

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

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M.A.B. <i>a minor, by and through his parents and</i>	)	)
<i>next friends, L.A.B. and L.F.B.,</i>	)	)
	)	)
<i>Plaintiff,</i>	)	)
	)	)
v.	)	Civil Action No. GLR-16-2622
	)	)
BOARD OF EDUCATION OF TALBOT	)	)
COUNTY, <i>et al.,</i>	)	)
	)	)
	)	)
	)	)
<i>Defendants.</i>	)	)
<hr/>		)

**MOTION TO FILE AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 15(a)(2), Local Rule 103.6 and this Court’s Scheduling Order (ECF # 59), Plaintiff, M.A.B., by his undersigned attorneys, moves to amend his complaint, and in support of his motion states:

1. Plaintiff filed his original complaint on July 19, 2016, alleging claims under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), the Equal Protection Clause of the Fourteenth Amendment, and Articles 24 and 46 of the Maryland Declaration of Rights. (ECF # 1.) On August 16, 2016, upon the parties’ joint request, this Court administratively closed this case pending the resolution of a stay granted in early August 2016 by the United States Supreme Court in *Gloucester County School Board v. G.G. ex rel. Grimm*, No. 16-273 (“*Grimm*”), a case involving related issues. (ECF # 24.) The case was reopened at Plaintiff’s request in March 2017 when the Supreme Court remanded *Grimm* back to the Fourth

Circuit. Defendants filed a Motion to Dismiss in April 2017, which the Court denied on March 12, 2018. (ECF # 53-54.)

2. The deadline for submitting amended pleadings is May 1. (ECF # 59.) Plaintiff now respectfully submits an Amended Complaint, which is attached as Exhibit A,<sup>1</sup> to account for additional factual and legal developments that occurred over the past twenty months and to clarify his damages request.

3. This “Court should freely give leave [to amend a pleading] when justice so requires.” Fed. R. Civ. Pro. 15(a)(2). Here, the Amended Complaint is not offered in bad faith and would not be futile. Nor would the granting this motion prejudice the defendants or cause any undue delay. Plaintiff has met the May 1 deadline set forth in the scheduling order, no depositions have been taken in this action, experts have yet to be designated, and approximately five months remain in the discovery period to pursue any additional discovery desired by the parties as a result of this amendment. (*See* ECF # 59) (setting deadline for close of discovery as October 1, 2018).

4. In accordance with Local Rule 103(6)(d), undersigned counsel has obtained consent from Defendants to the filing of the amended complaint. (*See* Ex. C, Email from Edmund J. O'Meally, Esq. to Jennifer Kent, Esq. (Apr. 27, 2018)).

**WHEREFORE**, plaintiff, M.A.B., respectfully requests that he be granted leave to file an Amended Complaint. A proposed order is attached for the Court’s convenience.

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<sup>1</sup> In line with Local Rule 103.6(c), plaintiff has also attached as Exhibit B “a copy of the amended pleading in which stricken material has been lined through or enclosed in brackets and new material has been underlined or set forth in bold-faced type.”



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)**

**M.A.B., a minor,**  
*by and through his parents and next friends,*  
**L.A.B. and L.F.B.,<sup>1</sup>**  
*Plaintiff,*

v.

**BOARD OF EDUCATION OF TALBOT  
COUNTY,**  
12 Magnolia Street  
Easton, MD 21601,

**KELLY L. GRIFFITH,**  
*in her official capacity as Superintendent of  
Talbot County Public Schools,*  
Talbot County Public Schools  
12 Magnolia Street  
Easton, MD 21601,

**TRACY ELZEY,**  
*in her official capacity as Principal of St.  
Michaels Middle-High School,*  
St. Michaels Middle-High School  
200 Seymour Avenue  
St. Michaels, MD 21663,  
*Defendants.*

Civil Action No. **1:16-cv-2622**

**COMPLAINT**

M.A.B., a minor, by and through his parents and next friends, L.A.B. and L.F.B., and by and through his undersigned counsel, files this Complaint and in support states:

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<sup>1</sup> Because Plaintiff is a minor child, he is identified in this Complaint only by his initials, as required by Fed. R. Civ. P. 5.2(a)(3). In the spirit of that rule, in order to avoid making Plaintiff easily identifiable from publicly-filed court documents, his parents (who share his last name) are also identified only by their initials, and the family's address is omitted. In a letter submitted *ex parte* along with this Complaint, Plaintiff is advising the Court and the Defendants of his and his parents' names, as well as their mailing address.

### **Nature of the Action**

1. This is an action to vindicate Plaintiff's right to non-discriminatory access to public educational facilities under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and Articles 24 and 46 of the Maryland Declaration of Rights.

2. The Plaintiff, M.A.B., is a sixteen-year-old boy. He is a student in the Tenth Grade at St. Michaels Middle-High School in Talbot County, Maryland.

3. M.A.B. is transgender. In other words, although at birth he was given a gender designation of female, that designation does not accurately reflect his gender identity—his deeply-held internal sense of his own gender—which is male. M.A.B. has had feelings of gender dysphoria (*i.e.*, feelings of profound incongruence between one's gender designated at birth and one's gender identity) since early childhood, and arrived at his knowledge of his gender as a boy when he was in the Sixth Grade.

4. St. Michaels Middle-High School and the Talbot County Public Schools system of which it is a part have taken certain steps to recognize M.A.B. as a boy, but the school system excluded M.A.B. from the same restrooms and locker rooms as other boys and required him to use separate single-user facilities that no other student was required to use because he is transgender.

5. Defendants excluded M.A.B. from using the same restrooms as other boys for most of the 2015-2016 school year, until a decision from the United State Court of Appeals for the Fourth Circuit held that a similar policy violated Title IX. Defendants then continued to exclude M.A.B. from using the same locker rooms as other boys until after M.A.B. filed suit and this Court denied Defendants' motion to dismiss. Although Defendants have now authorized

M.A.B. to use the boys' restrooms and locker rooms, they maintain that they are not legally obligated to do so and could revoke permission at any time in the absence of a final judgment from this Court.

### **Jurisdiction & Venue**

6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, because the action arises under federal law. Specifically, plaintiff brings federal causes of action under Title IX of the Educational Amendments of 1972 ("Title IX"), codified as amended at 20 U.S.C. § 1681 *et seq.*; and the Fourteenth Amendment to the Constitution of the United States, enforceable against Defendants under 42 U.S.C. § 1983 and *Ex parte Young*, 209 U.S. 123 (1908). The Court has supplemental jurisdiction over Plaintiff's state-law claims under 28 U.S.C. § 1367. The Court may grant declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 2201, and/or Rules 57 and 65 of the Federal Rules of Civil Procedure.

7. Venue is proper in this district under 28 U.S.C. § 1391(b), because the events giving rise to the action have occurred and are occurring in this district.

### **Parties**

8. M.A.B., Plaintiff, is a sixteen-year-old boy. He is a citizen of Maryland and is domiciled and resides within this district in the Town of St. Michaels, in Talbot County, Maryland. Because he is a minor child, he brings this action by and through his parents and next friends, L.A.B. and L.F.B., who are also citizens and domiciliaries of Maryland and residents of this district. Plaintiff has been injured and is being injured by the Defendants' acts and omissions as set forth below.

