

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-37-WTL-MPB
	)	
EVANSVILLE VANDERBURGH	)	
SCHOOL CORPORATION,	)	
	)	
Defendant.	)	

**Submission of Supplemental Evidence in Support of Motion for Preliminary Injunction**

Plaintiff submits the following supplemental evidence to support his motion for preliminary injunction.

- Exhibit 1 - The deposition of J.A.W. with selected redacted and sealed exhibits as follows: Exhibit 1 (redacted); Exhibit 3 (filed under seal); Exhibit 4 (filed under seal); Exhibit 5 (filed under seal); Exhibit 6 (filed under seal)
- Exhibit 2 - The deposition of Superintendent David Smith with selected exhibits, with some redacted or filed under seal, as follows: Exhibit 1 (redacted); Exhibit 6 (filed under seal); Exhibit 7; Exhibit 8 (redacted prior to being made an exhibit at the deposition); Exhibit 9; Exhibit 10; Exhibit 11 (a portion of the exhibit with redactions); Exhibit 12
- Exhibit 3 - The supplemental declaration of J.A.W. (counsel has not yet received the signed original of the scanned signature on the document, but anticipates receiving it in the near future)
- Exhibit 4 - The declaration of Tammy Work (counsel has not yet received the signed original of the scanned signature on the document, but anticipates receiving it in the near future)
- Exhibit 5 - The declaration of Dr. Randi Ettner, with exhibits
- Exhibit 6 - The declaration of Dr. James Fortenberry, with exhibits
- Exhibit 7 - The declaration of Dr. Janine Fogel, with exhibit

- Exhibit 8 - The declaration of Dr. Judy Chiasson, with exhibits
- Exhibit 9 - The declaration of Zachary Mulholland, with exhibit
- Exhibit 10 - The declaration of Alecander Dean (counsel has not yet received the signed original of the scanned signature on the document, but anticipates receiving it in the near future)

WHEREFORE, plaintiff submits the above supplemental evidence.

s/ Kenneth J. Falk

Kenneth J. Falk

s/ Gavin M. Rose

Gavin M. Rose

s/ Jan P. Mensz

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### Certificate of Service

I hereby certify that on this 16th day of July, 2018, a copy of the foregoing was filed electronically with the Clerk of this Court. A copy will be served by the Court's system on:

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s/ Kenneth J. Falk

Kenneth J. Falk  
Attorney at Law

**In The Matter Of:**

*J.A.W., et al. v.*

*Evansville Vanderburgh School Corporation*

---

*J.A.W.*

*June 21, 2018*

---

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1 STATE OF INDIANA )  
 ) SS:  
2 COUNTY OF VANDERBURGH )

3  
4 CERTIFICATION OF CERTAIN QUESTIONS

5  
6 I, NANCY A. TROTTER, A NOTARY PUBLIC AT LARGE IN AND  
7 FOR THE STATE OF INDIANA AND COURT REPORTER MAINTAINING AN  
8 OFFICE IN EVANSVILLE, VANDERBURGH COUNTY, INDIANA, DO HEREBY  
9 CERTIFY THAT UPON ADVICE OF HIS COUNSEL, THE DEPONENT HEREIN  
10 REFUSED TO ANSWER THE FOLLOWING QUESTION AS POSED TO HIM BY  
11 COUNSEL FOR THE DEFENDANT:

12  
13 PAGE NO. LINE NO.  
14 77 15

15  
16 THIS MATTER IS NOW REFERRED TO THE COURT FOR  
17 DISPOSITION PURSUANT TO THE FEDERAL RULES OF CIVIL  
18 PROCEDURE.

19  
20 NANCY A. TROTTER, NOTARY PUBLIC

21  
22 MY COMMISSION EXPIRES:  
23 FEBRUARY 5, 2025

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A P P E A R A N C E S

FOR THE PLAINTIFF:       KENNETH J. FALK  
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FOR THE DEFENDANT:       ROBERT L. BURKART  
                                  PATRICK A. SHOULDERS  
                                  L. KATHERINE BOREN  
                                  ZIEMER, STAYMAN, WEITZEL & SHOULDERS  
                                  20 N.W. FIRST STREET, NINTH FLOOR  
                                  EVANSVILLE, INDIANA 47708

ALSO PRESENT:             KATY ELMER

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1 J.A.W., HAVING BEEN FIRST DULY SWORN TO TELL  
2 THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,  
3 RELATING TO SAID MATTER, WAS EXAMINED AND TESTIFIED  
4 AS FOLLOWS:

5 DIRECT EXAMINATION,

6 QUESTIONS BY MR. BURKART:

7 Q Can you state your full legal name for the record?

8 A E.S.W.

9 Q And how do you spell your middle name for the  
10 reporter?

11 A Capital S-u-k, Capital S-h-a-n.

12 Q And what is the name you go by?

13 A J.A.W.

14 MR. BURKART: J.A.W., have you ever given a  
15 deposition before?

16 THE WITNESS: No.

17 MR. BURKART: I'm just going to ask you some  
18 questions, as your counsel probably indicated. We  
19 just need you to make verbal answers on the record.  
20 She can't get a nod of the head or anything, so speak  
21 into that so she can get everything on the record. I  
22 may be asking you some personal questions. I don't  
23 mean to be offensive, I don't mean to dig into  
24 certain things, but given the nature of this case,  
25 it's going to be required. Do you understand that?

1 THE WITNESS: Uh-huh. Yes.

2 MR. BURKART: Is there any medication you're  
3 currently on that impairs your ability to testify  
4 today?

5 THE WITNESS: No.

6 MR. BURKART: Are you on any current  
7 medication?

8 THE WITNESS: I'm on a hormone replacement  
9 therapy, which is testosterone.

10 MR. BURKART: We'll get into that later. Is  
11 there any physical or mental condition that you  
12 suffer from that prevents you from testifying  
13 truthfully today?

14 THE WITNESS: No.

15 Q And we're here today about a particular lawsuit that  
16 you're involved with. I don't want to know any  
17 communications you've had with counsel, but how was  
18 it that you first became aware of the ACLU?

19 A I went to a Pride event last year and I met Kit  
20 Malone who works with the ACLU and I talked to her  
21 about some of the things that they did and she told  
22 me about the ACLU.

23 Q And what is a Pride event?

24 A The Tri-State Alliance was holding a Pride picnic in  
25 Evansville, which was basically just a picnic that

1 was for LGBT activism.

2 Q And so you would have had some discussion. Was there  
3 a presentation by this Kit Malone?

4 A Not that I was aware of. Yeah, actually, I think she  
5 was running a booth, just giving out resources for  
6 LGBTQ people.

7 Q And was there some particular reason you went to her  
8 booth?

9 A My friend, Wyatt Squires, he knew her and introduced  
10 me to her.

11 Q And then did you have any discussions with Kit Malone  
12 at that time concerning any issues surrounding EVSC?

13 A Yeah, a little bit, just talking about the bathroom  
14 issue.

15 Q And what time period would this have been,  
16 approximately?

17 A Almost exactly a year ago.

18 Q So roughly June of 2017?

19 A Yes.

20 Q And then what was your next interaction with someone  
21 from the ACLU?

22 A After I submitted the Complaint through their  
23 website, I guess Kit got me in contact with Ken,  
24 so --

25 Q And you mentioned Mr. Squires. When did you first

1 meet him?

2 A About a year and a half ago through Tri-State  
3 Alliance.

4 Q And what is Tri-State Alliance?

5 A It is a non-profit in town for LBGTQ people.

6 Q And was he some kind of advocate or presenter at  
7 those meetings?

8 A He ran the transgender support group.

9 Q And did you attend his support group?

10 A Yes. I still do. I'm actually one of the leaders  
11 now.

12 Q When did you first begin attending those meetings  
13 with Mr. Squires?

14 A About a year and a half ago.

15 Q So it would have been roughly the beginning of 2017?

16 A Yeah.

17 Q And what was the purpose of attending those meetings?

18 A Just to meet more people that were trans in the  
19 community.

20 Q And what's your current relationship with  
21 Mr. Squires?

22 A Honestly, he's like a dad to me.

23 Q And Mr. Squires, is he a transgender as well?

24 A Yes, he is transgender.

25 Q All right. And he submitted an Affidavit in this

1 case that says that you speak regularly with him?

2 A Yes.

3 Q And did you consult with him regarding anything with  
4 this EVSC matter?

5 A Yes.

6 Q And when would that have first started?

7 A I guess after he introduced me to Kit. I mean, I've  
8 always mentioned to him that that was an issue.

9 Q When you say you mentioned to him that that was an  
10 issue, what's the "that"?

11 A That I'm not able to use the right bathroom at  
12 school.

13 Q And when do you recall that you first started having  
14 these conversations with Wyatt? Would it have been  
15 in the beginning when you first met him and you said  
16 you were attending those meetings in January of 2017?

17 A Yes, I guess a little after when I started to get to  
18 know him.

19 Q He submitted an Affidavit in this case mentioning  
20 things about your mother, that she was not willing to  
21 participate in this litigation; is that accurate?

22 A Yes.

23 Q And why is that?

24 A Right now, she's going through a divorce and she  
25 didn't want to have too much on her plate.

1 Q Did she know that you had contacted the ACLU?

2 A Yes.

3 Q Did the ACLU send a letter on your behalf to the EVSC  
4 at some point?

5 A I believe so, yes.

6 Q And would your mother have known that you had sent  
7 that at the time?

8 A Yes.

9 Q Did she have any conversations with you and the ACLU?

10 A Yes.

11 MR. FALK: Just to clarify, were you asking  
12 if she had any conversations with the ACLU and with  
13 him, you know, like a three-way call, or were you  
14 asking if -- was there a coma there? I'm sorry.

15 MR. BURKART: Yeah.

16 Q In your discussion with the ACLU concerning this EVSC  
17 matter, was your mother present?

18 A She's had separate conversations with them. I don't  
19 think we've all at once had a conversation together,  
20 but --

21 MR. BURKART: Let's just mark this, while  
22 we've got it, as Exhibit 1.

23 (WHEREUPON, DEPOSITION EXHIBIT 1 WAS MARKED  
24 FOR IDENTIFICATION.)

25 Q And would this have been a letter that was sent on

1 your behalf regarding this bathroom issue with EVSC?

2 A Yes.

3 Q And is this letter something you would have discussed  
4 with your mother before it was sent?

5 A Yes.

6 Q Do you currently live with your mother?

7 A Yes.

8 Q All right. What about your father, where is he?

9 A My biological father or my stepfather?

10 Q Your biological father.

11 A I don't know where he is.

12 Q Do you know if he resides in the community?

13 A I've never met him.

14 Q Okay. And you have a stepfather?

15 A Yes.

16 Q Does he reside with you at the house?

17 A No.

18 Q Are your mother and stepfather getting a divorce?

19 A Yes.

20 Q Are there any issues you've had with your stepfather  
21 when he did live in the home?

22 A What about specifically?

23 Q Any events that caused you distress or anxiety?

24 A Yes.

25 Q What kind?

1 A He wasn't a fan of my gender identity.

2 Q And how long has he been in the home?

3 A Ever since I was four, and he moved out around a  
4 couple weeks before Christmas.

5 Q What year?

6 A Last year, 2017.

7 Q And so his attitude towards your transgender status  
8 caused you some complications at home?

9 A Yes.

10 Q Did it cause you to feel depressed?

11 A Yes.

12 Q Did it cause you to feel distressed?

13 A Yes.

14 Q Did it cause you anxiety?

15 A Yes.

16 Q Did it cause you to have any suicidal thoughts?

17 A I wouldn't say that far.

18 Q Any thoughts about harming yourself?

19 A No, I wouldn't say that far.

20 Q Did your stepfather and mother ever have any  
21 disagreements at home about your transgender status?

22 A Yes.

23 Q And what were those discussions?

24 A My mom supported -- my mom supported me transitioning  
25 after awhile. My dad never supported it, so I had to

1 go to therapy kind of without him knowing.

2 Q You said your mom supported your transitioning after  
3 awhile. Was there a period of time she didn't  
4 support it?

5 A Yeah, she had to learn more about it, she had to come  
6 to accept it, but that's normal.

7 Q And what period of time, as best you can recall, was  
8 it when she was learning or didn't fully understand?

9 A I came out around 11 and up until I was about 15, she  
10 didn't really understand it, and then we started  
11 working on it and then I started going to therapy,  
12 so --

13 Q And how old are you today?

14 A I'm 17.

15 Q So within the last year and a half, she's been able  
16 to start accepting it; is that fair?

17 A Yes.

18 Q Let me back up a little bit. You've submitted an  
19 Affidavit in this case and you said that your gender  
20 that was assigned at birth and on your Birth  
21 Certificate is female. What is it that you  
22 understand differentiates a male from a female?

23 A I'm sorry, that's a hard question. I suppose just  
24 the -- how you express yourself and how you express  
25 your gender. Like I wear male clothes and I prefer

1 to be referred to as male, so I am male, and some  
2 people wear female clothes and, you know, prefer to  
3 be called by female things, so they're female.

4 Q All right. Let me ask you this then. When you said  
5 your Birth Certificate noted you as female, what is  
6 your understanding of how that was determined?

7 A It was just determined by the sex I was born with.

8 Q And when you say the sex you were born with, what are  
9 you referring to?

10 A The sex that I was born with?

11 Q Yeah. How do you determine that?

12 A By -- by genitalia.

13 Q So as I understand it, when it says you're noted as a  
14 female on your Birth Certificate, is that because you  
15 have a vagina?

16 A Yes.

17 Q Okay. And would you agree that one who is noted on  
18 their Birth Certificate as male would have a penis?

19 A Yes, on their Birth Certificate.

20 Q Okay. And so in terms of your -- you said you came  
21 out at 11. What was it that led to that?

22 A When I came out at 11, I was starting middle school  
23 and we started to have more gender-segregated  
24 activities with, like, gym class. There would be an  
25 all female gym class and an all male gym class and I

1           felt really uncomfortable put in the all female gym  
2           class, and at that point, I started to understand  
3           that -- I didn't really associate who I was with  
4           being female.

5           Q   And so that separation you talked about, that was,  
6           again, based upon your understanding of male and  
7           female being differentiated by biological?

8           A   I'm sorry, can you repeat that?

9           Q   Sure. You said that you started having these  
10          gender-segregated events, right, at school?

11          A   Yes.

12          Q   And when you say "gender segregated," is that based  
13          upon the biological sex --

14          A   Yes.

15          Q   -- of male and female?

16          A   Yeah. Sorry.

17          Q   Okay. And that was around, you said, when?

18          A   When I was around 11.

19          Q   Eleven. You've been in school at Evansville  
20          Vanderburgh School Corporation for how long?

21          A   I guess ever since I was -- I was enrolled in  
22          kindergarten with an EVSC school, so for as long as I  
23          could go to school, I was in the EVSC.

24          Q   So where did you go to school K through 8?

25          A   I started at Dexter Elementary School and then I

1 changed to Hebron Elementary School.

2 Q And then after Hebron, you went to which high school?

3 A I went to Plaza Park for middle school and then North  
4 Junior High and then I -- for high school, I went to  
5 both North and Central for freshman year, and then  
6 for sophomore and junior, I went to both North and  
7 Harrison.

8 Q And was there a separate program at Central that you  
9 went there part of the time?

10 A I went to a Medical Professions Academy for my  
11 freshman year.

12 THE WITNESS: I think my mom called me.

13 MR. FALK: Can we take a break?

14 MR. BURKART: Yeah, go ahead.

15 (WHEREUPON, A SHORT RECESS WAS TAKEN.)

16 Q J.A.W., you were talking about not knowing your  
17 biological father. Has that caused you some issues  
18 throughout your life?

19 A Not really.

20 Q No emotional or psychological problems relating to  
21 the lack of a father figure?

22 A No, because I -- I had a father figure with my  
23 stepdad, and then once he stopped being a really  
24 great father figure, then I had Wyatt, so --

25 Q When did your stepdad stop being a good father

1 figure?

2 A Well, I mean, I guess pretty early into my childhood.  
3 He always had a drinking problem, but -- I don't  
4 know.

5 Q So would you say he was a good father figure or he  
6 was good at times and other times not so good?

7 A Good at times.

8 Q And was there a period of time in which you went to  
9 live with Wyatt?

10 A Yes.

11 Q And when was that?

12 A It was sporadic. It was on and off in the past year.

13 Q In the past year?

14 A Yeah. There wasn't a specific time. It would be a  
15 weekend here, a weekend there, a week there.

16 Q Was that with your mother's permission?

17 A Yes.

18 Q When you started at Dexter, I assume you had to use  
19 the bathroom during the day at times?

20 A Yes.

21 Q And what was your understanding of the rule back then  
22 at EVSC?

23 A I was five or six. I didn't really have a concept of  
24 it.

25 Q Fair enough. Do you recall, when you were at Dexter,

1           which bathroom you would use?

2           A    The female restroom.

3           Q    And when you went through to Hebron, which bathroom  
4           would you use?

5           A    The female restroom.

6           Q    And at Plaza Middle School, which bathroom?

7           A    The female restroom, but begrudgingly. At that  
8           point, I started to feel uncomfortable.

9           Q    So you started feeling uncomfortable using the female  
10          restroom in what grade would you say?

11          A    When I started to feel uncomfortable?

12          Q    Yes.

13          A    I guess 6th grade to now.

14          Q    So K through 6, you didn't have any issues using the  
15          female restroom; is that fair?

16                   MR. FALK: He just said in the 6th grade he  
17          started to feel uncomfortable.

18          Q    Kindergarten through 5th grade, you didn't have any  
19          problems using the female restroom; is that --

20          A    I didn't really understand the concept of why the --  
21          why they were segregated genders. I mean, I was -- I  
22          was just a young kid. I didn't really know.

23          Q    And so you just would have learned from somebody at  
24          school that when you have to go to the bathroom, you  
25          use this particular bathroom and you followed that

1 practice; is that --

2 A I guess, yeah.

3 Q And so in Plaza, was there some experience you had  
4 that led you to start feeling uncomfortable using the  
5 female restrooms?

6 A There wasn't a specific experience, but it was more  
7 so, I guess, just things being more related to  
8 gender, I guess things being more dictated to gender.  
9 I wanted to feel more masculine and using the female  
10 restroom was not in agreement with how I felt.

11 Q All right. Did you express that to anyone at that  
12 time?

13 A Not at that time. I expressed it around 8th grade.

14 Q Is that when you were at North Junior High?

15 A Yes.

16 Q And who would you have expressed that issue with?

17 A The main issue I had at that point was with the  
18 locker rooms because they had all female and all male  
19 locker rooms and I was initially signed up for a gym  
20 class, but when my -- we had issues and then I talked  
21 to the office and my mom talked to the office and we  
22 ended up having that changed to a different class.

23 Q All right. And that would have been what, 8th grade?

24 A Yes.

25 Q And you raised the issue about being uncomfortable in

1 a female locker room?

2 A Yes.

3 Q And you raised that to an EVSC administrator at North  
4 High School?

5 A Social worker.

6 Q A social worker? Did you speak with the principal at  
7 any time?

8 A No, not that I'm aware of -- or that I remember.

9 Sorry.

10 Q All right. So the best you recall, you spoke with  
11 the social worker, and did she come back with some  
12 kind of proposed alternative or approval to change  
13 class?

14 A Yeah, I -- yeah, I think so.

15 Q Okay. So you raised the issue and then someone from  
16 EVSC would have accommodated that issue; is that  
17 fair?

18 A Yes.

19 Q Was there any issue with using the female restroom  
20 that you communicated to anyone at EVSC during this  
21 8th grade year?

22 A No. The main obstacle that year was to start being  
23 acknowledged as J.A.W. and not my birth name, so the  
24 main issue was trying to get EVSC employees to refer  
25 to me as that, which didn't always happen, but --

1 Q All right. And do you recall who you communicated  
2 with about the name issue?

3 A Oh, I talked to my teachers individually.

4 Q Okay. And you asked them to call you by J.A.W. then?

5 A Yes.

6 Q Were there teachers that agreed to do that?

7 A Some.

8 Q And there were teachers --

9 A That flat-out refused.

10 Q And do you recall who those were?

11 A Yeah. Should I be listing off specific names?

12 Q Yes.

13 A Oh, gosh, I don't know her first name. I know she  
14 was Mrs. Esparza.

15 Q Is there anyone else?

16 A Mr. Hoschild (phonetic). I think he's been fired  
17 since then, but -- and there were a couple others, I  
18 can't quite remember, and a lot of times teachers  
19 would call me by J.A.W. but they wouldn't use my  
20 correct pronouns.

21 Q And do you think that was just because it was  
22 something new for them or was there some  
23 intentional --

24 A I think it was easy for them to not have to, I guess,  
25 overcome that mental hurdle of understanding the new

1 concept, I guess.

2 Q And the teachers that refused, did you have any  
3 discussions with the social worker or anybody in  
4 administration about that?

5 A No. With Mrs. Esparza, that was a big scenario.  
6 Basically, she would always call me by my birth name  
7 and then one day, I think one of my peers asked her,  
8 "Well, why do you call J.A.W. by their birth name,  
9 they don't like that," and she just said that she's  
10 going to call me that because that's my name, and it  
11 was -- she was very, very upset that anyone  
12 questioned her doing that, so it kind of intimidated  
13 me and I didn't really talk to anyone about it. I  
14 just didn't want to have that confrontation, I guess.

15 Q And when was it that you -- you said when you were 11  
16 you kind of came out?

17 A Yes.

18 Q And when you said "came out," what exactly does that  
19 mean?

20 A I started having communication with my mom and  
21 friends about that I didn't feel female, that I  
22 didn't identify with a female.

23 Q And did you start dressing differently at that time?

24 A A little, yeah. We didn't -- I didn't outwardly  
25 start expressing my gender identity a lot just

1           because I wasn't comfortable transitioning to that  
2           stage yet, really until 7th grade -- or the end of  
3           7th grade and 8th grade.

4           Q    So when did the actual outward expression begin?

5           A    8th grade.

6           Q    8th grade? And that was by dress, haircut?

7           A    Yeah, haircut, dress, and, you know, being --  
8           requesting going by my name now and male pronouns.

9           Q    And when you made that outward expression, were you  
10          telling other students as well?

11          A    Yes.

12          Q    So this was not some kind of secret then?

13          A    Yeah, it was not a secret.

14          Q    So you were kind of not only publicly displaying it  
15          in terms of your physical appearance, your clothing,  
16          but also in communicating with other students?

17          A    Yes.

18          Q    And that would have been 8th grade?

19          A    Yes.

20          Q    Did you request in 8th grade, during this time, any  
21          EVSC personnel to allow you to use the male restroom?

22          A    Not at that point.

23          Q    Okay. And so it wasn't a transitional need at that  
24          time; is that --

25          A    It was, it was just more so I was too intimidated, I

1           guess, to seek that out.

2           Q    And at this time when you're going through this  
3                outward change, when you went to a public place,  
4                which restroom would you have used?

5           A    It depended if they had a singular stall restroom.  
6                If they didn't, you know, I would use the male  
7                restroom. It just -- it depended on if I felt safe.

8           Q    And when you say you felt safe, what does that mean?

9           A    Well, a lot of -- a lot of issues with being trans is  
10               that you can very easily get attacked in a restroom  
11               for which restroom you choose, so I guess it's just a  
12               feeling of comfort, of, you know, is someone going to  
13               harass me for going into this restroom or not. I  
14               feel more safe using a singular stall restroom  
15               because no one else can go in there while I'm in  
16               there.

17          Q    So you would have recognized that using a male  
18               restroom at times would have subjected yourself to  
19               safety concerns?

20          A    I mean, it depends on where you go, yeah.

21          Q    All right. Then 9th grade comes around and you're at  
22               North and Central?

23          A    Yes.

24          Q    Are you continuing this outward change in both  
25               appearance and communication?

1 A Yes.

2 Q So students would have known that you had made  
3 this -- were making this transition; is that fair?

4 A Yes.

5 Q And then any issues with feeling uncomfortable in  
6 using the restrooms during your freshman year?

7 A I felt extremely uncomfortable using the female  
8 restrooms.

9 Q And what was the change between 8th grade and 9th  
10 grade that made you now extremely uncomfortable?

11 A I guess my gender dysphoria just got worse as, you  
12 know, puberty was starting to hit more.

13 Q All right.

14 A Because I felt -- I still felt uncomfortable using  
15 the female restroom in 8th grade, it's just that, you  
16 know, the, I guess, intimidation of using the male  
17 restroom kind of outweighed it.

18 Q Again, I'm asking these questions because this is as  
19 much new to me. In terms of using the female  
20 restroom, if you went in there, there would be  
21 individual stalls, correct?

22 A Uh-huh.

23 Q Yes?

24 MR. FALK: You have to say "yes" or "no"  
25 because she can't do "uh-huh."

1 THE WITNESS: Sorry.

2 A Yes.

3 Q So you would have gone in and used one of those  
4 stalls, closed the door, right?

5 A Yes.

6 Q All right. In the male restroom, most of them would  
7 have urinals and also have stalls?

8 A Yes.

9 Q And when you go into a male restroom in a public  
10 place, I assume you use the stall?

11 A Yes.

12 Q Close the door?

13 A Yes.

14 Q So you're using the same kind of stall with the same  
15 door closed as you would in the female, right?

16 A Basically, yes.

17 Q And I'm just trying to understand. You're doing the  
18 same thing in the male as you're doing in the female  
19 and you're doing it in the same stall in the male as  
20 the female. What is the extreme discomfort from  
21 using the male as opposed to the female?

22 A Because I'm not female and that is a female space. I  
23 don't belong in a female space. I mean, we -- I  
24 don't -- I don't know.

25 Q It's just you don't feel comfortable?

1 (WHEREUPON, DEPOSITION EXHIBIT 2 WAS MARKED  
2 FOR IDENTIFICATION.)

3 Q Let me just show you what's marked as 2. Can you  
4 identify that? What is Exhibit 2?

5 A I'm sorry. It's my driver's license.

6 Q Okay. And what is the name on the driver's license?

7 A My birth name, E.S.W.

8 Q And why doesn't that reflect the J.A.W. name that you  
9 go by?

10 A Because I haven't legally been able to change my name  
11 yet.

12 Q And why is it that you haven't been able to legally  
13 change your name?

14 A I'm waiting until I'm not a minor any more because  
15 it's really expensive since I was born in  
16 Jacksonville, Florida.

17 Q And what's your understanding of what's required to  
18 change your name?

19 A You have to try to get an okay from both biological  
20 parents, which then I would have to run an ad in the  
21 paper finding my biological father, which could take  
22 weeks. I know that there are a lot of fees that come  
23 involved with changing a name, changing a name  
24 legally without a reason of, you know, mar- -- of  
25 being a -- a change of custody or anything like that.

1 Q Is it your understanding that your mother has full  
2 custody, full legal custody of you?

3 A Yes.

4 Q Your biological father has no legal custody, correct?

5 A No.

6 Q And so is it your understanding that you still need  
7 his -- some kind of approval from him in order to  
8 change your name?

9 A I'm supposed to legally make an attempt.

10 Q And how do you know that?

11 A I've done research. My mom has also done research.

12 Q And so you've chosen not to legally change your name,  
13 if I understand it, because of cost?

14 A Yes.

15 Q Will the cost be any different when you turn 18 as  
16 opposed to now?

17 A Yes.

18 Q And what is that based upon?

19 A Just research that I have found. I don't remember  
20 anything specific, but --

21 Q And so in order to change your name and to get an  
22 Indiana driver's license with your J.A.W. name, you  
23 have to meet some requirements in the State of  
24 Indiana, correct?

25 A Yes.

1 Q Okay. And your most recent issuance date of this  
2 Exhibit 2 driver's license is October 10, 2017?

3 A Yes.

4 Q So you've elected to use your legal name in order to  
5 obtain the privilege of getting a driver's license?

6 A Yes.

7 Q And then your understanding that when you fill out  
8 whatever application or whatever requirement the  
9 State of Indiana needs for a driver's license, you  
10 have to specify sex; is that true?

11 A Yes.

12 Q And what did you put down as sex on your driver's  
13 license?

14 A Female.

15 Q All right. And do you know, is there some  
16 requirements in order to change how you refer to  
17 yourself as a female on this driver's license to a  
18 male?

19 A Yes.

20 Q And what are those requirements as you understand  
21 them?

22 A You'd have to change your Birth Certificate. I don't  
23 know exactly the laws for Indiana and Florida, but I  
24 know that you have to -- some states require that you  
25 have certain surgeries in order to be able to have

1           your Birth Certificate updated to what your sex is,  
2           but there is a difference between sex and gender,  
3           so -- whether or not, you know, my sex is female, my  
4           gender is still male.

5           Q    So sex, again, goes back to the biological  
6           differences we discussed earlier?

7           A    Yes.

8           Q    And you are biologically and anatomically a female  
9           currently, correct?

10          A    Yes.

11          Q    And then you've done some research in order to  
12          understand what's necessary for changing a Birth  
13          Certificate, right?

14          A    Yes.

15          Q    And you've chosen not to undertake those steps  
16          currently; is that fair?

17          A    Not at this point, yes.

18          Q    Okay. And those would be steps that are required by,  
19          I guess, the State of Florida in order to change your  
20          Birth Certificate, right?

21          A    Well, I wouldn't be able to -- I can -- my --  
22          changing my name legally and changing my Birth  
23          Certificate for what is listed as sex are different  
24          things. Yeah, I have not chosen to change my name  
25          legally yet. For the sex on my Birth Certificate, if

1 I wanted to change that, I would probably have to  
2 undergo a sex reassignment surgery, which I can't do  
3 as a minor.

4 Q And so you've done research and you understand that,  
5 as you've indicated, in order to change your legal  
6 name or to change your Birth Certificate, you have to  
7 meet certain requirements of the applicable state?

8 A Yes.

9 Q And you've also indicated that you have an  
10 understanding that you cannot get sex reassignment  
11 surgery until you're over 18?

12 A Yes.

13 Q And is that from your research as well?

14 A Yes.

15 Q And did someone help you with that research?

16 A Yes.

17 Q Who would that have been?

18 A TSA has a lot of resources that helped me with that.  
19 Wyatt also helped me with a lot of research with the  
20 name change issues.

21 Q And TSA would be Tri-State Alliance?

22 A Yes, Tri-State Alliance.

23 Q And is that Mr. Squires -- the group he's active  
24 with?

25 A He's no longer active with that group anymore, but he

1 used to.

2 Q Does he head his own group now?

3 A No, not at the moment.

4 Q Why is he not active in that group?

5 A He's focusing on work right now.

6 Q He's a transgender advocate, right?

7 A Yes.

8 Q And he's assisted you with looking at these different  
9 things that are required in order to make these  
10 changes?

11 A Yes.

12 Q Is your goal sex reassignment surgery at some point?

13 A I mean, I want to have top surgery.

14 Q You want to have what?

15 A Top surgery. Sex reassignment surgery is kind of a  
16 broad term. There's different types of surgeries  
17 that you can have. Right now I am doing the part of  
18 transitioning which is just hormone replacement  
19 therapy. My goal is to have top surgery, which is  
20 surgery on my chest.

21 Q Is it like a mastectomy, kind of?

22 A Yeah.

23 Q And can you get it under 18 if you have consent of a  
24 parent?

25 A You could in some states. It's really hard to find a

1 surgeon that's willing to do it, and also my  
2 insurance won't cover me until I think I'm 21.

3 Q And from your active involvement in I think the  
4 groups you've talked about, do you think it's a good  
5 idea that kids under 18 can't have sex reassignment  
6 surgery?

7 A I -- I don't know.

8 Q You don't have an opinion one way or the other?

9 A Not really.

10 Q Would you think that kids under 18 are sufficiently  
11 mature to make that decision? That's a life-altering  
12 decision, isn't it?

13 A Yes.

14 Q And in your opinion, do you think that kids under 18  
15 have that ability, that maturity in order to make  
16 that kind of decision?

17 A I think that after undergoing therapy, yes.

18 Q Okay.

19 A I think that I would be able to make that decision.

20 Q And so without therapy, you couldn't make it; would  
21 that be fair?

22 A I could, but therapy just -- it helps people  
23 understand and learn to accept themselves before they  
24 start transitioning.

25 Q Do you have a Passport?

1 A No.

2 Q Have you ever looked up to see the requirements for a  
3 Passport in terms of requiring --

4 A I've never had a need for a Passport.

5 Q Okay. You said before, when we were talking about  
6 9th grade, you said your gender dysphoria was getting  
7 worse?

8 A Yes.

9 Q And explain to me what gender dysphoria is.

10 A It's a discomfort with the connection between what --  
11 the sex that your body is and what your gender is.

12 Q And that's a medical term?

13 A I don't know if that's the exact medical definition,  
14 but gender dysphoria is a medical term.

15 Q And that requires a diagnosis by some kind of medical  
16 provider?

17 A Yes.

18 Q And when you were a freshman, had you had some kind  
19 of diagnosis of gender dysphoria?

20 A I am not -- I'm not sure of the exact date that I was  
21 diagnosed with gender dysphoria. I think it was  
22 around my sophomore year, or at least the summer of  
23 it.

24 Q Okay. We'll get to that in a sec, but as you recall,  
25 you don't -- when you use the term "gender

1 dysphoria," you're referring to your feelings in 9th  
2 grade. That wasn't necessarily a particular medical  
3 diagnosis at that time, correct?

4 A It wasn't diagnosed, but any therapist could have  
5 told that -- could have said that that's what it was.

6 Q Were you seeking counseling in 9th grade at all?

7 A No.

8 Q And was it that this level of discomfort wasn't of  
9 such a concern that you thought you needed counseling  
10 or was there some other reason you didn't pursue  
11 counseling at that time?

12 A I didn't know that counseling would help me at that  
13 point, I suppose. I -- I was -- I was just  
14 feeling -- I wasn't sure what I was doing.

15 Q And when you say you were young and not sure what you  
16 were doing, you mean that these emotions were new and  
17 you weren't sure how to react?

18 A The -- I'm not sure how to word it. I was feeling an  
19 extreme amount of discomfort and wasn't sure how to  
20 place it. I knew that it had to do with my gender,  
21 so I tried to sort of fix it on my own by expressing  
22 myself, because also I was working to try to get  
23 acceptance with my parents more so and, you know,  
24 people that were surrounding my life, so I didn't  
25 really seek counseling just because I wasn't aware

1           that that was really an option.

2           Q   Okay.  So if I understand it, you're having these  
3           issues regarding gender in 9th grade, they're making  
4           you feel pretty uncomfortable, and as you've  
5           indicated, to try and overcome those, you began to  
6           express yourself more openly?

7           A   Yes.

8           Q   And during that time, this would have been a period  
9           of time at which your parents weren't particularly  
10          receptive to that, right?

11          A   Yes.

12          Q   And as we talked about, that would have caused you  
13          some of this concern and uncomfortableness as well,  
14          right --

15          A   I guess --

16          Q   -- anxiety?

17          A   -- yes, partly.

18          Q   Okay.  And so you get to your sophomore year, 10th  
19          grade, you're at -- where are you at during your  
20          sophomore year?

21          A   North and Harrison.

22          Q   North and Harrison.  And any changes during your  
23          sophomore year regarding to your gender issues?

24          A   My mom was becoming more open and accepting and that  
25          was the year that I started counseling.

1 Q And when you were in your freshman year, you  
2 continued to use the female restrooms?

3 A Yes. And if I -- a lot of times I would just avoid  
4 using the restroom.

5 Q In your freshman year, you're pretty sharp, you're a  
6 little more mature, you understood that EVSC had  
7 separate bathrooms, one for male, one for female?

8 A Yes.

9 Q Was that an issue that you had concerns with at that  
10 time, your freshman year?

11 A Yes. Yeah. Yeah, because I wanted to use the male  
12 restrooms and I wasn't -- I was told I wasn't allowed  
13 to.

14 Q Who did you ask to use the male restrooms; do you  
15 recall?

16 A I didn't ask anyone at first, I just started using  
17 the male restrooms to change out for locker rooms. I  
18 didn't feel like I had to ask to use the restroom  
19 with the gender I identified with until I was called  
20 down to the office and was informed that, I suppose,  
21 a parent was calling because their students saw two  
22 girls using the restroom -- using the male restroom.

23 Q All right. Let me go back just because there's a lot  
24 there. So first you're saying you were, you said,  
25 changing in the locker room. Was that for class?

1           A    Yeah, for gym.  At first, we were expected to just  
2                    use the normal female locker room.  I wasn't  
3                    comfortable with that, so I talked to the teacher and  
4                    just used the restroom, the male restroom, before  
5                    class to change out.

6           Q    All right.  So you've got a gym class.  You have to  
7                    get dressed before you go to the class, right?

8           A    Yes.

9           Q    Okay.  And there's girls' locker rooms and boys'  
10                   locker rooms; is that right?

11          A    Yes.

12          Q    And you're not comfortable in the girls' locker room,  
13                   right?

14          A    Right.

15          Q    And so you asked -- do you recall which teacher you  
16                   asked, who that was?

17          A    No, I can't remember.

18          Q    Would it have been the gym teacher, you think?

19          A    Yeah.  Yeah, it would have been the gym teacher.

20          Q    So you asked the gym teacher about using the male  
21                   locker room to get dressed?

22          A    I -- I can't remember.  I'm sorry.  I think I -- I  
23                   don't know.  I'm sorry.

24          Q    All right.  I'm just trying to get an understanding.  
25                   You said you were uncomfortable using the female

1 locker room, so you used the male locker room at some  
2 point?

3 A No, I never used the male locker room.

4 Q Then take me back, I'm missing something here. You  
5 used the male what?

6 A Restroom.

7 Q Restroom? Okay. And you used the male restroom just  
8 to get dressed for class?

9 A Yes.

10 Q And that was something that the teacher said was  
11 okay?

12 A I don't think she knew that I was using the male  
13 restroom, but yes.

14 Q Okay. All right. So you get to class early and then  
15 change in the male restroom?

16 A Yes.

17 Q And then at some point, that became a problem?

18 A Yes.

19 Q Take me through how that was communicated to you and  
20 from whom.

21 A I was called down to the office and was told that --  
22 basically to stop because they -- the office had  
23 gotten a call from a parent complaining about it,  
24 saying that there were two girls using the -- I was  
25 with another student changing, so that's why, who is

1           also a trans. Basically saying that there were two  
2           girls using the male restroom.

3           Q   Who was the other transgender girl?

4                       MR. FALK: I'm going to object just for  
5           privacy reasons and I'll instruct him not to answer.  
6           I'm just trying to protect -- I don't know who it is,  
7           either, I'm just trying to protect that person's  
8           privacy.

9                       MR. BURKART: Well, I mean, we're here on  
10          this issue. We can keep it confidential for purposes  
11          of Protective Order, but I think we have a right to  
12          know that information. I mean, there's no privilege  
13          here, it's just --

14                      MR. FALK: I know.

15                      MR. BURKART: I mean, it's --

16                      MR. FALK: Okay. Well, over my objection  
17          and with the understanding that it's going to be part  
18          of the confidentiality, if you remember.

19          A   Just my friend, Tom Beement.

20          Q   How do you spell that?

21          A   B-e-e-m-e-n-t.

22          Q   So do you remember who the person in the office was  
23          that communicated that there was a problem with that  
24          issue?

25          A   Yeah, it was actually Ms. Elmer.

1 Q Okay.

2 A She was the Dean at North at the time.

3 Q All right. And so it was your understanding that a  
4 parent had called and had a concern about two females  
5 dressing in a male restroom?

6 A Yes.

7 Q And you were just using the male restroom at that  
8 time to get dressed for gym class, correct?

9 A Yes.

10 Q And then after that was communicated to you, where  
11 did you get dressed for gym class?

12 A They, I guess, tried to figure out another option and  
13 placed us in another female locker room that wasn't  
14 being utilized upstairs.

15 Q And was that acceptable to you?

16 A No.

17 Q Why not?

18 A Because it was still a female locker room and it was  
19 completely unlocked. Female students would go in  
20 there all of the time. There -- it wasn't really  
21 respecting our gender identity so much as separating  
22 us.

23 Q So I guess it would be fair to say EVSC offered you  
24 an alternative, but you didn't believe that that was  
25 a reasonable alternative?

1 A It wasn't a reasonable alternative.

2 Q Did Tom Beement think that was unreasonable?

3 A Yes.

4 Q Is there any further communications you had with  
5 anyone at EVSC to advise them that that was not a  
6 reasonable alternative?

7 A My counselor, and she just proceeded to say that's  
8 all she could offer me.

9 Q And who was your counselor at that time?

10 A I don't know her first name. It's Haller,  
11 H-a-l-l-e-r.

12 Q And then you get into your sophomore year, your mom  
13 is more accepting. Did you continue to use the  
14 female restrooms?

15 A I avoided using the restroom.

16 Q Did you ever use the female restroom during your  
17 sophomore year?

18 A If I really had to, then yes, but just out of  
19 necessity.

20 Q Well, were there times you wanted to use the restroom  
21 when it wasn't a necessity?

22 A I just avoided using the restroom.

23 Q Okay. But my point is, you said you used it out of  
24 necessity, and I assume when you meant out of  
25 necessity is when you had to use --

1 A Yes.

2 Q -- the restroom urgently, you used the restroom?

3 A Yes.

4 Q And were there times you wanted to use the restroom  
5 for something other than to go to the bathroom?

6 A No, not that -- no.

7 Q Okay. And did you have any communications with any  
8 counselor or staff your sophomore year about having  
9 to use the female or male restrooms?

10 A No. The only communication that I really had with --  
11 was with my counselor and that was really freshman  
12 year, but she never really acknowledged any of my  
13 problems, she just sort of brushed them away.

14 Q And when you say she didn't acknowledge any of your  
15 problems, what were the problems that you  
16 acknowledged to her?

17 A Well, the bathroom situation and the gym class  
18 situation. We need gym credits to be able to  
19 graduate and at North, for freshman year, they have  
20 all female classrooms and all male classrooms, but  
21 oftentimes they have classrooms that have both  
22 genders in them just due to a lack of certain numbers  
23 of students, and I requested to her multiple times if  
24 I could switch -- because I was enrolled in an all  
25 female classroom.

1 MR. FALK: I'm sorry, are we talking about  
2 gym or all classes?

3 THE WITNESS: Oh, just for gym.

4 MR. FALK: I just wanted to clarify that.  
5 Okay. Sorry.

6 A I requested to be changed into a gym class that  
7 was -- that had both male and females, at least if I  
8 wasn't going to be put into an all male classroom,  
9 and she just didn't ever do anything about it. What  
10 she would tell me is that the next semester, no  
11 classes were gender segregated, and then -- then once  
12 the second semester rolled around, I showed up to my  
13 class and it was all female, and she just -- she  
14 wasn't very acknowledging of any of my problems, she  
15 just -- honestly, I felt like she was dishonest with  
16 me a lot of the times just to get me to get out of  
17 her office.

18 Q And that was Ms. Haller?

19 A Yes.

20 Q And so if I understand it, what you said your concern  
21 was, you wanted to be in the all male gym class?

22 A Or at least in the female and male gym -- just not in  
23 an all female class.

24 Q And did that make you feel uncomfortable?

25 A Yes.

1 Q Aside from school where you may have these -- do you  
2 feel uncomfortable in public when you're around  
3 females?

4 A Can you specify what you mean?

5 Q Well, I mean, you said when you were in this all  
6 female gym class, there would have been, what, 15 to  
7 20 other females?

8 A Yes.

9 Q When you're in a group of females, do you feel  
10 uncomfortable?

11 A I feel uncomfortable when I am put there because they  
12 -- I'm being perceived as female.

13 Q So it's not that you're uncomfortable being with a  
14 group of females, it's just when somebody else kind  
15 of puts their perceived view of your gender with that  
16 group?

17 A I suppose, yeah. I mean, I'm uncomfortable being put  
18 in a group of females that are only females because  
19 of the reason.

20 Q All right. So you have those communications with  
21 Ms. Haller. You go to your sophomore year, you don't  
22 make any communications with anyone at EVSC  
23 concerning the bathroom policy, right?

24 A After I was told that basically either I can use the  
25 nurse's restroom, which is always locked, or use the

1 female restroom, that was basically the answer I got,  
2 so --

3 Q And when did these communications take place?

4 A That was freshman year.

5 Q Your freshman year? And would those communications  
6 have been from Ms. Haller also, or someone else?

7 A Haller and Ms. Elmer, mainly.

8 Q And that would have been your freshman year?

9 A Yes.

10 Q So you were given the option to use the female  
11 restrooms or an alternative nurse's office?

12 A Yes.

13 Q And did you ever use the nurse's office?

14 A A couple of times. Most of the times that I would  
15 ever go down there, the nurse was out for the day and  
16 it was locked. There wasn't usually a good way to  
17 get access to it.

18 Q Was the nurse's office -- what school would that have  
19 been in?

20 A North.

21 Q North? And that was your freshman year?

22 A Yes.

23 Q And the nurse's office, is that close to the  
24 administrative office?

25 A Yeah, it's in the front office.

1 Q And there's always someone in the administrative  
2 office, correct?

3 A Yes.

4 Q Did you ever, when the nurse's office was locked, go  
5 and ask somebody in administration to unlock it for  
6 you?

7 A Well, there was a -- I know there was one time there  
8 was -- there's the secretary for the nurse and I  
9 asked her if, you know, the nurse was out for the  
10 day, is there any way that I can use the restroom  
11 there, and she just said that she didn't know what to  
12 tell me.

13 Q Do you remember who that was?

14 A I don't.

15 Q And so how many times did that occur, do you think?  
16 Because you said you only used the bathroom out of  
17 necessity your freshman year, or was that your  
18 sophomore year?

19 A Both years. I tried a handful of times to go to the  
20 nurse's office, but after awhile, I just gave up  
21 because it was always locked. I mean --

22 Q Did you ever tell anyone, Ms. Elmer or Ms. Haller,  
23 that "the nurse's office is locked, can I get a key  
24 or someone give me access?"

25 A No, because usually at that point, I would either be

1 late for class or -- I didn't -- I didn't feel really  
2 welcome to ask questions like that. It didn't --  
3 students like me kind of seem more like a problem  
4 than -- yeah. I don't know.

5 Q And you say "students like me." Who were you  
6 referring to?

7 A Transgender students.

8 Q And how many transgender students at North were you  
9 aware of?

10 A Oh, there's a lot. I'm the president of the GSA  
11 there and there's at least seven to 15. And I say  
12 "to 15" because some people are questioning.

13 Q And seven to 15, does that mean your sophomore year,  
14 does that mean currently?

15 A An accumulation of years, I suppose, because I've  
16 been with the GSA, which is where most of the  
17 transgender students go, so I guess an accumulation  
18 of years.

