

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 VII**

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# Exhibit C

**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

**REBUTTAL EXPERT REPORT OF DIANE EHRENSAFT, Ph.D.**

1. In preparing this rebuttal report, in addition to the materials listed in the expert report previously submitted on October 2, 2017, I have relied on my review of the expert witness report submitted by Dr. Allan M. Josephson; as well as reviewed the World Professional Association for Transgender Health (“WPATH”) Standards of Care, Version 7; the 2017 guidelines for transgender care recently released by the Endocrine Society; the 2015 American Psychological Association guidelines for transgender care; and the 2017 Australian guidelines for transgender care, released in September 2017. In addition, I have reviewed my notes for the interviews I conducted with Drew Adams and a 2017 article authored by Dr. Jack Turban and myself, *Research Review: Gender identity in youth: treatment paradigms and controversies*, which was just published in the Journal of Child Psychology and Psychiatry.

2. The conclusions drawn by the report of Dr. Josephson contain significant methodological flaws and appear to reflect a particular ideology rather than current scientific and medical knowledge regarding gender identity and transgender persons.<sup>1</sup> Those flaws include misuse of statistics, misrepresentation of the studies cited and of the limitations of

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<sup>1</sup> The framing and language used by Dr. Josephson in his report is very similar to a position paper entitled “Gender Dysphoria in Children” by the American College of Pediatricians. American College of Pediatricians, Position Statement: Gender Dysphoria in Children (2016), available at, <https://www.acpeds.org/the-collegespeaks/position-statements/gender-dysphoria-in-children>. The American College of Pediatricians is an association of pediatricians who view being gay or transgender as a disorder, despite the scientific evidence to the contrary. In 2010, Francis S. Collins, M.D., the Director of the National Institute of Health, in a statement made of NIH letterhead, referred to the American College of Pediatricians as a special interest group distorting scientific information to make points against homosexuality, pulling language out of context to “support an ideology that can cause unnecessary anguish and encourage prejudice” John Commins, *NIH Director Raps American College of Pediatricians for Distorting Research on Homosexuality*, HealthLeaders Media (Apr. 16, 2010), available at, <http://www.healthleadersmedia.com/physician-leaders/nih-director-raps-american-college-pediatricians-distorting-research-homosexuality>.

those studies, and failure to cite studies that disprove or undermine conclusions drawn. This renders the report of Dr. Josephson unscientific and unreliable.

**I. Standards of Care and Guidelines Are the Most Reliable Source for Providing Optimal Gender Care in light of Scientific and Clinical Evidence.**

3. The basic tenets of care for transgender care and treatment of gender dysphoria are reflected in the WPATH Standards of Care, Version 7; The American Psychological Association Guidelines for Psychological Practice with Transgender and Gender Nonconforming People; the Endocrine Society's Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline; and the most recently released standards of care, the Australian and New Zealand Standards of Care for Transgender and Gender Diverse Children and Youth, published in September 2017.

4. Standards of care are constructed specifically to direct practitioners toward best practices in the treatment of their patients, based on existing scientific evidence and professional consensus among entities assigned the task of designing those standards. Practice or clinical guidelines offer recommendations to practitioners to assist them in providing competent care in a particular area of treatment, but are not meant to be as rigorously followed as standards of care.

5. As stated succinctly by the authors of the American Psychological Association Guidelines for Psychological Practice with Transgender and Gender Nonconforming People, "Standards are mandates to which all psychologists must adhere, whereas guidelines are aspirational." (p. 833). However, the construction of both standards of care and guidelines are based on review of available scientific evidence and consensus among the working group of professionals constructing the manuals, a consensus drawn from both review of the scientific

evidence and professional knowledge from clinical practice across senior practitioners in the field.

6. Noteworthy in the area of care for transgender and gender diverse children, adolescents, and adults is the present consistency across the most recent documents released, specifically, the WPATH Standards of Care (2011); the APA Guidelines for Transgender Care (2015), the Endocrine Guidelines for Transgender Care (2017), and the most recent standards of care released, The Australian and New Zealand Standards of Care (September, 2017). Consistent across all these documents is that:

- a. Being transgender is a healthy and natural component of the human condition, not a disease;
- b. Attempts to alter an individual's gender to fit social expectations are harmful and should not be practiced;
- c. Psychiatric co-occurring conditions, prevalent in the transgender population, are typically a result of minority distress and environmentally induced stigma, rather than internal mental disturbance;
- d. Positive acceptance, support, and provision of gender-affirming treatments that respect an individual's expressed gender identity promotes healthy physical and psychological outcomes, while lack of acceptance/support and denial of such treatments puts an individual at risk for negative physical and psychological outcomes; and

e. Practitioners should develop a knowledge base and be trained in these gender-affirming practices if they are to be interfacing with gender diverse and transgender patients.

