

APPEAL NO. 18-13592-EE

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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DREW ADAMS,  
Plaintiff-Appellee,

v.

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

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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

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

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115TH CONGRESS  
1ST SESSION

# S. 1006

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 2, 2017

Mr. MERKLEY (for himself, Ms. BALDWIN, Mr. BOOKER, Mr. BENNET, Mr. BLUMENTHAL, Mr. BROWN, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. CASEY, Mr. COONS, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Ms. HARRIS, Ms. HASSAN, Mr. HEINRICH, Ms. HEITKAMP, Ms. HIRONO, Mr. KAINE, Mr. KING, Ms. KLOBUCHAR, Mr. LEAHY, Mr. MARKEY, Mrs. McCASKILL, Mr. MENENDEZ, Mr. MURPHY, Mrs. MURRAY, Mr. NELSON, Mr. PETERS, Mr. REED, Mr. SANDERS, Mr. SCHATZ, Mr. SCHUMER, Mrs. SILLABEE, Ms. STABENOW, Mr. TESTER, Mr. UDALL, Mr. VAN HOLLEN, Mr. WARNER, Ms. WARREN, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equality Act”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Discrimination can occur on the basis of the  
4 sex, sexual orientation, gender identity, or preg-  
5 nancy, childbirth, or a related medical condition of  
6 an individual, as well as because of sex-based stereo-  
7 types. Each of these factors alone can serve as the  
8 basis for discrimination, and each is a form of sex  
9 discrimination.

10 (2) A single instance of discrimination may  
11 have more than one basis. For example, discrimina-  
12 tion against a married same-sex couple could be  
13 based on the sex stereotype that marriage should  
14 only be between heterosexual couples, the sexual ori-  
15 entation of the two individuals in the couple, or  
16 both. Discrimination against a pregnant lesbian  
17 could be based on her sex, her sexual orientation,  
18 her pregnancy, or on the basis of multiple factors.

19 (3) Lesbian, gay, bisexual, and transgender (re-  
20 ferred to as “LGBT”) people commonly experience  
21 discrimination in securing access to public accom-  
22 modations—including restaurants, stores, places of  
23 or establishments that provide entertainment, and  
24 transportation. Forms of discrimination include the  
25 exclusion and denial of entry, unequal or unfair  
26 treatment, harassment, and violence. This discrimi-

1 nation prevents the full participation of LGBT peo-  
2 ple in society and disrupts the free flow of com-  
3 merce.

4 (4) Women also face discrimination, in estab-  
5 lishments such as stores and restaurants, and places  
6 or establishments that provide other goods or serv-  
7 ices, such as entertainment or transportation, in-  
8 cluding sexual harassment, differential pricing, and  
9 denial of services because they are pregnant or  
10 breastfeeding.

11 (5) Regular and ongoing discrimination against  
12 LGBT people, as well as women, in accessing public  
13 accommodations contributes to negative social and  
14 economic outcomes.

15 (6) The discredited practice known as “conver-  
16 sion therapy” is a form of discrimination that harms  
17 LGBT people by undermining individuals sense of  
18 self worth, increasing suicide ideation and substance  
19 abuse, exacerbating family conflict, and contributing  
20 to second class status.

21 (7) Both LGBT people and women face wide-  
22 spread discrimination in employment and various  
23 services, including by entities that receive Federal fi-  
24 nancial assistance. Such discrimination—

1 (A) is particularly troubling and inappro-  
2 priate for programs and services funded wholly  
3 or in part by the Federal Government;

4 (B) undermines national progress toward  
5 equal treatment regardless of sex, sexual ori-  
6 entation, or gender identity; and

7 (C) is inconsistent with the constitutional  
8 principle of equal protection under the Four-  
9 teenth Amendment of the Constitution of the  
10 United States.

11 (8) Workers who are LGBT, or are perceived to  
12 be LGBT, have been subjected to a history and pat-  
13 tern of persistent, widespread, and pervasive dis-  
14 crimination on the bases of sexual orientation and  
15 gender identity by private sector employers and Fed-  
16 eral, State, and local government employers.

17 (9) Numerous provisions of Federal law ex-  
18 pressly prohibit discrimination on the basis of sex,  
19 and Federal agencies and courts have correctly in-  
20 terpreted these prohibitions on sex discrimination to  
21 include discrimination based on sexual orientation,  
22 gender identity, and sex stereotypes. In particular,  
23 the Equal Employment Opportunity Commission  
24 correctly interpreted title VII of the Civil Rights Act

1 of 1964 in *Macy v. Holder*, *Baldwin v. Fox*, and  
2 *Lusardi v. McHugh*.

3 (10) The absence of explicit prohibitions of dis-  
4 crimination on the basis of sexual orientation and  
5 gender identity under Federal statutory law, as well  
6 as the existence of legislative proposals that would  
7 have provided such explicit prohibitions, has led  
8 some courts to conclude incorrectly that current  
9 Federal laws prohibiting sex discrimination do not  
10 prohibit discrimination on the basis of sexual ori-  
11 entation and gender identity. It has also created un-  
12 certainty for employers and other entities covered by  
13 Federal nondiscrimination laws and caused unneces-  
14 sary hardships for LGBT individuals.

15 (11) LGBT people often face discrimination  
16 when seeking to rent or purchase housing, as well as  
17 in every other aspect of obtaining and maintaining  
18 housing. LGBT people in same-sex relationships are  
19 often discriminated against when two names associ-  
20 ated with one gender appear on a housing applica-  
21 tion, and transgender people often encounter dis-  
22 crimination when credit checks or inquiries reveal a  
23 former name.

24 (12) National surveys, including a study com-  
25 missioned by the Department of Housing and Urban

1 Development, show that housing discrimination  
2 against LGBT people is very prevalent. For in-  
3 stance, when same-sex couples inquire about housing  
4 that is available for rent, they are less likely to re-  
5 ceive positive responses from landlords. According to  
6 other studies, transgender people have half the  
7 homeownership rate of non-transgender people and  
8 about 1 in 5 transgender people experience home-  
9 lessness.

10 (13) As a result of the absence of explicit prohi-  
11 bitions against discrimination on the basis of sexual  
12 orientation and gender identity, credit applicants  
13 who are LGBT, or perceived to be LGBT, have un-  
14 equal opportunities to establish credit. LGBT people  
15 can experience being denied a mortgage, credit card,  
16 student loan, or many other types of credit simply  
17 because of their sexual orientation or gender iden-  
18 tity.

19 (14) Numerous studies demonstrate that LGBT  
20 people, especially transgender people and women, are  
21 economically disadvantaged and at a higher risk for  
22 poverty compared with other groups of people.

23 (15) The right to an impartial jury of one's  
24 peers and the reciprocal right to jury service are  
25 fundamental to the free and democratic system of



1 justice in the United States and are based in the  
2 Bill of Rights. There is, however, an unfortunate  
3 and long-documented history in the United States of  
4 attorneys discriminating against LGBT individuals,  
5 or those perceived to be LGBT, in jury selection.  
6 Failure to bar peremptory challenges based on the  
7 actual or perceived sexual orientation or gender  
8 identity of an individual not only erodes a funda-  
9 mental right, duty, and obligation of being a citizen  
10 of the United States, but also unfairly creates a sec-  
11 ond class of citizenship for LGBT victims, witnesses,  
12 plaintiffs, and defendants.

13 (b) PURPOSE.—It is the purpose of this Act to ex-  
14 pand as well as clarify, confirm and create greater consist-  
15 ency in the protections against discrimination on the basis  
16 of all covered characteristics and to provide guidance and  
17 notice to individuals, organizations, corporations, and  
18 agencies regarding their obligations under the law.

19 **SEC. 3. PUBLIC ACCOMMODATIONS.**

20 (a) PROHIBITION ON DISCRIMINATION OR SEGREGA-  
21 TION IN PUBLIC ACCOMMODATIONS.—Section 201 of the  
22 Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

23 (1) in subsection (a), by inserting “sex, sexual  
24 orientation, gender identity,” before “or national ori-  
25 gin”; and

1 (2) in subsection (b)—

2 (A) in paragraph (3), by striking “sta-  
3 dium” and all that follows and inserting “sta-  
4 dium or other place of or establishment that  
5 provides exhibition, entertainment, recreation,  
6 exercise, amusement, gathering, or display;”;

7 (B) by redesignating paragraph (4) as  
8 paragraph (6); and

9 (C) by inserting after paragraph (3) the  
10 following:

11 “(4) any establishment that provides a good,  
12 service, or program, including a store, shopping cen-  
13 ter, online retailer or service provider, salon, bank,  
14 gas station, food bank, service or care center, shel-  
15 ter, travel agency, or funeral parlor, or establish-  
16 ment that provides health care, accounting, or legal  
17 services;

18 “(5) any train service, bus service, car service,  
19 taxi service, airline service, station, depot, or other  
20 place of or establishment that provides transpor-  
21 tation service; and”.

22 (b) PROHIBITION ON DISCRIMINATION OR SEGREGA-  
23 TION UNDER LAW.—Section 202 of such Act (42 U.S.C.  
24 2000a–1) is amended by inserting “sex, sexual orienta-  
25 tion, gender identity,” before “or national origin”.

1 (e) RULE OF CONSTRUCTION.—Title II of such Act  
2 (42 U.S.C. 2000a et seq.) is amended by adding at the  
3 end the following:

4 **“SEC. 208. RULE OF CONSTRUCTION.**

5 “A reference in this title to an establishment—

6 “(1) shall be construed to include an individual  
7 whose operations affect commerce and who is a pro-  
8 vider of a good, service, or program; and

9 “(2) shall not be construed to be limited to a  
10 physical facility or place.”.

11 **SEC. 4. DESEGREGATION OF PUBLIC FACILITIES.**

12 Section 301(a) of the Civil Rights Act of 1964 (42  
13 U.S.C. 2000b(a)) is amended by inserting “sex, sexual ori-  
14 entation, gender identity,” before “or national origin”.

15 **SEC. 5. DESEGREGATION OF PUBLIC EDUCATION.**

16 (a) DEFINITIONS.—Section 401(b) of the Civil Rights  
17 Act of 1964 (42 U.S.C. 2000c(b)) is amended by inserting  
18 “, sexual orientation, gender identity,” before “or national  
19 origin”.

20 (b) CIVIL ACTIONS BY THE ATTORNEY GENERAL.—  
21 Section 407 of such Act (42 U.S.C. 2000e–6) is amended,  
22 in subsection (a)(2), by inserting “, sexual orientation,  
23 gender identity,” before “or national origin”.

24 (c) CLASSIFICATION AND ASSIGNMENT.—Section 410  
25 of such Act (42 U.S.C. 2000e–9) is amended by inserting

1 “, sexual orientation, gender identity,” before “or national  
2 origin”.

3 **SEC. 6. FEDERAL FUNDING.**

4 Section 601 of the Civil Rights Act of 1964 (42  
5 U.S.C. 2000d) is amended by inserting “sex, sexual ori-  
6 entation, gender identity,” before “or national origin,”.

7 **SEC. 7. EMPLOYMENT.**

8 (a) **RULES OF CONSTRUCTION.**—Title VII of the  
9 Civil Rights Act of 1964 is amended by inserting after  
10 section 701 (42 U.S.C. 2000e) the following:

11 **“SEC. 701A. RULES OF CONSTRUCTION.**

12 “Section 1106 shall apply to this title except that for  
13 purposes of that application, a reference in that section  
14 to an ‘unlawful practice’ shall be considered to be a ref-  
15 erence to an ‘unlawful employment practice’.”.

16 (b) **UNLAWFUL EMPLOYMENT PRACTICES.**—Section  
17 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–  
18 2) is amended—

19 (1) in the section header, by striking “SEX,”  
20 and inserting “SEX, SEXUAL ORIENTATION, GENDER  
21 IDENTITY,”;

22 (2) except in subsection (e), by striking “sex,”  
23 each place it appears and inserting “sex, sexual ori-  
24 entation, gender identity,”;

1 (3) in subsection (c)(1), by striking “enter-  
2 prise,” and inserting “enterprise, if, in a situation in  
3 which sex is a bona fide occupational qualification,  
4 individuals are recognized as qualified in accordance  
5 with their gender identity,”; and

6 (4) in subsection (h), by striking “sex” the sec-  
7 ond place it appears and inserting “sex, sexual ori-  
8 entation, gender identity,”.

9 (c) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—  
10 Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C.  
11 2000e-3(b)) is amended—

12 (1) by striking “sex,” the first place it appears  
13 and inserting “sex, sexual orientation, gender iden-  
14 tity,”; and

15 (2) by striking “employment.” and inserting  
16 “employment, if, in a situation in which sex is a  
17 bona fide occupational qualification, individuals are  
18 recognized as qualified in accordance with their gen-  
19 der identity.”.

20 (d) CLAIMS.—Section 706(g)(2)(A) of the Civil  
21 Rights Act of 1964 (2000e-5(g)(2)(A)) is amended by  
22 striking “sex,” and inserting “sex, sexual orientation, gen-  
23 der identity,”.

1 (e) EMPLOYMENT BY FEDERAL GOVERNMENT.—Sec-  
2 tion 717 of the Civil Rights Act of 1964 (42 U.S.C.  
3 2000c–16) is amended—

4 (1) in subsection (a), by striking “sex,” and in-  
5 sserting “sex, sexual orientation, gender identity,”;  
6 and

7 (2) in subsection (c), by striking “sex” and in-  
8 sserting “sex, sexual orientation, gender identity,”.

9 (f) GOVERNMENT EMPLOYEE RIGHTS ACT OF  
10 1991.—The Government Employee Rights Act of 1991  
11 (42 U.S.C. 2000e–16a et seq.) is amended—

12 (1) in section 301(b), by striking “sex,” and in-  
13 sserting “sex, sexual orientation, gender identity,”;

14 (2) in section 302(a)(1), by striking “sex,” and  
15 inserting “sex, sexual orientation, gender identity,”;  
16 and

17 (3) by adding at the end the following:

18 **“SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.**

19 “Sections 1101(b), 1106, and 1107 of the Civil  
20 Rights Act of 1964 shall apply to this title except that  
21 for purposes of that application, a reference in that section  
22 1106 to ‘race, color, religion, sex, sexual orientation, gen-  
23 der identity, or national origin’ shall be considered to be  
24 a reference to ‘race, color, religion, sex, sexual orientation,  
25 gender identity, national origin, age, or disability’.”.

1 (g) CONGRESSIONAL ACCOUNTABILITY ACT OF  
2 1995.—The Congressional Accountability Act of 1995 (2  
3 U.S.C. 1301 et seq.) is amended—

4 (1) in section 201(a)(1) (2 U.S.C. 1311(a)(1))  
5 by inserting “sexual orientation, gender identity,”  
6 before “or national origin,”; and

7 (2) by adding at the end of title II (42 U.S.C.  
8 1311 et seq.) the following:

9 **“SEC. 208. RULES OF CONSTRUCTION AND CLAIMS.**

10 “Sections 1101(b), 1106, and 1107 of the Civil  
11 Rights Act of 1964 shall apply to section 201 (and reme-  
12 dial provisions of this Act related to section 201) except  
13 that for purposes of that application, a reference in that  
14 section 1106 to ‘race, color, religion, sex, sexual orienta-  
15 tion, gender identity, or national origin’ shall be consid-  
16 ered to be a reference to ‘race, color, religion, sex, sexual  
17 orientation, gender identity, national origin, age, or dis-  
18 ability’.”.

19 (h) CIVIL SERVICE REFORM ACT OF 1978.—Chapter  
20 23 of title 5, United States Code, is amended—

21 (1) in section 2301(b)(2), by striking “sex,”  
22 and inserting “sex, sexual orientation, gender iden-  
23 tity,”;

24 (2) in section 2302—

1 (A) in subsection (b)(1)(A), by inserting  
2 “sexual orientation, gender identity,” before “or  
3 national origin;” and

4 (B) in subsection (d)(1), by inserting “sex-  
5 ual orientation, gender identity,” before “or na-  
6 tional origin;” and

7 (3) by adding at the end the following:

8 **“SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.**

9 “Sections 1101(b), 1106, and 1107 of the Civil  
10 Rights Act of 1964 shall apply to this chapter (and reme-  
11 dial provisions of this title related to this chapter) except  
12 that for purposes of that application, a reference in that  
13 section 1106 to ‘race, color, religion, sex, sexual orienta-  
14 tion, gender identity, or national origin’ shall be consid-  
15 ered to be a reference to ‘race, color, religion, sex, sexual  
16 orientation, gender identity, national origin, age, a handi-  
17 capping condition, marital status, or political affiliation’.”.

18 **SEC. 8. INTERVENTION.**

19 Section 902 of the Civil Rights Act of 1964 (42  
20 U.S.C. 2000h-2) is amended by inserting “, sexual ori-  
21 entation, gender identity,” before “or national origin.”.

22 **SEC. 9. MISCELLANEOUS.**

23 Title XI of the Civil Rights Act of 1964 is amended—

24 (1) by redesignating sections 1101 through  
25 1104 (42 U.S.C. 2000h et seq.) and sections 1105



1 and 1106 (42 U.S.C. 2000h-5, 2000h-6) as sections  
2 1102 through 1105 and sections 1108 and 1109, re-  
3 spectively;

4 (2) by inserting after the title heading the fol-  
5 lowing:

6 **“SEC. 1101. DEFINITIONS AND RULES.**

7 “(a) DEFINITIONS.—In titles II, III, IV, VI, VII, and  
8 IX (referred to individually in sections 1106 and 1107 as  
9 a ‘covered title’):

10 “(1) RACE; COLOR; RELIGION; SEX; SEXUAL  
11 ORIENTATION; GENDER IDENTITY; NATIONAL ORI-  
12 GIN.—The term ‘race’, ‘color’, ‘religion’, ‘sex’, ‘sex-  
13 ual orientation’, ‘gender identity’, or ‘national ori-  
14 gin’, used with respect to an individual, includes—

15 “(A) the race, color, religion, sex, sexual  
16 orientation, gender identity, or national origin,  
17 respectively, of another person with whom the  
18 individual is associated or has been associated;  
19 and

20 “(B) a perception or belief, even if inae-  
21 curate, concerning the race, color, religion, sex,  
22 sexual orientation, gender identity, or national  
23 origin, respectively, of the individual.

24 “(2) GENDER IDENTITY.—The term ‘gender  
25 identity’ means the gender-related identity, appear-

1           ance, mannerisms, or other gender-related character-  
2           istics of an individual, regardless of the individual's  
3           designated sex at birth.

4           “(3) INCLUDING.—The term ‘including’ means  
5           including, but not limited to, consistent with the  
6           term’s standard meaning in Federal law.

7           “(4) SEX.—The term ‘sex’ includes—

8                   “(A) a sex stereotype;

9                   “(B) pregnancy, childbirth, or a related  
10           medical condition; and

11                   “(C) sexual orientation or gender identity.

12           “(5) SEXUAL ORIENTATION.—The term ‘sexual  
13           orientation’ means homosexuality, heterosexuality, or  
14           bisexuality.

15           “(b) RULES.—In a covered title referred to in sub-  
16           section (a)—

17                   “(1) (with respect to sex) pregnancy, childbirth,  
18           or a related medical condition shall not receive less  
19           favorable treatment than other physical conditions;  
20           and

21                   “(2) (with respect to gender identity) an indi-  
22           vidual shall not be denied access to a shared facility,  
23           including a restroom, a locker room, and a dressing  
24           room, that is in accordance with the individual’s  
25           gender identity.”; and

1 (3) by inserting after section 1105 the fol-  
2 lowing:

3 **“SEC. 1106. RULES OF CONSTRUCTION.**

4 “(a) SEX.—Nothing in section 1101 or the provisions  
5 of a covered title incorporating a term defined or a rule  
6 specified in that section shall be construed—

7 “(1) to limit the protection against an unlawful  
8 practice on the basis of pregnancy, childbirth, or a  
9 related medical condition provided by section 701(k);  
10 or

11 “(2) to limit the protection against an unlawful  
12 practice on the basis of sex available under any pro-  
13 vision of Federal law other than that covered title,  
14 prohibiting a practice on the basis of sex.

15 “(b) CLAIMS AND REMEDIES NOT PRECLUDED.—  
16 Nothing in section 1101 or a covered title shall be con-  
17 strued to limit the claims or remedies available to any indi-  
18 vidual for an unlawful practice on the basis of race, color,  
19 religion, sex, sexual orientation, gender identity, or na-  
20 tional origin including claims brought pursuant to section  
21 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983,  
22 1985) or any other law, including a Federal law amended  
23 by the Equality Act, regulation, or policy.

24 “(c) NO NEGATIVE INFERENCE.—Nothing in section  
25 1101 or a covered title shall be construed to support any

1 inference that any Federal law prohibiting a practice on  
2 the basis of sex does not prohibit discrimination on the  
3 basis of pregnancy, childbirth, or a related medical condi-  
4 tion, sexual orientation, gender identity, or a sex stereo-  
5 type.

6 **“SEC. 1107. CLAIMS.**

7 “The Religious Freedom Restoration Act of 1993 (42  
8 U.S.C. 2000bb et seq.) shall not provide a claim con-  
9 cerning, or a defense to a claim under, a covered title,  
10 or provide a basis for challenging the application or en-  
11 forcement of a covered title.”.

12 **SEC. 10. HOUSING.**

13 (a) FAIR HOUSING ACT.—The Fair Housing Act (42  
14 U.S.C. 3601 et seq.) is amended—

15 (1) in section 802, by adding at the end the fol-  
16 lowing:

17 “(p) ‘Gender identity’, ‘sex’, and ‘sexual orientation’  
18 have the meanings given those terms in section 1101(a)  
19 of the Civil Rights Act of 1964.

20 “(q) ‘Race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orienta-  
21 tion’, ‘gender identity’, ‘handicap’, ‘familial status’, or ‘na-  
22 tional origin’, used with respect to an individual, in-  
23 cludes—

24 “(1) the race, color, religion, sex, sexual ori-  
25 entation, gender identity, handicap, familial status,

1 or national origin, respectively, of another person  
2 with whom the individual is associated or has been  
3 associated; and

4 “(2) a perception or belief, even if inaccurate,  
5 concerning the race, color, religion, sex, sexual ori-  
6 entation, gender identity, handicap, familial status,  
7 or national origin, respectively, of the individual.”;

8 (2) in section 804, by inserting “sexual orienta-  
9 tion, gender identity,” after “sex,” each place that  
10 term appears;

11 (3) in section 805, by inserting “sexual orienta-  
12 tion, gender identity,” after “sex,” each place that  
13 term appears;

14 (4) in section 806, by inserting “sexual orienta-  
15 tion, gender identity,” after “sex,”;

16 (5) in section 808(e)(6), by inserting “sexual  
17 orientation, gender identity,” after “sex,”; and

18 (6) by adding at the end the following:

19 **“SEC. 821. RULES OF CONSTRUCTION.**

20 “Sections 1101(b) and 1106 of the Civil Rights Act  
21 of 1964 shall apply to this title and section 901, except  
22 that for purposes of that application, a reference in that  
23 section 1101(b) or 1106 to a ‘covered title’ shall be consid-  
24 ered a reference to ‘this title and section 901’.

1 **“SEC. 822. CLAIMS.**

2 “Section 1107 of the Civil Rights Act of 1964 shall  
3 apply to this title and section 901, except that for pur-  
4 poses of that application, a reference in that section 1107  
5 to a ‘covered title’ shall be considered a reference to ‘this  
6 title and section 901’.”.

7 (b) **PREVENTION OF INTIMIDATION IN FAIR HOUS-**  
8 **ING CASES.**—Section 901 of the Civil Rights Act of 1968  
9 (42 U.S.C. 3631) is amended by inserting “sexual orienta-  
10 tion (as such term is defined in section 802 of this Act),  
11 gender identity (as such term is defined in section 802  
12 of this Act),” after “sex,” each place that term appears.

13 **SEC. 11. EQUAL CREDIT OPPORTUNITY.**

14 (a) **PROHIBITED DISCRIMINATION.**—Section  
15 701(a)(1) of the Equal Credit Opportunity Act (15 U.S.C.  
16 1691(a)(1)) is amended by inserting “sexual orientation,  
17 gender identity,” after “status,”.

18 (b) **DEFINITIONS.**—Section 702 of the Equal Credit  
19 Opportunity Act (15 U.S.C. 1691a) is amended—

20 (1) by redesignating subsections (f) and (g) as  
21 subsections (h) and (i), respectively;

22 (2) by inserting after subsection (e) the fol-  
23 lowing:

24 “(f) The terms ‘gender identity’, ‘sex’, and ‘sexual  
25 orientation’ have the meanings given those terms in sec-  
26 tion 1101(a) of the Civil Rights Act of 1964.

1 “(g) The term ‘race’, ‘color’, ‘religion’, ‘national ori-  
2 gin’, ‘sex’, ‘sexual orientation’, ‘gender identity’, ‘marital  
3 status’, or ‘age’, used with respect to an individual, in-  
4 cludes—

5 “(1) the race, color, religion, national origin,  
6 sex, sexual orientation, gender identity, marital sta-  
7 tus, or age, respectively, of another person with  
8 whom the individual is associated or has been associ-  
9 ated; and

10 “(2) a perception or belief, even if inaccurate,  
11 concerning the race, color, religion, national origin,  
12 sex, sexual orientation, gender identity, marital sta-  
13 tus, or age, respectively, of the individual.”; and

14 (3) by adding at the end the following:

15 “(j) Sections 1101(b) and 1106 of the Civil Rights  
16 Act of 1964 shall apply to this title, except that for pur-  
17 poses of that application—

18 “(1) a reference in those sections to a ‘covered  
19 title’ shall be considered a reference to ‘this title’;  
20 and

21 “(2) paragraph (1) of such section 1101(b)  
22 shall apply with respect to all aspects of a credit  
23 transaction.”.

24 (e) RELATION TO STATE LAWS.—Section 705(a) of  
25 the Equal Credit Opportunity Act (15 U.S.C. 1691d(a))

1 is amended by inserting “, sexual orientation, gender iden-  
2 tity,” after “sex”.

3 (d) CIVIL LIABILITY.—Section 706 of the Equal  
4 Credit Opportunity Act (15 U.S.C. 1691e) is amended by  
5 adding at the end the following:

6 “(l) Section 1107 of the Civil Rights Act of 1964  
7 shall apply to this title, except that for purposes of that  
8 application, a reference in that section to a ‘covered title’  
9 shall be considered a reference to ‘this title.’”.

10 **SEC. 12. JURIES.**

11 (a) IN GENERAL.—Chapter 121 of title 28, United  
12 States Code, is amended—

13 (1) in section 1862, by inserting “sexual ori-  
14 entation, gender identity,” after “sex,”;

15 (2) in section 1867(e), in the second sentence,  
16 by inserting “sexual orientation, gender identity,”  
17 after “sex,”;

18 (3) in section 1869—

19 (A) in subsection (j), by striking “and” at  
20 the end;

21 (B) in subsection (k), by striking the pe-  
22 riod at the end and inserting a semicolon; and

23 (C) by adding at the end the following:



1 “(l) ‘gender identity’, ‘sex’, and ‘sexual orientation’  
2 have the meanings given such terms under section 1101(a)  
3 of the Civil Rights Act of 1964; and

4 “(m) ‘race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orienta-  
5 tion’, ‘gender identity’, ‘economic status’, or ‘national ori-  
6 gin’, used with respect to an individual, includes—

7 “(1) the race, color, religion, sex, sexual ori-  
8 entation, gender identity, economic status, or na-  
9 tional origin, respectively, of another person with  
10 whom the individual is associated or has been associ-  
11 ated; and

12 “(2) a perception or belief, even if inaccurate,  
13 concerning the race, color, religion, sex, sexual ori-  
14 entation, gender identity, economic status, or na-  
15 tional origin, respectively, of the individual.”; and

16 (4) by adding at the end the following:

17 **“§ 1879. Rules of construction and claims**

18 “Sections 1101(b), 1106, and 1107 of the Civil  
19 Rights Act of 1964 shall apply to this chapter, except that  
20 for purposes of that application, a reference in those sec-  
21 tions to a ‘covered title’ shall be considered a reference  
22 to ‘this chapter’.”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
24 The table of sections for chapter 121 of title 28, United

24

1 States Code, is amended by adding at the end the fol-

2 lowing:

“1879. Rules of construction and claims.”.

○

**DE 106-6**



114TH CONGRESS  
1ST SESSION

# S. 1858

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 23, 2015

Mr. MERKLEY (for himself, Ms. BALDWIN, Mr. BOOKER, Mr. BENNET, Mr. BLUMENTHAL, Mrs. BOXER, Mr. BROWN, Ms. CANTWELL, Mr. CARDIN, Mr. CARPER, Mr. COONS, Mr. DURBIN, Mrs. FEINSTEIN, Mr. FRANKEN, Mrs. GILLIBRAND, Mr. HEINRICH, Ms. HIRONO, Mr. KAINE, Mr. KING, Ms. KLOBUCHAR, Mr. LEAHY, Mr. MARKEY, Mrs. MCCASKILL, Mr. MENENDEZ, Ms. MIKULSKI, Mr. MURPHY, Mrs. MURRAY, Mr. PETERS, Mr. REED, Mr. REID, Mr. SANDERS, Mr. SCHATZ, Mr. SCHUMER, Mrs. SHAHEEN, Ms. STABENOW, Mr. UDALL, Mr. WARNER, Ms. WARREN, Mr. WHITEHOUSE, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To prohibit discrimination on the basis of sex, gender identity, and sexual orientation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equality Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

1 (1) Discrimination can occur on the basis of the  
2 sex, sexual orientation, gender identity, or preg-  
3 nancy, childbirth, or a related medical condition of  
4 an individual, as well as because of sex-based stereo-  
5 types. Each of these factors alone can serve as the  
6 basis for discrimination, and each is a form of sex  
7 discrimination.

8 (2) A single instance of discrimination may  
9 have more than 1 basis. For example, discrimination  
10 against a married same-sex couple could be based on  
11 the sex stereotype that marriage should only be be-  
12 tween heterosexual couples, the sexual orientation of  
13 the 2 individuals in the couple, or both. Discrimina-  
14 tion against a pregnant lesbian could be based on  
15 her sex, her sexual orientation, her pregnancy, or on  
16 the basis of multiple factors.

17 (3) Lesbian, gay, bisexual, and transgender (re-  
18 ferred to as “LGBT”) people commonly experience  
19 discrimination in securing access to public accom-  
20 modations—including restaurants, stores, places of  
21 or establishments that provide entertainment, and  
22 transportation. Forms of discrimination include the  
23 exclusion and denial of entry, unequal or unfair  
24 treatment, harassment, and violence. This discrimi-  
25 nation prevents the full participation of LGBT peo-

1 ple in society and disrupts the free flow of com-  
2 merce.

3 (4) Women also face discrimination, in estab-  
4 lishments such as stores and restaurants, and places  
5 or establishments that provide other goods or serv-  
6 ices, such as entertainment or transportation, in-  
7 cluding sexual harassment, differential pricing, and  
8 denial of services because they are pregnant or  
9 breastfeeding.

10 (5) Regular and ongoing discrimination against  
11 LGBT people, as well as women, in accessing public  
12 accommodations contributes to negative social and  
13 economic outcomes.

14 (6) Both LGBT people and women face wide-  
15 spread discrimination in employment and various  
16 services, including by entities that receive Federal fi-  
17 nancial assistance. Such discrimination—

18 (A) is particularly troubling and inappro-  
19 priate for programs and services funded wholly  
20 or in part by the Federal Government;

21 (B) undermines national progress toward  
22 equal treatment regardless of sex, sexual ori-  
23 entation, or gender identity; and

24 (C) is inconsistent with the constitutional  
25 principle of equal protection under the Four-

1           teenth Amendment of the Constitution of the  
2           United States.

3           (7) Workers who are LGBT, or are perceived to  
4           be LGBT, have been subjected to a history and pat-  
5           tern of persistent, widespread, and pervasive dis-  
6           crimination on the bases of sexual orientation and  
7           gender identity by private sector employers and Fed-  
8           eral, State, and local government employers.

9           (8) Numerous provisions of Federal law ex-  
10          pressly prohibit discrimination on the basis of sex,  
11          and Federal agencies and courts have correctly in-  
12          terpreted these prohibitions on sex discrimination to  
13          include discrimination based on sexual orientation,  
14          gender identity, and sex stereotypes. In particular,  
15          the Equal Employment Opportunity Commission has  
16          explicitly interpreted sex discrimination to include  
17          sexual orientation and gender identity.

18          (9) The absence of explicit prohibitions of dis-  
19          crimination on the basis of sexual orientation and  
20          gender identity under Federal statutory law, as well  
21          as some conflicting case law on how broadly sex dis-  
22          crimination provisions apply, has created uncertainty  
23          for employers and other entities covered by these  
24          laws. This lack of clear coverage also causes unnec-  
25          essary hardships for LGBT people.

1 (10) LGBT people often face discrimination  
2 when seeking to rent or purchase housing, as well as  
3 in every other aspect of obtaining and maintaining  
4 housing. LGBT people in same-sex relationships are  
5 often discriminated against when 2 names associated  
6 with 1 gender appear on a housing application, and  
7 transgender people often encounter discrimination  
8 when credit checks or inquiries reveal a former  
9 name.

10 (11) National surveys, including a study com-  
11 missioned by the Department of Housing and Urban  
12 Development, show that housing discrimination  
13 against LGBT people is very prevalent. For in-  
14 stance, when same-sex couples inquire about housing  
15 that is available for rent, they are less likely to re-  
16 ceive positive responses from landlords. According to  
17 other studies, transgender people have half the  
18 homeownership rate of non-transgender people and  
19 about 1 in 5 transgender people experience home-  
20 lessness.

21 (12) As a result of the absence of explicit prohi-  
22 bitions against discrimination on the basis of sexual  
23 orientation and gender identity, credit applicants  
24 who are LGBT, or perceived to be LGBT, have un-  
25 equal opportunities to establish credit. LGBT people



1 can experience being denied a mortgage, credit card,  
2 student loan, or many other types of credit simply  
3 because of their sexual orientation or gender iden-  
4 tity.

5 (13) Numerous studies demonstrate that LGBT  
6 people, especially transgender people and women, are  
7 economically disadvantaged and at a higher risk for  
8 poverty compared with other groups of people.