19 Q So just so I'm clear, you were given the alternative  
20 to use the nurse's restroom, right --

21 A Yes.

22 Q -- the restroom in the nurse's office?

23 A Yes.

24 Q And was that a single person bathroom?

25 A Yes.

1 Q And if it had been unlocked all of the time, would it  
2 have been acceptable for you?

3 A I mean, it's still separating me from, you know, the  
4 right of every other student to use the restroom of,  
5 you know, their gender identity. I'm male, identify  
6 as male. Now that I'm on testosterone, I don't have  
7 any uncomfort- -- you know, feelings of uncomfort to  
8 go into a male restroom in any public space because I  
9 look male and being -- you know, not being able to  
10 use the same restroom as my male peers is -- you  
11 know, I -- I don't know, it's a separation which  
12 is -- that's the comfortable part.

13 Q Did you take gym when you were a sophomore?

14 A No. I -- yes, I did. I'm sorry, I did. I took my  
15 first semester of gym, one for freshman year and then  
16 the other for sophomore year.

17 Q And did you change in the same location then?

18 A Yes.

19 Q Did you complain about that during your sophomore  
20 year to anyone, or just accept it and change there?

21 A I just accepted it.

22 Q There are times, I assume, when you have to use the  
23 restroom during class?

24 A Yes.

25 Q And when you do that, you don't have to tell the

1 teacher or any student which bathroom you're using,  
2 do you?

3 A No.

4 Q So no student is going to know whether you used the  
5 male, the female, or the nurse's, are they?

6 A I suppose no student that's also currently using the  
7 bathroom --

8 Q So --

9 A -- no.

10 Q And is the bathroom -- I don't know what North's  
11 setup is, but is the bathroom in the nurse's office  
12 somewhere where you have to go inside the nurse's  
13 office, there's an opening and then there's a  
14 bathroom kind of back in the corner or something?

15 A Yes.

16 Q So when you're entering into the nurse's office, no  
17 one knows whether someone is going in there to use  
18 the bathroom or to see the nurse for some physical  
19 ailment, would they?

20 A I mean, I'd tell her that I have to use the bathroom  
21 and then go down there.

22 Q But, I mean, generally, if you're walking down the  
23 hall and you see a student going in the nurse's  
24 office, you don't know if they're going in there to  
25 go to the bathroom or to see the nurse because they

1 hurt, they feel bad?

2 A Yeah, I suppose, yeah.

3 Q And do you know of whether there were other students  
4 that used the nurse's restroom for other reasons?

5 A I mean, I know another student who was trans that  
6 used the nurse's restroom for that reason, but I  
7 didn't know anyone else that would use it for other  
8 reasons.

9 Q And so any other conversations with EVSC about this  
10 bathroom issue during your sophomore year?

11 A No.

12 Q Then we get to your junior year, right?

13 A (Whereupon, witness nodded head up and down.)

14 Q Part of your sophomore year was spent at North and  
15 where else?

16 A Harrison.

17 Q Did you have any communications with anyone at  
18 Harrison your sophomore year about the bathroom  
19 issue?

20 A No.

21 Q And you used the bathroom in the nurse's office at  
22 Harrison also?

23 A No. I just avoided using the bathroom.

24 Q But you understood that to be an option for you?

25 A I never talked to Harrison's office about that being

1 an option, so I wasn't -- I wouldn't know.

2 Q What part of the day would you have been at Harrison?

3 A For sophomore year, I was at Harrison in the  
4 afternoon.

5 Q From like what time to what time?

6 A I do not remember. Just the last two periods of the  
7 day.

8 Q All right. And so you don't recall ever using the  
9 bathroom while at Harrison; is that fair?

10 A Yeah.

11 Q So you come to your junior year, and that would have  
12 been the school year that just ended up, right?

13 A Yes.

14 Q And where were you at your junior year?

15 A Harrison and North.

16 Q The same schedule basically?

17 A No. I was at Harrison in the morning.

18 Q Okay. And did you have any communications with  
19 anyone at Harrison your junior year about the  
20 bathroom issue?

21 A No.

22 Q You weren't taking gym at Harrison, correct?

23 A No.

24 Q So what did you do when you had to use the bathroom  
25 at Harrison?

1           A    I don't think I ever had to.  I tended to not  
2                    drink -- drink a lot.  I usually would just try to  
3                    avoid using the restroom at all possible costs.

4           Q    So, again, you had no communications with anyone at  
5                    Harrison about the bathroom issue?

6           A    No.

7           Q    And what about North your junior year, what issues  
8                    with the bathroom there did you communicate with  
9                    anyone?

10          A    It was just the same situation that it was for the  
11                   past three years -- or two years.  Sorry.

12          Q    So from what your understanding was in the prior  
13                   years, you carried that over, right?

14          A    Yes.

15          Q    So if you had to use the bathroom, you went down to  
16                   the nurse's office?

17          A    If it was unlocked.

18          Q    And did you have any communications with anyone about  
19                   the nurse's office being locked your junior year?

20          A    No.  My -- the only one that I would -- the only  
21                   person I really talked to was my counselor, and I did  
22                   not feel welcome talking to her.

23          Q    So I guess if I understand it, you wouldn't have  
24                   talked with your counselor either about the nurse's  
25                   bathroom if it was locked?

1 A Yes.

2 Q "Yes" meaning you didn't talk with her, right?

3 A Yeah, I didn't talk to her.

4 Q At some point, did you have conversation with anyone  
5 at EVSC about your name change?

6 A I did. I am not sure who I talked to about my name  
7 being changed. It might have been my counselor. I  
8 don't quite remember who it was, but I do remember  
9 that they -- because I was trying to see if my birth  
10 name could not be shown everywhere on transcripts,  
11 because if I had a substitute or something like that  
12 and they called out my name and they didn't know who  
13 I was, then they would call out my birth name and  
14 basically outing me to the whole class who I did not  
15 want to know my birth name because that's not what I  
16 identified with, and the change that was given on the  
17 transcript was that on certain printouts in  
18 parentheses, it would say J.A.W. as a nickname, which  
19 that was about the only thing that was really  
20 communicated, and it didn't really change at all  
21 because it -- you know, my birth name was still on  
22 there, it was still accessible to everyone.

23 Q So if I understand it, do you remember who these  
24 communications were with?

25 A I think it was my counselor, but I'm not sure. I

1 can't quite remember.

2 Q And that would have been Ms. Haller again?

3 A Yes.

4 Q And that would have been you wanting, if I understand  
5 it, your E.S.W. name to be wiped clear on all EVSC  
6 records?

7 A I understand that for legal purposes, it has to be  
8 used for certain things, but not all of my teachers  
9 need to have access to it, not -- my school e-mail  
10 doesn't have to have that on there for everyone to  
11 see. All accounts don't have to have that. It very  
12 easily could just be the name that, you know, I  
13 identify with.

14 Q So you understood that there were certain legal  
15 requirements which required your legal name to be  
16 used, right?

17 A Yeah, but it didn't need to be for every single user.

18 Q And do you recall any communications with anyone  
19 about changing your e-mail, your EVSC e-mail?

20 A I think I had a couple e-mail exchanges with the  
21 Diversity Director, which -- for the EVSC, Dionne  
22 Blue. Not a lot came from it, but I had some  
23 communication with her about it.

24 Q So was it something that couldn't be changed or you  
25 didn't follow up on, or what?

1 A I think it had issues to do with -- I'm not quite  
2 sure, honestly.

3 Q So you don't remember how that was resolved, if it  
4 was resolved at all?

5 A I -- I don't know.

6 Q Do you have an EVSC student e-mail?

7 A Yes.

8 Q And what is it under?

9 A My birth name.

10 Q And do you have a separate e-mail that you use under  
11 J.A.W.?

12 A Yes.

13 Q Any teachers your junior year that said, "no, we  
14 won't call you by your preferred name"?

15 A No. At that point, people were starting to call me  
16 by J.A.W., but I was also starting to undergo  
17 testosterone, so I started to look what my name was  
18 associated with.

19 Q Okay. If I understand it, you would have asked  
20 teachers to call you by J.A.W.?

21 A Yes.

22 Q And they agreed to and, in fact, did your junior  
23 year, correct?

24 A Yes.

25 Q And at that time, in terms of whether it was J.A.W.

1 or E.S.W., students all knew you were transgender and  
2 you were going by J.A.W., right?

3 A Yes.

4 Q Did you ever have any communications where your mom  
5 was present with anyone at EVSC concerning the  
6 bathroom or name or other transgender issues at EVSC?

7 A During my soph- -- or I don't know what year it was.  
8 Yeah, she's made a couple communications. It was my  
9 freshman year. I remember that because eventually my  
10 principal -- I'm not sure when it was, I'm sorry. I  
11 don't want to be dishonest, so I don't know which --  
12 when exactly she did.

13 Q Do you know what it was about?

14 A It -- yeah. It was about -- oh, I know exactly what  
15 it was about. It was about the new bathroom laws  
16 with the -- because the Obama administration had come  
17 out with, you know, state- -- you know, the "Dear  
18 Colleague" letter saying that, you know, transgender  
19 students should be able to use the restrooms that  
20 aligned with their gender identity and I -- at the  
21 beginning of the year, so it must have been sophomore  
22 year, I talked to my principal about it and he  
23 basically said, no, that he wasn't -- because  
24 Dr. Smith wasn't agreeing with it, that the EVSC  
25 decided not to acknowledge it, that he was not going

1 to acknowledge it and I wasn't able to do it, but --

2 Q Who was that with?

3 A John Skinner.

4 Q And was your mom present?

5 A My mom was not present for that conversation, but  
6 then she called him about it, and it was the same  
7 situation with the -- that it was last year, but he  
8 did -- I think he did e-mail the -- my teachers to  
9 refer to me as J.A.W.

10 Q So your understanding is your mom had a conversation  
11 with Mr. Skinner about this bathroom issue?

12 A Yes.

13 Q Did she have any conversations with anyone concerning  
14 the name change at EVSC?

15 A I'm not sure.

16 Q Did you maintain any e-mails or documentation of any  
17 of these discussions with EVSC teachers or counselors  
18 we've talked about?

19 A Not that I know of.

20 Q Do you have any paperwork at all relating to these  
21 bathroom issues at EVSC?

22 A I may not. My mom might. I don't know.

23 Q And those would have been documents that she would  
24 have maintained on your behalf with respect to these  
25 issues?

1 A Yes.

2 Q And have you asked her if she has any such documents?

3 A No.

4 Q At some point this year, did you attend an EVSC Board  
5 meeting?

6 A Yes.

7 Q What was the purpose of that?

8 A It was to request that the School Board change the  
9 EVSC's non-discrimination policy to add gender  
10 identity.

11 Q And did you get up and speak at that meeting?

12 A Yes.

13 Q And did you identify yourself?

14 A Yes.

15 Q And how did you identify yourself?

16 A I believe I identified myself by saying my name and  
17 that I'm transgender and a student at EVSC.

18 Q And then was there certain examples that you gave at  
19 all in terms of your presentation?

20 A I used examples, I guess, that related to that we --  
21 that the gender identity needed to be added based on  
22 that -- because it's not added, it doesn't -- it  
23 doesn't apply to students who are specifically  
24 transgender.

25 Q Okay. I guess my question was more of, did you give

1 any personal experience or personal examples of  
2 experiences within any of the schools that you  
3 attended that you thought necessitated the change in  
4 this policy?

5 A I didn't say anything -- I guess I didn't  
6 specifically say names, but yes, I think I  
7 referred -- I referred to the situation with  
8 Mrs. Esparza.

9 Q When did you first seek counseling outside of EVSC  
10 for any of the issues you were having?

11 A My sophomore year.

12 Q And do you recall who that was with?

13 A It took a couple months, honestly, to find a  
14 therapist that treated transgender patients, but  
15 eventually my mom and I settled with Within Sight.

16 (WHEREUPON, DEPOSITION EXHIBIT 3 WAS MARKED  
17 FOR IDENTIFICATION.)

18 Q Let me show you what we'll mark as Exhibit 3, and  
19 I'll represent that these are some records -- well,  
20 let me see that, that one may be marked up.

21 MR. FALK: Can we take a break for one  
22 second just for me?

23 MR. BURKART: Sure.

24 (WHEREUPON, A SHORT RECESS WAS TAKEN.)

25 Q J.A.W., Exhibit 3, I'll represent, is medical records

1 we received from Within Sight pursuant to a release  
2 executed by your mother, and you indicated Within  
3 Sight was the first place you sought counseling for  
4 your transgender issues?

5 A Yes.

6 Q And how was it you decided upon Within Sight?

7 A I just did online research that showed that the  
8 therapist that I chose had experience with  
9 transgender patients before.

10 Q And what was it that led you to the counseling?

11 A I knew that in order to be able to physically  
12 transition, then I would have to go through therapy.

13 Q And when you say "physically transition," does that  
14 mean get a prescription for some kind of medication?

15 A Yes.

16 Q Is there some other kind of physical transition or  
17 just that, medication?

18 A There's surgeries to go under, but I wanted to  
19 undergo hormone replacement therapy.

20 Q And what was your understanding that hormone  
21 replacement therapy does?

22 A It basically is a second puberty. It's to undergo  
23 testosterone. It's a male puberty, which is what I  
24 wanted.

25 Q And is that something that you learned through your

1 meetings or how was it that you became aware of  
2 hormone replacement therapy?

3 A Through research and through meetings at Tri-State  
4 Alliance.

5 Q Were there other transpersons that you had spoken  
6 with that went through this therapy?

7 A Yes. When I started going to TSA, I met more people  
8 that were -- that identified as transgender males  
9 that were undergoing testosterone and I realized that  
10 I wanted to be in the spot that they were in.

11 Q All right. So the counseling that you were seeking,  
12 was that simply to get some recommendation to allow  
13 you to obtain the medication or was there some other  
14 kind of counseling needs that you actually had?

15 A Well, I also wanted confirmation that this was --  
16 that I was feeling gender dysphoria, that I was --  
17 that I wasn't crazy.

18 Q And when you say "wanted confirmation," what kind of  
19 confirmation were you seeking from a counselor?

20 A A medical diagnosis.

21 Q And so if someone gave you a medical diagnosis, you  
22 believe that would have confirmed that you were truly  
23 transgender?

24 A I suppose. It's -- it's hard to be able to  
25 confidently say that you identify with a different

1 gender than what you're born with, especially at the  
2 age that I'm at because a lot of people often say  
3 that you are too young to know what your identity is.  
4 So it helped a lot to have a medical diagnosis just  
5 to cope with the fact that I was right, that I am --  
6 that I knew who I was.

7 Q So if I understand what you're saying, from your  
8 research and your involvement with Tri-State  
9 Alliance, there's certain segments of people who may  
10 believe or think -- pondering transgender status but  
11 then they come to a realization that maybe that's not  
12 them; is that fair?

13 A Yes.

14 Q And you mentioned that you were aware that -- during  
15 this period at North High School, you were aware of  
16 seven to 15 other transgenders, right?

17 A Yes.

18 Q And you said that some of them were questioning,  
19 right?

20 A Yeah.

21 Q And questioning, I assume, means they're not really  
22 sure if they're transgender or not?

23 A Yes.

24 Q And so there's a segment that I guess we call  
25 confirmed transgenders through a medical diagnosis?

1 A I suppose.

2 Q I mean, that's what you were seeking, right?

3 A I was really seeking, yeah, a medical diagnosis to --  
4 I suppose it's more to under- -- really understand  
5 that I was trans and that who I -- I guess a better  
6 understanding of being trans. I'm sorry, that  
7 doesn't make any sense.

8 Q No, I understand that, but the other point is,  
9 there's a group of people who maybe think they're  
10 transgender but then questioning part of their gender  
11 status all together, right?

12 A Yes.

13 Q And it may turn out that through research, education,  
14 maturity, whatever it may be, they may decide "I'm  
15 not transgender," right?

16 A Yes.

17 Q And some of them may decide that "I am transgender"?

18 A Yes.

19 Q And with that group of people who have this  
20 questioning phase, how would you approach the  
21 bathroom policy for them?

22 A A lot of people that are questioning just use the  
23 bathroom that they have -- that align with their sex  
24 that they've been using their whole life because they  
25 don't feel comfortable using a restroom that they --

1 a restroom that is associated with a gender that they  
2 don't fully identify with yet.

3 Q So those that are questioning may still use the  
4 bathroom of their biological association?

5 A They -- yeah.

6 Q Let's go back to these counseling notes. If you go  
7 towards, it looks like, the last three pages, I think  
8 they're in reverse chronological order, there's one  
9 that -- and it looks like it's Page 12 at the top,  
10 fax number Page 12. It shows an appointment on  
11 September 28, 2016. Would this have been your first  
12 counseling session?

13 A I believe so, yes.

14 Q And in here it says you're not a tobacco smoker?

15 A Yes.

16 Q Are you currently?

17 A No.

18 Q You've never been a smoker?

19 A I used to.

20 Q When did you start?

21 A A couple months ago.

22 Q When did you stop?

23 A About four months ago.

24 Q When did you start?

25 A Around -- no, I guess not a couple months ago.

1           Sorry. Around last June.

2           Q   And your mother was present for this first counseling  
3           session?

4           A   She was present at the beginning and then she left.

5           Q   Why did she leave?

6           A   Because the counselor wanted to talk to me one on  
7           one.

8           Q   Okay. Now, if you go down towards the "remarks made  
9           during session" part, kind of towards the middle  
10          bottom, it says that around 10 or 11, you knew you  
11          were not attracted to boys and that you refer to  
12          yourself as a lesbian. Do you see that?

13          A   Yes.

14          Q   And would you have communicated that to the  
15          counselor?

16          A   Yes.

17          Q   And so at the time, I guess 11, when you started  
18          feeling these transgender feelings, were you  
19          referring to yourself as a lesbian?

20          A   Yes. I -- I played around with a lot of different  
21          terms until I found out, when I was still 11, that,  
22          you know, I wanted to be trans. I thought that  
23          because I had these masculine feelings, then I was a  
24          lesbian, but that just wasn't who I was.

25          Q   And when you said you were playing around with these

1 terms, I mean, was it a matter of going to meetings,  
2 doing research, trying to figure out what you  
3 associated with, or --

4 A Yeah. It had a lot to do with researching and trying  
5 to go out into the community and finding people who I  
6 could identify with.

7 Q And when it says you refer to yourself as a lesbian,  
8 at that time, were you attracted to females?

9 A Yes.

10 Q And then it said, "after much more self-reflection  
11 and research, he has found comfort in identifying as  
12 trans-gender male." And, again, that's just from  
13 reading and thinking?

14 A Yes.

15 Q And it goes to the next sentence or two which says,  
16 "He states that his family and school have been  
17 supportive," and was that a truthful statement?

18 A Some of my peers were supportive. I wouldn't say  
19 that all of my school was supportive.

20 Q Okay.

21 A And my family -- my family has -- my mom is on and  
22 off supportive, not my entire family.

23 Q What about your grandparents?

24 A My grandparents aren't aware that I identify as male.

25 Q They are not?

1 A They are not. I don't have a very close relationship  
2 with them. I haven't seen them in months.

3 Q Just in months?

4 A Yeah.

5 Q I mean, you said you've been open since, what --  
6 changing your appearance, your hair, your clothes,  
7 since freshman year?

8 A Yes. They're in denial, I guess.

9 Q I mean, have you ever communicated to them that  
10 you're transgender?

11 A No. They wouldn't acknowledge it if I tried.

12 Q And you have two brothers?

13 A Yes.

14 Q And are they supportive?

15 A Well, one's a baby, but the 12 year old, he's -- he's  
16 very supportive actually.

17 Q And, again, the last sentence, it says, "He states  
18 that he has experienced anxiety, and is hopeful  
19 therapy can assist him in making sure he continues to  
20 be mentally and emotionally sound during this  
21 process." And that anxiety stemmed from just being  
22 unclear about your status?

23 A Yeah, and -- yeah.

24 Q And if you go on to Page 13 there, it talks about  
25 "risk assessment." You didn't communicate to the

1 counselor that you were suicidal, did you?

2 A No.

3 Q And you didn't communicate to the counselor that  
4 there was any kind of harm you were going to cause to  
5 yourself at all, right?

6 A Right.

7 Q Okay. On the last page, Page 14, one of the  
8 recommendations to decrease anxiety is to utilize a  
9 journal to include your thoughts and emotions. Have  
10 you done that?

11 A Yes. I still do that.

12 Q And that's something you keep in a hardbound or on a  
13 computer or where do you keep that?

14 A In a composition notebook.

15 Q And how long have you been keeping that?

16 A Since my therapist told me when I was 14.

17 Q And there was no medications that were issued as a  
18 result of this first visit, correct?

19 A Correct.

20 Q And you had follow-up?

21 A Yes.

22 Q And if you go to the one on Page 11, that was one in  
23 October of 2016. That would have been, what, your  
24 sophomore year?

25 A Yes.

1 Q And it said here, "The client presents today stating  
2 that things are going well." Was that accurate?

3 A Yes.

4 Q I mean, were you having any issues, as best you  
5 recall?

6 A Outside of general dysphoria, no.

7 Q And it refers to "some tension with Model UN, as he  
8 used to date one of the girls." Do you see that?

9 A Yes.

10 Q When it says "used to date," when would that have  
11 been, what time period?

12 A My freshman year.

13 Q And that was during a period of time you kind of  
14 identified as a lesbian?

15 A No, I still identified as male.

16 Q Do you remember -- if you go to the next one,  
17 Page 10, it looked like it had another counseling  
18 session which was canceled. There were a few  
19 sessions that were canceled. Were these just -- any  
20 particular reason?

21 A It might have just been a scheduling difficulty. My  
22 family is very busy.

23 Q If you go to Page 9, it talks about April 24, 2017.  
24 It says, "The client presents today after recently  
25 being inactive in therapy." So there was a period of

1 time where you didn't go on a regular basis?

2 A Yes.

3 Q And then, if I understand, the reason you came back  
4 is perhaps to get that medication?

5 A Yes.

6 Q All right. And then it refers to communications  
7 about becoming very confrontational. Explain to me  
8 what that involved. Did you become confrontational  
9 at school?

10 A I'm sorry, I'm trying -- I -- well, I've always been  
11 told I have a confrontational personality, so I don't  
12 know if it was confrontational with peers or anyone  
13 else and -- I'm not sure.

14 Q So far of what we've discussed, there's no reference  
15 in these notes about any anxiety or being  
16 uncomfortable because of a bathroom issue at EVSC.  
17 Do you know why -- did you ever communicate that to  
18 the counselor?

19 A I didn't talk to her a lot. The -- yeah, there were  
20 times I wouldn't regularly see her, which would span  
21 for months on end, so oftentimes any time I talked to  
22 her, it would just be in the introductory phase  
23 again. I am certain I've -- I've mentioned it to  
24 her, but honestly, probably the reason why is because  
25 I hadn't gotten to a level I was comfortable enough

1 talking to her about it because, I mean, not being  
2 able to go to the bathroom is an awkward conversation  
3 to have.

4 Q So you're having conversations with the counselor  
5 about being a lesbian, about being a transgender, but  
6 it was difficult -- more difficult to explain to her  
7 about EVSC's bathroom policy?

8 A Well, the fact that I would have to hold going to the  
9 bathroom every day is uncomfortable to talk about and  
10 it's -- honestly, it was really uncomfortable because  
11 I felt like I was being segregated from my peers and  
12 that's -- it's embarrassing, honestly, to be  
13 separated from everyone else for something as basic  
14 as going to the bathroom.

15 Q And despite all of those uncomfortable concerns, we  
16 won't find it one time in the counselor's notes. Do  
17 you have any explanation for that?

18 A Just that I didn't talk to her very frequently.

19 Q Okay. Then go to Page 8. It shows a session on  
20 May 9, 2017. It, again, notes being confrontational,  
21 but then it says, "expressed frustration with a  
22 specific teacher that he thought he had a good  
23 relationship with." Who was that?

24 A My English teacher, Frank Hendrix. That was for  
25 reasons that were kind of -- that weren't really

1 related to being transgender, though.

2 Q And which school was he at?

3 A Harrison.

4 Q Harrison? And you said it didn't relate to  
5 transgender issues?

6 A No.

7 Q But it refers to having a positive male figure.

8 A Yeah.

9 Q And that's something you lacked in your life, right?

10 A Yes.

11 Q And do you think that caused some of the emotional  
12 distress that you've suffered over the years?

13 A Not really relating to my gender identity, but yes.

14 Q And then down towards the bottom there, it says, "He  
15 states that he may be too desperate to find a  
16 positive male role model as he continues to go  
17 through his transitional journey." So it looks like  
18 having a male role model was something that was part  
19 of this transgender issue, wasn't it?

20 A I mean, that may have been what the counselor  
21 thought.

22 Q But you didn't see it that way then?

23 A I didn't really. I have always tried to make it a  
24 point to know that my gender identity is for myself  
25 specifically, not, you know, due to anyone else.

1 Q All right. And it looks like, if I can tell from the  
2 records, that was the last session you went to?

3 A I believe so, yes.

4 Q Why did you stop the sessions?

5 A I just -- I run a busy life and I couldn't keep up  
6 with them. I do plan on going back at some point,  
7 though.

8 Q So, I mean, the dysphoria you were experiencing  
9 wasn't to the level you thought you needed additional  
10 counseling?

11 A Well, eventually I was able to get on testosterone,  
12 which helped my dysphoria after this appointment.

13 Q So once you got the medical prescription, you didn't  
14 think that counseling sessions were needed at that  
15 point?

16 A Yeah, they weren't as much of a necessity.

17 (WHEREUPON, DEPOSITION EXHIBIT 4 WAS MARKED  
18 FOR IDENTIFICATION.)

19 Q Let me just mark what is Exhibit 4. Tell me if  
20 you've ever seen that document.

21 A Yes.

22 MR. FALK: We agreed off the record that  
23 Exhibit 4 is marked confidential; is that correct?

24 MR. BURKART: Right. Yes.

25 Q And was this letter from your counselor for purposes

1 of getting the hormone replacement therapy?

2 A Yes.

3 Q It says in this letter, quote, "He relates much of  
4 his Gender Dysphoria to the absence of male father  
5 figure in his life," unquote. Was that an accurate  
6 statement?

7 A I'm sorry, I'm trying to find where --

8 Q Oh, I'm sorry. It's midway through (indicating).

9 A I suppose for a time I felt that, but I never really  
10 deeply thought that because I -- because I didn't  
11 have a dad in my life, that meant I had to be a man.  
12 That wasn't at all related. I do think that if I had  
13 a better male role model in my life, then I would be  
14 able to learn how to, I guess, identi- -- be more  
15 well adjusted identifying as a male, but they're not  
16 -- they don't come exactly hand in hand.

17 Q So it may have been a factor in --

18 A Not a very big one, no.

19 Q And part of what you've become through school and the  
20 community is an advocate for the transgender,  
21 correct?

22 A Yes.

23 Q And you've organized groups within schools at EVSC  
24 for that community, haven't you?

25 A I -- I've joined organizations. I am the leader of a

1 couple. I never really started anything.

2 Q But you've requested EVSC at various times to  
3 organize events, haven't you, relating to the  
4 community?

5 A Yes.

6 Q And have they been accommodating in that regard?

7 A Yes, I suppose. They haven't had a lot of events --  
8 a lot of events, honestly.

9 Q But you've approached EVSC before about doing various  
10 things, right, with the LBG community?

11 A The only thing that I've really officially approached  
12 the EVSC about is the time that I talked to the  
13 School Board. Any events that they've really had  
14 have been -- coincide with other events. I mean,  
15 North's GSA was at a tailgate party with -- I mean,  
16 we've been a part of a tailgate party. It's not that  
17 we've really had our own specific thing.

18 (WHEREUPON, DEPOSITION EXHIBIT 5 WAS MARKED  
19 FOR IDENTIFICATION.)

20 Q Let me show you what we'll mark next as Exhibit 5 and  
21 represent these are some medical records from the  
22 Echo Community Facility. Is that where you went to  
23 seek the hormone replacement therapy?

24 A At Echo, yes.

25 Q Had you been there before for any reason?

1 A No.

2 Q And was the sole basis in order to get some kind of  
3 therapy treatment?

4 A Yes.

5 Q And part of what they required was a letter from the  
6 counselor --

7 A Yes.

8 Q -- in order to get that therapy treatment started?

9 A Yes.

10 Q How often do you take these hormone therapy  
11 injections?

12 A Once a week.

13 Q And where do you inject yourself?

14 A In the thigh.

15 Q Now, in going through some of these medical records,  
16 there's one from May 17th which talks about sexually  
17 active partners and it says "women only." Do you  
18 still have a relationship with a woman?

19 MR. FALK: I'm going to object and instruct  
20 him not to answer, it's not relevant. You can  
21 certify it if you want.

22 MR. BURKART: Well, we've got the medical  
23 records here. It's not a privileged issue. We're  
24 talking about transgender issues which deal with  
25 biological --

1 MR. FALK: It has no bearing whatsoever on  
2 this lawsuit and I'm instructing him not to answer.

3 MR. BURKART: All right. Certify that  
4 question.

5 Q You previously indicated on one of the documents that  
6 you had a girlfriend before, and that was freshman  
7 year?

8 A Yes.

9 Q And that's when you identified as lesbian, correct?

10 A No, I identified as a transgender male.

11 Q Was there a period of time that you had boyfriends?

12 A Yes. I've questioned my sexuality, but --

13 Q Do you currently have a boyfriend?

14 A No.

15 Q But you had in the past?

16 A Yes.

17 Q And you said you questioned your sexuality, so are  
18 you attracted to boys, girls, or both?

19 A I don't know. It's still a question.

20 Q And you never communicated to any of the medical  
21 doctors at Echo that you had any thoughts of suicide  
22 or harming yourself, did you?

23 A No, I didn't.

24 Q In here, the medical records, it has "gynecological  
25 history," and it talks about periods. Do you still

1           menstruate?

2           A    No.

3           Q    Has the hormone therapy decreased that?

4           A    Yes.

5                         MR. FALK: Well, just for the record, he  
6           said he does not, right? You said it decreased. I  
7           just want to -- it's decreased to zero; is that  
8           correct?

9                         THE WITNESS: Yes.

10                        MR. FALK: Okay. I'm sorry. Math concepts  
11           make me nervous. That's why I became a lawyer.

12           Q    If you go on to the -- it's titled Page 1 of 2. It's  
13           probably the third page in. It refers down -- in  
14           terms of smoking, "How often do you smoke?", and it  
15           says "every day." Was that accurate or was that --

16           A    Yeah, that was accurate.

17           Q    Okay. And so that smoking started when? I don't  
18           know what the date of this report is.

19                        MR. FALK: Off the record.

20                                 (WHEREUPON, A DISCUSSION WAS HELD OFF THE  
21           RECORD.)

22           Q    You said you don't smoke any longer, right?

23           A    Right.

24           Q    All right. As part of your involvement with  
25           Tri-State Alliance and the research you've done, the

1 transgender umbrella covers a broad group of -- I  
2 don't know what you call it -- varying terms, right?  
3 I mean, you've got transgender, you've got gender  
4 fluid, you've got a whole host, right?

5 A Yes.

6 Q And from your understanding, what is gender fluid?

7 A Someone who doesn't really identify with male or  
8 female, just sort of in between.

9 Q And is that one who can change between male and  
10 female at any given time?

11 A Well, their gender expression can be fluid. That's  
12 why it's gender fluidity.

13 Q So, I mean, they may wake up today and say, "I'm  
14 feeling female," and wake up tomorrow and say, "I'm  
15 feeling male"?

16 A Well, feeling feminine and masculine, not  
17 definitively this gender or this gender. It's more  
18 certain characteristics from this one and certain  
19 characteristics from this one. It's not black or  
20 white, it's gray.

21 Q All right. So in terms of those individuals, they,  
22 based upon their perception on any given day, may  
23 need to use the female restroom or the male restroom,  
24 right?

25 A Oftentimes they -- people who identify as that stick

1 to using a gender neutral restroom, if they can find  
2 one, or a restroom which their appearance is  
3 generally aligned with, but that doesn't mean that  
4 they're, you know, one day just running into the male  
5 restroom and then one day going into the female  
6 restroom. They're not -- it's not just picking and  
7 choosing whenever you feel like it. It's -- a lot of  
8 times they'll -- they'll just go to the restroom that  
9 they know they probably won't be harassed going to.

10 Q Okay. Are there any other counselors at any of the  
11 high schools you had conversations with regarding the  
12 transgender other than Ms. Haller?

13 A No.

14 Q If I look through the counseling notes we had,  
15 there's no recommendations from that counselor as to  
16 transition needs or assessments, is there?

17 A I -- I don't know.

18 Q Did the counselor give you any kind of "these things  
19 are necessary in order for you to transition to a  
20 male"?

21 A She never said that I had to do these specific  
22 things. When I went to the counselor -- when I went  
23 to my therapist -- you're talking about the Within  
24 Sight?

25 Q Yes.

1           A    Sorry.  She -- in the first -- even in the first  
2                    appointment I had with her, she could -- she told me  
3                    that it is very obvious that I identify as male and  
4                    that I'm more comfortable identifying as male and  
5                    that if -- that if I wanted to be on testosterone,  
6                    then I probably belong to -- then I should be on it,  
7                    if that would make me more comfortable, and that she  
8                    just wanted to start talking to me more and more to  
9                    help me with therapy while undergoing transitioning.

10          Q    And you said "undergoing transitioning."  Other than  
11                   her letter saying hormone therapy is appropriate and,  
12                   I guess you could say, keeping the journal, there's  
13                   nothing else within her counseling reports which say  
14                   "here are other things needed for your  
15                   transitioning," did she?

16          A    Not really.

17          Q    And, in fact, your medical providers from Echo,  
18                   there's nothing in their records, no recommendations  
19                   that they've ever made about transitioning  
20                   requirements for you, correct?

21          A    Correct.

22          Q    And so you're kind of, for lack of a better phrase,  
23                   self-diagnosing your own transitional needs, correct?

24          A    Yes.

25          Q    And so part of that, if I understand it, is this

1 lawsuit, right?

2 A I -- I suppose.

3 Q That's probably not a good question, but -- all  
4 right. What is it you hope to get out of this  
5 lawsuit?

6 A The ability to use the restroom that I identify with.

7 Q And which is that?

8 A Male.

9 Q Do you feel that you are in any part of the  
10 questioning stage that you talked about with these  
11 other transgender students?

12 A No.

13 Q You're beyond that?

14 A I know I'm -- I know I'm male. I know I identify as  
15 male and I know that's not going to change any time  
16 soon. That's why I was allowed to be on hormones in  
17 the first place.

18 Q And in terms of this lawsuit, the only thing that you  
19 would find acceptable for your transitioning is to be  
20 able to use the male restrooms?

21 A Yes.

22 Q Using an alternative restroom is not reasonable for  
23 you?

24 A Yes.

25 Q It is or it isn't?

1 A It isn't, it isn't reasonable.

2 Q Is not?

3 A It is not.

4 Q Okay. Would a separate unisex bathroom be an  
5 accomodation that assists you with transitioning?

6 A It wouldn't because you're separating me from my  
7 peers which, by virtue of doing that, is saying that  
8 you're not acknowledging me as male. If I'm male, I  
9 belong in a male restroom.

10 Q And you've understood, as long back as you can  
11 remember, that when going to the restrooms at any of  
12 the EVSC schools, boys, biological boys, use the male  
13 restroom and biological females use the female  
14 restrooms, correct?

15 A Correct.

16 Q And so that understanding treats every student the  
17 same, doesn't it?

18 A Their -- I'm sorry, I'm trying to think about how to  
19 word it. A student who -- any student who presents  
20 as male goes to the male restroom because they  
21 identify as male and that is where they feel  
22 comfortable. A male student who is biologically male  
23 would feel very uncomfortable going to the female  
24 restroom because that student is a female. I present  
25 as male, I look male, so I belong in the male



1 "biological sex," we're defining that as gender at  
2 birth; is that correct?

3 MR. BURKART: Yes. Well, I mean, biological  
4 sex we're defining, as the plaintiff has, boys have a  
5 penis, girls have a vagina. Biological, anatomical,  
6 however you want to --

7 MR. FALK: You're fine.

8 Q You feel uncomfortable using a female restroom,  
9 right?

10 A Yes.

11 Q And would you agree that if you were to use the male  
12 restrooms, there would be some males that would be  
13 uncomfortable in that circumstance?

14 A No. I look male. I'm -- I just recently shaved, but  
15 I grow facial hair. I don't look female anymore.  
16 Honestly, there are females that any time I've --  
17 when I'm on testos- -- when I've been on testosterone  
18 and I've had to use the restroom at school and I've  
19 had to use the female restroom just out of lack of  
20 options, there have been females that have been very  
21 uncomfortable with me going in there because they  
22 perceive me as male.

23 Q And my question isn't from your perception, it's from  
24 another perception. Students know that you're  
25 biologically female, right?

1 A Some do, some don't, it just depends.

2 Q I mean, you've testified here today that you've  
3 publicly announced to students, teachers that you're  
4 transgender, and so that tells them that --

5 A Well, yes, but not everyone knows me.

6 Q But a large segment I think do, correct?

7 A Correct.

8 Q All right. And so there's a segment that if you, as  
9 a transgender, go into a male restroom, would you  
10 agree, may feel uncomfortable themselves with you  
11 present?

12 A Not that I know of.

13 Q Well, you've never used it, but I'm just saying, if  
14 you feel uncomfortable going into a female, there  
15 might be other students who also may be uncomfortable  
16 with you going into the boys'?

17 MR. FALK: I'm going to object, it's asked  
18 and answered for the third time. He said he doesn't  
19 think any males were uncomfortable.

20 Q But you do know that the one time you were using the  
21 boys' locker room, someone called and complained  
22 because someone felt uncomfortable with two girls in  
23 there, right?

24 A Well, I looked female. I don't look female right  
25 now.

1 Q Did you ever communicate to EVSC that you were being  
2 bullied at all because of your transgender status?

3 A No, not that I remember.

4 Q There were, I think, certain perhaps days in the last  
5 year or two that there was some kind of discipline  
6 imposed because you were missing too many days of  
7 school?

8 A Yes.

9 Q And what was the reason that you were not in  
10 attendance at school?

11 A Being on testosterone, I get a lot of migraines and  
12 I'm unable to see my doctor a lot to see -- to get a  
13 doctor's note, and -- this year alone has been  
14 particularly difficult with the divorce happening and  
15 me switching between houses. It's hard to, you know,  
16 think of when I'm going to go to -- you know, how am  
17 I going to go to school when I'm hopping between one  
18 place and another, when I don't even know where I'm  
19 going to go -- you know, where I'm going to sleep.

20 Q So you've had a lot of stress within your life in the  
21 last couple of years unrelated to your gender status,  
22 haven't you?

23 A Yes.

24 Q And that's impacted -- as you've said, it's impacted  
25 your anxiety, your stress, right?

1 A Yes.

2 Q And it's impacted your attendance at school, right?

3 A Yes.

4 Q This Exhibit 4, you never provided a copy of that to  
5 anyone at the school corporation, did you?

6 A No.

7 Q And this Exhibit 3, you never produced any of the  
8 counseling records to anyone at EVSC, did you?

9 A No.

10 Q And you never communicated to anyone at EVSC that you  
11 were undergoing counseling with Within Sight, did  
12 you?

13 A It shouldn't -- I shouldn't have to prove that I'm  
14 trans through counseling.

15 Q You just need to answer my question. My question  
16 was, all of the documents, counseling reports and  
17 records in Exhibit 3, you've never produced any to  
18 EVSC, have you?

19 A No.

20 Q And you've never communicated to anyone at the EVSC  
21 that you were undergoing counseling with Within  
22 Sight, did you?

23 A No.

24 Q And you never communicated any of the medical records  
25 in Exhibit 5 to anyone at the EVSC, did you?

1 A No.

2 Q And you never communicated to anyone at EVSC any of  
3 the diagnoses or reports within those medical  
4 records, did you?

5 A I communicated to teachers that I was undergoing  
6 testosterone. Not any- -- I guess anyone in the  
7 office, but I've communicated to teachers that I've  
8 had.

9 Q Which teachers would you have communicated with that  
10 you were taking testosterone therapy?

11 A I know I told Hendrix and Fleenor that I was about to  
12 go on it because I was excited and they were excited  
13 for me. I told my Shepard teachers about it just  
14 because it was relevant to conversation. We talk a  
15 lot about social issues.

16 Q So you may have told teachers about your hormone  
17 therapy, but you didn't tell anyone in the  
18 administration, correct?

19 A No.

20 Q You didn't tell any of the principals, correct?

21 A No.

22 Q Did you tell any of the counselors?

23 A No.

24 Q And you didn't tell any of the EVSC teachers,  
25 counselors, principals or administrators that you had

1 any diagnosis of gender dysphoria, did you?

2 A No.

3 Q You made the statement that you shouldn't have to  
4 prove your gender to anyone at EVSC. What did you  
5 mean by that?

6 A I mean that I shouldn't have to, I guess, provide  
7 documentation that proves that I am transgender. I  
8 shouldn't have to, you know, show these documents to  
9 my counselor to be acknowledged as male. I feel that  
10 if I identify as male and I very much, you know, show  
11 that I present as male, then I don't -- I don't  
12 understand why I have to have countless of, you know,  
13 therapists saying -- counselors and doctors to back  
14 it up. It's what I identify with.

15 Q And you don't understand the requirements that EVSC  
16 has as to male and female students in a school, do  
17 you?

18 A Could you explain?

19 Q Well, if there were requirements that EVSC is  
20 required to maintain based upon biological sex, you  
21 wouldn't know that, would you?

22 A I suppose not.

23 Q I mean, if there are required filings with the State  
24 based upon male and female, you don't know that, do  
25 you?

1 A No.

2 Q And so EVSC may have to make determinations, make  
3 filings, keep reports based upon male and female  
4 status, right?

5 A I guess.

6 Q And what you've said is all you should have to do, if  
7 I understand it, is merely say that you identify and  
8 they should accept that?

9 A Yes.

10 Q Would you agree that high school bathrooms are not  
11 necessarily quiet, discrete places?

12 A I suppose not, they're public restrooms.

13 Q But there's a lot of social interactions that go on  
14 within a bathroom, aren't there, in high school?

15 A Yes.

16 Q Is it your position with this lawsuit that EVSC's  
17 bathroom policy should be the same from kindergarten  
18 to 12th grade?

19 A I -- I don't know.

20 Q Well, should students who identify as transgender in  
21 the 3rd grade be able to choose their bathrooms just  
22 as a student who identifies as transgender in the  
23 11th grade?

24 A I suppose so, yes, if they present a certain way and  
25 they -- that associates with the gender that they say

1           that they identify with and clearly do, then yes.

2           Q   And when you say "present a certain way," that  
3           suggests to me that there's this sliding scale. At  
4           some point you're not presenting yourself a certain  
5           way, but if you do it enough, you're presenting  
6           yourself a certain way; is that fair?

7           A   I think that if a child who is transgender and  
8           identifies as a certain gender, then they are going  
9           to want to present as what typically goes with that  
10          gender. If, you know, a child is a transgender  
11          female, then they're going to want to wear feminine  
12          clothing, they're going to want to wear their hair  
13          long, so that's -- I guess that's what I mean by  
14          presenting as --

15          Q   From your experience and interaction with the  
16          community and your research, are there transgender  
17          people who believe themselves to be transgender but  
18          choose not to outwardly display that?

19          A   Yes.

20          Q   So even though a person says "I'm a transgender  
21          male," I may choose not to wear male clothing or look  
22          like a male, right?

23          A   Right.

24          Q   And so even though a person doesn't have outward  
25          appearance of being transgender, they could still be

1 transgender?

2 A Are you saying that someone who is openly requesting  
3 to be identified as this gender but doesn't, I guess,  
4 dress that way?

5 Q Right. I'm saying there's some people who say, "you  
6 know what, I am transgender but I know the outside  
7 world may not accept me as that and it may cause me  
8 more stress and headache than I want and so I'm going  
9 to" -- "internally I know I'm transgender, but I want  
10 to not really present that to the world," and that's  
11 still a legitimate transgender, right?

12 A Yes.

13 Q So in presenting themselves in a certain way, some  
14 transgenders do it by outward appearance, by haircut,  
15 by hormone therapy, and others choose to do it just  
16 internally and not use outward appearance, right?

17 A Right.

18 Q And so in terms of someone being able to assess that,  
19 it makes it kind of difficult, doesn't it, a  
20 third-party saying -- it makes it difficult for  
21 someone to be able to gauge the sincerity of that,  
22 right?

23 A I wouldn't imagine. It's really rare for someone to  
24 be uncomfortable with their gender and not -- someone  
25 who expresses that they're uncomfortable with their

1 gender and experiences gender dysphoria, it's a very  
2 unique, I guess, condition to have.

3 Q What about the friend you talked about, Mr. Beement,  
4 is he still a transgender? He is a he, right? I  
5 think --

6 A Yes, he identifies as male and he has identified as  
7 male ever since I've known him.

8 Q And does he still go to school with you?

9 A Yes.

10 Q At North?

11 A Yes.

12 Q Has he ever expressed any problem using the bathroom?

13 A Yes.

14 Q Has he ever communicated that to anybody at EVSC,  
15 that you're aware of?

16 A He is -- he's very vocal about the fact that he's  
17 uncomfortable using female restrooms. I don't know  
18 if he's talked to any counselors or anything like  
19 that about it.

20 Q Is there -- and I just mean this -- there are certain  
21 times in life where you have these moments and you  
22 remember where you were, you remember the day. Do  
23 you remember the day that you first said, "all right,  
24 I am, I know I'm transgender"?

25 A It was probably the day that I found out that being

1 transgender was a thing. That was around when I was  
2 11. I found -- again, I just -- I was reading around  
3 and I found out that that was a term and I was just  
4 reading about what it meant to be transgender and  
5 then I knew that that's what I was because, you know,  
6 it made sense, it felt right.

7 Q Okay. And on that day, you truly believed that you  
8 were transgender and you affiliated with the male --

9 A Yes.

10 Q -- as a male, right?

11 A Yes.

12 Q And that was, in your belief, legitimate, right?

13 A Yes.

14 Q And that was before you started any change in  
15 clothing, right?

16 A Yes.

17 Q Any change in haircut?

18 A Yes.

19 Q Any hormone therapy?

20 A Yes.

21 Q And so if that happened -- if you had that belief or  
22 that epiphany on a Friday and you would have come  
23 into school on Monday and told EVSC "I'm transgender,  
24 I understand that, I know that, I believe that," it's  
25 your assertion that EVSC should be required to allow

1           you to use the male restroom on that day?

2           A   Well, it's different -- it's different from that.  No  
3           one just, you know, wakes up one day, realizes that  
4           they're transgender and then wants to use the male  
5           restroom.  It takes a lot of time to be comfortable  
6           doing that.  It takes a lot of understanding yourself  
7           to know if you're comfortable with doing that, if  
8           you're going to stay on this track.  I -- so I guess  
9           it's not just that.  You know, someone is -- the  
10          people who are asking to use the restroom, the people  
11          who want to use the restroom that are transgender,  
12          you know, very much look like -- you know, look like  
13          the associated gender in which they're wanting to use  
14          the restroom.