9. The Board of Education of Talbot County (the "Board"), Defendant, is a body politic and corporate established under Maryland state law, and vested with the control of all

educational matters in Talbot County, Maryland, including the authority and responsibility to govern and maintain Talbot County's primary and secondary public school system. *See* Md. Code, §§ 3-103, 3-104, 3-12A-01, 4-101, 4-108 of the Education Article ("Educ."). The Board consists of seven elected voting members, as well as non-voting student members from public high schools in the county. *See* Educ. §§ 3-114(a)(15) & 3-12A-01(a).

10. The primary and secondary public school system in Talbot County, which is governed by the Board, is called Talbot County Public Schools ("TCPS"). TCPS does not have existence as a legal entity separate from the Board. References to "TCPS" in this Complaint include the Board. TCPS is an "education program or activity" within the meaning of Title IX.

11. St. Michaels Middle-High School (sometimes referred to in this Complaint simply as the "School") is a public school in St. Michaels, Maryland, serving grades 6-12, and is part of the TCPS system. St. Michaels Middle-High School does not have existence as a legal entity separate from TCPS and the Board. References to "TCPS" in this Complaint include St. Michaels Middle-High School, and references to the "School" in this Complaint include TCPS and the Board. The School is an "education program or activity" within the meaning of Title IX.

12. Dr. Kelly L. Griffith, Defendant, is the Superintendent of TCPS. She serves in that capacity by appointment by the Board, *see* Educ. § 4-201(b), and is *ex officio* the executive officer, secretary, and treasurer of the Board, although she is not a voting member of the Board. *See* Educ. § 4-102(a)(1), (c). As Superintendent, Dr. Griffith is responsible for all management of the TCPS system, subject to the oversight and direction of the Board, and the implementation and interpretation of the policies established by the Board. Dr. Griffith is sued solely in her official capacity as Superintendent of TCPS. Dr. Griffith acts and has acted as the agent of the Board and TCPS in carrying out the actions and policies alleged in this Complaint.

13. Tracy Elzey, Defendant, is the Principal of St. Michaels Middle-High School. She reports to Dr. Griffith and is responsible for the management of the School, including implementation at the School of the policies and directives established by Dr. Griffith and the Board. Ms. Elzey is sued solely in her official capacity as Principal of St. Michaels Middle-High School. Ms. Elzey acts and has acted as the agent of the Board and TCPS in carrying out the actions and policies alleged in this Complaint.

14. The Board, TCPS, the School, Dr. Griffith, and Ms. Elzey (collectively, “Defendants”) have injured and are injuring Plaintiff by their acts and omissions set forth below.

### **Facts Giving Rise to This Action**

15. M.A.B. is enrolled at St. Michaels Middle-High School. He has attended the School since the seventh grade.

16. Like every other student at the School, M.A.B. must use the restroom periodically throughout the day and must use locker room facilities at the School for physical education class.

17. The locker room facilities at the School, and most of its restroom facilities, are designated separately for boys and for girls.

18. M.A.B. is a boy who is transgender. What this means is that his gender designated at birth was female, but that designation does not accurately reflect his gender identity—his deeply-held internal sense of his own gender—which is male.

19. A person’s gender designated at birth (*i.e.*, the “M” or “F” gender marker on the person’s birth certificate) is usually based upon the appearance of the person’s external genitalia at birth. However, determinations of gender involve multiple factors, such as chromosomes, hormone levels, internal and external reproductive organs, and gender identity.

20. “Gender dysphoria” is a diagnostic term that refers to the clinically significant distress that can be experienced by individuals whose gender identity differs from the gender they were designated at birth. Gender dysphoria is a condition that has been recognized since 1980 in the Diagnostic & Statistical Manual of Mental Disorders, now in its Fifth Edition (“DSM-5”), published by the American Psychiatric Association, as well as by the other leading medical and mental health professional groups, including the American Medical Association and the American Psychological Association.<sup>2</sup>

21. The condition of gender dysphoria and the status of being transgender are not synonymous, but they are correlated, because many transgender people experience gender dysphoria—especially if they are unable to access appropriate medical care and/or to undertake non-medical steps to socially and legally transition to the gender with which they identify.

22. Treatment for gender dysphoria includes living consistent with one’s gender identity (also known as “socially transitioning”) in all aspects of one’s life, including when accessing single-sex spaces like restrooms and locker rooms. The ability of transgender individuals to live consistently with their identity is critical to their health and well-being. That includes using names and pronouns consistent with their identity, grooming and dressing in a manner typically associated with that gender, and using restrooms, locker rooms, and other sex-separated facilities that match their gender identity. Preventing transgender students from living in a manner that is consistent with their gender identity puts them at increased risk of debilitating

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<sup>2</sup> In prior editions of the DSM, the same diagnosis was labeled “gender identity disorder” or “GID.” The label of the diagnosis was changed in the DSM-5 in order to focus on dysphoria—*i.e.*, the distress that may accompany the incongruence between one’s gender identity and one’s gender designated at birth—as the clinical problem, rather than identity per se.

depression and suicide. By contrast, when gender dysphoria is properly treated, transgender individuals experience profound relief and can go on to lead healthy, happy, and successful lives.

23. M.A.B. has had feelings of gender dysphoria since early childhood. He arrived at the clear realization that he is a boy when he was in the Sixth Grade. M.A.B. received a clinical diagnosis of gender dysphoria in mid-2014. Since that time, for approximately two years, he has regularly been seeing a therapist or psychologist regarding gender dysphoria and his process of gender transition.

24. In the Fall of 2014, during M.A.B.'s Seventh Grade year, M.A.B. and his parents advised personnel at the School of M.A.B.'s gender identity.

25. M.A.B. socially transitioned and "came out" as a boy and began going by a more traditionally masculine chosen first name (rather than the traditionally feminine name he was given at birth) later in that school year, on or about his thirteenth birthday in February 2015. With the support of his parents, M.A.B. subsequently obtained a judicial decree recognizing his legal change of name to his chosen first name

26. M.A.B. has been generally accepted and recognized as male by his fellow students at the School since his transition, apart from a few instances of honest mistakes in which other students inadvertently used female gender pronouns (*e.g.*, she, her) or his former name to refer to M.A.B., and a single instance of such conduct done intentionally as a form of bullying by one other student (which was addressed by School personnel).

27. TCPS and the School took several steps to recognize and respect M.A.B.'s gender identity, including addressing him with male gender pronouns (*e.g.*, he, him, his) and by his chosen name wherever possible even before he legally changed his name. The School also

conducted a professional development workshop for its staff in the Spring of 2015 on the topic of transgender students.

28. However, TCPS prohibited M.A.B. from using the same restrooms and locker rooms as other boys at the School. Instead, TCPS designated three single-occupancy restrooms in the School as “gender neutral” and required M.A.B. to use these rooms for toilet usage and to change clothes for physical education class and other athletic activities.

29. Two of the single-occupancy restrooms are located immediately adjacent to each other, near the School’s auditorium; the third is located in the school nurse’s office.

30. All three single-occupancy restrooms are remotely located from the School’s gymnasium and its associated locker room facilities. They are also remotely located from several other areas in the School that have easy access to common boys’ restrooms.

31. None of the single-occupancy restrooms is equipped with benches, lockers, showers, or other facilities and equipment that are provided in the locker rooms.

