

APPEAL NO. 18-13592-EE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DREW ADAMS,
Plaintiff-Appellee,

v.

THE SCHOOL BOARD OF ST. JOHNS COUNTY, FLORIDA
Defendant-Appellant.

On Appeal from the United States District Court
for the Middle District of Florida, Jacksonville Division
District Court No. 3:17-cv-00739-TJC-JBT

**APPELLANT'S APPENDIX IN SUPPORT OF INITIAL BRIEF
VOLUME I**

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Respectfully submitted,

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I hereby certify one true and accurate copy of the foregoing document has been furnished by electronic means to all counsel of record as well as by Federal Express on December 27, 2018, to the counsel for Plaintiff-Appellee, Drew Adams, on their addresses at:

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U.S. Court of Appeals for the 11th Circuit
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U.S. District Court
Middle District of Florida (Jacksonville)
CIVIL DOCKET FOR CASE #: 3:17-cv-00739-TJC-JBT

Adams v. The School Board of St. Johns County, Florida et al
Assigned to: Judge Timothy J. Corrigan
Referred to: Magistrate Judge Joel B. Toomey
Case in other court: 18-13592-B
Cause: 42:1981 Civil Rights

Date Filed: 06/28/2017
Date Terminated: 07/26/2018
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

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Case: 18-13592

Date Filed: 12/27/2018

Page 19 of 95
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Pediatric Endocrine Society 18-13592 Date Filed 07/26/18 Page 2 of 15

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 and the District of Columbia**

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TERMINATED: 07/26/2018
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Date Filed	#	Docket Text
06/28/2017	1	COMPLAINT against The School Board of St. Johns County, Florida, Tim Forson, and Lisa Kunze (Filing fee \$ 400 receipt number JAX024481) filed by Drew Adams. (Attachments: # 1 Civil Cover Sheet)(AEJ) (Entered: 06/28/2017)
06/28/2017	2	SUMMONS issued as to The School Board of St. Johns County, Florida, Tim Forson, and Lisa Kunze.(AEJ) (Entered: 06/28/2017)
06/30/2017	3	ORDER of recusal directing the Clerk of Court to reassign this case to another United States Magistrate Judge. Signed by Magistrate Judge Patricia D. Barksdale on 6/29/2017. (ASL) (Entered: 06/30/2017)
07/03/2017		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Tara L. Borelli, appearing on behalf of Drew Adams (Filing fee \$150 receipt number JAX024538.). (AFC) (Entered: 07/03/2017)
07/03/2017	4	NOTICE of Appearance by Terry Joseph Harmon on behalf of The School Board of St. Johns County, Florida (Harmon, Terry) (Entered: 07/03/2017)
07/03/2017	5	NOTICE of Appearance by Robert Jacob Sniffen on behalf of The School Board of St. Johns County, Florida (Sniffen, Robert) (Entered: 07/03/2017)
07/03/2017	6	Case Reassigned to Magistrate Judge Joel B. Toomey. New case number: 3:17-cv-000739-J-32JBT. Magistrate Judge Patricia D. Barksdale no longer assigned to the case. (TMC) (Entered: 07/03/2017)
07/05/2017	7	NOTICE of Appearance by Michael P. Spellman on behalf of The School Board of St. Johns County, Florida (Spellman, Michael) (Entered: 07/05/2017)

07/11/2017	8	RETURN of service on 06/30/2017 as to Tim Forson, by Drew Adams (Altman, Jennifer) Modified on 7/12/2017 to edit text. (TMC) (Entered: 07/11/2017)
07/11/2017	9	RETURN of service on 06/30/2017 as to Lisa Kunze, by Drew Adams (Altman, Jennifer) Modified on 7/12/2017 to edit text. (TMC) (Entered: 07/11/2017)
07/11/2017	10	RETURN of service on 06/30/2017 as to the School Board of St. Johns County, Florida, by Drew Adams (Altman, Jennifer) Modified on 7/12/2017 to edit text. (TMC) (Entered: 07/11/2017)
07/12/2017	11	NOTICE of designation under Local Rule 3.05 - track 2. Signed by Deputy Clerk on 7/12/2017. (Attachments: # 1 Case Management Report form, # 2 Consent to US Magistrate Judge Jurisdiction letter and form)(MD) (Entered: 07/12/2017)
07/13/2017		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Paul D. Castillo, appearing on behalf of Drew Adams (Filing fee \$150 receipt number JAX024648.). (AFC) (Entered: 07/13/2017)
07/13/2017		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Omar Gonzalez-Pagan, appearing on behalf of Drew Adams (Filing fee \$150 receipt number 024649.). (AFC) (Entered: 07/13/2017)
07/14/2017	12	Unopposed MOTION for Tara L. Borelli to appear pro hac vice by Drew Adams. (Doolittle, Kirsten) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 07/14/2017)
07/14/2017	13	Unopposed MOTION for Paul D. Castillo to appear pro hac vice by Drew Adams. (Doolittle, Kirsten) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 07/14/2017)
07/14/2017		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Nathaniel R. Smith, appearing on behalf of Drew Adams (Filing fee \$150 receipt number JAX024657.). (AEJ) (Entered: 07/14/2017)
07/14/2017		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Richard M. Segal, appearing on behalf of Drew Adams (Filing fee \$150 receipt number JAX024658.). (AEJ) (Entered: 07/14/2017)
07/14/2017	14	ENDORSED ORDER granting 12 13 Plaintiffs' Unopposed Motions for Admission Pro Hac Vice. If Tara L. Borelli, Esq., and Paul D. Castillo, Esq., have not already done so, they each shall immediately pay the admission fee and register for a login and password for electronic filing at the Court's website at www.flmd.uscourts.gov. Signed by Magistrate Judge Joel B. Toomey on 7/14/2017. (TSP) (Entered: 07/14/2017)
07/17/2017	15	APPEARANCE of non-resident counsel and designation of local counsel by Tara L. Borelli on behalf of All Plaintiffs. Local Counsel: Kirsten L. Doolittle. Non-Resident Counsel: Tara L. Borelli. (Borelli, Tara) (Entered: 07/17/2017)
07/17/2017	16	APPEARANCE of non-resident counsel and designation of local counsel by Paul David Castillo on behalf of All Plaintiffs. Local Counsel: Kirsten L. Doolittle. Non-Resident Counsel: Paul D. Castillo. (Castillo, Paul) (Entered: 07/17/2017)
07/17/2017	17	NOTICE of Appearance by Terry Joseph Harmon on behalf of Tim Forson, Lisa Kunze (Harmon, Terry) (Entered: 07/17/2017)
07/17/2017	18	CERTIFICATE of interested persons and corporate disclosure statement by Drew Adams. (Doolittle, Kirsten) (Entered: 07/17/2017)
07/17/2017	19	NOTICE of Appearance by Robert Jacob Sniffen on behalf of Tim Forson, Lisa Kunze

		(Case: 1:15-cv-00002-UNA) (Order: 7/17/2017) 7/20/2018 Page: 23 of 95
07/17/2017	20	NOTICE of Appearance by Michael P. Spellman on behalf of Tim Forson, Lisa Kunze (Spellman, Michael) (Entered: 07/17/2017)
07/17/2017	21	CERTIFICATE of interested persons and corporate disclosure statement by Tim Forson, Lisa Kunze, The School Board of St. Johns County, Florida. (Harmon, Terry) (Entered: 07/17/2017)
07/19/2017	22	MOTION for preliminary injunction <i>and Supporting Memorandum of Law</i> by Drew Adams. (Attachments: Affidavit, Text of Proposed Order)(Borelli, Tara) (TMC). (Additional attachment(s) added on 7/20/2017: # 1 Exhibit Declaration of Drew Adams, # 2 Exhibit Declaration of Erica Adams Kasper, # 3 Exhibit Declaration of Diane Ehrensaft, Ph.D., # 4 Exhibit Declaration of Tara L. Borelli, # 5 Text of Proposed Order) (TMC). Modified on 7/20/2017 to remove, separate and re-attach exhibits correctly per Chambers. Counsel directed to send 2 courtesy copies of this entire document to Chambers. (TMC) (Entered: 07/19/2017)
07/20/2017	23	Unopposed MOTION for Omar Gonzalez-Pagan to appear pro hac vice by Drew Adams. (Doolittle, Kirsten) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 07/20/2017)
07/20/2017	24	Unopposed MOTION for Nathaniel R. Smith to appear pro hac vice by Drew Adams. (Doolittle, Kirsten) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 07/20/2017)
07/20/2017	25	Unopposed MOTION for Richard M. Segal to appear pro hac vice by Drew Adams. (Doolittle, Kirsten) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 07/20/2017)
07/21/2017	26	ORDER Setting Hearing on 22 MOTION for preliminary injunction: Motion Hearing set for 8/10/2017 at 3:00 PM in Jacksonville Courtroom 10D before Judge Timothy J. Corrigan; defendants' response to plaintiff's motion due no later than 8/4/2017. Signed by Judge Brian J. Davis on 7/21/2017. (SRW) (Entered: 07/21/2017)
07/21/2017	27	Unopposed MOTION for Extension of Time to File Answer re 1 Complaint by Tim Forson, Lisa Kunze, The School Board of St. Johns County, Florida. (Harmon, Terry) Motions referred to Magistrate Judge Joel B. Toomey. Modified on 7/24/2017 - notified counsel of correct case number for future filings. (TMC) (Entered: 07/21/2017)
07/21/2017	28	ENDORSED ORDER granting 23 24 25 Plaintiffs' Unopposed Motions for Admission Pro Hac Vice. If Omar Gonzalez-Pagan, Esq., Nathaniel R. Smith, Esq., and Richard M. Segal, Esq., have not already done so, they each shall immediately pay the admission fee and register for a login and password for electronic filing at the Court's website at www.flmd.uscourts.gov. Signed by Magistrate Judge Joel B. Toomey on 7/21/2017. (TSP) (Entered: 07/21/2017)
07/21/2017	29	NOTICE by Drew Adams re 11 Related case order and track 2 notice : <i>Notice of service in compliance with ECF No. 11</i> (Borelli, Tara) (Entered: 07/21/2017)
07/23/2017	30	ENDORSED ORDER granting 27 Motion for Extension of Time to Respond to 1 Complaint. Defendants' response shall be filed no later than August 18, 2017. Signed by Judge Timothy J. Corrigan on 7/23/2017. (SRW) (Entered: 07/23/2017)
07/24/2017	31	APPEARANCE of non-resident counsel and designation of local counsel by Omar Gonzalez-Pagan on behalf of Drew Adams. Local Counsel: Kirsten Doolittle. Non-Resident Counsel: Omar Gonzalez-Pagan. (Gonzalez-Pagan, Omar) (Entered: 07/24/2017)

07/25/2017	32	APPEARANCE of non-resident counsel and designation of local counsel by Richard M. Segal on behalf of Drew Adams. <i>Notice of Appearance for Plaintiff and Notice of Compliance with CM/ECF Registration</i> Local Counsel: Kirsten L. Doolittle. Non-Resident Counsel: Richard M. Segal. (Segal, Richard) (Entered: 07/25/2017) APPEARANCE of non-resident counsel and designation of local counsel by Richard M. Segal on behalf of Drew Adams. <i>Notice of Appearance for Plaintiff and Notice of Compliance with CM/ECF Registration</i> Local Counsel: Kirsten L. Doolittle. Non-Resident Counsel: Richard M. Segal. (Segal, Richard) (Entered: 07/25/2017)
07/25/2017	33	APPEARANCE of non-resident counsel and designation of local counsel by Nathaniel R. Smith on behalf of Drew Adams. <i>Notice of Appearance for Plaintiff and Notice of Compliance with CM/ECF Registration</i> Local Counsel: Kirsten L. Doolittle. Non-Resident Counsel: Nathaniel R. Smith. (Smith, Nathaniel) (Entered: 07/25/2017)
08/01/2017	34	MOTION to Dismiss 1 Complaint by Tim Forson, Lisa Kunze. (Harmon, Terry) Modified on 8/2/2017 to create docket entry relationship. (TMC) (Entered: 08/01/2017)
08/01/2017	35	MOTION for Leave to File Excess Pages by All Defendants. (Harmon, Terry) (Entered: 08/01/2017)
08/02/2017	36	ENDORSED ORDER granting 35 Motion for Leave to File Excess Pages. Defendants' response to plaintiff's motion for preliminary injunction may be up to 35 pages long. Signed by Judge Timothy J. Corrigan on 8/2/2017. (SRW) (Entered: 08/02/2017)
08/02/2017	37	NOTICE of Appearance by Kevin Charles Kostelnik on behalf of Tim Forson, Lisa Kunze, The School Board of St. Johns County, Florida (Kostelnik, Kevin) (Entered: 08/02/2017)
08/03/2017	38	Unopposed MOTION for leave to file under seal <i>Education Records and Confidential Building Schematics to be Filed in Support of Defendants' Response to Plaintiff's 22 Motion for Preliminary Injunction</i> by Tim Forson, Lisa Kunze, The School Board of St. Johns County, Florida. (Kostelnik, Kevin) Modified on 8/3/2017 to create docket entry relationship. (TMC) (Entered: 08/03/2017)
08/03/2017	39	ORDER granting 38 defendants' unopposed motion to seal certain exhibits (see order for details). Signed by Judge Timothy J. Corrigan on 8/3/2017.(SRW) (Entered: 08/03/2017)
08/04/2017	40	NOTICE of Filing Documents in Support of its 42 Response to 22 Motion for Preliminary Injunction, by Tim Forson, Lisa Kunze, The School Board of St. Johns County, Florida (Attachments: # 1 Declaration of Tim Forson, # 2 Declaration of Paul Rose (exhibits filed under seal), # 3 Declaration of Cathy Mittelstadt, # 4 Declaration of Lisa Kunze (exhibits filed under seal), # 5 Declaration of Kyle Dresback, # 6 Declaration of Sallyanne Smith, # 7 Declaration of Michael Spellman)(Harmon, Terry) Modified on 8/7/2017 create docket entry relationship and edit text. (TMC) <i>Modified on 8/7/2017 - per counsel, this document amended to correct case number and grammatical errors, see doc 41 . (TMC)</i> (Entered: 08/04/2017)
08/04/2017	41	Amended NOTICE of Filing Documents in Support of its 42 Response to 22 Motion for Preliminary Injunction, by Tim Forson, Lisa Kunze, The School Board of St. Johns County, Florida. (Attachments: # 1 Declaration of Tim Forson, # 2 Declaration of Paul Rose (exhibits filed under seal), # 3 Declaration of Cathy Mittelstadt, # 4 Declaration of Lisa Kunze (exhibits filed under seal), # 5 Declaration of Kyle Dresback, # 6 Declaration of Sallyanne Smith, # 7 Declaration of Michael Spellman)(Harmon, Terry) Modified on 8/7/2017 to create docket entry relationship and edit text. (TMC) (Entered: 08/04/2017)
08/04/2017	42	RESPONSE to 22 MOTION for preliminary injunction and Supporting Memorandum of Law, filed by Tim Forson, Lisa Kunze, The School Board of St. Johns County, Florida. (Harmon, Terry) Modified on 8/7/2017 to edit text. (TMC) (Entered: 08/04/2017)
08/07/2017		Sealed Documents: S-43 and S-44. (TMC) (Entered: 08/07/2017)