15          Q   So is looks a determination of how someone is  
16          transgender or not?

17          A   It's -- it's a way that people express their  
18          identity.

19          Q   But like you've said, people express their identity  
20          in different ways, right?

21          A   If someone has internalized that they're transgender  
22          and they're not open about it, then they're not going  
23          to go to the bathroom of which they -- the gender  
24          that they identify with.  If they are not going to  
25          outwardly appear the gender that they identify with,

1           then they're definitely not going to go to the  
2           restroom with that gender.

3           Q   And so if I understand, you said, quote/unquote, it  
4           takes a lot of time before one truly knows whether  
5           they're transgender?

6           A   Yes, it takes an experimental phase.

7           Q   An experimental phase. And so how would you think  
8           EVSC, when they have a student come in and says, "I'm  
9           transgender," that they are able to assess whether  
10          the student is going through this questioning phase,  
11          the experimental phase, has put in a sufficient  
12          amount of time or appearance? How are they to gauge  
13          whether that's a real transgender or just someone who  
14          is not quite there?

15          A   Because it takes a lot of courage to be able to  
16          approach, you know, the EVSC and say that this is the  
17          restroom I want to choose. It's an awkward and  
18          uncomfortable, you know, conversation to have and no  
19          one is going to have it if they just want to feel  
20          special. You know, they're not going to go out of  
21          their way to say I want to use this restroom and then  
22          go turn right back around and change their mind.  
23          That's not -- that's not what's going to happen. No  
24          student is going to do that. They're -- what you're  
25          going to have is a lot of students that have taken

1 the time because you --

2 Q Well, how much time do they have to take in order --  
3 before EVSC can say, "okay, you're truly  
4 transgender"?

5 A I don't think it's something for the EVSC to decide  
6 whether they're truly transgender. If they're coming  
7 to you and saying that this is what they identify  
8 with and this is the restroom that they want to use,  
9 then they should be allowed to use that restroom  
10 because, obviously, they've taken that time to decide  
11 that for themselves before they've come to you.

12 MR. SHOULDERS: Bob, let's take a break.

13 (WHEREUPON, A SHORT RECESS WAS TAKEN.)

14 Q Just to be clear, so the only time you communicated  
15 an issue to EVSC about the bathroom policy was in  
16 your freshman year?

17 A Yes.

18 Q And last year, your junior year, you had no  
19 communications with EVSC about the bathroom policy,  
20 correct?

21 A I mean, I talked in front of the School Board, which  
22 I had mentions about, yeah, issues with -- but -- but  
23 it wasn't specifically about the bathroom.

24 Q But, I mean, you didn't have any conversations with  
25 anyone, teachers, counselors, administrators, about

1 the bathroom policy your junior year?

2 A No.

3 Q And you didn't provide any documentation to anyone  
4 within EVSC your junior year about counseling,  
5 hormone therapy, or gender dysphoria diagnosis, did  
6 you?

7 A No.

8 Q And do you recall whether -- Ms. Dionne Blue, you had  
9 conversations with her about changing e-mail?

10 A I -- I know that I e-mailed her. I don't -- all I --  
11 all I remember is that we had an exchange of e-mails.  
12 I don't remember anything outside of --

13 Q Did you follow-up with her about trying to get the  
14 e-mail changed?

15 A I don't think so, no.

16 Q Okay. And after your School Board meeting, did Katie  
17 Elmer reach out to you and ask you to give her a  
18 contact about some of the things you had raised?

19 A Yes.

20 Q And you didn't get back to her either, did you?

21 A No.

22 Q But this past year, every teacher you asked to use  
23 your given name of J.A.W., they all agreed to do that  
24 and did it, didn't they?

25 A Yes.

1 Q And when you asked to speak to Harrison about  
2 organizing a -- was it a club of some sort, they  
3 allowed you to do that?

4 A I -- oh. I asked around to see if Harrison had a Gay  
5 Straight Alliance and they ended up having a Gay  
6 Straight Alliance.

7 Q So you had asked EVSC whether you could go over there  
8 and see if there was support for such a club, right?

9 A Yes.

10 Q And they said, "Sure, we'll help accommodate that,"  
11 but then you found out that they already had one?

12 A Yes. It was sort of underground. It was really  
13 underground because the principal was not very much a  
14 fan of it being very public, I suppose.

15 Q And you didn't have any conversation with that  
16 principal at all, did you?

17 A I did. She only -- she just pointed me in the  
18 direction of the lady who ran the meeting -- the  
19 meetings.

20 Q And was there a GSA at North?

21 A Yes. I am the president of it.

22 Q And EVSC has given you support with that, haven't  
23 they?

24 A Yes.

25 Q And so would it be fair to say that in everything

1           you've asked of EVSC, they've been accommodating  
2           except your request to change the bathroom policy?

3           A    Yes. Well, that and the gym class issues that I had  
4           freshman year and I was still forced to be in a  
5           female classroom for --

6           Q    That's not part of your lawsuit here today, is it,  
7           things from your freshman year, the gym class?

8           A    No, it's just the bathroom.

9           Q    You're not currently undergoing any counseling, are  
10          you?

11          A    Not at the moment.

12          Q    Other than the hormone therapy treatment, is there  
13          any other medical treatment you're on with respect to  
14          your transition?

15          A    No.

16          Q    And how long does that process take?

17          A    It can take up to five years. It just depends on  
18          when my body starts producing the normal amounts of  
19          male pattern testosterone.

20          Q    What are the other things you need to be able to do  
21          to transition to full acceptance?

22          A    I -- I guess I don't quite understand the question.  
23          Sorry.

24          Q    Well, if I understand it, are you saying that to be  
25          able to use the male restroom in school is part of

1           your transition process, or is it just something you  
2           just want?

3           A    It is a part of the trans- -- it's the transition  
4           process, I suppose.  It's -- I -- I am male.  I  
5           identify as male.  It's -- I'm not really -- yeah.  I  
6           guess it is, yeah.

7           Q    And what is transition process, as you understand it?

8           A    Transitioning from originally identifying with what I  
9           was born with to identifying with what I am truly  
10          comfortable with, which is male.

11          Q    And what other things do you need to complete that  
12          process?

13          A    I'm going to -- I plan on further undergoing medical  
14          transitioning and the whole goal is to be  
15          acknowledged as male throughout all aspects of my  
16          life.

17          Q    And so part of that transitioning would be to get  
18          your Birth Certificate changed?

19          A    Yes.

20          Q    Part of it would be to get your driver's license  
21          changed?

22          A    Yes.

23          Q    Part of it would be to get your Social Security card  
24          changed?

25          A    Yes, if I can do that.  I'm not sure if I can.

1 Q I believe your Complaint says you've incurred  
2 damages. What damages have you incurred? Any  
3 specific out-of-pocket damages that you've incurred,  
4 or are you just claiming damages for just stress and  
5 emotional distress, et cetera?

6 A Emotional distress.

7 Q All right. So you haven't suffered any out-of-pocket  
8 expense relating to this bathroom policy issue, have  
9 you?

10 A I mean, there's, obviously, like health issues and  
11 stuff, I guess. Not out of pocket, but -- I mean --

12 MR. FALK: We'll stipulate there are no out  
13 of pocket. Our disclosure that we filed will  
14 indicate that.

15 MR. BURKART: Okay.

16 Q And in terms of asking for attorney's fees, you're  
17 not paying any attorney's fees, correct --

18 A Correct.

19 Q -- the ACLU is paying for that, representing you?

20 A Correct.

21 Q When we talked earlier about your freshman year, you  
22 were presenting yourself as a female then, right?

23 A No. I've always presented myself as male ever since  
24 8th grade.

25 Q But in terms of your outward appearance.

1 A Outward appearance, I've always presented as male  
2 ever since 8th grade.

3 Q So your freshman year, did you change your hairstyle  
4 then?

5 A My hair was short, yeah. It's always been short  
6 since 8th grade.

7 Q When we talked earlier, you said that when you were  
8 using the male restrooms to get dressed for gym, that  
9 you looked female and that's why somebody called, it  
10 looked like two females and somebody called and  
11 complained. Do you remember that?

12 A Because I didn't -- I didn't pass as well as I do  
13 now. Passing by -- you know, by saying that I  
14 look -- if someone were to look at me, that I look  
15 male. I presented as male. I wore masculine  
16 clothes, I wore my hair masculinely, but the reason  
17 why I look more like a boy right now is because I've  
18 medically transitioned. I could have, you know,  
19 appeared more feminine then.

20 Q So someone back then thought you looked like a female  
21 in a male restroom and they called and complained,  
22 right?

23 A Right.

24 Q And so even though you were looking like a female,  
25 you still wanted to use the male restroom, right?

1 A Right.

2 Q And that's because internally you identified as a  
3 male?

4 A And I outwardly expressed that I wanted to be seen as  
5 a male, yes.

6 Q And that would have been your freshman year. How old  
7 were you then when that happened?

8 A Fourteen.

9 Q Fourteen? And you said you started this when, 8th  
10 grade?

11 A Yes.

12 Q So it would have been roughly one year before the  
13 time where you did your research and came to believe  
14 that you were transgender until this event occurred  
15 your freshman year; is that right?

16 A Roughly, yeah.

17 Q And so if I understand it, even if North built on a  
18 separate unisex bathroom, that would still not be  
19 satisfactory, right?

20 A It would not be satisfactory, no.

21 Q What if North made a current male's restroom unisex  
22 and a female's restroom unisex, so anybody could use  
23 anything, would that be acceptable?

24 A That's -- I don't think that's very likely to ever  
25 happen.

1 Q That's wasn't my question. Would that be acceptable  
2 if they did?

3 A I -- I don't -- I suppose if no restroom -- if no  
4 restroom is, you know, segregated by gender, then it  
5 wouldn't matter, but the fact that all, you know, of  
6 the rest- -- all public restrooms, you know, at the  
7 high schools have male and female restrooms and I'm  
8 not allowed to go to the male restrooms despite  
9 identifying as male, that's the problem.

10 Q And do you know whether schools are required to have  
11 separate male and female restrooms?

12 A I'm -- I don't know.

13 Q Well, my question is, if they made it unisex, would  
14 you feel uncomfortable using a bathroom that you knew  
15 a female would be using at some point, or at the same  
16 time?

17 A No, they're -- because both male and -- that would be  
18 a both male and female space. If it's both, then it  
19 doesn't matter because I'm male, but both male and  
20 females belong there, but I -- if it's a space that  
21 is -- yeah. Sorry.

22 Q Have you used the female restroom since freshman  
23 year?

24 A A few times, just for emergency reasons.

25 Q And have any of your friends said that that somehow

1 makes you less of a transgender, because you used a  
2 female restroom?

3 A Peers have pointed that out, that I have used female  
4 restrooms and used that as a, you know, excuse to say  
5 that I am not male.

6 MR. BURKART: That's all we have.

7 MR. FALK: Can you give me a minute?

8 MR. BURKART: Sure.

9 (WHEREUPON, A SHORT RECESS WAS TAKEN, AND  
10 DEPOSITION EXHIBIT 6 WAS MARKED FOR IDENTIFICATION.)

11 CROSS EXAMINATION,

12 QUESTIONS BY MR. FALK:

13 Q J.A.W., Exhibit 2 is your driver's license; is that  
14 correct?

15 A Yes.

16 Q And the picture was taken, I assume, in October of  
17 2017?

18 A Yes.

19 Q At least that's the date on the license. At that  
20 point, you had just started hormone therapy?

21 A Yes, I was about a month on it.

22 Q And I'm showing you what's been marked as Exhibit 6.

23 A Yes.

24 Q Which despite what a great picture it is, it's not  
25 been professionally taken, and is this a picture of

1           you today?

2           A    Yes.

3           Q    And you mentioned, I believe, that the hormones have  
4           caused you to have a beard?

5           A    Patchy, but yes.

6           Q    I'm sorry?

7           A    Patchy, but yes.

8           Q    And have they changed your voice?

9           A    Yes.

10          Q    How so?

11          A    My voice has deepened a lot since I started.  It's  
12          crazy.

13          Q    And how about weight, has there been a  
14          re-distribution of weight or has your weight changed?

15          A    Yeah, my weight has changed.  I've lost a lot of  
16          weight and it's -- I have, like, different fat dis-  
17          -- yeah, fat distributions, so I look more -- like my  
18          abdomen has more of a male pattern body, I guess.

19          Q    And all of that is because of your hormones?

20          A    Yes.

21          Q    You were asked questions about contact you had with  
22          members of EVSC concerning either bathroom through  
23          your transgender status.  I just want to make sure I  
24          understood.  When you were a freshman is when you  
25          were brought to the office for changing in the boys'

1 room; is that correct?

2 A Yes.

3 Q And did you indicate at that point that you were  
4 transgender or that you were male and you wanted to  
5 use male facilities?

6 A Yes.

7 Q And the accommodation was to put you in a -- I think  
8 you said the second floor of a locker room that was  
9 not generally used but people could walk in on; is  
10 that correct?

11 A Yes.

12 Q And that was a girls' locker room?

13 A Yes.

14 Q And when you were a freshman is also when the  
15 accommodation was offered to use the nurse's  
16 bathroom; is that correct?

17 A Yes.

18 Q And when you were a sophomore, I believe you talked  
19 to Principal Skinner about the Department of Justice,  
20 Department of Education letter concerning transgender  
21 status and bathrooms?

22 A Yes.

23 Q So you specifically asked to use the male restroom?

24 A Yes.

25 Q But you were told no?

1 A Yes.

2 Q And your mom spoke to the school about your status.

3 Was that when you were a freshman or a sophomore?

4 A I know she talked to Skinner -- I know she talked to  
5 the school when I was a sophomore.

6 Q Specifically about your bathroom usage?

7 A Yes.

8 Q Now, we talked a lot about gender dysphoria and one  
9 of the exhibits, I believe Exhibit 3 and maybe  
10 Exhibit 4, also mentions anxiety. What is gender  
11 dysphoria and to you, how did it make -- or how does  
12 it or did it make you feel?

13 A Gender dysphoria, at least for me, is just a  
14 discomfort of what I -- gender dysphoria is just a  
15 discomfort of not wanting to be the gender I was born  
16 with. It's this feeling of uneasiness and, you know,  
17 unhappiness with identifying with what I was born  
18 with and alleviating that is by transition- --  
19 basically by transitioning.

20 Q And you were asked questions, I think, about that,  
21 about what -- you know, what do you do to make that  
22 feel different, and you said by transitioning. So at  
23 this point, please tell me or describe what you've  
24 done to transition.

25 A I've socially transitioned by going by a masculine

1 name and by masculine pronouns. I've worn  
2 masculine-style clothing and cut my hair short and  
3 I've also gone through hormone replacement therapy.

4 Q So is it fair, just sort of as a general grouping, to  
5 say that your transitioning requires you to present  
6 as a male?

7 A Yes.

8 Q You were asked questions a couple of times about --  
9 and I don't mean to repeat the question verbatim, but  
10 something along the lines of, you know, what  
11 difference does it make if you use a girls' bathroom  
12 if no one knows.

13 A Correct.

14 Q So I'll ask you again, what difference does it make  
15 if you use the girls' bathroom if no one knows?

16 A It makes a difference because I'm not a female. By  
17 going into a space that is female, it's just -- it's  
18 uncomfortable for me even if no one knows. You know,  
19 I still shouldn't have to -- I shouldn't be required  
20 to use a bathroom that I don't belong in. It's  
21 not --

22 Q Okay.

23 A I don't know. Yeah.

24 Q We talked just a second ago, a minute ago, about what  
25 happened in your freshman and your sophomore year.

1 Did anyone from EVSC ever ask for any sort of proof  
2 that you were transgender?

3 A No.

4 Q And you were asked questions about third graders  
5 wanting to use a bathroom different than the gender  
6 they were assigned at birth, and I realize you're not  
7 an expert but you know more about transgender than  
8 anyone else in this room. Is that something that's  
9 likely to happen?

10 A No.

11 Q Why?

12 A It's not really common for people that young to  
13 realize that they are trans or, you know, take -- it  
14 takes a lot of time and a lot of life experience to  
15 realize you're -- the discomfort of a -- you know, of  
16 a certain gender and wanting to be a different one.

17 Q Do substitute teachers refer to you as J.A.W.?

18 A I have to specifically tell them to, and sometimes it  
19 just -- it just depends on their personal beliefs.

20 Q You were asked about the reasons you went to Echo  
21 Medical Provider. Are they your family doctor --

22 A Yes.

23 Q -- at this point?

24 A Yes.

25 Q For things other than transgender?

1 A Yes.

2 Q And at one point I believe you said, "I know I'm male  
3 and that's not going to change any time soon." Are  
4 you male?

5 A Yes.

6 Q Is it ever going to change?

7 A No.

8 MR. FALK: I have no further questions.

9 MR. BURKART: Just a couple.

10 RE-DIRECT EXAMINATION,

11 QUESTIONS BY MR. BURKART:

12 Q When he asked you that you're male, that's a  
13 psychological belief, isn't it?

14 A Yes.

15 Q Because physically, you're a female, correct?

16 A Well, with how I'm transitioning, I appear male. I  
17 mean, I have a lot of male characteristics that -- my  
18 sex is female but I am male.

19 Q And you haven't done any research on transgender  
20 status in adolescents, have you?

21 A I have.

22 Q You have? What have you done?

23 A I've read a lot about it. I know a lot of people  
24 that, you know, go -- that have identified as  
25 transgender since -- you know, since adolescence.

1 Q What ages?

2 A Well, in the group that I help run at TSA, just the  
3 other day we met a ten year old who is a transgender  
4 male.

5 Q And that research, if you've read it, it, in fact,  
6 shows that the vast majority of kids, adolescent kids  
7 who claim to be transgender end up not being  
8 transgender; isn't that true?

9 A I don't think that's true at all.

10 Q And you said this gender dysphoria is basically  
11 making you uncomfortable. The State of Indiana won't  
12 recognize you as a male on your driver's license, so  
13 why haven't you sued them?

14 A Because they -- because if I pursue, I guess -- I can  
15 get my driver's license changed. I can after I am  
16 18. The reason I'm suing the EVSC is because, you  
17 know, this is a school corporation where it's claimed  
18 that, you know, you're supposed to provide a safe  
19 place for all students, but you're blatantly not  
20 allowing certain students basic rights like using the  
21 bathroom.

22 Q EVSC hasn't prevented you from using the bathroom,  
23 have they?

24 A Using the correct bathroom.

25 Q And by "correct" means the one you choose that you

1 want to use, right?

2 A Yes, but, I mean, of course I want to use the  
3 restroom that I identify with.

4 Q And they haven't -- the purpose of EVSC is to provide  
5 a free education, correct?

6 A Yes.

7 Q And they've done that?

8 A Yes.

9 Q They've given you every accommodation except allowing  
10 you to choose the bathroom of your choice, right?

11 A Yes.

12 Q And so as you sit here, you believe it's okay for the  
13 State of Indiana to differentiate driver's license  
14 based upon male and female status, right?

15 A I don't know.

16 MR. BURKART: That's all I have.

17 MR. FALK: I have nothing further. You have  
18 the right to review this, which will be fun, or else  
19 we can what's called waive signature. When you  
20 review it, you have the right to make changes, not  
21 substantive changes, but if, like, there's a word  
22 wrong or if you said 2018 instead of 2017. I would  
23 suggest that you review it.

24 THE WITNESS: Okay.

25 MR. FALK: We'll take signature.

DEPOSITION OF J.A.W.  
TAKEN ON JUNE 21, 2018

117

1 AND FURTHER DEPONENT SAITH NOT.

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3 THIS DEPOSITION TO BE READ AND SIGNED BY J.A.W.

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DEPOSITION OF J.A.W.  
TAKEN ON JUNE 21, 2018

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DEPONENT'S CERTIFICATION

I, J.A.W., DEPONENT HEREIN, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING TRANSCRIPT IS A FULL, TRUE AND COMPLETE COPY OF PROCEEDINGS WHICH TOOK PLACE ON THE 21ST DAY OF JUNE, 2018, AT THE LAW OFFICES OF ZIEMER, STAYMAN, WEITZEL & SHOULDERS, 20 N.W. FIRST STREET, NINTH FLOOR, EVANSVILLE, VANDERBURGH COUNTY, INDIANA. I FURTHER CERTIFY THAT ANY CHANGES AND/OR CORRECTIONS, IF ANY, HAVE BEEN NOTED ON THE FORM ATTACHED AS THE LAST PAGE OF THE TRANSCRIPT.

IN VERIFICATION AND CERTIFICATION THEREOF, I HAVE HEREUNTO PLACED MY SIGNATURE ON THIS THE DAY OF , 2018.

J.A.W.

SUBSCRIBED AND SWORN TO BEFORE ME, A NOTARY PUBLIC, ON THIS DAY OF , 2018.

NOTARY PUBLIC

MY COMMISSION EXPIRES:  
COUNTY OF:

1 STATE OF INDIANA )  
 ) SS:  
2 COUNTY OF VANDERBURGH )

3 I, NANCY A. TROTTER, A NOTARY PUBLIC AT LARGE IN AND  
4 FOR THE STATE OF INDIANA, DO HEREBY CERTIFY:

5 THAT THE WITNESS HEREIN, J.A.W., WAS FIRST DULY SWORN  
6 TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH  
7 IN THE FOREGOING DEPOSITION;

8 THAT I THEN STENOGRAPHICALLY AND ELECTRONICALLY  
9 RECORDED THE TESTIMONY OF THIS WITNESS AND THAT THE  
10 TYPEWRITTEN TRANSCRIPT ABOVE IS A TRUE RECORD OF THE  
11 TESTIMONY GIVEN; THAT SAID DEPONENT SUBSCRIBED HIS SIGNATURE  
12 TO HIS DEPOSITION AFTER THE SAME HAD BEEN CAREFULLY READ  
13 OVER BY HIM;

14 THAT I ALSO RECORDED AND TRANSCRIBED ANY AND ALL  
15 OBJECTIONS MADE BY COUNSEL AND THE REASONS THEREFOR; AND

16 THAT I AM NOT A RELATIVE OR EMPLOYEE OR ATTORNEY OR  
17 COUNSEL OF ANY OF THE PARTIES, NOR A RELATIVE OR EMPLOYEE OF  
18 SUCH ATTORNEY OR COUNSEL, NOR AM I FINANCIALLY INTERESTED IN  
19 THIS ACTION.

20 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND  
21 AFFIXED MY NOTARIAL SEAL ON THIS DAY OF 2018.

22  
23 NANCY A. TROTTER, NOTARY PUBLIC

24 MY COMMISSION EXPIRES:  
25 FEBRUARY 5, 2025

TAKEN ON JUNE 21, 2018

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ERRATA SHEET  
WITNESS: J.A.W.

After having read my deposition, I wish to make the following changes:

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I am, therefore, signing my deposition conditioned on the fact that the above noted shall be entered upon the deposition by the Notary Public.

\_\_\_\_\_  
(Signature of Deponent)

Date: \_\_\_\_\_

	<p><b>10:1,3,9,12,16; 104:19</b></p>	<p><b>92:10</b></p>	<p><b>90:6</b></p>	<p><b>92:25</b></p>
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American Civil Liberties Union of Indiana

January 21, 2018  
via e-mail only

Patrick A. Shoulders  
Zeimer Stayman Weitzel Shoulders LLP  
PShoulders@zsws.com

re: J A W.

Dear Pat,

I am writing to you in your capacity as General Counsel for the Evansville-Vanderburgh School Corporation on behalf of my client, Mr. W , who is a student at North High School, but who also attends Harrison High School. He is a junior. Mr. W is a transgender person who identifies as male.

When he was a freshman, he was told that he could not use the male restrooms at school and would have to use the bathroom in the nurse's office. This was and is not physically proximate to his classes and the nurse's office is locked if the nurse is out of the office, which occurs frequently.

Mr. W would like to be able to use the male restrooms—the restrooms associated with his gender identity—without fear of discipline.

I realize that the Supreme Court has not yet resolved this issue, but the Seventh Circuit has made it clear that a claim by a student in Mr. W 's situation against a school that prohibits him from using the male restrooms would likely be successful under both Title IX and equal protection. *Whitaker v. Kenosha Unified School Dist. No. 1 Bd. of Ed.*, 858 F.3d 1034 (7th Cir. 2017).

Given this, I am would like an assurance that Mr. W can use male restrooms without risk of punishment. If this is not forthcoming within two weeks then we will consider bringing litigation against the School Corporation.

I look forward to hearing from you concerning this matter.

Price Building \* 1031 East Washington Street \* Indianapolis, Indiana 46202-3952  
Telephone 317/635-4059 ext. 104 \* FAX: 317/635-4105 \* E-Mail kfalk@aclu-in.org

(Note: Our office has temporarily relocated, until approximately June 1, 2018, to 2457 E. Washington Street, Indianapolis, IN 46201 – All other contact information remains the same)



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Thank you very much.

Very truly yours,



Kenneth J. Falk  
Attorney at Law

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-37-WTL-MPB
	)	
EVANSVILLE VANDERBURGH	)	
SCHOOL CORPORATION,	)	
	)	
Defendant.	)	

**Plaintiff's Notice of Filing Under Seal**

J.A.W. Deposition Exhibit 3 – Counseling Records

**\*\*THIS DOCUMENT IS BEING FILED UNDER SEAL\*\***

s/ Kenneth J. Falk  
Kenneth J. Falk  
No. 6777-49

s/ Gavin M. Rose  
Gavin M. Rose  
No. 26565-53

s/ Jan P. Mensz  
Jan P. Mensz  
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-37-WTL-MPB
	)	
EVANSVILLE VANDERBURGH	)	
SCHOOL CORPORATION,	)	
	)	
Defendant.	)	

**Plaintiff's Notice of Filing Under Seal**

J.A.W. Deposition Exhibit 4– An Additional Counseling Record

**\*\*THIS DOCUMENT IS BEING FILED UNDER SEAL\*\***

s/ Kenneth J. Falk  
Kenneth J. Falk  
No. 6777-49

s/ Gavin M. Rose  
Gavin M. Rose  
No. 26565-53

s/ Jan P. Mensz  
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-37-WTL-MPB
	)	
EVANSVILLE VANDERBURGH	)	
SCHOOL CORPORATION,	)	
	)	
Defendant.	)	

**Plaintiff's Notice of Filing Under Seal**

J.A.W. Deposition Exhibit 5– Medical Records

**\*\*THIS DOCUMENT IS BEING FILED UNDER SEAL\*\***

s/ Kenneth J. Falk  
Kenneth J. Falk  
No. 6777-49

s/ Gavin M. Rose  
Gavin M. Rose  
No. 26565-53

s/ Jan P. Mensz  
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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-37-WTL-MPB
	)	
EVANSVILLE VANDERBURGH	)	
SCHOOL CORPORATION,	)	
	)	
Defendant.	)	

**Plaintiff's Notice of Filing Under Seal**

J.A.W. Deposition Exhibit 6; David Smith Deposition Exhibit 6 – Photograph

**\*\*THIS DOCUMENT IS BEING FILED UNDER SEAL\*\***

s/ Kenneth J. Falk  
Kenneth J. Falk  
No. 6777-49

s/ Gavin M. Rose  
Gavin M. Rose  
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Attorneys for Plaintiff

**In The Matter Of:**

*J.A.W., et al. v.*

*Evansville Vanderburgh School Corporation*

---

*David Smith, Ed.D.*

*June 22, 2018*

---

*Tri-State Reporting, Inc.*

*901 S. Kenmore Drive*

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*www.tsreporting.com*

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A P P E A R A N C E S

FOR THE PLAINTIFF:       KENNETH J. FALK  
                                  ACLU OF INDIANA  
                                  2457 E. WASHINGTON STREET, SUITE Z  
                                  INDIANAPOLIS, INDIANA 46201

FOR THE DEFENDANT:       PATRICK A. SHOULDERS  
                                  L. KATHERINE BOREN  
                                  ZIEMER, STAYMAN, WEITZEL & SHOULDERS  
                                  20 N.W. FIRST STREET, NINTH FLOOR  
                                  EVANSVILLE, INDIANA 47708

ALSO PRESENT:               RICK CAMERON

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1 DAVID SMITH, Ed.D., HAVING BEEN FIRST DULY SWORN TO TELL  
2 THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH,  
3 RELATING TO SAID MATTER, WAS EXAMINED AND TESTIFIED  
4 AS FOLLOWS:

5 DIRECT EXAMINATION,

6 QUESTIONS BY MR. FALK:

7 (WHEREUPON, DEPOSITION EXHIBITS 7 THROUGH  
8 AND INCLUDING 13 WERE MARKED FOR IDENTIFICATION.)

9 Q State your name, please.

10 A David B. Smith.

11 Q And you are a Ph.D.; is that correct?

12 A Ed.D.

13 Q Dr. Smith?

14 A Yes.

15 Q You are the Superintendent of the Evansville  
16 Vanderburgh School Corporation?

17 A Correct.

18 Q Which we will call EVSC just so we get out of here  
19 earlier; is that okay?

20 A Sure.

21 Q And what is the business address of EVSC?

22 A 951 Walnut Street.

23 Q In Evansville?

24 A Correct.

25 MR. FALK: And have you been deposed before?

1 THE WITNESS: I have.

2 MR. FALK: So you understand this is an  
3 asking and answering of questions under oath?

4 THE WITNESS: Yes.

5 MR. FALK: If you don't understand my  
6 questions or if I talk too fast, which I'm known to  
7 do, even though I've been in Indiana for 41 years,  
8 please stop me; otherwise, I'll assume you understand  
9 the question; is that okay?

10 THE WITNESS: Okay.

11 MR. FALK: If at any point you want to talk  
12 to your attorney, you, of course, can do so. I would  
13 only ask that you answer the question before you; is  
14 that okay?

15 THE WITNESS: Okay.

16 MR. FALK: So he can't tell you the answer.

17 Q And how long have you been the Superintendent?

18 A Seven years.

19 Q And were you with EVSC prior to that time?

20 A Yes.

21 Q And what was your position?

22 A Prior? I was Assistant Superintendent.

23 Q And before that?

24 A It probably would just be best to say I've been a  
25 teacher and an administrator.

1 Q And how long have you been with EVSC?

2 A I've completed 36 years.

3 Q I'm showing you what's been marked as Exhibit 7. As  
4 a former teacher, I don't want you questioning my  
5 math skills. We're just continuing the numbers from  
6 the one deposition we did yesterday. Have you seen  
7 that document?

8 A I have.

9 Q And you understand that's a Notice of Deposition to  
10 EVSC to produce someone to discuss certain topics?

11 A Yes.

12 Q And you are the person produced; is that correct?

13 A Correct.

14 Q Therefore, I will assume, unless you tell me  
15 differently, that you are speaking for the Evansville  
16 Vanderburgh School Corporation?

17 A I understand.

18 MR. FALK: Go off the record for a second.

19 (WHEREUPON, A DISCUSSION WAS HELD OFF THE  
20 RECORD.)

21 Q Do you personally know the plaintiff in this case?

22 A No.

23 Q Have you ever met him?

24 A I have heard him speak.

25 Q You heard him speak at a School Board meeting --

1 A Correct.

2 Q -- in early February of this year --

3 A I don't recall --

4 Q -- or January?

5 A -- the time, but earlier, yes.

6 Q And that's the only time you've met him --

7 A Yes.

8 Q -- or seen him, that you're aware of?

9 A Correct.

10 Q And have you checked his academic records? Do you  
11 know what grade he's going to be in next year, for  
12 instance, what school he's going to?

13 A Going to go to North High School.

14 Q And is he also in a program in another high school as  
15 well?

16 A He was this previous year.

17 Q But now he's just going to North?

18 A My understanding is, he requested just to go to  
19 North.

20 Q And he is a rising senior; is that correct?

21 A Correct.

22 Q And have you looked at his academic records?

23 A No.

24 Q Do you know if he's on a college track, what his  
25 grade point average is, information like that?

1 A I do not, no.

2 Q Are you aware of him having any disciplinary  
3 problems, that you're aware of?

4 A Not that I'm aware of.

5 Q And it's my understanding that the restrooms and  
6 locker rooms within EVSC schools are gender specific,  
7 there are male restrooms and locker rooms, female  
8 restrooms and locker rooms; is that correct?

9 A Yes, they're built to code.

10 Q And what code is that?

11 A Indiana code for buildings.

12 Q Which requires separate men's rooms and women's rooms  
13 if you have a certain number of people using the  
14 space; is that correct?

15 A I think they're called boys and girls.

16 Q So are there any unisex restrooms that are available  
17 for students for routine use in any of the EVSC  
18 schools?

19 A Yes.

20 Q And where are those?

21 A Throughout the buildings.

22 Q And are they in the buildings where the plaintiff  
23 attends the high school?

24 A Yes.

25 Q So what are those bathrooms in the high school that

1 he attends? Is it just a room that's marked  
2 "unisex"?

3 A They would be private restrooms.

4 Q And where would they be?

5 A Throughout various parts of the schools.

6 Q Do students have unlimited access to them or are they  
7 in other people's offices? Where are they?

8 A They're typically in parts of the building that could  
9 be within offices or suites.

10 Q For instance, we discussed yesterday, when J.A.W. was  
11 being deposed, the nurse's restroom.

12 A Yes.

13 Q And that's one of the rooms you're talking about?

14 A Yes.

15 Q So the unisex bathrooms are within offices and,  
16 therefore, within that office, they can be used by  
17 either men or women, boys or girls?

18 A Correct.

19 Q And the boys' rooms have urinals and stalls, I  
20 assume?

21 A Correct.

22 Q Multiple urinals, multiple stalls?

23 A Not necessarily.

24 Q But they are not designed for single use at one time?

25 A Correct.

1 Q And the urinals have a barrier between each urinal if  
2 there are more than one?

3 A It depends on when they were built.

4 Q The more modern ones have the barriers?

5 A Yes.

6 Q And female restrooms, of course, just have multiple  
7 stalls, separate stalls with doors?

8 A That's my understanding.

9 Q And you indicate that the Indiana code requires you  
10 to have separate boys' and girls' restrooms?

11 A Yes.

12 Q And is that code specific to schools or to buildings  
13 that the public has access to --

14 A I believe --

15 Q -- if you know?

16 A I believe it was public buildings, but that's really  
17 beyond my level of expertise.

18 Q Sure. Are you aware of any definition within that  
19 code, or anywhere else, as to what is boy, what is  
20 girl, what is male, what is female?

21 A Again, please.

22 Q Are you aware of there being any definition given in  
23 the code or anywhere else as to what is male and what  
24 is female or what is boy or what is girl?

25 A In terms of the definition?

1 Q Yes.

2 A Are you talking about anatomy purposes or --

3 Q Well, I'm just talking about -- let's go back to the  
4 code --

5 A Yes.

6 Q -- only speak of the code. You're aware there's a  
7 code that says you have to have separate boys' and  
8 girls' rooms?

9 A Yes.

10 Q Is there anywhere in that code, that you're aware of,  
11 that defines what a boy is and what a girl is for  
12 purposes of having separate boys' and girls'  
13 restrooms?

14 A Not that I'm aware of.

15 Q Okay. Obviously, in this case, we're talking a lot  
16 about transgender. You understand that, correct?

17 A Yes. I understand that's what we're talking about.

18 Q Exactly. Do you have a definition in your mind as to  
19 what transgender is?

20 A A singular definition, I do not.

21 Q You've read the Complaint in this cause?

22 A I have.

23 Q And you obviously have spoken to your lawyer -- I  
24 don't want to know what you've spoken about, but  
25 you've spoken to your lawyer about the case; is that

1 correct?

2 A Correct.

3 Q So you've discussed or you thought this is a student  
4 who claims that he is transgender?

5 A Correct.

6 Q So in saying that to yourself, what definition have  
7 you used, if you have any, as to what transgender is  
8 or is not?

9 A Specific to this case --

10 Q Or any case, yes.

11 A Well, or any case?

12 Q Well, specific to this case.

13 A Okay. Specific to this case, that we have an  
14 individual who was born with the anatomy of a female  
15 but yet identifies as a male.

16 Q Identifies as a male; is that correct?

17 A Yes.

18 Q Okay. And in this case, we've also talked about  
19 gender dysphoria. Do you remember reading about that  
20 in the Complaint?

21 A Reading about that in the Complaint, yes.

22 Q Do you have any definition in your mind as to what  
23 gender dysphoria is?

24 A Yes.

25 Q And what is that?

1 A In my mind, it is an individual that finds discomfort  
2 in an identity other than which they identify.

3 Q Gender identity?

4 A Yes.

5 Q Now, I'm showing you what's been marked as  
6 Exhibit 11, and these were just given to me today.  
7 I'm not going to ask you specific questions  
8 necessarily, but those are e-mails that were given to  
9 me concerning -- or mostly from J.A.W., to J.A.W., or  
10 concerning J.A.W. Are you aware of those e-mails?

11 A May I take a moment?

12 Q Of course.

13 MR. FALK: We can go off the record.

14 (WHEREUPON, A DISCUSSION WAS HELD OFF THE  
15 RECORD.)

16 Q So Exhibit 11 are e-mails concerning J.A.W. or from  
17 J.A.W.; is that correct?

18 A From J.A.W. or about J.A.W. They're not all from  
19 J.A.W., but --

20 Q Right. That's correct.

21 A -- yes.

22 Q And these are all from the EVSC e-mail platform; is  
23 that correct?

24 A I believe that would be correct.

25 Q And if they disclose that in 2016, J.A.W. was talking

1 to a principal or a principal was talking to J.A.W.  
2 concerning his transgender status, then you would  
3 have no reason to contest that; is that correct?

4 A I don't think I saw one from 2016.

5 Q Let me see if I can find it.

6 MR. FALK: Off the record.

7 (WHEREUPON, A DISCUSSION WAS HELD OFF THE  
8 RECORD.)

9 Q I realize that you don't have familiarity with the  
10 contents of Exhibit 11, and neither do I, but in  
11 looking through very quickly, I saw an e-mail from  
12 November 4th, 2016, an e-mail exchange from a "to"  
13 D-i-o-n-n-e Blue and then back to J.A.W., and  
14 Ms. Blue is identified as the Chief Diversity Officer  
15 of the Evansville Vanderburgh School Corporation?

16 A Yes, Dr. Blue.

17 Q Dr. Blue? And you have no reason not to believe that  
18 on this date, this e-mail was sent; is that correct?

19 A Correct.

20 Q Now, are you aware of any efforts that J.A.W. made to  
21 avoid using the girls' locker room when he was a  
22 freshman?

23 A No.

24 Q Are you aware of -- aside from what might be  
25 disclosed by the e-mails and, I apologize, I'm not

1           sure if they are disclosed, but aside from that, are  
2           you personally aware of any requests that J.A.W. made  
3           to use the male restrooms when he was a sophomore?

4           A    I am not.

5           Q    Are you aware of any efforts that his mother made to  
6           talk to the principal, I think Principal Skinner,  
7           when J.A.W. was a sophomore about his transgender  
8           status?

9           A    I'm aware through the process of discovery that there  
10          was one conversation, but not specifically regarding  
11          transgender.

12          Q    And what did you discover about that one  
13          conversation?

14          A    The principal did not recall what it was about.

15          Q    You talked to the principal?

16          A    I did not.

17          Q    Then how did you discover the principal does not  
18          recall what the conversation was about?

19          A    Based upon my conversation with the Chief of Staff.

20          Q    It's correct, however, that EVSC is aware that J.A.W.  
21          identifies as being transgender; is that correct?

22          A    Correct.

23          Q    And at least as of the one e-mail we discussed from  
24          Dr. Blue, that would have been at least by 2016, if  
25          not earlier; is that correct?

1 A Correct.

2 Q And it's a fact that even earlier than 2016, J.A.W.  
3 was requesting that his name J.A.W. be used by EVSC  
4 and its staff; is that correct?

5 A I do not know the date on that.

6 Q But that could have predated this e-mail; is that  
7 correct?

8 A It could have, yes.

9 Q And is EVSC aware that J.A.W. has been diagnosed with  
10 gender dysphoria?

11 A I was only recently made aware of that.

12 Q And how were you made aware of that?

13 A Through the discovery process.

14 Q Talking to your Chief of Staff or something  
15 different?

16 A Actually looking at medical records, so two weeks  
17 ago.

18 MR. SHOULDERS: And realizing he's covered  
19 by the Protective Order.

20 MR. FALK: Yes. I've discovered that school  
21 administrators have a really good sense of privacy of  
22 records.

23 MR. SHOULDERS: You betcha.

24 Q To the best of your knowledge, EVSC has never  
25 requested that J.A.W. produce any sort of evidence as

1 to having gender dysphoria or being transgender; is  
2 that correct?

3 A We don't, as a matter of practice, request students  
4 to produce those things.

5 Q And you have not in J.A.W.'s case?

6 A Correct.

7 Q After this case was filed, did you or any one of your  
8 staff go back to try and find out exactly when EVSC  
9 first learned that J.A.W. was transgender?

10 A Could you repeat that, please?

11 MR. FALK: Could you read it back?

12 (WHEREUPON, THE REQUESTED MATERIAL WAS READ  
13 BACK BY THE COURT REPORTER.)

14 A I'm not aware that we went back specifically for  
15 that.

16 Q Did you try and go back to find out when EVSC staff  
17 started using J.A.W.'s name -- or the name J.A.W.?  
18 Excuse me.

19 A I'm sorry, could you repeat that?

20 Q That was my fault. Did you go back and try and find  
21 out when staff was first requested by J.A.W. to use  
22 his name J.A.W.?

23 A No.

24 Q And you don't know when that happened?

25 A Correct.

1 Q And the only time that you recall seeing J.A.W. was  
2 the time that he spoke at the School Board in either  
3 late January or February --

4 A Correct.

5 Q -- of this year?

6 A (Whereupon, witness nodded head up and down.)

7 Q I'm showing you what's been marked as Exhibit 6.  
8 It's a picture that was taken yesterday, I'll  
9 represent to you. Is this the J.A.W. that you  
10 remember, or do you not recall?

11 A I would think so, yes.

12 Q Would you describe Exhibit 6 as seeing someone who is  
13 masculine or feminine in appearance, if you can tell?

14 A I don't think I would define him as either.

15 Q And at that School Board meeting, J.A.W. identified  
16 himself as a transgender student going to EVSC; is  
17 that correct?

18 A I believe so.

19 Q Now, at one point, I believe when J.A.W. was a  
20 freshman the testimony was, an offer was made to  
21 allow him to use the nurse's restroom in the high  
22 school that he was then attending. Are you aware of  
23 that?

24 A Of the testimony?

25 Q Are you aware that there was an offer made to allow

1           him to use the nurse's restroom?

2           A    Yes.

3           Q    And how are you aware of that?

4           A    Just through this process.

5           Q    After the case was filed?

6           A    I don't believe it was after the case. I believe it  
7           was perhaps before.

8           Q    And is this an offer made to other students, that  
9           you're aware of?

10          A    Yes.

11          Q    On a student-by-student basis?

12          A    Correct.

13          Q    And what is the reason to offer this accommodation,  
14          generally?

15          A    It would be based upon individual need.

16          Q    But this is an accommodation that has to be requested  
17          or at least allowed by the school?

18          A    What accommodation?

19          Q    The ability to use the restroom in the nurse's office  
20          or in some other private location of the school.

21          A    Specific to your question, no.

22          Q    Why is that?

23          A    Students, as a course of visiting the nurse, would  
24          use the nurse's restroom without explicit permission.

25          Q    If they are visiting the nurse?

1 A Correct.

2 Q Otherwise, then there are students who, as you say,  
3 have individual needs that are allowed the ability to  
4 either between classes or excuse themselves from  
5 class and go to the nurse's room to use the restroom?

6 A If I may answer the previous question. Or if they  
7 were in proximity to it, not necessarily specific to  
8 the nurse's office, so if they were in the office  
9 area. Now, I'm sorry, could you repeat the question  
10 that you just asked?

11 MR. FALK: Can you repeat the question back?

12 (WHEREUPON, THE REQUESTED MATERIAL WAS READ  
13 BACK BY THE COURT REPORTER.)

14 THE WITNESS: Thank you.

15 A Yes.

16 Q And is that a decision made by the principal, by --  
17 who makes the decision at each school as to whether a  
18 student has that ability?

19 A Typically, that would be site based.

20 Q That would be --

21 A Site based.

22 Q -- site based? So it's an administrator in the  
23 school?

24 A Correct.

25 Q And do you have any idea how frequently this occurs?

1 A I have some idea, yes.

2 Q And what is that idea based upon?

3 A My experience as a principal.

4 Q So how frequently does it occur?

5 A Are you asking for a number?

6 Q Well, in your past experience.

7 A It is more frequent than not, I guess would be the  
8 way to say it. It's hard for me to quantify that  
9 number.

10 Q So not infrequently?

11 A Correct.

12 Q And what are the other type of individual needs that  
13 are met this way besides transgender?

14 A Well, issues of anxiety or if there were concerns  
15 of -- that students had.

16 Q But most students, obviously, use the restrooms that  
17 are the boys' rooms or girls' rooms which, I assume,  
18 are proximate to where their classes are?

19 A Correct.

20 Q And the nurse's office, at least in the high schools  
21 that J.A.W. has or is in, are not necessarily  
22 proximate to where his classes are; is that correct?

23 A I don't know that.

24 Q Are you aware of J.A.W. being allowed to use a locker  
25 room other than the regular female locker room to

1 change in when he was a freshman?

2 A Minimal knowledge, yes.

3 Q Based on -- what is that knowledge based on?

4 A This process.

5 Q And so that did happen, to the best of your  
6 knowledge?

7 A To my understanding, yes.

8 Q And that was because he indicated discomfort changing  
9 in the regular girls' room at that point?

10 A That, I don't know.

11 Q You don't know why it happened?

12 A I don't know if it was discomfort in changing in the  
13 girls' room or his desire to use the boys' locker  
14 room.

15 Q And his testimony was that this was in the girls'  
16 locker room but it was a girls' locker room in an  
17 upstairs area that was somewhat more secluded,  
18 although people could come in; is that your  
19 understanding?

20 A My understanding is that it was an additional locker  
21 room upstairs.

22 Q Girls' locker room?

23 A Yes, sir.

24 Q And is it your understanding that another transgender  
25 student was afforded the same option at the same

1 time?

2 A That's my understanding, yes.

3 Q I assume -- and this is probably more of your  
4 knowledge back before you were Superintendent maybe.  
5 I assume that students are encouraged to use the  
6 bathroom other than during class time; is that  
7 correct?