32. No student who is not transgender has been required to use the single-occupancy restrooms.

33. Using the designated single-occupancy restrooms makes M.A.B. feel humiliated, embarrassed, and alienated from other students. He received “weird looks” from other students when he used the single-occupancy restrooms, and so he tried to use them as infrequently and inconspicuously as possible.

34. Having to use the single-occupancy restrooms also created practical problems for M.A.B. that non-transgender students do not have to face. For instance, during the Fall 2015 Semester, M.A.B.’s 4th-period class was in Room 314, which is in a wing of the school where none of the single-occupancy restrooms is located. There is a set of common restrooms just

around the corner from the classroom, and there are at least two more sets of common restrooms in between Room 314 and the nearest single-occupancy restroom; it took too long to go the distance from the classroom to a single-occupancy restroom and back without risking discipline from a teacher for taking too long or being late to class, so M.A.B. had to “hold it.”

35. M.A.B. also had to leave the gym to change for physical education class or extracurricular athletic activities because he was not permitted to use the same locker room as other boys. In order to change, he had to visit both his student locker (located outside the gym, inside the school building proper) and one of the single-occupancy restrooms, which are not near each other.

36. When M.A.B. took physical education class (in the Fall of 2015), the regular physical education teacher gave M.A.B. three minutes more than other students to reach the gymnasium changed and ready for class, because M.A.B. was required to change clothes in the single-occupancy restrooms. However, on more than one occasion, when the physical education class was taught by a substitute teacher who was unaware of this accommodation, M.A.B. was forced to explain his tardiness to the substitute teacher and disclose the fact that he is transgender to the substitute teacher in order to avoid discipline for tardiness.

37. Because of the stigma and impracticality of changing for physical education class in the single-occupancy restrooms, on days when M.A.B. did not anticipate that the physical education class would cause him to sweat profusely, he would sometimes attend physical education class without changing his clothes. On some of these occasions, M.A.B. had points deducted from his physical education grade for failure to change clothes for class.

38. M.A.B. and his parents communicated repeatedly with numerous TCPS personnel during the 2015-2016 school year, including the then-principal of the School, Dr. Helga

Einhorn,<sup>3</sup> and the superintendent, Dr. Griffith, in attempts to resolve the issue of restroom and locker room usage for M.A.B. M.A.B. also contacted TCPS through counsel in attempting to resolve this issue. Despite these efforts, TCPS maintained its position unchanged throughout most of the 2015-16 school year.

39. On or about April 25, 2016, following the Fourth Circuit's decision in *G.G. ex rel. Grimm v. Gloucester County School Board*, 822 F.3d 709 (4th Cir. 2016) ("the *G.G.* case"), counsel for TCPS advised Plaintiff's counsel that "although TCPS intends to permit [M.A.B.] to use restrooms based on his gender identity, it will continue to require him to use locker rooms based on his birth sex. Should he choose to do so, [M.A.B.] may also continue to use any of the gender-neutral restrooms in lieu of using either the single-sex restrooms or locker rooms." TCPS based its continued refusal to allow M.A.B. to access the locker rooms consistent with his gender on the fact that the *G.G.* case had not involved locker rooms. Then-Principal Einhorn personally advised M.A.B. and his parents of this decision on or about May 13, 2016 (by that point, M.A.B. had already begun using the boys' restrooms at the School based on the earlier communication from TCPS's counsel).

40. Despite repeated requests from Plaintiff, TCPS continued to prohibit M.A.B. from accessing the boys' locker room facilities at the School.

41. When M.A.B. played Junior Varsity Soccer in the Fall of 2016, he was forced to change into his uniform in one of the three single-occupancy restrooms. Being relegated to the separate restrooms was demeaning and shameful for M.A.B. It signaled to M.A.B. and the entire

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<sup>3</sup> At the completion of the 2015-16 school year, Dr. Einhorn was promoted to Assistant Superintendent for Instruction at TCPS, and Defendant Elzey was appointed to succeed Dr. Einhorn as Principal of the School.

school community that he is different, and it sent a public message to all his peers that he is not fit to be treated like everyone else.

42. The boys' locker room at the School includes stalls that are partitioned, or are capable of being partitioned, such that any student who wishes to disrobe in greater privacy from other students could do so. In addition, the toilet facilities within the boys' locker room are partitioned into private stalls that each have a stall door.

43. No other boys expressed to M.A.B. any discomfort with the prospect of his using the boys' locker room facilities; to the contrary, many of M.A.B.'s fellow students (both male and female) congratulated him on being able to access the boys' restrooms in the wake of the *G.G.* case.

44. M.A.B. filed his original Complaint in this lawsuit on July 19, 2016.

45. On December 5, 2017, M.A.B. obtained an updated birth certificate stating that his "sex" is "male." After M.A.B. provided a copy of the birth certificate to St. Michael's Middle-High School, the school updated all of M.A.B.'s records in TCPS's computer system to reflect his male gender marker in accordance with his birth certificate.

46. On March 12, 2018, this Court issued a memorandum opinion and order denying Defendants' motion to dismiss M.A.B.'s claims.

47. Ten days later, TCPS informed M.A.B. via letter that the Board had "decided that, from this point forward, [M.A.B.] will have access to all facilities, including locker rooms, that are designated for boys or men. The Board has made this decision voluntarily, and not as a settlement of the pending lawsuit."

**Claims for Relief**

**Count I:**

**Title IX of the Education of Amendments of 1972 (20 U.S.C. § 1681 *et seq.*)**

48. The foregoing paragraphs are incorporated as if fully set forth herein.

49. 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).

50. TCPS and the School are “education programs or activities” that receive “Federal financial assistance” within the meaning of Title IX.

51. By requiring M.A.B., a transgender boy, to use separate restrooms, instead of the locker room and restroom facilities made available to other students, because he is transgender, the Defendants have excluded M.A.B. from participation in, denied him the benefits of, and subjected him to discrimination in education programs and/or activities on the basis of sex in violation of Title IX.

52. By refusing to allow M.A.B., a transgender boy, to access boys’ restrooms and boys’ locker rooms because Defendants do not deem him to be male, the Defendants have excluded M.A.B. from participation in, denied him the benefits of, and subjected him to discrimination in education programs and/or activities on the basis of sex in violation of Title IX.

**Count II:**

**Equal Protection Clause of the Fourteenth Amendment to  
the Constitution of the United States**

53. The foregoing paragraphs are incorporated as if fully set forth herein.

54. The Board is the final policymaker for TCPS, acting under color of state law.

55. Under the Equal Protection Clause of the Fourteenth Amendment, discrimination

based on gender is presumptively unconstitutional and subject to heightened scrutiny.

56. In addition, transgender status is also independently subject to heightened scrutiny under the Equal Protection Clause because: (a) Transgender people as a class have historically been subject to discrimination; (b) Transgender people as a class have a defining characteristic that frequently bears no relation to an ability to perform or contribute to society; (c) Transgender people as a class exhibit immutable or distinguishing characteristics that define them as a discrete group; and (d) Transgender people as a class are a minority with relatively little political power.

57. By requiring M.A.B., a transgender boy, to use separate restrooms, instead of the locker room and restroom facilities made available to other students, because he is transgender, the Defendants have discriminated against him on the basis of gender and transgender status.

58. By refusing to allow M.A.B., a transgender boy, to access boys' restrooms and boys' locker rooms because Defendants do not deem him to be male, the Defendants have discriminated against him on the basis of gender and transgender status.

