reflect a change in the student's legal name or gender upon receipt of documentation that such legal name and/or gender have been changed pursuant to a court order, new birth certificate, through state or federally issued identification, or with documentation from a licensed healthcare practitioner. If a student and/or the student's parent/guardian requests a change to the student's permanent record absent such documentation, the school should contact OSFSE.
- The school should provide a means to protect the student's previous identity once a change to a student's legal name and/or gender has occurred and store the prior records where they are not easily accessible to staff members who have no need to see them.
- Unless the student or parent/guardian has specified otherwise, school staff members, when contacting the parent/guardian of a transgender student, should use the student's legal name and pronoun corresponding to the student's sex assigned at birth.

### *Dress Code*

- Transgender and gender non-conforming students have the right to dress in a manner consistent with their gender identity or gender expression as long as it complies with the MCPS dress code. School staff members shall not enforce a school's dress code more strictly for transgender or gender-nonconforming students than for other students.
- Schools should consider gender neutral dress codes for class or yearbook photos, honor society ceremonies, graduation ceremonies, or dances.

### *Gender-Based Activities*

- Schools should evaluate all gender-based policies, rules, and practices and maintain only those that have a clear and sound pedagogical purpose. Whenever students are separated by gender in school activities or are otherwise subject to an otherwise lawful gender-specific rule, policy, or practice, students must be permitted to participate consistent with their gender identity.

### *Gender-Separated Areas*

- Where facilities are designated by gender, students **must** be provided access to gender-specific facilities (e.g., bathrooms, locker rooms, and changing rooms) in alignment with their consistently asserted gender identity.
- Any student who is uncomfortable using a shared facility because of safety, privacy, or any other reason, should upon request, be provided with a safe and non-stigmatizing alternative arrangement such as a single bathroom, or with regard to locker rooms, a privacy partition or curtain in changing areas, use of a nearby private restroom or office, or a separate changing schedule. The student should be provided access in a manner that safeguards confidentiality.
- Students who are entitled to use a facility consistent with their gender identity cannot be required to use an alternative arrangement. Alternative arrangements should be used only at the request of a student and in a manner that keeps the student's transgender status confidential.
- Some students may feel uncomfortable with a transgender student using the same sex-specific facility. This discomfort is not a reason to deny access to the transgender student. School administrators and counseling staff members should work with students to address the discomfort and to foster understanding of gender identity and to create a school culture that respects and values all students.
- New Construction/Renovation:

- If existing facilities do not meet the requirements of school administration to provide a gender-neutral facility for students, schools should work with Department of Facilities Management to develop facility plans, which could include renovation of existing facilities.
- Taking into account student safety considerations, the Department of Facilities Management should work to design gender-neutral bathroom facilities that are for student/public use.
- To the extent feasible, MCPS should build at least one gender-neutral restroom on each floor and in high-traffic areas.
- To the extent feasible, MCPS should incorporate at least one gender-neutral changing facility into the design of new schools and school renovations, taking into account safety and confidentiality considerations in the design and location of the gender-neutral facility.

### ***Physical Education Classes and Intramural Sports***

- Whenever the school provides gender-segregated physical education classes and intermural sports, students must be allowed to participate in a manner consistent with their gender identity.

### ***Interscholastic Athletics***

- Student participation in interscholastic athletics is determined in accordance with Maryland Public Secondary Schools Athletic Association (MPSSAA) policies and guidelines (Attachment A-1 and available online at [www.mpssaa.org/assets/1/6/MPSSAA\\_Transgender\\_Guidance\\_revised\\_8.16.pdf](http://www.mpssaa.org/assets/1/6/MPSSAA_Transgender_Guidance_revised_8.16.pdf)).
- Per MPSSAA guidance and to ensure competitive fairness, the integrity of women's sports, and equal opportunities to participate without discrimination, transgender and gender-nonconforming students in MCPS shall be permitted to participate on the interscholastic athletics team of: (a) the student's sex assigned at birth; (b) the gender to which the student has transitioned; or (c) the student's asserted gender identity, as established in their school records (excluding records required by law to maintain legal name and gender).
- Schools should refer any appeals regarding eligibility to participate in interscholastic athletics to the MCPS Athletics Unit.
- Competition at other schools: accommodations provided at the home school should be made available at other facilities with the consent of the student and as part of the student's plan. The coach or home school should notify the school to be visited about any necessary accommodations, keeping the identity of the student confidential.