08/07/2017	45	NOTICE by Drew Adams of VOLUNTARY DISMISSAL WITHOUT PREJUDICE AS TO DEFENDANTS TIM FORSON AND LISA KUNZE ONLY (Castillo, Paul) (Entered: 08/07/2017)
08/07/2017	46	Unopposed MOTION for leave to file Reply in further support of Plaintiff's 22 Motion for Preliminary Injunction by Drew Adams. (Gonzalez-Pagan, Omar) Modified on 8/8/2017 to create docket entry relationship. (TMC) (Entered: 08/07/2017)
08/07/2017	47	ENDORSED ORDER granting 46 Motion for Leave to File Reply: plaintiff's 3 page reply brief and accompanying exhibits shall be filed no later than noon on 8/8/2017. Signed by Judge Timothy J. Corrigan on 8/7/2017. (SRW) (Entered: 08/07/2017)
08/08/2017	48	REPLY in Further Support of 22 MOTION for preliminary injunction <i>and Supporting Memorandum of Law</i> filed by Drew Adams. (Attachments: # 1 Affidavit of Tara L. Borelli)(Borelli, Tara) Modified on 8/9/2017 to edit text. (TMC) (Entered: 08/08/2017)
08/08/2017	49	ORDER re: 45 , dismissing without prejudice defendants Tim Forson and Lisa Kunze in their official capacities, finding as moot 34 motion to dismiss. Signed by Judge Timothy J. Corrigan on 8/8/2017.(SRW) (Entered: 08/08/2017)
08/10/2017	50	ORDER denying 22 Motion for Preliminary Injunction; directing defendant to respond to the complaint by 8/18/2017; plaintiff to respond by 9/8/2017 if defendant moves to dismiss any claims; parties to confer and file proposed case management schedule by 8/18/2017; tentatively setting case on December 2017 trial term for a 3 day non-jury trial. Signed by Judge Timothy J. Corrigan on 8/10/2017. (SRW) (Entered: 08/10/2017)
08/10/2017	51	MINUTE ENTRY. Proceedings held before Judge Timothy J. Corrigan: Hearing held on 8/10/2017 re: 22 Motion for Preliminary Injunction. Court Reporter: Shannon Bishop. (MD) (Entered: 08/14/2017)
08/17/2017	52	MOTION for Extension of Time to File Answer re 1 Complaint, 50 Order on Motion for Preliminary Injunction by The School Board of St. Johns County, Florida. (Harmon, Terry) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 08/17/2017)
08/18/2017	53	ENDORSED ORDER granting 52 Motion for Extension of Time to File Answer. The School Board of St. Johns County, Florida shall file its answer to Count I by 8/22/2017. Signed by Judge Timothy J. Corrigan on 8/18/2017.(SRW) (Entered: 08/18/2017)
08/18/2017	54	MOTION to dismiss for failure to state a claim by The School Board of St. Johns County, Florida. (Harmon, Terry) (Entered: 08/18/2017)
08/18/2017	55	CASE MANAGEMENT REPORT. (Rivaux, Shani) (Entered: 08/18/2017)
08/22/2017	56	ANSWER and affirmative defenses to 1 Complaint by The School Board of St. Johns County, Florida.(Harmon, Terry) (Entered: 08/22/2017)
08/30/2017	57	TRANSCRIPT of Motion for Preliminary Injunction Hearing held on August 10, 2017 before Judge Timothy J. Corrigan. Court Reporter/Transcriber Shannon M. Bishop, RDR, CRR; dsmabishop@yahoo.com, Telephone number (904)549-1307. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter.. Redaction Request due 9/20/2017, Redacted Transcript Deadline set for 10/2/2017, Release of Transcript Restriction set for 11/28/2017. (SB) (Entered: 08/30/2017)
08/30/2017	58	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this

		<p>Case 18-13592 Document 1-1 Filed 12/26/18 Page 26 of 95</p> <p>transcript. The transcript is filed electronically and is available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Shannon Bishop, RDR, CRR; dsmabishop@yahoo.com; (904)549-1307. (SB) (Entered: 08/30/2017)</p>
09/04/2017	59	<p>CASE MANAGEMENT AND SCHEDULING ORDER: Order carrying motion to dismiss with the case (plaintiff shall incorporate response in proposed findings of fact and conclusions of law); allowing parties to perpetuate testimony of unavailable witness; setting case schedule as follows: Motions to Add Parties and Amend Pleadings, Identification of Mediator or Interest in Magistrate Judge Settlement Conference: 9/15/2017; Disclosure of Affirmative Expert Reports: 10/2/2017; Rebuttal Expert Reports: 11/3/2017; Close of Fact and Expert Discovery: 11/22/2017; Joint Final Pretrial Statement and all motions: 11/29/2017; Final Pretrial Conference set for 12/1/2017 at 3:00 PM in Jacksonville Courtroom 10D; Preliminary Findings of Fact and Conclusions of Law (limited to 35 pages) due 12/7/2017; Bench Trial set for 12/11/2017 at 9:00 AM in Jacksonville Courtroom 10D (see Order for further details). Signed by Judge Timothy J. Corrigan on 9/4/2017. (SRW) (Entered: 09/04/2017)</p>
09/07/2017	60	<p>First AMENDED COMPLAINT against The School Board of St. Johns County, Florida filed by Drew Adams.(Borelli, Tara) Modified on 9/13/2017 to edit text. (TMC) (Entered: 09/07/2017)</p>
09/15/2017	61	<p>Joint NOTICE OF SELECTION of Terrance E. Schmidt as mediator by Drew Adams. (Rivaux, Shani) Modified on 9/18/2017 to edit text. (TMC) (Entered: 09/15/2017)</p>
09/20/2017	62	<p>ORDER referring case to mediation and appointing mediator. Terrance Edward Schmidt is appointed as mediator, mediation shall be conducted on or before 12/1/17. Signed by Judge Timothy J. Corrigan on 9/20/2017. (Attachments: # 1 Mediation Report form, # 2 docket sheet)(MD) (Entered: 09/20/2017)</p>
09/21/2017	63	<p>ANSWER and affirmative defenses to 60 Amended Complaint by The School Board of St. Johns County, Florida.(Spellman, Michael) (Entered: 09/21/2017)</p>
09/21/2017	64	<p>NOTICE Adopting 54 MOTION to Dismiss in Response to Count II of Plaintiff's 60 Amended Complaint, by The School Board of St. Johns County, Florida (Spellman, Michael) Modified on 9/22/2017 to create docket entry relationship and edit text. (TMC) (Entered: 09/21/2017)</p>
10/06/2017		<p>***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Natalie Nardecchia, appearing on behalf of Drew Adams (Filing fee \$150 receipt number JAX025443.). (AFC) (Entered: 10/06/2017)</p>
10/09/2017	65	<p>Joint MOTION for protective order by The School Board of St. Johns County, Florida. (Attachments: # 1 Stipulated Protective Order)(Harmon, Terry) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 10/09/2017)</p>
10/11/2017	66	<p>ORDER taking under advisement 65 Joint Motion for Entry of Stipulated Protective Order. The parties' filing due by 10/18/17. See Order for details. Signed by Magistrate Judge Joel B. Toomey on 10/11/2017. (TAM) (Entered: 10/11/2017)</p>
10/12/2017	67	<p>Unopposed MOTION for Natalie Nardecchia to appear pro hac vice by All Plaintiffs. (Attachments: # 1 Exhibit)(Doolittle, Kirsten) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 10/12/2017)</p>
10/12/2017	68	<p>NOTICE by The School Board of St. Johns County, Florida <i>of Filing Stipulation</i></p>

		<p style="text-align: center;">Regarding 11342 Protected Information (Harmon, Terry) (Entered: 10/12/2017) Stipulation Regarding HIPAA Protected Information(Harmon, Terry) (Entered: 10/12/2017) Page# 27 of 95</p>
10/12/2017	69	MOTION for miscellaneous relief, specifically for Student and Parent Witnesses to Proceed Anonymously and/or Under a Pseudonym and Request for Expedited Briefing Schedule and Review by The School Board of St. Johns County, Florida. (Harmon, Terry) (Entered: 10/12/2017)
10/12/2017	70	ENDORSED ORDER directing plaintiff to respond to 69 MOTION for Student and Parent Witnesses to Proceed Anonymously and/or Under a Pseudonym no later than 10/19/2017.Signed by Judge Timothy J. Corrigan on 10/12/2017. (SRW) (Entered: 10/12/2017)
10/12/2017	71	ORDER granting 65 Joint Motion for Entry of Stipulated Protective Order. See Order for details. Signed by Magistrate Judge Joel B. Toomey on 10/12/2017. (TAM) (Entered: 10/12/2017)
10/12/2017	72	Stipulated Protective Order. Signed by Magistrate Judge Joel B. Toomey on 10/12/2017. (TAM) (Entered: 10/12/2017)
10/13/2017	73	ENDORSED ORDER granting 67 Plaintiffs' Unopposed Motion for Admission Pro Hac Vice of Natalie Nardecchia. If Natalie Nardecchia, Esq., has not already done so, she shall immediately register for a login and password for electronic filing at the Court's website at www.flmd.uscourts.gov. Signed by Magistrate Judge Joel B. Toomey on 10/13/2017.(TSP) (Entered: 10/13/2017)
10/16/2017	74	APPEARANCE of non-resident counsel and designation of local counsel by Natalie Nardecchia on behalf of Drew Adams. Local Counsel: Kirsten L. Doolittle. Non-Resident Counsel: Natalie Nardecchia. (Nardecchia, Natalie) (Entered: 10/16/2017)
10/19/2017	75	RESPONSE in Opposition re 69 MOTION for miscellaneous relief, specifically for Student and Parent Witnesses to Proceed Anonymously and/or Under a Pseudonym and Request for Expedited Briefing Schedule and Review filed by Drew Adams. (Gonzalez-Pagan, Omar) (Entered: 10/19/2017)
10/24/2017	76	NOTICE of telephone hearing: Telephone Hearing re: Defendant's Motion for Student and Parent Witnesses to Proceed Anonymously and/or Under a Pseudonym (Doc. 69) set for 10/30/2017 at 2:00 PM in Courtroom 10 D before Judge Timothy J. Corrigan. Parties directed to contact CourtCall no later than 10/26/17 to make the telephone conference call arrangements.(MD) (Entered: 10/24/2017)
10/30/2017	77	MINUTE ENTRY. Proceedings held before Judge Timothy J. Corrigan: Telephone hearing re: Defendant's Motion for Student and Parent Witnesses to Proceed Anonymously and/or Under a Pseudonym (Doc. 69) held on 10/30/2017. Order to enter. Court Reporter: Shannon Bishop. (MD) (Entered: 10/30/2017)
10/30/2017	78	ORDER denying without prejudice 69 Defendant's Motion for Student and Parent Witnesses to Proceed Anonymously and/or Under a Pseudonym. Signed by Judge Timothy J. Corrigan on 10/30/2017.(SRW) (Entered: 10/30/2017)
11/02/2017		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Robert Christopher Barden, appearing on behalf of The School Board of St. Johns County, Florida (Filing fee \$150 receipt number JAX025726.). (AFC) (Entered: 11/02/2017)
11/08/2017	79	Unopposed MOTION for miscellaneous relief, specifically for Admission Pro Hac Vice of R. Christopher Barden by The School Board of St. Johns County, Florida. (Harmon, Terry) (Entered: 11/08/2017)

11/08/2017	80	Emergency MOTION to Quash Subpoena or, in the Alternative, for Protective Order and Supporting Memorandum of Law and Combined Objections by The School Board of St. Johns County, Florida. (Attachments: # 1 Exhibit 1 - November 3, 2017 Notice of Deposition of Allan Josephson, M.D., # 2 Exhibit 2 - November 6, 2017 Amended Notice of Deposition of Allan Josephson, M.D.)(Kostelnik, Kevin) (Entered: 11/08/2017)
11/09/2017	81	ORDER directing the parties to postpone Dr. Josephson's deposition (now set for 11/13/2017), directing plaintiff to file a response to 80 defendant's Emergency Motion to Quash by 11/11/2017 at 5:00 p.m., directing defendant to file Dr. Josephson's expert report by 11/11/2017 at 5:00 p.m., setting TELEPHONE HEARING on 80 Emergency Motion to Quash: Telephone Hearing set for 11/13/2017 at 4:00 PM before Judge Timothy J. Corrigan; parties to call CourtCall by 11/10/2017 to make telephone conference call arrangements (see Order for details). Signed by Judge Timothy J. Corrigan on 11/9/2017. (SRW) (Entered: 11/09/2017)
11/09/2017	82	ORDER denying without prejudice 79 Defendant's Unopposed Motion for Admission Pro Hac Vice of R. Christopher Barden. See Order for details. Signed by Magistrate Judge Joel B. Toomey on 11/9/2017. (MAM) (Entered: 11/09/2017)
11/09/2017	83	NOTICE of Appearance by Lisa Barclay Fountain on behalf of The School Board of St. Johns County, Florida (Fountain, Lisa) (Entered: 11/09/2017)
11/10/2017	84	RESPONSE in Opposition re 80 Emergency MOTION to quash Subpoena or, in the Alternative, for Protective Order and Supporting Memorandum of Law and Combined Objections filed by Drew Adams. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Altman, Jennifer) (Entered: 11/10/2017)
11/11/2017	85	NOTICE by The School Board of St. Johns County, Florida of Filing Dr. Josephson's Expert Report (Attachments: # 1 Exhibit Dr. Josephson's Expert Report)(Kostelnik, Kevin) (Entered: 11/11/2017)
11/12/2017	86	ENDORSED ORDER directing defendant to file a copy of Dr. Josephson's rebuttal report no later than 11/13/2017 at noon. Signed by Judge Timothy J. Corrigan on 11/12/2017. (SRW) (Entered: 11/12/2017)
11/13/2017	87	Amended MOTION for miscellaneous relief, specifically for Admission Pro Hac Vice of R. Chistopher Barden (<i>Unopposed</i>) by The School Board of St. Johns County, Florida. (Harmon, Terry) (Entered: 11/13/2017)
11/13/2017	88	ENDORSED ORDER granting 87 Defendant's Amended Unopposed Motion for Admission Pro Hac Vice of R. Christopher Barden. If Mr. Barden has not already done so, he shall immediately register for a login and password for electronic filing at the Court's website at www.flmd.uscourts.gov. Signed by Magistrate Judge Joel B. Toomey on 11/13/2017. (MAM) (Entered: 11/13/2017)
11/13/2017	89	NOTICE by The School Board of St. Johns County, Florida of Filing Dr. Josephson's Rebuttal Expert Report (Attachments: # 1 Dr. Josephsons Rebuttal Expert Report (redacted))(Harmon, Terry) (Entered: 11/13/2017)
11/13/2017		Sealed Document:[S-90]. Notice of Filing: Dr. Josephson's Unredacted Expert Rebuttal Report, dated November 3, 2017. (TMC) (Entered: 11/13/2017)
11/13/2017	91	ORDER granting 80 Defendant's Combined Objections and Emergency Motion to Quash Subpoena or, in the Alternative, for Protective Order, to the extent that Dr. Josephson need not produce any patient files in advance of his deposition (ruling is without prejudice to plaintiff seeking records after the deposition); resetting time

		Case Final Pretrial Conference Filed 11/13/2017 Page 100 of 85 (Courtroom 10D). Signed by Judge Timothy J. Corrigan on 11/13/2017. (SRW) (Entered: 11/13/2017)
11/13/2017	92	MINUTE ENTRY. Proceedings held before Judge Timothy J. Corrigan: Telephone hearing re: 80 Defendant's Combined Objections and Emergency Motion to Quash Subpoena or, in the Alternative, for Protective Order held on 11/13/2017. Court Reporter: Shannon Bishop. (MD) (Entered: 11/14/2017)
11/14/2017	93	NOTICE of Appearance by Robert Christopher Barden on behalf of The School Board of St. Johns County, Florida (Barden, Robert) (Entered: 11/14/2017)
11/15/2017	94	SECOND NOTICE OF RESCHEDULING HEARING (AS TO TIME ONLY): The Final Pretrial Conference hearing previously scheduled for 12/1/2017 is rescheduled as to time only. New hearing time: Final Pretrial Conference set for 12/1/2017 at 10:30 AM (instead of 10:00 AM) in Jacksonville Courtroom 10D before Judge Timothy J. Corrigan (SRW) (Entered: 11/15/2017)
11/16/2017	95	Joint MOTION for miscellaneous relief, specifically for Order Permitting Filing of Daubert Motion Pertaining to Dr. Josephson by December 6, 2017 by Drew Adams. (Nardecchia, Natalie) (Entered: 11/16/2017)
11/16/2017	96	ENDORSED ORDER granting 95 Motion to Extend Deadline to File Daubert Motion as to Dr. Josephson: deadline extended to 12/6/2017. Signed by Judge Timothy J. Corrigan on 11/16/2017. (SRW) (Entered: 11/16/2017)
11/27/2017	97	Joint MOTION for Extension of Time to File Daubert Motions to December 6, 2017 by Drew Adams. (Gonzalez-Pagan, Omar) (Entered: 11/27/2017)
11/27/2017	98	MOTION for miscellaneous relief, specifically for leave to allow Plaintiff's expert witness, Diane Ehrensaft, Ph.D., to testify out of turn on December 13, 2017 by Drew Adams. (Gonzalez-Pagan, Omar) (Entered: 11/27/2017)
11/27/2017	99	ENDORSED ORDER granting 97 Motion for Extension of Time to File Daubert motions until 12/6/2017. However, the parties should be prepared to advise the Court at the 12/1/2017 Final Pretrial Conference which experts they expect to challenge through Daubert motions. Signed by Judge Timothy J. Corrigan on 11/27/2017. (SRW) (Entered: 11/27/2017)
11/27/2017	100	NOTICE by The School Board of St. Johns County, Florida <i>Notice of Filing its Amended Final Rule 26(a)(3) Pretrial Disclosures</i> (Harmon, Terry) (Entered: 11/27/2017)
11/27/2017	101	Exhibit List by Drew Adams. (Borelli, Tara) (Entered: 11/27/2017)
11/27/2017	102	Witness List by Drew Adams. (Borelli, Tara) (Entered: 11/27/2017)
11/29/2017	103	MOTION to Withdraw and Amend Two Responses to Plaintiff's Request for Admissions by The School Board of St. Johns County, Florida. (Attachments: # 1 Exhibit 1 - Best Practices)(Spellman, Michael) (Entered: 11/29/2017)
11/29/2017	104	MOTION in limine by The School Board of St. Johns County, Florida. (Attachments: # 1 Exhibit 1 - Best Practices)(Spellman, Michael) (Entered: 11/29/2017)
11/29/2017	105	NOTICE by The School Board of St. Johns County, Florida <i>Notice of Filing its Second Amended Final Rule 26(a)(3) Pretrial Disclosures</i> (Harmon, Terry) (Entered: 11/29/2017)
11/29/2017	106	MOTION for Judicial Notice by The School Board of St. Johns County, Florida. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G)(Kostelnik, Kevin) Modified on 11/30/2017 to edit text. (TMC) (Entered: 11/29/2017)