8 A Could you repeat that?

9 Q Yeah. How much time is there between classes  
10 generally?

11 A It varies.

12 Q Is it five minutes, three minutes, seven minutes?

13 A I think you hit that range.

14 Q That range?

15 A Probably five to seven minutes.

16 Q I assume that teachers and administrators encourage  
17 the students to use the bathroom, if they need to use  
18 the bathroom, during that period rather than getting  
19 up in the middle of class to go to the bathroom?

20 A That is the expectation, correct.

21 Q I realize that expectation may not always be met.

22 A That is correct.

23 Q So J.A.W. was offered the ability to use the nurse's  
24 restroom and J.A.W. was allowed to change in a more  
25 secluded area in a girls' locker room and J.A.W. was

1 addressed as J.A.W. by many of his teachers and  
2 administrators. Are you aware of any other  
3 accommodations offered to him because of his  
4 transgender status?

5 A I believe at Harrison High School, there was also a  
6 gender neutral restroom beyond the nurse's, but I  
7 could be wrong.

8 Q And where would that gender neutral restroom be?

9 A Close to the Shepard Academy, in proximity of his  
10 courses.

11 Q And would that be, again, a teacher's office or an  
12 administrator's office or --

13 A No.

14 Q It would just be open to all of the students?

15 A It would be in the hallway -- or off of a hallway.

16 Q And you said you weren't sure, necessarily sure of  
17 this?

18 A Correct.

19 Q And that restroom would be open to all students if it  
20 was there?

21 A It depends on the definition of "all students."

22 Q Okay. Tell me what that means.

23 A Well, for instance -- well, I think it would be based  
24 upon student request, student need.

25 Q And would they need to be given a key to it, is it

1 open, or do you know?

2 A It's not locked. Lockable but not locked, is my  
3 understanding.

4 Q But they would have to get some sort of prior  
5 permission through the site, people on -- staff on  
6 site to use it?

7 A Yes.

8 Q And I understand you said that you're not sure.

9 A Right.

10 Q Okay. So you're obviously aware that J.A.W. wants to  
11 use the boys' restrooms?

12 A Yes.

13 Q Okay. And you're aware that your attorney and I had  
14 an exchange where, on J.A.W.'s behalf, I requested  
15 and your attorney indicated that the school's  
16 position was not to allow that? And I'll show you  
17 the exhibits. I'm showing you what's been marked as  
18 Exhibit 1 --

19 A I do recall this letter now.

20 Q -- and Exhibit 8. I'll find it.

21 MR. FALK: Off the record.

22 (WHEREUPON, A DISCUSSION WAS HELD OFF THE  
23 RECORD.)

24 Q I'm showing you what is in the lawyer's universe  
25 marked as Exhibit 8, the letter from Mr. Shoulders to

1 me. So you're aware that we had that exchange; is  
2 that correct?

3 A Yes.

4 Q And what would the discipline be or what would happen  
5 if J.A.W. used the male restrooms? Or what  
6 discipline would he possibly be subjected to, if any?

7 A It would depend.

8 Q But he could be subject to discipline?

9 A Could be.

10 Q And that could range from what to what?

11 A As a warning to not do it again.

12 Q To something more serious?

13 A Correct.

14 Q Possibly suspension if it's persistent behavior?

15 A Persistent behavior?

16 Q Yes.

17 A Yes.

18 Q Okay. And why is J.A.W. not able to use the male  
19 restrooms?

20 A Because biologically he's a female.

21 Q So it's EVSC policy that students must use the  
22 restroom consistent with their assigned gender at  
23 birth; is that correct?

24 A Yes. Well --

25 Q Or if they actually surgically get a -- go through

1 sex reassignment surgery; is that fair?

2 A Or if they request to use a gender neutral restroom.

3 Q And we've discussed already what gender neutral  
4 restrooms might be available to him?

5 A Correct.

6 Q Is this policy written down anywhere?

7 A No.

8 Q And what is the basis for the policy?

9 A Basically Indiana law. We do group our students  
10 according to sex.

11 Q And sex, in your mind, is defined as gender at birth?

12 A Gender at birth, sex at birth.

13 Q And do you have anywhere where that definition is  
14 written down either by you in terms of policy or  
15 Indiana law or anywhere else?

16 A What definition?

17 Q That gender is sex at birth.

18 A I'm not certain how we got on the topic of gender  
19 because, like I said, we group our students, when we  
20 do group our students, according to gender -- or to  
21 sex, so their physical anatomy at birth.

22 Q J.A.W. is taking hormones, you know that now; is that  
23 correct?

24 A Correct.

25 Q Did you know that before this litigation was filed?

1 A I did not.

2 Q And his body has changed, he has -- he's shaving, his  
3 periods have stopped, he has lost weight and his  
4 weight has redistributed in a masculine way. That's  
5 how he has testified. Assume that's true. So none  
6 of that makes any difference because he does not have  
7 a penis; is that correct?

8 A When it comes to using a restroom?

9 Q Yes. I'm sorry.

10 A Yes.

11 Q What would be the problem or what is the danger or  
12 risk of him using a male restroom at the school?

13 A Which question would you like me to answer?

14 Q What would be the problem with that, aside from the  
15 fact that it violates a school rule?

16 A There could be a likelihood of disruption, a  
17 likelihood of an unsafe environment.

18 Q And what is the likelihood of disruption based upon?

19 A My experience as an educator.

20 Q Well, tell me what that means.

21 A I can give you an example.

22 Q Sure.

23 A Early on in my teaching career, there was a -- our  
24 head custodian at Bosse High School was using the  
25 restroom and a female walked in and he walked out

1 very upset.

2 Q Any other examples that you're aware of?

3 A Specific to --

4 Q Well, specific to your concern that you have --

5 A Specific to that expectation?

6 Q Yes.

7 A Well, I think as an educator for 36 years, I believe  
8 that that could occur.

9 Q Okay. Are you aware of other transgender students  
10 within EVSC at the current time?

11 A Yes.

12 Q Are you aware of whether some of them may be using  
13 restrooms of their gender identity?

14 A I am not aware.

15 Q You have not heard of any disruption or concerns  
16 about that?

17 A Correct, nor do I know that they are using the  
18 restrooms of their gender identity.

19 Q Sure. Do you have any idea how many other  
20 transgender students there are within EVSC?

21 A How many other?

22 Q Yes.

23 A Two.

24 Q There are two?

25 A (Whereupon, witness nodded head up and down.)

1 Q And how do you know that?

2 A It's been brought to my attention.

3 Q So there may be others who have not been brought to  
4 your attention?

5 A Correct.

6 Q Are they two high school students?

7 A No.

8 Q Where are they, elementary or middle school? I'm  
9 sorry.

10 A Middle and high school.

11 Q And have they sought permission to use restrooms of  
12 their gender identity?

13 A Not that I'm aware of. In fact, one is questioning  
14 whether they're going to stay transgender.

15 Q And do you know if either have been diagnosed with  
16 gender dysphoria?

17 A Not to my knowledge.

18 Q And do you know if either of them are taking  
19 hormones?

20 A They are not, to my knowledge.

21 Q Are there other students besides J.A.W. who have  
22 identified as transgender who have raised concerns  
23 about not being able to use the bathrooms of their  
24 gender identity?

25 A Not to my knowledge.

1 Q And the same question, anyone with locker room usage  
2 questioning whether they can use locker rooms  
3 associated with their gender identity?

4 A Not to my knowledge.

5 Q Have you done any research or has anyone done  
6 research, that you're aware of, as to the percentage  
7 of high school students in the United States who are  
8 transgender?

9 A I'm sure there has been research done.

10 Q But you're not aware of it? You are not aware of the  
11 research -- of the results of the research? I'm  
12 sorry.

13 A Just that it's a very, very small percentage.

14 Q But there is a measurable percentage, to the best of  
15 your knowledge?

16 A One would assume.

17 Q Okay. I asked for any communications you received  
18 from the Federal Government concerning transgender  
19 issues, and I'm showing you what's been marked as  
20 Exhibit 9 and Exhibit 12, and I will represent to you  
21 that I believe Exhibit 9 is the May 2016 letter from  
22 the Department of Justice, Department of Education  
23 announcing interpretation concerning same sex  
24 bathrooms, and Exhibit 12 is the rescinding of that  
25 earlier letter.

1 A Did you say the utilization of same sex bathrooms?

2 Q Utilization, thank you, of bathrooms associated with  
3 gender identity by transgenders.

4 A Okay. I believe that was the May '16 letter and the  
5 recension is the February '17 letter.

6 Q So the policy of EVSC is that persons who were born  
7 anatomically male must use the male restrooms and the  
8 same for females using the female restrooms; is that  
9 correct?

10 A Is that the policy?

11 Q Yes.

12 A Yes.

13 Q Did that policy change at all after Exhibit 9, the  
14 letter in May of 2016?

15 A We consulted with legal counsel and the policy  
16 remained the same.

17 Q So the policy has been consistent?

18 A Correct.

19 Q It's not in writing, but it's understood that that is  
20 the policy?

21 A Correct.

22 Q Are you aware that I believe J.A.W. spoke to  
23 Principal Skinner concerning the policy expressed in  
24 Exhibit 9?

25 A I'm not aware.

1 Q I also asked for any written communications from the  
2 State Department of Education or any other Indiana  
3 agency concerning bathroom or locker room access by  
4 transgender students, and apparently there is nothing  
5 that you're aware of; is that correct?

6 A Nothing from the IDOE. It depends on what your  
7 definition of agency is.

8 Q What might you have from other agencies?

9 A From the Indiana School Board Association, there's a  
10 PowerPoint that I believe you have.

11 Q Okay. I'll show you what's been marked as  
12 Exhibit 10, and I believe you indicated that you were  
13 present when J.A.W. spoke to the School Board; is  
14 that correct?

15 A Correct.

16 Q And the School Board is actually, technically, the  
17 Board of School Trustees of the Evansville  
18 Vanderburgh School Corporation; is that correct?

19 A Yes.

20 Q But I assume everyone in the universe calls them the  
21 School Board. And he spoke about changing EVSC's  
22 formal anti-discrimination policy, non-discrimination  
23 policy; is that correct?

24 A I believe so.

25 Q And is Exhibit 10, the italicized portion, the

1 non-discrimination policy of EVSC?

2 A I believe so.

3 Q And in 2017, the Board was asked to add sexual  
4 identity to the non-discrimination policy; is that  
5 correct?

6 A In 2017?

7 Q Or perhaps earlier.

8 A I don't believe so.

9 Q They never were asked to add --

10 A I believe in 2018.

11 MR. SHOULDERS: You said sexual identity.

12 Did you mean gender identity?

13 MR. FALK: Gender identity. I'm sorry.

14 Q But that was not until this year that they were  
15 asked?

16 A That the School Board was asked?

17 MR. FALK: Go off the record for a second.

18 (WHEREUPON, A DISCUSSION WAS HELD OFF THE  
19 RECORD.)

20 Q The School Board added sexual orientation, I believe,  
21 to its non-discrimination policy at some point in the  
22 past; is that correct?

23 MR. FALK: Go off the record.

24 (WHEREUPON, A DISCUSSION WAS HELD OFF THE  
25 RECORD.)

1 Q At some point in the not so distant past, the School  
2 Board added sexual orientation to the current  
3 formulation that's indicated in Exhibit 10; is that  
4 correct?

5 A Yes.

6 Q And at some point, perhaps this year, the School  
7 Board was asked to consider adding gender identity  
8 also to this formulation?

9 A Correct.

10 Q And it might have been asked at an earlier time, like  
11 2017, but it was not formally considered, I believe,  
12 until 2018; is that correct?

13 A It has not been formally considered.

14 Q So it is still pending?

15 A No.

16 Q Was it rejected by the School Board?

17 A No.

18 Q So where is it?

19 A Just because someone would ask does not necessitate  
20 it being pending.

21 Q Do you know why the School Board determined not to  
22 consider and/or add sexual identity to the  
23 non-discrimination policy?

24 A The School Board follows all Federal and State law,  
25 to the best of our ability.

1 Q Now, I requested documents received from Indiana  
2 school corporations or organizations representing or  
3 advocating for school corporations concerning  
4 transgender issues, and I'm showing you what's been  
5 marked as Exhibit 13. Are these -- and these were  
6 given to me this morning. Are these the documents  
7 that you're aware of, including the one you spoke  
8 earlier about from the school board association, I  
9 believe?

10 (WHEREUPON, A DISCUSSION WAS HELD OFF THE  
11 RECORD.)

12 Q Are those the documents that you have that are  
13 responsive to that Request For Production of  
14 Documents?

15 A These are the documents, I think, produced from the  
16 result of the search, yes.

17 Q And this issue of transgender access to restrooms of  
18 gender identity, is that one that has been discussed  
19 informally in meetings that you or your staff have  
20 attended?

21 A Discussed informally?

22 Q Is it something that other school corporations within  
23 Indiana are facing or dealing with or considering?

24 A I would think so.

25 Q Are you aware of whether other school corporations

1           have policies that allow transgender students to use  
2           bathrooms consistent with their gender identities?

3           A    Am I aware of other school corporations?

4           Q    In Indiana.

5           A    No.

6           Q    Are you aware of any other school corporations in the  
7           United States that have policies that allow  
8           transgender students to use bathrooms consistent with  
9           their gender identities?

10          A    Yes.

11          Q    And what are you aware of in that regard?

12          A    Just that there are school districts, as a matter of  
13          policy, that allow restroom usage, not necessarily  
14          locker room or overnight field trip.

15          Q    And do you know what school corporations that might  
16          be?

17          A    Specifically, no.

18          Q    And are you aware of any report of any sort of  
19          problems that have occurred because of those  
20          policies?

21          A    No, because I'm not really aware of many that have  
22          the policy.

23          Q    Are you aware if any other Indiana school  
24          corporations have a policy like EVSC of not allowing  
25          transgender students to use the bathroom consistent

1 with their gender identities?

2 A Yes.

3 Q How are you so aware?

4 A There was recently an article in the paper where the  
5 Warrick County School Superintendent basically said  
6 they were waiting to see the outcome of this case.

7 Q Any others besides Warrick?

8 A No.

9 Q In formulating your policy of not allowing  
10 transgender students access to bathrooms consistent  
11 with their gender identity, did you consult with  
12 anyone other than your own staff and your lawyers?

13 A No.

14 Q Are you aware of the 7th Circuit's case called  
15 Whitaker?

16 A Yes.

17 Q After the Whitaker case came down, did you consider  
18 changing your policy?

19 A We had conversations with legal counsel.

20 Q And based on that, you did not change your policy?

21 A Correct.

22 Q Are you aware of the concept of social transition  
23 when applied to transgender persons or persons with  
24 gender dysphoria?

25 A No.

1 Q Do you think it's important for a transgender person  
2 or a person with gender dysphoria to let the world  
3 know of his or her gender identity?

4 A Do I think it's important?

5 Q Yeah.

6 MR. SHOULDERS: Are you asking him as an  
7 educator, as a school superintendent, as a human  
8 being, an expert opinion? I'm not sure.

9 Q I guess I'm just asking -- I'll ask you as a human  
10 being, but also as a school administrator.

11 THE WITNESS: Could you repeat the question?

12 (WHEREUPON, THE REQUESTED MATERIAL WAS READ  
13 BACK BY THE COURT REPORTER.)

14 A Do I think it's important for that -- so, in other  
15 words, is it a requirement or is it important? No, I  
16 don't think it is. I think that would be very  
17 personal. That would be my answer personally as well  
18 as professionally.

19 Q Okay. Do you have any evidence that the plaintiff's  
20 classmates in this case do not accept him currently  
21 as a male person?

22 A No, I do not.

23 MR. FALK: I think if I could go off the  
24 record and talk to myself, I think I'm about done.

25 MR. SHOULDERS: Great.

1 (WHEREUPON, A SHORT RECESS WAS TAKEN.)

2 MR. FALK: I have no further questions.

3 MR. SHOULDERS: I have no questions. Do you  
4 want him to read it and sign it?

5 MR. FALK: It's up to you.

6 MR. SHOULDERS: You have the right to read  
7 this to ensure that your answers were correctly  
8 transcribed. Even though elderly, I have found  
9 Trotter to be very professional and competent, so we  
10 can waive your signature and it will be filed with  
11 the court as she prepares it.

12 THE WITNESS: Well, I mean, I would at some  
13 point in time like to read it for accuracy just  
14 because I don't trust myself.

15 MR. SHOULDERS: Submit it to us and we'll  
16 sign it.

17

18 AND FURTHER DEPONENT SAITH NOT.

19

20 THIS DEPOSITION TO BE READ AND SIGNED BY DAVID SMITH, Ed.D.

21

22

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25

DEPOSITION OF DAVID SMITH, Ed.D.  
TAKEN ON JUNE 22, 2018

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DEPONENT'S CERTIFICATION

I, DAVID SMITH, Ed.D., DEPONENT HEREIN, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING TRANSCRIPT IS A FULL, TRUE AND COMPLETE COPY OF PROCEEDINGS WHICH TOOK PLACE ON THE 22ND DAY OF JUNE, 2018, AT THE LAW OFFICES OF ZIEMER, STAYMAN, WEITZEL & SHOULDERS, 20 N.W. FIRST STREET, NINTH FLOOR, EVANSVILLE, VANDERBURGH COUNTY, INDIANA. I FURTHER CERTIFY THAT ANY CHANGES AND/OR CORRECTIONS, IF ANY, HAVE BEEN NOTED ON THE FORM ATTACHED AS THE LAST PAGE OF THE TRANSCRIPT.

IN VERIFICATION AND CERTIFICATION THEREOF, I HAVE HEREUNTO PLACED MY SIGNATURE ON THIS THE 28 DAY OF JUNE, 2018.

*David B. Smith*  
DAVID SMITH, Ed.D.

SUBSCRIBED AND SWORN TO BEFORE ME, A NOTARY PUBLIC, ON THIS 28<sup>th</sup> DAY OF June, 2018.

*Janet Shackelford*  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
COUNTY OF:



DEPOSITION OF DAVID SMITH, Ed.D.  
TAKEN ON JUNE 22, 2018

1 STATE OF INDIANA )  
2 COUNTY OF VANDERBURGH ) SS:

3 I, NANCY A. TROTTER, A NOTARY PUBLIC AT LARGE IN AND  
4 FOR THE STATE OF INDIANA, DO HEREBY CERTIFY:

5 THAT THE WITNESS HEREIN, DAVID SMITH, Ed.D., WAS  
6 FIRST DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH AND  
7 NOTHING BUT THE TRUTH IN THE FOREGOING DEPOSITION;

8 THAT I THEN STENOGRAPHICALLY AND ELECTRONICALLY  
9 RECORDED THE TESTIMONY OF THIS WITNESS AND THAT THE  
10 TYPEWRITTEN TRANSCRIPT ABOVE IS A TRUE RECORD OF THE  
11 TESTIMONY GIVEN; THAT SAID DEPONENT SUBSCRIBED HIS SIGNATURE  
12 TO HIS DEPOSITION AFTER THE SAME HAD BEEN CAREFULLY READ  
13 OVER BY HIM;

14 THAT I ALSO RECORDED AND TRANSCRIBED ANY AND ALL  
15 OBJECTIONS MADE BY COUNSEL AND THE REASONS THEREFOR; AND

16 THAT I AM NOT A RELATIVE OR EMPLOYEE OR ATTORNEY OR  
17 COUNSEL OF ANY OF THE PARTIES, NOR A RELATIVE OR EMPLOYEE OF  
18 SUCH ATTORNEY OR COUNSEL, NOR AM I FINANCIALLY INTERESTED IN  
19 THIS ACTION.

20 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND  
21 AFFIXED MY NOTARIAL SEAL ON THIS 9<sup>th</sup> DAY OF July 2018.

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23   
24 NANCY A. TROTTER, NOTARY PUBLIC

25 MY COMMISSION EXPIRES:  
FEBRUARY 5, 2025

TAKEN ON JUNE 22, 2018

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ERRATA SHEET  
WITNESS: DAVID SMITH, Ed.D.

After having read my deposition, I wish to make the following changes:

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I am, therefore, signing my deposition conditioned on the fact that the above noted shall be entered upon the deposition by the Notary Public. \_\_\_\_\_

(Signature of Deponent)

Date: \_\_\_\_\_

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American Civil Liberties Union of Indiana

January 21, 2018  
via e-mail only

Patrick A. Shoulders  
Zeimer Stayman Weitzel Shoulders LLP  
PShoulders@zsws.com

re: J A W.

Dear Pat,

I am writing to you in your capacity as General Counsel for the Evansville-Vanderburgh School Corporation on behalf of my client, Mr. W , who is a student at North High School, but who also attends Harrison High School. He is a junior. Mr. W is a transgender person who identifies as male.

When he was a freshman, he was told that he could not use the male restrooms at school and would have to use the bathroom in the nurse's office. This was and is not physically proximate to his classes and the nurse's office is locked if the nurse is out of the office, which occurs frequently.

Mr. W would like to be able to use the male restrooms—the restrooms associated with his gender identity—without fear of discipline.

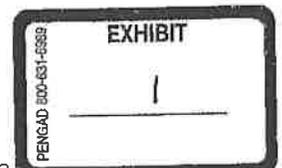
I realize that the Supreme Court has not yet resolved this issue, but the Seventh Circuit has made it clear that a claim by a student in Mr. W's situation against a school that prohibits him from using the male restrooms would likely be successful under both Title IX and equal protection. *Whitaker v. Kenosha Unified School Dist. No. 1 Bd. of Ed.*, 858 F.3d 1034 (7th Cir. 2017).

Given this, I am would like an assurance that Mr. W can use male restrooms without risk of punishment. If this is not forthcoming within two weeks then we will consider bringing litigation against the School Corporation.

I look forward to hearing from you concerning this matter.

Price Building \* 1031 East Washington Street \* Indianapolis, Indiana 46202-3952  
Telephone 317/635-4059 ext. 104 \* FAX: 317/635-4105 \* E-Mail kfalk@aclu-in.org

(Note: Our office has temporarily relocated, until approximately June 1, 2018, to 2457 E. Washington Street, Indianapolis, IN 46201 – All other contact information remains the same)



2 | Page

Thank you very much.

Very truly yours,

A handwritten signature in black ink, appearing to read 'K. Falk', written in a cursive style.

Kenneth J. Falk  
Attorney at Law

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-37-WTL-MPB
	)	
EVANSVILLE VANDERBURGH	)	
SCHOOL CORPORATION,	)	
	)	
Defendant.	)	

**Plaintiff's Notice of Filing Under Seal**

J.A.W. Deposition Exhibit 6; David Smith Deposition Exhibit 6 – Photograph

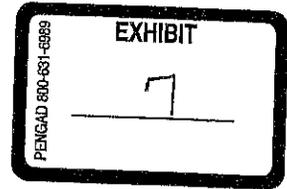
**\*\*THIS DOCUMENT IS BEING FILED UNDER SEAL\*\***

s/ Kenneth J. Falk  
Kenneth J. Falk  
No. 6777-49

s/ Gavin M. Rose  
Gavin M. Rose  
No. 26565-53

s/ Jan P. Mensz  
Jan P. Mensz  
No. 33798-49  
ACLU of Indiana  
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kfalk@aclu-in.org  
jmensz@aclu-in.org

Attorneys for Plaintiff



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W., a minor child, by his next friend, )  
Wyatt Squires, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
EVANSVILLE VANDERBURGH SCHOOL )  
CORPORATION, )  
 )  
Defendant. )

No. 3:18-cv-37-WTL-MPB

**Notice of Deposition**

Plaintiff notifies the defendant that its deposition will be taken on June 22, 2018, at 9:00 A.M., Evansville time, at the offices of ZIEMER STAYMAN WEITZEL & SHOULDERS, LLP, 20 N.W. First St., Evansville, IN 47706. The deposition shall be taken by means of stenographic and/or audio recording.

Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure the defendant shall designate one or more employees, officers, agents, or other person to testify on its behalf as to the following subjects.

1. Its knowledge of whether or not the plaintiff in this case is a transgender male and when and how any such knowledge was acquired.
2. Any knowledge that defendant has concerning whether the plaintiff is receiving, or has received, male hormones.
3. All conversations between the plaintiff or his mother with teachers or administrators of the defendant concerning plaintiff's status as a transgender male and/or his desire or need not to use female restrooms or locker rooms in defendant's schools.
4. Any and all accommodations made by defendant to plaintiff to assist with his transgender status while at school or on school property.
5. Any accommodations that defendant has offered or is willing to offer concerning plaintiff's use of restrooms or locker room within defendant's schools.

6. The number of transgender students of which defendant is aware attending defendant's schools.

7. Any and all policies, written or oral, or practices concerning the ability or inability of transgender students in the Evansville Vanderburgh School Corporation to utilize the restrooms and locker rooms consistent with their gender identities, and the reasons for the policies or practices or the reasons that there are no policies or practices.

8. Whether plaintiff is able to utilize male restrooms and locker rooms within defendant's schools and, if not, why not.

9. To the extent that plaintiff is unable to utilize male restrooms and locker rooms within defendant's schools, or transgender students are not allowed to use the restrooms and locker rooms corresponding to their gender identities, all reasons for this.

10. All persons consulted prior to this litigation to assist in formulating defendant's policies or practices regarding allowing or not allowing transgender students to access the restrooms and locker rooms associated with their gender identity.

11. The penalties to which plaintiff could be subject if he utilized the male restrooms or locker rooms at defendant's schools.

12. The school(s) in which plaintiff is enrolled or where plaintiff will have classes in the 2018-2019 school year.

13. Defendant's knowledge of other school systems' policies regarding allowing transgender students to use the restrooms and locker rooms of their gender identity.

14. Whether the male restrooms in the schools where plaintiff is enrolled or where plaintiff will have classes have toilet stalls with doors that close and whether they have urinals with partitions or other dividers separating the urinals.

15. Any written or other communications received from the United States Department of Education or any other federal agency at any time in the last five years concerning bathroom or locker room usage by transgender students and defendant's awareness of what federal policy in this regard has been during this time period.

16. Any written or other communications received from the Indiana Department of Education or any other state agency at any time in the last five years concerning bathroom or locker room usage by transgender students and defendant's awareness of what federal policy in this regard has been during this time period.

17. Defendant's awareness of policies or practices in other Indiana school corporations concerning allowing transgender students to use the bathrooms or locker rooms associated with their gender identities and how defendant is so aware.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, please produce at the deposition for plaintiff's counsel's inspection and copying the following documents.

1. Any and all policies, manuals, procedures or other documents concerning the ability or inability of transgender students in the Evansville Vanderburgh School Corporation to utilize the restrooms and locker rooms consistent with their gender identities.

2. Any and all documents referencing plaintiff's status as a transgender male or referencing his desire to utilize something other than female restrooms or locker rooms.

3. Any and all documents concerning any accommodations made, or offered, by defendant to plaintiff concerning restroom or locker room usage.

4. Any written communications received from the United States Department of Education or any other federal agency at any time in the last five years concerning bathroom usage and locker room usage by transgender students.

5. Any written communications received from the Indiana Department of Education or any other state agency at any time in the last five years concerning bathroom or locker room usage by transgender students.

6. All written communications received, in the last five years, from other Indiana school corporations or organizations representing or advocating for other Indiana school corporations, concerning bathroom or locker room usage by transgender students.

s/ Kenneth J. Falk

Kenneth J. Falk  
No. 6777-49

s/ Gavin M. Rose

Gavin M. Rose  
No. 26565-53

s/ Jan P. Mensz

Jan P. Mensz  
No. 33798-49  
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jmensz@aclu-in.org

Attorneys for Plaintiff

#### Certificate of Service

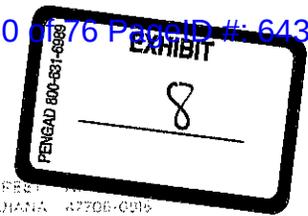
I hereby certify that on this 14th day of June, 2018, a copy of the foregoing was served on the below-named counsel of record by both first class U.S. postage and via email.

Patrick A. Shoulders  
Robert L. Burkart  
Jean M. Blanton  
ZIEMER STAYMAN WEITZEL & SHOULDERS, LLP  
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PO Box 916  
Evansville, IN 47706  
pshoulders@zsws.com  
rburkart@zsws.com

jblanton@zsws.com

s/ Kenneth J. Falk  
Kenneth J. Falk  
Attorney at Law





ZIEMER STAYMAN  
WEITZEL SHOULDERS LLP  
ATTORNEYS AT LAW

30 HWY FIRST STREET  
EVANSVILLE INDIANA 47706-0019  
PHONE 812 424 7575 FAX 812 421 8089  
ZSWS.COM

February 5, 2018

Kenneth J. Falk  
American Civil Liberties Union of Indiana  
[kfalk@aclu-in.org](mailto:kfalk@aclu-in.org)

Re: J A W

Dear Ken:

This is in response to your letter of January 21, 2018, concerning Evansville Vanderburgh School Corporation student J A W.

First, please know that Mr. W meets with school administrators/counselors on a quite regular basis and has never mentioned a problem with restroom proximity or accessibility. The EVSC will continue to make available a private bathroom for W's use - but is unwilling to allow Mr. W to use the male restrooms.

The Seventh Circuit case to which you refer is distinguishable on its facts and, further, does not appear to represent the current state of the law in the United States. Perhaps the United States Supreme Court will resolve this issue once and for all during its current term. Should the Supreme Court agree with your position, the EVSC will of course conform its rules accordingly. However, until then, Mr. W cannot use male restrooms without the risk of punishment.

Very truly yours,

ZIEMER, STAYMAN, WEITZEL & SHOULDERS, LLP

Patrick A. Shoulders  
[pshoulders@zsws.com](mailto:pshoulders@zsws.com)

PAS/jss



U.S. Department of Justice  
Civil Rights Division

# Archived Information



U.S. Department of Education  
Office for Civil Rights

## Dear Colleague Letter on Transgender Students Notice of Language Assistance

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**Aviso a personas con dominio limitado del idioma inglés:** Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

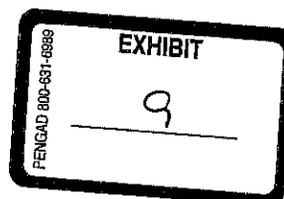
**給英語能力有限人士的通知:** 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov)。

**Thông báo dành cho những người có khả năng Anh ngữ hạn chế:** Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**영어 미숙자를 위한 공고:** 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일주소 [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov) 으로 연락하시기 바랍니다.

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**Уведомление для лиц с ограниченным знанием английского языка:** Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).





U.S. Department of Justice  
Civil Rights Division



U.S. Department of Education  
Office for Civil Rights

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance.<sup>1</sup> This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is *significant guidance*.<sup>2</sup> This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at [ocr@ed.gov](mailto:ocr@ed.gov) or 800-421-3481 (TDD 800-877-8339); or DOJ at [education@usdoj.gov](mailto:education@usdoj.gov) or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The examples in that document are taken from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.<sup>3</sup>

#### Terminology

- Gender identity* refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.
- Sex assigned at birth* refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.
- Transgender* describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.

- *Gender transition* refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

### **Compliance with Title IX**

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.<sup>4</sup> The Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Departments' interpretation is consistent with courts' and other agencies' interpretations of Federal laws prohibiting sex discrimination.<sup>5</sup>

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.<sup>6</sup> Because transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to restrictions imposed by state or local law in their place of birth or residence),<sup>7</sup> requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students.<sup>8</sup>

#### **1. Safe and Nondiscriminatory Environment**

Schools have a responsibility to provide a safe and nondiscriminatory environment for all students, including transgender students. Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly.<sup>9</sup> If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX. For a more detailed discussion of Title IX

requirements related to sex-based harassment, see guidance documents from ED's Office for Civil Rights (OCR) that are specific to this topic.<sup>10</sup>

## **2. Identification Documents, Names, and Pronouns**

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.<sup>11</sup>

## **3. Sex-Segregated Activities and Facilities**

Title IX's implementing regulations permit a school to provide sex-segregated restrooms, locker rooms, shower facilities, housing, and athletic teams, as well as single-sex classes under certain circumstances.<sup>12</sup> When a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.<sup>13</sup>

- Restrooms and Locker Rooms.** 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.<sup>14</sup> 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.<sup>15</sup>
- Athletics.** Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.<sup>16</sup> A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, the same gender identity) or others' discomfort with transgender students.<sup>17</sup> Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport.<sup>18</sup>
- Single-Sex Classes.** Although separating students by sex in classes and activities is generally prohibited, nonvocational elementary and secondary schools may offer nonvocational single-sex classes and extracurricular activities under certain circumstances.<sup>19</sup> When offering such classes and activities, a school must allow transgender students to participate consistent with their gender identity.
- Single-Sex Schools.** Title IX does not apply to the admissions policies of certain educational institutions, including nonvocational elementary and secondary schools, and private undergraduate colleges.<sup>20</sup> Those schools are therefore permitted under Title IX to set their own

sex-based admissions policies. Nothing in Title IX prohibits a private undergraduate women's college from admitting transgender women if it so chooses.

- **Social Fraternities and Sororities.** Title IX does not apply to the membership practices of social fraternities and sororities.<sup>21</sup> Those organizations are therefore permitted under Title IX to set their own policies regarding the sex, including gender identity, of their members. Nothing in Title IX prohibits a fraternity from admitting transgender men or a sorority from admitting transgender women if it so chooses.
- **Housing and Overnight Accommodations.** Title IX allows a school to provide separate housing on the basis of sex.<sup>22</sup> But a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students. Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.<sup>23</sup>
- **Other Sex-Specific Activities and Rules.** Unless expressly authorized by Title IX or its implementing regulations, a school may not segregate or otherwise distinguish students on the basis of their sex, including gender identity, in any school activities or the application of any school rule. Likewise, a school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity (*e.g.*, in yearbook photographs, at school dances, or at graduation ceremonies).<sup>24</sup>

#### 4. *Privacy and Education Records*

Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students' educational rights or opportunities by failing to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.<sup>25</sup> Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).<sup>26</sup> A school may maintain records with this information, but such records should be kept confidential.

- **Disclosure of Personally Identifiable Information from Education Records.** FERPA generally prevents the nonconsensual disclosure of PII from a student's education records; one exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information.<sup>27</sup> Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) PII from education records to the school community may

violate FERPA and interfere with transgender students' right under Title IX to be treated consistent with their gender identity.

- **Disclosure of Directory Information.** Under FERPA's implementing regulations, a school may disclose appropriately designated directory information from a student's education record if disclosure would not generally be considered harmful or an invasion of privacy.<sup>28</sup> Directory information may include a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.<sup>29</sup> School officials may not designate students' sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.<sup>30</sup> A school also must allow eligible students (*i.e.*, students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student's directory information.<sup>31</sup>
- **Amendment or Correction of Education Records.** A school may receive requests to correct a student's education records to make them consistent with the student's gender identity. Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.
  - Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student's education records that is inaccurate, misleading, or in violation of the student's privacy rights.<sup>32</sup> If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the requestor's comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.<sup>33</sup>
  - Under Title IX, a school must respond to a request to amend information related to a student's transgender status consistent with its general practices for amending other students' records.<sup>34</sup> If a student or parent complains about the school's handling of such a request, the school must promptly and equitably resolve the complaint under the school's Title IX grievance procedures.<sup>35</sup>

\* \* \*

We appreciate the work that many schools, state agencies, and other organizations have undertaken to make educational programs and activities welcoming, safe, and inclusive for all students.

Sincerely,

/s/

Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
U.S. Department of Education

/s/

Vanita Gupta  
Principal Deputy Assistant Attorney General for Civil Rights  
U.S. Department of Justice

<sup>1</sup> 20 U.S.C. §§ 1681–1688; 34 C.F.R. Pt. 106; 28 C.F.R. Pt. 54. In this letter, the term *schools* refers to recipients of Federal financial assistance at all educational levels, including school districts, colleges, and universities. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. § 106.12(a).

<sup>2</sup> Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), [www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf).

<sup>3</sup> ED, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 13, 2016), [www.ed.gov/oese/osh/emergerpractices.pdf](http://www.ed.gov/oese/osh/emergerpractices.pdf). OCR also posts many of its resolution agreements in cases involving transgender students online at [www.ed.gov/ocr/lgbt.html](http://www.ed.gov/ocr/lgbt.html). While these agreements address fact-specific cases, and therefore do not state general policy, they identify examples of ways OCR and recipients have resolved some issues addressed in this guidance.

<sup>4</sup> 34 C.F.R. §§ 106.4, 106.31(a). For simplicity, this letter cites only to ED’s Title IX regulations. DOJ has also promulgated Title IX regulations. See 28 C.F.R. Pt. 54. For purposes of how the Title IX regulations at issue in this guidance apply to transgender individuals, DOJ interprets its regulations similarly to ED. State and local rules cannot limit or override the requirements of Federal laws. See 34 C.F.R. § 106.6(b).

<sup>5</sup> See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 79 (1998); *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467, at \*8 (4th Cir. Apr. 19, 2016); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201–02 (9th Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-08 (D.D.C. 2008); *Macy v. Dep’t of Justice*, Appeal No. 012012082 (U.S. Equal Emp’t Opportunity Comm’n Apr. 20, 2012). See also U.S. Dep’t of Labor (USDOL), Training and Employment Guidance Letter No. 37-14, *Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System* (2015), [wdr.doleta.gov/directives/attach/TEGL/TEGL\\_37-14.pdf](http://wdr.doleta.gov/directives/attach/TEGL/TEGL_37-14.pdf); USDOL, Job Corps, Directive: Job Corps Program Instruction Notice No. 14-31, *Ensuring Equal Access for Transgender Applicants and Students to the Job Corps Program* (May 1, 2015), [https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi\\_14\\_31.pdf](https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf); DOJ, Memorandum from the Attorney General, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (2014), [www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title\\_vii\\_memo.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf); USDOL, Office of Federal Contract Compliance Programs, Directive 2014-02, *Gender Identity and Sex Discrimination* (2014), [www.doi.gov/ofccp/regs/compliance/directives/dir2014\\_02.html](http://www.doi.gov/ofccp/regs/compliance/directives/dir2014_02.html).

<sup>6</sup> See *Lusardi v. Dep’t of the Army*, Appeal No. 0120133395 at 9 (U.S. Equal Emp’t Opportunity Comm’n Apr. 1, 2015) (“An agency may not condition access to facilities—or to other terms, conditions, or privileges of employment—on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individual’s gender identity.”).

<sup>7</sup> See *G.G.*, 2016 WL 1567467, at \*1 n.1 (noting that medical authorities “do not permit sex reassignment surgery for persons who are under the legal age of majority”).

<sup>8</sup> 34 C.F.R. § 106.31(b)(4); see *G.G.*, 2016 WL 1567467, at \*8 & n.10 (affirming that individuals have legitimate and important privacy interests and noting that these interests do not inherently conflict with nondiscrimination principles); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (rejecting claim that allowing a transgender woman “merely [to be] present in the women’s faculty restroom” created a hostile environment); *Glenn*, 663 F.3d at 1321 (defendant’s proffered justification that “other women might object to [the plaintiff]’s restroom use” was “wholly irrelevant”). See also *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (recognizing that “mere negative attitudes, or fear . . . are not permissible bases for” government action).

<sup>9</sup> See, e.g., Resolution Agreement, *In re Downey Unified Sch. Dist., CA*, OCR Case No. 09-12-1095, (Oct. 8, 2014), [www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf](http://www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf) (agreement to address harassment of transgender student, including allegations that peers continued to call her by her former name, shared pictures of her prior to her transition, and frequently asked questions about her anatomy and sexuality); Consent Decree, *Doe v. Anoka-Hennepin Sch. Dist. No. 11, MN* (D. Minn. Mar. 1, 2012), [www.ed.gov/ocr/docs/investigations/05115901-d.pdf](http://www.ed.gov/ocr/docs/investigations/05115901-d.pdf) (consent decree to address sex-based harassment, including based on nonconformity with gender stereotypes); Resolution Agreement, *In re Tehachapi Unified Sch. Dist., CA*, OCR Case No. 09-11-1031 (June 30, 2011), [www.ed.gov/ocr/docs/investigations/09111031-b.pdf](http://www.ed.gov/ocr/docs/investigations/09111031-b.pdf) (agreement to address sexual and gender-based harassment, including harassment based on nonconformity with gender stereotypes). See also *Lusardi*, Appeal No. 0120133395, at \*15 (“Persistent failure to use the employee’s correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment”).

<sup>10</sup> See, e.g., OCR, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2001), [www.ed.gov/ocr/docs/shguide.pdf](http://www.ed.gov/ocr/docs/shguide.pdf); OCR, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010), [www.ed.gov/ocr/letters/colleague-201010.pdf](http://www.ed.gov/ocr/letters/colleague-201010.pdf); OCR, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011), [www.ed.gov/ocr/letters/colleague-201104.pdf](http://www.ed.gov/ocr/letters/colleague-201104.pdf); OCR, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), [www.ed.gov/ocr/docs/qa-201404-title-ix.pdf](http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf).

<sup>11</sup> See, e.g., Resolution Agreement, *In re Cent. Piedmont Cmty. Coll., NC*, OCR Case No. 11-14-2265 (Aug. 13, 2015), [www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf](http://www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf) (agreement to use a transgender student’s preferred name and gender and change the student’s official record to reflect a name change).

<sup>12</sup> 34 C.F.R. §§ 106.32, 106.33, 106.34, 106.41(b).

<sup>13</sup> See 34 C.F.R. § 106.31.

<sup>14</sup> 34 C.F.R. § 106.33.

<sup>15</sup> See, e.g., Resolution Agreement, *In re Township High Sch. Dist. 211, IL*, OCR Case No. 05-14-1055 (Dec. 2, 2015), [www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf](http://www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf) (agreement to provide any student who requests additional privacy “access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.”).

<sup>16</sup> 34 C.F.R. § 106.41(b). Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.

<sup>17</sup> 34 C.F.R. § 106.6(b), (c). An interscholastic athletic association is subject to Title IX if (1) the association receives Federal financial assistance or (2) its members are recipients of Federal financial assistance and have ceded controlling authority over portions of their athletic program to the association. Where an athletic association is covered by Title IX, a school’s obligations regarding transgender athletes apply with equal force to the association.

<sup>18</sup> The National Collegiate Athletic Association (NCAA), for example, reported that in developing its policy for participation by transgender students in college athletics, it consulted with medical experts, athletics officials, affected students, and a consensus report entitled *On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*), [https://www.ncaa.org/sites/default/files/NCLR\\_TransStudentAthlete%2B\(2\).pdf](https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf). See NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes 2*, 30-31 (2011), [https://www.ncaa.org/sites/default/files/Transgender\\_Handbook\\_2011\\_Final.pdf](https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf) (citing *On the Team*). The *On the Team* report noted that policies that may be appropriate at the college level may “be unfair and too complicated for [the high school] level of competition.” *On the Team* at 26. After engaging in similar processes, some state interscholastic athletics associations have adopted policies for participation by transgender students in high school athletics that they determined were age-appropriate.

<sup>19</sup> 34 C.F.R. § 106.34(a), (b). Schools may also separate students by sex in physical education classes during participation in contact sports. *Id.* § 106.34(a)(1).

<sup>20</sup> 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d); 34 C.F.R. § 106.34(c) (a recipient may offer a single-sex public nonvocational elementary and secondary school so long as it provides students of the excluded sex a “substantially

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equal single-sex school or coeducational school”).

<sup>21</sup> 20 U.S.C. § 1681(a)(6)(A); 34 C.F.R. § 106.14(a).

<sup>22</sup> 20 U.S.C. § 1686; 34 C.F.R. § 106.32.

<sup>23</sup> See, e.g., Resolution Agreement, *In re Arcadia Unified Sch. Dist., CA*, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, (July 24, 2013), [www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf](http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf) (agreement to provide access to single-sex overnight events consistent with students’ gender identity, but allowing students to request access to private facilities).

<sup>24</sup> See 34 C.F.R. §§ 106.31(a), 106.31(b)(4). See also, *In re Downey Unified Sch. Dist., CA*, *supra* n. 9; *In re Cent. Piedmont Cmty. Coll., NC*, *supra* n. 11.

<sup>25</sup> 34 C.F.R. § 106.31(b)(7).

<sup>26</sup> 20 U.S.C. § 1232g; 34 C.F.R. Part 99. FERPA is administered by ED’s Family Policy Compliance Office (FPCO). Additional information about FERPA and FPCO is available at [www.ed.gov/fpco](http://www.ed.gov/fpco).

<sup>27</sup> 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1).

<sup>28</sup> 34 C.F.R. §§ 99.3, 99.31(a)(11), 99.37.

<sup>29</sup> 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.

<sup>30</sup> Letter from FPCO to Institutions of Postsecondary Education 3 (Sept. 2009), [www.ed.gov/policy/gen/guid/fpco/doc/censuslettertohighered091609.pdf](http://www.ed.gov/policy/gen/guid/fpco/doc/censuslettertohighered091609.pdf).

<sup>31</sup> 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. §§ 99.3, 99.37(a)(3).

<sup>32</sup> 34 C.F.R. § 99.20.

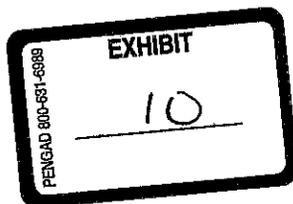
<sup>33</sup> 34 C.F.R. §§ 99.20-99.22.

<sup>34</sup> See 34 C.F.R. § 106.31(b)(4).

<sup>35</sup> 34 C.F.R. § 106.8(b).



The screenshot shows a web browser window with the address bar displaying "district.evscschools.com/about\_us/e\_s\_c/bylaws\_policies". The page title is "EVSC BYLAWS & POLICIES". The navigation menu includes: Home, Acad & Prog, Family Services, Athletics, About Us, Employment, School Facility Use/Rental, and Contact Us. On the right side, there is a list of policy categories: 0000 - Bylaws, 1000 Administration, 2000 Program, 3000 Professional Staff, 4000 Classified Staff, 5000 Students, 6000 Finances, 7000 Property, 8000 Operations, and 9000 Relations. The main content area features the EVSC logo and contact information: "951 Walnut St., Evansville, IN 47713" and "Phone: 812-435-8453". A section titled "Non-Discrimination Policy" states: "It is the policy of the Evansville Vanderburgh School Corporation not to discriminate on the basis of race, color, religion, gender, sexual orientation, veteran status, genetic information, national origin, age, limited English proficiency, or disability in its programs or employment policies as required by the Indiana Civil Rights Law (I.C.22-9-1), Title IV, and Title VII (Civil Rights Act of 1964), the Equal Pay Act of 1973, Title IX (Educational Amendments), the Genetic Information Non-Discrimination Act and Section 504 (Rehabilitation Act of 1973)." The browser's taskbar at the bottom shows the date and time as 10:12 AM on 6/19/2018.