### ***Outdoor Education/Overnight Field Trips***

- Students must be allowed to participate consistent with their asserted gender identity.
- Sleeping arrangements should be discussed with the student and family (if the family is supportive of the student). Upon request, the student should be provided with a safe and non-stigmatizing alternative arrangement, such as a private sleeping area if practicable.
- Schools should try to accommodate any student who may desire greater privacy, if practicable, without isolating other students.
- A student's transgender status is confidential information and school staff members may not disclose or require disclosure of a student's transgender status to other students or their parents/guardians in connection with a field trip without the consent of the student and/or the student's parent/guardian.

***Bullying and Harassment***

- MCPS Board Policy JHF and MCPS Regulation JHF-RA on Bullying, Harassment, or Intimidation are available on the MCPS website at: [www.montgomeryschoolsmd.org/departments/policy/section.aspx?sectionID=10](http://www.montgomeryschoolsmd.org/departments/policy/section.aspx?sectionID=10) (Attachment A-2).
- Bullying and harassment include conduct that is directed at a student based on a student's actual or perceived gender identity or expression, and includes conduct that targets a student because of a characteristic of a friend, family member, or other person or group with whom a student associates.
- Complaints alleging discrimination or harassment directed at a student based on a student's actual or perceived gender identity or expression should be handled in the same manner as other discrimination or harassment complaints. Schools should be vigilant about bullying and harassment and address it.
- School staff members should take all reasonable steps to ensure safety and access for transgender and gender-nonconforming students at their school and support students' rights to assert their gender identity and expression.
- Students shall not be disciplined on the basis of their actual or perceived gender identity or expression.

***Safe Spaces***

- Hallway or "Flash" Pass: If needed, schools should allow a transgender or gender-nonconforming student to go to a safe space (e.g., main office, counselor's office) at any time the student encounters a situation that feels unsafe or uncomfortable.
- Safe Zones: Schools should designate certain teachers' classrooms, specific offices, or a location in a school that is deemed a safe zone where any student, for whatever reason, may go to be free from judgment and to feel comfortable and safe.

Revised 8/3/17

# Exhibit C



## TRANSGENDER STUDENTS

Home (/) > Who We Are (<https://nassp.org/who-we-are>) > Board of Directors (<https://nassp.org/who-we-are/board-of-directors>) > Position Statements (<https://nassp.org/who-we-are/board-of-directors/position-statements>) > Transgender Students (<https://nassp.org/who-we-are/board-of-directors/position-statements/transgender-students>)

### Purpose

To acknowledge concerns related to marginalization and institutional bias associated with transgender students; state the association's opposition to legislation and policies that discriminate against transgender students; and to provide recommendations for federal, state, and local policymakers and school leaders on how to better support transgender students in the K-12 education system.

### Issue

According to the American Psychological Association, "transgender" is an umbrella term that incorporates differences in gender identity wherein one's assigned biological sex doesn't match their felt identity (American Psychological Association, 2015). While transgender students are a small percentage of the overall student population in middle and high schools, there seems to be an increasing number of children transitioning in this age group and a greater awareness of transgender issues among principals.

Unfortunately, a climate conducive to the educational success of transgender students remains elusive in many schools. In an annual survey of more than 7,000 students ages 13--21, the Gay, Lesbian & Straight Education Network (GLSEN) found that transgender students were more likely than any other students to have negative experiences at school and were more likely to have felt unsafe and to experience victimization based on their gender identity or expression. The survey also indicated that 42.2% of transgender students had been prevented from using their preferred name, 59.2% had been required to use a bathroom or locker room of their legal sex, and 31.6% had been prevented from wearing clothes considered inappropriate based on their legal sex.

Fourteen states and the District of Columbia have enacted laws to explicitly prohibit such discrimination in schools based on real or perceived gender identity or expression. While no such federal law exists, courts and the U.S. Department of Education's Office for Civil Rights (OCR), as well as the U.S. Department of Justice's Civil Rights Division, issued significant guidance in May 2016 asserting that Title IX prohibition against sex discrimination encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. The guidance addresses a school's responsibility to provide a safe and nondiscriminatory environment for all students and outlines a school's obligations regarding identification documents and pronouns, sex-segregated activities and facilities, and privacy and education records. In conjunction with the guidance, the Office of Elementary and Secondary Education released a document providing examples of policies and emerging practices for supporting transgender students. Many states have also adopted eligibility rules that explicitly permit transgender students to participate in school sports consistent with their gender identity.

Nonetheless, state legislatures are increasingly considering legislation that discriminates against transgender individuals with a particular focus on students in K-12 public schools. The Human Rights Campaign reported in February 2016 that 44 anti-transgender bills had been filed in 16 states; more than double the amount in 2015. Twenty-three of the bills are targeted specifically at children in schools, including legislation regarding school sports and public school facilities. In March 2016, North Carolina became the first state to pass a bill that requires transgender students to access restrooms, locker rooms, and shower rooms in accordance with the sex on their birth certificate. Similar bills reached the governor's desk in South Dakota and Georgia, but were eventually vetoed.