59. The Defendants' discrimination against M.A.B. based on his gender is not substantially related to any important government interest.

60. The Defendants' discrimination against M.A.B. based on his gender is not rationally related to any legitimate government interest.

61. The Defendants' discrimination against M.A.B. based on his gender and transgender status denies him the equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution.

62. TCPS is liable for its violation of M.A.B.'s Fourteenth Amendment rights under 42 U.S.C. § 1983.

**Count III:  
Article 24 of the Maryland Declaration of Rights**

63. The foregoing paragraphs are incorporated as if fully set forth herein.

64. Article 24 of the Maryland Declaration of Rights provides that a person may not be “disseized of his . . . liberties or privileges . . . but by the judgment of his peers, or by the Law of the land.” The Maryland Court of Appeals has held that the rights protected by Article 24 encompass a right to equal protection of the laws that is generally coextensive with the equivalent right established by the Equal Protection Clause of the Fourteenth Amendment.

65. The Defendants’ differential treatment of M.A.B. based on his gender, as alleged above, denies him the equal protection of the laws, in violation of Article 24.

**Count IV:  
Article 46 of the Maryland Declaration of Rights  
Equal Rights Amendment (“ERA”)**

66. The foregoing paragraphs are incorporated as if fully set forth herein.

67. Article 46 of the Maryland Declaration of Rights, known as the Equal Rights Amendment (“ERA”), provides: “Equality of rights under the law shall not be abridged or denied because of sex.” Under the ERA, distinctions based on gender are subject to strict scrutiny.

68. The Defendants’ differential treatment of M.A.B. because he is transgender, as alleged above, abridges and denies him equality of rights under the law because of sex, in violation of the ERA.

**Request for Relief**

For the foregoing reasons, Plaintiff respectfully requests that this Honorable Court:

A. Enter a judgment declaring that Defendants’ policies of refusing to allow M.A.B. to access the boys’ restrooms and locker rooms at the School to the same extent and on the same terms as other boys at School violate his rights under Title IX, the Fourteenth Amendment, and



email: [jblock@aclu.org](mailto:jblock@aclu.org)  
Counsel for Plaintiff  
\*Admitted Pro hac vice

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)**

**M.A.B., a minor,  
by and through his parents and next friends,  
L.A.B. and L.F.B.,<sup>1</sup>**

*Plaintiff,*

v.

**BOARD OF EDUCATION OF TALBOT  
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12 Magnolia Street  
Easton, MD 21601,

**KELLY L. GRIFFITH,  
in her official capacity as Superintendent of  
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Talbot County Public Schools  
12 Magnolia Street  
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**TRACY ELZEY,  
in her official capacity as Principal of St.  
Michaels Middle-High School,**

St. Michaels Middle-High School  
200 Seymour Avenue  
St. Michaels, MD 21663,

*Defendants.*

Civil Action No. **1:16-cv-2622**

**COMPLAINT**

M.A.B., a minor, by and through his parents and next friends, L.A.B. and L.F.B., and by  
and through his ~~counsel, Jer Welter, Esq., Laura McMahon DePalma, Esq., and FreeState~~

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<sup>1</sup> Because Plaintiff is a minor child, he is identified in this Complaint only by his initials, as required by Fed. R. Civ. P. 5.2(a)(3). In the spirit of that rule, in order to avoid making Plaintiff easily identifiable from publicly-filed court documents, his parents (who share his last name) are also identified only by their initials, and the family's address is omitted. In a letter submitted *ex parte* along with this Complaint, Plaintiff is advising the Court and the Defendants of his and his parents' names, as well as their mailing address.

~~Justice, Inc., undersigned counsel,~~ files this Complaint and in support states:

### Nature of the Action

1. This is an action to vindicate Plaintiff's right to non-discriminatory access to public educational facilities under Title IX of the Education Amendments of 1972, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and Articles 24 and 46 of the Maryland Declaration of Rights.

2. The Plaintiff, M.A.B., is a ~~fourteen~~sixteen-year-old boy. He is a student in the Tenth Grade at St. Michaels Middle-High School in Talbot County, Maryland, ~~where he will begin the Ninth Grade in the Fall of 2016.~~

3. M.A.B. is transgender. In other words, although at birth he was given a gender designation of female, that designation does not accurately reflect his gender identity—his deeply-held internal sense of his own gender—which is male. M.A.B. has had feelings of gender dysphoria (*i.e.*, feelings of profound incongruence between one's gender designated at birth and one's gender identity) since early childhood, and arrived at his knowledge of his gender as a boy when he was in the Sixth Grade.

4. ~~Although~~ St. Michaels Middle-High School and the Talbot County Public Schools system of which it is a part have taken certain steps to recognize M.A.B. as a boy, but the school system ~~has barred~~excluded M.A.B. from ~~using~~ the ~~sex-segregated boys'~~same restrooms ~~at the school for the bulk of the past school year,~~ and ~~has barred~~locker rooms as other boys and ~~continues to bar~~required him ~~from using the sex-segregated boys' locker room~~to use separate single-user facilities ~~at the school~~that no other student was required to ~~change clothes before or after physical education classes and extracurricular athletic activities—~~thereby treating him

~~5. differently from other students with respect to his sex, and giving rise to this action.~~ use because he is transgender.

5. Defendants excluded M.A.B. from using the same restrooms as other boys for most of the 2015-2016 school year, until a decision from the United State Court of Appeals for the Fourth Circuit held that a similar policy violated Title IX. Defendants then continued to exclude M.A.B. from using the same locker rooms as other boys until after M.A.B. filed suit and this Court denied Defendants' motion to dismiss. Although Defendants have now authorized M.A.B. to use the boys' restrooms and locker rooms, they maintain that they are not legally obligated to do so and could revoke permission at any time in the absence of a final judgment from this Court.

### **Jurisdiction & Venue**

5.6. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, because the action arises under federal law. Specifically, plaintiff brings federal causes of action under Title IX of the Educational Amendments of 1972 ("Title IX"), codified as amended at 20 U.S.C. § 1681 *et seq.*; and the Fourteenth Amendment to the Constitution of the United States, enforceable against Defendants under 42 U.S.C. § 1983 and *Ex parte Young*, 209 U.S. 123 (1908). The Court has supplemental jurisdiction over Plaintiff's state-law claims under 28 U.S.C. § 1367. The Court may grant declaratory and injunctive relief pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 2201, and/or Rules 57 and 65 of the Federal Rules of Civil Procedure.

6.7. Venue is proper in this district under 28 U.S.C. § 1391(b), because the events giving rise to the action have occurred and are occurring in this district.

### **Parties**

7.8. M.A.B., Plaintiff, is a ~~fourteen~~sixteen-year-old boy. He is a citizen of Maryland and is domiciled and resides within this district in the Town of St. Michaels, in Talbot County, Maryland. Because he is a minor child, he brings this action by and through his parents and next friends, L.A.B. and L.F.B., who are also citizens and domiciliaries of Maryland and residents of this district. Plaintiff has been injured and is being injured by the Defendants' acts and omissions as set forth below.