9 (14) The right to an impartial jury of one's  
10 peers and the reciprocal right to jury service are  
11 fundamental to the free and democratic system of  
12 justice in the United States and are based in the  
13 Bill of Rights. There is, however, an unfortunate  
14 and long-documented history in the United States of  
15 attorneys discriminating against LGBT individuals,  
16 or those perceived to be LGBT, in jury selection.  
17 Failure to bar peremptory challenges based on the  
18 actual or perceived sexual orientation or gender  
19 identity of an individual not only erodes a funda-  
20 mental right, duty, and obligation of being a citizen  
21 of the United States, but also unfairly creates a sec-  
22 ond class of citizenship for LGBT victims, witnesses,  
23 plaintiffs, and defendants.

1 **SEC. 3. PUBLIC ACCOMMODATIONS.**

2 (a) PROHIBITION ON DISCRIMINATION OR SEGREGA-  
3 TION IN PUBLIC ACCOMMODATIONS.—Section 201 of the  
4 Civil Rights Act of 1964 (42 U.S.C. 2000a) is amended—

5 (1) in subsection (a), by inserting “sex, sexual  
6 orientation, gender identity,” before “or national ori-  
7 gin”; and

8 (2) in subsection (b)—

9 (A) in paragraph (3), by striking “sta-  
10 dium” and all that follows and inserting “sta-  
11 dium or other place of or establishment that  
12 provides exhibition, entertainment, recreation,  
13 exercise, amusement, gathering, or display;”;

14 (B) by redesignating paragraph (4) as  
15 paragraph (6); and

16 (C) by inserting after paragraph (3) the  
17 following:

18 “(4) any establishment that provides a good,  
19 service, or program, including a store, shopping cen-  
20 ter, online retailer or service provider, salon, bank,  
21 gas station, food bank, service or care center, shel-  
22 ter, travel agency, or funeral parlor, or establish-  
23 ment that provides health care, accounting, or legal  
24 services;

25 “(5) any train service, bus service, car service,  
26 taxi service, airline service, station, depot, or other

1 place of or establishment that provides transpor-  
2 tation service; and”.

3 (b) PROHIBITION ON DISCRIMINATION OR SEGREGA-  
4 TION UNDER LAW.—Section 202 of such Act (42 U.S.C.  
5 2000a–1) is amended by inserting “sex, sexual orienta-  
6 tion, gender identity,” before “or national origin”.

7 (c) RULE OF CONSTRUCTION.—Title II of such Act  
8 (42 U.S.C. 2000a et seq.) is amended by adding at the  
9 end the following:

10 **“SEC. 208. RULE OF CONSTRUCTION.**

11 “A reference in this title to an establishment—

12 “(1) shall be construed to include an individual  
13 whose operations affect commerce and who is a pro-  
14 vider of a good, service, or program; and

15 “(2) shall not be construed to be limited to a  
16 physical facility or place.”.

17 **SEC. 4. DESEGREGATION OF PUBLIC FACILITIES.**

18 Section 301(a) of the Civil Rights Act of 1964 (42  
19 U.S.C. 2000b(a)) is amended by inserting “sex, sexual ori-  
20 entation, gender identity,” before “or national origin”.

21 **SEC. 5. DESEGREGATION OF PUBLIC EDUCATION.**

22 (a) DEFINITIONS.—Section 401(b) of the Civil Rights  
23 Act of 1964 (42 U.S.C. 2000c(b)) is amended by inserting  
24 “, sexual orientation, gender identity,” before “or national  
25 origin”.

1 (b) CIVIL ACTIONS BY THE ATTORNEY GENERAL.—  
2 Section 407 of such Act (42 U.S.C. 2000c–6) is amended,  
3 in subsection (a)(2), by inserting “, sexual orientation,  
4 gender identity,” before “or national origin”.

5 (c) CLASSIFICATION AND ASSIGNMENT.—Section 410  
6 of such Act (42 U.S.C. 2000c–9) is amended by inserting  
7 “, sexual orientation, gender identity,” before “or national  
8 origin”.

9 **SEC. 6. FEDERAL FUNDING.**

10 Section 601 of the Civil Rights Act of 1964 (42  
11 U.S.C. 2000d) is amended by inserting “sex, sexual ori-  
12 entation, gender identity,” before “or national origin,”.

13 **SEC. 7. EMPLOYMENT.**

14 (a) RULES OF CONSTRUCTION.—Title VII of the  
15 Civil Rights Act of 1964 is amended by inserting after  
16 section 701 (42 U.S.C. 2000e) the following:

17 **“SEC. 701A. RULES OF CONSTRUCTION.**

18 “Section 1106 shall apply to this title except that for  
19 purposes of that application, a reference in that section  
20 to an ‘unlawful practice’ shall be considered to be a ref-  
21 erence to an ‘unlawful employment practice’.”.

22 (b) UNLAWFUL EMPLOYMENT PRACTICES.—Section  
23 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–  
24 2) is amended—

1 (1) in the section header, by striking “SEX,”  
2 and inserting “SEX, SEXUAL ORIENTATION, GENDER  
3 IDENTITY,”;

4 (2) except in subsection (e), by striking “sex,”  
5 each place it appears and inserting “sex, sexual ori-  
6 entation, gender identity,”;

7 (3) in subsection (e)(1), by striking “enter-  
8 prise,” and inserting “enterprise, if, in a situation in  
9 which sex is a bona fide occupational qualification,  
10 individuals are recognized as qualified in accordance  
11 with their gender identity,”; and

12 (4) in subsection (h), by striking “sex” the sec-  
13 ond place it appears and inserting “sex, sexual ori-  
14 entation, gender identity.”.

15 (c) OTHER UNLAWFUL EMPLOYMENT PRACTICES.—  
16 Section 704(b) of the Civil Rights Act of 1964 (42 U.S.C.  
17 2000e-3(b)) is amended—

18 (1) by striking “sex,” the first place it appears  
19 and inserting “sex, sexual orientation, gender iden-  
20 tity,”; and

21 (2) by striking “employment.” and inserting  
22 “employment, if, in a situation in which sex is a  
23 bona fide occupational qualification, individuals are  
24 recognized as qualified in accordance with their gen-  
25 der identity.”.

1 (d) CLAIMS.—Section 706(g)(2)(A) of the Civil  
2 Rights Act of 1964 (2000e–5(g)(2)(A)) is amended by  
3 striking “sex,” and inserting “sex, sexual orientation, gen-  
4 der identity,”.

5 (e) EMPLOYMENT BY FEDERAL GOVERNMENT.—Sec-  
6 tion 717 of the Civil Rights Act of 1964 (42 U.S.C.  
7 2000e–16) is amended—

8 (1) in subsection (a), by striking “sex,” and in-  
9 serting “sex, sexual orientation, gender identity,”;  
10 and

11 (2) in subsection (c), by striking “sex” and in-  
12 serting “sex, sexual orientation, gender identity,”.

13 (f) GOVERNMENT EMPLOYEE RIGHTS ACT OF  
14 1991.—The Government Employee Rights Act of 1991  
15 (42 U.S.C. 2000e–16a et seq.) is amended—

16 (1) in section 301(b), by striking “sex,” and in-  
17 serting “sex, sexual orientation, gender identity,”;

18 (2) in section 302(a)(1), by striking “sex,” and  
19 inserting “sex, sexual orientation, gender identity,”;  
20 and

21 (3) by adding at the end the following:

22 **“SEC. 305. RULES OF CONSTRUCTION AND CLAIMS.**

23 “Sections 1101(b), 1106, and 1107 of the Civil  
24 Rights Act of 1964 shall apply to this title except that  
25 for purposes of that application, a reference in that section

1 1106 to ‘race, color, religion, sex, sexual orientation, gen-  
2 der identity, or national origin’ shall be considered to be  
3 a reference to ‘race, color, religion, sex, sexual orientation,  
4 gender identity, national origin, age, or disability’.”

5 (g) CONGRESSIONAL ACCOUNTABILITY ACT OF  
6 1995.—The Congressional Accountability Act of 1995 (2  
7 U.S.C. 1301 et seq.) is amended—

8 (1) in section 201(a)(1) (2 U.S.C. 1311(a)(1))  
9 by inserting “sexual orientation, gender identity,”  
10 before “or national origin,”; and

11 (2) by adding at the end of title II (42 U.S.C.  
12 1311 et seq.) the following:

13 **“SEC. 208. RULES OF CONSTRUCTION AND CLAIMS.**

14 “Sections 1101(b), 1106, and 1107 of the Civil  
15 Rights Act of 1964 shall apply to section 201 (and reme-  
16 dial provisions of this Act related to section 201) except  
17 that for purposes of that application, a reference in that  
18 section 1106 to ‘race, color, religion, sex, sexual orienta-  
19 tion, gender identity, or national origin’ shall be consid-  
20 ered to be a reference to ‘race, color, religion, sex, sexual  
21 orientation, gender identity, national origin, age, or dis-  
22 ability’.”

23 (h) CIVIL SERVICE REFORM ACT OF 1978.—Chapter  
24 23 of title 5, United States Code, is amended—

1 (1) in section 2301(b)(2), by striking “sex,”  
2 and inserting “sex, sexual orientation, gender iden-  
3 tity,”;

4 (2) in section 2302—

5 (A) in subsection (b)(1)(A), by inserting  
6 “sexual orientation, gender identity,” before “or  
7 national origin,”; and

8 (B) in subsection (d)(1), by inserting “sex-  
9 ual orientation, gender identity,” before “or na-  
10 tional origin,”; and

11 (3) by adding at the end the following:

12 **“SEC. 2307. RULES OF CONSTRUCTION AND CLAIMS.**

13 “Sections 1101(b), 1106, and 1107 of the Civil  
14 Rights Act of 1964 shall apply to this chapter (and reme-  
15 dial provisions of this title related to this chapter) except  
16 that for purposes of that application, a reference in that  
17 section 1106 to ‘race, color, religion, sex, sexual orienta-  
18 tion, gender identity, or national origin’ shall be consid-  
19 ered to be a reference to ‘race, color, religion, sex, sexual  
20 orientation, gender identity, national origin, age, a handi-  
21 capping condition, marital status, or political affiliation’.”.

22 **SEC. 8. INTERVENTION.**

23 Section 902 of the Civil Rights Act of 1964 (42  
24 U.S.C. 2000h-2) is amended by inserting “, sexual ori-  
25 entation, gender identity,” before “or national origin,”.



1 **SEC. 9. MISCELLANEOUS.**

2 Title XI of the Civil Rights Act of 1964 is amended—

3 (1) by redesignating sections 1101 through  
4 1104 (42 U.S.C. 2000h et seq.) and sections 1105  
5 and 1106 (42 U.S.C. 2000h-5, 2000h-6) as sections  
6 1102 through 1105 and sections 1108 and 1109, re-  
7 spectively;

8 (2) by inserting after the title heading the fol-  
9 lowing:

10 **“SEC. 1101. DEFINITIONS AND RULES.**

11 “(a) **DEFINITIONS.**—In titles II, III, IV, VI, VII, and  
12 IX (referred to individually in sections 1106 and 1107 as  
13 a ‘covered title’):

14 “(1) **RACE; COLOR; RELIGION; SEX; SEXUAL**  
15 **ORIENTATION; GENDER IDENTITY; NATIONAL ORI-**  
16 **GIN.**—The term ‘race’, ‘color’, ‘religion’, ‘sex’, ‘sex-  
17 ual orientation’, ‘gender identity’, or ‘national ori-  
18 gin’, used with respect to an individual, includes—

19 “(A) the race, color, religion, sex, sexual  
20 orientation, gender identity, or national origin,  
21 respectively, of another person with whom the  
22 individual is associated or has been associated;  
23 and

24 “(B) a perception or belief, even if inac-  
25 curate, concerning the race, color, religion, sex,

1 sexual orientation, gender identity, or national  
2 origin, respectively, of the individual.

3 “(2) GENDER IDENTITY.—The term ‘gender  
4 identity’ means the gender-related identity, appear-  
5 ance, mannerisms, or other gender-related character-  
6 istics of an individual, regardless of the individual’s  
7 designated sex at birth.

8 “(3) INCLUDING.—The term ‘including’ means  
9 including, but not limited to, consistent with the  
10 term’s standard meaning in Federal law.

11 “(4) SEX.—The term ‘sex’ includes—

12 “(A) a sex stereotype;

13 “(B) pregnancy, childbirth, or a related  
14 medical condition; and

15 “(C) sexual orientation or gender identity.

16 “(5) SEXUAL ORIENTATION.—The term ‘sexual  
17 orientation’ means homosexuality, heterosexuality, or  
18 bisexuality.

19 “(b) RULES.—In a covered title referred to in sub-  
20 section (a)—

21 “(1) (with respect to sex) pregnancy, childbirth,  
22 or a related medical condition shall not receive less  
23 favorable treatment than other physical conditions;  
24 and

1 “(2) (with respect to gender identity) an indi-  
2 vidual shall not be denied access to a shared facility,  
3 including a restroom, a locker room, and a dressing  
4 room, that is in accordance with the individual’s  
5 gender identity.”; and

6 (3) by inserting after section 1105 the fol-  
7 lowing:

8 **“SEC. 1106. RULES OF CONSTRUCTION.**

9 “(a) SEX.—Nothing in section 1101 or the provisions  
10 of a covered title incorporating a term defined or a rule  
11 specified in that section shall be construed—

12 “(1) to limit the protection against an unlawful  
13 practice on the basis of pregnancy, childbirth, or a  
14 related medical condition provided by section 701(k);  
15 or

16 “(2) to limit the protection against an unlawful  
17 practice on the basis of sex available under any pro-  
18 vision of Federal law other than that covered title,  
19 prohibiting a practice on the basis of sex.

20 “(b) CLAIMS AND REMEDIES NOT PRECLUDED.—  
21 Nothing in section 1101 or a covered title shall be con-  
22 strued to limit the claims or remedies available to any indi-  
23 vidual for an unlawful practice on the basis of race, color,  
24 religion, sex, sexual orientation, gender identity, or na-  
25 tional origin including claims brought pursuant to section

1 1979 or 1980 of the Revised Statutes (42 U.S.C. 1983,  
2 1985) or any other law, including a Federal law amended  
3 by the Equality Act, regulation, or policy.

4 “(c) NO NEGATIVE INFERENCE.—Nothing in section  
5 1101 or a covered title shall be construed to support any  
6 inference that any Federal law prohibiting a practice on  
7 the basis of sex does not prohibit discrimination on the  
8 basis of pregnancy, childbirth, or a related medical condi-  
9 tion, sexual orientation, gender identity, or a sex stereo-  
10 type.

11 **“SEC. 1107. CLAIMS.**

12 “The Religious Freedom Restoration Act of 1993 (42  
13 U.S.C. 2000bb et seq.) shall not provide a claim con-  
14 cerning, or a defense to a claim under, a covered title,  
15 or provide a basis for challenging the application or en-  
16 forcement of a covered title.”.

17 **SEC. 10. HOUSING.**

18 (a) FAIR HOUSING ACT.—The Fair Housing Act (42  
19 U.S.C. 3601 et seq.) is amended—

20 (1) in section 802, by adding at the end the fol-  
21 lowing:

22 “(p) ‘Gender identity’, ‘sex’, and ‘sexual orientation’  
23 have the meanings given those terms in section 1101(a)  
24 of the Civil Rights Act of 1964.

1 “(q) ‘Race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orienta-  
2 tion’, ‘gender identity’, ‘handicap’, ‘familial status’, or ‘na-  
3 tional origin’, used with respect to an individual, in-  
4 cludes—

5 “(1) the race, color, religion, sex, sexual ori-  
6 entation, gender identity, handicap, familial status,  
7 or national origin, respectively, of another person  
8 with whom the individual is associated or has been  
9 associated; and

10 “(2) a perception or belief, even if inaccurate,  
11 concerning the race, color, religion, sex, sexual ori-  
12 entation, gender identity, handicap, familial status,  
13 or national origin, respectively, of the individual.”;

14 (2) in section 804, by inserting “sexual orienta-  
15 tion, gender identity,” after “sex,” each place that  
16 term appears;

17 (3) in section 805, by inserting “sexual orienta-  
18 tion, gender identity,” after “sex,” each place that  
19 term appears;

20 (4) in section 806, by inserting “sexual orienta-  
21 tion, gender identity,” after “sex,”;

22 (5) in section 808(e)(6), by inserting “sexual  
23 orientation, gender identity,” after “sex,”; and

24 (6) by adding at the end the following:

1 **“SEC. 821. RULES OF CONSTRUCTION.**

2 “Sections 1101(b) and 1106 of the Civil Rights Act  
3 of 1964 shall apply to this title and section 901, except  
4 that for purposes of that application, a reference in that  
5 section 1101(b) or 1106 to a ‘covered title’ shall be consid-  
6 ered a reference to ‘this title and section 901’.

7 **“SEC. 822. CLAIMS.**

8 “Section 1107 of the Civil Rights Act of 1964 shall  
9 apply to this title and section 901, except that for pur-  
10 poses of that application, a reference in that section 1107  
11 to a ‘covered title’ shall be considered a reference to ‘this  
12 title and section 901’.”.

13 (b) PREVENTION OF INTIMIDATION IN FAIR HOUS-  
14 ING CASES.—Section 901 of the Civil Rights Act of 1968  
15 (42 U.S.C. 3631) is amended by inserting “sexual orienta-  
16 tion (as such term is defined in section 802 of this Act),  
17 gender identity (as such term is defined in section 802  
18 of this Act),” after “sex,” each place that term appears.

19 **SEC. 11. EQUAL CREDIT OPPORTUNITY.**

20 (a) PROHIBITED DISCRIMINATION.—Section  
21 701(a)(1) of the Equal Credit Opportunity Act (15 U.S.C.  
22 1691(a)(1)) is amended by inserting “sexual orientation,  
23 gender identity,” after “status,”.

24 (b) DEFINITIONS.—Section 702 of the Equal Credit  
25 Opportunity Act (15 U.S.C. 1691a) is amended—

1 (1) by redesignating subsections (f) and (g) as  
2 subsections (h) and (i), respectively;

3 (2) by inserting after subsection (e) the fol-  
4 lowing:

5 “(f) The terms ‘gender identity’, ‘sex’, and ‘sexual  
6 orientation’ have the meanings given those terms in sec-  
7 tion 1101(a) of the Civil Rights Act of 1964 (42 U.S.C.  
8 2000e).

9 “(g) The term ‘race’, ‘color’, ‘religion’, ‘national ori-  
10 gin’, ‘sex’, ‘sexual orientation’, ‘gender identity’, ‘marital  
11 status’, or ‘age’, used with respect to an individual, in-  
12 cludes—

13 “(1) the race, color, religion, national origin,  
14 sex, sexual orientation, gender identity, marital sta-  
15 tus, or age, respectively, of another person with  
16 whom the individual is associated or has been associ-  
17 ated; and

18 “(2) a perception or belief, even if inaccurate,  
19 concerning the race, color, religion, national origin,  
20 sex, sexual orientation, gender identity, marital sta-  
21 tus, or age, respectively, of the individual.”; and

22 (3) by adding at the end the following:

23 “(j) Sections 1101(b) and 1106 of the Civil Rights  
24 Act of 1964 shall apply to this title, except that for pur-  
25 poses of that application—

1 “(1) a reference in those sections to a ‘covered  
2 title’ shall be considered a reference to ‘this title’;  
3 and

4 “(2) paragraph (1) of such section 1101(b)  
5 shall apply with respect to all aspects of a credit  
6 transaction.”.

7 (c) **RELATION TO STATE LAWS.**—Section 705(a) of  
8 the Equal Credit Opportunity Act (15 U.S.C. 1691d(a))  
9 is amended by inserting “, sexual orientation, gender iden-  
10 tity,” after “sex”.

11 (d) **CIVIL LIABILITY.**—Section 706 of the Equal  
12 Credit Opportunity Act (15 U.S.C. 1691e) is amended by  
13 adding at the end the following:

14 “(l) Section 1107 of the Civil Rights Act of 1964  
15 shall apply to this title, except that for purposes of that  
16 application, a reference in that section to a ‘covered title’  
17 shall be considered a reference to ‘this title’.”.

18 **SEC. 12. JURIES.**

19 (a) **IN GENERAL.**—Chapter 121 of title 28, United  
20 States Code, is amended—

21 (1) in section 1862, by inserting “sexual ori-  
22 entation, gender identity,” after “sex,”;

23 (2) in section 1867(e), in the second sentence,  
24 by inserting “sexual orientation, gender identity,”  
25 after “sex,”;



1 (3) in section 1869—

2 (A) in subsection (j), by striking “and” at  
3 the end;

4 (B) in subsection (k), by striking the pe-  
5 riod at the end and inserting a semicolon; and

6 (C) by adding at the end the following:

7 “(l) ‘gender identity’, ‘sex’, and ‘sexual orientation’  
8 have the meanings given such terms under section 1101(a)  
9 of the Civil Rights Act of 1964; and

10 “(m) ‘race’, ‘color’, ‘religion’, ‘sex’, ‘sexual orienta-  
11 tion’, ‘gender identity’, ‘economic status’, or ‘national ori-  
12 gin’, used with respect to an individual, includes—

13 “(1) the race, color, religion, sex, sexual ori-  
14 entation, gender identity, economic status, or na-  
15 tional origin, respectively, of another person with  
16 whom the individual is associated or has been associ-  
17 ated; and

18 “(2) a perception or belief, even if inaccurate,  
19 concerning the race, color, religion, sex, sexual ori-  
20 entation, gender identity, economic status, or na-  
21 tional origin, respectively, of the individual.”; and

22 (4) by adding at the end the following:

23 **“§ 1879. Rules of construction and claims**

24 “Sections 1101(b), 1106, and 1107 of the Civil  
25 Rights Act of 1964 shall apply to this chapter, except that

1 for purposes of that application, a reference in those sec-  
2 tions to a ‘covered title’ shall be considered a reference  
3 to ‘this chapter’.”.

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
5 The table of sections for chapter 121 of title 28, United  
6 States Code, is amended by adding at the end the fol-  
7 lowing:

“1879. Rules of construction and claims.”.

○

**DE 106-7**



114TH CONGRESS  
1ST SESSION

# S. 439

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2015

Mr. FRANKEN (for himself, Mr. BENNET, Mr. BROWN, Mr. COONS, Mr. DURBIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. SCHATZ, Mr. SCHUMER, Mrs. SHAHEEN, Mr. PETERS, Mr. UDALL, Ms. WARREN, Mr. WHITEHOUSE, Mr. WYDEN, Mrs. GILLIBRAND, Ms. KLOBUCHAR, and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To end discrimination based on actual or perceived sexual orientation or gender identity in public schools, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Non-Discrimi-  
5 nation Act of 2015”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress makes the following find-  
8 ings:

1 (1) Public school students who are lesbian, gay,  
2 bisexual, or transgender (referred to in this Act as  
3 “LGBT”), or are perceived to be LGBT, or who as-  
4 sociate with LGBT people, have been and are sub-  
5 jected to pervasive discrimination, including harass-  
6 ment, bullying, intimidation, and violence, and have  
7 been deprived of equal educational opportunities, in  
8 schools in every part of the Nation.

9 (2) While discrimination of any kind is harmful  
10 to students and to the education system, actions  
11 that target students based on sexual orientation or  
12 gender identity represent a distinct and severe prob-  
13 lem that remains inadequately addressed by current  
14 Federal law.

15 (3) Numerous social science studies dem-  
16 onstrate that discrimination at school has contrib-  
17 uted to high rates of absenteeism, academic under-  
18 achievement, dropping out, and adverse physical and  
19 mental health consequences among LGBT youth.

20 (4) When left unchecked, discrimination in  
21 schools based on sexual orientation or gender iden-  
22 tity can lead, and has led, to life-threatening violence  
23 and to suicide.

24 (5) Public school students enjoy a variety of  
25 constitutional rights, including rights to equal pro-

1       tection, privacy, and free expression, which are in-  
2       fringed when school officials engage in or fail to take  
3       prompt and effective action to stop discrimination on  
4       the basis of sexual orientation or gender identity.

5           (6) Provisions of Federal statutory law ex-  
6       pressly prohibit discrimination on the basis of race,  
7       color, sex, religion, disability, and national origin.  
8       The Department of Education and the Department  
9       of Justice, as well as numerous courts, have cor-  
10      rectly interpreted the prohibitions on sex discrimina-  
11      tion to include discrimination based on sex stereo-  
12      types and gender identity, even when that sex-based  
13      discrimination coincides or overlaps with discrimina-  
14      tion based on sexual orientation. However, the ab-  
15      sence of express Federal law prohibitions on dis-  
16      crimination on the basis of sexual orientation and  
17      gender identity has created unnecessary uncertainty  
18      that risks limiting access to legal remedies under  
19      Federal law for LGBT students and their parents.

20      (b) PURPOSES.—The purposes of this Act are—

21           (1) to ensure that all students have access to  
22      public education in a safe environment free from dis-  
23      crimination, including harassment, bullying, intimi-  
24      dation, and violence, on the basis of sexual orienta-  
25      tion or gender identity;

1 (2) to provide a comprehensive Federal prohibi-  
2 tion of discrimination in public schools based on ac-  
3 tual or perceived sexual orientation or gender iden-  
4 tity;

5 (3) to provide meaningful and effective rem-  
6 edies for discrimination in public schools based on  
7 actual or perceived sexual orientation or gender  
8 identity;

9 (4) to invoke congressional powers, including  
10 the power to enforce the 14th Amendment to the  
11 Constitution of the United States and to provide for  
12 the general welfare pursuant to section 8 of article  
13 I of the Constitution and the power to make all laws  
14 necessary and proper for the execution of the fore-  
15 going powers pursuant to section 8 of article I of the  
16 Constitution, in order to prohibit discrimination in  
17 public schools on the basis of sexual orientation or  
18 gender identity; and

19 (5) to allow the Department of Education and  
20 the Department of Justice to effectively combat dis-  
21 crimination based on sexual orientation and gender  
22 identity in public schools, through regulation and en-  
23 forcement, as the Departments have issued regula-  
24 tions under and enforced title IX of the Education  
25 Amendments of 1972 (20 U.S.C. 1681 et seq.) and

1 other nondiscrimination laws in a manner that effec-  
2 tively addresses discrimination.

3 **SEC. 3. DEFINITIONS AND RULE.**

4 (a) **DEFINITIONS.**—For purposes of this Act:

5 (1) **EDUCATIONAL AGENCY.**—The term “edu-  
6 cational agency” means a local educational agency,  
7 an educational service agency, or a State educational  
8 agency, as those terms are defined in section 9101  
9 of the Elementary and Secondary Education Act of  
10 1965 (20 U.S.C. 7801).

11 (2) **GENDER IDENTITY.**—The term “gender  
12 identity” means the gender-related identity, appear-  
13 ance, or mannerisms or other gender-related charac-  
14 teristics of an individual, with or without regard to  
15 the individual’s designated sex at birth.

16 (3) **HARASSMENT.**—The term “harassment”  
17 means conduct that is sufficiently severe, persistent,  
18 or pervasive to limit a student’s ability to participate  
19 in or benefit from a program or activity of a public  
20 school or educational agency, including acts of  
21 verbal, nonverbal, or physical aggression, intimidat-  
22 ion, or hostility, if such conduct is based on—

23 (A) a student’s actual or perceived sexual  
24 orientation or gender identity; or



1 (B) the actual or perceived sexual orienta-  
2 tion or gender identity of a person with whom  
3 a student associates or has associated.

4 (4) PROGRAM OR ACTIVITY.—The terms “pro-  
5 gram or activity” and “program” have the same  
6 meanings given such terms as applied under section  
7 606 of the Civil Rights Act of 1964 (42 U.S.C.  
8 2000d–4a) to the operations of public entities under  
9 paragraph (2)(B) of such section.

10 (5) PUBLIC SCHOOL.—The term “public  
11 school” means an elementary school (as the term is  
12 defined in section 9101 of the Elementary and Sec-  
13 ondary Education Act of 1965 (20 U.S.C. 7801))  
14 that is a public institution, and a secondary school  
15 (as so defined) that is a public institution.

16 (6) SEXUAL ORIENTATION.—The term “sexual  
17 orientation” means homosexuality, heterosexuality,  
18 or bisexuality.

19 (7) STUDENT.—The term “student” means an  
20 individual within the age limits for which the State  
21 provides free public education who is enrolled in a  
22 public school or who, regardless of official enroll-  
23 ment status, attends classes or participates in the  
24 programs or activities of a public school or local edu-  
25 cational agency.

1 (b) RULE.—Consistent with Federal law, in this Act  
2 the term “includes” means “includes but is not limited  
3 to”.

4 **SEC. 4. PROHIBITION AGAINST DISCRIMINATION.**

5 (a) IN GENERAL.—No student shall, on the basis of  
6 actual or perceived sexual orientation or gender identity  
7 of such individual or of a person with whom the student  
8 associates or has associated, be excluded from participa-  
9 tion in, be denied the benefits of, or be subjected to dis-  
10 crimination under any program or activity receiving Fed-  
11 eral financial assistance.

12 (b) HARASSMENT.—For purposes of this Act, dis-  
13 crimination includes harassment of a student on the basis  
14 of actual or perceived sexual orientation or gender identity  
15 of such student or of a person with whom the student as-  
16 sociates or has associated.

17 (c) RETALIATION PROHIBITED.—

18 (1) PROHIBITION.—No person shall be excluded  
19 from participation in, be denied the benefits of, or  
20 be subjected to discrimination, retaliation, or re-  
21 prisal under any program or activity receiving Fed-  
22 eral financial assistance based on the person’s oppo-  
23 sition to conduct made unlawful by this Act.

1 (2) DEFINITION.—For purposes of this sub-  
2 section, “opposition to conduct made unlawful by  
3 this Act” includes—

4 (A) opposition to conduct believed to be  
5 made unlawful by this Act or conduct that  
6 could be believed to become unlawful under this  
7 Act if allowed to continue;

8 (B) any formal or informal report, whether  
9 oral or written, to any governmental entity, in-  
10 cluding public schools and educational agencies  
11 and employees of the public schools or edu-  
12 cational agencies, regarding conduct made un-  
13 lawful by this Act, conduct believed to be made  
14 unlawful by this Act, or conduct that could be  
15 believed to become unlawful under this Act if  
16 allowed to continue;

17 (C) participation in any investigation, pro-  
18 ceeding, or hearing related to conduct made un-  
19 lawful by this Act, conduct believed to be made  
20 unlawful by this Act, or conduct that could be  
21 believed to become unlawful under this Act if  
22 allowed to continue; and

23 (D) assistance or encouragement provided  
24 to any other person in the exercise or enjoy-

1           ment of any right granted or protected by this  
2           Act,  
3           if in the course of that expression, the person in-  
4           volved does not purposefully provide information  
5           known to be false to any public school or educational  
6           agency or other governmental entity regarding con-  
7           duct made unlawful by this Act, or conduct believed  
8           to be made unlawful by this Act, or conduct that  
9           could be believed to become unlawful under this Act  
10          if allowed to continue.

11 **SEC. 5. FEDERAL ADMINISTRATIVE ENFORCEMENT; RE-**  
12 **PORT TO CONGRESSIONAL COMMITTEES.**

13          (a) **REQUIREMENTS.**—Each Federal department and  
14 agency which is empowered to extend Federal financial as-  
15 sistance to any education program or activity, by way of  
16 grant, loan, or contract other than a contract of insurance  
17 or guaranty, is authorized and directed to effectuate the  
18 provisions of section 4 with respect to such program or  
19 activity by issuing rules, regulations, or orders of general  
20 applicability which shall be consistent with achievement of  
21 the objectives of the statute authorizing the financial as-  
22 sistance in connection with which the action is taken. No  
23 such rule, regulation, or order shall become effective un-  
24 less and until approved by the President.

1 (b) ENFORCEMENT.—Compliance with any require-  
2 ment adopted pursuant to this section may be effected—

3 (1) by the termination of or refusal to grant or  
4 to continue assistance under such program or activ-  
5 ity to any recipient as to whom there has been an  
6 express finding on the record, after opportunity for  
7 hearing, of a failure to comply with such require-  
8 ment, but such termination or refusal shall be lim-  
9 ited to the particular political entity, or part thereof,  
10 or other recipient as to whom such a finding has  
11 been made, and shall be limited in its effect to the  
12 particular program, or part thereof, in which such  
13 noncompliance has been so found; or

14 (2) by any other means authorized by law,  
15 except that no such action shall be taken until the depart-  
16 ment or agency concerned has advised the appropriate per-  
17 son or persons of the failure to comply with the require-  
18 ment and has determined that compliance cannot be se-  
19 cured by voluntary means.

20 (c) REPORTS.—In the case of any action terminating,  
21 or refusing to grant or continue, assistance because of fail-  
22 ure to comply with a requirement imposed pursuant to this  
23 section, the head of the Federal department or agency  
24 shall file with the committees of the House of Representa-  
25 tives and Senate having legislative jurisdiction over the

1 program or activity involved a full written report of the  
2 circumstances and the grounds for such action. No such  
3 action shall become effective until 30 days have elapsed  
4 after the filing of such report.

5 **SEC. 6. PRIVATE CAUSE OF ACTION.**

6 (a) PRIVATE CAUSE OF ACTION.—Subject to sub-  
7 section (c), and consistent with the cause of action recog-  
8 nized under title VI of the Civil Rights Act of 1964 (42  
9 U.S.C. 2000d et seq.) and title IX of the Education  
10 Amendments of 1972 (20 U.S.C. 1681 et seq.), an ag-  
11 grieved individual may bring an action in a court of com-  
12 petent jurisdiction, asserting a violation of this Act. Ag-  
13 grieved individuals may be awarded all appropriate relief,  
14 including equitable relief, compensatory damages, and  
15 costs of the action.

16 (b) RULE OF CONSTRUCTION.—This section shall not  
17 be construed to preclude an aggrieved individual from ob-  
18 taining remedies under any other provision of law or to  
19 require such individual to exhaust any administrative com-  
20 plaint process or notice of claim requirement before seek-  
21 ing redress under this section.