11/29/2017	107	Case: 18-13592 Date Filed: 12/27/2018 Page: 30 of 95 MOTION in limine <i>to exclude evidence purporting to dispute Plaintiff's diagnosis of gender dysphoria</i> by Drew Adams. (Attachments: # 1 Exhibit A - Hruz Deposition Excerpts, # 2 Exhibit B - Josephson Deposition Excerpts)(Gonzalez-Pagan, Omar) (Entered: 11/29/2017)
11/29/2017	108	MOTION in limine <i>to exclude evidence, argument, or opinion regarding the proper medical treatments for gender dysphoria, including testimony relating to desistance, conversion/reparative therapy, and hormone treatment</i> by Drew Adams. (Attachments: # 1 Exhibit A - Hruz Deposition Excerpts, # 2 Exhibit B - Josephson Deposition Excerpts, # 3 Exhibit C Informed Consent Form)(Gonzalez-Pagan, Omar) (Entered: 11/29/2017)
11/29/2017	109	MOTION in limine <i>to exclude evidence or argument regarding Plaintiff's medical records</i> by Drew Adams. (Attachments: # 1 Exhibit A - Hruz Deposition Excerpts, # 2 Exhibit B - Josephson Deposition Excerpts)(Gonzalez-Pagan, Omar) (Entered: 11/29/2017)
11/29/2017	110	MOTION in limine <i>to exclude evidence or argument regarding Plaintiff's academic records</i> by Drew Adams. (Gonzalez-Pagan, Omar) (Entered: 11/29/2017)
11/29/2017	111	MOTION in limine <i>to exclude evidence or argument regarding Plaintiff's social media</i> by Drew Adams. (Gonzalez-Pagan, Omar) (Entered: 11/29/2017)
11/29/2017	112	Unopposed MOTION for miscellaneous relief, specifically requesting judicial notice of EEOC decisions holding discrimination based on transgender status is a form of sex discrimination by Drew Adams. (Attachments: # 1 Exhibit Macy v. Holder, # 2 Exhibit Lusardi v. McHugh)(Gonzalez-Pagan, Omar) (Entered: 11/29/2017)
11/29/2017	113	MOTION for miscellaneous relief, specifically requesting judicial notice of federal court decisions making factual findings regarding transgender people by Drew Adams. (Gonzalez-Pagan, Omar) (Entered: 11/29/2017)
11/29/2017	114	MOTION for miscellaneous relief, specifically requesting judicial notice of governmental actions, policies, and reports documenting the history of discrimination against transgender people by Drew Adams. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6)(Gonzalez-Pagan, Omar) (Entered: 11/29/2017)
11/29/2017	115	MOTION for miscellaneous relief, specifically requesting judicial notice of the clinical guidelines, resolutions, standards of care, and statements by major medical and mental health organizations by Drew Adams. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25)(Gonzalez-Pagan, Omar) (Entered: 11/29/2017)
11/29/2017	116	Joint Final PRETRIAL statement by The School Board of St. Johns County, Florida. (Attachments: # 1 Exhibit Defendant's Objections to Plaintiff's Exhibits, # 2 Exhibit Plaintiff's Objections to Defendant's Exhibits)(Harmon, Terry) Modified on 11/30/2017 to edit text. (TMC) (Entered: 11/29/2017)
11/30/2017	117	MEMORANDUM in opposition re 104 Motion in Limine filed by Drew Adams. (Gonzalez-Pagan, Omar) (Entered: 11/30/2017)
11/30/2017	118	MOTION to Strike <i>AND RESPONSE IN OPPOSITION TO 119 MOTION/APPLICATION FOR LEAVE TO APPEAR AS AMICUS CURIAE</i> by The School Board of St. Johns County, Florida. (Kostelnik, Kevin) Motions referred to

	Magistrate Judge	Date Filed	Date Filed	Modified on	Page 31 of 95 create docket entry relationship.
11/30/2017	119	MOTION / Application for Leave to Appear as Amicus Curiae, by American Academy of Child and Adolescent Psychiatry, American Academy of Nursing, American College of Physicians, American Medical Association, American Medical Women's Association, American Nurses Association, Association of Medical School Pediatric Department Chairs, Endocrine Society, GLMA - Health Professionals Advancing LGBT Equality, Pediatric Endocrine Society, The American Academy of Pediatrics. (Attachments: # 1 Exhibit Proposed Brief of Amici Curiae Medical, Nursing, Mental Health, and Other Health Care Organizations in Support of Plaintiff)(TMC)	(Entered: 11/30/2017)		
12/01/2017	120	MEMORANDUM in opposition re 103 Motion to Withdraw <i>and Amend Two Responses to Plaintiff's Request for Admissions</i> filed by Drew Adams. (Gonzalez-Pagan, Omar)	(Entered: 12/01/2017)		
12/01/2017	121	MEDIATION report. Hearing held on November 29, 2017. Hearing outcome: Impasse.	(TMC) (Entered: 12/04/2017)		
12/01/2017	135	Minute Entry. Proceedings held before Judge Timothy J. Corrigan: Final Pretrial Conference held on 12/1/2017. Court Reporter: Shannon Bishop. (MD)	(Entered: 12/07/2017)		
12/05/2017	122	RESPONSE in Opposition re 118 MOTION to Strike <i>AND RESPONSE IN OPPOSITION TO 119 MOTION/APPLICATION FOR LEAVE TO APPEAR AS AMICUS CURIAE</i> filed by Drew Adams. (Borelli, Tara)	(Entered: 12/05/2017)		
12/05/2017	123	MEMORANDUM in opposition re 106 Motion for Miscellaneous Relief <i>Requesting Judicial Notice of Unenacted Congressional Bills (specifically, Exhibits E, F, and G to the Motion)</i> filed by Drew Adams. (Gonzalez-Pagan, Omar)	(Entered: 12/05/2017)		
12/06/2017	124	MOTION for Leave to File Amicus Brief of Amici Curiae School Administrators, by School Administrators from 29 States and the District of Columbia. (Attachments: # 1 Exhibit Proposed Brief of School Administrators from 29 States and the District of Columbia)(TMC)	(Entered: 12/06/2017)		
12/06/2017	125	MOTION for Rosanne C. Baxter to appear pro hac vice by School Administrators from 29 States and the District of Columbia. (Dyer, Karen) Motions referred to Magistrate Judge Joel B. Toomey.	(Entered: 12/06/2017)		
12/06/2017	126	Written designation and consent to act re: 125 Motion to Appear Pro Hac Vice, by Karen Caudill Dyer on behalf of School Administrators from 29 States and the District of Columbia. Local Counsel: Karen C. Dyer. Non-Resident Counsel: Rosanne C. Baxter. (Dyer, Karen) Modified on 12/7/2017 to edit text and create docket entry relationship.	(TMC) (Entered: 12/06/2017)		
12/06/2017	127	MOTION for miscellaneous relief, specifically to Preclude Dr. Allan Josephson from Testifying and Offering any Expert Opinion by Drew Adams. (Attachments: # 1 Declaration of Natalie Nardecchia and Exhibit A, # 2 Text of Proposed Order)	(Nardecchia, Natalie) (Entered: 12/06/2017)		
12/06/2017	128	MOTION for miscellaneous relief, specifically to exclude expert testimony and opinions of Dr. Paul W. Hruz by Drew Adams. (Attachments: # 1 Exhibit A - Defendant's Rule 26(a)(2) Disclosures, # 2 Exhibit B - Hruz Expert Rebuttal Report in Adams (Redacted), # 3 Exhibit C - Hruz Deposition Excerpts, # 4 Exhibit D - Hruz Expert Declaration in Whitaker (Redacted), # 5 Exhibit E - Redline Comparison of Hruz Expert Reports (Redacted), # 6 Exhibit F - Declaration of Dr. Norman P. Spack, # 7 Exhibit G - Hutton Deposition Excerpts)(Gonzalez-Pagan, Omar)	(Entered: 12/06/2017)		

12/06/2017	129	MOTION for Sealed Documents Filed Specifically to Exclude Expert Testimony of Deanna Adkins, M.D. And Diane Ehrensaft, Ph.D. (Daubert Motion) by The School Board of St. Johns County, Florida. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Harmon, Terry) (Entered: 12/06/2017)
12/07/2017		Sealed Documents: S-130 (Expert Rebuttal Report of Dr. Hruz), S-131 (Expert Declaration of Dr. Hruz), and S-132 (Redline Comparison of Expert Reports by Dr. Hruz). (TMC) Modified on 12/07/2017 to edit text. (TMC) (Entered: 12/07/2017)
12/07/2017		Sealed Documents: S-133, Deposition transcript of Dr. Adkins; S-134, Deposition transcript of Dr. Ehrensaft. (TMC) (Entered: 12/07/2017)
12/07/2017		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney Rosanne C. Baxter, appearing on behalf of School Administrators from 29 States and the District of Columbia (Filing fee \$150 receipt number JAX026092.) Related document: 125 MOTION for Rosanne C. Baxter to appear pro hac vice. (AFC) (Entered: 12/07/2017)
12/07/2017	136	RESPONSE in Opposition re 124 MOTION for leave to file filed by The School Board of St. Johns County, Florida. (Sniffen, Robert) (Entered: 12/07/2017)
12/07/2017	137	NOTICE of Filing Preliminary Findings of Fact and Conclusions of Law by Drew Adams. (Attachments: # 1 Exhibit A - Adkins Expert Report, # 2 Exhibit B - Ehrensaft Expert Report, # 3 Exhibit C - Ehrensaft Rebuttal Report)(Borelli, Tara) Modified on 12/8/2017 to edit text. (TMC) (Entered: 12/07/2017)
12/07/2017	138	NOTICE of Filing Preliminary Findings of Fact and Conclusions of Law by The School Board of St. Johns County, Florida (Attachments: # 1 Preliminary Findings of Fact and Conclusions of Law)(Spellman, Michael) Modified on 12/8/2017 to edit text. (TMC) (Entered: 12/08/2017)
12/08/2017	139	ORDER AND INFORMATION REGARDING COURTHOUSE ACCESS, CELL PHONES, AND USE OF ELECTRONICS. Signed by Judge Timothy J. Corrigan on 12/8/2017. (SRW) (Entered: 12/08/2017)
12/08/2017		Sealed Document: S-140, Expert Report of Dr. Ehrensaft re: 137 NOTICE of Filing Preliminary Findings of Fact and Conclusions of Law. (TMC) (Entered: 12/08/2017)
12/11/2017		***PRO HAC VICE FEES paid and Special Admission Attorney Certification Form filed by attorney William C. Miller, appearing on behalf of Drew Adams (Filing fee \$150 receipt number JAX026118.) (AEJ) (Entered: 12/11/2017)
12/11/2017	141	MOTION for William C. Miller to appear pro hac vice by Drew Adams. (Attachments: # 1 Exhibit Certificate of Good Standing)(TMC) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 12/11/2017)
12/11/2017	148	MINUTE ENTRY. Proceedings held before Judge Timothy J. Corrigan: BENCH TRIAL held on 12/11/2017. Court Reporter: Shannon Bishop. (MD) (Entered: 12/19/2017)
12/11/2017		Sealed Document: S-167. (TMC) (Entered: 01/23/2018)
12/11/2017		Sealed Document: S-169. (TMC) (Entered: 01/23/2018)
12/12/2017	142	ENDORSED ORDER granting 141 Plaintiffs' Unopposed Motion for Admission Pro Hac Vice of William C. Miller. If William C. Miller, Esq., has not already done so, he shall immediately register for a login and password for electronic filing at the Court's website at www.flmd.uscourts.gov. Signed by Magistrate Judge Joel B. Toomey on 12/12/2017. (TSP) (Entered: 12/12/2017)

12/12/2017	149	Minute Entry. Proceedings held before Judge Timothy J. Corrigan: BENCH TRIAL held on 12/12/2017. Court Reporter: Shannon Bishop. (MD) (Entered: 12/19/2017)
12/12/2017		Sealed Document: S-170. (TMC) (Entered: 01/23/2018)
12/13/2017	150	MINUTE ENTRY. Proceedings held before Judge Timothy J. Corrigan: BENCH TRIAL completed on 12/13/2017. Court Reporter: Shannon Bishop. (MD) (Entered: 12/19/2017)
12/13/2017	151	Exhibit List by Drew Adams and Exhibits Admitted At Trial. Please note: some trial exhibits are filed under seal. (Exhibits added on 1/19/2018: # 1 Plaintiff's Exhibit 3, # 2 Plaintiff's Exhibit 4, # 3 Plaintiff's Exhibit 12, # 4 Plaintiff's Exhibit 30, # 5 Plaintiff's Exhibit 43, # 6 Plaintiff's Exhibit 47, # 7 Plaintiff's Exhibit 65, # 8 Plaintiff's Exhibit 66, # 9 Plaintiff's Exhibit 68, # 10 Plaintiff's Exhibit 69, # 11 Plaintiff's Exhibit 113, # 12 Plaintiff's Exhibit 114, # 13 Plaintiff's Exhibit 115, # 14 Plaintiff's Exhibit 116 Part 1, # 15 Plaintiff's Exhibit 116 Part 2, # 16 Plaintiff's Exhibit 134, # 17 Plaintiff's Exhibit 138, # 18 Plaintiff's Exhibit 146, # 19 Plaintiff's Exhibit 147, # 20 Plaintiff's Exhibit 150) (MD). (Entered: 12/19/2017)
12/13/2017	152	Exhibit List by The School Board of St. Johns County, Florida, and Exhibits Admitted At Trial. Please note: some trial exhibits are filed under seal. (Exhibits added on 1/22/2018: # 1 Defendant's Exhibit 7, # 2 Defendant's Exhibit 14, # 3 Defendant's Exhibit 20, # 4 Defendant's Exhibit 27, # 5 Defendant's Exhibit 28, # 6 Defendant's Exhibit 33, # 7 Defendant's Exhibit 34, # 8 Defendant's Exhibit 36, # 9 Defendant's Exhibit 39, # 10 Defendant's Exhibit 40, # 11 Defendant's Exhibit 41, # 12 Defendant's Exhibit 42, # 13 Defendant's Exhibit 43, # 14 Defendant's Exhibit 65, # 15 Defendant's Exhibit 66, # 16 Defendant's Exhibit 67), # 17 Defendant's Exhibit 68, # 18 Defendant's Exhibit 69, # 19 Defendant's Exhibit 70, # 20 Defendant's Exhibit 71, # 21 Defendant's Exhibit 72, # 22 Defendant's Exhibit 84, # 23 Defendant's Exhibit 85, # 24 Defendant's Exhibit 87, # 25 Defendant's Exhibit 90, # 26 Defendant's Exhibit 120, # 27 Defendant's Exhibit 133, # 28 Defendant's Exhibit 142, # 29 Defendant's Exhibit 143, # 30 Defendant's Exhibit 144, # 31 Defendant's Exhibit 145, # 32 Defendant's Exhibit 157), # 33 Defendant's Exhibit 158, # 34 Defendant's Exhibit 159, # 35 Defendant's Exhibit 160, # 36 Defendant's Exhibit 161, # 37 Defendant's Exhibit 162, # 38 Defendant's Exhibit 163, # 39 Defendant's Exhibit 168, # 40 Defendant's Exhibit 170, # 41 Defendant's Exhibit 171, # 42 Defendant's Exhibit 172, # 43 Defendant's Exhibit 174, # 44 Defendant's Exhibit 177, # 45 Defendant's Exhibit 178, # 46 Defendant's Exhibit 179, # 47 Defendant's Exhibit 187, # 48 Defendant's Exhibit 188, # 49 Defendant's Exhibit 189, # 50 Defendant's Exhibit 190, # 51 Defendant's Exhibit 191), # 52 Defendant's Exhibit 203, # 53 Defendant's Exhibit 204, # 54 Defendant's Exhibit 213, # 55 Defendant's Exhibit 217, # 56 Defendant's Exhibit 223, # 57 Defendant's Exhibit 225, # 58 Defendant's Exhibit 228, # 59 Defendant's Exhibit 237, # 60 Defendant's Exhibit 238, # 61 Defendant's Exhibit 248, # 62 Defendant's Exhibit 254, # 63 Defendant's Exhibit 255) (MD). (Entered: 12/19/2017)
12/13/2017	166	COURT'S EXHIBITS. Please note: some court exhibits from trial are filed under seal. (Court Exhibits: # 1 Court Exhibit 1, # 2 Court Exhibit 2, # 3 Court Exhibit 3, # 4 Court Exhibit 4, # 5 Court Exhibit 5 A, # 6 Court Exhibit 5 B, # 7 Court Exhibit 5 C, # 8 Court Exhibit 5 D, # 9 Court Exhibit 5 E (part 1), # 10 Court Exhibit 5 E (part 2), # 11 Court Exhibit 5 E (part 3), # 12 Court Exhibit 5 E (part 4), # 13 Court Exhibit F, # 14 Court Exhibit G, # 15 Court Exhibit H, # 16 Court Exhibit I, # 17 Court Exhibit J, # 18 Court Exhibit K, # 19 Court Exhibit L, # 20 Court Exhibit 5 M, # 21 Court Exhibit 5 N, # 22 Court Exhibit 5 O, # 23 Court Exhibit 5 P)(MD) (Entered: 01/22/2018)
12/13/2017		Sealed Document: S-168. (TMC) (Entered: 01/23/2018)
12/13/2017		Sealed Document: S-171. (TMC) (Entered: 01/23/2018)