7. Failure to follow these guidelines or standards of care, in a professional community that relies on both to keep them abreast of the most recent scientific discoveries in their field, inform them of best practices, and direct them toward competent care, is typically assessed as substandard practice. This is especially true in situations when existent standards or guidelines from the dominant professional organizations in their field are consistent with each other and in agreement about best practices, as they are regarding transgender care.

8. It should also be noted that within these documents are also references to best practices not just for mental health and health professionals, but for families, schools, religious institutions, and community organizations.

9. Representative of this consistency across major health organizations internationally, itemized here are the major tenets of standards of care, as articulated in the most recently published document: Telfer, M.M., Tollit, M.A., Pace, C.C., & Panga, K.C. *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents*, Melbourne: The Royal Children's Hospital, 2017. These standards were established on the basis of available scientific and empirical evidence and clinical consensus:

a. "In the past, psychological practices attempting to change a person's gender identity to be more aligned with their sex assigned at birth were used. Such practices, typically known as conversion or reparative therapies, lack efficacy,



and are considered unethical and may cause lasting damage to a child or adolescent's social and emotional health and well-being." (p. 5);

- b. "Being trans or gender diverse is now largely viewed as part of the natural spectrum of human diversity." (p 2); and
- c. "Increasing evidence demonstrates that with supportive, gender affirming care during childhood and adolescence, harms can be ameliorated and mental health and wellbeing outcomes can be significantly improved." (p. 2).

10. In summary, the role of the mental health professional is to do a thorough assessment and provide avenues for a child or adolescent to explore and consolidate their affirmed gender identity, with additional services offered to parents to strengthen their levels of support to the child, and counsel the youth and parents, in adolescence, about possible available medical interventions.

11. Practices that encourage parents to set arbitrary or inappropriate limits on their children's authentic gender expression or the categorization of a child's persistent declarations of a cross-gender identity as a psychiatric disturbance violate the standards of care. Included in those violations would be reference to the child needing to be met with firm, empathic limits, and redirection and likening the child's gender articulations to childhood insistence on countless things that are not healthy or good for them, as Dr. Josephson suggests in paragraph 24 of his report.

12. It also violates those standards of care to treat a desire to live in accordance to one's affirmed gender identity as an avoidance of challenging developmental hurdles rather than "dealing with struggles on the road to health" with meaningful psychotherapy as an

empathic combination of support/affirmation and encouragement to change and improve,” as Josephson suggests in paragraph 32. Although Josephson does not specifically define in that paragraph what he is referring to when he speaks of change and improvement, if change and improvement involve recognizing the “delusion of transgender ideation,” as stated in other sections of Dr. Josephson’s report, that would be antithetical to the extant standards of care and clinical guidelines of all major health organizations, which clearly state that being transgender is not a disease.

13. The assertion that the current available medical interventions for treating transgender adolescents constitute “eliminating puberty” shows a lack of understanding of the standards of care and medical protocols. (See Josephson report, paragraph 27). There is no existing practice or scientific evidence that puberty could ever be eliminated, as stated in Dr. Josephson’s report (See Josephson report, paragraph 27). Instead, best practices are to make available to a transgender youth through medical interventions (puberty blockers and masculinizing or feminizing hormones) the possibility of a puberty more in alignment with their affirmed gender than with the sex assigned to them at birth.

**II. Extant Standards of Care and Clinical or Practice Guidelines for Transgender Youth Consistently Endorse a Gender Affirmative Model of Care.**

14. The gender affirmative model of care is defined as a model of care recognizing that gender is a combination of biology, environment, and culture and that goals of treatment should be to facilitate a process for a child or youth to live in their legitimate affirmed gender. As stated above, in all these documents gender variations are perceived as a healthy variation among human beings and it is understood that psychological symptoms are most likely a result

of minority stress (i.e., the psychological distress or angst resulting from negative behavior and discrimination targeted at the individual from the social world) rather than disease.

15. Although gender is understood to be a complex interplay of nature, nurture, and culture, it is recognized that for transgender people there is a strong biological underpinning. Gender identity is an internal core component of one's identity, one that may or may not match the sex assigned at birth, and one that is not enforced or legislated by others but internally driven.

16. Care is individualized, with no single form of treatment for all people. For example, in the WPATH Standards of Care, Version 7 (the latest edition), it is no longer required that a person have a "real life" experience (living in the gender role that matches their affirmed gender identity) before receiving medical treatments, and ongoing psychotherapy is no longer a prerequisite to receiving medical care or making a social transition. What has taken the place of either mandatory real life experience or psychotherapy is an interdisciplinary model in which careful assessment and facilitation occurs as the team, consisting of medical and mental health professionals, with the help of the child and family, assesses and acquires knowledge of a child's authentic gender.