22 (c) STATUTE OF LIMITATIONS.—For actions brought  
23 pursuant to this section, the statute of limitations period  
24 shall be determined in accordance with section 1658(a) of  
25 title 28, United States Code. The tolling of any such limi-

1 tations period shall be determined in accordance with the  
2 law governing actions under section 1979 of the Revised  
3 Statutes (42 U.S.C. 1983) in the State in which the action  
4 is brought.

5 **SEC. 7. CAUSE OF ACTION BY THE ATTORNEY GENERAL.**

6 The Attorney General is authorized to institute for  
7 or in the name of the United States a civil action for a  
8 violation of this Act in any appropriate district court of  
9 the United States against such parties and for such relief  
10 as may be appropriate, including equitable relief and com-  
11 pensatory damages. Whenever a civil action is instituted  
12 for a violation of this Act, the Attorney General may inter-  
13 vene in such action upon timely application and shall be  
14 entitled to the same relief as if the Attorney General had  
15 instituted the action. Nothing in this Act shall adversely  
16 affect the right of any person to sue or obtain relief in  
17 any court for any activity that violates this Act, including  
18 regulations promulgated pursuant to this Act.

19 **SEC. 8. STATE IMMUNITY.**

20 (a) STATE IMMUNITY.—A State shall not be immune  
21 under the 11th Amendment to the Constitution of the  
22 United States from suit in Federal court for a violation  
23 of this Act.

24 (b) WAIVER.—A State's receipt or use of Federal fi-  
25 nancial assistance for any program or activity of a State

1 shall constitute a waiver of sovereign immunity, under the  
2 11th Amendment or otherwise, to a suit brought by an  
3 aggrieved individual for a violation of section 4.

4 (c) REMEDIES.—In a suit against a State for a viola-  
5 tion of this Act, remedies (including remedies both at law  
6 and in equity) are available for such a violation to the  
7 same extent as such remedies are available for such a vio-  
8 lation in the suit against any public or private entity other  
9 than a State.

10 **SEC. 9. ATTORNEY'S FEES.**

11 Section 722(b) of the Revised Statutes (42 U.S.C.  
12 1988(b)) is amended by inserting “the Student Non-Dis-  
13 crimination Act of 2015,” after “Religious Land Use and  
14 Institutionalized Persons Act of 2000,”.

15 **SEC. 10. EFFECT ON OTHER LAWS.**

16 (a) FEDERAL AND STATE NONDISCRIMINATION  
17 LAWS.—Nothing in this Act shall be construed to pre-  
18 empt, invalidate, or limit rights, remedies, procedures, or  
19 legal standards available to victims of discrimination or  
20 retaliation, under any other Federal law or law of a State  
21 or political subdivision of a State, including titles IV and  
22 VI of the Civil Rights Act of 1964 (42 U.S.C. 2000c et  
23 seq., 2000d et seq.), title IX of the Education Amend-  
24 ments of 1972 (20 U.S.C. 1681 et seq.), section 504 of  
25 the Rehabilitation Act of 1973 (29 U.S.C. 794), the Amer-



1 icans with Disabilities Act of 1990 (42 U.S.C. 12101 et  
2 seq.), or section 1979 of the Revised Statutes (42 U.S.C.  
3 1983). The obligations imposed by this Act are in addition  
4 to those imposed by titles IV and VI of the Civil Rights  
5 Act of 1964 (42 U.S.C. 2000c et seq., 2000d et seq.), title  
6 IX of the Education Amendments of 1972 (20 U.S.C.  
7 1681 et seq.), section 504 of the Rehabilitation Act of  
8 1973 (29 U.S.C. 794), the Americans with Disabilities Act  
9 of 1990 (42 U.S.C. 12101 et seq.), and section 1979 of  
10 the Revised Statutes (42 U.S.C. 1983).

11 (b) **FREE SPEECH AND EXPRESSION LAWS AND RE-**  
12 **LIGIOUS STUDENT GROUPS.**—Nothing in this Act shall be  
13 construed to alter legal standards regarding, or affect the  
14 rights available to individuals or groups under, other Fed-  
15 eral laws that establish protections for freedom of speech  
16 and expression, such as legal standards and rights avail-  
17 able to religious and other student groups under the First  
18 Amendment and the Equal Access Act (20 U.S.C. 4071  
19 et seq.).

20 **SEC. 11. SEVERABILITY.**

21 If any provision of this Act, or any application of such  
22 provision to any person or circumstance, is held to be un-  
23 constitutional, the remainder of this Act, and the applica-  
24 tion of the provision to any other person or circumstance  
25 shall not be impacted.

15

1 **SEC. 12. EFFECTIVE DATE.**

2 This Act shall take effect 60 days after the date of  
3 enactment of this Act and shall not apply to conduct oc-  
4 ccurring before the effective date of this Act.

○

DE 116

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

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

Plaintiff,

v.

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

THE SCHOOL BOARD OF ST. JOHNS  
COUNTY, FLORIDA,

Defendant.

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**JOINT FINAL PRETRIAL STATEMENT**

Plaintiff and Defendant, in accordance with the Court's Case Management and Scheduling Order (Dkt. 59) and M.D. Fla. Loc. R. 3.06 (c), hereby submit this Joint Final Pretrial Statement.

**A. Basis of Federal Jurisdiction**

1. Plaintiff: The Court has jurisdiction of Plaintiff's federal law claims under 28 U.S.C. § 1331 and 28 U.S.C. 1343(a)(3) and (4). The initial Complaint was filed with this court on June 28, 2017 (Dkt. 1), and the Amended Complaint was filed on September 7, 2017 (Dkt. 60).

2. Defendant: This Court has federal question jurisdiction over this case pursuant to 28 U.S.C. §1331 and 1367. This Court also has jurisdiction based on 28 U.S.C. §1343(a)(3) and (4), because it involves claims of deprivation under color of state authority,

or rights, privileges or immunities secured by the U.S. Constitution and demands for damages and equitable relief under 42 U.S.C. §1983.

**B. Concise Statement of the Nature of the Action**

1. Plaintiff: Plaintiff seeks nominal damages, garden variety emotional distress damages, and declaratory relief due to his exclusion from the boys' restroom by Defendant The School Board of St. Johns County, Florida ("Defendant School Board" or "School Board") based on a Best Practices Guideline that Plaintiff contends 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"). Plaintiff also seeks preliminary and permanent injunctive relief enjoining Defendant from denying him equal access to the boys' restroom pursuant to the Fourteenth Amendment to the U.S. Constitution and Title IX.

2. Defendant: Plaintiff brings this action under the Equal Protection Clause of the Fourteenth Amendment (Count I) and Title IX of the Educational Amendments Act of 1972 ("Title IX")(Count II) alleging Defendant discriminated against him based on his gender identity. Specifically, Plaintiff contends that Defendant violated the above-referenced laws, because Defendant's bathroom policy does not allow him to use the group or multi-user bathrooms designated for biological male students at Allen D. Nease High School ("Nease") in St. Johns County, Florida. Plaintiff seeks injunctive and declaratory relief as well as compensatory damages.

Defendant contends that its long-standing policy is permitted under Title IX and other legal authorities, and survives any level of scrutiny under the Equal Protection Clause.

### C. General Statement of Each Party's Case

1. Plaintiff:

*Summary of Facts Supporting Relief*

Drew is a 17-year-old honors student registered at Allen D. Nease High School (“Nease High School”) in Ponte Vedra, Florida. Drew is a transgender boy, which means that his sex assigned at birth was female, but his core gender identity is male. Drew has been diagnosed with gender dysphoria, the distress from the incongruence between a transgender person’s gender identity and sex assigned at birth. 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.

Drew used boys’ restrooms without any incident at Nease High School—using one of the stalls on every occasion—until September 22, 2015, when he was pulled out of class and 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. The gender neutral restrooms are as not proximate to his classrooms requiring him to pass sex-segregated restrooms to get there, which takes time away from him attending classes. Further, the policy instituted by the school is discriminatory as it treats Plaintiff differently from other boys at the school, is humiliating and heightens the symptoms of his gender dysphoria. The policy instituted by the school 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.

***Fourteenth Amendment Claim***

By barring Drew from boys' restrooms at school, Defendant violates 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. Defendant's 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.

Defendants' discrimination against Drew triggers strict or at least 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. It is axiomatic that "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).

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*).

Echoing *Glenn*’s analysis that an “individual cannot be punished because of his or her perceived gender-nonconformity,” the court in *Whitaker v. Kenosh Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1049 (7th Cir. 2017), 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 v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 285-86 (W.D. Pa. 2017); *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep’t of Educ.*, 208 F. Supp. 3d 850, 877 (S.D. Ohio 2016); *Roberts v. Clark Cty. Sch. Dist.*, 215 F. Supp. 3d 1001, 1016 (D. Nev. 2016); *Lusardi v. McHugh*, EEOC Appeal No. 0120133395, 2015 WL 1607756, at \*9 (EEOC Apr. 1, 2015).

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 v. Hartford*, 204 F.3d 1187, 1201-02 (9th Cir. 2000) (holding that conduct motivated



by an individual's "gender or sexual identity" is because of "gender," which is interchangeable with "sex"); *Evancho*, 237 F.Supp.3d at 285 (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 v. Hosp. of Cent. Connecticut*, 172 F. Supp. 3d 509, 526-27 (D. Conn. 2016); *Norsworthy v. Beard*, 87 F. Supp. 3d 1104, 1119 (N.D. Cal. 2015); *Rumble v. Fairview Health Servs.*, No. 14-cv-2037, 2015 WL 1197415, at \*2 (D. Minn. Mar. 16, 2015); *Macy v. Holder*, 2012 WL 1435995, at \*10 (E.E.O.C. Apr. 20, 2012).

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).

Further, 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.

The discrimination based on transgender status is entitled to strict, or at least heightened scrutiny. 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 than 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, *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 with respect to laws that discriminate based on transgender status.

As will be shown at trial through the introduction of testimony and written evidence, transgender individuals have endured a history of discrimination, are a discrete group with distinguishing characteristics and, as a result, are virtually powerless to address the complained of conduct. Further, as will also be shown at trial, transgender people “have a defining characteristic that frequently bears no relation to an ability to perform or contribute to society.” *Evancho*, 237 F.Supp.3d at 288. And, finally, the evidence will show that there is no rational, let alone substantially related or narrowly tailored, relationship between the exclusion of Drew from the boys’ restroom and Defendant’s stated purpose, which allegedly was to protect the privacy interests of non-transgender individuals and protect transgender individuals from harm.

***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. § 1681(a). 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, Defendant is subject to Title IX’s strictures, and “[a]ccess to the bathroom is . . . an education program or activity under Title IX.” *Highland*, 208 F. Supp. 3d at 865. Defendants’ intentional exclusion of Plaintiff and other similarly situated from boys’ restrooms discriminates based on his sex under Title IX

and has caused Plaintiff harm. 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, which 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. 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. At trial, the evidence will support Plaintiff’s demonstration of each of the elements of his Title IX claim.

2. Defendant:

**Title IX**

Plaintiff’s Title IX claim is primarily a legal question – more specifically, whether “gender identity” (how a person internally defines his or her gender) is synonymous with “sex” under Title IX. The plain, ordinary meaning of “sex,” applicable case law and the current positions of the United States Department of Education and United States Department of Justice unequivocally support Defendant’s position that sex and gender identity are separate terms with separate meanings.

Defendant’s long-standing bathroom policy (60+ years) requiring students to use the bathroom corresponding to their biological sex and its Best Practices guidelines are both permitted by Title IX. Title IX allows educational institutions to provide “separate living facilities *for the different sexes.*” 20 U.S.C. §1686 (emphasis added). Similarly, the DOE regulations implementing Title IX allow educational institutions to provide “*separate toilet,*

locker room, and shower *facilities on the basis of sex...*” 34 C.F.R. §106.33 (emphasis added). The greater weight of the case law and other authority interpreting this language simply do not support Plaintiff’s expansive view of the definition of the term sex used in the statute.

The US DOE’s most recent guidance emphasizes that local school boards should play the “primary role” in formulating educational policy. Nevertheless, Plaintiff asks this Court to make a policy choice, one that expands the definition of “sex” beyond its plain and ordinary meaning to include “gender identity,” along with other concepts such as gender nonconformity, transgender status, gender expression, and gender transition. [Doc. 60 at ¶73]. To get there, Plaintiff must attempt to create an issue of fact regarding the definition of sex, which necessarily requires the Court delve into how certain segments of the medical community define sex. While Defendant is prepared to offer evidence contrary to the view of Plaintiff’s expert witnesses on this point, such an endeavor is unnecessary. As a matter of law, the term “sex” is unambiguous and should be given its plain and ordinary meaning. It cannot be gainsaid that “sex” under Title IX and §106.33 does not encompass “gender identity” or an individual’s feeling of their gender.

### **Equal Protection**

Plaintiff’s Equal Protection claim presents a mixed question of law and fact.

#### *A. Equal Protection Generally*

Defendant’s position is that Plaintiff is a biological female and, like all other biological females, he is not permitted to use the male bathrooms under Defendant’s long-standing policy of separating bathrooms based on biological sex.

*B. The Reason for Defendant's Policy*

The reason for Defendant's bathroom policy is fairly straightforward. Defendant has a legitimate and important governmental interest in protecting the bodily privacy rights of minor and young-adult students in its K-12 schools, rights guaranteed by the Florida Constitution and other authorities. These interests include, without limitation including preventing the unnecessary exposure of nude or partially nude body, genitalia, and other private parts of students of one sex to students of the opposite biological sex. Defendant further objects to forcing students to engage in intimate bodily functions in its school bathrooms with students of the opposite sex (for example, forcing biological females to address menstrual cycle issues in the presence of biological males or forcing biological males to relieve themselves at urinals in the physical presence of biological females). Allowing K-12 students of the same biological sex to use the same bathrooms at the same time conflicts with students' reasonable and traditional expectation of privacy, invades their bodily privacy rights and unnecessarily exposes them to potential psychological harm and unnecessary stress. It is a stipulated fact in this case that certain parents of students and students in the St. Johns County School District object to a policy or practice that would allow students to use a bathroom that matches their gender identity as opposed to their sex assigned at birth. These individuals believe that such a practice would violate the bodily privacy rights of students and raise privacy, safety and welfare concerns.

*C. The Appropriate Level of Scrutiny*

Either rational basis or intermediate scrutiny applies to Plaintiff's claim. With respect to rational basis, Defendant recognizes that precedent from the Eleventh Circuit Court of

Appeals has held that intermediate scrutiny applies to Equal Protection cases involving transgender individuals. Glenn v. Brumby, 663 F.3d 1312, 1320 (11th Cir. 2011)(applying intermediate scrutiny to case involving gender stereotyping of a transgender individual). Nonetheless, Glenn is distinguishable from the facts and issues in this case. If the Court were to apply rational basis review, Defendant will be able to show that its policy is rationally related to a legitimate government interest.

If intermediate scrutiny applies, Plaintiff must prove that Defendant's justification for denying his request to use the male bathrooms is not, at minimum, substantially related to the furtherance of an important government interest. For the reasons noted hereinabove, Defendant's justification for its policy is substantially related to the furtherance of an important government interest. The means employed by Defendant to protect the bodily privacy of minor and young-adult students is through a bathroom policy that requires students to use the bathroom consistent with their biological sex. Defendant's guidelines further permit students to use a single-stall bathroom if they are not comfortable using the bathroom corresponding to their biological sex.

#### **Defendant's Position on Damages and Relevance of Medical Information**

Plaintiff seeks compensatory damages for pain and suffering and has alleged that not allowing him to use the male bathroom is psychologically damaging and contrary to guidelines of treatment for individuals suffering from gender dysphoria. Plaintiff's damages claim is speculative and not supported by any admissible evidence. Likewise, the record evidence establishes that Plaintiff has not been damaged by Defendant's actions and that he had pre-

existing medical issues unrelated to the use of bathrooms.<sup>1</sup> Finally, Plaintiff's claim that using the male bathroom is contrary to guidelines for individuals suffering from gender dysphoria is based on the *ipsi dixit* of Drs. Adkins and Ehrensaft as opposed to evidence (including acceptable science) that is admissible under Daubert and its progeny.

#### **D. Exhibit Lists and Objections**

1. Plaintiff's Exhibits with Defendant's Objections: See Attachment A.
2. Defendant's Exhibits with Plaintiff's Objections: See Attachment B.

#### **E. Witness Lists**

1. Plaintiff:

##### Witnesses Plaintiff Expects to Call

1. Dr. Thomas Aberli
2. Drew Adams
3. Erica Jasper Adams
4. Scott Adams
5. Michelle L. Kefford
6. Michaelle Valbrun-Pope
7. Diane Ehrensaft, Ph.D. (retained expert)
8. Dr. Deanna Adkins (non-retained expert/treater) (by deposition)

##### Witnesses Plaintiff May Call

1. Kim Hutton
2. Defendant's corporate representative
3. Any witnesses necessary for rebuttal
4. Any witnesses necessary for impeachment
5. Records custodians and authentication witnesses

2. Defendant:

##### Witnesses Defendant Expects to Call

1. James (Tim) Forson

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<sup>1</sup> Plaintiff alleges that he is seeking only "garden variety damages." It is Defendant's position that this allegation is an effort to shield Defendant from introducing critical and relevant information regarding the nature and extent of Plaintiff's alleged medical condition(s).



2. Frank D. Upchurch, III, Esq.
3. Cathy Mittelstadt
4. Sallyanne Smith
5. Kyle Dresback
6. Lisa Kunze
7. Dr. Alan Josephson
8. Dr. Paul Hruz

Witnesses Defendant May Call

1. Drew Adams (live trial testimony and deposition testimony)
2. Erica Adams Kasper
3. Scott Adams
4. Brennan Asplen
5. Martha Mickler
6. Paul Rose
7. Holly Arkin (impeachment), c/o Sniffen & Spellman, P.A., 123 North Monroe Street, Tallahassee, Florida 32301
8. Michelle Sterling (impeachment), c/o Sniffen & Spellman, P.A., 123 North Monroe Street, Tallahassee, Florida 32301
9. Any witnesses for impeachment not otherwise listed herein
10. Records Custodian for St. Johns County School District
11. Records Custodian for medical providers

**F. Expert Witnesses Including, as to Each Expert Witness, a Statement of the Subject Matter and a Summary of the Substance of his or her Testimony**

1. Plaintiff:

a. **Diane Ehrensaft, Ph.D.** Plaintiff intends to call two expert witnesses in his case in chief. Diane Ehrensaft, Ph.D. is a psychologist with expertise in the area of transgender and gender non-conforming youth and adolescents. She will be testifying regarding the harm that Plaintiff reported as a result of the Defendant's establishment of the restroom Best Practices Policy at issue in this case. She is also expected to testify regarding the history of discrimination that transgender individuals have experienced, and the impact that such discrimination has on transgender children and adolescents. Diane Ehrensaft, Ph.D.'s expert report contains a full description of her qualifications,

the basis of her opinions, and documents relied on in presenting her opinions. She will also rely on deposition testimony and the opinions and deposition testimony of Defendant's experts. Her opinions embodied in her expert report served on October 2, 2017 and her rebuttal report served on November 3, 2017.

**b. Dr. Deanna Adkins.** Dr. Adkins is Plaintiff's treating physician relating to his diagnosis with gender dysphoria and is an expert in pediatric endocrinology, including the understanding and management of associated difficulties in gender identification. She is serving as an unretained expert in this case and is one of the treating physicians for Drew Adams. Dr. Adkins is also expected to certify certain medical aspects to the diagnosis and treatment of transgender and/or gender non-conforming individuals. Dr. Adkins expert report contains a full description of her qualifications, the basis of her opinions, and documents relied on in presenting her opinions. Dr. Adkins will also rely on deposition testimony and the opinions and deposition testimony of Defendant's experts. Her opinions are set forth in her expert report served on October 2, 2017 and her rebuttal report served on November 3, 2017. Their opinions and rebuttal opinions are embodied in their respective reports. Plaintiff provided Defendants with timely expert disclosures pursuant to the Court's Case Management and Scheduling Order and Fed. R. Civ. P. 26. (Dkt. 59).

2. Defendant:

a. **Dr. Allan Josephson:**

Dr. Josephson is currently a Professor and Chief, Adolescent and Family Psychiatry at the University of Louisville School of Medicine, where he also holds position of CEO of the Bingham Clinic. He has been licensed to practice medicine in Kentucky since 2003.

He is an expert in adolescent and family psychiatry, including the assessment and treatment of adolescents and delivery of family-oriented psychiatric care.

Dr. Josephson will testify about the diagnostic conditions of transgender and intersex individuals, the determination of sex and gender, core psychopathology and treatment principles, the treatment of individuals with gender dysphoria, sex-designated facilities and transgender individuals (including in public school settings), the cultural context of psychiatry, and his rebuttal to the opinions of Diane Ehrensaft, Ph. D. set forth in her expert reported dated September 21, 2017.

Dr. Josephson's expert report contains a full description of his qualifications, the basis of his opinions, and documents relied on in presenting his opinions. Dr. Josephson will also rely on Plaintiff's and Plaintiff's parents' sworn statements and deposition testimony and the opinions and deposition testimony of Dr. Ehrensaft and/or Dr. Adkins.

b. **Dr. Paul Hruz:**

Dr. Hruz is currently an Associate Professor of Pediatrics in the Division of Pediatrics in the Division of Pediatric Endocrinology and Diabetes at Washington University School of Medicine. He also has a secondary appointment as Associate Professor of Cellular Biology and Physiology in the Division of Biology and Biological Sciences at Washington University School of Medicine. He is board certified in Pediatrics and Pediatric Endocrinology and has been licensed to practice medicine in Missouri since 2000.

Dr. Hruz is an expert in pediatric endocrinology, including the understanding and management of associated difficulties in gender identification. Dr. Hruz is also an expert in the incidence, potential etiology and treatment of gender dysphoria.

Dr. Hruz will testify about basic terminology, human sexuality in relation to fundamental biology and observed variations, gender dysphoria in relation to biological sex, gender ideology, and potential harm related to gender dysphoria treatments. Dr. Hruz will testify that there is no scientific evidence to support a treatment approach that permits individuals suffering from gender dysphoria to use sex-segregated bathrooms matching their gender identity.

Dr. Hruz's expert report contains a full description of his qualifications, the basis of his opinions, and documents relied on in presenting his opinions. Dr. Hruz will also rely on Plaintiff's and Plaintiff's parents' sworn statements and

deposition testimony and the opinions and deposition testimony of Dr. Ehrensaft and/or Dr. Adkins.

**G. Statement of the Elements of Plaintiff's Claim for Money Damages and the Amount Being Sought with Respect to Each Such Element**

Plaintiff is seeking garden variety damages in this case due to the emotional harm he suffered as a result of Defendant's implementation of its discriminatory restroom policy, called the Best Practices Guidelines. See *Wineberger v. Racetrac Petroleum, Inc.*, No. 5:14-CV-653-OC-30PRL, 2015 WL 225760, at \*4 (M.D. Fla. Jan. 16, 2015); *Stone v. GEICO Gen. Ins. Co.*, No. 8:05-CV-636-T-30TBM, 2009 WL 3720954, at \*6 (M.D. Fla. Nov. 5, 2009); *City of Hollywood v. Hogan*, 986 So. 2d 634, 649 (Fla. 4th DCA 2008). Plaintiff intends to support such damages with his own testimony as well as other witnesses to be introduced by him at trial. *Myers v. Cent. Florida Investments, Inc.*, No. 604-CV1542-ORL-28DAB, 2008 WL 4710898, at \*14 (M.D. Fla. Oct. 23, 2008) (collecting authorities upholding awards in the \$100,000 range based solely on plaintiff's testimony). Plaintiff is not seeking the type of damages that would put his mental condition at issue, or that would require expert or other testimony. *Laboy v. Emeritus Corp.* No. 5:13-CV-582, 2014 WL 1293440, at \*1 (M.D. Fla. Mar. 28, 2014); *Ortiz-Carballo v. Ellspermann*, No. 5:08-CV-165-OC-10GRJ, 2009 WL 961131 at \*2 (M.D. Fla. Apr. 7, 2009); *Robinson v. Jacksonville Shipyards*, 118 F.R.D. 525 (M.D.Fla.1988).

**H. List of Depositions to be Offered in Evidence at Trial, including a Designation of the Pages and Lines to be Offered from Each Deposition**

1. Plaintiff: Dr. Adkins<sup>2</sup>

2. Defendant: Plaintiff's deposition taken on November 1, 2017. Defendant

may offer admissible testimony from the following pages and lines from Plaintiff's deposition

to be offered in evidence at trial:<sup>3; 4</sup>

Page	Line(s)
11	11-25
12	1-15
13	13-25
14	1-5
15	1-14
16	7-25
17	1-25
18	1-25
19	1-10
21	3-25
22	1-25
23	1-25
24	1-25
25	1-9 18-25
26	1-25
27	1-25
28	1-25
29	1-25
30	1-23

<sup>2</sup> The deposition of Dr. Adkins was taken by Defendant on November 15, 2017 and, thus, the transcript is not yet available to make such designations. It is Plaintiff's expectation that all or a majority of the direct questioning of Dr. Adkins will be introduced in Plaintiff's case-in-chief through her preservation deposition that is scheduled for December 6, 2017 by agreement of the parties.

<sup>3</sup> Defendant reserves the right to amend the pages/lines from Plaintiff's deposition transcript to be introduced into evidence in light of the Court's direction that such pages/lines are not required to be included herein but instead must be disclosed on a date set by the Court. [Doc. 59 at ¶9].

<sup>4</sup> Given the timing of when Plaintiff received the above potential designations, he has not had sufficient opportunity to review and make any relevant objections, but reserves his right to do so.

31	25
32	1-25
33	1-11
34	19-25
35	1-25
36	1-16
37	3-19
38	16-25
39	1-25
40	1-7 24-25
41	1-2 (and Exhibit 4)
43	6-25
44	1-19 22-25
45	1-8 13-21
46	1
55	1-17
58	1-25
59	1-9
60	12-25
61	1-9 12-22
63	3-21
65	6-25
66	1-10 19-23 (and Exhibit 6)
67	13-25
68	1-25
69	1-25
70	1-25
71	1-11 19-25
72	1-18
77	2-14
79	4-6 15-21
80	3-5
81	17-20
84	14-16
88	16-25
89	1-6
98	12-25
99	1-3
100	4-20

101	11-25
102	1-4 20-25
103	1-25
104	1-25
105	1-25
106	1-25
107	1-22
111	21-25
112	1-21
114	10-25
115	1-22
116	2-10
117	19-25 (and Exhibit 17)
118	1-25
119	1-25
120	1-25
121	1-24
122	2-12
127	2-25
128	1-25
129	1-25
130	1-9
132	8-16
133	20-25
134	1-25
135	1-11 18-25
136	1-25
137	1-4 13-19
140	23-25
141	1
142	8-15
145	19-25
146	1-21
153	15-25
154	1-25
155	1-17
160	1-21
163	25
164	1-25
167	7-23
171	18-25
172	1-25
173	1-25

174	4-13
176	3-25 (and Exhibit 11)
177	1-25
178	1-25
179	1-25
180	1-7
181	8-12
182	18-25
183	1-25
184	7-18
187	25
188	1-16
190	8-17
191	7-14
194	1-5
195	18-25
196	1-7
202	24-25
203	1-17
205	17-25 (and Exhibit 14)
206	1-2
207	5-12 17-24
208	1-25
209	1-22
210	11-22
211	18-21 (and Exhibit 15)
213	21-25
214	2-25
215	1-24
216	13-24
218	13-22
219	3-19
220	19-22
221	21-25
222	1-4 5-15
223	8-22
224	4-8 21-25
225	1-2 4-25
226	1-25
227	1-25
228	1-25
229	1-12



	14-25
230	3-9
231	2-14 16-18 22-25
232	1-4
233	6-25
234	1-25
235	1-25
236	1-25
237	1-25
238	1-25
239	1-25
240	1-25
241	1-25
242	1-25
243	1-13 16-20
245	24-25
246	1-5
247	12-19

### **I. Admitted Facts and Any Reservations Directed to Such Admissions**

1. The Defendant's records indicate that when referring to Drew Adams that school personnel, administrators and others employed by the Defendant should use male pronouns.
2. Defendant receives federal financial assistance including during the 2016/2017 school year and is currently receiving federal financial assistance.
3. The parties stipulate that certain parents of students and students in the St. Johns County School District object to a policy or practice that would allow students to use a bathroom that matches their gender identity as opposed to their sex assigned at birth. These individuals believe that such a practice would violate the bodily privacy rights of students and raise privacy, safety and welfare concerns. Plaintiff submits this stipulation does not apply to himself or his parents.

**J. Agreed to Issues of Law**

1. The jurisdiction of the Court.
2. Venue.
3. Title IX permits educational institutions to provide “separate living facilities for the different sexes” (20 U.S.C. §1686), and the DOE regulations implementing Title IX allow educational institutions to provide “separate toilet, locker room, and shower facilities on the basis of sex...” 34 C.F.R. §106.33.

**K. Issues of Fact which Remain to Be Litigated**

**Plaintiff**

1. Whether Plaintiff is a transgender boy.<sup>5</sup>
2. Whether Plaintiff has been excluded from the boys’ restroom by Defendant because he is a transgender boy.
3. Whether Defendant’s purported justifications actually motivated its exclusion of Plaintiff from the boys’ restroom.

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<sup>5</sup> While Plaintiff does not believe that there is any issue of fact as to whether Plaintiff is a transgender boy, Defendant has refused to stipulate to the same and, accordingly, Plaintiff has included this as a disputed issue of fact that remains to be litigated. Both of Defendant’s experts have already testified under oath that they cannot and do not dispute this fact, and are not offering opinions in this regard, however. Nor has Defendant provided any other evidence that would refute this fact and, accordingly, Plaintiff believes that this should be a stipulated fact.

Defendant submits that it has agreed to stipulate that Plaintiff self-identifies as a transgender male; however, Plaintiff has refused to accept such a stipulation.

4. Whether Defendant can proffer sufficient evidence to show that the exclusion of Plaintiff from the boys' restroom is substantially related or narrowly tailored to meet its asserted interests in the privacy, safety, and welfare of students.

5. Whether Plaintiff is harmed by the Defendant's rule excluding him from the boys' restroom.

**Defendant**

1. Whether Plaintiff has been diagnosed with gender dysphoria.

2. Whether there are any scientific or peer-reviewed controlled studies indicating positive behavior outcomes when allowing transgender students to use a K-12 school bathroom, shower, and locker room.

3. The treatment recommended for Plaintiff's alleged gender dysphoria.

4. Whether Plaintiff has been treated differently from other biological female student.

5. Whether Plaintiff's inability to use the male restroom at Nease caused Plaintiff to suffer the damages alleged in Plaintiff's Amended Complaint.

6. Whether Defendant purposefully disrupted Plaintiff's education.

7. Whether Plaintiff has been harmed by Defendant's actions.

8. The nature and extent of Plaintiff's alleged injuries, including Plaintiff's claim that Defendant's actions have heightened the symptoms, including depression and anxiety, of Plaintiff's alleged gender dysphoria [See, Doc. 60 at ¶¶58; 77].

**L. Issues of Law for Determination by the Court**

**Plaintiff**

1. Whether the exclusion of Plaintiff from the boys' restroom discriminates against him on the basis of sex under Title IX or the Equal Protection Clause of the Fourteenth Amendment.

2. Whether heightened scrutiny applies to the sex-based classification here, including pursuant to *Glenn v. Brumby*.

3. Whether the exclusion of Plaintiff from the boys' restroom discriminates against him on the basis of his transgender status under the Equal Protection Clause of the Fourteenth Amendment.

4. Whether strict or heightened scrutiny applies to the Defendant's discriminatory classification based on transgender status, which bears all the hallmarks of a suspect or quasi-suspect classification.

5. Whether Defendant has a sufficiently important or compelling governmental interest in excluding Plaintiff from the boys' restroom.

6. Whether the exclusion of Plaintiff from the boys' restroom is adequately tailored to Defendant's purported governmental interests.

7. Whether Plaintiff is entitled to garden variety damages for violation of his constitutional or statutory rights.

**Defendant**

1. What is the meaning of "sex" under Title IX and its implementing regulations, including 34 C.F.R. §106.33?

2. What is the meaning of “sex” under the Equal Protection Clause in the United States Constitution?

3. Whether Title IX and its implementing regulations, including 34 C.F.R. §106.33, permit Defendant to provide separate bathroom facilities for boys and girls that correspond to their biological sex.

4. Whether Defendant’s policy requiring boys and girls to use separate bathroom facilities that correspond to their biological sex is sex stereotyping that constitutes discrimination “based on sex” in violation of Title IX.

5. Whether Defendant’s practice allowing any student to use a gender-neutral bathroom if they are not comfortable using the bathroom facilities that correspond to their biological sex is sex stereotyping that constitutes discrimination “based on sex” in violation of Title IX.

6. Whether Defendant’s policy requiring boys and girls to use separate bathroom facilities that correspond to their biological sex excluded Plaintiff from participation in, denies him the benefits of, and subjects him to discrimination in educational programs and activities operated by Defendant.

7. Whether Defendant’s practice allowing any student to use a gender-neutral bathroom if they are not comfortable using the bathroom facilities that correspond to their biological sex excluded Plaintiff from participation in, denies him the benefits of, and subjects him to discrimination in educational programs and activities operated by Defendant.

8. Whether Defendant’s policy requiring boys and girls to use separate bathroom facilities that correspond to their biological sex is a sex-based classification under an Equal

Protection analysis and, if so, what level of scrutiny applies (rational basis, intermediate, or strict).

9. Whether Defendant's practice allowing any student to use a gender-neutral bathroom if they are not comfortable using the bathroom facilities that correspond to their biological sex is a sex-based classification under an Equal Protection analysis and, if so, what level of scrutiny applies (rational basis, intermediate, or strict).

10. Whether Plaintiff is able to demonstrate that Defendant's policy requiring boys and girls to use separate bathroom facilities that correspond to their biological sex is based on impermissible sex stereotyping or discriminatory on the basis of sex under an Equal Protection analysis.

11. Whether Defendant's guidelines allowing any student to use a gender-neutral bathroom if they are not comfortable using the bathroom facilities that correspond to their biological sex is based on impermissible sex stereotyping or discriminatory on the basis of sex under an Equal Protection analysis.