Date	Page	Description
01/17/2018	163	<p>Case: 18-13592 Date Filed: 12/27/2018 Page: 35 of 95</p> <p>NOTICE to counsel of filing of OFFICIAL REDACTED TRANSCRIPTS (Volume I, Volume II, and Volume III of Bench Trial Proceedings, 12/11/17, 12/12/17 and 12/13/17). The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Shannon Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com; (904)549-1307. (SB) (Entered: 01/17/2018)</p>
01/19/2018	164	Consent MOTION to extend time to File Proposed Findings of Fact and Conclusions of Law by The School Board of St. Johns County, Florida. (Harmon, Terry) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 01/19/2018)
01/19/2018	165	ENDORSED ORDER granting 164 Motion to extend time to file proposed findings of fact and conclusions of law. The parties' proposed findings of fact and conclusions of law (previously due by 1/24/2018) AND the supplemental briefing (previously due by 2/5/2018) shall now all be filed no later than 2/2/2018 at 5:00 p.m. Signed by Judge Timothy J. Corrigan on 1/19/2018. (SRW) (Entered: 01/19/2018)
02/02/2018	172	DEFENDANT'S BRIEF re 159 Order <i>requiring supplemental briefing</i> filed by The School Board of St. Johns County, Florida. (Harmon, Terry) (Entered: 02/02/2018)
02/02/2018	173	NOTICE by The School Board of St. Johns County, Florida <i>of Filing Post-Trial Proposed Findings of Fact and Conclusions of Law</i> (Attachments: # 1 Exhibit Post-Trial Proposed Findings of Fact and Conclusions of Law)(Harmon, Terry) Modified on 2/14/2018 - PDF for Exhibit #1 removed per 177 Court Order. (TMC) (Additional attachment(s) added on 2/14/2018: # 1 Exhibit REDACTED Post-Trial Proposed Findings of Fact and Conclusions of Law) (TMC). (Entered: 02/02/2018)
02/02/2018	174	PLAINTIFF'S BRIEF re 159 Order <i>requiring supplemental briefing</i> filed by Drew Adams. (Gonzalez-Pagan, Omar) (Entered: 02/02/2018)
02/02/2018	175	PROPOSED findings of fact and conclusions of law by Drew Adams. (Borelli, Tara) (Entered: 02/02/2018)
02/12/2018	176	Consent MOTION for leave to file <i>Redacted Version of Defendant's Post-Trial Proposed Findings of Fact and Conclusions of Law</i> by The School Board of St. Johns County, Florida. (Harmon, Terry) (Entered: 02/12/2018)
02/13/2018	177	ENDORSED ORDER granting 176 Defendant's Consented Motion for Leave to File Redacted Post-Trial Proposed Findings of Fact and Conclusions of Law; for good cause shown, the Clerk is directed to remove the attachment to Defendant's Notice of Filing [173-1] and place that document under seal. The Clerk will contact counsel for defendant to obtain a redacted version which will be attached to Defendant's Notice of Filing 173 . Signed by Judge Timothy J. Corrigan on 2/13/2018. (SRW) (Entered: 02/13/2018)
02/13/2018	178	ORDER requesting that the Chair of the St. Johns County School Board attend Friday's hearing. Signed by Judge Timothy J. Corrigan on 2/13/2018. (SRW) (Entered: 02/13/2018)
02/13/2018	179	ORDER re: Courthouse Access, Cell Phones, and Use of Electronics. Signed by Judge Timothy J. Corrigan on 2/13/2018. (SRW) (Entered: 02/13/2018)
02/14/2018		Sealed Document: S-180. (TMC) (Entered: 02/14/2018)
02/16/2018	181	Minute Entry. Proceedings held before Judge Timothy J. Corrigan: Oral Argument held

		Case 1:18-cv-00099-Corrigan-Report Filed 02/20/18 Page 46 of 95 Court Reporter Shelli Kozachenko (MD) (Entered: 02/20/2018)
03/12/2018	182	NOTICE of supplemental authority re 175 Proposed findings of fact and conclusions of law by Drew Adams. (Attachments: # 1 Exhibit A - FV v. Barron, # 2 Exhibit B - EEOC v. Harris)(Borelli, Tara) (Entered: 03/12/2018)
03/16/2018	183	NOTICE of supplemental authority re 175 Proposed findings of fact and conclusions of law by Drew Adams. (Attachments: # 1 Exhibit A - MAB v. Bd. of Educ. of Talbot Cty.) (Borelli, Tara) (Entered: 03/16/2018)
03/21/2018	184	TRANSCRIPT of Oral Argument held on 2/16/18 before Judge Timothy J. Corrigan. Court Reporter/Transcriber Shelli Kozachenko, Telephone number 904.301.6842. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 4/11/2018, Redacted Transcript Deadline set for 4/23/2018, Release of Transcript Restriction set for 6/19/2018. (SMK) (Entered: 03/21/2018)
03/21/2018	185	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Shelli Kozachenko. (SMK) (Entered: 03/21/2018)
04/18/2018	186	NOTICE of supplemental authority re 175 Proposed findings of fact and conclusions of law by Drew Adams. (Attachments: # 1 Exhibit A - Karnoski v. Trump)(Borelli, Tara) (Entered: 04/18/2018)
05/21/2018	187	MOTION for Natalie Nardecchia to withdraw as attorney by Drew Adams. (Borelli, Tara) Motions referred to Magistrate Judge Joel B. Toomey. (Entered: 05/21/2018)
05/22/2018	188	ENDORSED ORDER granting 187 Motion to Withdraw Natalie Nardecchia as Counsel for Plaintiff. Natalie Nardecchia, Esq., is hereby permitted to withdraw as counsel for Plaintiff. The Clerk is directed to terminate Ms. Nardecchia as counsel of record. Signed by Magistrate Judge Joel B. Toomey on 5/22/2018. (TSP) (Entered: 05/22/2018)
05/24/2018	189	NOTICE of supplemental authority re 175 Proposed findings of fact and conclusions of law by Drew Adams. (Attachments: # 1 Exhibit A - Grimm v. Gloucester Cty. Sch. Bd.) (Borelli, Tara) (Entered: 05/24/2018)
05/25/2018	190	NOTICE of supplemental authority re 175 Proposed findings of fact and conclusions of law by Drew Adams. (Attachments: # 1 Exhibit A - Doe v. Boyertown)(Borelli, Tara) Modified on 5/29/2018 - counsel notified to remove Natalie Nardecchia, Esq. from signature block of pleadings. (TMC). (Entered: 05/25/2018)
06/20/2018	191	NOTICE of supplemental authority re 175 Proposed findings of fact and conclusions of law by Drew Adams. (Attachments: # 1 Exhibit A - Doe v. Boyertown opinion)(Borelli, Tara) (Entered: 06/20/2018)
07/26/2018	192	FINDINGS OF FACT AND CONCLUSIONS OF LAW. Signed by Judge Timothy J. Corrigan on 7/26/2018. (SRW) (Entered: 07/26/2018)
07/26/2018	193	FINAL JUDGMENT. Signed by Judge Timothy J. Corrigan on 7/26/2018. (Attachments: # 1 Civil Appeals Checklist)(SRW) (Entered: 07/26/2018)
08/23/2018	194	NOTICE OF APPEAL as to 192 Findings of fact & conclusions of law, 193 Judgment by

		Class 18-13592 of State File Court 12/27/2018. Filed electronically. (Spellman, Michael) (Entered: 08/23/2018)
08/24/2018	195	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, docket sheet, order/judgment being appealed, and motion, if applicable to USCA re 194 Notice of appeal. Eleventh Circuit Transcript information form available to counsel at www.flmd.uscourts.gov under Forms and Publications/General. (Attachments: # 1 Docket Sheet, # 2 Notice of Appeal, # 3 USDC Findings of Fact and Conclusions of Law, # 4 USDC Final Judgment)(EAM) (Entered: 08/24/2018)
08/24/2018	196	Unopposed MOTION for Extension of Time to File motion for attorney's fees and bill of costs by Drew Adams. (Gonzalez-Pagan, Omar) (Entered: 08/24/2018)
08/27/2018		USCA appeal fees received \$ 505 receipt number JAX028781 re 194 Notice of appeal filed by The School Board of St. Johns County, Florida (AFC) (Entered: 08/27/2018)
08/27/2018	197	ENDORSED ORDER granting 196 Plaintiff's Unopposed Motion to Extend Time to File a Motion for Attorney's Fees and Costs: Plaintiff's Motion for Attorney's Fees and Costs shall be filed 30 days after any appellate review is final or the time for seeking such review expires, whichever is later. Signed by Judge Timothy J. Corrigan on 8/27/2018. (SRW) (Entered: 08/27/2018)
08/28/2018		ACKNOWLEDGMENT by USCA of receiving Notice of Appeal on 8/28/2018 re 194 Notice of appeal. USCA number: 18-13592-B. (EAM) (Entered: 08/28/2018)
09/06/2018	198	CORRECTED TRANSCRIPT of Oral Argument held on 2/16/18 before Judge Timothy J. Corrigan. Court Reporter/Transcriber Shelli Kozachenko, Telephone number 904.301.6842. (SMK) (Entered: 09/06/2018)
09/06/2018	199	NOTICE to counsel of filing of CORRECTED OFFICIAL TRANSCRIPT of 2/16/18 Oral Arguments. Court Reporter: Shelli Kozachenko. (SMK) (Entered: 09/06/2018)
09/06/2018	200	TRANSCRIPT information form filed by The School Board of St. Johns County, Florida for proceedings held on December 1, 2017, December 11, 12, 13, 2017, and February 16, 2018 before Judge Timothy J. Corrigan re 194 Notice of appeal. USCA number: 18-13592. (Harmon, Terry) (Entered: 09/06/2018)
09/10/2018	201	NOTIFICATION that transcript has been filed by Shelli Kozachenko re: 194 Notice of appeal. USCA number: 18-13592-B. (SMK) (Entered: 09/10/2018)
09/14/2018	202	COURT REPORTER ACKNOWLEDGMENT by Shannon M. Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com; (904)549-1307 re 194 Notice of appeal Estimated transcript filing date: October 1, 2018. USCA number: 18-13592. (SB) (Entered: 09/14/2018)
09/26/2018	203	TRANSCRIPT of Final Pretrial Conference held on December 1, 2017 before Judge Timothy J. Corrigan re 194 Notice of appeal. Court Reporter/Transcriber Shannon M. Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com, Telephone number (904)549-1307. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 10/17/2018, Redacted Transcript Deadline set for 10/29/2018, Release of Transcript Restriction set for 12/26/2018. (SB) (Entered: 09/26/2018)
09/26/2018	204	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the

		Case 18-13592 Document 12-1 Filed 12/26/18 Page 35 of 95 Court reporter's view of document as filed with the Clerk's Office. Original Document: Final. Court Reporter: Shannon Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com; (904)549-1307. (SB) (Entered: 09/26/2018)
09/26/2018	205	NOTIFICATION that transcript has been filed by Shannon M. Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com re: 194 Notice of appeal. USCA number: 18-13592-B. (SB) (Entered: 09/26/2018)

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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

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

Plaintiff,

v.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA; TIM FORSON, in his
official capacity as Superintendent of Schools for
the St. Johns County School District; and LISA
KUNZE, in her official capacity as Principal of
Allen D. Nease High School,

Defendants.

Civil Action No. 3:17-cv-739-J-SPDB

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND NOMINAL DAMAGES**

INTRODUCTION

1. Drew Adams (“Drew” or “Plaintiff”)¹ is a 16-year-old boy who attends Allen D. Nease High School (“Nease High School”) in Ponte Vedra, Florida. Drew will enter his junior year in August of 2017. Drew is active in his local community, having received an award for his volunteerism, and currently is preparing for a future career as an adolescent psychiatrist by volunteering at the Mayo Clinic in Jacksonville. Drew plays four musical instruments, and like many other kids his age, enjoys video games. Drew also is transgender.

¹ Pursuant to Fed. R. Civ. P. 5.2(h), Drew Adams waives the privacy protections afforded by Fed. R. Civ. P. 5.2(a).

As a result, unfortunately, he has been subjected to discrimination at his school on a daily basis.

2. Although Drew is a hard-working, high-achieving student, the school has discriminated against him by refusing him access to the boys' restrooms. This conduct has a negative and harmful impact on Drew, branding him as unfit to share the communal restrooms that all other boys use simply because he is transgender. Drew brings this suit because he has a simple request: to be treated like other boys who can use the restroom so that he too can focus on school, rather than the humiliation of being denied access to the facilities all others use for one of life's most basic functions.

3. Drew seeks a declaratory judgment that his exclusion from the boys' restroom by Defendants The School Board of St. Johns County, Florida ("Defendant School Board" or "School Board"); Tim Forson, in his official capacity as Superintendent of Schools for the St. Johns County School District; and Lisa Kunze, in her official capacity as Principal of Nease High School (collectively, "Defendants") violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* ("Title IX"). Drew also seeks preliminary and permanent injunctive relief enjoining Defendants from denying him equal access to the boys' restroom, and nominal damages against the Defendant School Board only for the violation of Drew's rights under the Fourteenth Amendment to the U.S. Constitution and Title IX.

PARTIES

4. Plaintiff Drew Adams is a 16-year-old boy who attends Nease High School within the St. Johns County School District ("District"). Drew is transgender. As a student

enrolled at Nease High School, Drew is subject to the policies of Defendants, including Defendants' policy, custom, or usage of barring transgender students from using restrooms that match their gender identity, while allowing non-transgender students to use the restrooms that match their gender identity. Drew sues pursuant to Federal Rule of Civil Procedure 17(c) by and through his next friend and mother Erica Adams Kasper ("Erica").

5. Defendant The School Board of St. Johns County, Florida, in accordance with the provisions of section 4(b) of Art. IX of the State Constitution and Fla. Stat. § 1001.32(2), operates, controls, and supervises all public schools in the District, including Nease High School. The School Board is empowered to determine the policies necessary for the effective operation of the school system, including the policy, custom, or usage challenged here that bars transgender students, and only transgender students, from using restrooms that match their gender identity. As a political subdivision of the State of Florida, the School Board is subject to civil suits pursuant to Fla. Stat. § 1001.41(4) and is a "person" acting under color of state law within the meaning of 42 U.S.C. § 1983.

6. Defendant Tim Forson ("Superintendent Forson") is, or was at the time of the events giving rise to this action, the Superintendent of Schools for the District who has been delegated authority and responsibility for the administration and management of schools, including Nease High School, as the secretary and executive officer of the School Board pursuant to Fla. Stat. § 1001.32(3). Superintendent Forson has both the authority and responsibility to enforce the School Board's policies, including the policy, custom, or usage that bars Drew from using the boys' restrooms at Nease High School. Superintendent Forson was preceded in office by Dr. Joseph Joyner, who was the Superintendent of Schools for the

District at the time of some of the events giving rise to this action. Upon information and belief, Superintendent Forson has previously, and continues to, ratify and perpetuate all relevant actions and omissions by former Superintendent Joyner.

7. Defendant Lisa Kunze (“Principal Kunze”) is, or was at the time of the events giving rise to the action, the Principal of Nease High School, who has been delegated authority and responsibility for the administration of Nease High School, pursuant to Fla. Stat. § 1001.32(4). Principal Kunze is an employee of the District and is under the general supervision of, and subject to the direction of Superintendent Forson. Principal Kunze has both the authority and responsibility to enforce the School Board’s policies, including the policy, custom, or usage that bars Drew from using the boys’ restrooms at Nease High School. Principal Kunze was preceded in office by Kyle Dresback, who was Principal of Nease High School at the time of some of the events giving rise to this action. Upon information and belief, Principal Kunze has previously, and continues to, ratify and perpetuate all relevant actions and omissions by former Principal Dresback.