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**Re: School Walkout**

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## Re: EVSC Transgender Policy

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email: "dionne.blue@evsck12.com Blue, Dionne"

Friday, November 4, 2016 at 3:03:47 PM Central Daylight Time

To: email: "a [REDACTED] w [REDACTED]@gmail.com A [REDACTED] W [REDACTED]"

Hi A [REDACTED]

Sorry for the delay. I have been in meetings all week and got a bit behind on email. Right now the EVSC does not have an official policy on transgender student bathroom/locker room access. We are still asking that students use the nurse's office or an individual/unisex bathroom, depending on the facilities in the building, and allowing schools to take any other needs on a case by case basis. We are hoping for future guidelines to come through state statute to give school districts and other institutions more guidance and legal backing to support the federal regulation.

Thanks for reaching out, and please know that we are watching the issue closely.

On Tue, Nov 1, 2016 at 10:07 AM, A [REDACTED] W [REDACTED] <a [REDACTED] w [REDACTED]@gmail.com> wrote:

Ms. Blue,

I am a transgender student that attends North High School. What is EVSC policy on transgender students and bathroom/locker room access?

-A [REDACTED] W [REDACTED]

Dionne A. Blue, PhD  
Chief Diversity Officer  
Evansville Vanderburgh School Corporation

*"You can make change or make excuses, you cannot do both"*

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U.S. Department of Justice  
Civil Rights Division



U.S. Department of Education  
Office for Civil Rights

**Dear Colleague Letter**  
**Notice of Language Assistance**

If you have difficulty understanding English, you may, free of charge, request language assistance services for this Department information by calling 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), or email us at: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**Aviso a personas con dominio limitado del idioma inglés:** Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o envíe un mensaje de correo electrónico a: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

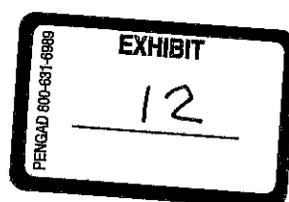
**給英語能力有限人士的通知:** 如果您不懂英語, 或者使用英語有困難, 您可以要求獲得向大眾提供的語言協助服務, 幫助您理解教育部資訊。這些語言協助服務均可免費提供。如果您需要有關口譯或筆譯服務的詳細資訊, 請致電 1-800-USA-LEARN (1-800-872-5327) (聽語障人士專線: 1-800-877-8339), 或電郵: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov)。

**Thông báo dành cho những người có khả năng Anh ngữ hạn chế:** Nếu quý vị gặp khó khăn trong việc hiểu Anh ngữ thì quý vị có thể yêu cầu các dịch vụ hỗ trợ ngôn ngữ cho các tin tức của Bộ dành cho công chúng. Các dịch vụ hỗ trợ ngôn ngữ này đều miễn phí. Nếu quý vị muốn biết thêm chi tiết về các dịch vụ phiên dịch hay thông dịch, xin vui lòng gọi số 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), hoặc email: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**영어 미숙자를 위한 공고:** 영어를 이해하는 데 어려움이 있으신 경우, 교육부 정보 센터에 일반인 대상 언어 지원 서비스를 요청하실 수 있습니다. 이러한 언어 지원 서비스는 무료로 제공됩니다. 통역이나 번역 서비스에 대해 자세한 정보가 필요하신 경우, 전화번호 1-800-USA-LEARN (1-800-872-5327) 또는 청각 장애인용 전화번호 1-800-877-8339 또는 이메일 주소 [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov) 으로 연락하시기 바랍니다.

**Paunawa sa mga Taong Limitado ang Kaalaman sa English:** Kung nahihirapan kayong makaintindi ng English, maaari kayong humingi ng tulong ukol dito sa inpormasyon ng Kagawaran mula sa nagbibigay ng serbisyo na pagtulong kaugnay ng wika. Ang serbisyo na pagtulong kaugnay ng wika ay libre. Kung kailangan ninyo ng dagdag na impormasyon tungkol sa mga serbisyo kaugnay ng pagpapaliwanag o pagsasalín, mangyari lamang tumawag sa 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339), o mag-email sa: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).

**Уведомление для лиц с ограниченным знанием английского языка:** Если вы испытываете трудности в понимании английского языка, вы можете попросить, чтобы вам предоставили перевод информации, которую Министерство Образования доводит до всеобщего сведения. Этот перевод предоставляется бесплатно. Если вы хотите получить более подробную информацию об услугах устного и письменного перевода, звоните по телефону 1-800-USA-LEARN (1-800-872-5327) (служба для слабослышащих: 1-800-877-8339), или отправьте сообщение по адресу: [Ed.Language.Assistance@ed.gov](mailto:Ed.Language.Assistance@ed.gov).





**U.S. Department of Justice**  
*Civil Rights Division*



**U.S. Department of Education**  
*Office for Civil Rights*

February 22, 2017

Dear Colleague:

The purpose of this guidance is to inform you that the Department of Justice and the Department of Education are withdrawing the statements of policy and guidance reflected in:

- Letter to Emily Prince from James A. Ferg-Cadima, Acting Deputy Assistant Secretary for Policy, Office for Civil Rights at the Department of Education dated January 7, 2015; and
- Dear Colleague Letter on Transgender Students jointly issued by the Civil Rights Division of the Department of Justice and the Department of Education dated May 13, 2016.

These guidance documents take the position that the prohibitions on discrimination “on the basis of sex” in Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681 et seq., and its implementing regulations, see, e.g., 34 C.F.R. § 106.33, require access to sex-segregated facilities based on gender identity. These guidance documents do not, however, contain extensive legal analysis or explain how the position is consistent with the express language of Title IX, nor did they undergo any formal public process.

This interpretation has given rise to significant litigation regarding school restrooms and locker rooms. The U.S. Court of Appeals for the Fourth Circuit concluded that the term “sex” in the regulations is ambiguous and deferred to what the court characterized as the “novel” interpretation advanced in the guidance. By contrast, a federal district court in Texas held that the term “sex” unambiguously refers to biological sex and that, in any event, the guidance was “legislative and substantive” and thus formal rulemaking should have occurred prior to the adoption of any such policy. In August of 2016, the Texas court preliminarily enjoined enforcement of the interpretation, and that nationwide injunction has not been overturned.

In addition, the Departments believe that, in this context, there must be due regard for the primary role of the States and local school districts in establishing educational policy.

In these circumstances, the Department of Education and the Department of Justice have decided to withdraw and rescind the above-referenced guidance documents in order to further and more completely consider the legal issues involved. The Departments thus will not rely on the views expressed within them.

Dear Colleague Letter

Page 2 of 2

Please note that this withdrawal of these guidance documents does not leave students without protections from discrimination, bullying, or harassment. All schools must ensure that all students, including LGBT students, are able to learn and thrive in a safe environment. The Department of Education Office for Civil Rights will continue its duty under law to hear all claims of discrimination and will explore every appropriate opportunity to protect all students and to encourage civility in our classrooms. The Department of Education and the Department of Justice are committed to the application of Title IX and other federal laws to ensure such protection.

This guidance does not add requirements to applicable law. If you have questions or are interested in commenting on this letter, please contact the Department of Education at [ocr@ed.gov](mailto:ocr@ed.gov) or 800-421-3481 (TDD: 800-877-8339); or the Department of Justice at [education@usdoj.gov](mailto:education@usdoj.gov) or 877-292-3804 (TTY: 800-514-0383).

Sincerely,

/s/

Sandra Battle  
Acting Assistant Secretary for Civil Rights  
U.S. Department of Education

/s/

T.E. Wheeler, II  
Acting Assistant Attorney General for Civil Rights  
U.S. Department of Justice

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W.,            )  
                  )  
          Plaintiff,    )  
                  )  
          v.            )        No. 3:18-cv-37-WTL-MPB  
                  )  
EVANSVILLE VANDERBURGH        )  
SCHOOL CORPORATION,            )  
                  )  
          Defendant.    )

**Supplemental Declaration of J.A.W.**

J.A.W., being duly sworn, says that:

1.     I am the plaintiff in this case.
2.     This declaration is a supplement to the one I previously executed in this case.
3.     I am aware that during the course of his deposition, Superintendent David Smith indicated that he thought there might be a gender neutral restroom in a hallway at Harrison High School that was not in a staff person's office.
4.     I am not aware that there was such a gender neutral restroom. I never saw it and it certainly was not pointed out to me or offered to me by any staff person or student.

**Verification**

I verify under penalties of perjury that the foregoing representations are true.

Executed on: \_\_\_\_\_ 7/6/18 \_\_\_\_\_

*[Handwritten signature and scribbles]*

\_\_\_\_\_

J.A.W.

Prepared by:

Kenneth J. Falk  
No. 6777-49  
ACLU of Indiana

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W., a minor child,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-37-WTL-MBP
	)	
EVANSVILLE VANDERBURGH SCHOOL	)	
CORPORATION,	)	
	)	
Defendant.	)	

**Declaration of Tammy Work**

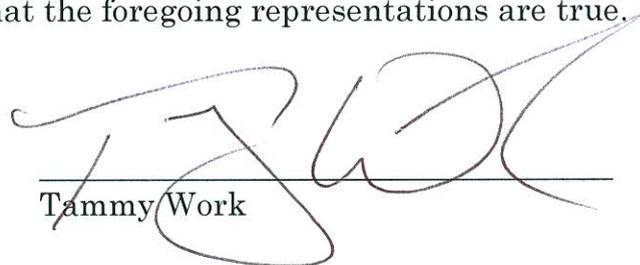
Tammy Work, being duly sworn, says that:

1. I am an adult resident of Indiana.
2. I am J.A.W.'s mother.
3. I have been aware of this litigation before it was filed and I am fully supportive of my child's efforts in this litigation to obtain access to male restrooms within his schools.

**Verification**

I verify under penalties of perjury that the foregoing representations are true.

Executed on: 7/05/2018



Tammy Work

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W., a minor child, by his next friend,	)	
Wyatt Squires,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-37-WTL-MPB
	)	
EVANSVILLE VANDERBURGH SCHOOL	)	
CORPORATION,	)	
	)	
Defendant.	)	

**EXPERT DECLARATION OF RANDI ETTNER, Ph.D.**

**Preliminary Statement**

1. I have been retained by counsel for Plaintiff as an expert in connection with the above-captioned litigation. I have actual knowledge of the matters stated in this declaration.

2. My professional background, experience, and publications are detailed in my curriculum vitae, a true and accurate copy which is attached as Exhibit A to this declaration. I received my doctorate in psychology from Northwestern University in 1979. I was the chief psychologist at the Chicago Gender Center from 2005 to 2016, when it moved to Weiss Memorial Hospital. Since that time, I have held the sole psychologist position at the Center for Gender Confirmation Surgery at Weiss Memorial Hospital.

3. I have expertise working with children, adolescents, and adults with gender dysphoria. I have been involved in the treatment of gender dysphoric individuals since

1977, when I was an intern at Cook County Hospital in Chicago, and in the course of my career, I have evaluated and/or treated between 2,500 to 3,000 individuals with Gender Dysphoria and mental health issues related to gender variance.

4. I have served as a consultant to multiple school districts in the state of Wisconsin as well as the Chicago public school system on issues related to gender identity. I was selected as the named honoree of an externally-funded fellowship in recognition of my achievements in the field of transgender health—the University of Minnesota Randi and Fred Ettner Fellowship in Transgender Health—and have been an invited guest at the National Institute of Health to participate in developing a strategic plan to advance the health of sexual and gender minorities and in November, 2017 was invited to address the Director of the Office of Civil Rights of the United States Department of Health and Human Services regarding the medical treatment of gender dysphoria.

5. I have published four books, including the medical text entitled “Principles of Transgender Medicine and Surgery” (co-editors Monstrey & Eyler; Routledge, 2007) and its 2nd edition (co-editors Monstrey & Coleman, 2016). I have authored numerous articles in peer reviewed journals regarding the provision of health care to this population. I have served as a member of the University of Chicago Gender Board and am a member of the editorial boards for the *International Journal of Transgenderism* and *Transgender Health*.

6. I am the secretary and a member of the Board of Directors of the World Professional Association for Transgender Health (“WPATH”) (formerly the Harry Benjamin International Gender Dysphoria Association), and an author of the WPATH

Standards of Care (7th version), published in 2011. The WPATH-promulgated Standards of Care are the internationally recognized guidelines for the treatment of persons with gender dysphoria and serve to inform medical treatment in the United States and throughout the world.

7. In preparing this declaration, I reviewed the materials listed in the attached Bibliography (Exhibit B). I may rely on those documents, in addition to the documents specifically cited as supportive examples in particular sections of this declaration, as additional support for my opinions. I have also reviewed medical records from ECHO Community Health Center, consisting of 20 faxed pages, and records from Within Sight, consisting of 14 faxed pages. 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 upon in preparing this declaration are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

8. In the past four years, I have testified as an expert at trial or deposition in the following matters: *Broussard v First Tower Loan*, No. 2:15CV-011-61 (LA, 2016); *Faiella v. American Medical Response, Inc.*, No. CV-15-6061263 (Ct. Super. 2015); *Kothmann v. Rosario*, Case No. 5:13-cv-28-Oc-22 PRL (M.D. Fla. 2013); and *Doe v. Clenchy*, Case No. cv-09-201 (Me. Super. Ct. 2009).

9. I am being compensated at an hourly rate for actual time devoted, at the rate of \$350 an hour for review of records, or preparation of reports or declarations; \$475 per

hour for deposition and trial testimony; and \$1800 per day for travel time spent out of the office. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

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

10. The term “gender identity” is a well-established concept in medicine, referring to one’s sense of oneself as belonging to a particular gender. All human beings develop this elemental internal view: the conviction of belonging to a particular gender, such as male or female. Gender identity is firmly established early in life (Halim& Ruble, 2007; Golombok et al, 2008; Ruble et al, 2007; Steensma et al, 2011; Steensma et al, 2013; deVries & Cohen-Kettenis, 2016).

11. Typically, people born with anatomical features associated with females (vagina, uterus, ovaries) identify as girls or women, and experience themselves as female. Conversely, those persons born with typically male characteristics ordinarily identify as males. However, for transgender individuals, this is not the case. For transgender individuals, the sense of one’s self—one’s gender identity—differs from the birth-assigned sex, giving rise to a sense of being “wrongly embodied.”

12. The medical diagnosis for that feeling of incongruence and accompanying distress is Gender Dysphoria, which is codified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) (302.95) (American Psychiatric Association) and the International Classification of Diseases-10 (F. 64.0) (World Health Organization). The condition is manifested by symptoms such as preoccupation with ridding oneself of the primary

and/or secondary sex characteristics associated with one's birth-assigned sex. Untreated Gender Dysphoria can result in significant clinical distress, debilitating depression, and often, suicidality.

13. The criteria for establishing a diagnosis of Gender Dysphoria in Adolescents and Adults are set forth in the DSM-V (302.85):

A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months duration, as manifested by at least two of the following:

1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated sex characteristics).
2. A strong desire to be rid of one's primary/and or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
3. A strong desire for the primary and /or secondary sex characteristics of the other gender.
4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

14. WPATH has established internationally accepted Standards of Care ("SOC") for the treatment of people with Gender Dysphoria. The SOC have been endorsed as the

authoritative standards of care by leading medical and mental health organizations, including the American Medical Association, the Endocrine Society, the American Psychological Association, the American Psychiatric Association, the World Health Organization, the American Academy of Family Physicians, the American Public Health Association, the National Association of Social Workers, the American College of Obstetrics and Gynecology and the American Society of Plastic Surgeons.

15. In accordance with the SOC, some transgender individuals undergo medically-indicated transition in order to live in alignment with their gender identity.

16. The SOC identify the following evidence-based protocols for the treatment of individuals with Gender Dysphoria:

- Changes in gender expression and role, consistent with one's gender identity (also referred to as social role transition).
- Psychotherapy for purposes such as addressing the negative impact of stigma, alleviating internalized transphobia, enhancing social and peer support, improving body image, promoting resiliency, etc.
- Hormone therapy to feminize or masculinize the body.
- Surgery to alter primary and/or secondary sex characteristics.

17. Like protocols for the treatment of other medical conditions, once a diagnosis is established, a treatment plan is developed based on an individualized assessment of the medical needs of the patient. Some combination of social role transition, hormone therapy, psychotherapy, and surgery is used to help the individual patient with Gender Dysphoria live congruently with his or her gender and eliminate the clinically significant distress caused by the condition.

18. Changes in gender presentation and role to masculinize or feminize appearance— social role transition—are an important component of treatment. This requires dressing, grooming, and otherwise outwardly presenting oneself consistently through social signifiers that correspond to one’s gender identity in every aspect of life—at home, work, school, and in the broader community. This is an appropriate prerequisite of identity consolidation.

19. Although children who are transgender feel “different” and may be confused about the suitability of their assigned sex, they often abide anxiety until they are older, and learn that there is a name for their experience— “transgender”—and a diagnosis— Gender Dysphoria. For some, this happens in adolescence, or even adulthood. Then, a sequential internal and external process ensues: accepting and identifying as transgender, explaining to family and others about the necessity of transition, disidentifying with the assigned gender and seeking support for post-transition life. The final stage—identity consolidation—is attained when the transgender aspect of life becomes less important, and the individual refocuses on the normal challenges of life like making a living, forming relationships, etc. With identity consolidation, the shame of having lived as a “false self” and the grief of being born into the “wrong body” can be ameliorated (Ettner, 1999). If any aspect of this social transition is impeded however, it destabilizes the patient and undermines the treatment goals.

20. As noted, in addition to social transition, many transgender individuals undergo medical transition including hormone therapy and surgery.

21. Even without surgery, hormone therapy has a profound effect on the physical appearance of an individual. In transgender boys and men (*i.e.*, those assigned female at birth), for example, hormone therapy has a profound virilizing effect on appearance. The voice deepens, there is growth of facial and body hair, body fat is redistributed, and muscle mass increases. For transgender girls and women (*i.e.*, those assigned male at birth), hormone therapy has a profound feminizing effect on appearance. Fat is redistributed to the hips and the breasts, skin is softened, and there is a loss of muscle mass, a reduction of body hair, cessation of male-pattern hair loss, and atrophy of the penis, prostate and testes.

22. Many transgender individuals never undergo surgery. For many transgender individuals, surgery is not medically necessary as dysphoria is alleviated through social role transition and hormone therapy. For others, surgery is cost prohibitive because it is excluded from coverage under many insurance plans. Additionally, there are several medical contraindications that preclude surgical treatment. These include: severe decompensating cardiovascular disease, brittle diabetes, history of multiple pulmonary emboli, history of stroke, history of anesthetic hyperthermia, brain aneurism, ongoing chemotherapy, morbid obesity, hepato-cellular disease, severe renal insufficiency, severe pulmonary disease, severe hemoglobinopathy, and uncontrolled endocrinopathy.

23. The goal of all treatment is to eliminate the distress caused by Gender Dysphoria. Treatment does not make a patient more or less of a man or a woman but instead brings an individual patient's body and presentation in line with who they already are at their

core.

### **Harmful Effects of Exclusion from Gender-Appropriate Facilities**

24. Social transition remains a critical part of treatment for transgender individuals and it is important that the social transition occur in all aspects of the individual's life. For a gender dysphoric young person or adult to be considered male in one situation, for example, but not in another is inconsistent with evidence-based medical practice and detrimental to the health and well-being of the individual, regardless of age. The integration of a consolidated identity into the daily activities of life is the aim of treatment. Thus, it is critical that the social transition be complete and unqualified – including with respect to the use of restrooms and other spaces and activities separated by sex.

25. Access to the same restrooms and other facilities available to others is an undeniable necessity for transgender individuals. Restrooms and locker rooms, unlike other settings (*e.g.*, the library or kitchen), categorize people according to gender. When it comes to sex-specific public restrooms and locker rooms, there are generally two, and only two, such categories designated: male and female. To deny a transgender individual access to such a facility consistent with that person's gender identity, or to insist that a transgender individual use a separate restroom, communicates that such a person is not a "real" man or woman; or that the person is some undifferentiated "other" (Seelman, 2016). Such segregation and identification of the individual as "other" interferes with the person's ability to consolidate identity and undermines the social transition process.

26. Denial of the use of restrooms that are consistent with the person's gender identity causes the use of the restroom to become a source of anxiety. Such anticipatory anxiety

makes it difficult to concentrate at school or in the workplace. Transgender people go to great lengths to transition from their assigned birth gender. Expelling these individuals from spaces with peers can be deeply traumatic (particularly for adolescents), and exacerbates the depression, anxiety and isolation that many transgender people experience (Grossman & Augelli, 2006; Grossman & Augelli, 2007). Indeed, research shows that transgender individuals are at far greater risk for severe health consequences, and 41% have attempted suicide, a rate much higher than the baseline in North America (Haas, 2014).

27. It is no solution to reserve a “special” bathroom or locker room solely for the use of the transgender person when there are other sex-specific restrooms and locker rooms available for everyone else. Sending the message that a person is different from peers, and needs to be segregated, triggers shame. External attempts to negate a person’s gender identity constitute identity threat. Developing and integrating a positive sense of self-identity formation is a developmental task for all human beings (Erickson, 1956). For the transgender individual, the process is more complex, as the “self” violates society’s norms and expectations (Devor, 2004; Bockting, 2013; Bockting, 2014). Attempts to negate a person’s identity – such as excluding transgender people from gendered restrooms – challenges the legitimacy of identity, erodes resilience and poses health risks, including depression, posttraumatic stress disorder, hypertension and self-harm. In a study of transgender youth age 15 to 21, investigators found 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 (Budge, Adelson & Howard, 2013).

The stigmatization to which they were routinely subjected led many to experience academic difficulties and to drop out of school (Russel, Pollet & Grossman, 2018).

28. For the majority of transgender people, social role transition allows for the social and legal recognition of their gender thereby conferring privacy – the right to maintain stewardship of personal and medical information – and allowing the individual to live safely and comfortably. Forcing a transgender individual into spaces designated for their birth-assigned sex and inconsistent with their gender identity can also lead to harassment and violence against the transgender individual.

29. A 2012 research study of discrimination and implications for health concluded: “living in states with discriminatory policies . . . was associated with a statistically significant increase in the number of psychiatric disorder diagnoses” (Bradford et al. , 2013).

30. Until recently, it was not fully understood that these experiences of shame and discrimination could have serious and enduring consequences. But it is now known that stigmatization and victimization are some of the most powerful predictors of current and future mental health problems, including the development of psychiatric disorders (Nuttbrock, Rosenblum & Blumenstein, 2002). The social problems that transgender teens face at school actually create the blueprint for future mental health, life satisfaction, and even physical health. A recent study of 245 gender-nonconforming adults found that stress and victimization at school was associated with a greater risk for posttraumatic stress disorder, depression, life dissatisfaction, anxiety, and suicidality in adulthood (Toomey et al., 2010).

31. A wealth of research establishes that transgender people suffer from stigma and shame. The “minority stress model” explains that the negative impact of the stress attached to being stigmatized is socially based (Frost, Lehavot & Meyer, 2015). The stress process can be both external, *i.e.*, actual experiences of rejection and discrimination (enacted stigma), and as a result of such experiences, internal, *i.e.*, perceived rejection and the expectation of being rejected or discriminated against (felt stigma). A 2012 study of transgender adults found fear of discrimination increased risk of developing hypertension by 100%, owing to the intersectionality of shame and cardiovascular reactivity (Ettner, Ettner & White,). A 2011 Institute of Medicine (IOM) report concurs: “the marginalization of transgender people from society is having a devastating effect on their physical and mental health.” The *American Journal of Public Health* recently reported that more than half of transgender women “struggle with depression from the stigma, shame and isolation caused by how others treat them.”

32. Privacy is essential in order to accomplish the therapeutic aims of treatment for Gender Dysphoria. Use of facilities that correspond to one’s lived experience and appearance is integral to social recognition of identity.

33. Privacy surrounding one’s gender dysphoria enables normal psychological functioning, the ability to have experiences that promote healthy personal growth and interpersonal relationships, and allows for control over the circumstances in which a person may disclose being transgender. It is the basis for the development of individuality and autonomy for transgender people (Matheson, 2009; McLean, 1995; Moore, 1984).

34. Requiring transgender individuals to use facilities that do not match their gender identity may violate their privacy and release confidential medical information to others. The repetition of such negative experiences erodes resilience and coping mechanisms.

35. This is particularly true where a person has been taking hormones resulting in the physical changes noted above and it is obvious that the person no longer physically appears to be of his or her birth-assigned sex. Requiring that person to use restrooms or locker rooms associated with his or her birth-assigned sex as opposed to gender identity is, in effect, a formal statement that the person is transgender and profoundly different from everyone else. This will do nothing other than exacerbate his or her anxiety and dysphoria and cause other negative consequences.

#### Verification

I verify under the penalties for perjury that the foregoing representations are true

Executed on 6/20/2018  
DATE

Randi Ettner Ph.D.  
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**POSITIONS HELD**

Clinical Psychologist  
Forensic Psychologist  
Fellow and Diplomate in Clinical Evaluation, American Board of  
Psychological Specialties  
Fellow and Diplomate in Trauma/PTSD  
President, New Health Foundation Worldwide  
Secretary, World Professional Association of Transgender Healthcare  
(WPATH)  
Chair, Committee for Institutionalized Persons, WPATH  
Global Education Initiative Committee  
University of Minnesota Medical Foundation: Leadership Council  
Psychologist, Center for Gender Confirmation Surgery, Weiss Memorial  
Hospital  
Adjunct Faculty, Prescott College  
Editorial Board, *International Journal of Transgenderism*  
Editorial Board, *Transgender Health*  
Television and radio guest (more than 100 national and international  
appearances)  
Internationally syndicated columnist  
Private practitioner  
Medical staff Weiss Memorial Hospital, Chicago IL

**EDUCATION**

PhD, 1979	Northwestern University (with honors) Evanston, Illinois
MA, 1976	Roosevelt University (with honors) Chicago, Illinois
BA, 1969-73	Indiana University Bloomington, Indiana Cum Laude Major: Clinical Psychology; Minor: Sociology
1972	Moray College of Education Edinburgh, Scotland International Education Program
1970	Harvard University Cambridge, Massachusetts Social Relations Undergraduate Summer Study Program in Group Dynamics and Processes

### **CLINICAL AND PROFESSIONAL EXPERIENCE**

- 2016-present Psychologist: Chicago Gender Center  
Consultant: Walgreens; Tawani Enterprises  
Private practitioner
- 2011 Instructor, Prescott College: Gender-A multidimensional approach
- 2000 Instructor, Illinois Professional School of Psychology
- 1995-present Supervision of clinicians in counseling gender non conforming clients
- 1993 Post-doctoral continuing education with Dr. James Butcher in MMPI-2 Interpretation, University of Minnesota
- 1992 Continuing advanced tutorial with Dr. Leah Schaefer in psychotherapy
- 1983-1984 Staff psychologist, Women's Health Center, St. Francis Hospital, Evanston, Illinois
- 1981-1984 Instructor, Roosevelt University, Department of Psychology: Psychology of Women, Tests and Measurements, Clinical Psychology, Personal Growth, Personality Theories, Abnormal Psychology
- 1976-1978 Research Associate, Cook County Hospital, Chicago, Illinois, Department of Psychiatry
- 1975-1977 Clinical Internship, Cook County Hospital, Chicago, Illinois, Department of Psychiatry
- 1971 Research Associate, Department of Psychology, Indiana University
- 1970-1972 Teaching Assistant in Experimental and Introductory Psychology  
Department of Psychology, Indiana University
- 1969-1971 Experimental Psychology Laboratory Assistant, Department of Psychology, Indiana University

### **LECTURES AND HOSPITAL GRAND ROUNDS PRESENTATIONS**

*The role of the mental health professional in gender confirmation surgeries*, Mt. Sinai Hospital, New York City, NY, 2018

*Mental health evaluation for gender confirmation surgery*, Gender Confirmation Surgical Team, Weiss Memorial Hospital, Chicago, IL 2018

*Transitioning; Bathrooms are only the beginning*, American College of Legal Medicine, Charleston, SC, 2018

*Gender Dysphoria: A medical perspective*, Department of Health and Human Services, Office for Civil Rights, Washington, D.C, 2017

*Multi-disciplinary health care for transgender patients*, James A. Lovell Federal Health Care Center, North Chicago, IL, 2017

*Psychological and Social Issues in the Aging Transgender Person*, Weiss Memorial Hospital, Chicago, 2017.

*Psychiatric and Legal Issues for Transgender Inmates*, USPATH, Los Angeles, 2017

*Transgender 101 for Surgeons*, American Society of Plastic Surgeons, 2017.

*Healthcare for transgender inmates in the US*, Erasmus Medical Center, Rotterdam, Netherlands, 2016.

*Tomboys Revisited: Replication and Implication; Models of Care; Orange Isn't the New Black Yet-* WPATH symposium, Amsterdam, Netherlands, 2016.

*Foundations in mental health; role of the mental health professional in legal and policy issues, healthcare for transgender inmates; children of transgender parents; transfeminine genital surgery assessment:* WPATH global education initiative, Chicago, 2015; Atlanta, 2016; Ft. Lauderdale, 2016; Washington, D.C., 2016, Los Angeles, 2017, Minneapolis, 2017, Chicago, 2017; Columbus, Ohio, 2017

*Pre-operative evaluation in gender-affirming surgery-*American Society of Plastic Surgeons, 2015

*Gender affirming psychotherapy; Assessment and referrals for surgery-Standards of Care-*Fenway Health Clinic, Boston, 2015

*Gender reassignment surgery-* Midwestern Association of Plastic Surgeons, 2015

*Adult development and quality of life in transgender healthcare-* Eunice Kennedy Shriver National Institute of Child Health and Human Development, 2015

*Healthcare for transgender inmates-* American Academy of Psychiatry and the Law, 2014

*Supporting transgender students: best school practices for success-* American Civil Liberties Union of Illinois and Illinois Safe School Alliance, 2014

*Addressing the needs of transgender students on campus-* Prescott College, 2014

*The role of the behavioral psychologist in transgender healthcare –* Gay and Lesbian Medical Association, 2013

*Understanding transgender-* Nielsen Corporation, Chicago, Illinois, 2013

*Role of the forensic psychologist in transgender care; Care of the aging transgender patient-* University of California San Francisco, Center for Excellence, 2013

*Evidence-based care of transgendered patients-* North Shore University Health Systems, University of Chicago, Illinois, 2011; Roosevelt-St. Vincent Hospital, New York; Columbia Presbyterian Hospital, Columbia University, New York, 2011

*Children of Transsexuals-*International Association of Sex Researchers, Ottawa, Canada, 2005; Chicago School of Professional Psychology, 2005

*Gender and the Law-* DePaul University College of Law, Chicago, Illinois, 2003; American Bar Association annual meeting, New York, 2000

*Gender Identity, Gender Dysphoria and Clinical Issues –*WPATH Symposium, Bangkok, Thailand, 2014; Argosy College, Chicago, Illinois, 2010; Cultural Impact Conference, Chicago, Illinois, 2005; Weiss Hospital, Department of Surgery, Chicago, Illinois, 2005; Resurrection Hospital Ethics Committee, Evanston, Illinois, 2005; Wisconsin Public Schools, Sheboygan, Wisconsin, 2004, 2006, 2009; Rush North Shore Hospital, Skokie, Illinois, 2004; Nine Circles Community Health Centre, University of Winnipeg, Winnipeg, Canada, 2003; James H. Quillen VA Medical Center, East Tennessee State University, Johnson City, Tennessee, 2002; Sixth European Federation of Sexology, Cyprus, 2002; Fifteenth World Congress of Sexology, Paris, France, 2001; Illinois School of Professional Psychology, Chicago, Illinois 2001; Lesbian Community Cancer Project, Chicago, Illinois 2000; Emory University Student Residence Hall, Atlanta, Georgia, 1999; Parents, Families and Friends of Lesbians and Gays National Convention, Chicago, Illinois, 1998; In the Family Psychotherapy Network National Convention, San Francisco, California, 1998; Evanston City Council, Evanston, Illinois 1997; Howard Brown Community Center, Chicago, Illinois, 1995; YWCA Women's Shelter, Evanston, Illinois, 1995; Center for Addictive Problems, Chicago, 1994

*Psychosocial Assessment of Risk and Intervention Strategies in Prenatal Patients-* St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984; Purdue University School of Nursing, West Layette, Indiana, 1980

*Psychoneuroimmunology and Cancer Treatment-* St. Francis Hospital, Evanston, Illinois, 1984

*Psychosexual Factors in Women's Health*- St. Francis Hospital, Center for Women's Health, Evanston, Illinois, 1984

*Sexual Dysfunction in Medical Practice*- St. Francis Hospital, Dept. of OB/GYN, Evanston, Illinois, 1980

*Sleep Apnea* - St. Francis Hospital, Evanston, Illinois, 1996; Lincolnwood Public Library, Lincolnwood, Illinois, 1996

*The Role of Denial in Dialysis Patients* - Cook County Hospital, Department of Psychiatry, Chicago, Illinois, 1977

## **PUBLICATIONS**

Ettner, R., White, T., Ettner, F., Friese, T., Schechter, L. (2018) Tomboys revisited: A retrospective comparison of childhood behaviors in lesbians and transmen. *Journal of Child and Adolescent Psychiatry*.

Narayan, S., Danker, S Esmonde, N., Guerriero, J., Carter, A., Dugi III, D., Ettner, R., Radix A., Bluebond-Langner, R., Schechter, L., Berli, J. (2018) A survey study of surgeons' experience with regret and reversal of gender-confirmation surgeries as a basis for a multidisciplinary approach to a rare but significant clinical occurrence, submitted.

Ettner, R. Mental health evaluation. Clinics in Plastic Surgery. Elsevier, 45(3): 307-311.

Ettner, R. Etiology of gender dysphoria in Schechter (Ed.) Gender Confirmation Surgery: Principles and Techniques for an Emerging Field. Springe. in press.

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Ettner, R., Ettner, F. & White, T. Choosing a surgeon: an exploratory study of factors influencing the selection of a gender affirmation surgeon. *Transgender Health*, 1(1), 2016.

Ettner, R. & Guillamon, A. Theories of the etiology of transgender identity. In Principles of Transgender Medicine and Surgery. Ettner, Monstrey & Coleman (Eds.), 2nd edition; Routledge, June, 2016.

Ettner, R., Monstrey, S, & Coleman, E. (Eds.) Principles of Transgender Medicine and Surgery, 2nd edition; Routledge, June, 2016.

Bockting, W, Coleman, E., Deutsch, M., Guillamon, A., Meyer, I., Meyer, W., Reisner, S., Sevelius, J. & Ettner, R. Adult development and quality of life of transgender and gender nonconforming people. *Current Opinion in Endocrinology and Diabetes*, 2016.

Ettner, R. Children with transgender parents in Sage Encyclopedia of Psychology and Gender. Nadal (Ed.) Sage Publications, 2017

Ettner, R. Surgical treatments for the transgender population in Lesbian, Gay, Bisexual, Transgender, and Intersex Healthcare: A Clinical Guide to Preventative, Primary, and Specialist Care. Ehrenfeld & Eckstrand, (Eds.) Springer: MA, 2016.

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Coleman, E., Bockting, W., Botzer, M., Cohen-Kettenis, P., DeCuypere, G., Feldman, J., Fraser, L., Green, J., Knudson, G., Meyer, W., Monstrey, S., Adler, R., Brown, G., Devor, A., Ehrbar, R., Ettner, R., et.al. Standards of Care for the health of transsexual, transgender, and gender-nonconforming people. World Professional Association for Transgender Health (WPATH). 2012.

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Schechter, L., Boffa, J., Ettner, R., and Ettner, F. Revision vaginoplasty with sigmoid interposition: A reliable solution for a difficult problem. *The World Professional Association for Transgender Health (WPATH), 2007, XX Biennial Symposium*, 31-32.

Ettner, R. Transsexual Couples: A qualitative evaluation of atypical partner preferences. *International Journal of Transgenderism*, Vol. 10, 2007.

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White, T. and Ettner, R. Disclosure, risks, and protective factors for children whose parents are undergoing a gender transition. *Journal of Gay and Lesbian Psychotherapy*, Vol. 8, 2004.

Witten, T., Benestad, L., Berger, L., Ekins, R., Ettner, R., Harima, K. Transgender and Transsexuality. Encyclopeida of Sex and Gender. Springer, Ember, & Ember (Eds.) Stonewall, Scotland, 2004.

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"Social and Psychological Issues of Aging in Transsexuals," proceedings, Harry Benjamin International Gender Dysphoria Association, Bologna, Italy, 2005.

"The Role of Psychological Tests in Forensic Settings," *Chicago Daily Law Bulletin*, 1997.

Confessions of a Gender Defender: A Psychologist's Reflections on Life amongst the Transgendered. Chicago Spectrum Press. 1996.

"Post-traumatic Stress Disorder," *Chicago Daily Law Bulletin*, 1995.

"Compensation for Mental Injury," *Chicago Daily Law Bulletin*, 1994.

“Workshop Model for the Inclusion and Treatment of the Families of Transsexuals,”  
Proceedings of the Harry Benjamin International Gender Dysphoria Symposium; Bavaria,  
Germany, 1995.

“Transsexualism- The Phenotypic Variable,” Proceedings of the XV Harry Benjamin  
International Gender Dysphoria Association Symposium; Vancouver, Canada, 1997.

“The Work of Worrying: Emotional Preparation for Labor,” Pregnancy as Healing. A Holistic  
Philosophy for Prenatal Care, Peterson, G. and Mehl, L. Vol. II. Chapter 13, Mindbody Press,  
1985.

### **PROFESSIONAL AFFILIATIONS**

University of Minnesota Medical School–Leadership Council  
American College of Forensic Psychologists  
World Professional Association for Transgender Health  
World Health Organization (WHO) Global Access Practice Network  
TransNet national network for transgender research  
American Psychological Association  
American College of Forensic Examiners  
Society for the Scientific Study of Sexuality  
Screenwriters and Actors Guild  
Phi Beta Kappa

### **AWARDS AND HONORS**

*The Randi and Fred Ettner Transgender Health Fellowship*-Program in Human Sexuality,  
University of Minnesota, 2016  
Phi Beta Kappa, 1971  
Indiana University Women’s Honor Society, 1969-1972  
Indiana University Honors Program, 9-1972  
Merit Scholarship Recipient, 1970-1972  
Indiana University Department of Psychology Outstanding Undergraduate Award  
Recipient, 1970-1972  
Representative, Student Governing Commission, Indiana University, 1970

### **LICENSE**

Clinical Psychologist, State of Illinois, 1980

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Ettner, R. Monstrey, S., & Coleman, E. (Eds.)( 2017). Principles of Transgender Medicine and Surgery, 2<sup>nd</sup> edition, New York: Taylor and Francis.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W., a minor child, by his next friend,	)	
Wyatt Squires,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-37-WTL-MPB
	)	
EVANSVILLE VANDERBURGH SCHOOL	)	
CORPORATION,	)	
	)	
Defendant.	)	

**Declaration of James D. Fortenberry, M.D., M.S.**

1. I have been retained by counsel for plaintiff as an expert in connection with the above-captioned litigation. I have actual knowledge of the matters stated in this declaration. My professional background, experience, and publications are detailed in my curriculum vitae, a true and accurate copy of which is attached as Exhibit A to this declaration.
2. I received my medical degree from the University of Oklahoma in 1979. I am currently a Professor of Pediatrics at Indiana University School of Medicine and I serve as Chief of the Division of Adolescent Medicine at Indiana University School of Medicine.
3. I am a member of the World Professional Association for Transgender Health (“WPATH”), the Society of Adolescent Health & Medicine, the International Academy for Sex Research, the American STD Association and the president of the American STD Association.

4. I am a fellow of the Society for the Scientific Study of Sex and I am the past chair of the Board of Directors of the American Sexual Health Association.

5. I have worked with persons with gender identity issues for my entire career and two years ago I founded and currently direct the Gender Health Program at Riley Children's Health that is designed to offer comprehensive support to children, teens and young adults who have been diagnosed with gender dysphoria. This is the only comprehensive gender health program in Indiana that serves patients under the age of 21.

6. The services at the Gender Health Program include, but are not limited to, diagnosis of gender dysphoria in children and adolescents, gender affirming hormone therapy, treatment for menstrual suppression, treatment of anxiety and depression, psychological counseling, family education and counseling, transition support at schools, and surgery consultation and coordination.

7. I have worked directly with at least 100 youth with gender dysphoria.

8. I do not perform surgery on my transgender patients. However, I do provide hormonal therapy that is designed to assist the person in transitioning, the process whereby the transgender person lives as a member of the sex of his or her gender identity.

9. In preparing this declaration, I reviewed the complaint in this case as well as the medical records of the plaintiff in this case consisting of records from ECHO Community Health Care and as counseling records from Within Sight.. I also have relied upon the literature listed in Exhibit B. These are all studies and publications accepted by persons in the field of transgender and transgender health.

10. In the past four years, I have not testified as an expert at trial or deposition in any matter.

11. I am being compensated at an hourly rate for actual time devoted in this matter, at the rate of \$450.00 an hour. My compensation does not depend on the outcome of this litigation, the opinions that I express, or any testimony that I provide.

12. Gender dysphoria is an accepted diagnosis for individuals with a gender identity that differs from the person's birth-assigned sex.

13. Gender identity is a well-established concept in medicine that refers to one's sense of oneself as congruent with a particular gender. Gender identity for many people is established early in life.

14. In the majority of cases one's gender identity is congruent with one's anatomical features, so that persons born with a penis and testes are identified as male at birth and subsequently identify as male; persons identified at birth by the presence of a vulva subsequently identify as female.

15. Transgender identity is a response to gender dysphoria, representing the lack of congruence of sex assigned at birth and a person's experienced gender.

16. Studies indicate up to 0.6% of persons in Indiana identify as transgender.

17. Being transgender is not a "choice." Indeed, there is evidence from functional magnetic resonance brain scans that that a transgender person's brain responds in a manner consistent with their experienced gender, rather than in a manner consistent with birth-assigned sex.

18. For a person with gender dysphoria, the incongruence of felt gender identity and birth-assigned sex creates a constant sense of distress associated with a sense of being “wrongly embodied” that can be manifested by symptoms such as preoccupation with expressing the characteristics of ridding oneself of one’s experienced gender, hiding or modifying the sex characteristics associated with one’s assigned sex, and acquiring the sex characteristics of one’s experienced gender. Untreated, gender dysphoria results in significant distress, clinically significant anxiety and depression, self-harming behaviors, substance abuse, and suicidality.

19. In fact, studies demonstrate that up to 40% of transgender persons have attempted suicide at least once, compared to 5% of the American population.

20. Gender dysphoria is a recognized condition codified in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM-V) at 302.85 and the World Health Organization’s International Classification of Diseases 10 (ICD-10) at F64.0. These are both standard classifications of mental and physical disorders.

21. In diagnosing gender dysphoria in adolescents and adults, I, and other practitioners, use the criteria set forth in the American Psychiatric Association’s Diagnostic and Statistical Manual, 5th edition (“DSM-V”). DSM-V, 302.85, sets out the following criteria for gender dysphoria among adolescents and adults:

A. A marked incongruence between one’s experienced/expressed gender and assigned gender, of at least 6 months’ duration, as manifested by at least two of the following:

1. A marked incongruence between one’s experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated sex characteristics).

2. A strong desire to be rid of one's primary/and or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).

3. A strong desire for the primary and /or secondary sex characteristics of the other gender.

4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).

5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).

6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

22. ICD-10 describes, at F64, "gender identity disorder." This is "[a] disorder characterized by a strong and persistent cross-gender identification (such as stating a desire to be the other sex or frequently passing as the other sex) coupled with persistent discomfort with his or her sex (manifested in adults, for example, as a preoccupation with altering primary and secondary sex characteristics through hormonal manipulation or surgery."

23. The "gender identity disorder" described in ICD-10 is the same as "gender dysphoria" as set out in the DSM-V. The more modern term is "gender dysphoria" and will be used in this declaration. The World Health Organization announced, on June 18, 2018, that the new ICD-11 uses the term "gender dysphoria."

24. WPATH has established an international standard of care for persons with gender dysphoria and these standards are recognized by leading mental health and medical organizations in the United States, including the American Medical Association, the Endocrine Society, the American Psychiatric Association, and American Psychological Association.

25. These are the standards that I and my colleagues at Indiana University School of Medicine and Riley Hospital follow in the treatment of transgender persons.

26. The standards of care recognize, consistent with my experience, that the principal treatment of gender dysphoria is to allow the person full expression of their experienced gender identity. This involves, generally, expressed gender through name and behavior consistent with experienced gender, and, hormone therapy to feminize or masculinize the body. Sometimes, but not always, the person will receive surgery to alter primary and/or secondary sex characteristics. The person may also benefit from counseling to assist the person with the depression or anxiety and other problems that may flow from longstanding gender dysphoria and being transgender. It is important to note that these problems primarily are rooted in social hostility, rejection, discrimination, emotional abuse, and physical violence associated with society's difficulty in accepting the person's expressed gender.

27. As a first therapeutic step for gender dysphoria, most people adopt names, clothing, social characteristics, and gendered pronouns consistent with their experienced gender. Practices such as suppression of menstrual periods and breast binding allow reversible treatment for specific contributors to gender dysphoria. Initiation of gender

affirming hormone therapy initiates the physiologic changes in body contour and appearance to match that the experienced gender. For example, the hormones given to birth-assigned female with an experience of male gender identity will deepen the voice, stimulate beard growth, increase muscle mass, and redistribute body fat. Full hormone effects may require 12-18 months to realize.

28. The standards of care recognize that assisting the person in social role transition—allowing the person to express himself or herself consistent with gender identity—is an essential component of treatment of gender dysphoria to ensure future mental health.

29. Social role transition, through which a person presents themselves in a manner consistent with their experienced gender, which includes name, dress, hair style, and other aspects of gender presentation, is an essential aspect of management of gender dysphoria. Research shows that such support at least partially ameliorates gender dysphoria.

30. The ability to be able to use public toilet facilities consistent with one's experienced and expressed gender is a prime component of gender affirmation. Being denied the use gendered toilet facilities consistent with expressed gender is experienced as a constant source of distress and anxiety. This distress and anxiety are linked to increase in self-harming behaviors including suicidality. As a physician to young people with gender dysphoria, I often hear reports of suppression of body functions for an entire day because of discomfort in assigned facilities. This suppression of body functions can be injurious to the young person.

31. These experiences are examples of constantly repeated micro-aggression often leading to outcomes consistent with post-traumatic stress disorder that may persist despite appropriate therapy for gender dysphoria.

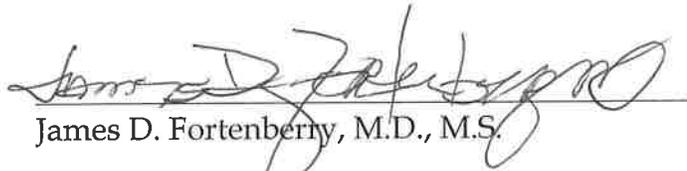
32. As noted above, I have reviewed the medical and counseling records of the plaintiff in this case. I find nothing remarkable in the records. Plaintiff appears to fully meet criteria for gender dysphoria and is consistent with an ICD-10 diagnosis of gender identity disorder, which is gender dysphoria under the DSM-V. He has received male hormones since prior to November 2017, as documented in the medical record. Although I have never met the plaintiff, at this point, the medical record notes male appearance, consistent with social transition and the recorded diagnosis of gender dysphoria. Receipt of regular treatment with testosterone as recorded in the medical record would cause recognizable masculinization, particularly in terms of voice changes and appearance of the beard.