12. Is protecting the bodily privacy rights of minor and young-adult students in Defendant's K-12 schools a legitimate, important, and/or compelling governmental interest. If so, is Defendant's policy requiring boys and girls to use separate bathroom facilities that correspond to their biological sex: (1) rationally related to a legitimate government interest; (2) substantially related to a legitimate government interest; or (3) narrowly tailored or substantially related to a compelling or important government interest.

13. Is protecting the bodily privacy rights of minor and young-adult students in Defendant's K-12 schools a legitimate, important, and/or compelling governmental interest. If

so, are Defendant's guidelines allowing any student to use a gender-neutral bathroom if they are not comfortable using the bathroom facilities that correspond to their biological sex: (1) rationally related to a legitimate government interest; (2) substantially related to a legitimate government interest; or (3) narrowly tailored or substantially related to a compelling or important government interest.

14. Whether allowing a student of one biological sex to share a bathroom with a student of the opposite biological sex in K-12 Florida public schools violates the right to privacy as outlined in the Florida Constitution (Article I, Section 23).

15. Whether Plaintiff was subjected to discrimination on the basis of sex.

16. Whether Defendant intentionally violated Title IX.

17. Whether Defendant was deliberately indifferent toward Plaintiff in violation of Title IX.

18. Whether Plaintiff's alleged injuries, if any, and damages, if any, and the derivative injury and damages, if any, were proximately caused by actions of others or events separate, distinct, unrelated and remote to any action or inaction of the Defendant, which said separate, distinct, unrelated actions of others or events or accidents were the sole proximate or contributing cause of Plaintiff's alleged injuries and damages, if any, for which Defendant cannot be liable, or were such separate intervening and superseding causes thereof as to absolve Defendant of any responsibility or liability therefore.

19. Whether Plaintiff is entitled to damages and, if so, in what amount.

**M. Disagreement as to Application of Federal Rules of Evidence or Federal Rules of Civil Procedure**

None at this time other than those set forth in the parties' pending motion as related to specific evidence in this case.

**N. Motions or Other Matters Requiring Court Action**

1. Plaintiff
  - a. Plaintiff's Motion for Leave to Call Expert Out of Turn
  - b. Plaintiff anticipates filing the following Motions in Limine and is currently engaging in the meet and confer process:
    - i. Motion in Limine Relating to Plaintiff's Social Media Accounts and Academic Record [**Docs. 110 and 111**];
    - ii. Motion in Limine Relating to Plaintiff's Medical Records [**Doc. 109**];
    - iii. Motion in Limine to Exclude Evidence Relating to Desistence, Puberty Blockers, Conversion and Hormone Therapy [**Doc. 108**].
    - iv. Motion in Limine to Exclude Evidence Purporting to Dispute Plaintiff's Gender Dysphoria Diagnosis [**Doc. 107**].
    - v. Motion in Limine to Exclude Evidence Relating to Dr. Adkins and, in particular, relating to, among other things, Informed and HIPAA Consent.
  - c. Plaintiff's Motions for Leave to Take Judicial Notice of Certain Materials and Information [**Docs. 112, 113, 114, 115**].
  - d. Plaintiff anticipates filing Daubert Motions on the agreed upon deadline of December 6, 2017.



2. Defendant – Defendant anticipates filing Daubert Motion(s) prior to the December 6, 2017, deadline. Defendant submits further action is required with respect to its pending (1) Motion to Withdraw and Amend Two Responses to Plaintiff’s Request for Admissions [Doc. 103], (2) Motion in Limine [Doc. 104], and (3) Motion for Judicial Notice [Doc. 106].

**O. Signatures of Counsel for All Parties.**

Respectfully submitted this 29th day of November, 2017.

/s/ Jennifer G. Altman

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**CERTIFICATE OF SERVICE**

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

*/s/ Terry J. Harmon* \_\_\_\_\_

**TERRY J. HARMON**

**DE 116-1**

## Plaintiff's Exhibits with Defendant's Objections

## Attachment "A" to Joint Final Pretrial Statement

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
1	PLAINTIFF0002230	Grant, J., et al. (2014). Injustice at Every Turn: A Report of the National Transgender Discrimination Survey.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Summary
2	PLAINTIFF0002457	James, S., et al. (2016). The Report of the U.S. Transgender Survey.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Summary

3	PLAINTIFF0001117	Drew's driver's license	Authenticity; Relevancy
4	PLAINTIFF0001118	Drew's birth certificate	Authenticity; Relevancy
5	SJCSB-DA 002691	June 14, 2015 – Erica emails Holly Arkin to let her know that Drew is transitioning; forward to S. Smith and C. Mittelstadt	Hearsay
6	SJCSB-DA 000525	September 22, 2015 – Erica emails Holly Arkin re conversation with Drew. “It seems that on the problems is that there are only two gender-neutral bathrooms on campus ...inconvenient on top of singling Drew out as a trans student...”	Hearsay
7	PLAINTIFF0002921 – 2925	(Undated) Letter from Erica Adams Kasper to Superintendent Joyner re: school's instruction to Drew to begin using gender neutral restrooms	Authenticity; Relevancy; Hearsay; Lack of Foundation
8	SJCSB-DA PRR 000819- 822	Oct. 2, 2015 Letter from Erica Adams Kasper to Principal Dresback re: school's instruction to Drew to begin using gender neutral restrooms	Hearsay

9	SJCSB-DA 17065	October 12, 2015 – E. Kasper sending email following meeting S. Smith	Hearsay
10	SJCSB-DA 010553	Nov. 30, 2015 – E. Kasper sending follow email to meeting with C. Mittelstadt and B. Asplen	Hearsay
11	SJCSB-DA 005831-005832	Nov. 30, 2015 – Email from C. Mittelstadt to E. Kasper	

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
12	SJCSD-D.A. 000616-617	April 9, 2016 – Email from E. Kasper to C. Mittelstadt and H. Arkin regarding meeting	Hearsay
13	KASPER000184-185	April 22, 2016 email from Erica Kasper to Roger Mills; subject “Drew Adams – update” regarding safety and privacy	Authenticity; Relevancy; Hearsay; Lack of Foundation
14	KASPER000186	A May 5, 2016 email from Erica to Roger Mills describing another problem with Drew accessing a boys’ restroom for AP testing that was occurring in the gymnasium area. Drew was required to use the coach’s restroom if he needed a restroom break.	Authenticity; Relevancy; Hearsay; Lack of Foundation
15	SJCSD-D.A. 000629	May 13, 2016 – E. Kasper emails C. Mittelstadt and Holly Arkin an article “US Directs Public Schools to Allow Transgender Access to Restrooms”	Hearsay, Relevancy
16	SJCSD-D.A. 000641	May 16, 2016 – Email from E. Kasper to C. Mittelstadt asking to change Drew’s gender in the computer system	Hearsay



17	SJCSD-D.A. 000657	May 22, 2016 and May 24, 2016 – Email from E. Kasper to C.M. and Holly Arkin sharing the American Federation of Teachers statement regarding Obama’s directives	Hearsay
18	SJCSD-D.A. 000650	May 22, 2016 – Drew emailed various teachers to notify them that he is male and that he still has not	Hearsay

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
		been able to change his gender marker in the school system so the roster says he is female	
19	SJCS D-D.A. 000700; SJCS D-D.A. 000701; SJCS D-D.A. 000703; SJCS D-D.A. 000704; SJCS D-D.A. 000705	July 26, 2016 – Drew emailing teacher regarding transgender status because school roster has not been updated	Hearsay, Relevancy
20	KASPER000202	Aug. 11, 2016 – Email from E. Kasper to R. Mills re “New Classes, New Locations”	Authenticity; Relevancy; Hearsay; Lack of Foundation
21	SJCS D-D.A. 000724	Aug. 27, 2016 – Email from E. Kasper to C. Mittelstadt and K. Dresback regarding bathroom access football game	Relevancy; Hearsay
22	SJCS D-D.A. 000795, 16071	March 6, 2017 – Email to L. Kunze and K. Dresback from student and cc’d Drew	Authenticity; Relevancy; Hearsay; Lack of Foundation

23	SJCSD-D.A. 000813	March 28, 2017 – Email to L. Kunze re petition to address gender neutral bathroom in H pod	Authenticity; Relevancy; Hearsay; Lack of Foundation
24	SJCSD-D.A. 16070	April 6, 2017 – Email from A.Mander, Asst Principal at Nease to L. Kunze: request for trans students to use coaches bathroom in gym during AP testing	Authenticity; Relevancy; Hearsay; Lack of Foundation
25	PLAINTIFF0002932 - 2933	Nov. 6-7, 2017 email exchange with Principal Kunze re: Drew's inability to access boys' restrooms during the lunch hour when all students are required to remain in a restricted area with no	Relevancy; Hearsay

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
		gender neutral restrooms.	
26	PLAINTIFF0001330-1345	American Psychiatric Association, Diagnostic Criteria for Gender Dysphoria, Diagnostic and Statistical Manual of Mental Disorders (DSM-5)	Relevancy
27	PLAINTIFF0001346-1347	America Psychiatric Association FAQ re: updating Gender Dysphoria diagnosis	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
28	PLAINTIFF0001119-1238	World Professional Association for Transgender Health (2011). Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People.	Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence

29	PLAINTIFF0001297 - 1329	American Psychological Association (2015). Guidelines for Psychological Practice with Transgender and Gender Nonconforming People. Am. Psychologist 70:832-864.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
30	PLAINTIFF0001239 - 1273	Hembree, W., et al. (2017). Endocrine Treatment of Gender-Dysphoric/Gender Incongruent Persons: An Endocrine Society Clinical Practice Guideline. J. of Clin. Endocrinology & Metabolism 102(11):1-35.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
31	PLAINTIFF0001274 - 1296	Hembree, W., et al. (2009). Endocrine Treatment of Transsexual Persons: An Endocrine Society Clinical Practice Guideline. J. of Endocrinology & Metabolism 94(9): 3132-	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
		3154.	
32	PLAINTIFF0001348 - 1349	American Academy of Family Physicians, AAFP Reaffirms Antidiscrimination Policy with Vote on Transgender Equality (Sept. 2016)	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
33	PLAINTIFF0001350 - 1354	The American College of Obstetricians and Gynecologists. Committee Op. No. 512: Health Care for Transgender Individuals (Dec. 2011)	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
34	PLAINTIFF0001355	American Medical Association (2017). Access to Basic Human Services for Transgender Individuals H-65.964	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence

35	PLAINTIFF0001356-1357	American Medical Association (2016). Health Care Needs of Lesbian Gay Bisexual and Transgender Populations H-160.991	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
36	PLAINTIFF0001358	American Medical Association (2016). Removing Financial Barriers to Care for Transgender Patients H-185.950	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
37	PLAINTIFF0001359	American Psychoanalytic Association (2012). Position Statement on Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
38	PLAINTIFF0001360-1371	American Psychological Association & National Association of School Psychologists. (2015). Resolution on gender and	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
		sexual orientation diversity in children and adolescents in schools.	
39	PLAINTIFF0001372 - 1375	Anton, B. S. (2009). Proceedings of the American Psychological Association for the legislative year 2008: Minutes of the annual meeting of the Council of Representatives. American Psychologist, 64, 372–453.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
40	PLAINTIFF0001376 - 1389	Daniel, H. (2015). Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper From the American College of Physicians. Ann Intern Med. 163:135-137	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
41	PLAINTIFF0001390 - 1391	American Psychiatric Association (2012). Position Statement on Discrimination Against Transgender and Gender Variant Individuals	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence



42	PLAINTIFF0001392 - 1393	American Psychiatric Association (2012). Position Statement on Access to Care for Transgender and Gender Variant Individuals	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
43	PLAINTIFF0001394 - 1395	Endocrine Society (2017). Position Statement: Transgender Health	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
44	PLAINTIFF0001396 - 1401	Lopez, X., et al. (2017). Statement on gender-affirmative approach to care from the pediatric endocrine society special interest group on	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
		transgender health. Curr. Op. Pediatr. 29:475–480.	
45	PLAINTIFF0001402 - 1413	National Association of Social Workers. (May 2015). Sexual Orientation Change Efforts (SOCE) and Conversion Therapy with Lesbians, Gay Men, Bisexuals, and Transgender Persons.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
46	PLAINTIFF0001414 - 1422	National Association of Social Workers. (2011). Transgender and Gender Identity Issues. Social Work Speaks.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
47	PLAINTIFF0001423	Pediatric Endocrine Society (Mar. 2017). PES Statement Promoting Safety of Transgender Youth.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence

48	EHRENSAFT001627 (Also: PLAINTIFF0001424 - 1499)	Substance Abuse and Mental Health Services Administration. (2015). Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
49	PLAINTIFF0001500 - 1516	American Academy of Pediatrics. (2013). Technical Report: Office- Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth. Pediatrics 132(1):297-313.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
50	PLAINTIFF0001519 - 1524	American Academy of Pediatrics. (2013). Policy Statement: Office-Based Care for Lesbian, Gay, Bisexual, Transgender, and Questioning Youth. Pediatrics 132(1):198-203.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
51	PLAINTIFF0001527 - 1529	World Medical Association. (2015). WMA Statement On Transgender People	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
52	PLAINTIFF0003732 - 3734	American Association for Marriage and Family Therapy statement on "Gender Identity"	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
53	PLAINTIFF0003735 - 3737	American Family Therapy Academy, "AFTA's Support for Transgender Persons"	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
54	PLAINTIFF0003738 - 3739	American Family Therapy Academy, "Statement on Transgender Students"	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence

55	PLAINTIFF0003740 - 3741	American Academy of Child & Adolescent Psychology, "Transgender Youth in Juvenile Justice and other Correctional Systems"	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
56	EHRENSAFT000229- 237	De Vries, Annelou L.C., et al. (2014). Young Adult Psychological Outcome After Puberty Suppression and Sex Reassignment. Pediatrics 134(4):696-704.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
57	EHRENSAFT000859 - 865	Olson, K., et al. (2016). Mental Health of transgender children who are supported in their identities. Pediatrics 137:1-8.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
58	EHRENSAFT000954 - 958	Travers, R., et al. (2012). Impacts of strong parental support for trans youth: a report prepared for Children's Aid Society of Toronto and Delisle Youth Services.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
59	PLAINTIFF0003742 -	Styne, D.M., et al. (2017).	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence Improper Attempt to Introduce Undisclosed

			Expert Evidence
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EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
	0003790	Pediatric Obesity— Assessment, Treatment, and Prevention: An Endocrine Society Clinical Practice Guideline. J. of Clin. Endocrinology & Metabolism 102(3):709–757.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence
60	PLAINTIFF0003791 - 0003828	Open letter critiquing the Sexuality and Gender (McHugh/Mayer) article, dated March 22, 2017.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
61	PLAINTIFF0003829 - 0003838	Fuqua, J. (2013). Treatment and Outcomes of Precocious Puberty: An Update. J. of Clin. Endocrinology & Metabolism 98(6):2198–2207	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
62	PLAINTIFF0002894	Flores, A.R. et al. How Many Adults Identify As Transgender In The United States? (June 2016). The Williams Institute.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence; Improper Summary

63	PLAINTIFF0001811 - 1812	Atherton High School, School-Based Decision Making Council Policy 500	Authenticity; Relevancy; Hearsay; Lack of Foundation;
64	PLAINTIFF0001813 - 1837	U.S. Department of Education, Examples of Policies and Emerging Practices for Supporting Transgender Students (May 2016)	Incomplete; Relevancy
65	PLAINTIFF0001563 - 1568	School Board of Broward County, Florida - Nondiscrimination Policy Statement (No. 4001.1)	Authenticity; Relevancy; Hearsay; Lack of Foundation
66	PLAINTIFF0001569 - 1669	Broward County Public Schools - Lesbian, Gay, Bisexual, Transgender, &	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence



EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
		Questioning Critical Support Guide (2d Ed., 2016).	
67	PLAINTIFF0001692 - 1694	Florida High School Athletic Association, "Who We Are"	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence
68	PLAINTIFF0001735 - 1810	Administrative Policies of the Florida High School Athletic Association, Inc. 2017-18 Edition	Authenticity; Relevancy; Hearsay; Lack of Foundation;
69		Rule 34 Inspection video	Stipulated
70	SJCAB-DA 001368-1369	Email between T. Forson and F. Upchurch regarding best practices	Relevancy
71	SJCAB-DA 1361	Jul 31, 2017 Letter from interested parent support the students	Relevancy; Hearsay; Lack of Foundation
72	SJCAB-DA 1326-27	Press release re LGBT bullies	Authenticity; Relevancy; Hearsay; Lack of Foundation

73	SJCAB-DA 1323	July 31, 2017 - We are nease email	Relevancy; Hearsay; Lack of Foundation
74	SJCSB-DA PRR 001897-1928	May 2015 - Materials related to conference in Ft. Lauderdale	Relevancy; Lack of Foundation
75	SJCSB-DA PRR 001543-1547	St. Johns County School Board policies	
76	SJCSB-DA PRR 001548-1551	Feb. 18, 2015 - minutes for LGBT Focus Group meeting	
77	SJCSB-DA PRR 1090-1097	March 3, 2015 email from S. Smith attaching recommendation and back-up information from LGBT Task Force	
78	SJCSB-DA PRR 001437-1526	Collection of non-discrimination policies from Florida school districts, and model policies for transgender	Relevancy; Lack of Foundation

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
		students	
79	SJCSB-DA PRR 001789-1790	Summary of purpose and work of St. Johns County LGBT Task Force	
80	Pltf Exh. 9 – Asplen Depo	GLSEN model policy	Authenticity; Relevancy; Hearsay; Lack of Foundation
81	PLAINTIFF0003731	Aug. 1, 2017 Map Nease High School (restrooms marked in green and blue)	(Must be filed under Seal)
82	SJCSB-DA PRR 823-827	Jan. 5, 2016 Email Dresback to Mittelstadt w Map of Nease High; Drew's class schedule, and Best Practices	
83	SJCSB-DA 819-823	Oct. 2, 2015 Email from Erica to Dresback (fwd to Mittelstadt, to Upchuch) re Concern regarding Drew Adams – info for meeting Oct 9	Hearsay
84	SJCSB-DA 000006-7	Jan. 15, 2016 Board response to OCR Complaint	

85	SJCSB-DA 001370-1374	Aug. 12, 2015 Email from Mittelstadt to Upchurch with Best Practices	
86	SJCSB-DA 001384-1393	Aug. 17, 2015 Email from Upchurch to Rob Sniffen with Best Practices	
87	SJCSB-DA 001397-1402	Aug. 18, 2015 Email from Upchurch to Strickland incorporating T. Harmon edits	
88	SJCSD-DA 000025-31	March 30, 2016 Upchurch position statement for School Board to OCR dated	
89	SJCSB-DA 000992	Aug. 12, 2016 Email from Mills to Upchurch asking supplemental questions	

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
90	SJCSB-DA 1086-87	Sept. 7, 2016 Email from Upchurch to Mills in response	Relevancy; Lack of Foundation
91	SJCSB-DA 17097	September 9, 2015 – Sallyanne email to H. Arkin (and others): best practices to be distributed to principals tomorrow	
92	SJCSB-DA PRR 001567	Sept 10, 2015 – St. John’s County School District Assistant Principals’ Meeting Agenda	
93	SJCSB-DA 17090	September 28, 2015 – Email from Sallyanne Smith to Cathy Mittelstadt - In response to email from Erica re Drew	Relevancy
94	SJCSB-DA 002685-86	September 28, 2015 Email C. Mittelstadt says she gave him information and they should discuss	Relevancy

95	SJCSB-DA PRR 001051	Feb. 11, 2016 – Email from Roger Mills (OCR) to Superintendent Joyner	Relevancy; Hearsay; Lack of Foundation
96	SJCSB-DA PRR 001930	Human Rights Campaign “A Guide for Schools Responding to Questions About the US Department of Education’s Guidance on the Rights of Transgender Students.”	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
97	SJCSB-DA PRR 001903	Gender Spectrum	Relevancy; Lack of Foundation
98	SJCSB-DA PRR 001592	Cover Letter with Task Force Recommendation	
99	SJCSB-DA PRR 001789-90	LGBTQ task force document	
100	SJCSB-DA PRR 001709-1721	Feb. 4-5, 2014 - Statewide LGBTQ – District Responses to the Legal and	Relevancy; Lack of Foundation

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
		Ethical Rights and Needs of LGBTQ Students	
101	SJCSB-DA PRR 001483-496	March 3-5, 2014 – Stonewall Education Project Conference	Relevancy; Lack of Foundation
102	SJCSB-DA PRR 001773	Powerpoint	Relevancy; Lack of Foundation
103	SJCSB-DA PRR 001119- SJCSB-DA PRR 001122; SJCSB-DA PRR 001613	Nov. 5, 2014 – LGBTQ focus group met and gathered information to bring to task force minutes and agenda	
104	SJCSB-DA PRR 002430 - SJCSB-DA PRR 002532	Jan. 16, 2015 –JASMYN 2015 Teaching Respect For All Conference	Relevancy; Lack of Foundation

105	SJCSB-DA 001362-1365	Jan. 27, 2015 – Laura Barkett forwards email and attachments to Tim Forson, Brennan Asplen, Christina McKendrick and Sallyanne Smith	
106	SJCSD-D.A. 000151- SJCSD-D.A. 000152	Agenda and Notes from February 2015 Task Force Meeting	
107	SJCSB-DA PRR 001090-1097	March 3, 2015 – Email from S.A. Smith to B. Asplen and others re “recommendation and back up information from the last LGBTQ Task for Meeting and asked for comments	
108	SJCSB-DA PRR 001430 - 001436	Edits to recommendations from LGBTQ task force	
109	SJCSB-DA PRR 001968-001995	Additional edits to recommendations from LGBTQ task force	
110	SJCSB-DA PRR 002479-2494	2013 GLSEN National School Climate Survey	Hearsay; Relevancy; Lack of Foundation



EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
111	SJCSB-DA PRR 001570-77	Pages from Broward County Public Schools LGBTQ Critical Support Guide	Relevancy; Lack of Foundation
112	SJCSB-DA PRR 001783-86	Transgender and Gender Non-Conforming: Your Rights at School (April 2014)	Relevancy; Lack of Foundation
113	SJCSB-DA PRR 001454-SJCSB-DA PRR 001458	CA Safe Schools Coalition	Relevancy; Lack of Foundation
114	SJCSB-DA PRR 001457	Massachusetts Public Schools	Relevancy; Lack of Foundation
115	SJCSB-DA PRR 001473-SJCSB-DA PRR 001478	Jan. 22, 2013 –email from D.Pallazzo re San Francisco’s transgender policies from 2006 or 2003	Hearsay; Relevancy; Lack of Foundation
116	SJCSB-DA PRR 001489-1526	District of Columbia Public Schools – June 2015 – Transgender and Gender-Nonconforming Policy Guidance	Relevancy; Lack of Foundation
117	SJCSB-DA PRR 001624-25	May 19, 2016 – Email from De Pallazzo (Equality Florida) All Together Now Statewide Conference Call Minutes	Hearsay; Relevancy; Lack of Foundation
118	SJCSB-DA PRR 001095-96	March 3, 2015, Appendix B to the LGBTQ Task Force	Relevancy; Lack of Foundation

119	SJCSD-D.A. 000160	Aug. 19, 2015 – Redlined Best practices	
120	SJCSB-DA PRR 001768 - 1770	Sept 9-10, [2015] –notes re LGBTQ guidelines meeting	
121	SJCSB-DA PRR 001584	District Response to the Needs of LGBTQ Students: Legal Rights and Ethical Responsibilities	Relevancy; Lack of Foundation

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
122	PLAINTIFF0002929	Best Practices	
123	PLAINTIFF0001535 - 1556	Sept. 2014, Medico-Legal Guidelines, North Carolina Bar Association Medico-Legal Liaison Committee	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
124	PLAINTIFF0001557 - 1559	Duke Department of Pediatrics, Duke University School of Medicine, Biography for Dr. Adkins	
125	PLAINTIFF0001531 - 1532	Nov. 19, 2017, HIPAA Privacy Authorization Form for Dr. Adkins	
126	PLAINTIFF0001533 - 1534	Nov. 19, 2017, HIPAA Privacy Authorization Form for Dr. Ehrensaft	
127	PLAINTIFF0003724 - 3729	Information for Informed Consent for Adolescents (originally signed June 19, 2016; updated Nov. 20, 2017)	
128	PLAINTIFF0003730	Informed consent signature page executed by Erica Adams Kasper and Scott Adams on May 31, 2016	

129	PLAINTIFF0003711	Meeting the Health Care Needs of LGBTQ Adolescents In the Primary Care Setting Powerpoint Presentation	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
130	PLAINTIFF0003723	University of Louisville School of Medicine Child and Adolescent Sexuality Powerpoint Presentation	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
131	PLAINTIFF0003710	Dept of Radiology: LGBT Identities, Clinical Concerns, Patient Communication Powerpoint Presentation	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence

EXHIBIT NUMBER	BATES NUMBER	DESCRIPTION	OBJECTION
132	PLAINTIFF0000001	Feb. 26, 2016 letter from Michael De La Hunt, MD, FAPA	Authenticity; Relevancy; Hearsay; Lack of Foundation; Improper Attempt to Introduce Undisclosed Expert Evidence
133	PLAINTIFF0000002	Nov. 22, 2016 letter from Michael De La Hunt, MD, FAPA	Authenticity; Relevancy; Hearsay; Lack of Foundation; Improper Attempt to Introduce Undisclosed Expert Evidence
134	PLAINTIFF0000003 - 04	May 31, 2016 letter from Naomi J. Jacobs, Ph.D.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Improper Attempt to Introduce Undisclosed Expert Evidence
135	PLAINTIFF0000005	May 25, 2017 Affidavit of Dr. Russell Sassani	Authenticity; Relevancy; Hearsay; Lack of Foundation; Improper Attempt to Introduce Undisclosed Expert Evidence Inability to Cross Examine Affidavit
136		Articles cited in the attachments to Dr. Adkins' Expert and Rebuttal Reports	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence

137		Articles cited in the attachments to Dr. Ehrensaft's Expert and Rebuttal Reports	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence
138		Defendant's Response to Plaintiff's First Set of Requests for Admissions	Relevancy; and other objections stated in the responses
139		Defendant's Response to Plaintiff's First Set of Interrogatories	Relevancy; Hearsay; Lack of Foundation; and other objections stated in the responses
140		All deposition transcripts and exhibits	Relevancy; Hearsay; Lack of Foundation; and other objections stated in deposition.
141		All exhibits necessary for rebuttal	No exhibits identified
142		All impeachment exhibits	No exhibits identified
143		Amended Complaint	Relevancy; Hearsay; Lack of Foundation; Opinion Evidence
144		Answer to Amended Complaint	
145		Any Exhibits Listed by Defendant	Defendant has not yet determined all exhibits from its exhibit list that it will seek to enter into evidence and

			therefore reserves all objections.
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**DE 116-2**



**I. PLAINTIFF'S OBJECTIONS TO DEFENDANT'S EXHIBITS<sup>1</sup>**

No.	Date Identified	Date Admitted	Description	Bates No	Objection
1.			Authorization for Treatment by Dr. Naomi Jacobs (Def. Depo 1).	PLTF860-	Relevance Hearsay; 403; authenticati on
2.			History Form for Dr. Naomi Jacobs (Def. Depo 1).	PLTF861	Relevance 403 Hearsay; authenticati on
3.			Patient Rights and Responsibilities for Dr. Naomi Jacobs (Def. Depo 1).	PLTF862	Relevance; Hearsay
4.			Evaluation Report by Dr. Naomi Jacobs dated February 17, 2015 (Def. Depo 1).	PLTF863- PLTF864	Relevance 403 Hearsay; Authenticati on
5.			Email dated April 24, 2015, from E. Adams to J. Johnson (Def. Depo 2).	SJCSD-DA 427	Relevance; Hearsay; 403
6.			Baptist Health Parent Intake Questionnaire dated May 14, 2015 (Def. Depo 3).	PLTF189- PLTF190	Relevance 403 Hearsay
7.			St. Johns County School District Safety Plan dated May 14, 2015 (Def. Depo 4).	SJCSD-DA 51-52	Relevance 403 Hearsay
8.			Email dated May 18, 2015, from E. Adams to V. Golden (Def. Depo 5).	SJCSD DA 477-78	Relevance 403; Hearsay; 404
9.			Client Intake Questionnaire for J. Asermely dated June 25, 2015 (Def. Depo 6).	PLTF 835- 836	Relevance 403 Hearsay; Authenticati

<sup>1</sup> Plaintiff makes these objections for purposes of preservation and intends to work with Counsel for Defendant to narrow objections upon conferral.

					on
10.			J. Asermely Session Notes for June 25, 2015 (Def. Depo 6).	PLTF837	Relevance 403 Hearsay; Authenticati on
11.			Acknowledgment of Notice of Privacy Rights for J. Asermely dated June 25, 2015 (Def. Depo 6).	PLTF838	Relevance 403
12.			Letter from E. Adams to K. Dresback (Def. Depo 7).	SJCSD DA 14-16	
13.			Email from E. Adams to H. Arkin dated March 15, 2015 (Def. Depo 8).	SJCSD DA 603	
14.			Email from H. Arkin to E. Adams dated March 17, 2016 (Def. Depo 8).	SJCSD DA 604-606	
15.			Email chain between E. Adams and H. Arkin dated March 31, 2016 (Def. Depo 9).	SJCSD-DA 613	
16.			Email from E. Adams to C. Mittelstadt dated April 9, 2016 (Def. Depo 9).	SJCSD-DA 615-619	
17.			Email from C. Mittelstadt to E. Adams dated June 2, 2016 (Def. Depo 10).	SJCSD-DA 664	
18.			Letter from Dr. Naomi Jacobs to K. Russell dated May 31, 2016 (Def. Depo 11) .	SJCSD-DA 3220-3221	
19.			Email from E. Adams to C. Mittelstadt dated June 6, 2016 (Def. Depo 12).	SJCSD-DA 665-666	
20.			Document from Dr. Naomi Jacob's records (Def. Depo 13).	SJCSD-DA 3222	Relevance; Hearsay; 403; Authenticity
21.			Baptist Medical Survey dated March 13, 2017 (Def. Depo 14).	SJCSD-DA 3166	Relevance; Hearsay; 403

22.			Letter from Dr. Naomi Jacobs to Dr. Sassani dated April 25, 2017 (Def. Depo 15).	SJCSD-DA 3226	
23.			Article from Florida Times-Union dated June 13, 2016, entitled "Transgender Students Seek to Counter Opposition, Fears Over Bathrooms" (Def. Depo 16).		Hearsay
24.			Email chain between A. Linsky, K. Dresback and Plaintiff dated September 25, 2015 (Def. Depo 17).	SJCSB-DA PRR 507-508	Relevance; Hearsay; 403
25.			Email from L. Maalouf to Plaintiff dated November 1, 2016 (Def. Depo 18).	SJCSD-DA 742	Relevance; Hearsay; 403
26.			Email from E. Adams to C. Mittelstadt and B. Asplen dated November 30, 2015.	SJCSB-DA PRR 579	
27.			Email from S. Smith to T. Forson dated September 23, 2014.	SJCSB-DA 17199	
28.			Email from S. Smith re Task Force members dated March 3, 2015 with attachment.	SJCSB-DA PRR 1090-1097	
29.			Letter from V. Hollis to Dr. J. Joyner dated December 28, 2015.	SJCSD-DA 001-003	
30.			Letter from Dr. Joyner to V. Hollis dated January 15, 2016.	SJCSD-DA 006-007	
31.			Map of Nease High School depicting gender designated and non-gender designated restrooms.	SJCSD-DA 909 and 919	Foundation; relevance; authenticity; 403
32.			Ninth grade class schedule for Plaintiff	SJCSD-DA 010	Relevance; Hearsay; 403
33.			St. Johns County School District Guidelines for LGBTQ students – Follow	SJCSD-DA 011-012	
			Best Practices (2015-16)		

34.			Email from E. Adams to H. Arkin dated September 23, 2015.	SJCSD-DA 013-016	
35.			Email from C. Mittelstadt to K. Dresback dated October 6, 2015.	SJCSD-DA 017 (DA 2665-68)	
36.			Email from E. Adams to S. Smith dated October 12, 2015.	SJCSD-DA 018	
37.			Email from S. Smith to E. Adams dated October 13, 2015.	SJCSD-DA 019	
38.			Email from E. Adams to S. Smith dated October 16, 2015.	SJCSD-DA 020	
39.			Email from C. Mittelstadt to E. Adams dated December 1, 2015.	SJCSD-DA 022	
40.			Letter from F. Upchurch to R. Mills dated March 30, 2016.	SJCSB-DA 025-032	Relevance; Hearsay; 403
41.			Student Attendance Report for Plaintiff dated July 14, 2017.	SJCSD-DA 149-150	Relevance
42.			Course and Grade Information for Plaintiff from 2014-2017.	SJCSD-DA 036-038	Relevance
43.			Eleventh grade class schedule for Plaintiff.	SJCSD-Adams 905	Relevance
44.			1979 Building Plans for Nease High School: Bldgs C, F and G.	SJCSD-Adams 906	Foundation; relevance; authenticity; 403
45.			1979 Building Plans for Nease High School: Bldg J.	SJCSD-Adams 907	Foundation; relevance; authenticity; 403
46.			1979 Building Plans for Nease High School: Bldgs K, L and O.	SJCSD-Adams 908	Foundation; relevance; authenticity; 403

47.			2008 Nease High School Floor Plan	SJCSD-Adams 909	Foundation; relevance; authenticity; 403
48.			2016 Nease High School Floor Plans – First Floor	SJCSD-Adams 910-913	
49.			2016 Nease High School Floor Plans – Second Floor	SJCSD-Adams 914-917	
50.			Architect’s Notes re Nease High School.	SJCSD-Adams 918	Hearsay; relevance; foundatio
51.			8/12/15 e School Plus note re use of C-Pod bathroom	SJCSD-Adams 892	hearsay
52.			9/11/15 e School Plus note re use of male pronoun	SJCSD-Adams 893	
53.			8/15/16 e School plus note re GSA meeting issue	SJCSD-Adams 894	Relevance; hearsay; 404
54.			8/16/16 e School plus note re “verbal attack”	SJCSD-Adams 895	Relevance; hearsay ;404
55.			12/14/16 e School plus note re rumors	SJCSD-Adams 896	Relevance; hearsay; 404
56.			8/16/16 Student Statement	SJCSD-Adams 897	Relevance; hearsay; 404
57.			Email from E. Adams to B. Blue dated January 25, 2016.	SJCSD-Adams 898-899	Relevance; hearsay; 404; 403