8. Superintendent Forson and Principal Kunze are each sued in their official capacities. Each of them is a “person” within the meaning of 42 U.S.C. § 1983 and is, and was, acting under color of state law at all times relevant to this complaint.

9. Defendants, through their respective duties and obligations, are responsible for the exclusion of Drew from the boys’ restrooms within the school district. Each Defendant, and those subject to their direction, supervision, or control, has or intentionally will perform, participate in, aid and/or abet in some manner the acts alleged in this complaint, has or will proximately cause the harm alleged herein, and has or will continue to injure

Plaintiff irreparably if not enjoined. Accordingly, the relief requested herein is sought against each Defendant and their successors, as well as all persons under their supervision, direction, or control, including, but not limited to, their officers, employees, and agents.

JURISDICTION AND VENUE

10. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights secured by the United States Constitution and under Title IX.

11. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 because the matters in controversy arise under the Constitution and laws of the United States; and pursuant to 28 U.S.C. § 1343(a)(3) and (4) because the action is brought to redress deprivations, under color of state authority, or rights privileges and immunities secured by the U.S. Constitution and seeks to secure damages and equitable relief under an Act of Congress, specifically 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights.

12. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and (2) and Local Rule 1.02(c) because Defendants reside within this judicial district and division, and all Defendants reside within the State of Florida; and because a substantial part of the events that gave rise to the Plaintiff's claims took place (or will take place going forward through continued enforcement of the unlawful policy) within this judicial district and division.

13. This Court has the authority to enter a declaratory judgment and to provide preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, and 28 U.S.C. §§ 2201 and 2202.

14. This Court has personal jurisdiction over Defendants because they are domiciled in Florida.

FACTUAL ALLEGATIONS

15. Drew is 16 years old, and will begin his junior year at Nease High School on August 10, 2017.

16. Drew hopes to attend medical school. He is an honor student, is enrolled in a number of Advanced Placement classes in school, and participates in the International Baccalaureate (“IB”) Pre-IB/IB Diploma Program.

17. Drew is also active in a number of extra-curricular, volunteer and community service activities. He is on the Board of Leaders of Nease High School’s Gay Straight Alliance, which works to improve the school climate for lesbian, gay, bisexual, and transgender (“LGBT”) students. Drew was selected from more than 700 applicants to serve as one of only 18 students on the Gay, Lesbian, and Straight Education Network’s (“GLSEN”) National Student Council, which educates people about LGBT youth and does anti-bullying work. Drew helps raise money each year for the Jacksonville Area Sexual Minority Youth Network (“JASMYN”), which provides programs and services to support local LGBT youth. Starting the summer before high school, Drew has volunteered each summer at a local hospital, and he currently volunteers at the Mayo Clinic in Jacksonville. In May of 2017, Drew received the HandsOn Youth in Action Award from HandsOn Jacksonville, a non-profit that encourages volunteerism in the local community. He plays four musical instruments and also really enjoys playing video games. And, like lots of other kids his age, Drew wants to be treated equally and accepted for who he is.

18. After high school, Drew hopes to attend the University of Florida to study pre-medicine. Ultimately, he would like to attend medical school and become an adolescent psychiatrist.

19. Drew is a boy.

20. Drew also is transgender. At birth, Drew was incorrectly designated “female” on his birth certificate, even though he is, in fact, a boy.

21. Each person has multiple sex-related characteristics, including hormones, external and internal morphological features, external and internal reproductive organs, chromosomes, and gender identity. These characteristics may not always be in alignment.

22. The phrase “sex assigned at birth” refers to the sex recorded on a person’s birth certificate at the time of birth. Typically, a person is assigned a sex on their birth certificate solely on the basis of the appearance of external reproductive organs at the time of birth. Other sex-related characteristics (such as a person’s chromosomal makeup and gender identity, for example) are typically not assessed or considered at the time of birth.

23. Gender identity—a person’s core internal sense of their own gender—is the primary factor in determining a person’s sex. Every person has a gender identity. There is a medical consensus that gender identity is innate and that efforts to change a person’s gender identity are unethical and harmful to a person’s health and well-being.

24. Transgender persons are people whose gender identity diverges from the sex they were assigned at birth. A transgender boy’s sex is male (even though he was assigned the sex of female at birth) and a transgender girl’s sex is female (even though she was assigned the sex of male at birth).

25. Cisgender persons are people whose gender identity aligns with the sex they were assigned at birth. A cisgender boy's sex is male (matching his assigned sex of male at birth) and a cisgender girl's sex is female (matching her assigned sex of female at birth).

26. The incongruence between a transgender person's gender identity and sex assigned at birth can sometimes be associated with gender dysphoria. Gender dysphoria is a serious medical condition recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. (2013) ("DSM-V"), and by the other leading medical and mental health professional groups, including the American Medical Association and the American Psychological Association.

27. Gender dysphoria refers to clinically significant distress that can result when a person's gender identity differs from the person's sex assigned at birth. If left untreated, gender dysphoria may result in psychological distress, anxiety, depression, and even suicidal ideation or self-harm.

28. Treatment of gender dysphoria is usually provided pursuant to the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People ("Standards of Care"), published by the World Professional Association of Transgender Health. The Standards of Care are recognized as authoritative by major medical and mental health professional organizations.

29. Treatments for gender dysphoria align the transgender person's body and lived experience with the person's true sex. Steps that transgender people may take to treat their gender dysphoria pursuant to the Standards of Care include: (1) social transition; (2)

hormone therapy; and/or (3) gender-affirming surgery. These treatments do not change a transgender person's sex, which is determined by their gender identity.

30. Social transition entails a transgender person living in accordance with the person's gender identity. For example, for a transgender boy, social transition can include, among other things, changing his first name to a name typically associated with boys, using male pronouns, changing his identity documents to indicate a male gender, wearing clothing and adopting grooming habits stereotypically associated with boys, using restrooms and other facilities for boys, and otherwise living as a boy in all aspects of life.

31. Social transition requires that a transgender boy be recognized as a boy and treated the same as all other boys by family members, educators, and others in the community.

32. The ability to live in a manner consistent with one's gender identity is critical to the health and well-being of all transgender people.

33. Living in a manner consistent with one's gender identity, including the use of restroom facilities that match one's gender identity, also is a key aspect of treatment for gender dysphoria for those who suffer from it.

34. Even though Drew's sex assigned at birth was female, and even before he was aware that transgender people existed, Drew knew that his body did not feel like it fit him. Erica saw that he was having a difficult time too. She saw that he was becoming increasingly anxious, depressed, and withdrawn as he went through female puberty.

35. Drew first began to understand why he felt the way he did when he was 14 years old, and saw a transgender man interviewed on television. When Drew heard the man

describe what it meant to be transgender, everything clicked for Drew, and he immediately realized that he felt the same way. Erica was watching television with Drew at the time, and noticed right away how mesmerized he was by the interview; she felt like she could see the wheels turning in his head.

36. Erica had a moment of dread, and thought to herself, “things are about to get really hard.” But she also knew that Drew was profoundly unhappy, so she waited for Drew to become ready to talk to her. Not long after, her son came out as transgender.

37. Drew began researching what it meant to be transgender, and in 2015 began taking steps toward aligning his lived experience with his gender identity, *i.e.*, living as a boy. Drew cut his hair short, and began wearing a binder on his chest to minimize the appearance of his breasts. Each step brought him a sense of relief and happiness, and he felt like he was finally starting to live the way he was meant to live. This confirmed for Drew that transitioning was the only way he would ever feel fully comfortable in his own skin.

38. Drew has since been diagnosed with gender dysphoria, and that diagnosis has been confirmed by multiple providers.

39. Drew is receiving medical treatment through the Duke Child and Adolescent Gender Care (“Duke Clinic”) in North Carolina. Drew began taking testosterone in June 2016, and he remembers thinking that was the happiest day of his life. When Drew learned that he could get “top surgery” (a double mastectomy to masculinize his chest), he was so overcome with joy that he cried. Erica also saw a dramatic change in Drew’s happiness and wellbeing. As he continued to transition, Drew became an increasingly confident and

positive kid. As a result, Erica quickly realized that transitioning was the only way Drew could ever be truly happy and reach his full potential as a person.

40. Along with taking these medical steps to relieve his gender dysphoria and bring his body into alignment with his gender identity, Drew also began taking other steps to live fully as the boy that he is. For example, Drew updated the gender marker on his driver's license from female to male, in order to have his identification accurately reflect who he is.

41. By the time Drew began his freshman year at Nease High School, he was living full-time as a boy, and wanted to start school as a boy too. This was especially important to him because relatively few of the kids who knew him before his transition in middle school would be attending this high school, which gave him a chance for a fresh start.

42. Before the 2015-2016 school year started, Drew emailed his teachers to explain that the female gender marker on his school records was wrong, and to ask them to use male pronouns for him instead. He continued using the gender neutral name "Drew" that his parents had given him at birth.

43. When Drew began his freshman year, he was generally perceived by students and staff alike as a boy. His peers and teachers generally used male pronouns, and he was generally treated as a boy in every respect.

44. When Drew first started at Nease High School in August of 2015, he did not even imagine that anyone would try to prevent him from using the boys' restroom, so he used those restrooms along with all the other boys. On every occasion, he used one of the stalls.

45. Drew used the boys' restrooms at school without any incident until on or around September 22, 2015, when he was pulled out of class to meet with three guidance

counselors, including IB Program guidance counselor Kim Hollis. The guidance counselors informed him that someone had anonymously reported that he was using the boys' restroom. Drew was instructed to use a gender neutral restroom from that point forward.

46. Drew was shocked and confused. He asked if he had done anything wrong, and was told "no." That answer was frustrating, because it made Drew feel like he was being punished even though he had not done anything to deserve it.

47. Drew did not want to get in trouble or have any disciplinary reports on his school record, so he reluctantly began using gender neutral restrooms at the school, and has not used the boys' restroom since. But doing so has had a negative emotional and social impact on Drew, who simply wants to be treated like all of the other boys at the school.

48. Using the gender neutral restrooms immediately felt like an insult to Drew's identity. He felt humiliated having to walk halfway across the school, passing several boys' restrooms, to find one of the gender-neutral restrooms to use. His transgender status was not widely known among the school administrators, and he was anxious about encountering staff in the hallway who would have thought he was skipping class if he had said he was going to the restroom – while he was walking past right past a boys' restroom. It also created an inaccurate and discriminatory distinction between Drew as a boy and all other boys. Rather than treat Drew equally and in all material respects like a boy, he is singled out as different from the other boys at the school, which interferes with treatment for his gender dysphoria.

49. In contrast to boys' restrooms located throughout the school, there are, at most, three gender neutral restrooms for the entire school (with one minor exception for art class, described below): Two of these restrooms are located in the administrative building,

including one restroom in the main office, and one in the guidance office. Generally, no one uses the restroom in the main office, because individuals must enter the nurse's office to get to it.

50. The third gender neutral restroom has been available only intermittently to students in a building called the "H-pod." For approximately half of Drew's academic career at the school, this restroom has been restricted to staff, with a "Staff Only" sign appearing periodically on the door; on one occasion, Drew and other students had to petition Principal Kunze to re-open the restroom to students. On each occasion that the restroom was made available to students, no public announcement was made, which made Drew nervous about getting in trouble with staff who had not realized that the restroom was re-designated.

51. To access any of these gender neutral restrooms, Drew usually has to walk past at least one, if not two, boys' restrooms to get to the gender neutral restrooms. This fact alone highlights the false and discriminatory distinction that Defendants impose on Drew by separating him from other boys; this differential treatment causes Drew to feel anxious by reinforcing a message that he is "different," rather than simply allowing him to live as he is: a boy.

52. None of the gender neutral restrooms is as convenient to classes Drew has had as the restrooms that all the other boys get to use. For example, when Drew has had classes in the portable classrooms, it takes approximately 15 to 20 minutes to get to and from the gender neutral restrooms in the administrative building. Because the pass time between classes is only five minutes, using the gender neutral restrooms generally required Drew to miss significant amounts of class time. That was extremely stressful, given that every minute

of class time in his advanced classes matters. It forces Drew to weigh the importance of the information that he would miss in class, against the anxiety, stress, and distraction that come with trying to hold one's bladder. No cisgender boy at the school has to cope with that stress or loss of classroom time just to do something as basic as go to the restroom. This creates a Hobson's choice for Drew, one that forces him to choose between the importance of learning and being present in class, with the physiological need to use the restroom. Equally as bad is the constant reminder that he is being treated differently. Given the importance of living as a boy in all respects, this distinction creates an emotional and social hardship on Drew.

53. This discriminatory environment resulted in Drew's avoiding using the restroom at all, whenever he could physically manage it. He began restricting his fluid intake and planning his day around when he might have to use the restroom. He worried about what other students would think if they saw him going to the gender neutral restrooms. Despite the fact that this meant missing class, Drew would sometimes attempt to go to the restroom in the middle of the class, so that fewer students in the hallways would see him walking past the boys' restrooms to a special restroom instead. Drew also held his bladder as much as he could, which was extremely – at times, excruciatingly – uncomfortable. Erica recalls Drew needing to rush home to use the restroom at the end of the school day after trying to hold his bladder for hours.

54. By a stroke of luck, Drew had an art class last year in the middle of the day, with a single-user restroom inside the classroom. Having access to a restroom in the middle of his day provided some relief, but he was still careful about how much he drank before and during school, so that he could try to limit himself to one restroom break during the school

day. While he intends to take art class again, it could be scheduled for any period of the day; an early or late art class would once again leave him in the terrible, anxiety-provoking position of not having reliable or convenient access to a restroom. And even when he did have art class in the middle of the day, he still felt very anxious about needing to use the restroom during other parts of his day. Further, Drew should not be forced to take classes (or not take others) because of the proximity or access to neutral bathrooms when there are boys' restrooms available throughout the school. The policy is a constant reinforcement by the school that, according to them, Drew is not a real boy and should be treated differently. This creates and nurtures a stigma that has no place in the school system.

55. Erica felt hurt and angry as she watched the school's policy take an enormous toll on Drew. She tried to address it with school officials in an effort to avoid taking legal action. Erica sent letters to Principal Dresback and Superintendent Joyner right after Drew was first instructed on September 22, 2015 not to use boys' restrooms, requesting that he be treated as equal to all other boys in the school. Superintendent Joyner never responded to her letter. Erica and Drew then met with Principal Dresback, social workers Holly Arkin and Christy McKendrick, and Director of Student Services Sallyanne Smith in early October 2015. Erica and Drew were told during the meeting that this was "a District issue," and that the school's hands were tied.

56. Erica met with District officials on or around November 23 or 24, 2015, including Associate Superintendent Cathy Mittelstadt and Assistant Superintendent Brennan Asplen. Mr. Asplen repeatedly raised the issue of "biology" during the meeting, which he used to refer to genitals. Erica had brought an assortment of studies, articles, and other

materials about transgender students to help the District officials understand how important equal treatment is, but Mr. Asplen explained his view that “98% of the people in this District would not understand” if Drew were allowed to use the boys’ restroom. Mr. Asplen said he was more concerned about legal action by the parent of a cisgender child than legal action by Drew. Erica offered during that meeting, and later via email, to help educate other parents in the district about transgender children, but was rebuffed. Mr. Asplen again focused his attention on the issue of genitals and asked what would happen if a transgender girl were to come out of a stall and “wave her penis around.” Erica said words to the effect of, “Sir, I don’t know what kind of bathrooms you’ve been in, but I’ve never seen a naked person in a bathroom.” Erica pointed out that lewd behavior by *any* student is already against the law. Unfortunately, Mr. Asplen’s comments are precisely the type that foster negative stereotypes and misperceptions, all of which are both discriminatory and unsupported by any evidence, meaning that there is no evidence that a transgender child is any more likely to engage in inappropriate behavior. Comments like these highlight the discriminatory nature of the policy itself, one predicated on others’ unsupported fears, rather than actual evidence.

57. Erica contacted the U.S. Department of Education’s Office for Civil Rights (“OCR”) in November 2015 to file a complaint, and OCR opened an investigation. OCR offered District officials an opportunity to mediate the matter, but the District declined. OCR’s assigned investigator conducted a full investigation, later suggesting that Erica meet with officials again to see if the issue could be resolved. On April 8, 2016, Erica met with Ms. Mittelstadt, Ms. Arkin, and Ms. McKendrick. Ms. Mittelstadt described this as a “civil rights issue,” but said that the district is “too conservative” and “not there yet.” Erica pointed

out that other Florida school districts, like Broward County Public Schools, treat their transgender students equally in restrooms. Unfortunately, the meeting too yielded no progress. Erica and Drew met again with Ms. Mittelstadt on May 4, 2016, but they were once again unsuccessful in securing a policy change that would allow Drew equal access to the boys' restrooms.