### **III. Legal Statutes Exist Supporting the Present Standards of Care and Practice Guidelines.**

17. In nine states (California, Rhode Island, New Jersey, Oregon, Nevada, New Mexico, Illinois, Vermont, Connecticut) and the District of Columbia, legislative statutes exist prohibiting psychotherapeutic practices that attempt to change a minor's sexual orientation or gender behaviors. Similar bills have been introduced in 20 other states, and the Canadian province of Ontario also has legislation banning such clinical practices.

18. In addition to existing laws in a number of states prohibiting discrimination based on gender identity or transgender status in public accommodations, the state of California has also passed legislation that states that every student in the public school system shall be able to use all facilities and engage in all school activities in conformance with their affirmed gender identity, rather than the sex indicated on their birth certificate. Since the passing of that bill there has been no reported instance of any student's privacy being violated by bathroom use according to one's affirmed gender rather than sex assigned at birth.

19. Legislative actions are moving in alignment with the present standards of care and clinical guidelines in assuring the health and well-being of gender diverse and transgender students and prohibiting practices that are implicitly or explicitly advocated in Dr. Josephson's report.

IV. **All Clinical Practice Should Involve Careful and Thoughtful Exploration, Rather Than Cursory Endorsement, of a Youth's Initial Reporting About Their Gender.**

20. I agree with Dr. Josephson that clinical practice should involve careful and thoughtful exploration rather than cursory endorsement of a youth's initial reporting about their gender (See Josephson, Paragraph 34). Problematic, however, is his assumption that the gender affirmative model of care fails to engage in such practices. The model of care promoted in both the extant standards and guidelines involves careful investigation and exploration of a youth's gender, along with consideration of co-existing psychological issues for a youth that may interface with their gender explorations or self-understandings. No cursory endorsement is involved.

21. The best indication of this model in practice is a consideration of the plaintiff in this complaint, Drew Adams. Having had the opportunity to interview Drew directly and to also review his clinical records, there is sufficient documentation and clinical evidence, along with my own observations, that Drew, with the aid of several mental health and health professionals, has spent much time exploring and bringing into focus his thoughts, feelings, and stresses related to his gender, and with the help of extensive professional care and support came to the realization that his authentic gender is male. In accordance with operationalizing that realization through a social and medical transition, again with continued support from trained professionals, Drew is now only asking that he be allowed to live as the boy he is in every aspect of daily life, which would include access to bathrooms that match his gender, not the sex assigned to him at birth.

**V. The Conclusions of Dr. Josephson's Report are Methodologically Unsound.**

22. Dr. Josephson relies on incomplete, outdated, and methodologically flawed data, as will be described below, and then extrapolates from that unreliable data to support the view that treatment of transgender children should seek to alter the child's gender identity to conform to the child's sex assigned at birth. That view has no support in the scientific literature or in current medical knowledge and practice, which recognizes that such treatments are harmful and unethical. See U.S. Dep't of Health and Human Servs., Substance Abuse and Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* (2015), available at, <http://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf>; American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009),

available at, <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>; World Prof. Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* (2011), available at, [https://s3.amazonaws.com/amo\\_hub\\_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20\(2\)\(1\).pdf](https://s3.amazonaws.com/amo_hub_content/Association140/files/Standards%20of%20Care%20V7%20-%202011%20WPATH%20(2)(1).pdf).

23. The report misrepresents research relating to the desistence rates among children diagnosed with gender dysphoria. First, Dr. Josephson fails to point out a critical limitation in those studies, which is that those studies focused on children with gender dysphoria (or its predecessor, gender identity disorder), but not transgender youth. Although all transgender youth meet the criteria for gender dysphoria, not all youth diagnosed with gender dysphoria are transgender. Further, Dr. Josephson draws conclusions about transgender children from a sample of children diagnosed with gender dysphoria, which is not the same as it includes children who are not transgender, and fails to recognize that not all transgender children will be captured by a diagnosis of gender dysphoria.

24. Second, a number of key articles that Dr. Josephson relies on in his discussion of the desistence of gender dysphoria have additional methodological weaknesses. For example, in “Psychosexual Outcome of Gender-Dysphoric Children,” by Madeleine Wallien and Peggy Cohen-Kettenis, the study started with a cohort of seventy-seven children who had been diagnosed with gender identity disorder, which is now referred to as gender dysphoria. Of that cohort, twenty-three were lost to follow up and for another ten the follow up was conducted with a parent, not the youth. Instead of excluding those children from the statistical analysis, which is a necessary methodical requirement in scientific research, the authors