58.			Statement by [student] about Plaintiff.	SJCSD-Adams 900	Relevance; hearsay ; 404; 403
59.			Statement by Plaintiff re incident with [student].	SJCSD-Adams 901	relevance; hearsay; 404; 403
60.			Omitted		
61.			Student Information Sheet for Plaintiff (9 <sup>th</sup> grade)	SJCSD-Adams 903	Relevance; Hearsay; 403
62.			Incident Report dated November 14, 2016.	SJCSD-Adams 904	Relevance; Hearsay; 403 404
63.			E-School Plus Notes re Plaintiff	SJCSB-DA 920	Relevance; Hearsay; 403
64.			H. Arkin encounters with Plaintiff	SJCSB-DA 921	Relevance; Hearsay; 403; foundation
65.			Student Codes of Conduct for 2015-2018	SJCSB-DA 982-1231	Relevance
66.			Emails from S. Smith to LGBTQ Task Force re various meetings in 2014-15	SJCSB-DA PRR 1098-1116	Relevance; Hearsay; Authenticity
67.			Agenda for LGBTQ Task Force Meeting dated February 18, 2015 (with handwritten notes).	SJCSD-DA 151-152	
68.			Minutes for LGBTQ Focus Group Meeting held February 18, 2015	SJCSB-DA PRR 1619-1622	
69.			LGBTQ Focus Group Meeting Agenda dated November 5, 2014.	SJCSB-DA PRR 1613	
70.			LGBTQ Focus Group Meeting Minutes dated November 5, 2014.	SJCSD-DA 153-156	
71.			Draft of LGBTQ Best Practices dated August 19, 2015.	SJCSD-DA 157-159, PRR 003-012, 1988, 1988-90, 1992-94, 2087	Authenticati on (2087)

72.			Email from C. Mittelstadt to F. Upchurch dated August 12, 2015, with draft of Best Practices.	SJCSD-DA 1377-1380	Hearsay
73.			Email from S. Willets to V. Moody dated August 13, 2015.	SJCSB DA 3053-3054	
74.			Minutes from St. Johns County School Board Meeting on July 11, 2017.	SJCSB-DA PRR 192-198	Hearsay; Authentication (197-198); subject to stipulation
75.			Email chain between A. Linsky and Plaintiff dated July 17, 2017.	SJCSB-DA PRR 222-223	Relevance; Hearsay; 403
76.			Email from Plaintiff to A. Linsky dated July 12, 2017.	SJCSB-DA PRR 225	Relevance; 403
77.			Email chain between A. Linsky and Plaintiff dated July 7 & 8, 2017.	SJCSB-DA PRR 226-227	Relevance; Hearsay
78.			Email chain between L. Kunze, J.A. and Plaintiff dated March 28 & April 2, 2017.	SJCSB-DA PRR 249	
79.			Email chain between Plaintiff K. Dresback, M. Fox dated March 6 & 7, 2017.	SJCSB-DA PRR 258	Relevance; Hearsay; 403
80.			Emails re HOPE curriculum	SJCSB-DA PRR 261-83, DA 753-794	Relevance; Hearsay; 403
81.			Emails re GSA	SJCSB-DA PRR 284-88, 371-76, DA 668-699, 749	Relevance; Hearsay; 403 (
82.			Email chain between Plaintiff and H. Farson dated August 19, 2016.	SJCSB-DA PRR 341	Relevance; Hearsay; 403
83.			Email chain between Plaintiff and K. Dresback dated September 25, 2015.	SJCSB DA PRR 389-90	Relevance; Hearsay
84.			U.S. Department of Justice Dear Colleague Letter dated May 13, 2016, on Transgender Students	SJCSB-DA PRR 1731-39	Relevance

85.			Policies and guidelines from other school districts re gender identity and transgender issues	SJCSB-DA PRR 1437-1526, 2533-2610	Relevance to exhibit in its entirety; improper composite
86.			A.L.E.R.T. Guide for 2017-18 (includes Best Practices)	SJCSB-DA PRR 1559-1566	Relevance (1559-1564); 403 (waste of time)
87.			Principal and Asst. Principal Meetings where Best Practices implementation discussed	SJCSB-DA PRR 1567-69	Authenticati on /foundation
88.			Docs re conferences attended by S. Smith and others re LGBTQ rights.	See SJCSB-DA PRR 1895-1928	Authenticity /Foundation; improper composite
89.			Email from G. Freeman to S. Smith and others re LGBTQ Meeting Summary.	SJCSB-DA PRR 1605-1606	
90.			Minutes from Children's Behavioral Focus Group Meeting held October 8, 2014.	SJCSB-DA PRR 1610-1612	Relevance; Hearsay
91.			Email from D. Palazzo to various recipients dated May 19, 2016, with minutes of All Together Now Statewide Conference Call.	SJCSB-DA PRR 1623-1627	Hearsay
92.			High School Feedback from 9/10 AP Meeting on LGBTQ Guidelines.	SJCSB-DA PRR 1768-1770	Authenticati on/Foundati on
93.			Agenda for Initial Meeting of LGBTQ Committee on September 19, 2014.	SJCSB-DA PRR 1771-1788	Hearsay and authenticatio n (1771-1775); Relevance and Hearsay (1779-1788); improper composite
94.			LGBTQ "Fact Sheet"	SJCSB-DA PRR 1789-1790	



95.			2014 email responses from other school districts re LGBTQ Critical Support Guide questions	SJCSB-DA PRR 1791-1810	Hearsay; improper composite
96.			Email chain between E. Adams and H. Arkin dated September 22, 2015.	SJCSD-DA 520	Completeness – 521-524
97.			Email from E. Adams to H. Arkin dated October 27, 2015.	SJCSD-DA 548	Relevance; Hearsay
98.			Email chain between E. Adams and C. Mittelstadt dated May 13, 2016.	SJCSD-DA 634-635	
99.			Email chain between E. Adams and C. Mittelstadt dated May 16, 2016.	SJCSD-DA 644	
100			Email from C. Mittelstadt to E. Adams dated June 13, 2016.	SJCSD-DA 667	
101			Email chain between E. Adams and L. Maalouf dated June 17 & 19, 2016.	SJCSD-DA 669-670	Relevance; 403
102			Email from E. Adams to H. Arkin dated August 13, 2016.	SJCSD-DA 714	Relevance; hearsay; 403; 404
103			Email from E. Adams to H. Arkin dated August 15, 2016.	SJCSD-DA 715	Relevance; 403
104			Email from E. Adams to H. Arkin dated August 23, 2016.	SJCSD-DA 723	Relevance; 403
105			Email from E. Adams to C. Mittelstadt dated August 27, 2016.	SJCSD-DA 724	
106			Email chain between K. Dresback and E. Kasper dated August 29, 2016.	SJCSD-DA 733-735	Relevance; 403
107			Email from K. Dresback to Plaintiff dated February 22, 2017.	SJCSD-DA 784-785	Relevance; 403
108			Email chain between K. Dresback and Plaintiff dated February 22, 2017.	SJCSD-DA 799	Relevance; 403

109			Email chain between L. Kunze, Plaintiff and J.A. dated March 6 & 8, 2017.	SJCSD-DA 801	Relevance; 403
110			Letter from N. Jacobs to K. Russell dated May 31, 2016.	SJCSD-DA 3220-3221	
111			Letter from Dr. Jacobs to Dr. Sassanint dated April 25, 2017.	SJCSD-DA 3226-3227	
112			Medical records from Duke Health	SJCSB-DA 18024-18126	Relevance; 403; foundation/authenticity; improper composite
113			Medical records from Dr. Naomi Jacobs	SJCSB-DA 3197-3231	Relevance; Hearsay; 403; foundation/authenticity; improper composite
114			Medical records from Dr. Kamallesh Pai	SJCSB-DA 18323-18342	Relevance; Hearsay; 403; foundation/authenticity; improper composite
115			Medical records from Baptist Medical South	SJCSB-DA 18940-18986	Relevance; Hearsay; 403; foundation/authenticity; improper composite
116			Medical records from Baptist Pediatrics	SJCSB-DA 3154-3196	Relevance; Hearsay; 403; foundation/authenticity; improper composite
117			Medical records from Nemours Children's Clinic	SJCSB-DA 18169-18322	Relevance; 403; foundation/authenticity ; improper

					composite
118			Medical records from Wolfson Children's Hospital	SJCSB-DA 18432-18939	Relevance; 403; foundation/ authenticity; ; improper composite
119			Medical records from Take Shape Plastic Surgery	SJCSB-DA 18127-18168	Relevance; 403; foundation/ authenticity ; improper composite
120			Best Practices emails and drafts	SJCSB DA 1362-1416	
121			Emails from citizens and parents re transgender restroom policy	SJCSB DA 1235-1361, 2470-2513	Relevance; Hearsay; 403; subject to stipulation; completeness; improper composite; foundation/ authenticity
122			SJCSB Policy 2.16 Prohibiting Discrimination, Including Sexual and Other Forms of Harassment	SJCSB-DA PRR 2059-2062	Relevance
123			Email from Plaintiff to D. Ousley dated April 28, 2015.	SJCSD-DA 435	Relevance; 403
124			Email chain between E. Adams and C. Mittelstadt dated May 22 & 24, 2016.	SJCSD-DA 657	

125			Email from Plaintiff to K. Bransford dated March 20, 2017.	SJCSD-DA 806-807	Relevance; 403
126			Email from E. Adams to C. Mittelstadt dated May 28, 2016.	SJCSD-DA 2695	
127			Email from H. Arkin to S. Smith dated June 15, 2015.	SJCSD-DA 2996	
128			Undated letter from E. Adams to Dr. Joyner.	KASPER 39-43	
129			Emails between E. Adams and Transactive Online representatives	KASPER 81-84	Relevance
130			Emails between E. Adams and DOE OCR	KASPER 88-113, 180-247	
131			SJCSD High School Student Progression Plan 2017-2018	SJCSD-DA 2218-2296	Relevance; 403
132			SJCSD Parent Resource Guide for 2017-18	SJCSD-DA 2092-2171	Relevance; 403
133			Video from School Bathroom Tour with Plaintiff and legal counsel	n/a	
134			2014 Article from American Psychologist entitled "Expertise in Psychotherapy – An Elusive Goal?"	HRUZ 1635-1646	Relevance; Hearsay; 403

135			2010 Article from Association for Psychological Science entitled "Pitfalls and Opportunities in Nonverbal and Verbal Lie Detection"	HRUZ 1588-1620	Relevance; Hearsay; 403
136			2004 Article from Journal of Academy of Psychiatry Law entitled "A Cautionary Lesson from Simulated Patients"	HRUZ 1621-1622	Relevance; Hearsay; 403
137			2001 Article from Journal of American Academy of Psychiatry Law entitled "Commentary – Informed Consent in Psychotherapy – A Multidisciplinary Perspective"	HRUZ 1628-1634	Relevance; Hearsay; 403
138			2004 Research Report from American Psychological Society entitled "Psychological Responding During Script-Driven Imagery in People Reporting Abduction by Space Aliens"	HRUZ 1623-1627	Relevance; Hearsay; 403
139			1997 Article from American Journal of Psychiatry entitled "On Wearing Two Hates: Role Conflict in Serving as Both Psychotherapist and Expert Witness"	HRUZ 1579-1587	Relevance; Hearsay; 403
140			1997 APA Article entitled: Irreconcilable Conflict Between Therapeutic and Forensic Roles	HRUZ 1571-1578	Relevance; Hearsay; 403

141			WPATH Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People	Adkins Depo 3	
142			2010-11 St. Johns County School District Student Information/Entry Form dated July 30, 2010	SJCSD-DA 0053-0054	Relevance; 403
143			SJCSD Home Language Survey dated August 2, 2010	SJCSD-DA 0055	Relevance; 403
144			Florida Department of Health School Entry Health Exam dated July 29, 2010	SJCSD-DA 0069	Relevance; 403
145			Plaintiff Birth Certificate issued December 18, 2000	SJCSD-DA 70	Relevance; 403
146			Omitted		
147			Omitted		
148			Omitted		
149			Omitted		
150			SJCSD Checklist for Gifted Characteristics dated November 25, 2013.	SJCSD-DA 141	Relevance; 403
151			SJCSD Checklist for Gifted Characteristics dated December 3, 2013	SJCSD-DA 142	Relevance; 403
152			Assessment by Hope Haven Children's Clinic and Family Center dated September 16, 2013.	SJCSD-DA 143-145	Relevance; Hearsay; 403

153			Discipline Narrative History dated November 12, 2013.	SJCSD-DA 148	Relevance; Hearsay; 403; 404
154			SJCSD Student Record for Plaintiff	SJCSD-DA 033-	Relevance; Hearsay; 403; full bates range not identified
155			February 2015 Council of School Attorneys Inquiry & Analysis re Title IX and Gender Identity Issues	SJCSB-DA PRR 013-023	Hearsay; 403
156			Article re Advocates or Employees: First Amendment Claims Brought by Special Ed Teachers	SJCSB-DA PRR 024-028	Relevance; hearsay; 403
157			Broward County Public Schools LGBTQ Critical Support Guide Appendix F – Guide Summary	SJCSB-DA PRR 029-030	
158			Broward County Public Schools LGBTQ Critical Support Guide Appendix G – Federal Support Letter dated June 14, 2011	SJCSB-DA PRR 031-033	
159			Broward County Public Schools LGBTQ Critical Support Guide – The Necessity of the Guide	SJCSB-DA PRR 034-035	
160			July 24, 2013 Department of Justice, Office of Public Affairs Press Release re Arcadia, California Agreement	SJCSB-DA PRR 036-037	Relevance; hearsay; 403

161			October 2012 Fact Sheet from the National Women's Law Center re Title IX Protections	SJCSB-DA PRR 1531-33	Relevance; hearsay; authentication; 403
162			Stonewall National Education Project Symposium Schedule for January 21, 2015 - Building Safe and Supportive Schools for LGBTQ Youth	SJCSB-DA PRR 1534-36	Relevance; hearsay; 403
163			National Center for Transgender Equality April 2014 Outline re Rights at School	SJCSB-DA PRR 1539-42	
164			Draft of SJCSB Chapter 2.0 School Board Governance and Organization (Restroom Policy)	SJCSB-DA PRR 1543-1551, 2050-58	Relevance improper composite exhibit; foundation/authenticity
165			Broward County Public Schools Critical Support Guide - 2012		Not produced
166			Recommendations from LGBTQ Task Force to Executive Cabinet dated February 2015	SJCSB-DA PRR 1552-58	
167			Trends in Recent Case Law Regarding LGBTQ Students	SJCSB-DA PRR 1572-83	Completeness; relevance; hearsay; improper composite; foundation/authenticity



168			District Response to Needs of LGBTQ Students: Legal Rights and Ethical Responsibilities – Evaluation Summation	SJCSB-DA PRR 1584	
169			Log of LGBTQ conferences attended in 2014-2017	SJCSB-DA PRR 1604	Relevance; hearsay; authentication; foundation
170			2014-15 FHSA Handbook Excerpt re Gender Identity Participation	SJCSB-DA PRR 1607-08	
171			2010- A Legal Handbook for LGBT Floridians and Their Families	SJCSB-DA PRR 1628-78	Relevance; Hearsay; 403; Foundation/ authenticity
172			Stonewell National Education Project Release re 2014 Symposium on LGBT Youth	SJCSB-DA PRR 1681-85	Hearsay; relevance; authentication; 403
173			Palm Beach County Safe Schools Handout re Ideas for Applying Strategic Language to Situations Involving Homophobic Remarks	SJCSB-DA PRR 1687-91	Hearsay; relevance; authentication; 403
174			2011 ASCA Article entitled “The Children Already Know”	SJCSB-DA PRR 1697	Relevance; Hearsay Foundation/ authenticity 403
175			Sun Sentinel Article dated January 21, 2014, re Stonewall	SJCSB-DA PRR 1698-1700	Relevance; Hearsay Foundation/ authenticity; 403

176			Legally Speaking article entitled "Disciplining Students for Off-Campus Text Messaging/Social Networking"	SJCSB-DA PRR 1702-05	Relevance; Hearsay Foundation/ authenticity; 403
177			Brochure re Safe Schools of South Florida	SJCSB-DA PRR 1706-08	Relevance; Hearsay Foundation/ authenticity; 403
178			2014 Florida Statewide LGBTQ District Collaborative Conference Agenda	SJCSB-DA PRR 1709-13	Hearsay Foundation/ authenticity; 403
179			2009 California Safe Schools Coalition Research Brief 9 – Understanding Differences Between Schools in Overall LGBT School Safety	SJCSB-DA PRR 1714-17	Foundation/ authenticity
180			LRP Conference from October 27, 2016, re Transgender Students' Rights: Legal Issues and Practical Concerns for Your District	SJCSB-DA PRR 1722-30	Hearsay Foundation/ authenticity
181			Injunction Order from Texas v. US dated August 21, 2016	SJCSB-DA PRR 1740-61	Relevance; Hearsay; Foundation/ authenticity; 403
182			Email chain between C. McKendrick and M. Sterling re LGBTQ training dated December 1, 2016	SJCSB-DA PRR 1762	

183			2016 FAQ from National School Boards Association re Addressing a Transgender Student	SJCSB-DA PRR 1763	Hearsay Foundation/ authenticity; completeness; 403
184			Lambda Legal's "A Transgender Advocate's Guide to Updating and Amending School Records"	SJCSB-DA PRR 1764-67	
185			Duval County Public Schools Youth Risk Behavior Surveys from 2013	SJCSB-DA PRR 1839-1871	Relevance Hearsay Foundation/ authenticity; 403
186			Brochure entitled "I Think I Might Be Transgender, Now What Do I Do?"	SJCSB-DA PRR 1823-1838	Hearsay Foundation/ authenticity; 403
187			The Daytona Beach News-Journal article dated June 8, 2011, "Flagler Schools Expand Policies on Bullying and Harassment."	SJCSB-DA PRR 1872	Hearsay Foundation/ authenticity; 403
188			SJCSB Draft Policy 511.2 re Bullying and Harassment	SJCSB-DA PRR 1873-75	Hearsay; Relevance; authenticity
189			New York Department of Education Guidelines for Transgender Students	SJCSB-DA PRR 1876-78	Hearsay Foundation/ authenticity; 403
190			Article re Gender Neutral Bathrooms: (Hopefully) Coming to a City Near You	SJCSB-DA PRR 1879-80	Hearsay; Foundation/ authenticity; 403

191			Brochure re Gender Spectrum Services – Training and Support	SJCSB-DA PRR 1881-94	Hearsay Foundation/ authenticity; 403
192			Agenda, notes and other documents from May 13-15, 2015 Stonewall Conference in Ft. Lauderdale	SJCSB-DA PRR 1895-1927	Hearsay Authenticati on/Foundati on; 403
193			A Guide for Schools Responding to Questions About U.S. DOE Guidance on Rights of Transgender Students	SJCSB-DA PRR 1929-33	Hearsay Foundation/ authenticity; 403
194			Misc. Journal Articles re Transgender issues	SJCSB-DA PRR 1939-46	Relevance; Hearsay; Foundation/ authenticity; improper composite
195			Fact Sheet: Transgender & Gender Nonconforming Youth in Schools by the Sylvia Law Project	SJCSB-DA PRR 1947-50	Hearsay Foundation/ authenticity; 403
196			Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools	SJCSB-DA PRR 1951-62	Hearsay Foundation/ authenticity; 403
197			October 2015 ASCA School Counselor article “Transgender and Gender Nonconforming Students: Advocate for Best Practices”	SJCSB-DA PRR 1963-66	Hearsay Foundation/ authenticity; 403
198			2015 Abstract re G.G. v. Gloucester County School Board	SJCSB-DA PRR 1967	Relevance; Hearsay Foundation/ authenticity; completene s; 403

199			Draft Anti-discrimination Training Power Point re Gender Identity	SJCSB-DA PRR 1996-2001	Hearsay; Foundation/ authenticity; 403; completeness
200			Implementing Lessons that Matter – The Impact of LGBTQ-Inclusive Curriculum on Student Safety, Well-Being and Achievement	SJCSB-DA PRR 2002-2049	Hearsay Foundation/ authenticity; 403
201			SJCSB Policy 5.02 re Non-Discriminatory Admission of Students	SJCSB-DA PRR 2059	Relevance; hearsay Foundation/ authenticity 403; improper composite
202			SJCSB Policy 511.2 re Bullying and Harassment	SJCSB-DA PRR 2070-72	Relevance; hearsay Foundation/ authenticity 403; improper composite
203			U.S. Department of Health and Human Services web article re Stop Bullying and Creating a Safe Environment for LGBT Youth	SJCSB-DA PRR 2188-89, 2305-07	Hearsay Foundation/ authenticity; 403
204			Misc. Research compiled and reviewed by District personnel prior to implementation of Best Practices	SJCSB-DA PRR 2114-2236	Hearsay Foundation/ authenticity; improper composite; 403
205			Lambda Legal Publication entitled “Out, Safe & Respected”	SJCSB-DA PRR 2208-2236	Hearsay Foundation/ authenticity; 403

206			Lambda Legal Facts: Gays and Lesbian Youth in Schools	SJCSB-DA PRR 2204-07	Hearsay Foundation/ authenticity; 403
207			9 Things to Know About Title IX	SJCSB-DA PRR 2201-03	Relevance Hearsay Foundation/ authenticity; 403
208			MSNBC article dated April 30, 2014, entitled "Transgender Students Protected Under Title IX, DOE Says."	SJCSB-DA PRR 2199-2200	Hearsay Foundation/ authenticity; 403
209			US DOE Know Your Rights: Title IX Requires Your School to Address Sexual Violence	SJCSB-DA PRR 2204-07	Relevance Hearsay Foundation/ authenticity; 403
210			2014 Article re School Board Answers Transgender Students' Complaint re Gloucester High	SJCSB-DA PRR 2195-96	Hearsay Foundation/ authenticity; 403
211			SJCSB Policy 4.06 re Student Clubs and Organizations	SJCSB-DA PRR 2193-94	Relevance; 403
212			US DOE Questions and Answers on Title IX and Sexual Violence dated April 29, 2014	SJCSB-DA PRR 2135-2187	Relevance Hearsay Foundation/ authenticity; 403; improper composite
213			FHSAA January 2013 BOD Meeting Agenda Item re Proposed Gender Participation Policy	SJCSB-DA PRR 2237-39	Hearsay Foundation/ authenticity 403
214			US DOE Examples of Policies and Emerging Practices for Supporting Transgender Students – May 2016	SJCSB-DA PRR 2240-73	Hearsay Foundation/ authenticity; 403

215			GLSEN 2011 National School Climate Survey Executive Summary	SJCSB-DA PRR 2292-2304	Hearsay Foundation/ authenticity; 403
216			Abstracts of Safe Schools Improvement Act of 2013 and Student Non-Discrimination Act of 2013	SJCSB- DA PRR 2282	Relevance Hearsay Foundation/ authenticity; 403
217			Misc. News Articles re Orange, Volusia and Escambia Counties development of transgender Polices	SJCSB-DA PRR 2283-85	Hearsay Foundation/ authenticity; 403; improper composite
218			Misc. materials re Bullying in St. Johns County Schools	SJCSB-DA PRR 2308-11	Relevance Hearsay Foundation/ authenticity; 403; improper composite
219			San Francisco State University 2009 Publication re Helping Families with Lesbian, Gay, Bisexual and Transgender Children	SJCSB-DA PRR 2312-34	Hearsay Foundation/ authenticity; 403
220			2012 Publication: An Ally's Guide to Issues Facing LGBT Americans	SJCSB-DA PRR 2335-49	Relevance; hearsay Foundation/ authenticity; 403
221			An Ally's Guide to Terminology: Talking About LGBT People and Equality	SJCSB-DA PRR 2350-59	Relevance; Hearsay Foundation/ authenticity
222			Best Practices: A Teaching Tolerance Guide by the Southern Poverty Law Center	SJCSB-DA PRR 2360-63	Relevance; Hearsay Foundation/ authenticity; 403

223			Transgender Law Center - Transgender and Gender Non-conforming Youth – Recommendations for Schools	SJCSB-DA PRR 2364-69	Hearsay Foundation/ authenticity; 403
224			Student Codes of Conduct from other Florida school districts re Bullying and Harassment	SJCSB-DA PRR 2370-2382	Relevance; Hearsay Foundation/ authenticity; 403
225			Buzzfeed Article re GG. v. Gloucester County School Board	SJCSB-DA PRR 2383-85	Relevance; hearsay Authentication/Foundati on; 403
226			2012 NSBA publication re Respecting the Rights of Transgender Youths in the School System	SJCSB-DA PRR 2386-99	Hearsay Authentication/Foundati on; 403
227			Toronto District School Board Guidelines for the Accommodation of Transgender and Gender Non-Conforming Students and Staff	SJCSB-DA PRR 2400-29	Hearsay Authentication/Foundati on; 403
228			Misc. research and training materials re development and implementation of transgender policies.	SJCSB-DA PRR 2430-2532	Hearsay Authentication/Foundati on; improper composite
229			Seminar Materials for “Transgender Students in K-12: Navigating Accommodations and Avoiding Litigation”	SJCSB-DA PRR 2611-13	Relevance; hearsay Authentication/Foundati on; 403
230			Email chain between E. Kasper and L. Kunze dated November 7, 2017.	PLTF 2931-2933	



231			Social Media Postings by Plaintiff, E. Adams Kasper and S. Adams provided in response to discovery requests.	PLTF2934-3671	Relevance; Hearsay; 403; 404; foundation; improper composite exhibit
232			Duke Children's Hospital and Health Center Information for Informed Consent for Adolescents	PLTF 1097-1102	Relevance/Authentication/Foundation; incomplete
233			Treatment records from J. Asermely, LCSW, LCC	PLTF 835-838	Relevance; Hearsay Authentication/Foundation; improper composite; 403
234			Articles cited by Dr. Josephson in October 30, 2017, and November 3, 2017, Expert Reports	JOSEPHSON 001-522	Hearsay; improper composite exhibit 403
235			Articles cited by Dr. Hruz in November 2, 2017, Expert Report	HRUZ 1-249, 250-1455	Hearsay; improper composite exhibit ; 403

236			Article: "St. Johns County will continue to provide gender-neutral bathrooms" published May 18, 2016	<a href="http://www.actionnewsjax.com/news/local/st-johns-county-says-they-will-SJCSB-DA-18992-18996-continue-to-provide-gender-neutral-bathrooms/291985863">http://www.actionnewsjax.com/news/local/st-johns-county-says-they-will-SJCSB-DA-18992-18996-continue-to-provide-gender-neutral-bathrooms/291985863</a>	Relevance; hearsay; not produced; 403
237			February 22, 2017, Dear Colleague letter issued by U.S. Departments of Justice and Education	<a href="https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.docx">https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.docx</a>	Not previously produced; relevance; completeness
238.			Plaintiff YouTube Video Titled, "MY DYSPHORIA"	PLAINTIFF 0001113	Relevance; Hearsay; completeness (also need PLAINTIFF 1109 11010; 1114; 1115); 403; improper lay opinion
239.			Plaintiff YouTube Video Titled, "Mental Health + Resources)	PLAINTIFF 0001112	Relevance; completeness (also need PLAINTIFF 1109 11010; 1114; 1115); 403

240.			Plaintiff 4/11/17 Facebook Post re: Kroger Bathrooms	PLAINTIFF 0003012	Hearsay; relevance
241.			Plaintiff 3/23/17 Facebook Post re: Gender Neutral- Bathrooms	PLAINTIFF 0003030	Hearsay; relevance
242.			Plaintiff's 2/17/17 Facebook Post re: Medications	PLAINTIFF 0003074	Hearsay; relevance
243.			Plaintiff's parent's Facebook Post w/ media	PLAINTIFF 0003140	Hearsay; relevance
244.			Plaintiff 3/10/17 Facebook Post re: 3 <sup>rd</sup> bathroom	PLAINTIFF 0003288	Hearsay; relevance
245.			Billing Records from Duke Health	Awaiting records	Not produced; Relevance; Hearsay; foundation; authentication ;403; improper composite exhibit
246.			Article entitled "Transseksualiteit en Psychotherapie" (Dutch version)	Adkins Depo Exh 4	Relevance; Hearsay; lack of certified translation
247.			Article entitled "Transexuality and Psychotherapy" (English version)	Adkins Depo Exh 5	Relevance; Hearsay; authentication ; lack of certified translation
248.			Attorney General Memorandum dated October 4, 2017	SJCSB-DA 18987-18988	Relevance; hearsay; completeness

249.			<p>(Proposed) Equality Act, 115<sup>th</sup> Congress: Introduced as S 1006 and HR 2282</p>	<p><a href="https://www.congress.gov/bill/115th-congress/senate-bill/1006/text?q=%7B%22search%22%3A%5B%22%5C%22Title+VII%5C%22+AND+%5C%22gender+identity%5C%22%22%5D%7D&amp;r=1">https://www.congress.gov/bill/115th-congress/senate-bill/1006/text?q=%7B%22search%22%3A%5B%22%5C%22Title+VII%5C%22+AND+%5C%22gender+identity%5C%22%22%5D%7D&amp;r=1</a></p> <p><a href="https://www.congress.gov/bill/115th-congress/house-bill/2282/text?q=%7B%22search%22%3A%5B%22%5C%22Title+VII%5C%22+AND+%5C%22gender+identity%5C%22%22%5D%7D&amp;r=2">https://www.congress.gov/bill/115th-congress/house-bill/2282/text?q=%7B%22search%22%3A%5B%22%5C%22Title+VII%5C%22+AND+%5C%22gender+identity%5C%22%22%5D%7D&amp;r=2</a></p>	<p>Relevance; Hearsay; Not produced; completeness</p>
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<p>250 .</p>			<p>(Proposed) Equality Act, 114<sup>th</sup> Congress; S 1858 and HR 3185</p>	<p><a href="https://www.congress.gov/bill/114th-congress/senate-bill/1858/text?q=%7B%22search%22%3A%5B%22114hr3185%22%5D%7D&amp;r=2">https://www.congress.gov/bill/114th-congress/senate-bill/1858/text?q=%7B%22search%22%3A%5B%22114hr3185%22%5D%7D&amp;r=2</a></p> <p><a href="https://www.congress.gov/bill/114th-congress/house-bill/3185/text?q=%7B%22search%22%3A%5B%22114hr3185%22%5D%7D&amp;r=3">https://www.congress.gov/bill/114th-congress/house-bill/3185/text?q=%7B%22search%22%3A%5B%22114hr3185%22%5D%7D&amp;r=3</a></p>	<p>Relevance; Hearsay; Not produced completeness</p>
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251.			<p><b>(Proposed) Student Non-Discrimination Act of 2015, S439 and HR 846</b></p>	<p><a href="https://www.congress.gov/bill/114th-congress/senate-bill/439/text?q=%7B%22search%22%3A%5B%22114s439%22%5D%7D&amp;r=1">https://www.congress.gov/bill/114th-congress/senate-bill/439/text?q=%7B%22search%22%3A%5B%22114s439%22%5D%7D&amp;r=1</a></p> <p><a href="https://www.congress.gov/bill/114th-congress/house-bill/846/text?q=%7B%22search%22%3A%5B%22114s439%22%5D%7D&amp;r=2">https://www.congress.gov/bill/114th-congress/house-bill/846/text?q=%7B%22search%22%3A%5B%22114s439%22%5D%7D&amp;r=2</a></p>	<p>Relevance; Hearsay; Not produced; completeness</p>
252.			<p><b>All documents listed by Plaintiff in Plaintiff's Disclosures</b></p>		<p>Objections will need to be determined on a case by case basis</p>
253.			<p><b>Signed Statements from Individuals Regarding Separation of Bathrooms Based on Birth Gender</b></p>	<p>SJCSB-DA 18997-19020</p>	<p>Not previously produced; Hearsay; 403; Foundation/authentication; subject to stipulation; foundation/authentication</p>

DE 135

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

DREW ADAMS, etc.,

Plaintiff,

vs.

Case No. 3:17-cv-739-J-32JBT

THE SCHOOL BOARD OF  
ST. JOHNS COUNTY, FLORIDA,

Defendant.

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**HONORABLE TIMOTHY J. CORRIGAN, United States District Judge**

Courtroom Deputy: Marielena Diaz

Court Reporter: Shannon Bishop

Counsel for Plaintiffs:

Jennifer Altman

Tara L. Borelli

Kirsten L. Doolittle

Shani Rivaux

Markenzy Lapointe

Counsel for Defendant:

Terry Joseph Harmon

Lisa B. Fountain

Robert Jacob Sniffen

Kevin Charles Kostelnik

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**CLERK'S MINUTES**

PROCEEDINGS: Final Pretrial Conference

Discussion regarding pretrial matters.

- Order to enter.

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DATE: December 1, 2017

TIME: 10:32 a.m. - 4:45 p.m.  
(Recess 12:34 p.m. - 3:38 p.m.)



DE 137

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

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

Plaintiff,

v.

THE SCHOOL BOARD OF ST. JOHNS  
COUNTY, FLORIDA,

Defendant.

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

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**PLAINTIFF’S PRELIMINARY FINDINGS OF FACT & CONCLUSIONS OF LAW**

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Pursuant to the Court’s Case Management and Scheduling Order [Dkt. 59], Plaintiff respectfully submits the following Proposed Preliminary Findings of Fact and Conclusions of Law, which incorporate Plaintiff’s response to Defendant’s Motion to Dismiss [Dkt. 54].

**I. PLAINTIFF’S PROPOSED FINDINGS OF FACT**

**A. Parties.**

1. Plaintiff Drew Adams, a minor, sues by and through his mother, Erica Adams Kasper. Drew attends Allen D. Nease High School (“Nease”) in Ponte Vedra, Florida, within the St. Johns County School District (the “District”).<sup>1</sup>

2. Drew is 17 years old, and a junior in high school. Drew is a boy. He is also

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<sup>1</sup> Proposed findings of fact without citations to record evidence constitute a proffer of the evidence Plaintiff will introduce at trial. Plaintiff attaches the expert reports cited herein, but to avoid unnecessarily burdening the Court, has not submitted other cited discovery materials. Plaintiff will gladly submit those materials at the Court’s request.

transgender. [Drew Decl. Dkt. 22-1 ¶¶ 7-8; 30(b)(6) Tr. 221:12-18] He is denied access to the boys' restrooms at Nease because he is a transgender boy.