58. At no point has any school or District official ever provided Erica or Drew with information suggesting that his use of the boys' restroom harms anyone else. When Drew is in all other settings outside of school, he uses the men's restroom. To his knowledge, there has never been an incident or complaint by others with his restroom use outside of school. Drew has never, and would never, invade anyone else's privacy in a restroom. He just wants to use the restroom, wash his hands, and leave like everyone else does. He wants to be normal and blend in.

59. Access to the boys' restroom is important to Drew because he wants to interact with his peers like an equal. He is recognized as the boy that he is in every respect by peers and teachers, except at the moment he needs to enter a restroom. It does not work for him to be a boy in every other part of his school life, but not when he needs to perform one of life's most basic functions. And, more particularly, it suggests to others a false distinction: that a transgender boy is not a "real" boy. Such stigma is not only deleterious for Drew, it is a harmful statement to others, creating a stigma associated with being transgender.

60. Being banned from the boys' restrooms is humiliating to Drew. It sends a signal to other students that Drew is not a real boy, and treats him as if he is unfit to share a

communal space with others. It also creates a negative perception and reinforces stereotypes—all of which are unfounded—that transgender children are more likely to behave inappropriately or that they are inferior to other boys. Drew feels like he has enough to manage in a world that is still learning to understand transgender people without his school making the situation worse, and teaching his peers that he is not worthy of the same dignity and respect as all other boys.

61. By mandating and relegating Drew to use single-stall gender neutral restrooms, a condition not imposed on cisgender students, Defendants isolate and separate Drew based on his sex and transgender status.

62. By barring Drew from the restrooms consistent with who he is, Defendants refuse to recognize Drew's gender identity even as they recognize the gender identity of all of his cisgender peers.

63. As a result, Drew has experienced and continues to experience the harmful effects of being separated from, and treated differently than, his cisgender classmates of the same gender identity at Nease High School, including lowered self-esteem, embarrassment, humiliation, social isolation, and stigma. All of these harmful effects have also heightened the symptoms, including depression and anxiety, of the gender dysphoria suffered by Drew.

64. Through their actions, Defendants have purposefully disrupted Drew's education.

CLAIMS FOR RELIEF

COUNT I

**Denial of Equal Protection
U.S. Const. Amend. XIV
(Against All Defendants)**

65. Plaintiff incorporates paragraphs 1 through 64 as though fully set forth herein.

66. Plaintiff states this cause of action against all Defendants for purposes of seeking declaratory and injunctive relief, and against the School Board only for purposes of seeking nominal damages, and challenges Defendants' policy of excluding transgender students from the single-sex facilities that match their gender identity both facially and as applied to him.

67. Each of the Defendants is a person acting under color of state law for purposes of 42 U.S.C. § 1983.

68. Defendant School Board is the final policy maker for Nease High School within the St. Johns County School District.

69. The Fourteenth Amendment to the U.S. Constitution, enforceable pursuant to 42 U.S.C. § 1983, provides that no state shall deny to any person within its jurisdiction the equal protection of the laws.

70. Defendants' exclusion of transgender students like Drew from the single-sex facilities matching their gender identity treats transgender students differently from cisgender students who are similarly situated. Under Defendants' discriminatory policy, cisgender students are able to access restrooms and other single-sex facilities consistent with their

gender identity, but transgender students are banned from single-sex facilities consistent with their gender identity.

71. **Discrimination based on sex:** Under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, discrimination based on sex is presumptively unconstitutional and subject to heightened scrutiny.

a. Discrimination based on sex includes, but is not limited to, discrimination based on gender, gender nonconformity, transgender status, gender expression, and gender transition.

b. Defendants' exclusion of Drew from boys' restrooms in the school district discriminates against him on the basis of sex.

c. Defendants' policy also discriminates against Drew based on gender nonconformity and sex stereotyping. For example, although Drew is a boy, is perceived as a boy in public, and has had medical treatment to bring his body into alignment with his male gender identity, he does not conform to Defendants' sex-stereotyped expectations for boys because his sex assigned at birth was female.

72. **Discrimination based on transgender status:** Under the Equal Protection Clause of the Fourteenth Amendment, discrimination based on transgender status is presumptively unconstitutional and subject to strict, or at least heightened scrutiny.

a. Transgender people have suffered a long history of extreme discrimination in Florida and across the country, and continue to suffer such discrimination to this day.

b. Transgender people are a discrete and insular group and lack the political power to protect their rights through the legislative process. Transgender people have largely been unable to secure explicit state and federal protections to protect them against discrimination.

c. A person's gender identity or transgender status bears no relation to a person's ability to contribute to society.

d. Gender identity is a core, defining trait and is so fundamental to one's identity and conscience that a person cannot be required to abandon it as a condition of equal treatment.

e. Gender identity generally is fixed at an early age and highly resistant to change through intervention.

73. Defendants' discrimination against Drew is not narrowly tailored or substantially related to any compelling or important government interest. Indeed, it is not even rationally related to any legitimate government interest. The discriminatory policy does not promote the safety, privacy, security, or well-being of cisgender students, but it does undermine the safety and privacy of Drew, who is publicly marked as different and inferior every time he has to access a different restroom from other boys.

74. Defendants' discriminatory policy deprives Drew and transgender students like him of their right to equal dignity, liberty, and autonomy by branding them as second-class citizens. Defendant thus denies Drew equal protection of the laws in violation of the Equal Protection Clause of the Fourteenth Amendment.

75. Defendant School Board has intentionally violated the Equal Protection Clause of the Fourteenth Amendment, for which Drew is entitled to nominal damages against Defendant School Board.

COUNT II

Violation of Title IX 20 U.S.C. § 1681, *et seq.* (Against Defendant School Board)

76. Plaintiff incorporates paragraphs 1 through 64 as though fully set forth herein.

77. Title IX provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

78. Under Title IX, discrimination on the basis of sex includes, but is not limited to, discrimination based on gender, gender nonconformity, transgender status, gender expression, and gender transition.

79. Defendant School Board is a recipient of federal financial assistance from the United States Department of Education, and therefore subject to Title IX.

80. Under Defendant School Board's discriminatory policy, cisgender students are able to access restrooms and other single-sex facilities consistent with their gender identity, but transgender students are banned from single-sex facilities consistent with their gender identity.

81. By banning Drew from use of boys' restrooms consistent with his gender identity, Defendant School Board excludes Drew from participation in, denies him the benefits of, and subjects him to discrimination in educational programs and activities within

the District, particularly at Nease High School, on the basis of sex, in violation of Title IX. For example, Drew's need to access far away gender neutral restrooms means that Drew must sometimes miss classroom time simply to relieve himself; and when Drew attempts to hold his bladder so as not to miss instruction time, he struggles to concentrate on the teacher's material instead of the significant discomfort of holding his bladder.

82. Defendants' discriminatory exclusion of Drew from boys' restrooms because he is transgender harms Drew by stigmatizing him and treating him as lesser than other boys, which causes Drew to feel anxious and humiliated.

83. Defendant School Board has intentionally violated Title IX, for which Drew is entitled to nominal damages against the School Board.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendants on all claims, as follows:

A. Enter a declaratory judgment that Defendants' exclusion of Drew from boys' restrooms within the District violates Drew's rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution;

B. Enter a declaratory judgment that Defendant School Board's exclusion of Drew from boys' restrooms within the District violates Drew's rights under Title IX;

C. Issue preliminary and permanent injunctive relief enjoining all Defendants, including but not limited to Defendants Superintendent Forson and Principal Kunze, in their official capacities, (i) from treating Drew differently from other boys in any respect, including but not limited to by denying Drew equal access to boys' restrooms within the

District on the same terms as all other boys, and (ii) from denying any students, including those who are transgender, from using single-sex multi-user facilities in accordance with gender identity;

E. Award Drew, by and through his next friend Erica Adams Kasper, nominal damages against Defendant School Board in the amount of \$1.00 for violation of Drew's rights under the Fourteenth Amendment to the U.S. Constitution and Title IX;

F. Award Drew his costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other applicable laws; and

G. Grant such other and further relief as the Court deems just and proper.

H. The declaratory and injunctive relief requested in this action is sought against each Defendant and their successors; against each Defendant's officers, employees, and agents; and against all persons acting in active concert or participation with any Defendant, or under any Defendant's supervision, direction, or control.

* * *

Dated: June 28, 2017

Respectfully submitted,

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3:17-cv-739-J-32 PDB

JS 44 (Rev 09/10)

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

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law.

Plaintiff(s):

First Listed Plaintiff:
Drew Adams ;
County of Residence: St. Johns County

Defendant(s):

First Listed Defendant:
The School Board of St. Johns County, Florida ;
County of Residence: St. Johns County

Additional Defendants(s):
Superintendent of Schools for the St. Johns County School District Tim Forson ;
Principal of Allen D. Nease High School Lisa Kunze ;

County Where Claim For Relief Arose: St. Johns County

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Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: N/A

Defendant: N/A

Origin: 1. Original Proceeding

Nature of Suit: 440 All Other Civil Rights

Cause of Action: First Cause of Action is brought against all Defendants for their Denial of Equal Protection under U.S Const. Amend. XIV. The second cause of action is brought against the School Board as a Violation of Title IX, 20 U.S.C. S. 1681, et. seq.

Requested in Complaint

Class Action: Not filed as a Class Action

Monetary Demand (in Thousands): .001

Jury Demand: No

Related Cases: Is NOT a refiling of a previously dismissed action

Signature: Kirsten Doolittle

Date: 6.28.17

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.

DE 22

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

DREW ADAMS, et al.,

Plaintiff,

v.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA, et al.,

Defendants.

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

ORAL ARGUMENT REQUESTED

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

Plaintiff Drew Adams (“Drew”), by and through his next friend and mother, Erica Adams Kasper, respectfully moves this Court for a Preliminary Injunction against Defendants The School Board of St. Johns County, Florida (“School Board”); Superintendent Tim Forson (“Superintendent Forson”), and Principal Lisa Kunze (“Principal Kunze”) (collectively, “Defendants” unless otherwise specifically identified), pursuant to Rule 65(a) of the Federal Rules of Civil Procedure and Local Rules 3.01(j) and 4.06. In support of this Motion, Drew relies upon the following Memorandum of Law and the supporting declarations from himself (“Drew Decl.”); Erica Adams Kasper (“Erica Decl.”); Diane Ehrensaft, Ph.D. (“Ehrensaft Decl.”); and Tara L. Borelli (“Borelli Decl.”).

INTRODUCTION

The Fourteenth Amendment’s Equal Protection Clause and Title IX of the Education Amendments Act of 1972 (“Title IX”) guarantee equal treatment, including for students like

Drew. Although he is a hard-working, high-achieving student about to enter his junior year, his school singles him out for differential treatment because he is transgender, branding him as unfit to use the communal restrooms that all other boys use. Defendants' policy prohibiting Drew from using the boys' restroom leaves Drew humiliated, anxious, and often in severe discomfort as he has to navigate his day to hold back one of life's most basic functions or, alternatively, miss classroom time because the gender neutral restrooms are not conveniently located. The School Board's discriminatory policy leaves Drew unable to fully participate in his education. This discrimination warrants that this Court preliminarily enjoin Defendants' discriminatory restroom policy, which, if not stopped, will once again subject Drew to discrimination and humiliation when his junior year starts on August 10, 2017.

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

FACTUAL BACKGROUND

Drew is a 16-year-old honors student registered at Allen D. Nease High School ("Nease High School") in Ponte Vedra, Florida. Drew Decl. ¶¶ 2, 4. A current photograph of Drew is in his declaration at paragraph three. Drew plays four musical instruments and volunteers at the Mayo Clinic in Jacksonville, which he hopes will help prepare him to attend medical school someday. *Id.* ¶¶ 4-6. Drew hopes to become an adolescent psychiatrist and has won an award for his volunteerism in the community. *Id.* ¶¶ 5-6. Drew is a boy. *Id.* ¶ 7; Erica Decl. ¶ 3. Drew also is transgender, which in his case means that his sex assigned at birth was female, but his core gender identity is male. Drew Decl. ¶ 8; Erica Decl. ¶ 3; Ehrensaft Decl. ¶ 19. Although each person has multiple sex-related characteristics, gender

identity—a person’s core internal sense of their own gender—is the primary factor in determining sex. Ehrensaft Decl. ¶¶ 20-21. The medical consensus is that gender identity is innate and efforts to change it are unethical. *Id.* ¶ 26.

Drew has been diagnosed with gender dysphoria, the distress from the incongruence between a transgender person’s gender identity and sex assigned at birth. Drew Decl. ¶ 13; Erica Decl. ¶ 8; Ehrensaft Decl. ¶ 28. Treatments for gender dysphoria align the transgender person’s body and lived experience with the person’s true sex, through social and medical transition. Ehrensaft Decl. ¶¶ 33-39. These treatments do not change a transgender person’s sex, which is already determined by their gender identity. *Id.* ¶ 39. Ensuring that a transgender child is in an environment that does not undermine that treatment and respects the child’s gender identity is critical to the child’s healthy development. *Id.* ¶ 33. Such positive environments improve mental health and reduce the risk of self-harming or suicidal behaviors. *Id.* ¶¶ 31-33, 42-46. Because gender is a core aspect of a person’s identity, transgender children who are denied recognition of their gender identity, such as through exclusion from communal restrooms, experience that mistreatment as a profound rejection of their core self, which can have serious negative consequences for their development and their long-term health and well-being. *Id.* ¶¶ 42-46, 48.

To help align his body with his innate sex, Drew receives medical treatment through the Duke Child and Adolescent Gender Care clinic (“Duke Clinic”) in North Carolina. Drew Decl. ¶¶ 14-15. He was prescribed testosterone, and had a double-mastectomy to bring his body into alignment with his gender identity. *Id.* ¶¶ 16-17. By the time Drew began his freshman year at Nease High School, he was living full-time as a boy. *Id.* ¶ 18. He was

generally perceived and treated as a boy by students and staff alike. *Id.* ¶ 20.

Drew used boys' restrooms without any incident—using one of the stalls on every occasion—until September 22, 2015, when he was pulled out of class to meet with three guidance counselors. *Id.* ¶¶ 20-21. Drew was informed that someone anonymously “reported” that he was using the boys' restroom; as a result, he was instructed to use only a gender neutral restroom. *Id.* ¶ 21. Drew asked if he had done anything wrong, and was told “no.” *Id.* ¶ 22. Drew was deeply frustrated and upset by this change, but did not want to get in trouble or have any disciplinary reports on his record so he capitulated and has used the school's gender neutral restrooms ever since. *Id.* ¶ 23.

While boys' restrooms are located throughout the school, there previously have been only three generally accessible gender neutral restrooms for the entire school. *Id.* ¶ 26. Two are clustered together in the administrative building. *Id.* A third gender neutral restroom has been available only intermittently to students; for approximately half of Drew's time at the school, this restroom has been restricted to staff. *Id.* ¶ 27. A new building with gender neutral restrooms will open this year, but it borders one side of the campus and is not centrally located. *Id.* ¶ 31. Drew usually has to walk past one, if not two, boys' restrooms to get to the gender neutral restrooms. *Id.* ¶ 28. When Drew has had classes in portable classrooms, it could take well over 10 minutes to get to and from the gender neutral restrooms, requiring Drew to miss class time simply to use the restroom (something that otherwise would take only a few minutes). *Id.* ¶ 28. This creates a significant hardship because Drew must then weigh the importance of the information that he would miss in class against the anxiety, stress, and distraction that come with trying to hold his bladder. *Id.* This

Hobson's choice is not foisted on non-transgender boys. *Id.*

Drew started to avoid using the restroom and began restricting his fluid intake. *Id.*

¶ 29. Drew also held his bladder as much as he could, which was at times extremely uncomfortable. *Id.* Erica recalls Drew's needing to rush home to use the restroom at the end of the school day after holding his bladder for hours. Erica Decl. ¶ 14. Drew found some minor relief last year when an art class gave him access to a rare single-user restroom in the classroom. Drew Decl. ¶ 30. While he intends to take art class again, it could be scheduled for any period of the day; an early or late art class would once again leave him in the anxiety-provoking position of not having reliable or convenient access to a restroom. *Id.* And even when he did have art class in the middle of the day, he still had to cope with anxiety about needing to use the restroom during other parts of the day. *Id.*

Erica met with school officials to try to resolve the issue, but they indicated that their hands were tied by district policy. Erica Decl. ¶ 16. Erica met with district officials Associate Superintendent Cathy Mittelstadt and Deputy Superintendent Brennan Asplen in November 2015. *Id.* ¶ 17. Mr. Asplen repeatedly raised the issue of "biology" during the meeting, which he used to refer to genitals, asking what would happen if a transgender girl were to come out of a stall and "wave her penis around." *Id.* ¶¶ 17-18. Erica said words to the effect of, "Sir, I don't know what kind of bathrooms you've been in, but I've never seen a naked person in a bathroom." *Id.* ¶ 18. Erica pointed out that lewd behavior by *any* student is already against the law. *Id.* Mr. Asplen said "98% of the people in this district would not understand" if Drew were allowed to use the boys' restroom, and that he was more concerned

about legal action by the parent of a non-transgender child than by Drew. *Id.* ¶ 17.¹

Erica met again with district officials on April 8, 2016, and brought Drew for an additional meeting with Ms. Mittelstadt on May 4, 2016, but received no resolution. *Id.* ¶¶ 20-21. At no point has any school or district official ever provided Erica or Drew with information suggesting that his use of the boys' restroom has harmed anyone. *Id.* ¶ 23. When Drew is in all other settings outside of school, he uses the men's restroom, and to his knowledge there has never been any complaint or incident. Drew Decl. ¶ 32; Erica Decl. ¶ 24. Drew has no interest in trying to invade anyone else's privacy in a restroom; he just wants to blend in, interact with his peers like an equal, and not be singled out as different. Drew Decl. ¶ 32. Being banned from the boys' restrooms feels humiliating to Drew, because it teaches his peers that he is not worthy of the same dignity and respect as all other boys. *Id.* ¶¶ 25, 33-34. It also heightens the symptoms of his gender dysphoria. *Id.* ¶ 25.