8.9. The Board of Education of Talbot County (the "Board"), Defendant, is a body politic and corporate established under Maryland state law, and vested with the control of all educational matters in Talbot County, Maryland, including the authority and responsibility to govern and maintain Talbot County's primary and secondary public school system. *See* Md. Code, §§ 3-103, 3-104, 3-12A-01, 4-101, 4-108 of the Education Article ("Educ."). The Board consists of seven elected voting members, as well as non-voting student members from public high schools in the county. *See* Educ. §§ 3-114(a)(15) & 3-12A-01(a).

9.10. The primary and secondary public school system in Talbot County, which is governed by the Board, is called Talbot County Public Schools ("TCPS"). TCPS does not have existence as a legal entity separate from the Board. References to "TCPS" in this Complaint include the Board. TCPS is an "education program or activity" within the meaning of Title IX.

10.11. St. Michaels Middle-High School (sometimes referred to in this Complaint simply as the "School") is a public school in St. Michaels, Maryland, serving grades 6-12, and is part of the TCPS system. St. Michaels Middle-High School does not have existence as a legal entity separate from TCPS and the Board. References to "TCPS" in this Complaint include St. Michaels Middle-High School, and references to the "School" in this Complaint include TCPS and the Board. The School is an "education program or activity" within the meaning of Title IX.

~~11.12.~~ Dr. Kelly L. Griffith, Defendant, is the Superintendent of TCPS. She serves in that capacity by appointment by the Board, *see* Educ. § 4-201(b), and is *ex officio* the executive officer, secretary, and treasurer of the Board, although she is not a voting member of the Board. *See* Educ. § 4-102(a)(1), (c). As Superintendent, Dr. Griffith is responsible for all management of the TCPS system, subject to the oversight and direction of the Board, and the implementation and interpretation of the policies established by the Board. Dr. Griffith is sued solely in her official capacity as Superintendent of TCPS. Dr. Griffith acts and has acted as the agent of the Board and TCPS in carrying out the actions and policies alleged in this Complaint.

~~12.13.~~ Tracy Elzey, Defendant, is the Principal of St. Michaels Middle-High School. She reports to Dr. Griffith and is responsible for the management of the School, including implementation at the School of the policies and directives established by Dr. Griffith and the Board. Ms. Elzey is sued solely in her official capacity as Principal of St. Michaels Middle-High School. Ms. Elzey acts and has acted as the agent of the Board and TCPS in carrying out the actions and policies alleged in this Complaint.

~~13.14.~~ The Board, TCPS, the School, Dr. Griffith, and Ms. Elzey (collectively, “Defendants”) have injured and are injuring Plaintiff by their acts and omissions set forth below.

### **Facts Giving Rise to This Action**

~~14.15.~~ M.A.B. is enrolled at St. Michaels Middle-High School. He has attended the School since the ~~Seventh Grade and will begin the Ninth Grade at the School in the upcoming Fall 2016 Semester.~~seventh grade.

~~15. — M.A.B.’s extracurricular interests include the sport of soccer. He intends to try out for the School’s soccer team (which is coeducational) in August 2016.~~

~~16. In conjunction with trying out for and competing on the School's soccer team, as well as participating in physical education classes and other extracurricular athletic activities during the school year, M.A.B. requires access to locker room facilities at the School.~~

~~17. Access to the locker room facilities for M.A.B. is necessary, not only to facilitate changing clothes before and after athletic activity, but also to participate in and benefit from team bonding activities and coaching that traditionally occur in a locker room setting.~~

~~18.16. Like anyevery other student at the School, M.A.B. also requires must use the restroom ~~access~~ periodically throughout the day ~~when he is at School~~ and must use locker room facilities at the School for physical education class.~~

~~19.17. The locker room facilities at the School, and most of its restroom facilities, are segregated by gender: there are locker rooms and restrooms~~ designated separately for boys and for girls.

~~20.18. M.A.B. is a boy who is transgender ~~boy~~. What this means is that his gender designated at birth was female, but that designation does not accurately reflect his gender identity—his deeply-held internal sense of his own gender—which is male.~~

~~21.19. A person's gender designated at birth (*i.e.*, the "M" or "F" gender marker on the person's birth certificate) is usually based upon the appearance of the person's external genitalia at birth. However, determinations of gender involve multiple factors, such as chromosomes, hormone levels, internal and external reproductive organs, and gender identity.~~

~~22. Gender identity is the primary determinant of someone's gender, and of their "sex" within the meaning of Title IX and Article 46 of the Maryland Declaration of Rights.~~

~~23.20. "Gender dysphoria" is a diagnostic term that refers to the clinically significant distress that can be experienced by individuals whose gender identity differs from the gender~~

they were designated at birth. Gender dysphoria is a condition that has been recognized since 1980 in the Diagnostic & Statistical Manual of Mental Disorders, now in its Fifth Edition (“DSM-5”), published by the American Psychiatric Association, as well as by the other leading medical and mental health professional groups, including the American Medical Association and the American Psychological Association.<sup>2</sup>

24.21. The condition of gender dysphoria and the status of being transgender are not synonymous, but they are correlated, because many transgender people experience gender dysphoria—especially if they are unable to access appropriate medical care and/or to undertake non-medical steps to socially and legally transition to the gender with which they identify.

25.22. Treatment for gender dysphoria includes living consistent with one’s gender identity (also known as “socially transitioning”) in all aspects of one’s life, including when accessing single-sex spaces like restrooms and locker rooms. The ability of transgender individuals to live consistently with their identity is critical to their health and well-being. That includes using names and pronouns consistent with their identity, grooming and dressing in a manner typically associated with that gender, and using restrooms, locker rooms, and other sex-separated facilities that match their gender identity. Preventing transgender students from living in a manner that is consistent with their gender identity puts them at increased risk of debilitating depression and suicide. By contrast, when gender dysphoria is properly treated, transgender individuals experience profound relief and can go on to lead healthy, happy, and successful lives.

26.23. M.A.B. has had feelings of gender dysphoria since early childhood. He arrived at

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<sup>2</sup> In prior editions of the DSM, the same diagnosis was labeled “gender identity disorder” or “GID.” The label of the diagnosis was changed in the DSM-5 in order to focus on dysphoria—*i.e.*, the distress that may accompany the incongruence between one’s gender identity and one’s gender designated at birth—as the clinical problem, rather than identity per se.

the clear realization that he is a boy when he was in the Sixth Grade. M.A.B. received a clinical diagnosis of gender dysphoria in mid-2014. Since that time, for approximately two years, he has regularly been seeing a therapist or psychologist regarding gender dysphoria and his process of gender transition.

27.24. In the Fall of 2014, during M.A.B.'s Seventh Grade year, M.A.B. and his parents advised personnel at the School of M.A.B.'s gender identity.

28.25. M.A.B. socially transitioned and "came out" as a boy and began going by a more traditionally masculine chosen first name (rather than the traditionally feminine name he was given at birth) later in that school year, on or about his thirteenth birthday in February 2015.

With the support of his parents, ~~he~~M.A.B. subsequently obtained a judicial decree recognizing his legal change of name to his chosen first name.

29.26. M.A.B. has been generally accepted and recognized as male by his fellow students at the School since his transition, apart from a few instances of honest mistakes in which other students inadvertently used female gender pronouns (*e.g.*, she, her) or his former name to refer to M.A.B., and a single instance of such conduct done intentionally as a form of bullying by one other student (which was addressed by School personnel).