### **Guiding Principles**

The Professional Standards for Educational Leaders adopted in October 2015 state that effective educational leaders strive for equity of educational opportunity and culturally responsive practices to promote each student's academic success and well-being.

Students should be able to enter school free of judgment from school officials and their peers. Therefore, the principal must provide an affirming school environment where each student is treated fairly, respectfully, and with an understanding of each student's culture and context.

Principals influence the school culture in profound ways, specifically in the values they emphasize and the behaviors they reinforce.

The principal's primary responsibility is to create and sustain a school environment in which each student is known, accepted and valued, trusted and respected, cared for and encouraged to be an active and responsible member of the school community.

The principal also must support a school environment where diversity is valued and accepted and where students from diverse backgrounds and identities are affirmed, supported, and assured equitable educational opportunities and access to school and community-based support services.

### **Recommendations for Federal Policymakers**

- Enact legislation to provide a comprehensive federal prohibition of discrimination in public schools based on actual or perceived sexual orientation and gender identity.
- Periodically review and update guidance that strongly affirms the protections transgender students are afforded under Title IX and provide schools with recommendations on best practices to ensure they are not discriminating against transgender youth and/or their parents or guardians.
- Fully fund Title IV, Part A of the Elementary and Secondary Education Act to improve school conditions for student learning through school based mental health services, bullying and harassment prevention programs, and schoolwide positive behavioral interventions and supports.
- Extend the Qualified School Construction Bond and Qualified Zone Academy Bond programs to continue their important financial support to build, renovate and modernize schools across America.
- Promote policies for student information records that respect transgender students' need for privacy throughout the P-20 education continuum.

### **Recommendations for State Policymakers**

- Oppose any attempt to introduce or pass legislation aimed at discriminating against transgender students, including bills aimed at restricting the use of restrooms or locker rooms and participation in sports and other school activities that correspond with a student's gender identity.
- Align and adjust records policies to eliminate provisions that prevent school leaders from respecting a student's gender identity on their formal record.
- Provide for a sufficient number of school counselors, school psychologists, and school social workers to support safe and welcoming school environments, provide school-based interventions, and coordinate mental health and wellness services for students and their families.
- Provide funding for new school construction and maintenance that will help schools update their facilities to include gender-neutral restrooms, locker rooms and shower rooms.

## Recommendations for District Policymakers

- Ensure that district policies on bullying and harassment specifically protect students based on real or perceived gender or gender identity.
- Review the GLSEN Model District Policy on Transgender and Gender Nonconforming Students and revise district policies if needed.
- Develop policies and protocols for maintaining correct data for transgender students in the district student information system regardless of the student's legal name or gender marker.
- Provide support for the unique privacy needs of transgender students so they can comfortably participate in field trips, overnight trips, and other school activities.
- Provide ongoing professional development for principals, teachers, and other school staff to increase awareness of transgender issues in schools; create a school climate that avoids gender stereotyping and affirms the gender identity of all children; and to prevent, identify and respond to bullying, harassment and discrimination.
- Ensure that school counselors, school psychologists and school social workers receive specialized training on understanding and responding to the needs of transgender students.
- Assist schools to update their facilities to include gender-neutral restrooms, locker rooms and shower rooms.
- In the annual notices sent to all parents at the beginning of the school year, include a disclosure stating that the district allows students to participate in sex-segregated school programs and activities consistent with their gender identity or expression.
- Widely disseminate the district's nondiscrimination policy and also make it readily accessible to students and parents on the district and schools' websites and in policy manuals available in school offices.

## Recommendations for School Leaders

- Familiarize yourself with the newly released Title IX guidance and state and district policies regarding transgender students and consult your school or district attorney should you have any questions or concerns.
- Advocate for school district policies that include protections for transgender students if those policies are not currently in place.