33. For the reasons noted above, it is my opinion that the plaintiff's overall health and wellbeing is best served through use of toilet facilities consistent with his experienced and expressed male gender.

**Verification**

I verify under the penalties for perjury that the foregoing representations are true.

Executed on: 06-25-2018  
Date

  
James D. Fortenberry, M.D., M.S.

Prepared by:

Kenneth J. Falk  
No. 6777-49  
ACLU of Indiana

**CURRICULUM VITA**

update: 06/20//2018

**J. Dennis Fortenberry, M.D., M.S.**

**Professional Address:**

410 W. 10<sup>th</sup> St, HITS 1001  
Indianapolis, IN 46202-5225  
317/274-8812  
317/274-0133 (FAX)  
jfortenb@iu.edu (e-mail)

**Date of Birth:** August 27, 1953 **Place of Birth:** Big Spring, Texas **Citizenship:** U.S.A.

**Education:**

9/85 – 5/89 Epidemiology and Biostatistics, College of Public Health, Univ. of Oklahoma. Master of Science degree. Thesis Title: *The Effect of Maternal Age on Substance Use During Pregnancy*  
5/82 – 6/83 Bryn Mawr Hospital, Bryn Mawr, PA. Senior Resident in Internal Medicine  
7/81 – 5/82 Interrupted residency to travel in Europe  
7/80 – 6/81 University of Oklahoma Health Sciences Center, Internal Medicine - PG2  
7/79 - 6/80 University of Oklahoma Health Sciences Center, Internal Medicine - PG1  
9/75 – 5/79 University of Oklahoma School of Medicine. M.D. Degree  
9/71 – 5/75 Oklahoma State University. B.S. in University Studies

**Professional Experience:**

2015 – Present Chief, Division of Adolescent Medicine, Department of Pediatrics, Indiana University School of Medicine.  
2006 – Present Core Faculty, Center for Sexual Health Promotion, Indiana University.  
2006 – Present Senior Research Fellow, Kinsey Institute for Sex, Gender & Reproduction, Indiana University  
7/99 - Present Professor (with tenure), Department of Pediatrics, Indiana University School of Medicine  
7/93 – 6/99 Associate Professor, Department of Pediatrics, Indiana University School of Medicine. Associate Director of Adolescent Medicine  
7/91 – 6/93 Section Chief, Adolescent Medicine, 1993. University of Oklahoma Health Sciences Center, Departments of Medicine & Pediatrics  
7/90 – 6/93 Associate Professor of Pediatrics & Medicine (with tenure), University of Oklahoma Health Sciences Center, Adolescent Medicine Section, Oklahoma City, OK  
9/88 – 6/95 Faculty Research Associate, Research Program on Problem Behavior, University of Colorado at Boulder, Institute of Behavioral Science  
7/83 – 6/90 Assistant Professor of Medicine & Pediatrics, University of Oklahoma Health Sciences Center, Department of Medicine, Adolescent Medicine Section. Oklahoma City, OK

**Certification:**

American Board of Internal Medicine. September, 1983; renewed: November 2004.

American Board of Internal Medicine: Certificate of Added Qualifications in Adolescent Medicine. November, 1994; renewed November 2004.

**Licenses:**

Oklahoma - active, lic. # 12703  
Pennsylvania - inactive  
Indiana - active, lic. # 0104534

**Memberships:**

EXHIBIT A

Society for Adolescent Health & Medicine  
 Population Association of America  
 American Sexually Transmitted Diseases Association  
 International Union against Sexually Transmitted Infections  
 Society for Scientific Study of Sexuality  
 International Academy for Sex Research  
 Society for Research on Adolescence  
 World Professional Association for Transgender Health

**Teaching and Mentoring Activities:**

Supervision of Adolescent Medicine Fellows (and current position):

Sarah Sayger, MD	1985 – 1986	Purdue University
Edward P. Tyson, MD	1986 – 1987	Austin, Texas
Kathy S. Waller, MD, MPH	1988 – 1990	Colorado State University
Marcia Shew, MD, MPH	1988 – 1991	Indiana University School of Medicine
Wilma Fett, MD, MPH	1989 – 1991	Oklahoma City, OK
Lanette Brown-Jones, MD	1993 – 1996	St. Vincent Medical Center, Indianapolis.
Monique Howard, MD.	1995 – 1998	Louisville, KY.
Melissa Lawson, MD	1996 – 1999	University of Missouri
Craig Spence, MD	1997 – 1998	Bloomington, IN.
Lee Ann Conard, DO, MPH	1999 – 2002	University of Cincinnati
Thomas A. Eccles, MD	2000 – 2003	Arizona State University
Stephanie Brown, MD	2001 – 2004	Northwestern University
Tatiana Greenfield, MD, PhD	2002 – 2005	New York, New York
Jennifer Woods, MD MS	2003 – 2006	Arkansas University School of Medicine
Michael Spaulding-Barclay MD	2004 – 2007	Kansas University School of Medicine
Aneesh Tosh MD MS	2004 – 2007	University of Missouri School of Medicine
Sarah Halleran MD	2005 – 2007	Vancouver, British Columbia, Canada
Rebecca Williams MD MS	2006 – 2009	Indiana University School of Medicine
Paul Kim MD	2007 – 2009	Los Angeles, CA.
Lekeisha Terrell MD MS	2007 – 2010	Washington, D.C.
Cynthia Robbins MD MS	2008 – 2011	Indiana University School of Medicine
Annie Nguyen MD	2009 – 2010	University of Arizona
Laura Kester MD MPH	2010 – 2013	Indiana University School of Medicine
Julia Taylor MD	2012 – 2015	University of West Virginia
Zachary Jacobs DO	2012 – 2015	SUNY Downstate
Jamie Essian Taylor	2013 – 2016	Michigan State University
Ola Mscichowski DO	2015 – 2017	
Rachael Snedecor MD	2016 – present	
Katherine MacDonald MD	2016 – present	
Nikki Ferrin MD	2017 – present	
Mayaan Melemed MD	2017 - present	

**Thesis and Dissertation Committees:**

Dawn Daniels, RN., Ph. D. An observational study of adolescent bicycle riding safety and risk behaviors. Indiana University, College of Nursing. Completed 04/02.

Aaron Sayegh, Ph. D. Purdue University, Department of Sociology. Completed 1/02. Dissertation Title: Relationship Quality, coital frequency and Chlamydia infection among adolescent females.

Devon Hensel, M.S. Purdue University, Department of Sociology Master’s thesis, 2001.

Devon Hensel PhD. Purdue University, Department of Sociology. Doctoral dissertation, 2005.

Debby Herbenick PhD MPH. Indiana University, Department of Applied Health Science, Dissertation committee. 2004 – 2005.

Amanda Tanner PhD MPH. Indiana University, Department of Applied Health Science, Dissertation committee. 2005 – 2007.

Barbara (Bobbie) Van Der Pol PhD MPH. Indiana University, Department of Applied Health Science, Dissertation committee. 2005 – 2007.

Laurie Legocki PhD. Indiana University, Department of Applied Health Science, Dissertation committee. 2006 – 2008.

Jennifer Collins PhD MSN. University of Texas School of Nursing. Dissertation committee. 2008 – 2009.

Violet Yebei MA PhD. Indiana University, Department of Sociology. Dissertation committee 2005- 2008.

Candace Best PhD. Purdue University Department of Psychology. Dissertation committee. 2008 – 2010.

Joshua Rosenberger PhD MPH. Indiana University, Department of Allied Health Science. Dissertation committee 2009 – 2011.

Alexis Roth MPH PhD. Indiana University, Department of Allied Health Science. Dissertation committee 2009 – 2012.

Kristen Mark MA PhD. Indiana University, Department of Allied Health Science. Dissertation committee 2011-12.

Sofia Jawed-Wessel MPH PhD. Indiana University, Department of Allied Health Science. Dissertation committee 2011-12.

Kelly Donahue PhD. Indiana University, Department of Psychology. Dissertation Committee 2010-2012.

Nicole Smith MPH, PhD. Indiana University. School of Public Health. Dissertation Committee 2012 – 2013.

Zuokai Li PhD. Indiana University Fairbanks School of Public Health, Department of Biostatistics. Dissertation Committee. 2013 – 2014.

Margo Mullinax PhD – Indiana University School of Public Health. Dissertation Committee. 2013 – 2014.

Aleta Baldwin PhD – Indiana University School of Public Health. Dissertation Committee. 2014 – 2015.

Daphne van de Bongardt PhD – University of Utrecht, Netherlands. External doctoral dissertation examiner. 2014-2015.

Lindsey Fuzzell PhD. Purdue University. Department of Psychology. 2015 – 2017

Richard Brandon-Friedman MSW – School of Social Work, IUPUI. 2015 – present.

Dustin Pifer MSW – School of Social Work, IUPUI. 2016- present.

Thomas Duszynski – Fairbanks School of Public Health, 2016 – present

Finneran Muzzey – Michigan State University – 2018

Killian Kinney – School of Social Work, IUPUI - 2018

Post-Doctoral Fellows and Faculty, with current position:

Heather Cecil, Ph. D.	1994 – 1996 Pennsylvania State University (social psychology)
Matt Aalsma, Ph. D.	2000 – 2008 Indiana University (Psychology; NIMH K08 [primary mentor])
Alice Thornton, M.D.	2000 – 2003 University of Kentucky (infectious diseases/internal medicine)
Aaron Sayegh, Ph. D.	2002 – 2003 Indiana University School of Public Health (Sociology; NIH T32 post-doctoral fellow)
Ayesha Khan, MD	2001 – 2004 Section of Infectious Diseases, Department of Medicine, Indiana University (infectious diseases fellow; research mentor). National HIV Control Program, Islamabad Pakistan
John Sidle, MD	2002 – 2006 Department of Medicine (Indiana University)
Adnan Khan, MD	2002 – 2004 WHO Consultant, Pakistan. Section of Infectious Diseases, Department of Medicine, Indiana University (infectious diseases fellow; research mentor)
Sarah Wiehe MD MPH	2005 – 2014. Indiana University School of Medicine (Robert Wood Johnson Faculty Scholars awardee; NIH K23 awardee [primary mentor])
Devon J. Hensel PhD	2005 – 2008 Indiana University School of Medicine/ IUPUI Sociology (Sociology; NIH T32 post-doctoral fellow)
Kimberly A. McBride	2006 – 2008 Cleveland State University (Health behavior; NIH T32 post-doctoral fellow)

EXHIBIT A

Amanda Tanner PhD	2007 – 2008 University of North Carolina Greensboro (Health behavior; post-doctoral fellow)
Mary A. Ott MD	2003 – 2012 Indiana University School of Medicine (NIH K23 awardee [primary mentor])
Bree Weaver MD	2009 – 2012 Indiana University School of Medicine (American STD Association Development Award; primary mentor)
Melissa Carpentier PhD	2008 – 2010 University of Texas Houston (Psychology; NIH K08 awardee; research mentor)
Jeffry Thigpen PhD	2009 – 2012 IUPUI School of Social Work (faculty research mentor)
Devon J. Hensel PhD	2008 – 2011 Indiana University School of Medicine (Sociology; faculty research mentor)
Vanessa Schick PhD	2011 – 2013 Baylor University School of Public Health) research mentor; American STD Association Development Award)
Tamara Leech PhD	2011 – 2013 Fairbanks School of Public Health. WT Grant Faculty Scholar recipient (Sociology; primary faculty mentor)
Teresa Anderson MD	2012 – 15 Indiana University School of Medicine (infectious diseases fellow; NIH T32 primary research mentor)
Renata Sanders MD MPH	2012 – 2015 Johns Hopkins University (NIH K23 research mentor)
Rebecca Beyda MD MPH	2013 – 14 University of Texas Houston (research mentor)
Amy Knopf PhD	2014- 15 Indiana University School of Nursing (T32 post-doctoral fellow)
Carly Guss MD	2015-16 Boston Children’s Hospital (research mentor)
Erika Cheng PhD	2016 - present Indiana University (research mentor)
Camille Robinson MD	2017 – 2018 Johns Hopkins University (research mentor)
Jamie Levine Daniels PhD	2018 – present Indiana University EMPOWER scholar (mentor)
Brian Feinstein PhD	2018 – present Northwestern University (K08 resource mentor)

**Community Activities:**

Camp John Warvel: American Diabetes Association summer camp for children and adolescents with diabetes. Volunteer medical staff, 2000, 2001, 2003, 2004, 2010.

**Department of Pediatrics**

Promotion and Tenure Committee 2016 - present

**Indiana University School of Medicine:**

Promotion and Tenure Committee 2016 – 2018.

IU School of Medicine Office of Diversity Affairs – LGBTQ Diversity subcommittee

**Honors:**

Society for Adolescent Medicine Visiting Professor in Research – 2004.  
Indiana University Trustee Teaching Award – 2007; 2015.  
American Sexually Transmitted Diseases Association Achievement Award – 2009.  
Fellow, Society for Scientific Study of Sexuality, 2013.  
Chancellor’s Faculty Fellow for Translating Research Into Practice (TRIP) 2010 – 2013.  
Society for Adolescent Health & Medicine Lifetime Achievement Award – 2014  
Donald Orr Professor of Adolescent Medicine – 2016  
Distinguished Service Award – Society for Scientific Study of Sexuality, 2017.

**Funded Research Activities:**

Completed Projects

Demonstration Project for STD Curriculum in Adolescent Medicine. Center for Disease Control #R30/CCR 600668, 1986.

Pulmonary Sequelae of Intentional Hydrocarbon Inhalation. NIDA Small Grant Program, 1986.(Co-PI)

Effect of Maternal Age on Substance Use During Pregnancy. University of Oklahoma Health Sciences Center Alumni Association, 1988. (PI)

Behavioral Epidemiology of Adolescence. K11HD00858-01/05. Physician-Scientist Award, NICHD, 1988 - 1992. Richard Jessor, Ph. D. (Institute for Behavioral Science, University of Colorado), major advisor.

Age at First Intercourse and Risk of Human Papillomavirus Infection. University of Oklahoma Health Sciences Center Alumni Association, 1988 (Co-Investigator)

Adolescent Allergy Program. Children's Medical Research Foundation, 1988. (PI)

A randomized multicenter study of a single dose oral fluconazole tablet compared with seven days of miconazole vaginal cream in the treatment of acute candidal vaginitis in women 18-65 years of age. Pfizer Central Research, 1989. (PI)

Patterns of Help-seeking among Adolescents. Midwest STD-CRC, Indiana University Medical Center. 1993 - 1994.

Psychosocial Contexts of Daily Health-compromising and Health-protective behaviors of adolescents. Riley Memorial Foundation. 1994 - 1996. (Principal Investigator).

Research and Evaluation Issues in Prevention of Infertility due to Sexually Transmitted Diseases. Centers for Disease Control. 1994 - 2000.(co-investigator).

Behavioral Epidemiology of Reoccurrent Sexually Transmitted Infections in Adolescents. National Institute of Allergy & Infectious Diseases. 1995 - 1999. (Co-investigator)

Attitudes about Genital Herpes Vaccination among Participants in a Herpes Vaccine Clinical Trial. Chiron Corporation, 1994 - 1995.

Biobehavioral Contributions to Infection with HSV-2, C. trachomatis, and HIV in High Risk Adolescent Females. Centers for Disease Control and Prevention, 1995 - 1996.

Development and feasibility testing of interventions to increase health-seeking behaviors in, and health care for, populations at high risk for gonorrhea. Centers for Disease Control. (PI) \$153,000 per year for 4 years (Principal Investigator).

Computer-Assisted Risk assessment and Education (CARE) for STIs. Centers for Disease Control & Prevention. Consultant, Small Business Innovations Research, Phase 1, \$98,000 (Principal Investigator, James Larkin, Seattle, Washington) (2002-2003).

HIV/STI Risk Assessment Media. Centers for Disease Control & Prevention. Consultant. Small Business Innovations Research, Phase 1, \$100,000. (Principal Investigator: Richard Goldsworthy, Academic Edge Inc, Bloomington, IN), 2002 - 2003.

Strategies to prevent genital herpes simplex infections. Centers for Disease Control & Prevention. 10/99 – 9/03. Total Costs \$1,562,634. (Co-Investigator).

Psychosocial, Partner-Specific and Coitus-Specific Risk and Protective Factors Associated with Sexually Transmitted Infections among Women in Middle Adolescence. \$1,490,125 Project 1 of the Mid-America Adolescent Sexually Transmitted Disease Cooperative Research Center. National Institute of Allergy and Infectious Disease. Principal Investigator.

STD Transmission and Early Subsequent STD among Sexual Dyads. Project 2 of the Mid-West Sexually Transmitted Diseases Cooperative Research Center. \$1,493,498 National Institute of Allergy and Infectious Disease U19 AI 31494. Principal Investigator. (2000 – 2004)

HIV/STI related stigma in Kenya. Supported through a grant from the Bill and Melinda Gates Foundation to the Indiana University/Moi University Academic Partners.(Principal Investigator).

Statistical Tools For Daily STD/HIV Behavioral Reports. NICHD (HD42404-01) 12/1/03 – 11/30/06. \$95,000 year direct costs. (Principal investigator: Wanzhu Tu, PhD) role: co-investigator

Computer-Assisted Risk assessment and Education (CARE) for STIs. Centers for Disease Control & Prevention. Consultant, Small Business Innovations Research, Phase 2. 2003 – 2005, \$750,000 (Principal Investigator, James Larkin, Seattle, Washington).

Factors Influencing contraception behavior of adolescents (MM-0467-03/03). \$246,698 per year for three years. Centers for Disease Control & Prevention (co-investigator)

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Vaginal microbicide acceptability for STI/HIV Prevention. NICHD (R01 HD40147). 2003 – 2008. Principal Investigator. (about \$200,000/year direct costs)

Development of Relationship Dynamics Related to STI/HIV Risk among Adolescent and Young Adult Women. NICHD, R01 HD044387-01 5/7/03 – 4/30/08. \$438,913 (Year 1 direct costs). (Principal Investigator)

Computerized HIV vaccine trial assent: Will it improve adolescent comprehension? NICHD 4/1/08 – 3/31/2011. Deidre Blake MD MPH PI (University of Massachusetts). Role: consultant.

HIV-Related Care Engagement: Linkage to Care and Care-Seeking for HIV-Infected Adolescents. 9/1/2007 – 6/30/2010. NICHD. \$239,788 total costs.

Tools for Patient Delivered Partner Treatment. Centers for Disease Control & Prevention. Consultant. Small Business Innovations Research (phase 1), \$100,000; Phase 2 (\$600,000). (Principal Investigator: Richard Goldsworthy, Academic Edge Inc, Bloomington, IN)

Sexual Aggression and HIV Risk in Young Heterosexual Men (R21HD055831) National Institute of Child Health and Human Development (NICHD) \$345,311 direct costs; \$83,070 indirect costs Funding Period: May 1, 2008 – April 30, 2010. Principal Investigator: Zoe Peterson PhD, University of St. Louis). Role:Co-investigator.

U19 AI 31494 Midwest Sexually Transmitted Diseases and Topical Microbicide Cooperative Research Center, PI, Project 2, 9/1/04 – 6/30/09.

Relational and contextual phenomenology of STI/HIV risk. 7/1/08 – 06/30/2013. (About \$3 million total costs). NICHD, principal investigator.

Characterization of vaginal and vulvar microbial communities in pre-menarcheal adolescents using culture-independent methods. 7/1/08 – 6/30/13. \$350,000. Proctor & Gamble, Role: principal investigator.

Perceived risk for sexually transmitted diseases among adolescents. 10/1/07 – 9/30/13. NICHD. Jonathan Ellen MD (Johns Hopkins University) PI. Role: consultant.

Behavioral and virulologic impact of HPV vaccination. NICHD 5/1/08 – 4/30/2013. Jessica Kahn MD MPH (University of Cincinnati) PI. Role: Investigator. Total costs \$1.3 million.

Factors associated with HPV persistence in adolescent women. NIAID 7/1/08 – 6/30/2013. Darron Brown MD PI. Role: Investigator.

Bacterial Vaginosis and Sexually Transmitted Infections among Women who have Sex with Women and Men and their Sexual Networks \$67,489 Indiana University Collaborative Research Grants (Investigator).

Urethral microbiome of adolescent males. UH2DK083980/UH3 AI094641 6/1/09 – 5/30/2015 Total Costs: \$5.1 million. NIDDK & NIAID. Role: Principal Investigator. 0.6 calendar months. Component of the Human Microbiome Demonstration Projects, describes the microbial communities of the urethral and penile skin as a function of development and sexual exposures.

#### Active Projects

1. Adolescent Health Training Project (subsequently named Leadership Education in Adolescent Health). Maternal and Child Health Bureau. 1992 – 2017. 30%

2. Adolescent HIV/AIDS Trials Network. (NIH-NICHD; U01 HD040533-15; Craig Wilson MD [PI]). Various RolesCommunity Prevention Leadership Group. 3/1/06 – 2/28/16.: Consultant and protocol chair (35% FTE across all active projects). Protocol chair for ATN 116 (2012-2015) and ATN 128 (2013-2015), protocol team member for ATN 125 (2014-2016), and ATN 135 (2014-2016).

3. Sexually Transmitted Infections Clinical Trials Group (NIH-NIAID; HHSN27200006; Edward Hook MD [PI], University of Alabama, Birmingham) 9/15/2013-9/14/2015. 1.2 calendar months; \$34,400. The major goal of this project is to review all incoming requests for funding of clinical studies as passed to them by the Operations Coordinating Center and make

recommendations to the Executive Committee based on scientific merit.

4. Sexual modulation of HIV-relevant vaginal immunity. 1R01AI094563-01. 03/01/2011 – 02/28/2016. Total Costs: \$1.53 million. NIAID. Principal Investigator: Sari Van Anders PhD, University of Michigan. Role: Investigator. 0.3 calendar month. Examines changes in vaginal immune function and susceptibility to HIV as a function of sexual arousal and sexual intercourse.

5. Developmental Microbiome of Young Black Women. NIAID. 56AI108775-01. Direct Costs: \$499,007.00. Principal investigator. 2.4 calendar months. Longitudinal study of factors associated with changes in vaginal microbiome during middle adolescence of black women, using non-culture based techniques.

6. The HIV Care Continuum Among Recent Offenders (1R01AI114435-01) 7/1/2014 - 6/30/2018 NIH/NIAID Sarah Wiehe MD MPH Principal Investigator. Investigates HIV care and outcomes among HIV+ individuals arrested or released from jail, prison or juvenile detention within Marion County (Indianapolis), Indiana over a 12-year period, using as a conceptual framework the HIV care continuum including HIV diagnosis, linkage to care, retention in care, initiation of antiretroviral therapy and viral suppression. Role: Co-Investigator, 1.2 calendar month.

7. Identifying Opportunities to Reduce STI/HIV Disparities among Recent Offenders (1 R01 HS23318-01A1) 3/01/2015 – 2/28/2018 (Year 1 total costs: \$249,946). Agency for Healthcare Research and Quality. Role: Co-Investigator, 0.3 calendar month. Investigates factors associated with sexually transmitted infections following discharge from Marion County jails and prisons.

8. 3Us4HD089880-01S1, FAIN: U24HD089880 Account Number: 4079140 Total Amount: \$358,422 Year 1 (\$1,145,849 total) Direct Amount: \$238,366 Year 1 (\$790,442 total) Indirect Amount: \$120,056 Year 1 (\$355,407 total)

#### **Research and Policy Consultanships:**

Understanding the relationship of STD control to HIV prevention in the United States. National Invitational Conference. Institute of Medicine, National Academy of Science. Washington, D.C., July 10, 1995.

Adolescent Immunization Workgroup Meeting. Centers for Disease Control & Prevention. Atlanta, GA. March 11-12, 1996.

Adolescent Medicine Consultant - Oklahoma State Health Department (1996 - 1999)

American Medical Association - Section on Adolescent Health (1996)

Council of State and Territorial Epidemiologists and Centers for Disease Control & Prevention – Recommendations for public health surveillance of *Chlamydia trachomatis* and *Neisseria gonorrhoeae*. Atlanta, GA. (1997)

External Consultant, Health Behavior Module. Center for Education in Drug Abuse Research. Dr. Ralph Tarter, Principal Investigator. University of Pittsburgh, Pittsburgh, PA. (1998)

Girls Incorporated - medical consultant for a national pregnancy prevention curriculum (1998)

Centers for Disease Control and Prevention: Genital Herpes Prevention Project. Atlanta, GA, May 5-6, 1998.

Centers for Disease Control and Prevention. Division of STD Prevention Research Review. Atlanta, GA, January 7-8, 1999.

Centers for Disease Control and Prevention. External Consultant. Human Papilloma Virus Prevention. April 13 –14, 1999.

Centers for Disease Control and Prevention. External Reviewer. March, 2000.

Centers for Disease Control and Prevention, National Institute of Child Health and Human Development and Office of Population Affairs. Consultant. Addressing Ambivalence in Contraceptive Use. June, 2000.

National Institute for Mental Health. Working Group on Stigma. 1999 – 2002.

Department of Health and Human Services. Surgeon General's Call to Action on Promoting Responsible Sexual Behavior. July, 2000.

Centers for Disease Control and Prevention. National Expert Panel on Adolescents and STD Prevention. Atlanta, GA. September, 2000.

National Institutes of Health. Social Science, Nursing, Epidemiology and Methods (3) Initial Review Group. Member: 1998 – 2003.

The Kinsey Institute for Research in Sex, Gender, and Reproduction: Summer Graduate Training Institute “Interventions for High-Risk Sexual Behavior: Design, Implementation and Evaluation”. June 9-16, 2002.

The Annenberg Public Policy Center, University of Pennsylvania. “Reducing Adolescent Risk: Toward an Integrated Approach” June 27-30, 2002.

American Social Health Association. Herpes Stigma Colloquium. Invited speaker. Oct. 3, 2003.

Alliance for Microbicide Development. Invited speaker, Feb, 2005.

National Institute for Child Health & Human Development. Health Disparities & Infertility. Invited speaker, March 11, 2005.

Centers for Disease Control & Prevention. National STD Prevention Meeting, guiding committee. May, 2005; January, 2006; February 2009; September 2013.

Centers for Disease Control & Prevention. Consultant; recommendations for male chlamydia screening. April, 2006.

Centers for Disease Control & Prevention. External reviewer of research portfolio of Division of STD; sub-group chair for portfolio of the Behavioral Interventions Research Branch; October, 2007 – February, 2008, November 2009.

Chair, ZHD1 DSR-M Special Emphasis Review Panel National Institutes of Health, April 4, 2011.

NIH ZAI1- UKS-A-M1 Special Emphasis Panel for RFA-14-025 “Integrated Preclinical/Clinical Program for HIV Topical Microbicides and Biomedical Prevention” (IPCP-MBP) (U19), March 9-10, 2015.

*Professional Leadership, Editorial Boards and Editorships:*

Society for Adolescent Medicine Board of Directors 1998 – 2001

*Journal of Adolescent Health* – Editorial Board (2005 – present)

*Journal of Sex Research* – Associate Editor (2006 - 2016)

*Archives of Sexual Behavior* – Consulting Editor and editorial board (2006 - present)

Society for Research on Adolescence – Journal Advisory Committee (2004 - 2008)

International Society for STD Research – Board of Directors (2006 – 2007)

American Sexually Transmitted Diseases Association – Member, Executive Committee (2007 – 2014)

*Sexually Transmitted Diseases* – Editorial Board (2011 – present)

American Sexual Health Association – Board of Directors, Chair (2014 – present).

International Academy for Sex Research – President, 2012 – 2015

International Union against STI - IUSTI Executive Committee; 2013 – 2017; IUSTI North America Regional Chair

American Sexually Transmitted Diseases Association – President; 2016-2018.

**Visiting Scholar Lectures:**

- Center for HIV/AIDS Research, Columbia University. New York NY. Feb, 2004

- Department of Pediatrics, University of Texas Medical Branch. Galveston TX. Feb, 2004

- Center for Family and Demographic Research. Bowling Green State University. Bowling Green OH April, 2004.

- Long Island Community Hospital, Department of Medicine. Brooklyn NY, May 2005.

- University of Pittsburgh, Department of Pediatrics, Pittsburgh PA, November 1, 2005.

- National STD Prevention Conference, Jacksonville FL. May 10, 2006 (invited plenary).

- Children’s National Medical Center, Washington DC, June 8, 2006.

- International Society for STD Research, Seattle WA, July 30, 2007 (invited plenary).

- Institute for Behavioral Science, Boulder CO, Oct 2-3, 2007.

- Centers for Disease Control & Prevention, Atlanta GA Sept 9, 2010 (invited keynote).

- Society for Scientific Study of Sexuality, Las Vegas NV, Nov 12, 2010 (plenary).
- National Stakeholders in Sexual Health, Washington DC. Dec 10, 2010
- Merck Inc. Phoenix AZ Mar 22, 2011
- University of California, Long Beach, Los Angeles CA. Mar 23, 2011, (invited lecturer).
- Centers for Disease Control & Prevention, Atlanta GA Sept 9, 2010 (invited keynote).
- Society for Scientific Study of Sexuality, Las Vegas NV, Nov 12, 2010 (plenary).
- National Stakeholders in Sexual Health, Washington DC. Dec 10, 2010
- Society for Adolescent Health & Medicine, Seattle WA. Apr 1, 2011 (invited lecturer).
- AIDS Impact, Santa Fe NM. Sept 15, 2011 (invited plenary).
- Loyola University, Chicago IL. Sept 28, 2011 (invited lecturer).
- International Union against STI, New Delhi India November 29, 2011 (invited lecturer).
- Symposium of the Amsterdam School, Academic Medical Center of the University of Amsterdam (invited lecture)
- Baystate Medical Center, Springfield MA (Oct 19, 2012)
- Department of Epidemiology and Biostatistics, University of Cincinnati, 12/14/2012.
- Department of Psychology, University of Missouri at St. Louis, 3/2013.
- Region 3 STI/HIV Prevention Training Center – Invited Plenary, 6/2013.
- Center for HIV/AIDS Research, Columbia University. New York NY. February 27, 2014.
- University of Amsterdam. Amsterdam, Netherlands, April, 2015.
- University of Utrecht. Utrecht, Netherlands, April 2015.
- Mountain Plains HIV Training Center, August 2015.
- University of Minnesota, November 2015.
- Harvard University Center for AIDS Research – Invited Plenary, May 2016
- Southeastern AIDS Education & Training Center. June 1, 2016 (webinar; 150 participants).
- Association for Sexuality Education, Counseling & Therapy – January 2017; Invited Plenary.
- Society for Research on Child Development – April 2017; invited discussant.
- New Mexico AHEC – April 2018 Invited plenary.

## **Publications**

### **Books/Chapters**

1. For Kid's Sake: An Advanced Curriculum in Child Sexual Abuse for Health Care Professionals. Gallmeier TM, Bonner BL, eds. Oklahoma City, OK: Oklahoma State Department of Health, 1988 (contributor).
2. Fortenberry JD. Maternal Age as a Predictor of Substance Use during Pregnancy. Master's Thesis, University of Oklahoma, 1989.
3. Hill RF, Solomon G, Tiger J, Fortenberry JD. Complexities of ethnicity among Oklahoma Native Americans: Health behaviors of rural adolescents. in: Stein HF, Hill RF (eds) The Culture of Oklahoma. University of Oklahoma Press (1993)
4. Fortenberry JD, Cecil H, Zimet GD, Orr DP. Concordance between diary and self-report questionnaires of sexual behaviors of adolescent women. in Bancroft J. (ed.) Researching Sexual Behavior. Indiana University Press, 1997; pp. 237-249.
5. Fortenberry JD. Discussion Paper. In: Bancroft J. The Role of Theory in Sex Research. Bloomington IN: Indiana University Press, 2000, pp 282 – 285.
6. Fortenberry JD. Health behaviors and reproductive health risk within adolescent sexual dyads. In: Florsheim P.(ed) Adolescent romantic relations and sexual behavior: Theory, research, and practical implications New York: Lawrence Erlbaum Associates, pp 279 -296, 2003
7. Fortenberry JD. Sexually transmitted diseases. In: Neinstein L. Adolescent Health Care: A Practical Guide (4<sup>th</sup> edition), (5<sup>th</sup> edition), (6<sup>th</sup> edition). New York: Williams & Wilkin, 2002, 2008, 2015.
8. Fortenberry JD. Syphilis. In: Neinstein L. Adolescent Health Care: A Practical Guide (4<sup>th</sup> edition). New York: Williams & Wilkin, 2002, 5<sup>th</sup> edition (2008), 6<sup>th</sup> edition (2015).

## EXHIBIT A

10. Shew ML, Fortenberry JD. Sexually Transmitted Diseases. in: Finberg L, Kleinman R (eds). Saunder's Manual of Pediatric Practice. 2<sup>nd</sup> ed. (2002) and 3<sup>rd</sup> ed. (2007).
11. Fortenberry JD, Aalsma MC. Abusive sexual experiences before age 12 and adolescent sexual behaviors. In Bancroft J (ed). Research on childhood sexuality. Bloomington, IN.: Indiana University Press, pp. 293-300, 2003.
12. Fortenberry JD. Adolescent sex and the rhetoric of risk. In: Romer, D. Reducing Adolescent Risk: Toward an Integrated Approach. Sage Press, 2003 .
13. Fortenberry JD. Sexually transmitted diseases in adolescents. In: UpToDate, 2007 - present (revised two times per year, published continuously). Wellesley MA: UpToDate, Inc.
14. St. Lawrence JS, Fortenberry JD. Behavioral interventions for STDs: Theoretical models and intervention methods. In: Aral SO, Douglas JM Jr, Lipshutz JA (eds). Behavioral Interventions for Prevention and Control of Sexually Transmitted Diseases. New York: Springer Science+Business Media, 2007, pp. 23-59.
15. Blythe MJ, Fortenberry JD. Sexually transmitted infection syndromes. In: Principles and Practice of Pediatric Infectious Diseases (3<sup>rd</sup> Edition). New York: Churchill Livingstone.
16. Fortenberry JD, Hensel DJ. (2012) Adolescent sexual health and sexually transmitted infections: A conceptual and empirical demonstration. In: Fenton KA, Aral SO, Lipshutz JA. *The New Public Health and STD/HIV Prevention: Personal, Public and Health Systems Approaches*. Pp 293-308.
17. Best CA, Fortenberry JD. Adolescent Sexuality and Sexual Behavior. In: O'Donohue W, Benuto L, Tolle LW. *Handbook of Adolescent Health Psychology* Springer Publishers, 2013.
18. Fortenberry JD. Adolescent Sexual Health. In: Bromberg DS, O'Donohue WT. *Handbook of Child and Adolescent Sexuality: Developmental and Forensic Psychology*. Elsevier Publishing Services, 2013.
19. Hensel DJ, Fortenberry JD. Lifespan Sexuality through a Sexual Health Perspective. *APA Handbook on Sexuality and Psychology*. Washington, D.C.: APA Press; 2013.
20. Weaver BA, Fortenberry JD. Gonorrhea. In: Hillard P. *Practical Pediatric and Adolescent Gynecology*. 2012.
21. Fortenberry JD, Hensel DJ. Trajectories of Within-Relationship Relationship Quality, Relationship Satisfaction and Sexual Satisfaction among Young African-American Women. In: Agnew CR, South S (eds) *Interpersonal Relationships and Health: Social and Clinical Psychological Mechanisms*. Oxford University Press (2014)
22. Fortenberry JD. Adolescent sexual health is not an oxymoron. In Kempner M. (ed): *Creating a Sexually Healthy Nation: Celebrating 100 Years of the American Sexual Health Association*. North Carolina: 2014.

#### Articles

##### 1985

1. Fortenberry JD. Gasoline sniffing. *American Journal of Medicine* 79(6):740-4, 1985. PMID: 3907347

##### 1986

2. Fortenberry JD, Hill RF. Sister-sister incest as a manifestation of multi-generational sexual abuse. *Journal of Adolescent Health Care* 7(3):202-4, 1986. PMID: 3700201
3. Scott B, Fortenberry JD. Postgonococcal conjunctivitis due to *Chlamydia*. *Sexually Transmitted Diseases* 13(3):172-3, 1986. PMID: 3764629

##### 1987

4. Reyes de la Rocha S, Brown MA, Fortenberry JD. Pulmonary function abnormalities in intentional spray paint inhalation. *Chest* 92:100-104, 1987. PMID: 3595219

##### 1988

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5. Sayger SA, Fortenberry JD, Beckman RJ. Practice patterns of teaching testicular self-examination to adolescent patients. *Journal of Adolescent Health Care* 9:441-2, 1988. PMID: 3170312

6. Fortenberry JD, Kaplan DW, Hill RF. Physicians' values and experience during adolescence. *Journal of Adolescent Health Care* 9:46-51, 1988. PMID: 3335470

1989

7. Johnson J, Fortenberry JD, Demetriou E, et al. A sexually transmitted diseases curriculum in adolescent medicine. *American Journal of Diseases of Children* 143:1073-1076, 1989. PMID: 2773885

8. Fortenberry JD, Evans DL. Routine screening for genital *Chlamydia trachomatis* in adolescent females. *Sexually Transmitted Diseases* 16:168-172, 1989. PMID: 2688146

9. Fortenberry JD, Shew ML. Fatal *Pneumocystis* pneumonia in an adolescent with SLE. *Journal of Adolescent Health Care* 10:570-572, 1989. PMID: 2606762

1990

10. Hill RF, Fortenberry JD, Stein, HF. Culture in clinical medicine. *Southern Medical Journal* 83:1071-1080, 1990. PMID: 2205923

1991

11. Holden EW, Zimmerman JL, Fortenberry JD. Recurrent diabetic ketoacidosis: Larger systems issues. *Journal of Strategic and Systemic Therapies*. 10:52-66; 1991.

1992

12. Hill RF, Fortenberry JD. Adolescence as a culture-bound syndrome. *Social Science and Medicine* 35:73-80, 1992. PMID: 1496414

13. Fortenberry JD. Reliability of adolescents' self-reports of height and weight. *Journal of Adolescent Health* 13:114-117; 1992. PMID: 1627577

14. Shew ML, Fortenberry JD. Syphilis screening in adolescents. *Journal of Adolescent Health*. 13:303-305; 1992. PMID: 1610847

1993

15. Johnson J, Neas B, Parker DE, Fortenberry D, Cowan LD. Screening for urethral infection in adolescent and young adult males. *Journal of Adolescent Health* 14:356-361; 1993. PMID: 8399246

1994

16. Shew ML, Fortenberry JD, Miles P, Amortegui AJ. The relationship of the interval between menarche and first sexual intercourse and risk of human papillomavirus infection. *Journal of Pediatrics* 125:661-666, 1994. PMID: 7931894

1995

17. Costa F, Jessor R, Donovan JE, Fortenberry JD. Early initiation of sexual intercourse: The influence of psychosocial unconventionality. *Journal of Research on Adolescence* 5: 93-121, 1995.

18. Fortenberry, JD. Substance use and sexually transmitted diseases risk of adolescents: A review. *Journal of Adolescent Health* 16: 304-308, 1995. PMID: 7612636

1996

19. Costa FM, Jessor R, Fortenberry JD, Donovan JE. Psychosocial conventionality, health orientation, and contraceptive use in adolescence. *Journal of Adolescent Health* 18:404-416, 1996. PMID: 8803732

1997

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20. Fortenberry, JD, Health care-seeking behaviors related to sexually transmitted diseases among adolescents. *American Journal of Public Health* 87:417-420, 1997. PMID: 9096544 PMC1381015
21. Fortenberry JD, Orr DP, Katz BP, Brizendine E, Blythe MJ. "Sex under the influence": A diary self-report study of substance use and sexual behavior among adolescent females. *Sexually Transmitted Diseases* 24:313-319, 1997. PMID: 9243736
22. Fortenberry JD, Orr DP, Zimet GD, Blythe MJ. Weekly and seasonal variation in adolescent sexual behaviors. *Journal of Adolescent Health* 20:420-425, 1997. PMID: 9178078
23. Zimet GD, Liao A, Fortenberry JD. Health beliefs and intention to be immunized for HIV. *Journal of Adolescent Health* 20:354-359, 1997. PMID: 9168382
24. Orr DP, Fortenberry JD, Blythe MJ. Validity of self-reported sexual behaviors in adolescent women using biomarker outcomes. *Sexually Transmitted Diseases* 24:261-266, 1997. PMID: 9153734
25. Fortenberry JD, Costa FM, Jessor R, Donovan JE. Contraceptive behavior and adolescent lifestyles: A structural modeling approach. *Journal of Research on Adolescence* 7:307-329, 1997. PMID: 12292602
26. Fortenberry JD. Condom availability in schools. *Adolescent Medicine: State of the Art Reviews* 8:11-16, 1997. PMID: 10360026
27. Fortenberry JD. Number of sexual partners and health lifestyle of adolescents: Use of the AMA's *Guidelines for Adolescent Preventive Services* to address a basic research question. *Archives of Pediatric and Adolescent Medicine* 151:1139-1143, 1997. PMID: 9369876
28. Zimet GD, Fortenberry JD, Fife KH, Tying SK, Herne K, Douglas JM. Acceptability of genital herpes immunization: The role of health beliefs and health behaviors. *Sexually Transmitted Diseases* 24:555 -560, 1997. PMID: 9383842

1998

29. Liao A, Zimet GD, Fortenberry JD. Attitudes about HIV immunization: The influence of health beliefs and vaccine characteristics. *Sexually Transmitted Diseases* 25:76-81, 1998. PMID: 9518382
30. Fortenberry JD. Alcohol, drugs and STD/HIV risk among adolescents. *AIDS Patient Care and STDs* 12:707-710, 1998. PMID: 11362023
31. Orr DP, Fortenberry JD. Screening adolescents for sexually transmitted infections. *JAMA* 280:654-565, 1998 (invited editorial). PMID: 9707150
32. Katz BP, Fortenberry JD, Orr DP. Factors affecting chlamydial persistence or recurrence one and three months after treatment. In: Stephen RS, Byrne GI, Christiansen G., et al. (eds). *Proceedings of the Ninth International Symposium on Human Chlamydial Infections* (1998).

1999

33. Howard MM, Fortenberry JD, Blythe MJ, Zimet GD, Orr DP. Patterns of sexual partnerships among adolescent females. *Journal of Adolescent Health* 24:300 – 303, 1999. PMID: 10331835
34. Fortenberry JD, Brizendine EJ, Katz BP, Wools KK, Blythe MJ, Orr DP. Subsequent sexually transmitted infections among adolescent women with genital infection due to *Chlamydia trachomatis*, *Neisseria gonorrhoeae* or *Trichomonas vaginalis*. *Sexually Transmitted Diseases* 26:26 – 32, 1999. PMID: 9918320
35. Fortenberry JD, Zimet GD. Received social support for STD-related care-seeking among adolescents. *Journal of Adolescent Health* 25:174-178, 1999. PMID: 10475492
36. Zimet GD, Fortenberry JD, Blythe MJ. Adolescents' attitudes about HIV immunization. *Journal of Pediatric Psychology* 24: 67-75, 1999.
37. Webb PM, Zimet GD, Fortenberry JD, Blythe MJ. Comparability of a computer-assisted versus written method for

collecting health behavior information among adolescent patients. *Journal of Adolescent Health* 24:383-388, 1999. PMID: 10401965

38. Bull SS, Rietmeijer C, Fortenberry JD, Stoner B, Malotte K, Van Devanter N, Middlestadt SE, Hook EW III. Practice patterns for the elicitation of sexual history, education and counseling among providers of STD services: Results from the Gonorrhea Community Action Project (GCAP). *Sexually Transmitted Diseases*. 26:584- 589, 1999. PMID: 10560723

39. Webb PM, Zimet GD, Mays R, Fortenberry JD. HIV immunization and anticipated effects on sexual behavior among adolescents. *Journal of Adolescent Health* 25:320-322, 1999. PMID: 10551661

#### 2000

40. Katz BP, Fortenberry JD, Zimet GD, Blythe MJ, Orr DP. Partner-specific relationship characteristics and condom use among youth with sexually transmitted infections. *Journal of Sex Research* 37:69 – 75, 2000.

41. Zimet GD, Mays RM, Fortenberry JD. Vaccines against sexually transmitted infections: Promise and problems of the magic bullets for prevention and control. *Sexually Transmitted Diseases*, 27:49 – 52, 2000. PMID: 10654869

42. Zimet GD, Blythe MJ, Fortenberry JD. Vaccine characteristics and acceptability of HIV immunization among adolescents. *International Journal of STD & AIDS* 11:143-149, 2000. PMID: 10726935

#### 2001

43. Whittington WLH, Kent C, Kissinger P, Oh MK, Fortenberry D, Hillis SE, Litchfield B, Bolan GA, St. Louis ME, Farley TA, Handsfield HH. Determinants of persistent and recurrent *Chlamydia trachomatis* infection in young women: Results of a multicenter cohort study. *Sexually Transmitted Diseases*, 28:117-123, 2001. PMID: 11234786

44. Katz BP, Fortenberry JD, Tu W, Harezlak J, Orr DP. Sexual behavior among adolescent women at high risk for sexually transmitted infections. *Sexually Transmitted Diseases*, 28:247-251, 2001 PMID: 11354261.