30.27. ~~To their credit,~~ TCPS and the School took several steps to recognize and respect M.A.B.'s gender identity, including addressing him with male gender pronouns (*e.g.*, he, him, his) and by his chosen name wherever possible even before he legally changed his name. The School also conducted a professional development workshop for its staff in the Spring of 2015 on the topic of transgender students.

31. — However, TCPS ~~prohibits M.A.B. from using the common male locker room facilities at the School and, until recently, for much of the past school year, also prohibited~~

M.A.B. from using the ~~common male~~same restrooms and locker rooms as other boys at the School.

~~32.~~—Instead, TCPS ~~has~~ designated three single-occupancy restrooms in the School as “gender neutral,<sup>23</sup>” and ~~has~~ required M.A.B. to use these rooms for changing toilet usage and to change clothes for physical education class and other athletic activities ~~and, until recently, for toilet usage.~~

~~33.28.~~ TCPS ~~has also indicated that M.A.B. may use the communal female locker rooms and restrooms, but this is not a viable option because using the communal female facilities is stigmatizing, inappropriate, and socially awkward for both M.A.B. and the female users of those facilities, given that M.A.B. is male.~~

~~34.29.~~ Two of the single-occupancy restrooms are located immediately adjacent to each other, near the School’s auditorium; the third is located in the school nurse’s office.

~~35.30.~~ All three single-occupancy restrooms are remotely located from the School’s gymnasium and its associated locker room facilities. They are also remotely located from several other areas in the School that have easy access to ~~communal male~~common boys’ restrooms.

~~36.31.~~ None of the single-occupancy restrooms is equipped with benches, lockers, showers, or other facilities and equipment that are provided in the locker rooms.

~~37.32.~~ No student who is not transgender has been required to use the single-occupancy restrooms ~~or been prohibited from accessing the communal locker rooms or restrooms associated with their gender.~~

~~38.33.~~ Using the designated single-occupancy restrooms makes M.A.B. feel humiliated, embarrassed, and alienated from other students; ~~he reports that he.~~ He received “weird looks”

from other students when he ~~uses~~used the single-occupancy restrooms, and so he ~~has~~ tried to use them as infrequently and inconspicuously as possible.

39.34. Having to use the single-occupancy restrooms also ~~creates~~created practical problems for M.A.B. that non-transgender students do not have to face. For instance, during the Fall 2015 Semester, M.A.B.'s 4th-period class was in Room 314, which is in a wing of the school where none of the single-occupancy restrooms is located. There is a set of ~~communal~~common restrooms just around the corner from the classroom, and there are at least two more sets of ~~communal~~common restrooms in between Room 314 and the nearest single-occupancy restroom; it took too long to go the distance from the classroom to a single-occupancy restroom and back without risking discipline from a teacher for taking too long or being late to class, so M.A.B. had to "hold it."

40.35. M.A.B. also ~~has~~had to leave the gym to change for physical education class or extracurricular athletic activities because he ~~is~~was not permitted to ~~access~~use the ~~communal~~boys'~~same~~ locker room—~~in~~ as other boys. In order to change, he ~~has~~had to visit both his student locker (located outside the gym, inside the school building proper) and one of the single-occupancy restrooms, which are not near each other.

41.36. When M.A.B. took physical education class (in the Fall of 2015), the regular physical education teacher gave M.A.B. three minutes more than other students to reach the gymnasium changed and ready for class, because M.A.B. was required to change clothes in the single-occupancy restrooms. However, on more than one occasion, when the physical education class was taught by a substitute teacher who was unaware of this accommodation, M.A.B. was forced to explain his tardiness to the substitute teacher and disclose the fact that he is transgender to the substitute teacher in order to avoid discipline for tardiness.

~~42.37.~~ Because of the stigma and impracticality of changing for physical education class in the single-occupancy restrooms, on days when M.A.B. did not anticipate that the physical education class would cause him to sweat profusely, he would sometimes attend physical education class without changing his clothes. On some of these occasions, M.A.B. had points deducted from his physical education grade for failure to change clothes for class.

~~43.38.~~ M.A.B. and his parents communicated repeatedly with numerous TCPS personnel during the 2015-~~16~~2016 school year, including the then-~~Principal~~principal of the School, Dr. Helga Einhorn,<sup>3</sup> and the ~~Superintendents~~superintendent, Dr. Griffith, in attempts to resolve the issue of restroom and locker room usage for M.A.B. M.A.B. also contacted TCPS through counsel in attempting to resolve this issue. Despite these efforts, TCPS maintained its position unchanged throughout most of the 2015-16 school year.

~~44. — On April 19, 2016, the United States Court of Appeals for the Fourth Circuit issued its decision in *G.G. ex rel. Grimm v. Gloucester County School Board*, 822 F.3d 709 (4th Cir. 2016), *reh'g en banc denied*, \_\_\_ F.3d \_\_\_, 2016 WL 3080263, 2016 U.S. App. LEXIS 9909 (4th Cir. May 31, 2016). The plaintiff in *G.G.*, a transgender boy who is a student at a public high school in Virginia, challenged under Title IX and the Fourteenth Amendment a school policy similar to the one at issue here, restricting him to use of a single occupancy restroom. (Because *G.G.* did not participate in physical education classes or extracurricular athletic activities at the school, he had not sought access to the boys' locker rooms, and so access to restrooms was the only issue before the Court. *See G.G.*, 822 F.3d at 715 n.2.) In its decision in *G.G.*, the Fourth Circuit considered the U.S. Department of Education's interpretation of its~~

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<sup>3</sup> At the completion of the 2015-16 school year, Dr. Einhorn was promoted to Assistant Superintendent for Instruction at TCPS, and Defendant Elzey was appointed to succeed Dr. Einhorn as Principal of the School.

~~own Title IX regulations—to the effect that “[w]hen a school elects to separate or treat students differently on the basis of sex” by providing sex-segregated toilet, locker room, or shower facilities as permitted by the Department’s Title IX regulations, “a school generally must treat transgender students consistent with their gender identity.”’” *Id.* at 718 (quoting Dept. of Ed. opinion letter). The Fourth Circuit held that the Department’s interpretation of its regulations is “entitled to *Auer* [*v. Robbins*, 519 U.S. 452 (1997),] deference and is to be accorded controlling weight . . . .” *Id.* at 723. Accordingly, the Fourth Circuit reversed the district court’s dismissal of G.G.’s Title IX claim and the district court’s denial of a preliminary injunction that would require the school to permit G.G. to access the common male restrooms.~~

45.39. ~~On or about April 25, 2016, in light of the G.G. decision,~~On or about April 25, 2016, following the Fourth Circuit’s decision in *G.G. ex rel. Grimm v. Gloucester County School Board*, 822 F.3d 709 (4th Cir. 2016) (“the G.G. case”), counsel for TCPS advised Plaintiff’s counsel that “although TCPS intends to permit [M.A.B.] to use restrooms based on his gender identity, it will continue to require him to use locker rooms based on his birth sex. Should he choose to do so, [M.A.B.] may also continue to use any of the gender-neutral restrooms in lieu of using either the single-sex restrooms or locker rooms.” TCPS based its continued refusal to allow M.A.B. to access the locker rooms consistent with his gender on the fact that the *G.G.* case had not involved locker rooms. Then-Principal Einhorn personally advised M.A.B. and his parents of this decision on or about May 13, 2016 (by that point, M.A.B. had already begun using the boys’ restrooms at the School based on the earlier communication from TCPS’s counsel).