3. Defendant The School Board of St. Johns County, Florida (the "School Board" or "Defendant") operates, supervises, and controls all public schools within the St. Johns County School District (the "District"), including Nease. [RFA 5-7] Defendant has the authority to establish policies for the effective operation of the public schools in the district. [RFA 8] Defendant is a "person" acting under color of state law within the meaning of 42 U.S.C. § 1983 [RFA 1], and is subject to civil suits [RFA 2].

4. Defendant receives federal financial assistance from the U.S. Department of Education, and certain of its education programs and activities benefit from that assistance, making it subject to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* ("Title IX"). [RFA 3-4; Dkt. 116 at 22 ¶ 2 (stipulation in Joint Final Pretrial Statement)]

**B. Plaintiff's Expert Testimony About Drew, Transgender Adolescents, and Gender Dysphoria.**

5. Plaintiff offered the testimony of Dr. Deanna Adkins, Drew's treating endocrinologist. Dr. Adkins received her medical degree from the Medical College of Georgia in 1997, and has been licensed to practice medicine in North Carolina since 2001. [Ex. A, Adkins Rpt. ¶¶ 1-2] Dr. Adkins is a Pediatric Endocrinologist at Duke University School of Medicine, where she is Fellowship Director of Pediatric Endocrinology. [*Id.* ¶ 1] She also is Director of the Duke Center for Child and Adolescent Gender Care (the "Clinic"), which she founded in 2015. [*Id.* ¶ 5] Dr. Adkins has treated approximately 300 intersex and transgender patients, and began caring for those patients in her routine practice many years prior to opening the Clinic. [*Id.* ¶¶ 5-6] Dr. Adkins is regularly called upon by colleagues to

assist with the sex assignment of infants where their sex-related characteristics are not completely aligned as male or female. [*Id.* ¶ 8] Dr. Adkins has extensive experience in medical treatment of transgender adolescents and the medical understanding of sex-related characteristics. Dr. Adkins has the qualifications and experience to testify on these topics and the Court found her testimony reliable and relevant.

6. Plaintiff also offered the testimony of Dr. Diane Ehrensaft, a practicing developmental and clinical psychologist for more than 35 years; she specializes in working with children and adolescents experiencing gender dysphoria and their families. Dr. Ehrensaft has provided consultation, therapy and evaluations to more than 500 transgender and gender nonconforming children, and has consulted with more than 200 mental health professionals across the United States to aide them in treating this patient population. Dr. Ehrensaft, along with others, founded the Child and Adolescent Gender Center at the University of California, San Francisco (“UCSF”) Benioff Children’s Hospital. [Ex. B, Ehrensaft Exp. Rpt. ¶¶ 1-4] She serves on the Board of Directors of Gender Spectrum, a national organization offering educational, training, and advocacy services to schools and youth-serving organizations to become more gender inclusive. [*Id.* ¶ 6] Dr. Ehrensaft is also an adjunct professor at UCSF and has taught courses in The Treatment of Gender-Nonconforming Children; The Emotional Development of Gender-Nonconforming Children; Interdisciplinary Support of Gender-Nonconforming and Transgender Children; Parenting a Gender-Nonconforming/Transgender Child. [*Id.* ¶ 8] She has published numerous books and articles, including peer-reviewed articles, on the subjects relevant to the issues in this case and participated directly in studies relating to medical and mental health outcomes of

gender nonconforming youth. [*Id.* ¶¶ 9-10] Dr. Ehrensaft has the qualifications and experience to testify on these topics and the Court found her testimony reliable and relevant.

7. Everyone has a gender identity, which is a person's inner sense of belonging to a particular gender, such as male or female.<sup>2</sup> [Ex. A, Adkins Rpt. ¶¶ 15, 17; Ex. B, Ehrensaft Rpt. 18; Hruz Depo. Tr. 148:19-23; *id.* at 155:1-3; Pl.'s Ex. 26, American Psychiatric Association, Diagnostic Criteria for Gender Dysphoria, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)*] Gender identity is a deeply felt and core component of a person's identity. [Ex. A, Adkins Rpt. ¶ 16; Ex. B, Ehrensaft ¶ 18]

8. Gender identity is not a choice [Hruz Tr. 149:24-25], and cannot be voluntarily altered; it is widely considered unethical to attempt to change the gender identity of others. [Ex. A, Adkins Rpt. ¶¶ 20-21; Ex. B, Ehrensaft Rpt. ¶ 24]

9. Although research regarding the precise determinant of gender identity is still ongoing, evidence suggests, and Defendant's experts agreed, that gender identity has a biological component. [Ex. A, Adkins Rpt. ¶ 22; Hruz Tr. 147:7-19; Josephson Tr. 259:12-16; Pl.'s Ex. 26 (DSM 5)]

10. At birth, infants are generally classified as male or female based solely on observation of their external genitalia. [Ex. A, Adkins Rpt. ¶ 14; Josephson Tr. 17:8-21] Most individuals' gender identity aligns with the sex they were assigned at birth. [Ex. A, Adkins Rpt. ¶ 14]

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<sup>2</sup> Plaintiff respectfully refers the Court to *Doe v. Boyertown Area Sch. Dist.*, No. CV 17-1249, 2017 WL 3675418 (E.D. Pa. Aug. 25, 2017), which entered similar factual findings about transgender adolescents, treatment for gender dysphoria, and access to restrooms matching one's gender identity after an evidentiary hearing on a preliminary injunction. *Id.* at \*35-41 ¶¶ 322-368; *see also Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 274 n.6 (W.D. Pa. 2017) (designating findings of fact in that decision).

11. For some people, however, external genitalia are not an accurate determinant of their sex. These include transgender people, whose gender identity differs from the sex they were assigned at birth [Ex. A, Adkins Rpt. ¶ 12; Ex. B, Ehrensaft Rpt. ¶ 16]; and intersex people, who have a mixture of sex characteristics typically associated with both “male” and “female” sex designations [Ex. A, Adkins Rpt. ¶ 13].

12. For transgender individuals, the lack of alignment between their gender identity and their sex assigned at birth can cause significant distress. [Ex. A, Adkins Rpt. ¶ 18; Ex. B, Ehrensaft Rpt. ¶ 25] Individuals with this distress can be diagnosed with gender dysphoria. [Ex. A, Adkins Rpt. ¶ 19; Ex. B, Ehrensaft Rpt. ¶ 26]

13. Gender dysphoria is defined by the American Psychiatric Association’s Diagnostic and Statistical Manual 5 (“DSM 5”) as a marked incongruence between one’s experienced/expressed gender and assigned gender, of at least 6 months’ duration, frequently manifested by the following: A strong desire to be of the other gender or an insistence that one is the other gender, possibly a strong dislike of one’s sexual anatomy, and/or a strong desire for the primary and/or secondary sex characteristics that match one’s experienced gender. [Ex. A, Adkins Rpt. ¶ 19; Pl.’s Ex. 26 (DSM 5)]

14. There are authoritative standards for caring for individuals who are transgender or suffer from gender dysphoria. These have been published by multiple medical organizations, including the Standards of Care Version 7 by the World Professional Association for Trans gender Health (“WPATH Standards of Care”), Endocrine Treatment of Gender Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline, and the Guidelines for Psychological Practice with Transgender and Gender

Nonconforming People by the American Psychological Association. [Ex. A, Adkins Rpt. ¶ 27; Ex. B, Ehrensaft Rpt. ¶ 11; Ex. C, Ehrensaft Rpt. ¶ 3]

15. The goal of treatment is to alleviate the gender dysphoria by aligning the adolescent's lived experience and body with his or gender identity. [Ex. A, Adkins Rpt. ¶ 37; Ex. B, Ehrensaft Rpt. ¶ 37]

16. Being transgender is a normal developmental variation, and when the dysphoria is properly treated, nothing about being transgender limits the individual's capacity to have a fulfilling and productive life as a contributor to society. [Ex. A, Adkins Rpt. ¶¶ 24-25; Ex. B, Ehrensaft Rpt. ¶ 22]

17. Defendant offered the testimony of Dr. Allan Josephson and Dr. Paul Hruz. Neither witness treats transgender patients, has examined Drew, or has any basis to question Drew's transgender status or his diagnosis of gender dysphoria and prescribed treatment. [Josephson Tr. 9:25-10:11, 19-24; 14:17-15:1; 16:18-19; Hruz Depo. Tr. 17:9-18:2; *id.* at 46:23-47:22] Dr. Hruz has never treated a patient who is transgender or has gender dysphoria. [Hruz Rpt. Dkt. 128-2 ¶ 8; Hruz Tr. 24:11-24:14; *id.* at 25:20-25:23] Similarly, Dr. Hruz has not conducted any independent research about transgender youth or gender dysphoria, nor has he published peer-reviewed literature on this subject. [Hruz Tr. 61:17-64:7; *id.* at 295:19-295:23] Instead, Dr. Hruz relies solely on his review of studies for purposes of his expert opinion. Dr. Hruz's opinions regarding transgender people, as he admits, are contrary and squarely at odds with the generally accepted opinions, guidelines, and standards of care of the medical and scientific community. [Hruz Tr. 58:21-61:9]

18. Dr. Josephson admitted that he is not an expert in treating transgender patients

or in treating patients with gender dysphoria, and conceded that he is not entrusted to treat transgender patients at his University's Gender Clinic. [Josephson Tr. 86:1-18; 88:1-13; 102:9-14; 101:8-23; 114:25-115:8; 177:7-12; 185:11-186:1] Dr. Josephson's report opined that transgender children meet the criteria for a "delusion," Dkt. 85-1, but when pressed during deposition, he disavowed and contradicted some of his opinions, agreeing for example that if Drew has a birth certificate and driver's license stating that he is male (as Drew does), "that would allow him to say then that he – he is male" and "he would be male." [Josephson Tr. 15:17-17:1; 36:14-37:10]

19. Both Dr. Josephson and Dr. Hruz advocated in their reports that efforts be made to change transgender children's gender identity, and that medical treatment be withheld for their gender dysphoria. [Josephson Tr. 112:8-113:3; 115:9-23; 117:4-9; Hruz Rpt. Dkt. 128-2 ¶ 68] Such efforts, often known as "conversion therapy," fall below the standard of care for transgender children and adolescents, and are widely considered unethical and ineffective. [Ex. B, Ehrensaft Rpt. ¶ 24; Ex. A, Adkins Rpt. ¶¶ 21, 41; Pl's Ex. 37, 48] These methods are illegal in many states and cities. [Ex. C, Ehrensaft Rebuttal Rpt. ¶¶ 17-19] The Court gave the testimony of Dr. Josephson and Dr. Hruz little or no weight, finding that their testimony lacked credibility and reliability, and falls below the standards for admissibility in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) for the reasons stated in Plaintiff's motions [Dkt. 127-128], which will be addressed in a separate order.

**C. Drew's medical, legal, and social transition.**

20. Like non-transgender boys, Drew has a male gender identity. [Drew Decl. Dkt. 22-1 ¶ 16]



21. Drew has been diagnosed with gender dysphoria. [Drew Decl. Dkt. 22-1 ¶ 13; Ex. A, Adkins Rpt. ¶ 13]

22. The standard of care for treating gender dysphoria includes living consistently with one's gender identity in all aspects of one's life. To accomplish that transgender people undertake a process that includes social, legal, and medical transition. [Ex. A, Adkins Rpt. ¶¶ 28-30; Ex. B, Ehrensaft Rpt. ¶¶ 31-33]

a. Drew's social transition included cutting his hair short, wearing clothing typically associated with males, using male pronouns, and using male restrooms in all settings but school. [Drew Decl. Dkt. 22-1 ¶ 11; Scott Tr. 30:25-32:3]

b. Drew's legal transition included correcting his driver's license and birth certificate to reflect his male gender identity. [Pl. Exs. 3-4]

c. Drew's medical transition included hormone therapy, which deepened his voice and will eventually give him facial hair; and a double-mastectomy, which gave him a masculine chest.

23. Drew is widely known and accepted as a boy in all aspects of his life. This includes at Nease, where fellow students, staff, and teachers refer to Drew with male pronouns. [30(b)(6) Tr. 140:24-140:4; RFA 52]

24. When Drew first came out to his parents, both Scott and Erica had already suspected that he might be transgender. Erica and Scott did some research to better understand what it means to be transgender. [Scott Tr. 25:22-26:1] As they absorbed this information, a number of cues from Drew's childhood started to make more sense, *e.g.*, Drew's strong aversion to wearing dresses, and refusal even to open gifts like Barbie dolls.

[Scott Tr. 23:5-24:7]

25. Erica and Scott consulted numerous mental health and medical professions, several of which diagnosed Drew with gender dysphoria and provided him with gender-affirming treatment, in accordance with the WPATH Standards of Care. [Pl.'s Ex. 132-35]

26. Once Drew began treatment, his mood and quality of life improved so dramatically that it was “as if someone had flipped a light switch.” [Erica Decl. ECF No. 22-2 ¶ 7] Drew became less anxious and less depressed. His love of life returned.

**D. Defendant’s policies and practices relating to restrooms and other sex-designated facilities and activities.**

27. All individuals, regardless of whether they are transgender, need access to restrooms that match their gender identity. In accordance with his male gender identity, Drew began using the boys’ restrooms at Nease at the beginning of his freshman year, and continued to use them for approximately six weeks. [Drew Decl. Dkt. 22-1 ¶ 21] Drew always used a stall, as he does in every boys’ restroom he uses outside of school. [*Id.* ¶ 20] In every material way, Drew’s restroom use is just like that of other boys; he enters the restroom, relieves himself, washes his hands, and leaves.

28. On or around September 22, 2015, the school allegedly received a report from two female students that they had seen Drew entering the boys’ restroom. [30(b)(6) Tr. 19:24-20:6; *id.* 20:9-12; *id.* 100:17-20] There is no documentary evidence of this alleged complaint and neither the District nor Nease officials has been able to identify the students who made this alleged complaint. Before Drew filed suit, not a single boy or parent of a boy complained about Drew’s restroom use. [30(b)(6) Tr. 100:22-101:5; *id.* 101:14-20; *id.* 139:10-16; *id.* 101:21-25] Apart from the mere fact of Drew’s presence in the boys’

restroom, no one, male or female, ever complained that Drew had engaged in any misconduct while in the restroom. [RFA 25-26, 31-32; Dresback Tr. 120:7-21]

29. Drew was pulled out of class to meet with guidance counselors after the report about his restroom use. [Drew Decl. Dkt. 22-1 ¶ 21] Drew was instructed during that meeting that he was banned from the boys' restroom, and limited to use of the girls' restroom or gender neutral restrooms. *Id.*

30. Drew was given this instruction pursuant to an unwritten policy, and a written set of guidelines entitled ["Best Practices"] (the "guidelines"), adopted by the District.

31. The District's unwritten policy requires students to use restrooms that match their "biological sex." [30(b)(6) Tr. 33:23-34:1; *id.* 36:4-6; *id.* 27:24-28:1] Defendant defines "biological sex" as the individual's sex assigned at birth "based on reproductive anatomy." [30(b)(6) Tr. 55:25-56:10]

a. Dr. Adkins and Dr. Ehrensaft offered testimony that "biological sex" is not considered a medically accurate term, since each individual has multiple sex-related characteristics (*e.g.*, hormones, chromosomes, internal sex organs, external sex organs, and gender identity), which may or may not all be aligned. [Hruz Tr. 199:12-200:11; Ehrensaft Rpt. ¶ 17] When those characteristics are not all aligned, the most important determinant of a person's sex is gender identity. [Ex. B, Ehrensaft Rpt. ¶ 17; Ex. A, Adkins Rpt. ¶ 43]

b. Given that Drew is treated by peers and school personnel alike as a boy, is on testosterone, has a deep voice, and has undergone a double-mastectomy, using the girls' restroom would be intolerable for him. It would also violate Drew's privacy, by indiscriminately disclosing his transgender status to all other girls in the restroom. While

Defendant claims that its policy and guidelines treat all students equally based on “biological sex,” Drew is treated differently from other non-transgender students by being relegated to a gender neutral restroom. [30(b)(6) Tr. 224:4-11; 161:14-21]

32. The District’s guidelines allow the use of a gender neutral restroom as an additional accommodation, in addition to the restroom matching the student’s birth-assigned sex. Although the guidelines do not respect transgender students’ gender identity for restroom use, they do recognize it in a variety of other ways. The guidelines provide that schools will: use the pronouns matching a student’s consistently-asserted gender identity upon request of a student or parent [RFA 51]; update student records to reflect a transgender student’s name and gender upon receipt of a court order [30(b)(6) Tr. 143:22-144:7; Pl.’s Ex. 122]; use a student’s chosen name on unofficial school records even without a court order or birth certificate [Pl.’s Ex. 122]; allow transgender students to wear clothing in accordance with their consistently-asserted gender identity [Pl.’s Ex. 122]; not unnecessarily disclose a student’s transgender status to others [Pl.’s Ex. 122]; allow students to publicly express their gender identity [Pl.’s Ex. 122]. The guide also cites Florida High School Athletics Association policy providing that students should be allowed to participate in athletics consistent with their gender identity. [Pl.’s Ex. 122]

33. If transgender students violate the policy and guidelines by using the restroom matching their gender identity more than once, they are subject to discipline. [30(b)(6) Tr. 150:1-8]

34. The District is aware of at least 16 transgender students in its schools; at least seven of those students have asked for access to restrooms matching their gender identity.

[Upchurch Tr. 76:13-19]

35. Erica communicated with Nease and District officials to try to resolve this issue informally, and when her efforts were unsuccessful, she filed a complaint with the U.S. Department of Education, Office for Civil Rights (“OCR”). After the OCR complaint languished, Drew filed the instant suit.

**E. The Harms Visited on Drew by Defendant’s Restroom Policy.**

36. Failing to recognize and support a transgender student’s gender identity sends a message—both to the transgender student and to others—that the transgender student is different from his or her peers and needs to be segregated, causing the transgender student to experience shame. [Ex. B, Ehrensaft Rpt. ¶¶ 39-40] Refusing to allow a transgender person to fully transition in all aspects—or deciding that he/she cannot be affirmed in a particular area, like in bathroom use—is detrimental and interferes with social transition. [Ex B, Ehrensaft Rpt. ¶¶ 39-40]

37. Dr. Ehrensaft interviewed Drew Adams, and she concluded that his exclusion from the boys’ restroom has had a significant impact on him, causing him anxiety, embarrassment, and otherwise stigmatizing him because he is transgender. [Ex. B, Ehrensaft Rpt. ¶ 50] Drew reported that the humiliation of having to walk past the boys’ restroom that all other boys are permitted to use causes Drew frequently to avoid restroom use, moderate his fluid intake, and miss valuable class time to use the restroom. [Ex. B, Ehrensaft Rpt. ¶ 50] Dr. Ehrensaft concluded that this prohibition causes him increased anxiety. [Ex. B, Ehrensaft Rpt. ¶ 50]

38. As Drew’s treating endocrinologist, Dr. Adkins prescribed that Drew

complete his social transition by living consistent with his gender identity in all aspects of life, including using the boys' restroom. Denying Drew access to the boys' restroom interferes with that prescribed medical treatment. The Pediatric Endocrine Society views denying access to the boys' restroom as a human rights abuse, and the American Medical Association has adopted a position statement supporting restroom use in accordance with gender identity.

39. When Drew is mis-gendered (*i.e.*, referred to as a girl rather than a boy), it is harmful to him, and can cause him to feel anxious and depressed. [Scott Tr. 39:9-40:6; Drew Tr. 82:16-83:13] Erica testified that she and Drew have discussed the restroom exclusion countless times, and that she has observed that Drew experiences the school's differential treatment of him as a profound negation of his identity as a boy, which is painful and difficult for him. [Dkt. 22-2 ¶ 14]

40. Additionally, to avoid the stigmatizing experience of having to use a gender neutral restroom, Drew restricts his liquid intake, and sometimes will hold his bladder.

**F.** Nease does not have a gender neutral restroom adjacent to each boys' restroom, or each girls' restroom. [RFA 77-78] Drew must walk a longer distance to use the gender neutral restroom compared to his male peers, who have access to restrooms that are both greater in number, and closer to many of Drew's classes, than the gender neutral restrooms. Because it is not possible to access the more distant gender neutral restrooms solely during the breaks between his classes, Drew must sometimes choose between missing class to use them, or the stress and anxiety of holding his bladder in class instead of being able to concentrate fully on his class. Additionally, Drew is deprived of ready access to

gender neutral restrooms several days a week during the lunch hour, when the school has chosen to restrict students to a specific limited area to better supervise them. That area has no gender neutral restroom. Drew could leave the area if he sought permission, but doing so would call unwanted attention to him since no other student is permitted to leave.

**Defendant's Purported Governmental Interests.**

41. Defendant asserts that the governmental interests supporting its policy and guidelines consisting of an umbrella interest in student welfare, with the specific components of that interest constituting the protection of student (1) privacy and (2) safety. [30(b)(6) Tr. 78:7-10; *id.* 95:3-7] Several District and Nease administrators admitted that they do not have any valid interest in interfering with a transgender student's medical treatment of their gender dysphoria. [See, e.g., Dresback Tr. 115:13-20]

a. **Privacy:** Defendant's privacy interest is purportedly intended to protect the privacy of non-transgender individuals using the restrooms at Nease. [30(b)(6) Tr. 86:21-25] The interest derives from the "the values and expectations of St. Johns County students and their families" that boys will not enter the girls' restroom, and vice versa. [30(b)(6) Tr. 85:23-86:18] Among these values is that "North Florida is more conservative than South Florida," [30(b)(6) Tr. 88:2-7], and that the district is "in a pretty religious area." [Kunze Tr. 22:8-18] The guidelines were developed by a St. Johns County School District task force, which was influenced by those community values. [30(b)(6) Tr. 156:22-157:8] The task force did not, as part of its work, consider allowing transgender students to access restrooms matching their gender identity. [30(b)(6) Tr. 170:4-11]

i. Defendant's privacy interest in its restroom policy and

guidelines also includes protecting students who are “naked or partially naked from exposure to the opposite sex.” [30(b)(6) Tr. 225:11-13] But on the occasions where a student might change in a restroom, the student can do so in a stall or a gender neutral restroom. [30(b)(6) Tr. 234:25-235:13]

ii. All boys’ and girls’ restrooms at Nease contain stalls with doors that close and lock. [30(b)(6) Tr. 84:13-20; *id.* 201:14-19; RFA 57] All students who use a girls’ restroom at Nease must use a stall when relieving themselves. [RFA 58] Defendant confirmed that it has not added partitions between the urinals in the boys’ restroom, but could do so. [30(b)(6) Tr. 201:20-202:7] Any boy who wishes to use a stall for additional privacy can do so.

iii. Any student at Nease who wants additional privacy, for any reason, can use a gender neutral restroom, regardless of whether that student is transgender. [30(b)(6) Tr. 106:11-16; RFA 59]

iv. Associate Superintendent for Student Support Services  
Dresback agrees that transgender students have a right of privacy too. [Dresback Tr. 138:2-5]

b. **Safety:** Defendant’s purported interest in safety is two-fold: First, Defendant recognizes that transgender children are vulnerable to bullying by others and believes that separating them from other students in restrooms will keep them safe. [30(b)(6) Tr. 81:22-82:16] Second, Defendant suggests that someone “could feign being transgender to get into the opposite bathroom to take pictures or peep or whatever.” [30(b)(6) Tr. 93:16-20] But Defendant conceded that the second concern is “not number one on [the] list,” and that no one “sees Drew Adams as a threat.” [30(b)(6) Tr. 93:22-24; Dresback Tr. 126:5-9; *id.*



132:11-133:16; *id.* 134:20-135:8] Defendant's concern is "[p]rimarily" for the safety of transgender individuals. [30(b)(6) Tr. 93:25-94:2]

i. Defendant also suggests that the policy and guidelines are intended to prevent an older male from sexually assaulting a younger female [30(b)(6) Tr. 226:12-18], but the District has a code of conduct which prohibits any kind of misconduct or crime, including assault [30(b)(6) Tr. 233:7-19; RFA 28], and Florida's criminal laws may apply to criminal conduct on campus as well [RFA 30]. Defendant is not aware of any instances of sexual assault in the District involving a transgender man, and concedes that transgender people are not more prone to committing assault than any other person. [30(b)(6) Tr. 233:7-234:13]

ii. The school also has a duty to protect transgender students' safety. After an individual transitions, and is living consistent with their gender identity, it can be dangerous for them to continue to use restrooms that match their sex assigned at birth as they would be at risk of bullying and injury. [Ex. A, Adkins Rpt. ¶ 29; Ex. B]

42. As a practical matter, the school accepts as a student's "biological sex" the gender designated in their enrollment paperwork, in the student's birth certificate, and in other school records. [30(b)(6) Tr. 56: 20-23; *id.* 63:21-64:4]

43. The school does not undertake any protocol or effort to verify the student's sex as it appears in the enrollment paperwork and the student's records. [30(b)(6) Tr. 56:25-57:3] The District does not routinely keep records of, or ask students to identify, their chromosomes, external sex organs, or internal sex organs. [RFA 62-67] Nor does the District routinely ask students if they are intersex. [RFA 68] The District does not inspect

students' anatomy before they use District restrooms. [RFA 69; Dresback Tr. 137:17-19]

44. Apart from the purported report by two girls about Drew's restroom use, Defendant is not aware of any complaints in the District before this lawsuit about any transgender students using a restroom that matches their gender identity. [30(b)(6) Tr. 106:25-108:3, 108:12; 139:22-140:11; *id.* 148:17-23; *id.* 154:12-18; *id.* 230:5-20; Forson Tr. 61:22; *id.* 62:3; *id.* 68:22]

45. After the lawsuit, Defendant received comments from parents supporting Defendant's policy. [30(b)(6) Tr. 108:17-19] At least some of them were prompted by a press release from a member of the St. Johns County Republican Party entitled, "LBGT Bullies Sue St. Johns Schools to Force Transgender Bathrooms." [30(b)(6) Tr. 108:17-19; 109:23-110:12; Pl.'s Ex. 3]

46. Plaintiff also introduced the testimony of three school administrators with experience implementing inclusive policies for transgender students. Dr. Thomas Aberli served as Principal at J. M. Atherton High School in Louisville, Kentucky when the school adopted a policy in 2014 that respects students' gender identity. Michaelle Valbrun-Pope is the Executive Director for Student Support Initiatives for Broward County Public Schools ("BCPS") in Florida, which also adopted an inclusive policy several years ago. BCPS is the sixth largest district in the nation, with more than 271,500 students. Michelle Kefford is the Principal of the Charles W. Flanagan High School, a school within BCPS. Ms. Valbrun-Pope helped develop BCPS's non-discrimination policy, and Principal Kefford helps train educators within BCPS on the policy. All of these policies extend to restrooms, locker rooms, and all other sex-separated spaces and activities.

47. Dr. Aberli, Ms. Valbrun-Pope, and Principal Kefford all testified that the process of implementing their policies was neither difficult nor costly, and that their policies have improved their ability to carry out their mission as educators to help every student to thrive. None have experienced problems under their policies with privacy or safety.

**G. The Level of Scrutiny for Transgender Status Discrimination.**

48. Transgender people have been subjected to a long history of discrimination that continues into the present day. [Pl.’s Ex. 1 and 2; Ex. B, Ehrensaft Rpt. ¶ 22; Dkt. 114] This history of discrimination includes recent state legislation targeting them for discrimination in public restrooms [Ex. A, Adkins Rpt. ¶ 48; Dkt. 114-2], and a ban imposed by this administration on their military service. [Dkt. 114-1] The DSM 5 acknowledges that gender dysphoria is “associated with high levels of stigmatization, discrimination, and victimization.” [Pl.’s Ex. 26; *see also* Pl.’s Ex. 1 and 2; Ex. B, Ehrensaft Rpt. ¶ 22; Dkt. 114]

49. As described above, being transgender does not impair one’s ability to be a fully productive and contributing member of society. [Ex. A, Adkins Rpt. ¶¶ 24-25; Ex. B, Ehrensaft Rpt. ¶ 22]

50. Transgender people are a small, discrete minority group, easily identifiable both by self-report and professional assessment. [Ex. B, Ehrensaft Rpt. ¶ 22; Adkins Rpt. ¶ 42; Hruz Tr. 163:21-165-7] Additionally, gender identity is innate, generally fixed, and not subject to voluntary change. [Ex. A, Adkins Rpt. ¶¶ 20-21; Ex. B, Ehrensaft Rpt. ¶¶ 23-24]

51. Transgender people also are relatively politically powerless. [Dkt. 114]

**II. PROPOSED CONCLUSIONS OF LAW**

**A. Equal Protection**

1. The Fourteenth Amendment Equal Protection Clause provides that no State may “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

2. The Equal Protection Clause is fully applicable to Defendant and public school districts established and maintained under the laws of the State of Florida. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258 (2009); *see also West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943).

3. “Where a governmental entity, like Defendant, by its conduct intentionally treats one person differently from another, or one group of people differently from another group, when they are similarly-situated in all other material respects, the governmental classification must be justified by a standard related to its nature.” *Evancho v. Pine-Richland Sch. Dist.*, 237 F. Supp. 3d 267, 285 (W.D. Pa. 2017).

4. Here, Defendant’s policy facially discriminates against transgender students in violation of the equal protection guarantee of the Fourteenth Amendment.

**1. Discrimination on the Basis of Sex.**

5. Defendant’s bathroom policy discriminates on the basis sex. *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017) (“Here, the School District’s policy cannot be stated without referencing sex, as the School District decides which bathroom a student may use based upon the sex listed on the student’s birth certificate. This policy is inherently based upon a sex-classification and heightened review applies.”); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011) (“Accordingly, discrimination against a transgender individual because of her gender-

nonconformity is sex discrimination, whether it's described as being on the basis of sex or gender."); *Smith v. City of Salem*, 378 F.3d 566, 573-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215-16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201-02 (9th Cir. 2000); *Stone v. Trump*, No. CV MJG-17-2459, 2017 WL 5589122, at \*15 (D. Md. Nov. 21, 2017); *Doe 1 v. Trump*, No. CV 17-1597 (CKK), 2017 WL 4873042, at \*28 (D.D.C. Oct. 30, 2017); *Evancho*, 237 F. Supp. 3d at 286; *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep't of Educ.*, 208 F. Supp. 3d 850, 873 (S.D. Ohio 2016); *Adkins v. City of New York*, 143 F. Supp. 3d 134, 140 (S.D.N.Y. 2015).

6. Discrimination on the basis of sex necessarily encompasses discrimination based on an individual's gender identity, transgender status, and gender expression, including nonconformity to sex- or gender-based stereotypes. *See Glenn*, 663 F.3d at 1316; *Whitaker*, 858 F.3d at 1048; *Evancho*, 237 F. Supp. 3d at 288-89; *Highland Local Sch. Dist.*, 208 F. Supp. 3d at 869; *see also Fabian v. Hosp. of Cent. Conn.*, 172 F. Supp. 3d 509, 526 (D. Conn. 2016).

7. 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.

8. 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; *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).

9. Put simply, “[t]he defining characteristic of a transgender individual is that their inward identity, behavior, and possibly their physical characteristics, do not conform to stereotypes of how an individual of their assigned sex should feel, act and look.” *Doe I*, 2017 WL 4873042, at \*28; *see also Glenn*, 663 F.3d at 1316.

10. Accordingly, excluding transgender individuals from restrooms consistent with their gender identity constitutes government action “on the basis of sex.” *Whitaker*, 858 F.3d at 1051; *Evancho*, 237 F. Supp. 3d at 285-86; *Highland Local Sch. Dist.*, 208 F. Supp. 3d at 870. *Cf. Lusardi*, 2015 WL 1607756, at \*8.

11. There is no question that “all gender-based classifications today warrant heightened scrutiny.” *United States v. Virginia*, 518 U.S. 515, 555 (1996); *see also Glenn*, 663 F.3d at 1319.

## **2. Discrimination Based On Transgender Status.**

12. Defendant’s bathroom policy separately triggers, or at least heightened, scrutiny because it discriminates on the basis of transgender status. *See Stone*, 2017 WL 5589122, at \*15; *Doe I*, 2017 WL 4873042, at \*27; *Evancho*, 237 F. Supp. 3d at 288; *Highland Loc. Sch. Dist.*, 208 F. Supp. 3d 850, 873-74; *Adkins*, 143 F. Supp. 3d at 140.

13. In identifying whether a classification triggers strict or heightened scrutiny, the Supreme Court has considered whether: (a) the class has historically been “subjected to discrimination,” *Bowen v. Gilliard*, 483 U.S. 587, 602 (1987); (b) the class’s defining characteristic “frequently bears [a] relation to ability to perform or contribute to society,” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440-41 (1985); (c) the class exhibits “obvious, immutable, or distinguishing characteristics that define them as a discrete group,” *Gilliard*, 483 U.S. at 602; and (d) the class is “a minority or politically powerless,” *id.*

14. While not all four hallmarks must be present to warrant heightened scrutiny, *see Golinski v. Office of Pers. Mgmt.*, 824 F. Supp. 2d 968, 983 (N.D. Cal. 2012), all four point in favor of at least heightened scrutiny with respect to laws that classify on the basis of transgender status.

15. Transgender people “satisf[y] these criteria.” *Doe 1*, 2017 WL 4873042, at \*27. *See also Evancho*, 237 F. Supp. 3d at 288; *Highland Local Sch. Dist.*, 208 F. Supp. 3d at 874; *Adkins*, 143 F. Supp. 3d at 139-40.

16. Transgender people have experienced a long history of discrimination, including pervasive discrimination in employment, housing, and access to places of public accommodation or government services. *See Whitaker*, 858 F.3d at 1051; *Doe 1*, 2017 WL 4873042, at \*27; *Evancho*, 237 F. Supp. 3d at 288; *Highland Loc. Sch. Dist.*, 208 F. Supp. 3d at 874; *Adkins*, 143 F. Supp. 3d at 139; *Brocksmith v. United States*, 99 A.3d 690, 698 n.8 (D.C. 2014).