ARGUMENT

I. Preliminary Injunction Standard.

A plaintiff is entitled to a preliminary injunction when he demonstrates: (1) a substantial likelihood of success on the merits; (2) that the plaintiff will suffer irreparable injury absent preliminary relief; (3) that the harms he will likely suffer outweigh any harm that defendant will suffer as a result of an injunction; and (4) that preliminary relief will not disserve the public interest. *Scott v. Roberts*, 612 F.3d 1279, 1290 (11th Cir. 2010). Each of those factors weighs strongly in Drew's favor.

¹ Erica filed an administrative complaint in November 2015 with the U.S. Department of Education's Office for Civil Rights ("OCR") for violation of Title IX. *Id.* ¶ 19. The School Board declined mediation or to otherwise resolve the complaint, and OCR began to investigate it. *Id.*

II. Drew Is Likely To Succeed On His Equal Protection Claim.

By barring Drew from boys' restrooms at school, Defendants violate the constitutional guarantee that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. Defendants' policy facially discriminates against transgender students like Drew. Although all students must be able to access facilities that match their gender identity, only transgender students are denied such access under the policy, which requires that students use facilities according to their birth-assigned sex. This discriminates against transgender students because by definition their birth-assigned sex does not match their gender identity.

A. Strict—or at least heightened—scrutiny applies to Defendants' decision to exclude Drew from the boys' restrooms.

Defendants' discrimination against Drew triggers some form of heightened scrutiny for at least three reasons: (1) *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011), establishes as a matter of law that discrimination against transgender people is sex discrimination because it inherently relies on gender stereotypes; (2) discrimination based on transgender status and gender transition necessarily classifies individuals based on sex; and (3) discrimination against transgender people bears all the indicia of a suspect classification.

1. Eleventh Circuit precedent prohibits discrimination against transgender people as impermissible sex stereotyping.

"For close to a half century," the Supreme Court "has viewed with suspicion laws that rely on . . . fixed notions concerning [a particular] gender's roles and abilities." *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1684 (2017) (alterations and citations omitted). As the Supreme Court has explained, "we are beyond the day when an employer could evaluate

employees by assuming or insisting that they matched the stereotype associated with their group.” *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (plurality opinion).

Accordingly, “gender classifications that rest on impermissible stereotypes violate the Equal Protection Clause.” *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 139 n.11 (1994). And “generalizations about ‘the way women are’” do not justify denying equal treatment to women who are “outside the average description.” *United States v. Virginia*, 518 U.S. 515, 550 (1996). The same is true for boys like Drew.

The Eleventh Circuit applied these concepts to hold that discrimination against transgender individuals is inherently rooted in sex stereotypes and triggers heightened scrutiny. *Glenn*, 663 F.3d at 1320. As *Glenn* recognized, sex discrimination is not limited to favoring one sex over another sex. *Id.* 1316-17. Instead, it includes any differential treatment on the basis of a sex-based consideration, such as preferring a woman who conforms to societal expectations of her gender over a gender-nonconforming woman. Stated differently, discrimination based on sex “is not only discrimination because of maleness and discrimination because of femaleness but also . . . discrimination because of the *properties or characteristics* by which individuals may be classified as male or female.” *Fabian v. Hosp. of Cent. Conn.*, 172 F. Supp. 3d 509, 526 (D. Conn. 2016).

Accordingly, it is settled law in the Eleventh Circuit that discrimination against transgender people necessarily relies upon sex stereotypes, because “[t]he very acts that define transgender people as transgender are those that contradict stereotypes of gender-appropriate appearance and behavior.” *Glenn*, 663 F.3d at 1316 (citation omitted); *see also id.* (“A person is defined as transgender precisely because of the perception that his or her

behavior transgresses gender stereotypes.”); *Chavez v. Credit Nation Auto Sales, LLC*, 641 F. App’x 883, 884 (11th Cir. 2016) (reaffirming *Glenn*’s holding that “sex discrimination includes discrimination against a transgender person for gender nonconformity”); *Valentine Ge v. Dun & Bradstreet, Inc.*, No. 6:15-cv-1029-ORL-41GJK, 2017 WL 347582, at *4 (M.D. Fla. Jan. 24, 2017) (“Sex discrimination includes discrimination against a transgender person for gender nonconformity.”) (citing *Chavez*).

Modern precedent, much of which invokes *Glenn*’s cogent reasoning, overwhelmingly agrees. *See, e.g., Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1048 (7th Cir. 2017) (“By definition, a transgender individual does not conform to the sex-based stereotypes of the sex that he or she was assigned at birth.”); *Smith v. City of Salem*, 378 F.3d 566, 575 (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 (9th Cir. 2000); *Evancho v. Pine-Richland Sch. Dist.*, No. 2:16-cv-01537, 2017 WL 770619, at *11 (W.D. Pa. Feb. 27, 2017) (“[D]iscrimination based on transgender status . . . is essentially the epitome of discrimination based on gender nonconformity. . . .”); *Bd. of Educ. of the Highland Local Sch. Dist. v. U.S. Dep’t of Educ.*, 208 F. Supp. 3d 850, 869 (S.D. Ohio 2016) (appeal filed) (“[D]iscrimination on the basis of a transgender person’s gender non-conformity constitutes discrimination ‘because of sex.’”).²

Glenn’s binding decision compels the conclusion that Drew is likely to succeed on

² *See also Smith v. Avanti*, No. 16-cv-00091, 2017 WL 1284723, at *4 (D. Colo. Apr. 5, 2017); *Rumble v. Fairview Health Servs.*, No. 14-cv-2037, 2015 WL 1197415, at *2 (D. Minn. Mar. 16, 2015); *Finkle v. Howard Cty.*, 12 F. Supp. 3d 780, 788 (D. Md. 2014); *Schroer v. Billington*, 577 F. Supp. 2d 293, 305 (D.D.C. 2008); *Macy v. Holder*, EEOC Appeal No. 0120120821, 2012 WL 1435995, at *8 (EEOC Apr. 20, 2012).

the merits of his Equal Protection claim. Defendants' discriminatory rule codifies sex stereotypes into school policy by banishing those whose gender identity does not match their birth-assigned sex from the facilities that others are permitted to use. *Glenn* makes clear that such discrimination "is a form of sex-based discrimination that is subject to heightened scrutiny under the Equal Protection Clause." 663 F.3d at 1319. *Glenn* applied this analysis to an employee who was fired because she was transgender, *id.* at 1314, and subsequent authority makes clear that under *Glenn* and its progeny discrimination in restrooms is no more tolerable. Echoing *Glenn's* analysis that an "individual cannot be punished because of his or her perceived gender-nonconformity," the court in *Whitaker*, 858 F.3d at 1049, held that exclusion of an individual from the restroom conforming to his or her gender identity "punishes that individual for his or her gender non-conformance." *See also Evancho*, 2017 WL 770619, at *16; *Highland*, 208 F. Supp. 3d at 877; *Roberts v. Clark Cty. Sch. Dist.*, 215 F. Supp. 3d 1001, 1016 (D. Nev. 2016); *Lusardi v. McHugh*, EEOC Appeal No. 0120133395, 2015 WL 1607756, at *9 (EEOC Apr. 1, 2015).³

No coherent reading of *Glenn* allows the conclusion that Equal Protection shelters Drew as he crosses the school threshold, but falls dormant at the restroom door. Rather, as Section II(B) below explains, Defendants discriminatory policy furthers no adequate government interest, and Drew's claims are likely to succeed on the merits.

³ Impermissible gender stereotyping is not inoculated because a policy purports to regulate genital characteristics rather than sex. *See Lusardi*, 2015 WL 1607756, at *9 (finding it unlawful to bar a transgender woman from the restroom based on the belief that she was not "truly female" without genital surgery); *see also Rene v. MGM Grand Hotel, Inc.*, 305 F.3d 1061, 1065-66 (9th Cir. 2002) (explaining that any focus on sex-related anatomy, such as genitalia or breasts, "is inescapably 'because of . . . sex'" (citation omitted)).

2. Discrimination based on transgender status and gender transition is sex-based.

Although *Glenn*'s holding is sufficient to resolve whether Defendants' sex-based policy triggers heightened scrutiny, several additional bases support that holding:

Transgender status. Policies distinguishing between transgender boys or girls, and non-transgender boys or girls, are sex discrimination for an additional reason: such policies allow students to be treated consistent with their gender identity *only* if that identity matches their sex assigned at birth. A policy that discriminates against students because their birth-assigned sex and gender identity do not match—*i.e.*, because they are transgender—necessarily discriminates based on sex. *See Schwenk*, 204 F.3d at 1201-02 (holding that conduct motivated by an individual's "gender or sexual identity" is because of "gender," which is interchangeable with "sex"); *Evancho*, 2017 WL 770619, at *11 (holding that restroom exclusions discriminate based on "transgender status" because "Plaintiffs are the only students who are not allowed to use the common restrooms consistent with their gender identities"); *Fabian*, 172 F. Supp. 3d at 526-27; *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015); *Rumble*, 2015 WL 1197415, at *2; *Macy*, 2012 WL 1435995, at *10.

Indeed, gender identity is not merely related to sex; from a medical perspective, it is the critical determinant of sex. Ehrensaft Decl. ¶¶ 20-21; *see also Evancho*, 2017 WL 770619, at *13 ("[A]s to [transgender] [p]laintiffs, gender identity is entirely akin to 'sex' as that term has been customarily used in the Equal Protection analysis. It is deeply ingrained and inherent in their very beings."). Gender identity is not susceptible to voluntary change, and attempts to change a person's gender identity can lead to extreme psychological harm. Ehrensaft Decl. ¶ 26. That is why in situations where an individual's gender identity is

inconsistent with other sex-related characteristics, one's gender identity determines one's sex—not the discordant sex-related characteristics. *Id.* ¶ 20. For example, non-transgender individuals who have lost external genitalia in an accident have not somehow had their sex changed. *See Sommerville v. Hobby Lobby Stores*, Charge Nos. 2011CN2993/2011CP2994 at 8 (Ill. Hum. Rts. Comm'n May 15, 2015) (Borelli Decl. Ex. A) (observing that the “absence of male genitalia does not make a female, as that could occur by illness or injury”; finding exclusion of transgender woman from women's restrooms unlawful). Instead, gender identity continues to be the primary determinant of their sex; so too for transgender people. In sum, gender identity serves as the primary determinant of sex—not genitalia, gonads, or any other sex-related characteristic. *Cf. Schroer v. Billington*, 424 F. Supp. 2d 203, 211 (D.D.C. 2006) (noting that sex “is not a cut-and-dried matter of chromosomes”).

The central inquiry is whether “the discrimination is related to [] sex.” *Schwenk*, 204 F.3d at 1202; *accord Fabian*, 172 F. Supp. 3d at 525-26 (the dispositive inquiry is whether discrimination is “related to sex”). Accordingly, any argument that Defendants' policy simply treats everyone consistently with their birth-assigned sex must fail because it ignores the key question of whether one's sex has been taken into account, as is clearly the case here. *See Whitaker*, 858 F.3d at 1051 (rejecting school district's claim that its exclusion treated boys and girls equally); *Roberts*, 215 F. Supp. 3d at 1015 (“Although CCSD contends that it discriminated against Roberts based on his genitalia, not his status as a transgender person, this is a distinction without a difference here.”); *cf. Loving v. Virginia*, 388 U.S. 1, 8 (1967) (rejecting “the notion that the mere ‘equal application’ of a statute containing racial classifications” removes it from the Fourteenth Amendment's prohibition of discrimination).

Here, it is clear that Defendants' policy excludes Drew based on his sex. If one's dress, hairstyle, and make-up usage constitute "sex-based considerations"—as *Price Waterhouse* confirms that they do—then the same necessarily holds true for a mismatch between gender identity, which gives rise to such outward expressions of gender, and birth-assigned sex. 490 U.S. at 242 (plurality opinion); *accord Smith*, 378 F.3d at 575; *Schroer*, 577 F. Supp. 2d at 306. Precedent makes clear that when the government draws lines related to whether a person's gender identity aligns with the person's birth-assigned sex, such line-drawing is sex-based and must be tested under heightened scrutiny.

Gender transition. Discrimination based on gender transition is necessarily based on sex, just as discrimination based on religious conversion is necessarily based on religion. Firing an employee because she converts from Christianity to Judaism "would be a clear case of discrimination 'because of religion,'" even if the employer "harbors no bias toward either Christians or Jews but only 'converts.'" *Schroer*, 577 F. Supp. 2d at 306; *accord Fabian*, 172 F. Supp. 3d at 527; *Macy*, 2012 WL 1435995, at *11. Similarly, Defendants may treat boys and girls equally as a general matter but nonetheless discriminate against those who undertake gender transition. By burdening transgender students based on expectations about how "real" boys or girls behave, Defendants' policy discriminates based on sex. *Schroer*, 577 F. Supp. 2d at 306.

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

Even aside from its inextricable connection to sex discrimination, discrimination

based on transgender status is separately entitled to strict, or at least heightened scrutiny.⁴

The Supreme Court consistently has applied some form of heightened scrutiny where the classified group has suffered a history of discrimination, and the classification has no bearing on a person's ability to perform in society. *See, e.g., Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 313 (1976). In addition, the Supreme Court has sometimes considered whether the group is a minority or relatively politically powerless, and whether the characteristic is defining, or "immutable" in the sense of being beyond the individual's control or not one the government has a right to insist that an individual try to change. *See, e.g., Lyng v. Castillo*, 477 U.S. 635, 638 (1986); *see also Kerrigan v. Comm'r of Pub. Health*, 957 A.2d 407, 426-30 (Conn. 2008) (analyzing federal equal protection law to conclude that history of discrimination and ability to contribute to society are the two central considerations, and collecting authorities). While not all considerations need be present, *see Plyler v. Doe*, 457 U.S. 202, 216 n.14 (1982); *Golinski v. U.S. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, 983 (N.D. Cal. 2012), here all four point in favor of some form of heightened scrutiny for laws or policies that discriminate based on transgender status.

Numerous federal courts have applied these considerations to recognize that discrimination against transgender people warrants close scrutiny. *See, e.g., Evancho*, 2017 WL 770619, at *13; *Highland*, 208 F. Supp. 3d at 873-74; *Adkins v. City of N.Y.*, 143 F. Supp. 3d 134, 139-40 (S.D.N.Y. 2015); *Norsworthy*, 87 F. Supp. 3d at 1119. This Court should do the same for the reasons explained below.

History of discrimination. As courts have concluded, transgender people as a class

⁴ This argument was neither raised in nor decided by *Glenn*, and remains an open question.

have historically been subject to discrimination. *See, e.g., Evancho*, 2017 WL 770619, at *13. Transgender people face “disturbing patterns of mistreatment and discrimination and startling disparities between transgender people . . . and the U.S. population when it comes to the most basic elements of life, such as finding a job, having a place to live, accessing medical care, and enjoying the support of family and community.” *Executive Summary of the Report of the 2015 U.S. Transgender Survey* at 2 (2016) (“*U.S. Transgender Survey*”) (Borelli Decl. Ex. B). A majority of transgender students have experienced verbal, physical, or sexual attacks in schools because of their transgender status. *Id.* at 9.⁵

Lack of relationship to ability to contribute to society. Transgender people “have a defining characteristic that frequently bears no relation to an ability to perform or contribute to society.” *Evancho*, 2017 WL 770619, at *13; *see also* Borelli Decl. Ex. C (American Psychiatric Association position statement that gender dysphoria “implies no impairment in judgment” or “social or vocational capabilities”). Transgender people contribute to every facet of society,⁶ and no data suggests “that a transgender person, simply by virtue of transgender status, is any less productive” than others. *Adkins*, 143 F. Supp. 3d at 139.