~~46. — On May 13, 2016, the United States Department of Education and Department of Justice jointly issued a “Dear Colleague” letter, further confirming and clarifying the~~

~~requirements of Title IX and its implementing regulations with respect to transgender students.~~<sup>4</sup>

~~With regard to “Restrooms and Locker Rooms” (which the Dear Colleague letter treats indistinguishably), the letter states:~~

~~A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity. A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy. (Endnotes omitted.)~~

~~47.40.~~ Despite ~~the Dear Colleague letter and~~ repeated requests from Plaintiff, TCPS ~~continues~~continued to prohibit M.A.B. from accessing the boys’ locker room facilities at the School.

~~41. When M.A.B. played Junior Varsity Soccer in the Fall of 2016, he was forced to change into his uniform in one of the three single-occupancy restrooms. Being relegated to the separate restrooms was demeaning and shameful for M.A.B. It signaled to M.A.B. and the entire school community that he is different, and it sent a public message to all his peers that he is not fit to be treated like everyone else.~~

~~48.42.~~ The ~~communal~~ boys’ locker room at the School includes stalls that are partitioned, or are capable of being partitioned, such that any student who wishes to disrobe in greater privacy from other students could do so. In addition, the toilet facilities within the boys’ locker room are partitioned into private stalls that each have a stall door.

~~49.43.~~ No other ~~male students have~~boys expressed to M.A.B. any discomfort with the prospect of his using the boys’ locker room facilities; to the contrary, many of M.A.B.’s fellow

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<sup>4</sup>~~The “Dear Colleague” letter is available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>.~~

students (both male and female) ~~have~~ congratulated him on ~~gaining the right~~being able to access the boys' restrooms in the wake of the *G.G.* ~~decision~~case.

~~50. —The extracurricular soccer season is due to start imminently, with tryouts commencing on or about August 10, 2016.~~

44. M.A.B. filed his original Complaint in this lawsuit on July 19, 2016.

45. On December 5, 2017, M.A.B. obtained an updated birth certificate stating that his “sex” is “male.” After M.A.B. provided a copy of the birth certificate to St. Michael’s Middle-High School, the school updated all of M.A.B.’s records in TCPS’s computer system to reflect his male gender marker in accordance with his birth certificate.

46. On March 12, 2018, this Court issued a memorandum opinion and order denying Defendants’ motion to dismiss M.A.B.’s claims.

47. Ten days later, TCPS informed M.A.B. via letter that the Board had “decided that, from this point forward, [M.A.B.] will have access to all facilities, including locker rooms, that are designated for boys or men. The Board has made this decision voluntarily, and not as a settlement of the pending lawsuit.”

## Claims for Relief

### Count I:

#### Title IX of the Education of Amendments of 1972 (20 U.S.C. § 1681 *et seq.*)

~~51:48.~~ The foregoing paragraphs are incorporated as if fully set forth herein.

~~52:49.~~ 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).

~~53.— Title IX by its statutory text admits no exception that would permit sex segregation in spaces such as locker rooms or restrooms at all. However, Title IX directs each federal agency that administers federal financial assistance for “education programs[s] or activit[ies]” to effectuate the statute by “issuing rules, regulations, or orders of general~~

~~applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance,” and by withholding financial assistance on the basis of noncompliance with such regulations. 20 U.S.C. § 1682.~~

~~54.—In the exercise of that authority, the United States Department of Education has issued a regulation that authorizes providing “separate toilet, locker room, and shower facilities on the basis of sex,” so long as “such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.” 34 C.F.R. § 106.33. The regulation does not specifically indicate how it is to be applied with regard to students who are transgender.~~

~~55.—In a series of actions over several years, including but not limited to the opinion letter cited in *G.G.*, *see* ¶ 44 *supra*, and the recent Dear Colleague letter cited in Paragraph 46 *supra*, the U.S. Department of Education has made clear that, in order to comply with Title IX, a covered educational program must give transgender students access to the sex-segregated facilities that 34 C.F.R. § 106.33 authorizes on the basis of the students’ gender identity. This is consistent with the view of the federal government generally and of numerous courts (including this Court, *see Finkle v. Howard County*, 12 F. Supp. 3d 780, 788 (D. Md. 2014)) that subjecting a person to differential treatment because they are transgender is a form of discrimination “on the basis of sex” within the meaning of Title IX and other laws prohibiting sex discrimination.~~

~~56.—Under the Fourth Circuit’s decision in *G.G.*, the Department of Education’s interpretation of Title IX and 34 C.F.R. § 106.33 is entitled to controlling deference.~~

~~57.—Under Title IX, discrimination “on the basis of sex” encompasses discrimination based on biological differences between men and women, discrimination based on gender nonconformity, and discrimination against a person because they are transgender.~~

~~58.50.~~ TCPS and the School are “education programs or activities” that receive “Federal financial assistance” within the meaning of Title IX.

~~59.51.~~ By requiring M.A.B., a transgender boy, to use separate restrooms, instead of the locker room and restroom facilities made available to other students, because he is transgender, the Defendants have excluded ~~and continue to exclude~~ M.A.B. from participation in, ~~denydenied~~ him the benefits of, and ~~subjectsubjected~~ him to discrimination in education programs and/or activities on the basis of sex in violation of Title IX.

~~60.52.~~ By refusing to allow M.A.B., a transgender boy, to access boys’ restrooms and boys’ locker rooms because Defendants do not deem him to be male, the Defendants have excluded ~~and continue to exclude~~ M.A.B. from participation in, ~~denydenied~~ him the benefits of, and ~~subjectsubjected~~ him to discrimination in education programs and/or activities on the basis of sex in violation of Title IX.

**Count II:  
Equal Protection Clause of the Fourteenth Amendment to  
the Constitution of the United States**

~~61.53.~~ The foregoing paragraphs are incorporated as if fully set forth herein.

~~54. The Board is the final policymaker for TCPS, acting under color of state law.~~

~~62.55.~~ Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on gender is presumptively unconstitutional and subject to heightened scrutiny. ~~The Fourteenth Amendment’s protections from discrimination based on gender encompass discrimination based on the biological differences between men and women, discrimination based on gender nonconformity, and discrimination against a person because they are transgender.~~

~~56. In addition, transgender status is also independently subject to heightened scrutiny~~

under the Equal Protection Clause because: (a) Transgender people as a class have historically been subject to discrimination; (b) Transgender people as a class have a defining characteristic that frequently bears no relation to an ability to perform or contribute to society; (c) Transgender people as a class exhibit immutable or distinguishing characteristics that define them as a discrete group; and (d) Transgender people as a class are a minority with relatively little political power.

63.57. By requiring M.A.B., a transgender boy, to use separate restrooms, instead of the locker room and restroom facilities made available to other students, because he is transgender, the Defendants have ~~treated and continue to treat M.A.B. differently based~~ discriminated against him on his the basis of gender and transgender status.

64.58. By refusing to allow M.A.B., a transgender boy, to access boys' restrooms and boys' locker rooms because Defendants do not deem him to be male, the Defendants have ~~treated and continue to treat M.A.B. differently based~~ discriminated against him on his the basis of gender and transgender status.

65.59. The Defendants' discrimination against M.A.B. based on his gender is not substantially related to any important government interest.

66.60. The Defendants' discrimination against M.A.B. based on his gender is not rationally related to any legitimate government interest.