45. Fortenberry JD et al., Relationship of health literacy to gonorrhea-related care. *Sexually Transmitted Infections*, 77:206-211, 2001. PMID: 11402232 PMC1744316

46. Orr DP, Johnston K, Brizendine E, Katz B, Fortenberry JD. Subsequent sexually transmitted infection in urban adolescents. *Archives of Pediatrics and Adolescent Medicine*, 155:947-953, 2001. PMID: 11483124

#### 2002

47. Fortenberry JD, Tu W, Harezlak J, Katz BP, Orr DP. Condom use as a function of time in new and established adolescent sexual relationships. *American Journal of Public Health*, 92:211-213, 2002. PMID: 11818293 PMC1447044

48. Kissinger P, Clayton JL, O'Brien ME, Kent C, Whittington W, Oh MK, Fortenberry D, et al. Older partners not associated with lack of condom use, partner treatment or recurrence among teenaged women infected with *Chlamydia trachomatis*. *Sexually Transmitted Diseases* 29:144-149, 2002. PMID: 11875375

49. Fortenberry JD. Clinic-based service programs for increasing responsible sexual behavior. *Journal of Sex Research* 39:63-66, 2002. PMID: 12476259

50. Mahon BE, Rosenman MB, Graham MF, Fortenberry JD. Post-partum *Chlamydia trachomatis* and *Neisseria gonorrhoeae* infections. *American Journal of Obstetrics & Gynecology*;186:1320-5, 2002. PMID: 12066116

51. Fortenberry JD. Unveiling the hidden epidemic of sexually transmitted diseases. (invited editorial) *Journal of the American Medical Association*, 287:764-765, 2002. PMID: 11851546

52. Fortenberry JD, McFarlane M, et al. Relationships of stigma and shame to gonorrhea and human immunodeficiency virus screening. *American Journal of Public Health*, 92:378-381, 2002. PMID: 11867314 PMC1447083

53. Aalsma MC, Zimet GD, Fortenberry JD, Blythe M, Orr DP. Reports of childhood sexual abuse by adolescents: Stability over time. *Journal of Sex Research*, 39: 259-263, 2002. PMID: 12545408

54. Fortenberry JD, Brizendine EJ, Katz BP, Orr DP. The role of self-efficacy, anticipated consequences and relationship

quality in adolescents' partner notification for sexually transmitted infections. *Archives of Pediatrics & Adolescent Medicine*, 156:1133-1137, 2002. PMID: 12413343

55. Cunningham SD, Tschann J, Gurvey JE, Fortenberry JD, Ellen JM. Attitudes about sexual disclosure and perceptions of stigma and shame. *Sexually Transmitted Infections*, 78:334-338, 2002. PMID: 12407233 PMC1744540

56. Fortenberry JD, Brizendine EJ, Katz BP, Orr DP. Post-treatment sexual and prevention behaviors of adolescents with sexually transmitted infections. *Sexually Transmitted Infections*, 78:365-368, 2002. PMID: 12407242 PMC1744530

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W., a minor child, by his next friend, )  
Wyatt Squires, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
EVANSVILLE VANDERBURGH SCHOOL )  
CORPORATION, )  
 )  
Defendant. )

No. 3:18-cv-00037-WTL-MPB

**Expert Declaration of Janine M. Fogel, M.D., C.C.F.P., A.B.F.M.**

**Preliminary Statement**

1. I have been retained by counsel for the plaintiff as an expert in connection with the above-captioned litigation. I have actual knowledge of the matters stated in this declaration.
2. Attached to this declaration is my current curriculum vitae. As noted, I am currently the Medical Director of the Transgender Health and Wellness Program at the Eskenazi Health Outpatient Center in Indianapolis.
3. I was licensed to practice medicine in Indiana in 1996
4. I have extensive experience in providing medical care for persons who are transgender. I have treated more than 250 persons who are transgender. I provide primary care and hormone therapy and work with older adolescents and adult transgender patients.

5. The Transgender Health & Wellness Program also provides surgical options for transgender patients through University Gender Affirmation Surgery.

6. In preparing this declaration I have relied on my knowledge obtained from years of experience in the field, as set out in my curriculum vitae. The materials I have relied upon in preparing this declaration are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject. I am also familiar with literature in this area, which is voluminous. I recently reviewed a survey of 73 studies on transgender issues published by the WHAT WE KNOW SITE of Cornell University entitled *What does the scholarly research say about the effect of gender transition on transgender well-being?*, available at <https://whatweknow.inequality.cornell.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-the-well-being-of-transgender-people/>. This is a thorough review of peer-reviewed articles focusing on gender transition in cases of gender dysphoria. I have also reviewed the complaint that was filed in this case and the medical records of plaintiff from ECHO Community Health Care and Within Sight, both of which are in Evansville, Indiana.

7. I have not testified as an expert at trial or in a deposition in the last four years.

8. I am being compensated for my services at the rate of \$500 an hour for review of records and preparation of any reports or declarations. However, I am only charging a fee for those services for blocks of time greater than 30 minutes. I will charge \$500 an hour for deposition and trial testimony. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

**Gender identity and gender dysphoria**

9. Gender identity is a recognized medical concept that refers to one's sense of belonging to a particular gender.
10. Gender identity is established early in life and is fixed.
11. Typically, gender identity matches the anatomical features that a person is born with. A person born with a vagina, uterus, and ovaries identifies as female, while a person born with a penis and testes identifies as male.
12. However, a transgender individual has a gender identity that differs from the sex assigned at birth. This gives rise to a conflict between the person's assigned at birth gender and the person's gender identity, which is diagnosed as "gender dysphoria."
13. For many persons with gender dysphoria this conflict may arise at a very young age.
14. Gender dysphoria, formerly referred to as "gender identity disorder" is a recognized condition codified in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-V) at 302.85 and the World Health Organization's International Classification of Diseases-10 (ICD-10) at F64.0. These are both standard classifications of mental and physical disorders.
15. The DSM-V at 302.85, establishes the following well-accepted criteria for the diagnosis of gender dysphoria in adolescents and adults:
  - A. A marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months duration, as manifested by at least two of the following:
    1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics (or in young adolescents, the anticipated sex characteristics).

2. A strong desire to be rid of one's primary/and or secondary sex characteristics because of a marked incongruence with one's experienced/expressed gender (or in young adolescents, a desire to prevent the development of the anticipated secondary sex characteristics).
3. A strong desire for the primary and /or secondary sex characteristics of the other gender.
4. A strong desire to be of the other gender (or some alternative gender different from one's assigned gender).
5. A strong desire to be treated as the other gender (or some alternative gender different from one's assigned gender).
6. A strong conviction that one has the typical feelings and reactions of the other gender (or some alternative gender different from one's assigned gender).

B. The condition is associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.

16. ICD-10 describes, at F64, "gender identity disorder." This is "[a] disorder characterized by a strong and persistent cross-gender identification (such as stating a desire to be the other sex or frequently passing as the other sex) coupled with persistent discomfort with his or her sex (manifested in adults, for example, as a preoccupation with altering primary and secondary sex characteristics through hormonal manipulation or surgery."

17. The "gender identity disorder" described in ICD-10 is the same as "gender dysphoria" as set out in the DSM-V. The more modern term is "gender dysphoria" and will be used in this declaration. In fact, on June 18, 2018, the World Health Organization announced that in ICD-11 the term "gender dysphoria" was to be used.

18. Gender dysphoria is a serious condition as persons with gender dysphoria may often experience significant emotional distress and problems functioning as they experience a conflict between the way they feel and think of themselves and the gender assigned to them at birth.

19. Although research regarding the precise determinant of gender identity is still ongoing, evidence strongly suggest that gender identity is innate or fixed at a very young age and that gender identity has a strong biological basis.

20. If untreated, gender dysphoria can interfere with normal life functions and can cause stress, anxiety, and suicide. Studies specify that 40% of all those who identify as transgender have attempted suicide at some time. This is much greater than the percentage for the population at large. Treatment of gender dysphoria has been shown to reduce the feelings of depression, anxiety and lowers the risk of suicide.

21. The World Professional Association for Transgender Health ("WPATH") has promulgated Standard of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People - 7th Version ("standards of care"), which are the internationally recognized guidelines for the treatment of persons with gender dysphoria.

22. I am very familiar with these standards and they are the standards that I, and other professionals who treat persons with gender dysphoria, utilize in our practices.

23. The Standards of Care have been endorsed as the authoritative standard by leading medical and mental health associations, including the American Medical Association, the Endocrine Society, the American Psychiatric Association, and the American Psychological Association.

24. The Standards of Care recognize that the treatment that must be provided must focus on alleviating distress through supporting outward expression of the person's gender identity - social role transition - along with bringing the person's body into alignment with the person's gender identity to the extent deemed medically appropriate through hormone therapy to either feminize or masculinize the person and, if warranted, surgery to alter the person's sex characteristics.

25. Psychotherapy may be helpful to the person with gender dysphoria. The purpose of psychiatric and mental health services is not to "cure" the person with gender dysphoria as this is not a condition that can be cured in this way. The purpose is to assist the person with the mental health problems that arise because of how the person with gender dysphoria is treated by society. The inability to have his or her gender identity accepted by family, friends, and society at large frequently causes depression, anxiety, and suicidality. These problems frequently are resolved when the person is able to be comfortable with his/her gender identity and this comfort is directly related to the acceptance that others display to the person with gender dysphoria.

26. In fact, studies show that if children are allowed to transition and are supported in the transition by family and friends that their rate of mental illness is the same as that of the population at large.

27. Not all persons with gender dysphoria choose surgery as an ultimate goal. Often the provision of hormones and social role transition are sufficient to ameliorate the anxiety and depression and other negative consequences of gender dysphoria.

28. Even without surgery, hormone therapy will profoundly change a person's physical appearance. The records of the plaintiff that I reviewed disclose that he is a young man who is transgender (*i.e.* he was assigned female at birth), who was diagnosed with what the DSM-V labels as gender dysphoria. With hormones the transgender male will become increasingly male in appearance. His voice will deepen, he will develop body and facial hair, muscle mass will increase, and body fat will be redistributed. This will start when the person begins to take the hormones and will continue as they are taken. He will be "masculine" in appearance. Typically, after a year of hormone therapy most of my transgender male patients will look very masculine. Hormone therapy will continue throughout the lifetime to maintain the physical changes.

29. Social role transition is extremely important. The ability of a person to feel they are openly living their gender role, which is the point of social role transition, is as important as medical treatment. Social role transition allows the transgender person to assume the role of his or her sexual identity and the greater the immersion of the person in his or her sexual identity, the better it is for the person's treatment. Social role transition may include such things as change of name and gender markers, dress, hairstyle, and use of the restrooms that match the person's sexual/gender identity.

30. The importance of being able to use restrooms that match the person's gender identity cannot be underestimated. Being forced to use restrooms that differ from the person's identity is a prime reminder that the transgender person is "different" and this undercuts the purpose and goal of social role transition.

31. There are also health consequences that follow denying a transgender person the ability to use restrooms associated with his or her gender identity. Many of my patients who are not able to use restrooms associated with their gender identity severely cut down their consumption of liquids and try to avoid using the restroom for extremely long periods of time. This can cause physical discomfort as well as kidney and/or bladder problems.

32. Moreover, it can be dangerous for a transgender person to use the restroom consistent with their sex assigned at birth. Studies show that transgender persons have a higher risk of being assaulted than the population at large. If a transgender male who has been on hormones for any length of time enters a female restroom it will be perceived as a man entering a women's room. This can lead to dangerous confrontations.

#### Verification

I verify, under the penalties of perjury, that the foregoing is true and correct.

Executed on: June 27, 2018



\_\_\_\_\_  
Janine M. Fogel, M.D.

Prepared by:

Kenneth J. Falk  
No. 6777-49  
ACLU of Indiana

**Indiana University School of Medicine**

**Curriculum Vitae**

**Name:** Janine M. Fogel

**Education:**

*Undergraduate:*

University of Toronto, Toronto, Ontario, Canada, Bachelor of Science (BSc) with Distinction (Human Biology and Psychology), 1980-1984.

*Graduate:* University of Toronto School of Medicine, M.D., 1984-1988.

*Postdoctoral:*

Mount Sinai Hospital, Toronto, Ontario, Canada, rotating internship, 1988-1989.

University of Toronto, Family Medicine Residency Training Program, 1989-1990.

**Academic Appointments:**

Lecturer in Family Medicine, 1990-1996. University of Toronto School of Medicine.

Lecturer in Family Medicine, 1996-2013. Indiana University School of Medicine.

Assistant Professor of Clinical Family Medicine, 2013-present. Indiana University School of Medicine

**Hospital Appointments:**

1990-1996: Attending Physician, Family Medicine, Women's College Hospital, Toronto, Ontario, Canada.

1990-1991: Attending Physician, Scarborough Grace Hospital, Scarborough, Ontario, Canada.

1996-1997: Attending Physician, Ball Memorial Hospital, Muncie, IN.

1996-present: Attending Physician, Indiana University Hospital, Indianapolis, IN.

1996-present: Attending Physician, Wishard Memorial Hospital/Eskenazi Hospital, Indianapolis, IN.

**Board Status:**

Board Certified Canadian College of Family Physicians (CCFP), 1990.

Board Certified American Academy of Family Physicians (AAFP), 1997, 2013.

**Licensure and Certification:**

Province of Ontario, 1990-1996 (voluntarily allowed to expire).

State of Indiana (#010340455), 1996-present

Basic Life Support (BLS) certification, March 2016.

**Professional Organizations:**

Ontario Medical Association, 1990-1996.

Canadian College of Family Physicians, 1990-present.

American Academy of Family Physicians, 1997-present.

World Professional Association of Transgender Health, 2015-present.

**Honors and Awards:**

Paul H. Wells award in Pediatrics, 1988.

Primary Care Innovation Grant recipient for creation of a yoga and wellness program to improve the health of transgender patients – Eskenazi Hospital, Indianapolis, IN, 2016.

Women’s Philanthropy Leadership Council grant recipient for continuation of a yoga and wellness program to improve the health of transgender patients – Eskenazi Hospital, Indianapolis, IN, 2017.

NUVO Magazine’s Cultural Visionary Award for creation of the Transgender Health and Wellness Program at Eskenazi Hospital, Indianapolis, IN, June 2017.

St. Margaret’s Hospital Guild and Indiana Blood Center’s AIM Award recipient 2018, The AIM (Achievement in Medicine) Award recipient is selected by the St. Margaret’s Hospital Guild and honors a management-level member of the Eskenazi Health team who upholds the tradition of excellence in health care.

Designated a “Remarkable Project” by the Gage Award Committee for creating the Transgender Health and Wellness Program at Eskenazi Health, 2018.

**Employment:**

Staff Physician, Women’s College Hospital, Toronto, Ontario, Canada, 1990-1996.

Private Practice, Toronto, Ontario, Canada, 1990-1996.

Locum Tenens, private practice, Scarborough, Ontario, Canada, 1990.

Staff Physician, Bay Centre for Birth Control, Toronto, Ontario, Canada, 1990-1996.

Staff Physician, Breastfeeding Clinic, Women’s College Hospital, Toronto, Ontario, Canada, 1994-1996.

Staff Physician, Ball Memorial Hospital, Department of Family Medicine, Muncie, IN, 1996-1997.

Staff Physician, IU Medical Group, Primary Care, Indianapolis, IN, 1996-2006.

Staff Physician, National Center of Excellence in Women’s Health, Wishard / Eskenazi Hospital, Indianapolis, IN, 2006-present.

Staff Physician, Indiana University, Executive Health, Corporate Wellness and Prevention Program, Indianapolis, IN, 2011-present.

Medical Director—Transgender Health and Wellness Program at Eskenazi Hospital, Indianapolis, IN, March 2016-present.

**Teaching:**

Supervision of medical students and residents, 1990-present.

Mentored fourth year medical student, Indiana University School of Medicine, Indianapolis, IN, 2010-2011.

Supervised pre-med student, National Center of Excellence in Women’s Health, Indianapolis, IN July-August 2011.

Supervised pre-med student, Eskenazi Hospital’s Transgender Health and Wellness Program, June – August, 2016.

Supervised third year Family Medicine resident, Eskenazi Hospital Transgender Health and Wellness Program, January – February 2017.

Supervised MS4 IUSM student, Eskenazi Hospital Transgender health and Wellness Program, June 2017.

Supervised MS4 IUSM student, Eskenazi Transgender health and Wellness Program, June-July, 2017.

Mentored 2 college pre-med students, Eskenazi Transgender Health and Wellness Program, June-August, 2017.

Supervised IUSM adolescent medicine fellow, Eskenazi Transgender Health and Wellness Program, Eskenazi Hospital, Indianapolis, IN, August – November, 2017

Supervised Family Medicine Resident, Eskenazi Transgender Health and Wellness Program, Eskenazi Hospital, Indianapolis, IN, January, 2018.

**Professional Service:**

a) Committee service

Led planning committee for Eskenazi Transgender Health and Wellness program, September 2015-March 2016.

Member of Indiana University School of Medicine Office of Diversity Affairs LGBTQ Health Care Committee, 2016- ongoing

b) State and regional meetings (Oral Presentations)

“Wellness: Mind, Body and Soul” presented at Women of Influence Symposium hosted by the National Center of Excellence in Women’s Health, Indianapolis, IN, September 9, 2015

Cultural Competency Training – various groups throughout Eskenazi Hospital, December 2015-present

Transgender Health and Wellness Program Update – Center of Excellence Meeting, Eskenazi Hospital, February 3, 2016

Transgender Health and Wellness Program Update – CMO Meeting, Eskenazi Hospital, February 25, 2016

Transgender Health and Wellness Program Update – Leadership Forum, Eskenazi Hospital, March 8, 2016

Transgender Cultural Competency – Methodist Hospital Emergency Department Staff, Indianapolis, IN, April 2016

Transgender Health Care Update – Indiana University School of Medicine Lunch & Learn, Indianapolis, IN, April 1, 2016

Transgender Health Care Update – Horizon House, Indianapolis, IN, April 27, 2016

Transgender Health Care Info Exchange – Regional Out and Equal meeting hosted by Eli Lilly, Indianapolis, IN, May 24, 2016

Midtown Trauma Training – Transgender Healthcare, Indianapolis, IN, May 27, 2016, and June 13, 2016

Transgender Cultural Competency – Brebeuf Jesuit Preparatory School, Indianapolis, IN, June 2016

Transgender Health Care Update – Midtown Psychiatry Staff, Indianapolis, IN, June 2, 2016

Transgender Health Care Update – Rehabilitation Medicine Department, Eskenazi Hospital, Indianapolis, IN, June 14, 2016

Transgender Health Care Update – Nora Dental Associates, Indianapolis, IN, June 17, 2016

Transgender Health Update 2016 – University of Indianapolis, Indianapolis, IN, July 16, 2016

Doris Merritt M.D. Lectureship in Women’s Health panelist- Indiana University, Indianapolis IN, Sept 14, 2016

Indiana University School of Medicine Faculty Education, Enrichment and Development (FEED) Program leader– LGBTQ Interviewing Skills- Indianapolis IN, October 20, 2016, January 17, 2017, April, 2017

Improving Healthcare for Transgender People – Mid-America College Health Association, Indianapolis, IN, October 27, 2016

Improving Healthcare for Transgender People – Eskenazi Medical Group hospitalists, Indianapolis, IN, November 22, 2016

LGBTQ Cultural Competency panel member at the Indiana University School of Dentistry, Indianapolis IN, December 1 and 2, 2016

“Creation of a Multidisciplinary Transgender Medicine Program in the Midwest”, presented at USPATH conference, Los Angeles, CA, February 3, 2017

Organized, implemented and facilitated the first annual Transgender Healthcare Conference at Eskenazi Hospital, Indianapolis, IN March 10, 2017

Transgender Healthcare - Indiana State Department of Health’s (ISDH) STD Prevention Program, Indianapolis, IN, June 2,2017

Transgender Cultural Competency – Brebeuf Jesuit Preparatory School, Indianapolis, IN, June 2017

“Transgender Health and Wellness at Eskenazi Hospital”, presented as part of Diversity Today series, Eskenazi Hospital, Indianapolis, IN, July 26, 2017

“Transgender Health and Wellness at Eskenazi Hospital”, presented to Midwest Chapter- Aging Life Care Association (ALCA), Indianapolis, IN, August 8, 2017

“Transgender Health and Wellness at Eskenazi Hospital”, presented to SG Patient Care Leadership Council, Indianapolis, IN, September 14, 2017

LGBTQ Cultural Competency panel member at the Indiana University School of Dentistry, Indianapolis IN, September 20, 2017

Transgender Health and Wellness Program Update, Eskenazi Hospital Board meeting, October 17, 2017

“Improving LGBTQ+ Competency Training in a Large Midwestern Healthcare System”, a poster presentation at the 2017 Transforming Care: LGBTQ & HIV/AIDS Health Equity Conference, Columbus, OH. October 20, 2017

“LGBTQ Healthcare” training, Fairbanks Hospital, Indianapolis, IN. January 24, 2018

“LGBTQ Healthcare” training, Riley Hospital for Children – noon conference Indianapolis, IN. January 29, 2018

“Sexual Orientation and Gender Identity Data Collection” Indiana University School of Medicine Diversity Month presentation, Indianapolis, IN. January 30, 2018.

LGBTQ Healthcare Conference, Indiana University School of Medicine, Indianapolis IN. March 22-23, 2018. Organizer and speaker.

**Media:**

“Healthcare in the Closet”, Nuvo Magazine, Indianapolis, IN, February 3, 2016

“Rules Mandate Some Firms Cover Transgender Services”, Indianapolis Business Journal, Indianapolis, IN, October 22, 2016

Panelist with cast of “Hir”, Phoenix Theater, Indianapolis, IN, May 21, 2017

“A Trans Health Pioneer”, Nuvo Magazine, Indianapolis, IN, June 14, 2017

**Board Memberships:**

Member, Board of Directors, OutCare Health Indiana – Indianapolis, IN, June 2016-present

Date: August 13, 2017

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Janine M. Fogel, MD

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W., a minor child, by his next friend,	)	
Wyatt Squires,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-37-WTL-MPB
	)	
EVANSVILLE VANDERBURGH SCHOOL	)	
CORPORATION,	)	
	)	
Defendant.	)	

**Declaration of Judy Chiasson, Ph.D.**

Judy Chiasson, being duly sworn upon her oath and says that:

1. My name is Judy Chiasson, Ph.D. I have been the Program Coordinator for the Office of Human Relations, Diversity, and Equity in the Los Angeles Unified School District support services for fostering a safe and respectful district, school and community culture so that all students and staff can lead safe, purposeful and academically successful lives. I hold a Ph.D. in Urban Education from Claremont Graduate University. A true and correct copy of my curriculum vitae is attached to this declaration as Exhibit A.

2.

In the last four years I have not testified as an expert at trial or deposition in any case.

3. I am being compensated at the rate of \$250.00 an hour for review and preparation of any reports or declarations. However, I am only charging a fee for those services for blocks of time greater than 30 minutes. I will charge \$250.00 an hour for deposition and trial testimony. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

4. In preparing this declaration I have relied upon my knowledge obtained from my experience in the field as set out below and in my curriculum vitae. I have also reviewed the complaint filed in this case.

5. LAUSD is the second largest school district in the country, with 713,871 students attending more than 1,200 schools. According to the 2017 Youth Risk Behavior survey conducted by the Centers for Disease Control (CDC), approximately 1% of LAUSD secondary students, self-identify as transgender.

6 As Program Coordinator for the Office of Human Relations, Diversity and Equity, I am responsible for designing, implementing, and evaluating district-wide programs to reduce bullying, bias, and intergroup conflict. I oversee the design, adoption and delivery of evidence-based trainings to end bias, bullying, sexual harassment, and hazing among students and adults. I have developed resources for students, staff and parents on gender identity, student misconduct, and bullying. I also assess the schools' safety climate and conduct needs assessment by collecting and analyzing qualitative and quantitative data.

7 I have provided expert testimony before the California Senate and Assembly in support of LAUSD's positions on critical legislation, including the School Success and Opportunity Act of 2013 (AB 1266), a California state law clarifying that transgender

students are entitled to use facilities consistent with their gender identity, and Seth's Law of 2012 (AB 9), a bullying prevention law based on gender identity, gender expression, and sexual orientation. I frequently represent LAUSD in print, radio and television media outlets on matters of inclusive education, bullying, and LGBTQ concerns. I have conducted over 50 media interviews on transgender inclusive policies and practices.

8. Prior to working as Program Coordinator in the Office for Human Relations, Diversity and Equity, I was the Project 10 Specialist in the Office of General Counsel's Educational Equity and Compliance unit at LAUSD. In that role, I responded to incidents of bias, discrimination, or access based on protected categories. Two separate instances involving transgender students came to my attention, which prompted us to realize that LAUSD did not have formal guidelines in place for transgender students. We also noticed that our transgender students were having challenges at school, that they were disengaged from their classes and peers, and that their academics were suffering.

9. I was the primary author of LAUSD's first district-wide memorandum in 2004 that called for fully recognizing students' gender identity. In 2005, LAUSD adopted a formal policy requiring that transgender students be treated consistent with their gender identity in all aspects of their educational experience. The formal policy strongly recommended that schools grant transgender students full access to facilities that corresponded with their affirmed identity. Based on schools' overwhelming success in implementing that recommendation, we updated our policy in 2011 to require that transgender students have full access to facilities that match their gender identity. We have updated our policies for transgender students regularly to make them clearer and

stronger. We last updated the policy in August 2014. A true and correct copy of LAUSD's current transgender student policy is attached as Exhibit B.

10. While we were initially drafting supportive guidance on transgender students, we definitely had our concerns. We asked ourselves whether we were creating unanticipated problems by adopting an inclusive policy. Ultimately, though, we decided that as educators, we needed to manage our fears, and show our transgender students the dignity and respect that they deserve. We would not require someone with a physical disability to use a separate facility because of any discomfort expressed by the staff or other students. This is the same. Our job as educators is to give our students the best academic opportunity we can provide, and we should never step back from that charge because of our own fears or discomfort.

11. Since LAUSD's formal policy on transgender students was first implemented, I have overseen the implementation of LAUSD's transgender-inclusive policy and none of our concerns have materialized. Our transgender students use restrooms and locker rooms, participate in gym class, play on sports teams and attend overnight field trips in a way that corresponds with their gender identity. We treat our transgender students - our transgender boys and girls - like any other boys and girls, with the same rights, responsibilities, rules, and obligations. In the 14 years that we have had our policy, we have not had any problems with its implementation.

12 I describe our transgender-inclusive policy as solving problems, rather than creating them. Everybody is more comfortable. Transgender boys and girls want to be recognized and treated like all other boys and girls. Forcing a transgender boy to use the

female facilities would be extremely uncomfortable for all parties involved. For example, we had a new student who was a transgender boy. He was using the female facilities, incorrectly assuming that he would be required to do so. It was equally uncomfortable for him to use the girls' facilities as it was for the girls in those facilities. When the administration learned of the situation, they told the young man that he could use the boys' facilities. Everyone was relieved by this solution.

13. Our transgender students use the bathrooms for the same reasons that all other students use the restroom: to do their business, fix their hair and make-up, and gossip with friends. Going to the bathroom as a group is very normative behavior for teenagers. We want our transgender students to be fully integrated into the community. We do not want our transgender students to be stigmatized and not have full access to school spaces and social opportunities.

14.. While some transgender students request to use single-user, gender-neutral restrooms because they feel more comfortable there, more often transgender students want to be able to blend in just like any other boy or girl, using the same facilities as everyone else. We allow any student - not just transgender students - access to single-user facilities if they desire additional privacy for any reason. But it is important not to force any student, including transgender students, to use a facility separate from everyone else, which would send the stigmatizing message that they are different from their peers and need to be kept apart from other students.

15. There have been no instances of disruption caused by the policy. From my experience, it appears that disruption occurs when people anticipate that a transgender-

inclusive policy is going to be problematic. People's fears – frankly, primarily adult fears – are what are disruptive. Our experience has been that the fears of the adults have not played out. I have yet to be called into a situation to respond to an actual incident; I have only had to respond to fears, generally of adults and the fears have proven to be unfounded.

16. One fear that I have heard articulated is that a person will pretend to be transgender to be predatory. But being transgender is persistent and consistent throughout the day. A student is transgender in all of their classes, outside of their classes and in their relationships at school. I have never had someone pretend to be transgender for nefarious reasons. It is implausible to think that a presumably male student is going to come to school for months on end, wear female attire, present as female to all of his friends and teachers, just so he can enter a female restroom. In the rare instances that students enter an inappropriate restroom, LAUSD addresses the conduct in the same way we would address other disciplinary issues.

17. Our policy treats all students with the dignity they deserve. A school should have an affirming environment where all students feel they are welcomed members of the community. Schools also need to model the respect that they want the students to demonstrate. In my experience, there's a strong, causal relationship between bias and bullying and bias is highly predictive of bullying. If our schools' actions reflect bias towards a group of students, we are going to see an increase in bullying of those students. On the other hand, when schools model support, the students emulate the supportive behavior and treat each other with greater respect.

18. In 2013, California's legislature passed the School Success and Opportunity Act (AB 1266), a law that clarifies that transgender students must be allowed to use facilities that match their gender identity. Since that law took effect, school districts in California and across the country have contacted me to ask for advice about implementing their own transgender-inclusive policies. Those administrators often raise the same questions and fears we initially faced. However, I have learned that those districts have had the same success we have, and none of their fears materialized. I am not aware of any incidents of inappropriate behavior by transgender students who were permitted to use facilities that correspond with their gender identity. On the contrary, those supporting policies have both improved the educational experience for transgender students and created a more positive and inclusive school climate for everyone.

**Verification**

I verify under the penalties for perjury that the foregoing is true and corrected.

Executed on : June 25, 2018  
DATE

\_\_\_\_\_  
JUDY CHIASSON

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W., a minor child, by his next friend,	)	
Wyatt Squires,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-37-WTL-MPB
	)	
EVANSVILLE VANDERBURGH SCHOOL	)	
CORPORATION,	)	
	)	
Defendant.	)	

**Declaration of Judy Chiasson, Ph.D.**

Judy Chiasson, being duly sworn upon her oath and says that:

1. My name is Judy Chiasson, Ph.D. I have been the Program Coordinator for the Office of Human Relations, Diversity, and Equity in the Los Angeles Unified School District support services for fostering a safe and respectful district, school and community culture so that all students and staff can lead safe, purposeful and academically successful lives. I hold a Ph.D. in Urban Education from Claremont Graduate University. A true and correct copy of my curriculum vitae is attached to this declaration as Exhibit A.

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students are entitled to use facilities consistent with their gender identity, and Seth's Law of 2012 (AB 9), a bullying prevention law based on gender identity, gender expression, and sexual orientation. I frequently represent LAUSD in print, radio and television media outlets on matters of inclusive education, bullying, and LGBTQ concerns. I have conducted over 50 media interviews on transgender inclusive policies and practices.

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stronger. We last updated the policy in August 2014. A true and correct copy of LAUSD's current transgender student policy is attached as Exhibit B.

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female facilities would be extremely uncomfortable for all parties involved. For example, we had a new student who was a transgender boy. He was using the female facilities, incorrectly assuming that he would be required to do so. It was equally uncomfortable for him to use the girls' facilities as it was for the girls in those facilities. When the administration learned of the situation, they told the young man that he could use the boys' facilities. Everyone was relieved by this solution.

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**Verification**

I verify under the penalties for perjury that the foregoing is true and corrected.

Executed on : June 25, 2018  
DATE

  
JUDY CHIASSON

JUDY CHIASSON, PH.D.

MAY 2018

[Judy.chiasson@lausd.net](mailto:Judy.chiasson@lausd.net)

213-241-8719

Employee# 60546

#### EDUCATION

**Doctor of Philosophy in Urban Education, 2004**  
*Claremont Graduate University, Claremont, CA*

**Master of Science in Educational Therapy, 1995**  
*College for Developmental Studies, Los Angeles, CA*

#### SPECIAL SKILLS

Ability to build affirming learning and working place environments across race, ethnicity, culture, sexual orientation, gender identity, and intersecting micro-identities.. Advanced competencies in appreciative inquiry, mediation, conflict resolution, restorative practices, communication and presentation skills, media relations. Excellent written and oral communication. Strong research and evaluation skills.

#### PROFESSIONAL EXPERIENCE, Los Angeles Unified School District

##### HUMAN RELATIONS, DIVERSITY & EQUITY, COORDINATOR, 2006 to present

Responsible for designing, implementing and evaluating District-wide programs to reduce bullying, bias, and intergroup conflict, commercial sex trafficking, and ideologically based violent extremism, resulting in improved staff relations, student achievement and engagement, and reduction in school violence and District liability.

Leverage expertise in District policies, legal mandates, and bias reduction to ensure that schools and worksites are compliant, affirming, and violence-free.

Facilitate small and large-group trainings for administrators, teachers, counselors, and law enforcement about practical, legal and ethical guidelines of bias, discrimination, and bullying, thereby building capacity among leadership staff and affirming learning and working environments.

First responder in high impact incidents (intergroup conflicts, school or community violence, deaths due to natural and unnatural causes). Triage operational and mental health interventions for students, staff, parents and community members, thereby restoring school operations following critical incidents, prepare internal briefings and respond to media.

Represent District as primary respondent and author in high profile audits:

- Los Angeles County Civil Grand Jury Performance Audit of the School Discipline and Law Enforcement Policies at Los Angeles Unified School District, 2014
- California State Audit School Safety and Non Discrimination Laws, 2013
- Office of Inspector General Bullying and Hazing, 2014, 2016

##### **Implementation Methods:**

- Spearhead district's mandate to reduce SOGIE (sexual orientation, gender identity/expression) bias, bullying, discrimination, harassment and hazing among students and adults. Oversee the design, acquisition, and delivery of trainings and resources that are evidence based to increase positive school and work engagement.
- Develop/acquire resources for students, staff, and parents on sexual orientation, gender identity, sexual harassment, student misconduct, bully, cyber bullying, sex trafficking, religious intolerance, ideologically based violent extremism, and child abuse.
- Designed and launched robust District-wide campaigns and resources to address critical issues:
  - *OUT for Safe Schools*, annually since 2012, to promote SOGIE-affirming schools.
  - *17+ Ways to Stand or Kneel for Safe Schools* in solidarity with national efforts to end gun violence at schools.

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- *Talking Politics and Unity Day* to promote meaningful dialogues and community engagement following the November 2016 results of the presidential election and the January 2017 inauguration day.
- *Now Matters Later*, to reduce prevalence of sexting.
- *Healthy Relationships*, to promote positive peer interactions in middle schools.
- *Healing Communities*, to help schools address incidents of violent extremism (e.g., San Bernardino and Orlando shootings), Islamophobia, and community relationships with law enforcement.
- *Engaging Students in Peaceful Dialogues About Conflict and Bias*, to help schools facilitate conversations about race and identity.
- *Not in Our Schools*, to educate schools about commercial sex trafficking of children.
- Conduct confidential investigations and mediations among District personnel and community members, resulting in more cohesive work environments and mitigating liability.
- Represent the school district in national print, radio, and television media outlets on matters of inclusive education, bullying, child abuse, LGBTQ concerns, school unrest, intergroup conflicts, social media, sex trafficking, the 2017 presidential election, and other timely topics. Conducted over 50 media interviews on transgender inclusion alone.
- Assess school safety climate and conduct needs assessment through collection and analysis of internal and external qualitative and quantitative data from primary and secondary sources (surveys, interviews, observations and crime data, etc.)
- Conduct and facilitate professional development seminars, discussion groups, parent meetings, colloquia and classes targeting causes of intergroup bias, with an emphasis on positive resolution methods.
- Coordinated large-scale conferences Human Relations Symposia and Models of Pride with national leaders to address human relations, bias, SOGIE, social justice and child abuse topics for youth and adults.
- Coordinate multi-agency interventions to address school and community inter-group conflicts, leveraging resources from the ACLU, Museum of Tolerance, Los Angeles City Attorney's Office, LAPD, Anti-Defamation League, UCLA, and Loyola Law School Center for Conflict Resolution.
- Preceptor for Masters of Social Work interns from CSLA and USC. Oversee projects, establish goals, and provide mentorship.
- LAUSD Committee for External Research Review, evaluate proposals of external researchers
- Examined and appraise textbook and curricula for sensitive and accurate representations of LGBTQ concerns, prior to adoption.
- Authored chapters on sexual orientation and gender identity for middle school and high school textbooks, thus making LAUSD the first district to adopt inclusive curriculum.
- Spearhead District wide efforts to create cross-disciplinary curricula, policies and practices that are affirming of sexual orientation and gender identity.

**Intensive support climate assessments, facilitated dialogues, crisis response, mediations**

- Crisis team for the district-wide shut down in response to threat December 15, 2015
- Design comprehensive plans to reduce mitigation of community actions and offer innovative educational resources to enhance student engagement during critical incidents:
  - May 1, 2018, 2017 *May Day*, educational resources to immigration rights
  - March 14, 2018 -17+ *Ways to Stand or Kneel for Safe Schools; #Never Again*, support students in meaningful actions to voice their positions on gun violence in schools
  - September 2017 – *Charlottesville and Beyond*, educational resources to address racial conflict
  - January 20, 2017 – *Unity Day*, educational resources to discuss the inauguration
  - November 8, 2016– *Talking Politics*, educational resources to discuss the presidential election

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**EDUCATIONAL EQUITY COMPLIANCE, PROJECT 10 SPECIALIST, 2005 – 2006**

Ensured compliance with District mandates requiring bias-free campus practices and minimized liability by ensuring compliance with educational access in accordance with legal guidelines set forth in IDEA, Title IX, Section 504, Title VI, First Amendment, et al.

***Implementation Methods:***

- Responsible for implementation and monitoring of three-year settlement agreement that included, among other requirements, the delivery and evaluation of annual comprehensive LGBT diversity trainings for all community stakeholders at four LAUSD schools.
- Partnered with University of Southern California to measure efficacy of LGBT bias reduction program. Outcomes showed that 97% of participants showed reduction in bias following outreach.
- Coordinated implementation of settlement agreement encompassing forty corrective actions, including annual bias reduction trainings for over 5000 students at targeted high school and feeder middle schools.
- Assessed and evaluated District policies prior to implementation to ensure protected-class issues were adequately addressed; outreach to affected communities as necessary, including students, families, school personnel, and community agencies.

**Gays & Lesbians Initiating Dialogue for Equity, cofounder, 1984**

GLIDE is Los Angeles' premier speakers bureau on LGBTQ+ diversity. Reached 20,000 participants in diversity trainings throughout Los Angeles, creating safer more affirming schools for all students. GLIDE is an all-volunteer organization and accomplishes its transformative work through small group dialogues.

**CREDENTIALS, CERTIFICATIONS & ADVANCED TRAININGS**

Professional Clear Administrative Credential  
Multiple Subject, K-12, LH, SH, RSP, CLAD  
National Board Certified, Exceptional Needs, 2000  
Intensive Assistant Principal Special Educator Academy 2005  
Loyola Law School Center for Conflict Resolution, 2009  
Master's Program Institute, 2010  
Reasonable Accommodations for Supervisors, 2012  
LAPD Community Police Academy, 2012  
Appreciative Inquiry, 2012, 2013, 2014, 2017  
GLSEN LGBT Safe School Initiative Professional Development Facilitator, 2013  
Readiness and Emergency Management for Schools Adult Sexual Misconduct Training, 2012  
Restorative Justice, Council in Schools, August 2013, January 2014  
Commercial Sexual Exploitation of Children (CSEC) Training, 2015  
Sexual Exploitation and Commercial Sexual Exploitation of Gay Males and Transgender Females, 2016  
Active Shooter Response, 2016  
Working With Difficult People, UCLA 2016

**RECOGNITIONS AND AWARDS**

Associated Administrators of Los Angeles, 2014 Community Leadership Award  
Claremont Graduate University, 2011 Outstanding Leadership  
City of West Hollywood, 2011 Outstanding Leadership, Child Abuse and Neglect Prevention  
Advocate Magazine, 2010 Outstanding National Educator

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#### **EXPERT WITNESS & TESTIMONY**

Named as “person most knowledgeable” in state and national litigation and legislation regarding transgender students and LGBT-bias in the workplace. Provided Amicus Brief on litigation in Ohio, Virginia, North Carolina and the Fourth Circuit Court ruling on transgender persons’ access to facilities.

Expert testimony before the California Senate and Assembly in support of the District’s positions on critical legislation - FAIR Education Act of 2011 (SB 8); Proposition 8, Marriage Equality; Seth’s Law of 2012 (AB 9); School Success and Opportunity Act of 2013 (SB 1266).

#### **California Senate and Assembly Education Committees, 2013**

AB 1266 (Ammiano) the School Success and Opportunity Act. Testimonies to Assembly and Senate education committees regarding transgender students.

#### **Los Angeles Unified School District, 2008, 2016**

Expert testimony regarding allegations of workplace harassment based on sexual orientation.

#### **California Assembly, Judiciary Committees, 2008.**

Proposition 8, Marriage Equality. Testimony regarding Proposition 8’s relevance to public school instructional practices.

#### **PRIMARY OR SIGNIFICANT CONTRIBUTING AUTHOR**

##### **Board Resolutions and Position Statements:**

- LAUSD School Board Resolution to Eliminate, Address and Prevent Commercial Sexual Exploitation of Children (CSEC) in the Los Angeles Unified School District (LAUSD). 2016
- LAUSD School Board Resolution to recognize June as Gay Pride Month, annually, 2009 to date
- LAUSD School Board position statement supporting FAIR Education Act, 2011
- LAUSD School Board position statement supporting marriage equality, Proposition 8, 2008

##### **Policies and memoranda:**

- Bullying and Hazing Policy (Student-to-Student and Student-to-Adult), 2010, 2012, 2014
- Calendar of Commemorative Dates and Observances, updated annually to recognize religious, cultural and political dates and observances.
- Child Abuse Awareness Policy, 2016
- Guidelines for Sexual Orientation and Gender Identity Inclusive Education, 2014
- Guidelines for Teaching About Religions, 2011, 2014, 2016
- Social Media Policy for Employees and Associated Persons, 2012, 2014
- Social Media Policy for Students, 2016
- Transgender Students – Ensuring Equity and Nondiscrimination, 2004, 2011, 2015
- Workplace Violence, Bullying and Threats (Adult-to-Adult), 2011, 2012

Populate website for Human Relations, Diversity & Equity with policies, resources, educational materials on a full spectrum of human relations concerns, e.g., culture, race, religion, sexual orientation, gender identity and expression, and differently-abled, discrimination, bullying, bias, conflict resolution, community and intergroup violence, and restorative practices., <http://achieve.lausd.net/human-relations>

##### **Editor/Reviewer/Consultant**

*Journal of Homosexuality*, 2012 - present

*Journal of LGBT Youth*, 2009 – present

Public Health Law Research, *Anti-bullying laws: A blueprint for prevention*. June 2015,

[www.http://phlr.org](http://www.phlr.org).

Glencoe Publishers, *Health: Making Life Choices*. 2014

Los Angeles County Office of Education, *Addressing the Needs of Sexual Minority Youth in Public Education*, 2012-2014

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McGraw Hill Publishers, Health education text books for middle and high school, 2011  
Rutgers University, Online education, *LGBTQ Issues in Schools*

- Collaborate with university researchers:
  - Negin Ghavin, UCLA, Loyola Marymount *Value-Added of Peer Relationships in Reducing LGBTQ-Bias and Bullying; School Officers' Response to Student Misconduct*
  - Paul Kwon, Washington State University, and Peter Theodore, Alliant University, *A Resilience Intervention for Sexual Minority Adolescents and Young Adults.*
  - Gregory Phillips, UCLA, *Culturally Relevant Cyberbullying Prevention Strategies.*
  - Shabbar Ranapurwala, University of Iowa, *Assessment of Violence Prevention Curricula Programs in Middle and High Schools.*
  - Peter Theodore, Alliant International University, *The Efficacy of LGBT-Inclusive Curriculum in Reducing Bias and Bullying*

### **Publications**

Morgan, E. & Chiasson, J. (2014). Respecting the rights of transgender students. *National School Public Relations Association*, [http://www.nspra.org/e\\_network/2014-02\\_connecting-communities](http://www.nspra.org/e_network/2014-02_connecting-communities)

Chiasson, (2013). Success and Opportunity for Transgender Students. Huffington Post.com Success and Opportunity for Transgender Students. [http://www.huffingtonpost.com/judy-chiasson/success-and-opportunity-for-transgender-students\\_b\\_3744830.html](http://www.huffingtonpost.com/judy-chiasson/success-and-opportunity-for-transgender-students_b_3744830.html)

Chiasson, J. & Sanlo, R. (2013). Putting sexual orientation and gender identity in context: Historical influences and social trends. In E. S. Fisher & K. Komosa-Hawkins (Eds.), *Creating Safe and Supportive Learning Environments: A Guide for Working with Lesbian, Gay, Bisexual, Transgender, and Questioning Youth and Families (pp. 10-28)*. New York, NY: Routledge.

Chiasson, J. (2006). Three plaintiffs, nine defendants, twelve allegations. *United Teachers of Los Angeles*

Chiasson, J. (2005). The diversity of human relationships in *Lifetime health: Sexuality and society*, Holt, Rinehart and Winston

Chiasson, J. (2000). Poverty provides wealth of reasons for school's low ranking. *Los Angeles Times*

### **MEDIA SPOKESPERSON.**

Represent LAUSD in media outreach on topics of bullying, sexting, inclusive education, LGBTQ, and 2016 president election concerns:

Aljazeera America  
Asheville Citizen Times, July 2016  
Beverly Press, July 2016  
California Educator  
Capital Public Radio  
CBS  
Channel 4 News  
CNN, September 2011, July 2013  
Detroit Free Press, July 2016  
EdSource, 2015, 2016, 2017, Presidential election.  
Equality Matters  
ESPN 2016  
Fox News, February 2012, 2013, 2014

Hoy Newspaper  
Huffington Post, 2013,  
Independent Weekly, 2016  
John McMullen Radio Show  
KCRW, IMRU with Linda Birch, May 2011  
KNBC TV  
KNX Talk Radio,  
*Presidential election* January 2017  
*Transgender*, February 2017  
KPCC. June 2017, *Education Student well-being higher in diverse schools*  
KPFK Air Talk with Larry Mantle  
*FAIR Education Act*, September 2011

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*Bullying in LAUSD*, February 2017  
KPI Talk Radio, Nov. 2016, Trump  
KQED Public Radio  
LA Daily News  
LA Live, Fox TV Morning Show; August 2011  
LA School Report  
Los Angeles Times, 2014, 2015, 2016, 2017  
LaOpinion  
Mercury News  
Naked Truth Radio, November 2010  
National Geographic Documentary, *Gender Revolution*, February, 2017  
National Public Radio, *Talk of the Nation* 2010, 2013, 2016  
National School Board Association, August 2016  
NBC Universal  
New York Daily News, 2016  
New York Times, 2011, 2014, 2015  
*On These Shoulders We Stand*, 2011, documentary on school bullying  
Orange County Register  
Out in the 562

Profiled by LAUSD Journal, August 2011  
ProPublica  
Reno Gazette Journal, 2015  
Sacramento Bee  
San Diego Reporter  
San Gabriel Valley Tribune, 2015  
Sheila Kheul Talk Television Show, 2011  
*Teach Your Children Well*, documentary on the murder of student Larry King  
Telemundo  
The Daily Breeze, 2016  
The Daily Free Press, 2016  
The Hollywood Reporter, transgender students, 2017  
TIME Magazine, 2016 (cover article)  
TransAdvocate, 2015  
USA Today, 2016  
Univision, Nov. 2016 (Trump)  
Wall Street Journal, 2016  
Whittier Daily News  
Yomiuri Shimbun (Japan)

**Represent LAUSD on community partnerships**

Anti-Bully Coalition *Founding member, 2011*. Multi-agency collaborations of human relations organizations (LA County and LA City Human Relations; LA County Office of Education; Museum of Tolerance; Anti-Defamation League; et al).