17. There is also “obviously no relationship between transgender status and the ability to contribute to society.” *Highland Loc. Sch. Dist.*, 208 F. Supp. 3d at 874; *see also*

*Doe 1*, 2017 WL 4873042, at \*27; *Evancho*, 237 F. Supp. 3d at 288; *Adkins*, 143 F. Supp. 3d at 139.

18. Transgender individuals are a discrete minority—it is estimated that only 0.6% of the adults in the United States identify as transgender—and there can be little dispute that they are relatively powerless politically. *See Doe 1*, 2017 WL 4873042, at \*28; *Evancho*, 237 F. Supp. 3d at 288; *Highland Loc. Sch. Dist.*, 208 F. Supp. 3d at 874; *Adkins*, 143 F. Supp. 3d at 139-40.

19. Further, a person’s gender identity is an innate, effectively immutable characteristic that cannot be altered or be expected to change. *See Evancho*, 237 F. Supp. 3d at 288; *Highland Loc. Sch. Dist.*, 208 F. Supp. 3d at 874; *see also Hernandez-Montiel, v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000).

**3. Defendant’s Policy Cannot Be Justified Under Any Standard of Review.**

20. Defendant’s policy cannot survive *any* level of scrutiny, much less the exacting inquiry required by strict or heightened scrutiny.

21. Defendant’s class-based targeting of Plaintiff demands some form of heightened scrutiny, as discrimination based on both sex and transgender status.

22. All sex classifications must be evaluated under heightened scrutiny even when they are based on alleged “biological differences” between men and women. *Tuan Anh Nguyen v. INS*, 533 U.S. 53, 73 (2001).

23. Under the heightened scrutiny required for all sex-based classifications, the government “must show at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially



related to the achievement of those objectives.” *Virginia*, 518 U.S. at 533. Under strict scrutiny, a law must be narrowly tailored to advance compelling state interests. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Under both, “[t]he burden of justification is demanding and it rests entirely on the State. . . . The justification must be genuine, not hypothesized or invented post hoc in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females.” *Virginia*, 518 U.S. at 533. Moreover, constitutionality is judged based on the “actual state purposes, not rationalizations for actions in fact differently grounded.” *Id.* at 535-36. Defendant’s policy cannot meet either standard. Indeed, it cannot survive even the most deferential review.

24. “[E]ven in the ordinary equal protection case calling for the most deferential of standards, [courts] insist on knowing the relation between the classification adopted and the object to be obtained.” *Romer v. Evans*, 517 U.S. 620, 632 (1996). The justifications offered must have a “footing in the realities of the subject addressed by the legislation.” *Heller v. Doe*, 509 U.S. 312, 321 (1993); *U.S. Dep’t of Agric. v. Moreno*, 413 U.S. 528, 533-38 (1973). And even when the government offers an ostensibly legitimate purpose, “[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.” *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985). Close scrutiny requires Defendant to demonstrate that the challenged policy is “a meaningful step towards solving a real, not fanciful problem.” *Schleifer by Schleifer v. City of Charlottesville*, 159 F.3d 843, 849 (4th Cir. 1998); *see also Brown v. Entm’t Merchants Ass’n*, 564 U.S. 786, 799 (2011).

25. Put simply, a “classification must substantially serve an . . . interest *today*, for in interpreting the equal protection guarantee, we have recognized that new insights and societal understandings can reveal unjustified inequality . . . that once passed unnoticed and unchallenged.” *Sessions v. Morales-Santana*, No. 15-1191, 582 U.S. ---, 2017 WL 2507339, at \*9 (June 12, 2017).

26. Defendant lacks even a legitimate reason to treat Plaintiff differently from his non-transgender peers, let alone an important or compelling one.

27. Plaintiff’s unremarkable and uneventful use of the boys’ restrooms at the beginning of his freshman year, without any incident, is the best evidence that Defendant’s decision to bar his from those same restrooms later was purely arbitrary and based on discriminatory motives. *See Whitaker*, 2016 WL 5239829, at \*6.

28. **Privacy:** Defendant appears to have primarily based its policy on a purported interest to protect “bodily privacy,” meaning the interest of all students in not having their unclothed bodies observed by a persons of the other sex. [30(b)(6) Tr. 225: 11-13] But Plaintiff does not seek any such thing; he is a boy, and simply seeks to use the boys’ restroom like all other boys. Although the protection of students’ privacy is a legitimate interest, in the circumstances presented here, Defendant cannot show that the “fit between the means and the important end is ‘exceedingly persuasive.’” *Nguyen*, 533 U.S. at 70 (quoting *Virginia*, 518 U.S. at 533). Moreover, Defendant’s policy “appear[s] to do little to address any actual privacy concern of any student that is not already well addressed by the physical layout of the bathrooms.” *Evancho*, 237 F. Supp. 3d at 289-90; *see also Highland*, 208 F. Supp. 3d at 874; *Whitaker*, 2016 WL 5239829, at \*4.

29. Nor can any physiological differences between Plaintiff and non-transgender students of the same gender identity justify Defendant's actions in barring Plaintiff from shared restrooms and singling him out from his peers. Although physiological differences between the sexes in some cases may permit differential treatment in the achievement of an important objective, *see Nguyen*, 533 U.S. at 64, such differences cannot be used to "mask discrimination that is unlawful" or "embod[y] a gender-based stereotype," *id.* at 64, 68. Perhaps most importantly, any such differences must be *relevant* to the governmental interest, but here, Drew's restroom use is similar in every material way to that of his peers (he uses a stall to relieve himself, washes his hands, and leaves).

30. "Although the record reveals some specific concerns driven by the reputed presence (and presence alone) of [] Plaintiff in a restroom matching [his] gender identity," based on a complaint by an anonymous female student who does not use the boys' restrooms, "there is no record evidence that this actually imperiled or risked imperiling any privacy interest of any person." *Evancho*, 237 F. Supp. 3d at 290. Indeed, there is no evidence that Plaintiff ever "did, or threatened to do, anything to actually invade the physical or visual privacy of anyone else." *Id.* at 280.

31. In addition, privacy can be preserved without resorting to discrimination against transgender individuals. As a threshold issue, a purported concern for bodily exposure has no footing in the restroom context, given the divided and enclosed nature of restroom stalls, and the existence and availability of privacy dividers for urinals.

32. Defendant's policy also fails to promote privacy, even on its own terms. The policy continually invades transgender students' own interest in bodily privacy, stigmatizing

them and exposing them to their peers as different. For these reasons, the policy actually undermines any interest in protecting students' privacy by making transgender students' physiological features, particularly those who are not out, the subject of unwanted attention.

33. Defendant's "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." *Whitaker*, 858 F.3d at 1052.

34. Moreover, Defendant's policy is not tailored to address its hypothetical-concerns about privacy. That is because "any [non-transgender] student concerned with running into a transgender student in a bathroom and who does not think that urinal dividers or toilet stalls provide the requisite protection of their privacy can access one of the single-user facilities." *Doe by & through Doe v. Boyertown Area Sch. Dist.*, No. CV 17-1249, 2017 WL 3675418, at \*55 (E.D. Pa. Aug. 25, 2017).

35. **Safety:** Defendant also asserts a purported interest in protecting students' safety, but notably, there has been no suggestion that Drew poses any safety concerns.

36. Courts 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*, 237 F. Supp. 3d at 289; *Highland Local Sch. Dist.*, 208 F. Supp. 3d at 877 n.15.

37. Defendant's suggestion that its discrimination against transgender students is justified by a concern for their own safety is disingenuous, and should not be credited. Defendant's fanciful suggestion that a non-transgender student might pose as transgender in order to access a restroom of a different sex has no basis in reality. As one court put it,

For an “imposter” to take such steps would be an extensive social and medical undertaking. That would appear to the Court to be a really big price to pay in order to engage in intentionally wrongful conduct that is unlawful under state law and contrary to the District's stated expectations as to student conduct. The Court . . . can observe with confidence that a one-off, episodic declaration of transgender status in an effort to escape the consequences of engaging in nefarious bathroom behavior would not support a factual finding of transgender “gender identity” as is present in this case.

*Evancho*, 237 F. Supp. 3d at 291.

38. **Discomfort/Community Values:** Lastly, protecting cisgender students’ comfort is an illegitimate interest that cannot justify Defendant’s policy. A transgender person’s mere presence in a restroom does not violate the rights of cisgender individuals in those spaces. *See Dep’t of Fair Emp’t & Hous. v. Am. Pac. Corp.*, No. 34-2013-00151153, Order at 4 (Cal. Super. Ct. Mar. 13, 2014); *Lusardi*, 2015 WL 1607756, at \*9. *Cf. Glenn*, 663 F.3d at 1321; *Cruzan v. Special Sch. Dist.*, No. 1, 294 F.3d 981, 984 (8th Cir. 2002).

39. To the extent Defendant’s policy seeks to validate an objection, whether based on discomfort, community values, or religion, to seeing transgender people in the restroom consistent with their gender identity—which is to say, to their mere presence—that is not a legitimate, let alone an important or compelling, government interest. Similar claims of “discomfort” about simply sharing spaces with those perceived as different have been made throughout history, but never has the correct answer been to indulge that discomfort.

40. Discomfort and personal biases about transgender people, even when wrapped in the cloak of privacy, safety, or community values, is simply not even a legitimate basis, let alone important or compelling, for imposing unequal or stigmatizing treatment. “The question, however, is whether the reality of private biases and the possible injury they might inflict are permissible considerations” for Defendant’s policy. *Palmore v. Sidoti*, 466 U.S.

429, 433 (1984). The answer is “they are not.” *Id.* “The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.” *Id.*

41. **The forced use of single-user restrooms is not an appropriate alternative:**

Finally, for every student at Nease High School that may feel uncomfortable using a shared restroom, the option also exists for any student to use a single stall bathroom. However, to the extent Defendant argues that “that there should not be an issue here because any student may use the single-user restrooms sprinkled around the High School,” “the law does not impose on [] Plaintiff[] the obligation to use single-user facilities in order to ‘solve the problem.’” In these circumstances, “that would compel [him] to use only restrooms inconsistent with [his] gender identit[y] or to use the ‘special’ restrooms. That is a choice directed by official edict, and it is not a choice compelled of other students.” *Evancho*, 237 F. Supp. 3d at 293; *see also Whitaker*, 858 F.3d at 1050; *A.H. v. Minersville Area Sch. Dist.*, No. 3:17-CV-391, 2017 WL 5632662, at \*6 (M.D. Pa. Nov. 22, 2017). “It is no answer under the Equal Protection Clause that those impermissibly singled out for differential treatment can, and therefore must, themselves ‘solve the problem’ by further separating themselves from their peers.” *Evancho*, 237 F. Supp. 3d at 293; *see also Hassan v. City of New York*, 804 F.3d 277, 289-92 (3d Cir. 2015).

**B. Title IX**

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

assistance.” 20 U.S.C. § 1681(a).

43. Title IX’s prohibition on sex discrimination extends to “any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient of federal funding.” 34 C.F.R. § 106.31.

44. Defendant is an education program receiving federal financial assistance and is therefore subject to Title IX’s prohibition of sex discrimination against any student.

45. Title IX requires schools to provide transgender students access to restrooms that are consistent with their gender identity. “Access to the bathroom is [] an education program or activity under Title IX.” *Highland Loc. Sch. Dist.*, 208 F. Supp. 3d 850, 865.

46. “Title IX is a broadly written general prohibition on discrimination, followed by specific, narrow exceptions to that broad prohibition.” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 175 (2005). Thus, while there is an exception which permits the provision of “separate toilet, locker rooms, and shower facilities on the basis of sex,” 34 C.F.R. § 106.33, such exception does not permit the exclusion of transgender students from the restrooms congruent with their gender identity.

47. To prove a violation of Title IX, Plaintiff has to show that (1) he experienced discrimination in an education program or activity on the basis of sex, (2) the educational institution was receiving federal financial assistance at the time the discrimination occurred, and (3) the discrimination caused Plaintiff harm. *See Evancho*, 237 F. Supp. 3d at 295; *Highland Loc. Sch. Dist.*, 208 F. Supp. 3d at 865.

48. Title IX’s prohibition of discrimination based on sex is generally viewed as parallel to the similar proscriptions contained in Title VII of the Civil Rights Act of 1964,

which prohibits discrimination on the basis of “sex” in the employment context. These statutes’ prohibitions on sex discrimination are analogous. *See Davis v. Monroe County Bd. of Educ.*, 526 U.S.629, 651 (1999).

49. “Courts have long interpreted “sex” for Title VII purposes to go beyond assigned sex as defined by the respective presence of male or female genitalia.” *Evancho*, 237 F. Supp. 3d at 296. And as noted above, numerous courts with the Eleventh Circuit and elsewhere have held that Title VII’s prohibition of discrimination on the basis of “sex” includes discrimination on the basis of gender identity, transgender status, and gender expression, including nonconformity to sex-or gender-based stereotypes. *See Chavez*, 641 Fed. Appx. 883; *Glenn*, 663 F.3d 1312; *Valentine Ge*, 2017 WL 347582; *see also Roberts v. Clark Cty. Sch. Dist.*, 2016 WL 5843046 (D. Nev. 2016); *Fabian*, 172 F.Supp.3d 509; *Finkle v. Howard Cty., Md.*, 12 F. Supp. 3d 780 (D. Md. 2014); *Lopez v. River Oaks Imaging & Diagnostic Grp., Inc.*, 542 F.Supp.2d 653 (S.D. Tex. 2008); *Schroer*, 577 F. Supp. 2d 293.

50. While Title IX “does not define the term ‘sex,’” *Conley v. Nw. Florida State Coll.*, 145 F. Supp. 3d 1073, 1076 (N.D. Fla. 2015), the aforementioned conclusions by numerous courts are bolstered by their studied analysis of the definition of “sex” in modern dictionaries as well as those contemporaneous with the enactment of Title IX. Courts that have carefully evaluated and considered definitions of the word from a variety of dictionaries, including definitions from dictionaries at the time Title IX was enacted, have correctly concluded that the term is multi-faceted and that a reasonable interpretation of the term includes a host of sex-related characteristics, including gender identity. *See, e.g., Students and Parents for Privacy*, 2016 WL 6134121, at \*17-18; *Highland Loc. Sch. Dist.*,



208 F. Supp. 3d at 866, n.4; *Fabian*, 172 F. Supp. 3d at 526; *see also Radtke v. Misc. Drivers & Helpers Union Local No. 683 Health, Welfare, Eye & Dental Fund*, 867 F. Supp. 2d 1023, 1032 (D. Minn. 2012). *Cf. Conley*, 145 F. Supp. 3d at 1078. Thus, by adopting and implementing its policy, Defendant has discriminated on the basis of sex.

51. The fact that the current administration recently reversed the prior interpretation of Title IX by the U.S. Department of Education is entitled to no weight. “Contrary to Defendant’s argument, a specific practice need not be identified as unlawful by the government before a plaintiff may bring a claim under Title IX.” *A.H.*, 2017 WL 5632662, at \*6.

52. “A policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender non-conformance, which in turn violates Title IX.” *Whitaker*, 858 F.3d at 1049. As such, Defendant’s policy subjects Drew, “as a transgender student, to different rules, sanctions, and treatment than non-transgender students, in violation of Title IX.” *Whitaker*, 858 F.3d at 1049-50; *see also Whitaker*, 2016 WL 5239829, at \*3; *Highland Local Sch. Dist.*, 208 F. Supp. 3d at 867-71.

53. By adopting and enforcing a policy or practice prohibiting Drew, a transgender boy, from accessing and using male-designated restrooms at school, and requiring that he use female-designated restrooms or single-occupancy restrooms, Defendant has discriminated against and continues to discriminate against Drew in his enjoyment of the School District’s educational programs and activities by treating him differently from other male students based on his gender identity, the fact that he is transgender, and his

nonconformity with sex stereotypes.

54. Defendant has discriminated against Drew on the basis of sex in violation of Title IX and thereby has denied Drew the full and equal participation in, benefits of, and right to be free from discrimination in the educational opportunities offered by the School District and Nease High School.

55. Defendant has intentionally discriminated against Plaintiff based on his sex, and, thus, violated Title IX.<sup>3</sup>

**C. Declaratory and Injunctive Relief, and Damages.**

56. As a result of Defendant's policy, Plaintiff suffers irreparable harm each passing day that he is subjected to unequal treatment, and the humiliation, anxiety, depression that accompany that treatment.

57. The emotional distress and symptoms of gender dysphoria, including anxiety, surge significantly in transgender students after being instructed not to use the restrooms consistent with their gender identity. Here, Plaintiff has already experienced some of those consequences. As a result, Plaintiff also increasingly feels isolated, marginalized, and stigmatized by Defendant's actions.

58. "Courts have long recognized that disparate treatment itself stigmatizes members of a disfavored group as innately inferior, and raises the 'inevitable inference' of

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<sup>3</sup> In its Case Management and Scheduling Order, Dkt. 59, para. 1, the Court stated that it would carry Defendant's motion to dismiss Plaintiff's Title IX claim with the case and that it would be "decided as part of the Court's Findings of Facts and Conclusions of Law." Accordingly, Plaintiff hereby "incorporate his response in his proposed findings of fact and conclusions of law" and avers that he has stated a plausible claim under Title IX. "When reviewing a motion to dismiss under Rule 12(b)(6), the Court must view the allegations in the light most favorable to the plaintiff and accept the allegations of the complaint as true." *Pucci v. Bank of Am., N.A.*, No. 3:14-CV-1236-J-32MCR, 2016 WL 1162331, at \*2 (M.D. Fla. Mar. 23, 2016) (citing *Speaker v. U.S. Dep't of Health & Human Servs.*, 623 F.3d 1371, 1379 (11th Cir. 2010)).

animosity toward those impacted by the involved classification.” *Evancho*, 237 F. Supp. 3d at 294. Given the facts here and that Plaintiff, a transgender boy, has been targeted for disparate treatment, “it is not a long leap, nor really a leap at all, to give credence to the Plaintiff[’s] assertions that [he] subjectively feel[s] marginalized, and objectively [is] being marginalized, which is causing them genuine distress, anxiety, discomfort and humiliation.” *Id.*

59. Because neither of the options established by Defendant’s policy are tenable, Plaintiff has been compelled to choose a harmful alternative option: not using the restroom at all at school except when absolutely necessary, which causes him great discomfort. The abstention of using the restroom can also lead to long-term adverse health consequences.

60. Defendant’s actions have negatively affected Plaintiff’s school work, by forcing seem to work even harder than he otherwise would in order to maintain good grades and his honor student status. In the school context, even “diminished academic motivation” is sufficient to constitute irreparable harm. *Washington v. Ind. High Sch. Athletic Ass’n, Inc.*, 181 F.3d 840, 853 (7th Cir. 1999).

61. Plaintiff thus will undoubtedly suffer serious and irreparable harm if a permanent injunction is not granted.

62. Further, “in a private cause of action brought pursuant to Title IX, ‘both injunctive relief and damages are available.’” *A.H.*, 2017 WL 5632662, at \*6; *see also Sheely v. MRI Radiology Network, P.A.*, 505 F.3d 1173, 1195-96, 1198 (11th Cir. 2007). “While a plaintiff must prove discriminatory intent to receive money damages, there is no such requirement to receive injunctive relief.” *A.H.*, 2017 WL 5632662, at \*6.

63. “As a matter of both common sense and case law, emotional distress is a predictable, and thus foreseeable, consequence of discrimination.” *Sheely*, 505 F.3d at 1199.

64. As such, the Eleventh Circuit has “long found that violations of antidiscrimination statutes frequently and palpably result in emotional distress to the victims.” *See, e.g., Bogle v. McClure*, 332 F.3d 1347, 1354, 1359 (11th Cir. 2003); *Ferrill v. Parker Group, Inc.*, 168 F.3d 468, 476 (11th Cir. 1999); *Stallworth v. Shuler*, 777 F.2d 1431, 1435 (11th Cir. 1985).

65. Because Plaintiff has suffered intentional and purposeful discrimination at the hands of Defendant, Plaintiff is entitled to garden variety, non-economic compensatory damages for the emotional distress and suffering, embarrassment, humiliation, pain and anguish, violation of dignity that have been caused by Defendant’s conduct intentionally violating Plaintiff’s rights under the Fourteenth Amendment and Title IX.

Dated this 7th of December, 2017.

Respectfully submitted,

s/ Tara L. Borelli

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2017, I electronically filed the foregoing 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.

/s/ Tara L. Borelli

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**DE 137-1**

# **Exhibit A**



**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,

*Defendant.*

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

**EXPERT REPORT OF DEANNA ADKINS, M.D.**

### PRELIMINARY STATEMENT

1. I have been retained by counsel for Plaintiff as an expert in connection with the above-captioned litigation. My professional background, experience, and publications are detailed in my curriculum vitae, a true and accurate copy of which is attached as Exhibit A to this report. I received my medical degree from the Medical College of Georgia in 1997. I am currently the Fellowship Program Director of Pediatric Endocrinology at Duke University School of Medicine (“Duke”) and the Director of the Duke Center for Child and Adolescent Gender Care.

2. I have been licensed to practice medicine in the state of North Carolina since 2001.

3. I have extensive experience working with children with endocrine disorders and I am an expert in the treatment of children with differences or disorders of sex development and gender dysphoria.

4. I am a member of the American Academy of Pediatrics, the North Carolina Pediatric Society, the Pediatric Endocrine Society, and The Endocrine Society. I am also a member of the World Professional Association for Transgender Health (“WPATH”), the leading association of medical and mental health professionals in the treatment of transgender individuals.

5. I am the founder of the Duke Center for Child and Adolescent Gender Care (“Gender Care Clinic”), which opened in 2015. I currently serve as the Director of the clinic. The Gender Care clinic treats children and adolescents age 4 years old through 22 years old with gender dysphoria and differences or disorders of sex development. I have been caring for these individuals in my routine practice for many years prior to opening the clinic.

6. I currently treat approximately 240 transgender and intersex young people from North Carolina and across the Southeast at the Gender Care clinic. I have treated approximately 300 transgender and intersex young people in my career.

7. As part of my practice, I stay familiar with the latest medical science and treatment protocols related to differences or disorders of sex development and gender dysphoria.

8. I am regularly called upon by colleagues to assist with the sex assignment of infants who cannot be classified as male or female at birth due to a range of variables in which sex-related characteristics are not completely aligned as male or female.

9. In preparing this report, I reviewed the materials listed in the attached Bibliography (Exhibit B). I may rely on those documents as additional support for my opinions. I have also relied on my years of experience in this field, as set out in my curriculum vitae (Exhibit A), and on the materials listed therein. The materials I have relied upon in preparing this report are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

10. I have testified once as an expert at trial or deposition in the past four years, in *U.S. Army v. Specialist Brandon Richard Oversby*, B Company, 50<sup>th</sup> Signal Battalion, (Expeditionary), 35<sup>th</sup> Signal Brigade, Fort Bragg, NC.

11. I am not being compensated for my expert work and testimony related to this case. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

**WHAT DOES IT MEAN TO BE TRANSGENDER OR INTERSEX?**

12. A transgender individual is an individual who has a gender identity that differs from the person's birth-assigned sex.

13. Individuals who are intersex (also known as having "differences of sex development or differentiation") have sex characteristics that are a mixture of those typically associated with both "male" and "female" sex designations.

14. At birth, infants are generally classified as male or female based on observation of their external genitalia. This classification becomes the person's birth-assigned sex but may not be the same as the person's gender identity.

15. A person's gender identity refers to a person's inner sense of belonging to a particular gender, such as male or female.

16. Gender identity is a deeply felt and core component of a person's identity.

17. Everyone has a gender identity.

18. Most people have a gender identity that aligns with the sex they were assigned at birth. However, for some people, their deeply felt, core identification and self-image as a particular gender does not align with the sex they were assigned at birth. This lack of alignment can create significant distress for individuals with this experience and can be felt in children as young as 2 years old.

19. Individuals with this distress may be diagnosed with gender dysphoria. Gender dysphoria is defined by the Diagnostic and Statistics Manual 5 as a marked incongruence between one's experienced/expressed gender and assigned gender, of at least 6 months' duration, frequently manifested by the following: A strong desire to be of the other gender or an insistence that one is the other gender, possibly a strong dislike of

one's sexual anatomy, and/or a strong desire for the primary and/or secondary sex characteristics that match one's experienced gender.

20. Gender identity is innate and cannot be voluntarily altered, including for individuals whose gender identity does not align with their birth-assigned sex.

21. It is widely considered unethical to attempt to change the gender identity of others.

22. Although research regarding the precise determinant of gender identity is still ongoing, evidence strongly suggests that gender identity is innate at a young age and that it has a strong biological basis.

23. Both post-mortem and functional brain studies that have been done on the brains of individuals with gender dysphoria show that these individuals have brain structure, connectivity, and function that do not match their birth-assigned sex. Variations in these studies include overall brain size, intra- and inter-hemispheric connectivity (number of connections within each half of the brain and between halves of the brain). Differences have been shown in visuospatial and verbal fluency tasks and their activation patterns in the brain. Variations in cortical thickness in the sensory motor areas, the white matter microstructure, and regional cerebral blood flow are also present in those with gender incongruence compared to those without.

24. Being transgender is a normal developmental variation.

25. When properly treated, individuals with gender dysphoria can lead happy, healthy, productive lives.

26. Being transgender does not limit one's ability to function in and contribute fully to society.

27. There are authoritative standards for caring for individuals who are transgender. These have been published by multiple medical organizations. These include the Standards of Care Version 7 by the World Professional Association for Transgender Health (“WPATH Standards of Care”), Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline, and the Guidelines for Psychological Practice with Transgender and Gender Nonconforming People by the American Psychological Association.

28. There are typically several phases of transitioning from one gender to another. They may or may not all occur and they may occur in different sequences in different individuals. I will discuss here the most common order in which my patients experience their transitions. The first form is social transition. This can include things such as: asking to be called a different name, using different pronouns that match one’s gender identity, changing the way one dresses, changing one’s haircut, and using restrooms and changing facilities that match one’s gender identity.

29. The second form of transition is a medical transition. This is when people begin to take medications that will decrease their own body’s hormones and increase the hormone levels that match their gender identity. This step causes physical changes such as breast development in transgender women, and deepening of the voice and growth of facial hair in transgender men. These changes will make their bodies align with their gender identity. At this point it will often be dangerous for them to continue to use restrooms and changing facilities that match their sex assigned at birth as they would be at risk of bullying and injury.

30. The next form of transition is surgical. This is the most variable of all of the stages. Many people do not have any surgery.

31. Surgery is not recommended by any of our standards of care for minors. However, once adolescents have started on hormonal treatment, they begin to take on physical characteristics that make it obvious that they have transitioned to a gender different than the one they were assigned at birth. These changes, as mentioned above, make using restrooms other than those that match their new appearance and gender identity dangerous and give away to others that they are transgender. This may occur even when they are forced to use gender neutral restrooms which their peers are not being asked to use. This interferes with their right to privacy. This is also not consistent with the standards of care which recommend that individuals who are transgender use restrooms consistent with their gender identity.

32. In addition to my expert testimony in this case, I have served as Drew's treating physician since July 2016. Drew has been properly diagnosed with gender dysphoria by his own mental health provider as well as our mental health provider at Duke. Drew's gender identity is male, and accordingly Drew is a boy and should be treated that way in all aspects of his life. Drew is receiving treatment in accordance with the WPATH Standards of Care as well as the Endocrine Society's Clinical Guidelines from 2017.

#### **HOW DO EXPERTS ASSIGN OR "DETERMINE" SEX?**

33. The medically appropriate determinant of sex is gender identity.

34. For many people, gender identity aligns with the sex assigned to the individual at birth.

35. For transgender people and people with differences or disorders of sex development, there is not complete alignment among sex-related characteristics. Medicine and science require that where a more careful consideration of sex assignment is needed that it be based on gender identity rather than other sex characteristics.

36. In the past, when mental health and medical practitioners identified a disconnect between a person's gender identity and assigned sex at birth, treatment often focused on efforts to bring the individual's gender identity into alignment with the assigned sex. These practices were unsuccessful and incredibly harmful. Deep depression, psychosis, and suicide frequently resulted.

37. Medical science has since recognized that appropriate treatment for individuals who are transgender and suffer from gender dysphoria must focus on alleviating distress through supporting outward expressions of the person's gender identity and bringing the body into alignment with that identity to the extent deemed medically appropriate based on assessments between individual patients and their medical and mental health providers. These treatments have been very successful. Data in the medical literature shows a better response rate for these treatments than most medications.

38. In infants with sex-characteristics associated with both males and females, if an assignment is made that later conflicts with gender identity, then the only appropriate medical course is to correct the misassignment of the individual's sex to align with gender identity.

39. It is harmful to make sex assignments based on characteristics other than gender identity. For example, in cases where surgery was done prior to the ability of the



child to understand and express their gender identity, there has been significant distress in these individuals who then have to endure further surgeries to reverse the earlier treatments. It has become standard practice to wait until the gender identity is clear to make permanent surgical changes in these patients unless the changes are required to maintain the life and health of the child.

40. Genital surgery is not medically indicated for minors. There are many reasons that many people never undergo genital surgery including medical conditions that could make surgery dangerous, cost, and a lack of insurance coverage.

41. A person's gender identity (regardless of whether that identity matches other sex-related characteristics) is fixed, is not subject to voluntary control, cannot be voluntarily changed, and is not undermined or altered by the existence of other sex-related characteristics that do not align with it.

42. Today, medical and mental health care providers who specialize in the treatment of these individuals with gender dysphoria recognize that being transgender is a normal developmental variation. Current estimates of transgender individuals in the U.S. is 0.3% of the population based on a study by the Williams Institute in 2011. As a comparison The American Diabetes Association and the Centers for Disease Control and Prevention together estimate that the prevalence of type 1 diabetes mellitus in the U.S. is 0.38%.

43. For individuals with gender dysphoria and individuals with differences of sex development, gender identity is the only appropriate determinant of sex when sex assignment as male or female is necessary for social and legal purposes. It would be unethical and extremely harmful to, for example, force a man with congenital adrenal

hyperplasia, discussed below, to be classified as a woman for all legal and social purposes simply because he was classified as female at birth. Likewise it would be unethical and extremely harmful to force a man who has gender dysphoria to be classified as female for all social and legal purposes simply because he was assigned female at birth.

44. Requiring individuals with gender dysphoria to use single-sex facilities that are inconsistent with their gender identity is not only harmful to their mental health and stigmatizing; when these individuals are excluded from restrooms that match their gender identity, rather than use restrooms of a different gender or gender neutral restrooms, they often will avoid restroom use for long periods of time, resulting in urinary tract infections, kidney problems, and other medical complications. The American Medical Association has recently passed a resolution in their House of Delegates supporting access to restrooms that match one's gender identity.

45. Being denied access to restrooms that match one's gender identity interferes with treatment based on the standards of care, specifically that transgender individuals have the ability to live in accordance with their gender identity in all aspects of life.

46. Being denied access to restrooms that match their gender identity heightens transgender individuals' dysphoria, worsens depression and anxiety and can lead to self-harm.

47. On the other hand, respecting a person's gender identity leads to significant improvement in dysphoria, anxiety, and depression.

48. I have first-hand knowledge of these issues based on transgender patients I have treated in North Carolina. The state previously enacted a law called H.B. 2, which restricted transgender individuals' restroom access to those that match their birth certificates. Prior to the passage of H.B. 2, most of my patients used restrooms and changing facilities consistent with their gender identity in various settings. The ability to use restrooms consistent with their gender identity lowered their anxiety levels. After the passage of H.B. 2, my patients who are transgender and intersex largely avoided using public restrooms and this was detrimental to their health and wellbeing. In other medical conditions where there is urinary retention, such as diabetes mellitus and diabetes insipidus, it is well documented in the medical literature that this leads to bladder spasms, damage and kidney injury.

49. The cost of not assigning sex based on gender identity is dire. It is counter to medical science to use chromosomes, hormones, internal reproductive organs, external genitalia, or secondary sex characteristics to override gender identity for purposes of classifying someone's sex. Gender identity does and should control when there is a need to classify an individual as a particular gender.

50. With the exception of some serious childhood cancers, gender dysphoria is the most fatal condition that I treat because of the harms that flow from not properly recognizing gender identity. Attempted suicide rates in the transgender community are over 40%, which is a risk of death that far exceeds most other medical conditions. The only treatment to avoid this serious harm is to recognize the gender identity of patients with gender dysphoria and differences of sex development.

### WHAT IS “BIOLOGICAL SEX”?

51. I understand that the defendant in this case restricts use of multi-occupancy restrooms to “biological sex,” *i.e.*, one’s sex assigned at birth. In addition to being counter to medical science as explained above, this definition and conception of “biological sex” is inherently flawed.

52. Although we generally label infants as “male” or “female” based on observing their external genitalia at birth, external genitalia do not account for the full spectrum of sex-related characteristics or determine one’s sex. Instead, sex-related characteristics include external genitalia, internal reproductive organs, chromosomes, secondary sex characteristics, genes, and gender identity. These sex-related characteristics do not always align as completely male or completely female in a single individual. In fact, this occurs frequently enough that doctors use a scale called the Prader Scale to describe the genitalia on a spectrum from male to female.

53. Particularly for individuals with a difference or disorder of sex development, sex assignment at birth can involve the evaluation of the sex chromosomes, the external genitalia, the internal genitalia, hormonal levels, and sometimes, specific genes. There are also cases in which the appearance of the external genitalia can change at puberty as well as variations in the appearance of secondary sex characteristics that may signal that there is a difference in sex development in a person.