- Model and set expectations for students, staff, and parents about how to build a positive school culture where all students feel included and respected, regardless of their gender identity or gender expression.
- Provide training to student leaders so that they are able to communicate and model respect for the gender identity of all students.
- Support student clubs that promote gender inclusiveness and display supportive signs and posters in the school.
- Ensure that all incidents of discrimination, harassment or violence are thoroughly investigated and that appropriate actions are taken.
- Regularly administer a school climate survey of students, parents, and school personnel, and use the data to improve school conditions for all stakeholders.
- Remind your staff, students, parents and community members of the need to support the rights of all students-including transgender students-and that diminishing those rights runs contrary to the values of the school. A student's gender identity or expression is one such right, which should be respected-regardless of whether the student has begun the medical process of gender transition-especially in:
  - Privacy: Unless the student chooses to disclose certain information, his or her transgender status, legal name or sex assigned at birth is confidential medical information and considered "personally identifiable information" under the Family Educational Rights Privacy Act (FERPA). Disclosure of that information to other school staff or parents could violate the school's obligations under FERPA or constitutional privacy protections.
  - Name and pronouns: All school staff should use the student's preferred name and pronoun, which is a sign of respect to the student and affirms his or her gender identity. Documents with the student's birth name should not be circulated, and principals should follow the lead of other school districts that have found solutions to comply with recordkeeping and reporting requirements while also meeting their obligations to safeguard the student's privacy.
  - Dress: Transgender students have the right to dress in a manner consistent with their gender identity or gender expression as long as it complies with the school or district dress code.
  - Restrooms and locker rooms: Unless the student has a preference for another option, transgender students have the right to use the restroom and locker room consistent with their gender identity or gender expression. School leaders should do their best to address the needs of their school community and should provide a private facility, such as a single-occupancy restroom or changing

station, or privacy curtains for any student who feels uncomfortable in the restroom or locker room.

- Physical education and interscholastic athletic activities: Unless your state athletics association has established other rules, transgender students should be allowed to participate in school sports, and health and physical education classes consistent with their gender identity. Enrolling them in the wrong class could disclose their transgender status and be a violation of their privacy.
  - Overnight field trips: Transgender students should have the opportunity to room with peers that match their gender identity, and schools should try to pair the transgender student with peers with whom there is a mutual level of comfort. The school should also honor requests for alternative sleeping arrangements if that is the transgender student's preference.
- School traditions: Transgender students should be allowed to participate in all school traditions, such as homecoming court, in the gender category that matches their gender identity or gender expression.
  - If a student or his or her parent notifies the administration of the decision to transition during the school year, convene a meeting with the student and parents (if they are involved in the process) to discuss their preferences and any concerns to help find solutions that are in the best interest of the entire school community; develop a timeline for the transition in order to create conditions for a safe and supporting environment at the school; provide appropriate information and training for any educators that interact directly with the student on the transition plan, timelines for transition, and any relevant legal requirements; and develop a communications plan that outlines who needs to know what information, when, and how it will be communicated.
  - Unless the student, parent, or guardian has specified otherwise, use the student's legal name and the pronoun corresponding to the student's gender assigned at birth when contacting the parent or guardian of a transgender student. While it would be ideal for the parents or guardian to be supported and included in the transition process, school leaders must be mindful of protecting the student's privacy and not creating an unsafe home climate for the student. Ensure that the student and his or her parents, if appropriate, have access to counseling and other mental health services as needed.

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION

JOHN DOE, a minor, by his parents  
and next friends, SUSAN AND  
JACK DOE,

Plaintiff,

No. 6:18-CV-102-RBD-GJK

v.

VOLUSIA COUNTY SCHOOL BOARD,

Defendant.

**[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

This matter comes before the Court on Plaintiff's Motion for Preliminary Injunction requesting that the Court preliminarily enjoin Defendant Volusia County School Board, including its officers, employees, and agents, and all individuals under its supervision, direction, or control ("the School Board") from enforcing any policy or custom that denies Plaintiff access to and use of boys' restrooms and locker rooms.

Having reviewed the papers filed in support of and in opposition to this motion, having heard oral arguments from counsel, and being fully advised, the Court hereby **GRANTS** Plaintiff's motion for good cause shown, and finds that Plaintiff has demonstrated (1) a likelihood of success on the merits; (2) that he is likely to suffer irreparable harm absent a preliminary injunction; (3) that the balance of equities weighs in his favor, and; (4) that preliminary relief will not disserve the public interest.

Accordingly, it is hereby **ORDERED** that:

1. The Court hereby preliminarily restrains and enjoins Defendant, its officers, employees, and agents; all persons acting in active concert or participation with Defendant, or under Defendant's supervision, direction, or control; and all other persons within the scope of Federal Rule of Civil Procedure 65, from enforcing any policy, custom, or usage that treats Plaintiff differently than other boys, including with respect to use of facilities and participation in Physical Education.

2. This Preliminary Injunction shall take effect immediately and shall remain in effect pending final disposition in this action, or further order of this Court.

3. No bond shall be required in order for this injunction to take effect since important federal rights are involved and Defendant will not suffer any financial harm related to the injunction.

**DONE AND ORDERED** in Orlando, Florida this \_\_\_\_ day of \_\_\_\_\_, 2018.

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Hon. Roy B. Dalton, Jr.  
United States District Court Judge