California Safe Schools Coalition, San Francisco

Children's Hospital, *Connect to Protect Outreach to MSM Youth of Color*

City of Los Angeles Human Relations LGBT Advisory Council

City of Los Angeles, Mayor's Task Force, Strategies Against Violent Extremism, 2016. Member of 2017 cross-disciplinary delegation to Paris, London and Brussels for international collaboration on countering violent extremism and terrorism, 2017

County of Los Angeles, Hate Crimes Task Force, 2014

Division of Adolescent and School Health (DASH), joint venture of Center for Disease Control and American Psychological Association, Washington, DC

Foster Care Project, RISE, *June 2011 to present*. Partnership between LAUSD, Foster Services and LA Gay and Lesbian Center to build permanency with LGBT youth in foster care.

Gay and Lesbian Allied Administrators Association. *Co-founder, 2007*. First LGBT school administrators' association in the nation.

LAUSD Commission on Human Relations, Diversity and Equity, *2009 to present*. Coordinate the council of twenty commissioners representing all board members, bargaining units, and various community stakeholders in identifying ways to support the District's human relations concerns.

LGBT Health and Human Services Network

LGBT Mental Health Disparity Project

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LGBT Youth in Detention Task Force, *September 2010*. Established by Loyola Law School to address the concerns of incarcerated youth

LGBTQ Child Abuse and Neglect Prevention Council, *Founding member, 2008 to present*. First LGBTQ specific Child Abuse and Neglect Council, founded under auspices of LA County Child Abuse and Neglect Council to reduce over representation of LGBTQ children and youth as targets of abuse and neglect.

Los Angeles Police Department (LAPD), Community Relations Cadre, graduate, 2012

Los Angeles Police Department (LAPD) LGBT Working Collaborative, 2012 to date

National Stonewall Education Project, *February 2013 to present*, inaugural member of national consortium of school districts addressing needs of LGBTQ+ students.

Rainbow Families School Network, *Founder, 2008 to 2010*. First school district-affiliated association for LGBTQ+ parents in the nation.

Sacramento County Office of Education, California Teacher Recruitment Incentive Program

Suicide Prevention Intervention Network, SPIN, *Executive Steering Committee, September 2010* Partnership between LAUSD, the Los Angeles LGBT Center and community stakeholders to address bullying-related suicides nationwide.

Youth Advocacy Coalition *Founding member, 2009*. Collaboration of community based organizations serving youth

#### CONFERENCE ATTENDANCE

EDGY Child Abuse Conference, *Sexual Minority Youth in K-12*, Annually since 2011

Commercial Sexual Exploitation of Children, 2015, 2016

LGBTQI2-S TAY: Safe and Welcoming Environments for Youth, 2016

US Department of Education, Bullying conference, 2016

Changing Minds and Creating Healthy Trauma-Informed Communities, 2016

Commercial Sexual Exploitation of Children, July 2015

LGBT Sports Summit, Nike #BeTrue, 2014, 2013

Understanding OCR Guidance on Sexual Harassment and Violence, 2014

Los Angeles County Office of Education Suicide Prevention Summit, "Two Lives a Day Lost in L.A.,"  
September 2012

Office of Civil Rights, Department of Education, Investigative Training, September 2012

Adult Sexual Misconduct in School, June 2012

FBI Hate Crimes Training, July 2011

#### SELECTED PRESENTATIONS AND MEDIATIONS

*Presentation topics: SOGIE, Diversity, Conflict Resolution, Effective Communication, CyberSafety, Bullying, Commercial Sex Trafficking of Children*

#### CONFERENCE PRESENTATIONS

##### 2018

Gender Odyssey, *Creating Institutional Change: Activism from the Ivory Tower*, June 2018

LA County Mental Health and Spirituality, *Will God Still Love Me If I'm LGBT? Intersecting Faith, Mental Health and SOGIE*, May 2018

Foothill Child Abuse & Family Violence Prevention Council, *Bullying: We Stand Together*. April 2018

Stonewall National Education, *SOGIE Affirming Schools Project*, April 2018

Mount Saint Mary's University, Critical Teaching in Action Conference: Health, Wellness and Social Justice, *Affirming Schools for LGBTQ+ Students*, March 2018

##### 2017

UCLA Luskin School of Public Affairs, *Muslim American Scholarship*, December 2017

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*Tackling Bullying in California Schools: Increasing Awareness, Engagement, Collaboration and Support for Students*, December 2017

*Gender Odyssey, Sexual Behavior and Risk Factors of Trans & Queer Youth*, and *Sexual Behavior and Risk Factors of Trans & Queer Youth*, June 2017

LA Sparks Girls' Empowerment, June 2017

*Pathways to Student Equality: Access and Resolution*, LAUSD Educational Equity Compliance Office, Office of the General Counsel, March 2017

#### **2016**

PBIS (Positive Behavior Intervention Support) National Leadership Forum, October 2016

White House Bullying Summit on Transgender and Muslim Students, August 2016

Challenge LA, *Three Challenges: Gender Inclusion, Religious Intolerance and Sex Trafficking*, August 2016

Lesbian & Gay Psychotherapy Association 21<sup>st</sup> Annual LGBTQI Psychotherapy Conference, November 2016

Educational Books and Materials Association, *Sexual Minority Youth in K-12*, annual conference, 2016

California Association of Bilingual Educators, annual conference, *Sexual Minority Youth in K-12*, 2016, 2014

National Association of School Safety and Law Enforcement Officials, July 2016 Annual conference, *Safe & Affirming Schools for LGBT Students*

#### **2015**

Ventura County Office of Education, *Sexual Minority Youth in K-12*, 2015, 2014

Stonewall Education Project National conference, *Sexual Minority Youth in K-12*, 2012 - 2015

EDGY Child Abuse Conference, *Sexual Minority Youth in K-12*, October 2011, 2015 California Association of School Psychologists, annual conference, *Sexual Minority Youth in K-12*, 2105, 2013

LA County Office of Education, Learning Communities, *Sexual Minority Youth in K-12*, 2015

Network Against Hate, *Bullying and Bias* LA County Commission on Human Relations, 2015

Models of Pride, full day conference for educators, *Sexual Minority Youth in K-12*, annually since 2005 - 2015

#### **2013**

National Association of School Board Administrators, Annual Conference, *Addressing the needs of transgender students in public education*. 2013

Teaching Respect for All Keynote Speaker, University of North Florida, *Sexual Minority Youth in K-12*, October 2013, 2011

#### **2012**

LAUSD District-wide, *Protecting Students from Sexual Abuse*, 2012

Council of Black Administrators, 2012, 2013 Annual Conferences, *Bullying and Hazing: What Administrators Need to Know* and *Invisible Populations: Sexual Minority Youth of Color*.

#### **2011**

American Bar Association, *Working in Partnership to Advocate for LGBTQ Students*, Sept. 2011

Museum of Tolerance, Freedom's Sisters, September 2011

American Psychological Association Annual Conference, Washington, DC, *LGBTQ*, August 2011, 2008

LAUSD Annual Parent Summit, 2011, 2010, 2009, 2008

LAUSD Pupil Services and Attendance Counselors, *Sexual Minority Youth in K-12*, April 2011, January 2011, November 2010

HIV/AIDS Conference, March 2011, *Teaching to the Text: Sexual Minority Youth in K-12*

New Principals Conference, *Sexual Minority Youth in K-12*, March 2011

LAUSD Principals Training, LD 5, *Bullying*, March 2011

LAUSD School Psychologists, Support Units central and west, March 2011

Association of Chief Human Resources and Equal Employment Officers, February 2011

LAUSD School Counselors, *Sexual Minority Youth in K-12*, LD 1, February 2011

Center for Excellence in School Counseling and Leadership (CESCaL), *Sexual Minority Youth in K-12*, San Diego, 2011, 2010

National LGBT Bar Association, Lavender Law Annual Conference, *Working in Partnerships to Advocate for LGBT Students*, 2011

#### **2010**

LA County Child Abuse and Neglect Conference, LGBT Child Abuse Conference, panelist and workshop facilitator,, 2010, 2009

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LAUSD Health Teachers: *Teaching to the Text, Sexual Minority Youth in K-12*, 2010, 2009, 2008  
California State University at Northridge, Keynote. *Day of Diversity*, Masters in Social Work, 2010  
Department of Education, *Sexual Minority Youth in K-12*, St. Paul, MN, July 2010,  
California Federation of Teachers, *Sexual Minority Youth in K-12*,  
Center for Anti-Oppressive Education  
Ready to Learn: *Helping Students Survive and Thrive*, 2010, 2009, 2008  
NEXUS Conference, Inter-Agency Council on Child Abuse and Neglect, Violence Within the Home and its  
Effects on Children, *Bullying or Harmless Teasing*. 2008, 2009, 2010

**2008**

LA County Office of Education, School Psychologists, *Sexual Minority Youth in K-12*, 2008, 2007  
Black Probation Officers Association, 2008  
LAUSD Office of the General Counsel, Education Law Conference, *From the Courtroom to the Classroom:  
Looking at the Future of Urban Education*, 2007

Parent Empowerment Providers, *Transforming our Communities*  
Summit on Equal Protection and Civil Rights for Students  
United Teachers of LA, *Achieving Equity Conference*  
Gay Lesbian Straight Educators Network, *Sexual Minority Youth in K-12*  
International Criminal Justice & Diversity Symposium  
LA County Office of Affirmative Compliance

**COMMUNITY AND GOVERNMENT ORGANIZATIONS**

*LGBT, Bullying, CSEC, Diversity, Conflict Resolution, Effective Communications*

California State Park Rangers  
Children’s Hospital Adolescent Services  
City of Santa Monica  
Hilton Hotels, Guest Relations staff  
Internal Revenue Service, LGBT  
LA School Police Department  
Los Angeles Unified School Board  
LA County Human Relations Commission  
LA City Human Relations Commission  
Paraprofessionals Annual Conference, 2010  
Penny Lane Foster Parents  
Planned Parenthood of Los Angeles, LGBT  
Posse Foundation, LGBT  
Museum of Tolerance, *Tools for Tolerance*, LGBT  
UCLA Medical Group, LGBT  
United Universalist Church, LGBT  
White Memorial Hospital, LGBT  
LAUSD Gifted/Talented Programs, LGBT, 2014  
LAUSD Middle School Principals, *Sexting* February  
2017  
*Navigating Social Media*, October 2017  
LAUSD Office of General Counsel  
LAUSD Organizational Excellence Leadership  
Academy. Biannual trainings on *Diversity in the  
Workplace; Effective Communications*.  
LAUSD Organizational Facilitators, 2018  
LAUSD Parent Educators, *Bullying*  
LAUSD Payroll, *Diversity in the Workplace*  
LAUSD Principals Academy, September 2011, 2016  
LAUSD Pupil Services staff retreat, 2017  
LAUSD Restorative Justice, 2015  
LAUSD, School Administrative Assistants and  
Office Managers, 2016, LGBT  
LAUSD School Mental Health, LGBT  
LAUSD Student Discipline and Expulsion Unit,  
September 2011  
LAUSD Student Health and Human Services,  
*Commercial Sex Trafficking of Children*,  
November 2016, February 2017; *bullying* 2017  
LAUSD Teacher Training Academy, tri-annual  
trainings on bullying, LGBT, commercial sexual  
exploitation of children for new teachers  
LAUSD Office of General Counsel, staff retreat,  
2015  
LAUSD Options Principals, LGBT, CSEC

**PROFESSIONAL AUDIENCES**

Early Education Teachers  
LA County Department of Children and Family  
Services, *What We Need to Know About  
Bullying*, 2018  
Los Angeles School Police Department  
LAUSD Aspiring Principals Program, 2017  
LAUSD, Division of Transportation, sensitivity  
training in preparation for first female large-  
truck operator; *Effective Communications*  
LAUSD Foster and Homeless Youth, LGBT

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LAUSD Organizational Excellence, bi-annual trainings on Communication and Conflict Management, for persons in supervisor preparation program  
 Paraprofessional Annual Conferences  
 Principals Academy, September 2011  
 SPIN Conference, June 2011  
 Teach for America, LGBT

**STUDENTS, STAFF, PARENTS K-12**

Amino High School  
 Audubon Middle School  
 Avalon High School, June 2011  
 Braddock Elementary, October 2011  
 Bancroft Elementary School, April 2011; March 2011, 2017  
 Beachy Elementary School  
 Belmont High School, December 2010  
 Berendo Middle School  
 Birmingham High School  
 Broadway Elementary  
 Busing Unit. Facilitate series of communications and conflict management to all employees in school bus unit, 2016, 2017  
 Canoga High School  
 Canyon Elementary  
 Charter School of Education  
 Chatsworth Charter High School  
 Clay Middle School  
 Cleveland High School  
 Daniel Pearl Magnet, staff development  
 Drew Middle School  
 East Valley High School, every semester since 2008  
 El Dorado Elementary School  
 El Sereno Middle School  
 Esperanza Middle School  
 Euclid Elementary School  
 Fairfax High School, June 2011  
 Fleming Middle School, January 2011  
 Franklin High School, June 2011  
 Freemont High School, December 2010  
 Frost Middle School  
 Garfield High School, November 2010  
 Gassell Middle School, October 2011  
 Hamilton High School  
 Hawaiian Avenue Elementary, November 2017  
 Hart Middle School  
 Hobart Elementary School  
 Horace Mann Middle School, January 2011  
 Ivanhoe Elementary, March 2011  
 Jefferson High School, November 2010  
 King Elementary School

King Starr Middle School, January 2011, October 2011  
 LA Center for Enriched Studies  
 Langdon Elementary, February 2011, October 2010  
 Laurel School, March 2011  
 Lawrence Middle School, December 2010  
 Lennox Middle School, January 2011  
 Liechty Middle School, January 2011  
 Lincoln High School  
 Los Angeles Academy  
 Los Angeles High School, June 2011  
 Mann Middle School, March 2011  
 Marina Del Rey Middle School  
 Mayberry Elementary School, March 2011  
 Miguel Contreras Learning Center  
 Monroe High School  
 Mt. Gleason Middle School, 2017  
 Mt. Washington Elementary School, religious diversity, 2016, communications, 2017, transgender, 2017, 2018  
 Nimitz Elementary, April 2011  
 Nobel Middle School, November 2010, March 2011  
 North Valley Occupational, bullying, January 2018  
 Nursing Unit, CSEC, 2016, LGBT, 2018  
 O'Melveny Elementary School, February 2011  
 Organizational Excellence, communications trainings for classified staff in supervisory training program, quarterly since 2014  
 Phoenix Continuation  
 Revere Middle School, 2015  
 Riverside Elementary, 2017  
 Roosevelt High School, 2010, February 2012, March 2012  
 Rosewood Elementary, LGBT, 2018  
 San Fernando High School  
 San Fernando Middle School, February 2011  
 San Pedro High School, September 2001  
 Santee Learning Complex  
 Serrania Elementary School, Students, November 2011  
 Sherman Oaks Elementary Charter, Bullying; LGBT, 2015  
 Sun Valley High School, LGBT June 2011  
 Sun Valley Magnet, LGBT, 2016  
 Sunny Brae Elementary School, February 2011  
 Taft High School, LGBT, every semester since 2007  
 Tailor Special Education, every semester since 2014, trainings for new teachers on CSEC, bullying and LGBT  
 Tarzana Elementary School, September 2001  
 Third Street Elementary

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Thoreau CDS, December 2010  
Topeka Elementary, 2016, LGBT  
Torres Learning Academy, advanced LGBT training for social work interns, 2016, 2017  
Transportation, facilitate series of communications and conflict management to all employees in transportation, 2018  
University High School  
Valley Alternative Magnet, 2017, team building  
Van Nuys High School, March 2011  
Venice High School, facilitated dialogues, 2014, 2016  
Wadsworth Elementary  
Warner Avenue Elementary, 2017, 2018  
Washington Prep High School  
Webster Middle School  
Westchester High School, June 2011  
Westport Elementary School  
Wiltern Place Elementary School  
Wooden High School  
Woodlake Elementary, September 2011

**POST-SECONDARY ACADEMIC INSTITUTIONS:**

Antioch College  
Argosy University  
Azusa Pacific College  
Cal State Dominguez Hills  
Cal State University, Fullerton, July 2013  
Cal State University Northridge, Teacher Preparation, April 2011  
Cal State University Northridge, School of Social Work, 2011, 2012  
California Lutheran College

California School of Professional Psychology, *Partnering with K-12 Education, LGBT* June 2011, August 2012  
Chapman College  
Claremont Graduate University, every semester since 2008  
Cal State University Los Angeles, School Counselors, November 2011, 2012; March 2011, 2012, 2013  
East Los Angeles College  
Grinnell College, Iowa, 2008, *Keynote speaker, October as LGBT History Month*  
Los Angeles Valley College, LGBT  
Loyola Marymount University, LGBT regularly  
Mount Saint Mary's University, guest lecturer  
Moorpark College  
National University  
Occidental College  
Pasadena City College  
Pepperdine University, regularly  
Phillips Graduate Institute  
Santa Monica College, regular presenter  
Stetsun University, Sanford, FL, 2012, keynote at first LGBT Pride Event  
Torrance Unified School Board, LGBT  
UCLA, Law School, October 2011  
UCLA, School of Social Work, LGBT, November 2011, 2016  
USC, School of Social Work, LGBT, August 2011, November 2011, November 2016  
University of Southern Mississippi, *Socio-ethical Issues in Sports*, transgender athletes, February 2017

**UNIVERSITY POSITIONS, Adjunct Faculty**

Areas of strong experience: building capacity for culturally rich, relevant, responsive and affirming collaborations built on the intersecting identities of birth and life experiences; and on change leadership in educational settings. Receive exemplary student and peer reviews for creating an engaging and academically rigorous learning environment.

**California State University Los Angeles**, Charter School of Graduate Educational Leadership, EDAD 536A. *Pluralism, Collaboration and Social Justice 2007-2010, 2013, 2015, 2017, 2018*  
EDHI 605C. *Laboratories of Practice: Community-Based Research with Community Mentor, 2010*  
Precept for Masters of Social Work Interns, 2007

**University of California Los Angeles Extension**, 2015, 2016  
EDUC 437.73. *Advanced Culture and Inclusion*

**University of Southern California**, Rossier School of Education  
Masters of Art in Teaching 2010, 2011  
EDUC 519. *Human Differences*  
Precept for Masters of Social Work interns, 2008 - 2016

**Argosy University, Los Angeles**, Doctoral Program in Education, 2008 - 2011

Judy Chiasson, PhD

May 2018

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E7233. Organizational Communication  
E703. Leading and Managing Change in a Diverse Society  
E713. Issues in Higher Education  
R7036. Program Evaluation Methods

**Mount Saint Mary's College**, Los Angeles, Department of Education, 2007, 2008, 2018

EDU 252. Diversity and Schools

**Dissertation Committee Member, Doctorate in Education**

**California State University Northridge**

Richard Ungerhill, 2013. *FAIR Education Act: Secondary Teachers Respond to Inclusive Curriculum*

**California State University Los Angeles**

Eric Gates, 2012. *Instrumental Case Study of an After School High School Physical Activity Program*

Dickson Perey, 2015. *Understanding Identity and Advocacy Stances Among School Counselors and Gay Fathers Raising School-Aged Children.*

**California State University Fullerton**

Fausto Barragán Jr., 2013. *The Exploration of Information about the Knowledge of LGBT Issues Among Elementary School Principals*



LOS ANGELES UNIFIED SCHOOL DISTRICT  
POLICY BULLETIN

**TITLE:** Transgender Students -  
Ensuring Equity and Nondiscrimination

**NUMBER:** BUL-6224.1

**ISSUER:** David Holmquist, General Counsel  
Office of General Counsel

**DATE:** August 15, 2014

**ROUTING**  
All Employees  
All Locations

**PURPOSE:** The Los Angeles Unified School District (District) is committed to providing a safe and supportive learning environment for all students and to ensuring that every student shall have equal access to the District’s educational programs and activities. Additionally, District policy requires that all schools and all personnel promote acceptance and respect among students and staff.

This policy reflects the reality that transgender and gender nonconforming students are enrolled in the District. Its purpose is to advise District staff regarding issues relating to transgender students in order to create and maintain a safe learning environment for all students. The guidelines provided in this Bulletin do not anticipate every situation that might occur with respect to transgender students. The needs of each transgender student are unique. This policy should be interpreted consistent with the goals of reducing stigmatization and ensuring the integration of transgender students in educational programs and activities.

California Education Code §210.7 states that ‘gender means sex,’ and includes a person’s gender identity and gender related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

California Education Code §221.5 (f) states that a pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.

California Education Code §220 and District policy require that all educational programs and activities should be conducted without discrimination based on actual or perceived sex, sexual orientation, or gender identity and expression.

California Education Code §201 provides that public schools have an affirmative obligation to combat sexism and other forms of bias, and a responsibility to provide an equal educational opportunity to all students.



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Title IX of the Education Amendments of 1972 states, “No person...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.”

This Bulletin provides guidelines to ensure protection, respectful treatment, and equal access to educational programs and activities for transgender students.

**MAJOR  
CHANGES:**

This Bulletin replaces REF-1557.1, “Transgender and Gender Variant Students - Ensuring Equity and Nondiscrimination,” dated September 9, 2011, issued by the Office of General Counsel. It provides updated information and guidance to schools regarding issues related to transgender students.

**GUIDELINES:**

The following guidelines apply:

- I. Definitions - The following definitions are not meant to label, but are intended as functional descriptors:
  - A. Gender: a person's actual sex or perceived sex, and includes a person's perceived identity, appearance, or behavior, whether or not that identity, appearance or behavior is different from that traditionally associated with a person's sex at birth [Title 5, California Code of Regulations, §4910(k)].
  - B. Gender Identity: a person’s internal, deeply rooted identification as female, male or a non-binary understanding of gender, regardless of one’s assigned sex at birth. The responsibility for determining an individual’s gender identity rests with the individual.
  - C. Gender Expression: A person’s gender-related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth. Students who adopt a presentation that varies from the stereotypic gender expectations sometimes may describe themselves as gender nonconforming, gender queer, or gender fluid.
  - D. Gender Nonconforming: Displaying a gender identity or expression that may differ from those typically associated with one’s sex assigned at birth. A person’s gender expression may differ from stereotypical expectations about how females and males are “supposed to” look or act. Gender nonconforming is not synonymous with transgender; not all gender nonconforming students identify as transgender.
  - E. Transgender: A person whose gender identity differs from their gender assigned at birth, and whose gender expression consistently varies from stereotypical expectations and norms. A transgender person desires to live persistently by a gender that differs from that which was assigned at birth.



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- F. Transition: Each transgender person has a unique process in which they go from living and identifying as one gender to living and identifying as another. Gender transition can occur at any age. It begins internally then expands to external expression. This can include social, medical and/or a legal transition.
- G. LGBTQ: An acronym that stands for “lesbian, gay, bisexual, transgender, and queer/questioning.” Questioning incorporates those who are uncertain or fluid about their sexual orientation and/or gender identity.
- H. Sex: The biological condition or quality of being female or male.
- I. Sexual Orientation: A person’s emotional and sexual attraction to another person based on the gender of the other person. Common terms used to describe sexual orientation include, but are not limited to, heterosexual, lesbian, gay, and bisexual. Sexual orientation and gender identity are different.

### II. Guiding Principles and Requirements

The school shall accept the gender identity that each student asserts. There is no medical or mental health diagnosis or treatment threshold that students must meet in order to have their gender identity recognized and respected. The assertion may be evidenced by an expressed desire to be consistently recognized by their gender identity. Students ready to socially transition may initiate a process to change their name, pronoun, attire, and access to preferred activities and facilities. Each student has a unique process for transitioning. The school shall customize support to optimize each student’s integration.

#### A. Privacy and Confidentiality

1. All persons, including students, have a right to privacy. This includes keeping a student’s actual or perceived gender identity and expression private. Such private information shall be shared only on a need to know basis.
2. Students have the right to openly discuss and express their gender identity and expression, and to decide when, with whom, and how much information to share.
3. District and school personnel may encounter situations where transgender students have not disclosed their transgender status. School personnel must be mindful of the confidentiality and privacy rights of students when communicating with others, so as to not reveal, imply, or refer to a student’s gender identity or expression.



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4. To ensure confidentiality when discussing a particular concern such as conduct, discipline, grades, attendance, or health, school personnel's focus should be specifically school-related and not on the student's gender identity or expression.

B. Official Records

1. The District is required to maintain in perpetuity mandatory permanent pupil records ("official records") which include the legal name of the student and the student's gender as indicated on official government issued documents such as birth certificates, passports and identification cards/permits. The official records may include but are not limited to progress and grade reports, transcripts, assessment data, health records, discipline records, Individualized Education Programs (IEP), Section 504 Plans and the cumulative card and file (folder).
2. The District will change a student's name and gender on official records when the name of the student is changed by the appropriate court action, such as by a change of name proceedings. The new name is the official legal name of the student for all purposes, including school registration. Upon the submission of proper evidence of the court order, the student's official name and gender in all school records shall be changed to reflect the legal name change.

C. Unofficial Records

1. The District shall permit a student to use a preferred name and gender on unofficial records. The unofficial records may include but are not limited to identification badges, classroom and homeroom rosters, certificates, programs, announcements, office summons and communications, team and academic rosters, diplomas, newspapers, newsletters, yearbooks and other site-generated unofficial records. The preferred name shall also appear on the student's cumulative folder (official record) as "Also Known As" (AKA).
2. The District shall input the student's preferred name and gender in the appropriate fields of the District's electronic data system to indicate how the student's name and gender will appear on unofficial records.
3. The District shall permit a student or parent/legal guardian to request a change of name and/or gender so that a student may be registered in school under a name and gender that corresponds with the student's gender identity without obtaining a court order or without changing the student's official records (See BUL-5703.2 Names and/or Gender of



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4. Pupils for Purposes of School Records, dated July 17, 2014, issued by the Office of Data and Accountability).
5. After the school receives and verifies the contents of the completed form, the school shall change the name and/or gender of the student in the District's electronic data system and enter the preferred name as AKA in the cumulative folder. In the cumulative folder and registration card, name and gender should be cross-referenced.

D. Names/Pronouns

1. Students shall be addressed by the name and pronoun that corresponds to their gender identity asserted at school without obtaining a court order, changing their official records or obtaining parent/legal guardian permission.
2. Students shall be known by their name and gender of identity. However, there may be situations (e.g., communications with the family, official state or federal records, and assessment data) where it may be necessary and recommended for staff to be informed of the student's legal name and gender. In these situations, staff should prioritize the safety, confidentiality, and respect of the student in a manner that affirms the law.
3. If school personnel are unsure how a student wants to be addressed in communications to the home or in conferences with parents/legal guardians, they may privately ask the student. For communications with a student's parent/legal guardian, school personnel should refer to this policy's prior section on "Privacy and Confidentiality."
4. Every effort should be made to use the preferred names and pronouns consistent with a student's gender identity. While inadvertent slips or honest mistakes may occur, the intentional and persistent refusal to respect a student's gender identity is a violation of District policy.

E. Restroom Accessibility

1. Schools may maintain separate restroom facilities for male and female students. Students shall have access to restrooms that correspond to their gender identity asserted at school.
2. If a student desires increased privacy, regardless of the underlying reason, the administrator shall make every effort to provide the student with reasonable access to an alternative restroom such as a single-stall restroom or the health office restroom. The use of a restroom should be



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determined by the student's choice; no student shall be compelled to use an alternative restroom.

3. Administrators may take steps to designate single stall "gender neutral" restrooms on their campus.

F. Locker Room Accessibility

1. Schools may maintain separate locker room facilities for male and female students. Students shall have access to the locker room facility that corresponds to their gender identity asserted at school.
2. If there is a request for increased privacy, *any* student shall be provided access to a reasonable accommodation such as:
  - a. Assignment of a student locker in near proximity to the coaches' office or a supportive peer group.
  - b. Use of a private area within the public area of the locker room facility (e.g. nearby restroom stall with a door or an area separated by a curtain).
  - c. Use of a nearby private area (e.g. nearby restroom or a health office restroom).
  - d. A separate changing schedule.

G. Sports, Athletics, and Physical Education

1. Physical education classes are typically co-gender. In the event that the classes or activities are sex-segregated, transgender students shall participate in physical education by their gender identity asserted at school.
2. When conducting physical education classes and fitness evaluations, the teacher will address and evaluate the student by their gender of identity. Performance on the state physical fitness test (Fitnessgram) is evaluated by the State of California in accordance with the sex reported on the student's initial enrollment, even when the student identifies as transgender. In these events, the physical education teacher shall make every effort to maintain confidentiality of student information.
3. Participation in competitive athletics, intramural sports, athletic teams, competitions, and contact sports shall be facilitated in a manner consistent with the student's gender identity asserted at school and in accordance with the California Interscholastic Federation bylaws (Gender Identity Participation, 300.D, page 56).



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### H. School Activities and Programs

Students have the right to equitable access to activities and programs in their school. Students may not be excluded from participation in, be denied the benefits of, or be subjected to harassment or other forms of discrimination on the basis of gender identity in any program or activity. These activities and programs may include but are not limited to cheer class, homecoming, prom, spirit day, celebrations, assemblies, acknowledgments, after school activities/ programs and all extra-curricular activities.

### I. Course Accessibility and Instruction

Students have the right to equitable learning opportunities in their school. Students shall not be required to take and/or be denied enrollment in a course on the basis of their gender identity in any educational and academic program.

### J. Dress Codes/School Uniform Policies

1. A school's dress code and school uniform policy shall be gender-neutral. Schools cannot enforce specific attire based on gender.
2. Students have the right to dress in accordance with their gender identity within the parameters of the dress code, as it relates to the school uniform or safety issues (e.g., prohibiting attire that promotes drugs or violence, or is gang-affiliated).

### K. Student Safety

1. School staff must ensure that students are provided with a safe school environment that is free of discrimination, harassment, bullying and/or intimidation.
2. School staff and families should work together to resolve complaints alleging discrimination, harassment, bullying and/or intimidation based on a student's actual or perceived gender identity or expression. Complaints of this nature are to be handled in the same manner as other complaints. Consideration should be given as to whether a Sexual Harassment investigation is warranted. [See the "Related Resources" and the "Assistance" sections of this Bulletin and BUL-3349.1 Sexual Harassment Policy (Student-to-Student, Adult-to-Student, and Student-to-Adult, dated August 6, issued by the Office of General Counsel).]



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3. School staff shall take all reported incidents of bullying seriously and take appropriate measures to ensure that the bullying stops. [See BUL-5212.1 Bullying and Hazing Policy (Student-to-Student and Student-to-Adult), dated September 17, 2012, issued by the Office of the Superintendent].
4. School administration shall respond immediately to incidents of discrimination, harassment, bullying and/or intimidation by taking actions that include, but are not limited to the following: a) intervening to stop the behavior; b) investigating and documenting the incident; c) determining and enforcing appropriate corrective actions; and d) monitoring to ensure that the behavior does not reoccur.
5. School staff should take all reasonable steps to ensure safety and access for transgender and gender nonconforming students at their school. School staff shall support students' rights to assert their gender identity and expression.
6. Students shall not be disciplined solely on the basis of their actual or perceived gender identity or expression.
7. Students shall be informed that they have the responsibility to report situations/incidents of discrimination, harassment, bullying and/or intimidation to the designated site administrator or Title IX/Bullying Complaint Manager in cases where they may be a target or witness.
8. Students shall be informed of their role in ensuring a school environment that is free from discrimination, harassment, bullying and/or intimidation. Students should consider how others may perceive or be affected by their actions and words.

**RELATED  
RESOURCES:**

- *Bullying and Hazing Policy (Student-to-Student and Student-to-Adult)*, BUL-5212.1, dated September 17, 2012, issued by the Office of the Superintendent
- *Calendar of Commemorative Dates and Observances*, MEM 5466.3, issued annually by the Office of the Superintendent
- *Code of Conduct with Students - Distribution and Dissemination Requirement*, BUL-5167.0, dated July 1, 2010, issued by the Office of the Superintendent
- *Organizing for Crisis Intervention*, BUL-962.1, dated December 7, 2005, issued by the Office of the Chief Operating Officer
- *Discipline Foundation Policy: School-Wide Positive Behavior Support*, BUL-3638.0, dated March 27, 2007, issued by Educational Services



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- *Educating for Diversity*, LAUSD Board Resolution, passed March 16, 1992
- *Ethics Policies*, BUL-4748.0, dated May 18, 2009, issued by the Office of the Superintendent
- *Fair, Accurate, Inclusive and Respectful (FAIR) Education Act*, BUL-5898.0, dated October 9, 2012, issued by Office of Curriculum, Instruction and School Support
- *Gold Book*, Los Angeles City Section, California Interscholastic Federation, “Gender Identity Participation”, 300.D, page 56, dated July 24, 2013
- *Guidelines for Student Suspensions*, BUL-5655.2, dated August 19, 2013, issued by School Operations
- *Incident System Tracking Accountability Report (ISTAR)*, BUL-5269.2, dated July 10, 2013, issued by School Operations
- *Intra-district Permits and Student Transfers in Elementary and Secondary Schools*, BUL-5347.1, dated June 10, 2013, issued by Office of the Superintendent
- *LGBT and Sexual Orientation Anti-Bullying Resolution*, LAUSD Board Resolution, passed September 13, 2011
- *LGBT Resource Guide*, dated September 2013, issued by the Educational Equity Compliance Office
- *Name and/or Gender of Pupils for Purposes of School Records*, BUL-5703.2, dated July 17, 2014, issued by Office of Data and Accountability
- *Nondiscrimination Required Notices*, MEM 5818.1 issued annually by the Office of General Counsel
- *Opportunity Transfers (OTs) Policy*, BUL-4478.0, dated December 15, 2008, issued by the Chief Academic Officer
- *Physical Education Programs, Grades K-12*, BUL-2528.1, dated December 21, 2009, issued by Office of Curriculum, Instruction and School Support
- *Responding to and Reporting Hate-Motivated Incidents and Crimes*, BUL-2047.0, dated October 10, 2005, issued by the Office of General Counsel
- *Sex Equity in Physical Education Programs*, BUL-1826.0, dated August 5, 2005, issued by Secondary Instructional Services



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- *Sexual Harassment Policy (Student-to-Student, Student-to-Adult, Adult-to-Student)*, BUL-3349.1, dated August 6, 2014, issued by the Office of General Counsel
  - *Student Dress Codes/Uniforms*, BUL-2549.1, dated December 15, 2009, issued by the Office of the Chief Operating Officer
  - *Title IX Policy/Complaint Procedures*, BUL-2521.1, dated June 7, 2006, issued by the Office of General Counsel
  - *To Enforce the Respectful Treatment of All Persons*, LAUSD Board Resolution, passed October 10, 1988
  - *Uniform Complaint Procedures (UCP)*, BUL-5159.2, dated February 1, 2013, issued by the Office of the General Counsel.

**AUTHORITY:** Title IX of the Education Amendments of 1972, 42 U.S.C. 1681  
Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c et seq  
California Education Code Sections § 201, § 210.7, §221.5, § 220, and § 231  
“Gold Book,” Los Angeles City Section, California Interscholastic Federation

**ASSISTANCE:** For further information:

- California Interscholastic Federation, at (818) 767-0800
- Data and Accountability, at (213) 241-2460
- Educational Equity Compliance Office, at (213) 241-7682
- Health Education Programs, at (213) 241-3570
- Human Relations, Diversity and Equity, at (213) 241-5337
- Interscholastic Athletics, at (213) 241-5847
- Office of General Counsel, Education Legal Services, at (213) 241-7600
- Physical Education, at (213) 241-4556
- School Mental Health, at (213) 241-3841
- School Operations, at (213) 241-5337
- School Police, at (213) 625-6631
- Suicide Prevention, at (213) 241-3516

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W., a minor child,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:18-cv-00037-WTL-MPB
	)	
EVANSVILLE VANDERBURGH SCHOOL	)	
CORPORATION,	)	
	)	
Defendant.	)	

**Declaration of Zachary J. Mulholland**

Zachary J. Mulholland, being duly sworn upon his oath, and says that:

1. I am an adult resident of the State of Indiana.
2. I am an attorney, having been admitted to the Indiana bar on May 16, 2011.
3. I am currently employed by Indianapolis Public Schools (“IPS”) as the Board Administrator for the Board of School Commissioners of IPS.
4. In this capacity, I serve as a liaison between the Board and administration of IPS. Among other things, I assist the Board to adopt resolutions and draft policies.
5. I am therefore aware of the policies and guidelines that govern IPS.
6. I have attached as Exhibit 1 to this declaration the bylaw and policy forbidding sex discrimination and harassment that is currently in effect within IPS.
7. I have attached as Exhibit 2 to this declaration the administrative guideline, developed in 2016, utilized within IPS concerning the maintenance of an inclusive learning environment for transgender and gender non-conforming students.

8. I am not personally aware, nor am I aware of the Board of School Commissioners of IPS being informed, of any disruptions or incidents arising from allowing students to have access to the restrooms and locker rooms corresponding to their gender identities.

9. IPS is one of the largest public school districts in Indiana, serving over 30,000 students.

**Verification**

I verify, under the penalties of perjury, that the foregoing is true and correct.

Executed on: June 26, 2018

  
\_\_\_\_\_  
Zachary J. Mulholland

Prepared by:

Kenneth J. Falk  
No. 6777-49  
ACLU of Indiana



Book	BYLAWS AND POLICIES
Section	5000 STUDENTS
Title	TITLE IX POLICY FORBIDDING SEX DISCRIMINATION AND HARASSMENT
Number	5518
Status	Active
Adopted	March 23, 2010
Last Revised	July 30, 2015

1) POLICY AGAINST SEX DISCRIMINATION

In accordance with applicable law, including Title IX of the Education Amendments of 1972 and the Indiana Civil Rights Law, it is the policy of Indianapolis Public Schools that no student will be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any education program or activity on the basis of sex. A student may not, on the basis of sex, be limited in the enjoyment of any right, privilege, advantage, or opportunity, including courses, extracurricular activities, benefits, and facilities. "On the basis of sex" includes because of the student's sexual orientation or gender identity.

2) PROHIBITION AGAINST SEXUAL HARASSMENT

a. The policy against sex discrimination includes a prohibition against sexual harassment. Sexual harassment consists of sexual advances, sexual gestures, requests for sexual favors, or other verbal or physical conduct of a sexual nature that is unwelcome and that limits or denies, on the basis of sex, a student's ability to participate in or benefit from the education program.

b. This policy prohibits sexual harassment by an employee or agent of IPS, by another student, and by third parties who come in contact with students at school or at school-related activities. This policy also prohibits any employee from being in a locked room with a student.

3) TITLE IX COORDINATOR

IPS has designated a Title IX Coordinator, who has responsibility for IPS' compliance with Title IX, including directing the investigation of complaints and reports of sex discrimination and harassment and assuring that prompt and effective corrective action is taken. The name and contact information of the Title IX Coordinator is included in the Administrative Guidelines accompanying this policy and will be published annually.

4) COMPLAINT PROCEDURE

a. Parents and students are encouraged promptly to submit a complaint or provide information about suspected sex discrimination or harassment so that IPS can take appropriate action to resolve the situation. A parent or student should make the complaint or report by telephoning the IPS Service Center at 317-226-4000. The Service Center Associate will provide the Complainant with the name and contact information of the Title IX Coordinator and will advise the Title IX Coordinator of the complaint and provide contact information for the Complainant. If the parent or student first makes the report or complaint to the building administrator, school counselor or social worker, that person must provide the Complainant with the name and contact information of the Title IX Coordinator and advise the Title IX Coordinator of the complaint and provide contact information for the Complainant.

b. Every employee of IPS is required immediately to report in writing to the Title IX Coordinator suspected sex discrimination or harassment of a student whether it is based on the employee's witnessing such conduct or on information from the student, the student's parent, or a third party.

5) INVESTIGATION AND CORRECTIVE ACTION

a. The Title IX Coordinator will promptly investigate, or direct the investigation of, complaints and reports of sex discrimination or harassment. The investigation will be completed in a timely manner, the time depending on the nature and complexity of the issues but generally taking no more than 30 days. The Title IX Coordinator will assist the building principal in determining

whether to take interim measures during the investigation and whether IPS is required to report the incident that is the subject of the complaint to Child Protective Services

b. At the conclusion of the investigation, the Title IX Coordinator will report the result to the Superintendent, including, where appropriate, making a recommendation for reasonable, timely, age-appropriate, and effective correction action. The Superintendent may impose discipline up to and including a recommendation for employee termination or student expulsion. The Title IX Coordinator will advise the Complainant and the person accused of misconduct, in writing, whether or not the allegations were found to be substantiated.

c. Except to the extent an employee or student has a statutory right to challenge the Superintendent's recommendation for expulsion or termination or an employee has a collectively bargained right to challenge the imposition of discipline, the decision of the Superintendent is final.

6) GUIDELINES

a. The Superintendent is directed to promulgate administrative guidelines and arrange for appropriate training for implementation of this policy. The guidelines will include complaint procedures providing for prompt and equitable resolution of complaints alleging sex discrimination or harassment of a student.

b. This policy should be read in conjunction with IPS' general anti-harassment policy (BP 5517) and procedures for reporting abuse and neglect to Child Protective Services.



Book ADMINISTRATIVE GUIDELINES  
Section 5000 STUDENTS  
Title INCLUSIVE LEARNING ENVIRONMENT FOR TRANSGENDER AND GENDER NON-CONFIRMING STUDENTS  
Number [tbd]  
Legal Title III, Sec.581-101 of the Indianapolis-Marion County, Indiana Code of Ordinances; 34 C.F.R. Part 99.

### 1) GENERAL POLICY STATEMENT

- a. It is the policy of the Board of School Commissioners to maintain an education environment that is free from all forms of unlawful discrimination. The City of Indianapolis and Board policy prohibit discrimination on the basis of gender identity. The Board has adopted the following guidelines in order to create a safe and inclusive learning environment for transgender and gender non-conforming students.
- b. If a school has a request for accommodations from a transgender or non-transgender student or that student's parents or guardians, such school's principal shall contact the District's Deputy Superintendent of Operations or the Operations Officer to implement the accommodations set forth in the following guidelines.
- c. Definitions:
  - i. **Gender Identity/Gender Nonconforming/Transgender**- an individual having or being perceived as having a gender-related self-identity, self-image, appearance, expression or behavior different from those characteristics traditionally associated with the individual's assigned sex at birth.
  - ii. **Gender Identity**- refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's assigned sex at birth.
  - iii. **Sex Assigned at Birth**- refers to the sex designation recorded on an infant's birth certificate should such record be provided at birth.
  - iv. **Transgender**- describes those individuals whose gender identity is different from the sex they were assigned at birth. A transgender male is someone who identifies as male but was assigned the sex of female at birth. A transgender female is someone who identifies as female but was assigned the sex of male at birth.
  - v. **Gender Transition**- refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress

differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

## **2) Privacy**

Information about a student's transgender status, legal name, or gender assigned at birth may constitute confidential medical or educational information. Disclosing this information to third parties, including other students, may violate privacy laws, including the Family Education Rights and Privacy Act, 34 CFR Part 99 ("FERPA"). Therefore, to ensure the safety and well-being of the student, school personnel should not disclose a student's transgender status to anyone other than the student's parent or legal guardian, unless legally required to do so. Among school personnel, a student's transgender status should only be disclosed to those with a legitimate educational interest in the information.

## **3) Official Records**

The District will change a student's official records to reflect a change in legal name or gender upon receipt of documentation that such legal name or gender has been changed pursuant to a court order or through amendment of state-or-federally issued identification. The District will also consider the request of an eligible student or parent to amend the student's official records under FERPA.

Should a school receive such a request and supporting documentation, such school's principal shall contact the District's Office of Enrollment and Options to change a student's official record.

## **4) Names/Pronouns**

Students shall have the right to be addressed by a name and pronoun corresponding to the gender identity consistently asserted at school. Students are not required to obtain a court ordered name and/or gender change or to change their official records as a prerequisite to being addressed by the name and pronoun that corresponds to their gender identity.

## **5) Restroom and Locker Room Accessibility**

The use of restrooms and locker rooms at schools should be assessed on a case by case basis, with the goals of maximizing the student's social integration and equal opportunity, including participation in physical education classes and sports, ensuring the student's safety and comfort, and minimizing the stigmatization of the student. In most cases, transgender students should have access to the restroom and locker room that corresponds to the gender identity they consistently assert at school.

Further, all students- transgender or not- who have a need or desire for increased privacy, regardless of the underlying reason, should be provided access to an alternative restroom or locker room, including use of a private area (e.g., staff restroom or health office restroom). This allows students who may feel uncomfortable sharing the restroom with the transgender student(s) the option to make use of a separate restroom and have their concerns addressed without stigmatizing any individual student. Any alternative arrangement should be provided in a way that protects the student's ability to keep his or her transgender status private. No student, however, should be required to use an alternative restroom because they are transgender or gender nonconforming.

Should a school need to make such accommodations, such school's principal shall contact the Deputy Superintendent of Operations or Operations Officer to assess the student's and school's individual case.

**6) Sports and Physical Education Classes**

Transgender or gender nonconforming students must be provided the same opportunities to participate in physical education as all other students. Student participation in interscholastic sports in the District is governed by the Indiana High School Athletic Association, Inc.

**7) Dress Codes**

Students have the right to dress in accordance with the gender identity they consistently assert at school, within the constraints of the District's dress code.

**8) Gender Segregation in Other Areas**

As a general rule, in any other circumstances where students are separated by gender in school activities (e.g., class discussions, field trips), students shall be permitted to participate in accordance with the gender identity they consistently assert at school.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

J.A.W., )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 3:18-cv-00037-WTL-MPB  
 )  
 EVANSVILLE VANDERBURGH SCHOOL )  
 CORPORATION, )  
 )  
 Defendant. )

**Declaration of Aleczonder Dean**

Aleczonder Dean, being duly sworn upon his oath, says that:

1. I am an adult resident of the State of Indiana.
2. I graduated from Kokomo High School in the Spring of 2018.
3. I am a transgender male. This means that my sex at birth was female. However, my gender identity is male.
4. The Kokomo School Corporation was aware of my status as a transgender male as, among other things, I spoke publicly about the High School bathroom access issue and was quoted in the local newspaper about it.
5. For my Junior and Senior years at Kokomo High School I used the male restrooms in the school.
6. School administrators and teachers at Kokomo High School were aware that I was using male restrooms at the school and I had permission to do so from the High School's administration.

7. To the best of my knowledge, my use of male restrooms at Kokomo High School did not cause any disruption or problems with my fellow students.

**Declaration**

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

Executed on: 7-5-2018  
DATE

  
ALECZANDER DEAN

Prepared by:

Kenneth J. Falk  
No. 6777-49  
ACLU of Indiana