54. Many individuals, including individuals who have intersex traits or gender dysphoria, have biological, sex-related characteristics that are typically associated with both men and women. For example:

- a. Individuals with Complete Androgen Insensitivity have 46-XY chromosomes, which are typically associated with males, but do not have the tissue receptors that respond to testosterone or other androgens. The body, therefore, does not develop external genitalia or secondary sex characteristics typically associated with males but does, generally, have testes. At birth, based on the appearance of the external genitalia, individuals with Complete Androgen Insensitivity are generally assigned female.
- b. Individuals with Klinefelter Syndrome have 47-XXY chromosomes and internal and external genitalia typically associated with males, however, the testicles in individuals diagnosed with Klinefelter Syndrome lose function over time. This may lead to breast development and infertility in addition to a number of other health issues.
- c. Individuals with Turner Syndrome have 45-XO chromosomes, which means they have one less chromosome than everyone else. In utero, these individuals form sex characteristics typically associated with females including all internal structures but the ovaries begin to die soon after birth and the individuals are unable to make estrogen. Without treatment, individuals with Turner Syndrome do not develop secondary sex characteristics typically associated with women.
- d. Individuals with Mosaic Turner Syndrome may have two different sets of chromosomes. They lose a sex chromosome in the early stages of embryonic development. The cells that are descendants of the cell that

lost a chromosome will have Turner Syndrome features. The cells that are descendants of the cells that did not lose a sex chromosome will have features of the embryo's initial chromosomal sex. Sometimes this initial sex was XX and sometimes it is XY. When there are cells with XY chromosomes present, the fetus produces testosterone and there is at least some testicular tissue. There may also be ovarian tissue. The external genitalia can then be a mixture of external genitalia typically associated with both males and females.

- e. Individuals with congenital adrenal hyperplasia are individuals who have XX chromosomes and external genitalia typically associated with women but are born with extra androgens, including testosterone, and from early in gestation, their brains are exposed to high levels of androgen. Despite frequently being assigned female at birth because of external genitalia, many individuals with this condition have a male gender identity.
- f. Individuals with 5-alpha reductase are chromosomally XY but they have an enzyme deficiency that does not allow them to convert testosterone to dihydrotestosterone, the active form of testosterone. At birth, based on external genitalia, they are often assigned female, but their gender identity is almost always male as adults. Their external genitalia also changes at puberty because hormonal changes allow them to make more dihydrotestosterone which is needed for the physical changes that occur causing the development of external genitalia typically associated with

males. During early development there is enough testosterone to affect the brain, which often results in a male gender identity.

- g. Individuals with cloacal extrophy have external genitalia at birth that is often split in half and most of their internal pelvic organs are located on the outside of their bodies. They are born with both XX and XY chromosomes. However, because of the severity of the changes in their external genitalia, most of the XY patients had sex reassignment in infancy and were raised as females. Follow-up studies of these patients as adults show that almost all of the XY patients have a gender identity of male. This is powerful evidence that one's core gender identity cannot be changed.
- h. A transgender person who transitioned at a young age and takes hormone blockers would not develop the secondary sex characteristics typically associated with their birth-assigned sex. This process suspends their pubertal development until the blockers are stopped or until gender affirming hormones are added.
- i. A woman who is transgender may have XY chromosomes, undergo hormone treatment and surgery, and have external genitalia and secondary sex characteristics typically associated with women.
- j. A man who is transgender may undergo hormone therapy, have hormone levels comparable to a man assigned the sex of male at birth, and thus develop masculine secondary sex characteristics.

55. As the examples above underscore, “biological sex” is not an accurate or useful medical term with respect to individuals whose sex-related characteristics are not in alignment with each other. Rather, the medically appropriate determinant of sex is gender identity and should be treated as such.

Executed on October 1, 2017.

By:



Deanna Adkins, M.D.



# Expert Report of Deanna Adkins, M.D.

## Exhibit A – Curriculum Vitae

**CURRICULUM VITAE**  
**Date Prepared: October 1, 2017**

**Name:** Deanna Wilson Adkins, MD

**Primary Academic Appointment:** Assistant Professor  
**Program Director** Pediatric Endocrinology  
**Director** Pediatric Diabetes and Endocrinology Duke Children's Raleigh  
**Director** Duke Child and Adolescent Gender Care  
**Medical Director** Duke Children's and WakeMed Children's Consultative Services of Raleigh

**Primary Academic Department:** Department of Pediatrics  
Division of Endocrinology

**Present Academic Rank and Title :** Assistant Professor

**Date and Rank of First Duke Faculty Appointment:** July 1, 2004 Clinical Associate

**Medical Licensure:** North Carolina License #:200100207  
Date of License: March 15, 2001

**Specialty Certification:** Pediatrics current  
Pediatric Endocrine current

**EDUCATIONAL BACKGROUND**

<u>Level</u>	<u>Institution</u>	<u>Date</u>	<u>Degree</u>
High School	Tift County High School	1988	Diploma
College	Georgia Institute of Technology	1993	B.S.
Graduate or Professional School	Medical College of Georgia	1997	MD

**PROFESSIONAL TRAINING AND ACADEMIC CAREER**

<u>Institution</u>	<u>Position/Title</u>	<u>Dates</u>
University of North Carolina Hospitals, Chapel Hill, North Carolina	Pediatrics Resident	1997-2000

Name: Adkins, Deanna W.

University of North Carolina Hospitals, Chapel Hill, North Carolina	Pediatric Endocrine Fellow	2000- 2004
Duke University Medical Center, Durham, North Carolina	Clinical Associate/Medical Instructor	2004- 2008
Duke University Medical Center, Durham, North Carolina	Assistant Clinical Professor	2008- present
Duke University Medical Center, Durham, North Carolina	Fellowship Program Director Pediatric Endocrinology	2008- 2010
Duke University Medical Center, Durham, North Carolina	Associate Fellowship Program Director Pediatric Endocrinology	2010- 2014
Duke University Medical Center, Durham, North Carolina	Fellowship Program Director Pediatric Endocrinology	2014- present
Duke University Medical Center, Durham, North Carolina	Director Duke Child and Adolescent Gender Care	2015- present

## **PUBLICATIONS**

### **Refereed Journals:**

1. Zeger MD, Adkins D, Fordham LA, White KE, Schoenau E, Rauch F, & Loechner KJ. "Hypophosphatemic rickets in opsismodysplasia." *J Pediatr Endocrinol Metab.* 20, no. 1 (2007): 79-86. PMID: 17315533
2. Gordon Worley MD, Blythe Crissman MS CGC, Emily Cadogan BS MSI, Christie Milleson BA, Deanna W. Adkins MD, & Priya Kishnani MD. "Down Syndrome Disintegrative Disorder: New-Onset Autistic Regression, Dementia, and Insomnia in Older Children and Adolescents With Down Syndrome." *J. Child Neurol.* 30, no. 9 (2015): 1147-52.
3. Tejwani R, Jiang R, Wolf S, Adkins DW, Young BJ, Alkazemi M, Wiener JS, Pomann GM, Purves JT, & Routh JC. "Contemporary Demographic, Treatment, and Geographic Distribution Patterns for Disorders of Sex Development." *Clinical Pediatrics* (Jul. 2017).  
doi: 10.1177/0009922817722013. PMID:28758411

### **Collaborations in National studies: SPIN**

4. Mink RB, Schwartz A, Herman BE, Turner DA, Curran ML, Myers A, Hsu DC, Kesselheim JC, Carraccio CL and the Steering Committee of the Subspecialty Pediatrics Investigator Network (SPIN). "Validity of Level of Supervision Scales for Assessing Pediatric Fellows on the Common Pediatric Subspecialty Entrustable Professional Activities." *Academic Medicine* (Jul. 2017).  
doi: 10.1097/ACM.0000000000001820.
5. Mink R, Carraccio C, High P, Dammann C, McGann K, Kesselheim J, Herman B. "Creating the Subspecialty Pediatrics Investigator Network (SPIN)." Provisionally accepted to *J. Peds.* (2017).

6. Mink RB, Carraccio CL, Herman BE, Weiss P, Turner DA, Stafford DE, Hsu DC, High PC, Fussell JJ, Curran ML, Chess PR, Schwartz A for SPIN. "The link between milestone levels and fellow entrustment for the common pediatric subspecialty entrustable professional activities." Oral and poster presentation at the annual education meeting of the Accreditation Council for Graduate Medical Education, February, 2016, National Harbor, Maryland.
7. Mink RB, Schwartz A, Herman BE, Turner DA, Myers AL, Kesselheim JC, Hsu DC, Curran ML, Carraccio CL for SPIN. "Reliability and validity of a supervision scale for the common pediatric subspecialty entrustable professional activities." Poster presentation at the annual education meeting of the Accreditation Council for Graduate Medical Education, February, 2016, National Harbor, Maryland.
8. Mink RB, Carraccio CL, Schwartz A, Dammann CE, High PC, McGann KA, Herman BE for SPIN. "Creation of a pediatric subspecialty educational research network." Poster presentation at the annual spring meeting of the Association of Pediatric Program Directors, April, 2016, New Orleans.
9. Mink RB, Schwartz A, Herman BE, Curran ML, Hsu DC, Kesselheim JC, Myers AL, Turner DA, Carraccio CL. "Creation and validation of entrustment scales for the common pediatric subspecialty entrustable professional activities (EPAs)." Oral presentation at the annual spring meeting of the Association of Pediatric Program Directors, April, 2016, New Orleans.
10. Mink RB, Carraccio CL, Herman BE, Aye T, Baffa JM, Chess PR, Fussell JJ, Sauer CG, Stafford DE, Weiss P, Schwartz A for SPIN. "Do fellowship program directors (FPD) and clinical competency committees (CCC) agree in fellow entrustment decisions?" Poster presentation at the annual spring meeting of the Association of Pediatric Program Directors, April, 2016, New Orleans.
11. Mink RB, Carraccio CL, Schwartz A, Dammann CE, High P, Kesselheim JC, McGann K, Herman BE. "Establishing a medical education research network for the pediatric subspecialties." Poster presentation at annual spring meeting of the Pediatric Academic Societies, May, 2016, Baltimore, Maryland.
12. Mink RB, Carraccio CL, Herman BE, Dammann C, Mahan J, Pitts S, Sauer CG, Schwartz A. "Variability in fellow entrustment across the pediatric subspecialties for the common pediatric subspecialty entrustable professional activities (EPAs)." Poster presentation at annual spring meeting of the Pediatric Academic Societies, May, 2016, Baltimore, Maryland.

**Selected Abstracts:**

13. Rohit Tejwani, Deanna Adkins, Brian J. Young, Muhammad H. Alkazemi, Steven Wolf, John S. Wiener, J. Todd Purves, and Jonathan C. Routh. "Contemporary Demographic and Treatment Patterns for Newborns Diagnosed with Disorders of Sex Development." Poster presentation at AUA meeting 2016.
14. Deanna W. Adkins, MD, Kristen Russell, LCSW, Dane Whicker, PhD, Nancy Zucker, Ph. D: Departments of Pediatrics and Psychiatry, Duke University Medical Center. "Evaluation of Eating Disturbance and Body Image Disturbance in the Trans Youth Population." WPATH International Scientific Meeting June 2016; Amsterdam, The Netherlands.
15. Lydia Snyder, MD, Deanna Adkins, MD, Ali Calikoglu, MD. "Celiac Disease and Type 1 Diabetes: Evening of Scholarship." UNC Chapel Hill 3/2015 poster.
16. Laura Page, MD; Benjamin Mouser, MD; Kelly Mason, MD; Richard L. Auten, MD; Deanna Adkins, MD. "Cholesterol Supplementation In Smith-Lemli-Opitz: A Case of Treatment During Neonatal Critical Illness." Poster presentation June 2014.
17. Kellee M. Miller, David M. Maahs, Deanna W. Adkins, Sureka Bollepalli, Larry A. Fox, Joanne M. Hathway, Andrea K. Steck, Roy W. Beck and Maria J. Redondo for the T1D Exchange Clinic Network. "Twins Concordant for Type 1 Diabetes in the T1D Exchange." Poster presentation at ADA scientific sessions June 2014.
18. Adkins, D.W. and Calikoglu, A.S. "Delayed puberty due to isolated FSH deficiency in a male." *Pediatric Research Suppl.* 51: Abstract #690, page 118A.
19. Zeger, M.P.D., Adkins, D.W., White, K., Loechner, K.L. "Opsismodysplasia and Hypophosphatemic Rickets." *Pediatric Research Suppl.* from PAS 2005.
20. Redding-Lallinger RC, Adkins DW, Gray N. "The use of diaries in the study of priapism in sickle cell disease." Poster presentation Abstract in Blood November 2003.

**Non-Refereed Publications:**

**Editorials, Position, and Background Papers**

1. Reviewer: Hormone Research, Lancet, NC Medical journal, Journal of Pediatrics, Pediatrics, Transgender Health, International Journal of Pediatric Endocrinology
2. Reviewer: AAP National meeting COCIT submissions

**Invited Speaker:**

1. Annual Diversity and Inclusion Symposium, Duke School of Medicine
2. Duke Endocrinology Grand Rounds
3. Duke School of Nursing Course
4. The Seminar, Fort Lauderdale, FL
5. Duke Urology Grand Rounds
6. Greensboro News and Record Community Forum, Greensboro, NC
7. ECU School of medicine first year course lecture, Greenville, NC
8. ECU Ob/Gyn Grand Rounds, Greenville, NC
9. North Carolina Child Psychiatry Annual Meeting, Asheville, NC
10. WPATH Science Meeting Amsterdam, The Netherlands
11. Course Instructor Duke School of Medicine Cultural Determinants of Health and Disparities course
12. The Magic Foundation, Chicago, Il.
13. The Duke School, Teacher Education Seminar
14. Duke Ob/Gyn Grand Rounds
15. NAPNAP nurse practitioner monthly education course

**CONSULTANT APPOINTMENTS:**

North Carolina Newborn Screening Committee

**PROFESSIONAL AWARDS AND SPECIAL RECOGNITIONS:**

ESPE Fellows Summer School, 2001  
NIH Loan Repayment Program Recipient  
Lawson Wilkins AstraZeneca Research Fellow,  
2003-2004

**ORGANIZATIONS AND PARTICIPATION:**

**American Academy of Pediatrics**

- Council on Information Technology
- Reviewer AAP annual meeting presentations
- Section on Endocrinology

**NC Pediatric Society**

**The Endocrine Society**

WPATH-International transgender society

**Pediatric Endocrine Society**

- Education Committee
- web publication for pediatrician education

**American Pediatric Program Directors**

**American Diabetes Association**

1. Course Director: ADA Camp Carolina  
Trails rotation for fellows and residents
2. 2014 Walk Recruitment Committee and  
Team Captain

**RESEARCH:**

1. Novo Nordisk Growth Hormone Registry-closed
2. Exubera inhaled insulin-trial ended
3. Type 1 Diabetes Exchange PI-ongoing
4. INC research trial on oral tolvaptan-ended
5. Celiac and Type 1 diabetes-collaboration with UNC Chapel Hill-complete  
publication in process
6. Metabolic Bone Disease in neonates
7. Service over education in residency and fellowship-start-up phase
8. SPIN study for pediatric subspecialties-ongoing multicenter study
9. Trent Center funding for research on eating disorders and gender dysphoria

# Expert Report of Deanna Adkins, M.D.

## Exhibit B – Bibliography



## **BIBLIOGRAPHY**

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Baudewijntje P.C. Kreukels & Antonio Guillamon; Neuroimaging studies in people with gender incongruence; *International Review of Psychiatry* 28, no. 1 (2016): 120–128.

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Gordetsky, Jennifer & Joseph, David B. "Cloacal Exstrophy: a History of Gender Reassignment." *The Journal of Urology* 86, no. 6 (2015): 1087–1089.

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Hembree, Wylie C.; Cohen-Kettenis, Peggy T.; Gooren, Louis; Hannema, Sabine E.; Meyer, Walter J.; Murad, M. Hassan; Rosenthal, Stephen M.; Safer, Joshua D.; Tangpricha, Vin & T'Sjoen, Guy G. "Endocrine Treatment of Gender-Dysphoric/ Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline." *J. Clin. Endocrinol. Metab.* 102, no. 11 (2017): 1–35.

Hines, Melissa. "Prenatal endocrine influences on sexual orientation and on sexually differentiated childhood behavior." *Frontiers in Neuroendocrinology* 32 (2011): 170–182.

Hoekzema, Elseline; Schagen, Sebastian E.E.; Kreukels, Baudewijntje P.C.; Veltmand, Dick J.; Cohen-Kettenis, Peggy T.; Delemarre-van de Waale, Henriette; & Bakker, Julie. "Regional volumes and spatial volumetric distribution of gray matter in the gender dysphoric brain." *Psychoneuroendocrinology* 55 (2015): 59-71.

Lee PA, Nordenström A, Houk CP, Ahmed SF, Auchus R, Baratz A, Baratz Dalke K, Liao LM, Lin-Su K, Looijenga LH 3rd, Mazur T, Meyer-Bahlburg HF, Mouriquand P, Quigley CA, Sandberg DE, Vilain E & Witchel S. "Global DSD Update Consortium; Global Disorders of Sex Development Update since 2006: Perceptions, Approach and Care." *Horm. Res. Paediatr.* 85, no. 3 (2016): 158-80.

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DE 137-2

# **Exhibit B**

**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,

*Defendants.*

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

**EXPERT REPORT OF DIANE EHRENSAFT, Ph.D.**

### **Qualifications and Experience**

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

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

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

4. In addition to my private practice, I helped found the Child and Adolescent Gender Center (“CAGC”) at the University of California, San Francisco (“UCSF”) Benioff

Children’s Hospital in San Francisco, California, along with several colleagues. I have served as CAGC’s Director of Mental Health since its inception in July 2009 and was appointed an Adjunct Associate Professor at the UCSF Department of Pediatrics.

5. As part of my work through CAGC, I organize and facilitate a group of local mental health providers that work with children and adolescents experiencing gender dysphoria called “Mind the Gap.” The group meets every month to discuss issues we see in our respective practices and provide support and outreach to each other so that we can provide the best care

possible to our patients. Mind the Gap has developed training materials and assessment protocols, and provides community psychotherapy and evaluation for patients who attend the UCSF Child and Adolescent Gender Center Clinic at Benioff Children's Hospital in San Francisco and San Mateo, and at the Children's Hospital in Oakland. There are approximately 175 providers who participate in the group.

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

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

8. As an Adjunct Associate Professor in the Department of Pediatrics at UCSF, I have taught courses including The Treatment of Gender-Nonconforming Children; The Emotional Development of Gender-Nonconforming Children; Interdisciplinary Support of Gender-Nonconforming and Transgender Children; Parenting a Gender nonconforming/Transgender Child. I have also lectured at the University of California, Berkeley and The Wright Institute, which is a clinical psychology graduate school, in Berkeley, California.

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

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

11. I belong to a number of professional organizations and associations relating to (i) the health and well-being of children and adolescents, including those who are transgender; and (ii) appropriate medical treatments for transgender individuals. For example, I am a



member of the World Professional Association for Transgender Health (“WPATH”), an international multidisciplinary professional association to promote evidence-based care, education, research, advocacy, public policy and respect in transgender health. WPATH publishes the Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People, which leading medical and mental health associations, including the American Medical Association, the Endocrine Society, the American Psychiatric Association, and the American Psychological Association, have endorsed as the authoritative standards of care for transgender people. I also sit on the subcommittee of WPATH tasked with drafting the new version of the Standards of Care. A complete list of my involvement in various professional associations is located in my Curriculum Vitae, Exhibit A.

12. In preparation for my testimony, I have reviewed the materials listed in the bibliography attached hereto as Exhibit B, and which consist relevant medical and scientific materials related to transgender people and gender dysphoria. I may rely on those documents, in addition to the documents specifically cited as supportive examples in particular sections of this declaration, as additional support for my opinions. I reserve the right to supplement the materials listed in the bibliography. I have also relied on my years of experience in this field, as set out in my curriculum vitae, Exhibit A, and on the materials listed therein. The materials I have relied on in preparing this declaration are the same type of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

13. In the past four years, I have testified as an expert and provided testimony in the following matters: *Evancho v. Pine-Richland Sch. Dist.*, Case No. 2:16-cv-1537-MRH (W.D. Pa.); *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep’t of Educ.*, Case

No. 2:16-CV-524 (S.D. Ohio); *Brashar v. Or. Health Plan* (Or.); *Miller v. Perdue* (Colo.); and *Stephane Huard v. Dr. Barwín and Broadview Fertility Clinic* (Quebec, 2016).

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

15. In addition to the materials listed in the bibliography attached hereto as Exhibit B, I was provided with and have reviewed the following case-specific materials: (1) the Complaint filed in this matter; (2) the declarations of Plaintiff Drew Adams and his mother, Erica Adams Kasper, that were submitted in support of Plaintiff's motion for preliminary injunction; (3) the transcript of the court hearing on Plaintiff's motion for preliminary injunction, held on August 10, 2017; and (4) Plaintiff Drew Adams's medical and psychological records, as specified on Exhibit B. I have also interviewed Drew Adams in three separate video interviews, dated August 27, 2017; September 5, 2017, and September 14, 2017.

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

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

17. By the beginning of the twentieth century, scientific research had established that external genitalia alone—the typical criterion for assigning sex at birth—is not an accurate proxy for a person's sex. Instead, current medical understanding recognizes that a person's

sex is comprised of a number of components including: chromosomal sex, gonadal sex, fetal hormonal sex (prenatal hormones produced by the gonads), internal morphologic sex (internal genitalia, i.e., ovaries, uterus, testes), external morphological sex (external genitalia, i.e., penis, clitoris, vulva), hypothalamic sex (i.e., sexual differentiations in brain development and structure), pubertal hormonal sex, neurological sex, and gender identity and role. When there is a divergence between these factors, neurological sex and related gender identity are the most important and determinative factors.

18. Gender identity is a person's inner sense of belonging to a particular gender, such as male or female. It is a deeply felt and core component of human identity. It appears to be related to one's brain messages and mind functioning, the factors that are now included under the category of neurological sex.

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

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

21. In other words, transgender boys are boys and transgender girls are girls.

22. Transgender individuals are no different than any other citizen in their ability and talents to make a contribution to society, as long as they are not obstructed by discrimination in doing so. In this regard, transgender people are defined as a group of individuals whose authentic gender is either opposite to or other than the gender that matches the sex assigned to them at birth. What we know in this moment in history, as recent census surveys will tell us, is that transgender people are a discrete, small minority group in our society, easily identifiable both by self-report and professional assessment.

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

24. The evidence demonstrating that gender identity cannot be altered, either for transgender or for non-transgender individuals, further underscores the innate and immutable nature of one's gender identity. Past attempts to "cure" transgender individuals by means of psychotherapy, aversion treatments or electroshock therapy, in order to change their gender identity to match their birth-assigned sex, have proven ineffective. As importantly, evidence suggests that such efforts may cause extreme psychological damage. All major associations of medical and mental health providers, such as the American Medical Association, the

American Psychiatric Association, the American Psychological Association, and WPATH's Standards of Care, consider such efforts unethical and dangerous, as they may cause extreme psychological harm.

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

26. Gender dysphoria is the medical diagnosis for the significant distress and/or problems functioning that result from the incongruity between various aspects of one's sex. It is a serious medical condition and is listed in both the DSM-5 and the World Health Organization's International Classification of Diseases, the diagnostic and coding compendia for mental health and medical professionals, respectively. People diagnosed with gender dysphoria have an intense and persistent discomfort with their assigned sex.

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

28. The psychophysiological experiences of gender dysphoria symptoms vary in kind and degree. Not all transgender young people experience dysphoria. Different types of biological and environmental triggers can cause onset of symptoms.

29. Some environmental triggers of gender dysphoria symptoms are related to a lack of respect for social transition including, but not limited to, misgendering in the form of pronoun use, prohibition of involvement in activities in accordance with one's gender identity, and denying someone access to a restroom or changing facilities that match the person's gender identity.

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

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

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

32. Support for social transition—such as dressing in accord with one's gender identity, respecting a person's chosen name and correct pronouns, and providing access to

restrooms that match who they are—can thus both treat and prevent negative psychological and psychophysiological symptoms of gender dysphoria. Mental health care can also address symptoms of gender dysphoria.

33. Research and clinical experience have shown that consistent respect and inclusive acknowledgement of a transgender youth's gender identity (i.e., positive reinforcement of social transition) improves that child's mental health and reduces the risk that the child will engage in self-harming or suicidal behaviors. In fact, undergoing a social transition before puberty often provides tremendous and immediate relief because there are few, if any, observable physical differences between boys and girls at that age.

34. There are no pharmacologic treatments for gender dysphoria until after the onset of puberty. However, after the onset of puberty, adolescents suffering from gender dysphoria may be placed on puberty suppressors (i.e. hormone blockers) to block the stopping the development of secondary sex characteristics that do not align with the adolescent's gender identity. Thereafter, usually around the age of 16, gender dysphoric adolescents are treated with cross-sex hormones to bring their bodies into alignment with their sex, as primarily determined by their gender identity. For example, a transgender girl will receive estrogens which result in breast growth and female fat distribution, while a transgender boy will receive androgens and will become more muscular and develop a lower voice as well as facial and body hair.

35. Surgical treatment is not typically recommended until an adolescent is, at minimum, in his or her mid- to late-teens, depending on the specific procedure. However, once gender dysphoric adolescents come of age and meet the eligibility criteria, they can be eligible

for surgical interventions meant to bring their bodies into alignment with their identity. The need, timing, and nature of the surgical treatment will differ from patient to patient.

36. Many transgender individuals never undergo surgery or do so only later in life. For many transgender individuals, surgery is not medically necessary or may be safely delayed for some time as their dysphoria is alleviated through social role transition and other medical treatments.

37. A person's gender identity is an innate, effectively immutable characteristic; a person's sex is not determined by a particular medical treatment or procedure. Thus, from a medical and scientific perspective, a person's gender is not dependent on whether or not that person has undergone surgery or any other medical treatment. The medical treatments provided to transgender people (including social transition for transgender children), do not "change a girl into a boy" or vice versa. Instead, they affirm the authentic gender that an individual person *is*. Treatments fall below the accepted standards of care if they fail to recognize that a youth's affirmed gender identity is not how they feel, but rather who they are. The goal of proper treatment is to align the person's body and lived experience with the person's fixed identity as male or female, which already exists. Treatment creates more alignment between the person's identity and the person's appearance, attenuating the dysphoria, and allowing the person's actual sex, male or female, to be seen and recognized by others.

38. Failure to recognize and support a transgender student's gender identity also relies on an outmoded and scientifically unsound premise that transgender identity is only how a person feels, not who they are, and that a transgender girl can never be a "real" girl and a



transgender boy can never be a “real” boy because they lack the chromosomes and genitalia stereotypically-associated with their gender identity. Scientific evidence is now available indicating that gender identity not only has a strong core component but also is primarily dictated by messages from our brain rather than either chromosomes or physiological sex characteristics. With that said, it should be noted that a transgender youth’s gender identity—translated to the sex they live in—is as real as any cisgender youth’s and should be treated accordingly in all settings, including schools.

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

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

40. Transgender children experience significant psychological distress when parents/caregivers or school staff repeatedly fail to acknowledge the child’s gender identity or treat the child in a manner consistent with his or her inaccurate, birth-assigned gender. Because gender is a core aspect of a person’s identity, transgender children who are treated in this way experience that mistreatment as a profound rejection of their core self, which has serious negative consequences for their development and their long-term health and well-being. The

intensity of that distress is directly correlated to the level of rejection or disapproval expressed by a parent, caregiver, or school staff. Greater levels of rejecting behaviors significantly increase the risk that the child will develop long-term mental health conditions, including serious negative mental health consequences such as low self-esteem, anxiety, depression, substance use issues, self-harming behaviors, and suicidal ideation. These conditions accumulate in their severity and also show up immediately in the face of rejecting circumstances, such as when transgender children are told that they cannot use the restroom that matches the gender they know themselves to be.

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

42. Given the amount of time that students spend in school, the school environment has a tremendous impact on a transgender student's development and well-being. Ensuring that schools support a transgender student's gender is critical to their long-term health and well-being. In a study of transgender youth between ages 15 and 21, participants identified school to be the most traumatic aspect of growing up. Experiences of rejection and discrimination from teachers and school personnel led to feelings of shame and unworthiness. The stigmatization to which transgender youth were routinely subjected led many to experience academic difficulties and to drop out of school. The longer a child experiences rejection from his or her family, school, or community, the more significant and long-lasting the negative consequences. Research and surveys have found that transgender adults who experienced discrimination in schools were more likely to have attempted suicide. Research

and surveys have also found that a high percentage of transgender people used drugs and alcohol to cope with the mistreatment they experienced based on their gender identity.

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

44. Partial acceptance is not enough. If a caretaking or school environment offers support in certain domains—such as appropriate pronoun and name use—yet fails to offer support in other areas—such as allowing the child to use the restroom that matches the gender they know themselves to be and/or sending harmful messages that the child, if incorrectly assigned female at birth will always be a girl—such inconsistency can be a confusing and stressful experience for the youth. This stress-inducing experience can in turn result in a lack of trust in an environment that both supports and punishes the same behavior, in this instance the child's affirmation of his or her actual sex. Research has consistently shown that children who receive inconsistent rather than consistent reinforcement of behaviors are at risk for behavioral problems, generalized anxiety, and psychiatric symptoms.

45. Based on my extensive experience researching and working with transgender children, it would be psychologically damaging for a transgender child to be forced to use either the sex-segregated restroom that does not comport with their gender identity or a

separate single-user restroom that other students are not required to use. In addition, there are serious health concerns, as these youth, when barred from using the restroom that matches their affirmed gender identity, will instead typically choose to restrict or forego restroom use at school, putting them at risk for urinary tract infections and impacted bowels.

46. I understand that an administrator in Drew's school district has expressed a concern that some transgender students might take advantage of communal restroom facilities to display their genitals to others. This is simply wrong, and profoundly at odds with the reality of transgender youth's experiencing gender dysphoria and their restroom use. The issue for transgender students is overwhelmingly one in which they seek privacy and discreteness in restroom use, as their genitalia or any part of their body that reveals secondary sex characteristics is typically the source of significant-to-severe body dysphoria and distress related to such dysphoria. In other words, exposing parts of their body that are often associated with gender dysphoria, such as genitalia, is generally the last thing any transgender student wants to do. Nor are transgender students disproportionately likely to engage in misconduct of any kind, in restrooms or any other facility. Certainly there is no evidence that they would be more likely than any other individual to engage in such inappropriate behaviors.

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57. I respectfully reserve the right to modify and expand upon my testimony as the facts are developed in this matter.

Dated this 21st day of September, 2017.



Diane Ehrensaft, Ph.D.

# Expert Report for Diane Ehrensaft, Ph.D.

## Exhibit A – Curriculum Vitae

## **CURRICULUM VITAE**

**NAME:** Diane Ehrensaft, Ph.D.

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

**TELEPHONE:** 510-547-4147

**FAX:** 510-547-7692

**E-MAIL:** dehrensaft@earthlink.net

### **PRESENT POSITIONS:**

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

### **STATUS:**

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



**EDUCATION:**

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

**EDUCATIONAL AWARDS AND APPOINTMENTS:**

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

**GRANTS:**

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

**EMPLOYMENT EXPERIENCE:**

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

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

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

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

**PROFESSIONAL ACTIVITIES:**

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

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

**SELECTED LECTURES AND SPEAKING ENGAGEMENTS:**

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

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

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

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



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

**PROFESSIONAL AFFILIATIONS:**

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

**PUBLICATIONS AND PAPERS:**

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

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

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

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

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

# Expert Report for Diane Ehrensaft, Ph.D.

## Exhibit B – Bibliography

## **BIBLIOGRAPHY**

### **Literature**

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Bockting, W. (2014). The impact of stigma on transgender identity development and mental health. In Kreukels, Steensma, and De Vries (eds), *Gender dysphoria and disorders of sex development: Progress in care and knowledge*. New York: Springer.

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D'Augelli, A.R., Grossman, A.H. & Starks, M.T. (2006). Childhood gender atypicality, victimization, and PTSD among lesbian, gay, and bisexual youth. *Journal of Interpersonal Violence*, 21:1462–1482.

de Vries, Annelou L.C., *et al.* (2014). Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment. *Pediatrics* 134(4):696-704.

de Vries, A.L. & Cohen-Kettenis, P.T. (2012). Clinical management of gender dysphoria in children and adolescents: The dutch approach. *Journal of Homosexuality*, 59(3):301– 320

de Vries, Annelou L.C., *et al.* (2010) Autism Spectrum Disorders in Gender Dysphoric Children and Adolescents, *J. Autism Dev. Disord.* 2010 Aug. 40(8):930-36.

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

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

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**Case-Specific Documents**

- Complaint, *Adams v. The Sch. Bd. of St. Johns Cty., Fla.*,  
Case No. 3:17-cv-00739-TJC-JBT (M.D. Fla. June 28, 2017) (Docket No. 1)
- Declaration of Drew Adams, *Adams v. The Sch. Bd. of St. Johns Cty., Fla.*,  
Case No. 3:17-cv-00739-TJC-JBT (M.D. Fla. July 19, 2017) (Docket No. 22-1)
- Declaration of Erica Adams Kasper, *Adams v. The Sch. Bd. of St. Johns Cty., Fla.*,  
Case No. 3:17-cv-00739-TJC-JBT (M.D. Fla. July 19, 2017) (Docket No. 22-2)
- Hearing Transcript, *Adams v. The Sch. Bd. of St. Johns Cty., Fla.*,  
Case No. 3:17-cv-00739-TJC-JBT (M.D. Fla. Aug. 10, 2017) (Docket No. 57)
- Amended Complaint, *Adams v. The Sch. Bd. of St. Johns Cty., Fla.*,  
Case No. 3:17-cv-00739-TJC-JBT (M.D. Fla. Sept. 7, 2017) (Docket No. 60)

**Medical and Psychological Records for Drew Adams**

- Records from Nemours Children’s Clinic – Jacksonville, including:
  - Records from Dr. Michael De La Hunt, MD
  - Records from Dr. Lisa M. Buckloh, Ph.D.
  - Records from Dr. Priscila C. Gagliardi, MD
  - Records from Dr. Monica M. Mortensen, DO
  
- Records from Duke Health, Department of Pediatrics, including:
  - Records from Dr. Deanna W. Adkins, MD
  
- Records from Baptist Medical Center South
  
- Records from Dr. Kamalesh Pai, MD
  
- Records from Dr. Naomi Jacobs, Ph.D.
  
- Records from Dr. Erica Tarbox/Baptist Pediatrics, Inc.
  
- Records from Dr. Russell F. Sassani, MD/Take Shape Plastic Surgery, P.A.
  
- Records from Judith A. Asermely, LCSW, LLC
  
- Records from counselor Claudia Rojas