67.61. The Defendants' discrimination against M.A.B. based on his gender and transgender status denies him the equal protection of the laws, in violation of the Fourteenth Amendment to the United States Constitution.

~~68-62.~~ ~~The Defendants' acts as alleged above have been performed under color~~ TCPS is liable for its violation of ~~state law, but exceed Defendants' lawful authority because they violate~~ the M.A.B.'s Fourteenth Amendment- rights under 42 U.S.C. § 1983.

**Count III:  
Article 24 of the Maryland Declaration of Rights**

~~69-63.~~ The foregoing paragraphs are incorporated as if fully set forth herein.

~~70-64.~~ Article 24 of the Maryland Declaration of Rights provides that a person may not be “disseized of his . . . liberties or privileges . . . but by the judgment of his peers, or by the Law of the land.” The Maryland Court of Appeals has held that the rights protected by Article 24 encompass a right to equal protection of the laws that is generally coextensive with the equivalent right established by the Equal Protection Clause of the Fourteenth Amendment.

~~71-65.~~ The Defendants' differential treatment of M.A.B. based on his gender, as alleged above, denies him the equal protection of the laws, in violation of Article 24.

**Count IV:  
Article 46 of the Maryland Declaration of Rights  
Equal Rights Amendment (“ERA”)**

~~72-66.~~ The foregoing paragraphs are incorporated as if fully set forth herein.

~~73-67.~~ Article 46 of the Maryland Declaration of Rights, known as the Equal Rights Amendment (“ERA”), provides: “Equality of rights under the law shall not be abridged or denied because of sex.” Under the ERA, distinctions based on gender are subject to strict scrutiny.

~~74-68.~~ The Defendants' differential treatment of M.A.B. because he is transgender, as alleged above, abridges and denies him equality of rights under the law because of sex, in violation of the ERA.

~~75. The Defendants' differential treatment of M.A.B. because they do not deem him to be male, as alleged above, abridges and denies him equality of rights under the law because of sex, in violation of the ERA.~~

### Request for Relief

For the foregoing reasons, Plaintiff respectfully requests that this Honorable Court:

A. Enter a judgment declaring that Defendants' policies of refusing to allow M.A.B. to access the boys' restrooms and locker rooms at the School to the same extent and on the same terms as other ~~male students~~boys at School violate his rights under Title IX, the Fourteenth Amendment, and Articles 24 and 46;

B. ~~Enter a temporary restraining order and preliminary and~~Enter permanent injunctive relief requiring Defendants to allow M.A.B. to access the boys' restrooms and locker rooms at the School to the same extent and on the same terms as other ~~male students~~boys at School;

C. As to Counts I, III, and/or IV only, award M.A.B. nominal ~~and compensatory~~ damages ~~in amounts to be determined by the Court (but, as to Count III or Count IV, no greater of~~ a sum less than \$100,000), twenty dollars, payable by the Board of Education of Talbot County (money damages are not sought against any defendant other than the Board);

D. Award Plaintiff his reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

E. Grant such other and further relief as justice requires.

Date: ~~July 19, 2016~~May 1, 2018  
~~submitted~~Submitted,

Respectfully

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**Jennifer Kent**

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**Subject:** FW: M.A.B./Talbot County: Rule 26(a)(1) Disclosures

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**From:** Edmund J. O'Meally [mailto:[eomeally@pklaw.com](mailto:eomeally@pklaw.com)]  
**Sent:** Friday, April 27, 2018 9:20 AM  
**To:** Jennifer Kent <[jkent@freestate-justice.org](mailto:jkent@freestate-justice.org)>  
**Cc:** Andrew G. Scott <[AScott@pklaw.com](mailto:AScott@pklaw.com)>; Joshua Block <[jblock@aclu.org](mailto:jblock@aclu.org)>  
**Subject:** Re: M.A.B./Talbot County: Rule 26(a)(1) Disclosures

Jennifer:

Thanks for that clarification. You have our consent to file and to represent that to the Court. No need to send us the revised ad damnum clause.

Ed  
Edmund J. O'Meally, Esquire  
Pessin Katz Law, P.A.  
901 Dulaney Valley Road, Suite 500  
Towson, Md. 21204  
Office (410)-938-8800  
Direct (410)-339-6757  
Fax (410)-832-5654  
[eomeally@pklaw.com](mailto:eomeally@pklaw.com)

On Apr 27, 2018, at 8:29 AM, Jennifer Kent <[jkent@freestate-justice.org](mailto:jkent@freestate-justice.org)> wrote:

Andy,

We are not seeking money damages for Count II. We will clarify that Counts I, III, and IV are all for less than 20 dollars. Please let me know if you would like to see the revised ad damnum clause.

Jennifer

**Jennifer L. Kent, Esq.** Managing Attorney  
[jkent@freestate-justice.org](mailto:jkent@freestate-justice.org) (*pronouns: she/her*)

<image002.png>

2526 St. Paul Street  
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t: (410) 625-**LGBT** (5428) f: (410) 625-7423  
[www.freestate-justice.org](http://www.freestate-justice.org) @FreeStateLGBTQ

**FreeState Justice has Moved! We are now located at 2526 St. Paul Street, Baltimore, MD 21218.**

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**From:** Andrew G. Scott [<mailto:AScott@pklaw.com>]  
**Sent:** Wednesday, April 25, 2018 3:45 PM  
**To:** Jennifer Kent <[jkent@freestate-justice.org](mailto:jkent@freestate-justice.org)>; Edmund J. O'Meally <[esomeally@pklaw.com](mailto:esomeally@pklaw.com)>  
**Cc:** Joshua Block <[jblock@aclu.org](mailto:jblock@aclu.org)>  
**Subject:** RE: M.A.B./Talbot County: Rule 26(a)(1) Disclosures

Jennifer,

I notice that in Paragraph C of the ad damnum clause of your proposed Amended Complaint, you strike your claim for compensatory damages, leaving only a claim for nominal damages, but you then make a distinction between Counts I, III, and/or IV wherein you seek less than \$20) but make no such distinction with respect to Count II (i.e., the Equal Protection claim). Was this intentional? In other words, are you intending to seek nominal damages in excess of \$20 with regard to the Equal Protection claim, and if so, how much?

Thanks for clarifying this for us.

Andy

**Andrew G. Scott, Esquire**  
901 Dulaney Valley Road | Suite 500 | Towson, MD | 21204  
Direct Dial: (410) 339-6744 | Cell: (443) 824-8952  
[ascott@pklaw.com](mailto:ascott@pklaw.com)  
[Attorney Bio](#) | [About Us](#)  
<image004.png>

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

<hr/>		)	
M.A.B. a minor, by and through his parents and		)	
next friends, L.A.B. and L.F.B.,		)	
		)	
<i>Plaintiff,</i>		)	
		)	
v.		)	Civil Action No. GLR-16-2622
		)	
BOARD OF EDUCATION OF TALBOT		)	
COUNTY, <i>et al.</i> ,		)	
		)	
		)	
		)	
<i>Defendants.</i>		)	
<hr/>		)	

**ORDER**

Upon consideration of Plaintiff’s Motion to File an Amended Complaint, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the United States District Court for the District of Maryland, hereby **ORDERED** that Plaintiff is granted leave to file an Amended Complaint.

\_\_\_\_\_  
George Levi Russell, III  
United States District Judge