Discrete group with distinguishing characteristics. Transgender people are a discrete group with distinguishing characteristics. Ehrensaft Decl. ¶ 23. And one’s gender identity is “so fundamental . . . that a person should not be required to abandon [it]” as a

⁵ *See also Brocksmyth v. United States*, 99 A.3d 690, 698 n.8 (D.C. 2014) (concluding that “[t]he hostility and discrimination that transgender individuals face in our society today is well-documented”).

⁶ Recognizing that transgender people are full contributors to the workplace, 82% of Fortune 500 companies prohibit discrimination against transgender people in their employment decisions. Human Rights Campaign Foundation, *Corporate Equality Index 2017* at 4 (Borelli Decl. Ex. D).

condition of equal treatment. *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000), *overruled on other grounds by Thomas v. Gonzales*, 409 F.3d 1177 (9th Cir. 2005); *see also* Ehrensaft Decl. ¶ 26 (efforts to change gender identity are unethical); Borelli Decl. Ex. E at 11-14 (attaching Substance Abuse and Mental Health Services Administration, *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* (2015)).

Relative political powerlessness. At 0.6% of the population, transgender people constitute a small minority lacking meaningful power in the political arena.⁷ In fact, recent years have seen an unprecedented assault on transgender people as state legislatures have introduced, and in some instances, passed legislation targeting transgender people for discrimination.⁸ *See generally Adkins*, 143 F. Supp. 3d at 140.

Accordingly, this Court should evaluate Defendants' discrimination based on transgender status under strict or at least heightened scrutiny.

B. Defendants' policy fails any heightened scrutiny, and indeed lacks even a rational basis.

Defendants' discriminatory policy targeting Drew and other transgender students like him demands meaningful review as discrimination based on either sex or transgender status, a suspect classification. Under the heightened scrutiny required for all sex-based classifications, the government must demonstrate that its sex-based action is substantially related to an "exceedingly persuasive" justification. *Virginia*, 518 U.S. at 533 (quotation marks omitted). Under strict scrutiny, a law must be narrowly tailored to advance

⁷ The Williams Institute, *How Many Adults Identify As Transgender In The U.S.?* (June 2016) (Borelli Decl. Ex. F).

⁸ *See, e.g.*, Human Rights Campaign, *Anti-transgender Legislation Spreads Nationwide, Bills Targeting Transgender Children Surge* (Feb. 19, 2016) (Borelli Decl. Ex. G).

compelling state interests. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Under both, the “burden of justification is demanding and [] rests entirely on the State,” and constitutionality is judged based on the “the actual state purposes, not rationalizations for actions in fact differently grounded.” *Virginia*, 518 U.S. at 533, 535-36. “Moreover, the classification must substantially serve an important governmental interest *today*, for . . . ‘new insights and societal understandings can reveal unjustified inequality . . . that once passed unnoticed.’” *Morales-Santana*, 137 S. Ct. at 1690 (quoting *Obergefell v. Hodges*, 135 S. Ct. 2584, 2603 (2015)) (alterations omitted). Defendants’ policy cannot meet either standard. Indeed, it cannot survive even the most deferential review.

Underscoring the lack of any proper government interest here, Defendants have yet to offer Drew any substantive justification for excluding him from the same access to restrooms that other boys receive. Erica Decl. ¶ 23. For months, Erica attempted to resolve the school’s policy directly with the administration. Defendants did not provide *any* basis—let alone a justified reason—suggesting that that Drew’s use of the boys’ restroom resulted in any harm to anyone. *Id.* And while this Court should consider only Defendants’ actual reasons for excluding Drew, such as Mr. Asplen’s absurd suggestion about a hypothetical transgender girl exposing her genitals, or concern about litigation by other parents—and not *post hoc* justifications—Drew addresses arguments offered by defendants in other similar cases to provide a thorough analysis for the Court.

Courts have rejected the argument that allowing transgender students to share multi-user restrooms affects the privacy of other students. *See, e.g., Whitaker*, 858 F.3d at 1052 (“This policy does nothing to protect the privacy rights of each individual student vis-à-vis

students who share similar anatomy and it ignores the practical reality of how [plaintiff], as a transgender boy, uses the bathroom: by entering a stall and closing the door.”); Drew Decl. ¶ 20 (Drew uses the stalls in male restrooms). As in other similar cases, there is no evidence that Drew ever “did, or threatened to do, anything to actually invade the physical or visual privacy of anyone else.” *Evancho*, 2017 WL 770619, at *7; Drew Decl. ¶ 32. As Erica discussed with district administrators, such conduct would be prohibited by any student under school policy. *See also Highland*, 208 F. Supp. 3d at 874 (“There is no evidence that Jane herself, if allowed to use the girls’ restroom, would infringe upon the privacy rights of any other students”). In fact, Defendants’ policy undermines any interest in privacy by effectively outing students as transgender to their peers and school staff, making transgender students’ physiological features the subject of unwanted attention. Drew Decl. ¶ 29.

Courts also repeatedly have rejected the notion that affording transgender students equal access to multi-user restrooms raises any safety concerns for others. *See, e.g., Evancho*, 2017 WL 770619, at *15 (noting the lack of any evidence that treating transgender students equally would encourage improper behavior in restrooms); *Highland*, 208 F. Supp. 3d at 877 n.15 (rejecting the argument that equal access to facilities by transgender students will “lead to disruption or safety incidents”). Notably, there has been no suggestion that Drew poses any safety concerns; to the contrary, when it comes to safety risks, transgender people themselves are the group most vulnerable to harassment and violence in sex-separated spaces such as restrooms. *U.S. Transgender Survey*, Borelli Decl. Ex. B at 14-15; *id.* Ex. H (attaching Miami Herald article explaining that the Miami-Dade and Broward County school districts allow transgender students equal access to multi-user restrooms as part of a

commitment to protect them from bullying and discrimination).⁹

Any potential interest in protecting non-transgender students' comfort is illegitimate. “[A]ssertions of emotional discomfort about sharing facilities with transgender individuals” share a common lineage with “similar claims of discomfort in the presence of a minority group, which formed the basis for decades of racial segregation in housing, education, and access to public facilities like restrooms, locker rooms, swimming pools, eating facilities and drinking fountains.” *Dep’t of Fair Emp’t & Hous. v. Am. Pac. Corp.*, No. 34-2013-00151153, Order at 4 (Cal. Super. Ct. Mar. 13, 2014) (Borelli Decl. Ex. I); *Lusardi*, 2015 WL 1607756, at *9 (“Some co-workers may be . . . embarrassed or even afraid, [but] . . . co-worker confusion or anxiety cannot justify discriminatory terms and conditions of employment.”). Such unfounded concerns—such as Mr. Asplen’s suggestion that 98% of parents would not understand if Drew were treated equally—amount to nothing more than “mere negative attitudes [and] fear,” which are not “permissible bases for” differential treatment, even under rational basis review. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985).

III. Drew Is Likely To Succeed On His Title IX Claim.

Title IX declares that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C.

⁹ One district administrator’s suggestion that transgender students might “wave” their genitals at other students, Erica Decl. ¶ 18, hardly bears a response, but suffice it to say that such behavior is not permissible behavior by any student, and transgender students are *particularly* likely to shield parts of their body that cause them the acute distress associated with gender dysphoria. Ehrensaft Decl. ¶ 49.

§ 1681(a).¹⁰ To succeed on a Title IX discrimination claim, the student “must show that: (1) [he] was excluded from participation in an education program because of [his] sex; (2) the educational institution received federal financial assistance at the time of the exclusion; and (3) the discrimination harmed [him].” *Highland*, 208 F. Supp. 3d at 865.

As a recipient of federal financial assistance,¹¹ Defendant School Board is subject to Title IX’s strictures, and “[a]ccess to the bathroom is . . . an education program or activity under Title IX.” *Id.* at 865. Defendant School Board’s intentional exclusion of Drew from boys’ restrooms discriminates based on his sex under Title IX for all the reasons explained above. Courts rely upon a common body of law in analyzing discrimination claims, regardless of whether a claim arises under the Equal Protection Clause or a particular anti-discrimination statute. *See, e.g., Glenn*, 663 F.3d at 1315-18 (analyzing Equal Protection claim with reference to Title VII cases); *Whitaker*, 858 F.3d at 1049-50.

Without question, the discriminatory policy causes harm to Drew. Drew Decl. ¶¶ 25, 28-30, 34; Erica Decl. ¶¶ 22, 25-26. Consigning Drew to separate gender neutral restrooms does not mitigate the harm that the policy inflicts. Drew must live with the constant and degrading reminder that school officials do not view him as a “real” boy. Moreover, the gender neutral restrooms are much less accessible than the boys’ restrooms that all others use, and are segregated from the communal restrooms that his peers use. *Id.* ¶¶ 26-28. This

¹⁰ A Title IX regulation permits schools to maintain “comparable” separate restrooms for boys and girls. 34 C.F.R. § 106.33. Drew does not challenge that regulation; to the contrary, he seeks only equal access to the boys’ restrooms permitted by that regulation.

¹¹ *See* search results from USAspending.gov, reflecting federal financial assistance provided by the U.S. Department of Education to the St. Johns County School Board for fiscal years 2015, 2016, and 2017 (Borelli Decl. Ex. J).

forces Drew to miss class simply to travel to a restroom, or to deal with the extreme discomfort of holding his bladder, which in turn disrupts his ability to participate in class. *Id.* ¶ 28; Ehrensaft Decl. ¶ 48; *Whitaker*, 858 F.3d at 1045 (noting plaintiff was forced into the “unenviable choice between using a bathroom that would further stigmatize him and cause him to miss class time, or avoid use of the bathroom altogether at the expense of his health”).

Moreover, shunting transgender students like Drew into alternative facilities is stigmatizing and brands them as second-class students who are unfit to share communal spaces with others. *Id.* at 1050 (“Providing a gender-neutral alternative is not sufficient to relieve the School District from liability, as it is the policy itself which violates the Act.”); *Evancho*, 2017 WL 770619, at *17 (giving “credence to the Plaintiffs’ assertions that they subjectively feel marginalized, and objectively are being marginalized, which is causing them genuine distress, anxiety, discomfort and humiliation”); *Highland*, 208 F. Supp. 3d at 870-71 (finding harm where student testified that she felt “stigmatized and isolated when she [wa]s forced to use a separate bathroom and otherwise not treated as a girl”) (footnote omitted). Such policies may lead transgender students to delay or minimize trips to the restroom, which, in turn, leads to increased risk for urinary tract infections and impacted bowels. *See* Drew Decl. ¶ 29; Ehrensaft Decl. ¶ 48. Title IX bars this harmful and humiliating exclusion on the basis of sex.

IV. Drew Will Suffer Irreparable Harm If Defendants’ Discriminatory Restroom Policy Is Not Enjoined.

This Court has recognized that interference with a student’s education constitutes irreparable harm meriting injunctive relief. *See Ray v. Sch. Dist. of Desoto Cty.*, 666 F. Supp. 1524, 1535 (M.D. Fla. 1987) (holding that separating three hemophiliac, HIV-positive

students into a different classroom, and denying access to integrated classroom, constituted irreparable harm).¹² So have other courts. *See, e.g., Alejandro v. Palm Beach State Coll.*, 843 F. Supp. 2d 1263, 1270-71 (S.D. Fla. 2011) (holding that the plaintiff student would suffer irreparable injury if defendant state college did not allow her psychiatric service dog in class, even though she had attended prior classes without the dog). This Court has likewise held that an allegation of ongoing unequal treatment in violation of Title IX demonstrates irreparable injury meriting a preliminary injunction. *Daniels v. Sch. Bd. of Brevard Cty.*, 985 F. Supp. 1458, 1461-62 (M.D. Fla. 1997) (holding that various unequal facilities for girls' softball team versus boys' baseball team warranted preliminary injunctive relief; where boys had restrooms accessible from field and girls did not, noting that "[e]qual access to restroom facilities is such a clearly established right as to merit no further discussion").

As a result of Defendants' policy, Drew is forced to choose between suffering through efforts to hold his bladder while trying to pay attention in class, or engaging in the humiliating exercise of racing to use a separate restroom at the expense of being in class with his classmates. Drew Decl. ¶ 28. As other courts have recognized, "no recovery could give back to [Drew] the loss suffered if he spent his [junior and] senior year focusing on avoiding using the restroom, rather than on his studies, his extracurricular activities and his college application process." *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, No. 16-CV-943-PP, 2016 WL 5239829, at *4 (E.D. Wis. Sept. 22, 2016); *id.* at *64 ("[P]laintiff's spending his last school year trying to avoid using the restroom, living in fear of being

¹² As in *Ray*, the theoretical harms raised by school officials here are "not supported by the evidence in this case," and the "clear weight of the expert medical evidence and opinion is in favor of" providing an "integrated" experience at school. 666 F. Supp. at 1535; Ehrensaft Decl. ¶¶ 41-48.

disciplined, feeling singled out and stigmatized” cannot be “rectified by a monetary judgment, or even an award of injunctive relief, after a trial that could take place months or years from now.”); *see also Virginia Coll., LLC v. SSF Savannah Properties, LLC*, 93 F. Supp. 3d 1370, 1379 (S.D. Ga. 2015) (finding go-kart business above college irreparably harmed students by interfering with their concentration and learning).

Even apart from impeding Drew’s education—which itself is irreparable harm—the stigma of separation and exclusion causes non-compensable harm. No check can be written later to restore the equal dignity stripped from Drew by Defendants’ policy. “Courts have long recognized that disparate treatment itself stigmatizes members of a disfavored group as innately inferior” *Evancho*, 2017 WL 770619, at *17; *id.* (the marginalization and humiliation imposed by school’s policy “cannot later be readily remedied by money relief”); *Whitaker*, 858 F.3d at 1045 (banishing plaintiff to gender-neutral restrooms “further stigmatized [him], indicating that he was ‘different’ because he was a transgender boy”); *Highland*, 208 F. Supp. 3d at 878 (finding that “stigma and isolation” of 11-year-old transgender girl from communal restrooms caused irreparable harm).

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

The “balance of equities tips especially sharply in” Drew’s favor because the relief he seeks is “narrowly tailored” to permit him to use the boys’ “restroom and does not even implicate locker rooms or overnight accommodations.” *Highland*, 208 F. Supp. 3d at 878. Additionally, as the record establishes, there are no potential privacy violations or safety risks. There is no evidence that Drew invaded others’ privacy or posed a safety risk during the six weeks that he used the boys’ restroom. While no student is harmed when Drew uses

the boys' restroom, the harms inflicted on Drew from the exclusion are profound. Drew Decl. ¶¶ 24-25, 28-29, 32-34; Ehrensaft Decl. ¶¶ 42-46, 48.

The “public has no interest in enforcing an unconstitutional” policy, like the one at issue here. *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). Similarly, “the overriding public interest lay[s] in the firm enforcement of Title IX.” *Cohen v. Brown Univ.*, 991 F.2d 888, 906 (1st Cir.1993); accord *Dodds v. United States Dep’t of Educ.*, 845 F.3d 217, 222 (6th Cir. 2016). The public interest also is served by ensuring that schools are conducive to learning and preparing all students for a productive life—as occurs when transgender students are treated as full, equal members of the school community.¹³ *Cf. Virginia Coll., LLC*, 93 F. Supp. 3d at 1380 (explaining that the public has an interest in seeing vocational colleges achieve their mission to educate students); Ehrensaft ¶¶ 32, 41-44.

VI. No Bond Should Be Required.

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

¹³ A number of Florida and other schools allow access to facilities in accordance with gender identity, including Broward County Public Schools (“Broward”), Leon County Schools, and Miami-Dade County Public Schools. *See Borelli Dec., Exs. H, K at 40-41, L, and M at 7-8. See also Whitaker*, 858 F.3d at 1054-55 (relying on positive experiences of *amici curiae* school administrators from 21 states and the District of Columbia with restroom policies that respect students' gender identity).

CONCLUSION

“It is no answer under the Equal Protection Clause that those impermissibly singled out for differential treatment can . . . themselves ‘solve the problem’ by further separating themselves from their peers.” *Evancho*, 2017 WL 770619, at *16. Drew respectfully requests that this Court preliminarily enjoin Defendants from excluding him from the boys’ restrooms at school.

Dated: July 19, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2017, I electronically filed the foregoing and all attachments with the Clerk of the Court by using the CM/ECF system, causing a copy of the foregoing and all attachments to be served on all counsel of record.

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