continued to count them as subjects in the longitudinal study and combined them with those deemed to have “desisted” (i.e., no longer met the diagnostic criteria for gender identity disorder) – resulting in an artificially depressed 27% “persistence” rate. A similar methodological error was made in “Desisting and Persisting Gender Dysphoria After Childhood: A Qualitative Follow-up Study,” by Thomas Steensma, et al. That study started with a cohort of fifty-three adolescents who had been diagnosed with gender identity disorder. Of that cohort, twenty-four were lost to follow up. The authors noted in the article that “[a]s the Amsterdam Gender Identity Clinic for children and adolescents is the only one in the country, we assumed that their gender dysphoric feelings had desisted.” This causal assumption is clearly flawed, as these adolescents might have many reasons for not returning to the clinic beyond whether they continued to be gender dysphoric, and furthermore, as mentioned above, it is not allowable to count individuals who have dropped out of a study as subjects once lost to the examiner. Further, the critical variables to be measured to determine transgender status, which included measures of gender identity and measures of gender expression, were not the independent variables used in the studies of desisters and persisters, as they should have been if the focus of the study is to determine whether one is transgender or not. Qualifying for a diagnosis of gender identity disorder, the independent variable used in these studies and for which the diagnostic criteria were different than diagnosis of gender dysphoria, fails to meet the standard of measurements necessary to determine transgender status, which includes measures of gender identity and gender expression. Because of those serious flaws, these articles provide no reliable information about the desistance rates for children diagnosed early in life with gender dysphoria.

25. Third, the impetus behind undertaking scientific studies on desistence was to hone the diagnostic criteria used by professionals to more accurately distinguish between transgender youth and youth who are gender-nonconforming. As reflected in the current medical consensus of experts in this field, that goal has been largely achieved. As discussed in “Factors Associated with Desistence and Persistence of Childhood Gender Dysphoria: A Qualitative Follow-Up Study,” by Thomas Steensma, et al., four commonly used hallmarks have been identified to differentiate children who are grappling with their preferred gender expressions but not their gender identity from transgender children: (i) the intensity of gender dysphoria; (ii) that the child indicates they are the “other” sex as opposed to wishing to be the “other” sex; (iii) evidence of a significant degree of discomfort with their genitals (body dysphoria); and (iv) age of referral. Dr. Josephson fails to acknowledge the investigators’ review of their own research, information which is widely accepted and relied upon by experts in treating transgender children (e.g. cf. D. Ehrensaft, *Gender Born, Gender Made & The Gender Creative Child*).

26. As a result, there is no support for the conclusion that affirming a transgender child’s gender identity will cause a child whose gender dysphoria would have otherwise desisted to persist. All data point to the fact that children who underwent an early social transition had already exhibited the objective hallmarks previously mentioned, i.e., were already clearly transgender in their own understanding of themselves and as observed by others, including mental health and medical professionals. Thus, consistent with the standards of care, social transition was the appropriate treatment and supporting those children through a social transition contributed to their overall positive mental health.



27. Lastly, the persister/desister research which Dr. Josephson relies on in his report does not pertain to transgender youth who do not surface with either gender dysphoria or a transgender knowledge of self until adolescence, often triggered by the onset of puberty which feels discordant to the youth.

**VI. Transgender Youth Are a Small Percentage of the Population, But That Does Not Render Them Abnormal.**

28. Although transgender people are a small percentage of the overall population, Dr. Josephson inappropriately extrapolates that statistic to support the belief that being transgender is not normal and is a disease that must be cured. *See* Josephson Report, para. 22. There are many human variations that are rare or affect only small populations and that are not equated with disease, such as people with high IQs. The rarity of a particular occurrence or trait is just that, evidence of its rate of occurrence within a population; that statistic indicates nothing about whether the occurrence or trait is maladaptive.

29. Stated differently, minority status does not equate with psychiatric abnormality. Presently it is estimated that somewhere between 1 and 2% of the population is transgender, and it is assessed that these are underestimates, due to the reluctance of many to report their transgender status. In addition to the analogy of the comparatively rare number of individuals rated as having superior intelligence, we can also refer to the analogy of handedness. Left-handed people represent only 10% of the population; therefore, individuals who hold this status qualify as a minority population, possessing a variation in brain make-up, but not abnormality.

30. As discussed presently in this statement, and in my prior declaration in this matter, scientific studies and clinical experience demonstrate that being transgender is a normal part of human variation.

**VII. Transgender Status Is Not a Mental Disorder.**

31. By all existent mental health diagnostic measures, being transgender does not qualify as a mental disease or a delusion, although specifically stated in Paragraph 16 of Dr. Josephson's report and suggested, in referring to transgender ideation as delusion, in Paragraph 43 of his report.

32. In 2013, the DSM-V replaced the DSM-IV. The previous child and adolescent gender diagnosis "Gender Identity Disorder" was removed from the DSM manual and replaced by the "Gender Dysphoria" diagnosis, a diagnostic category that replaces the concept of disorder with the acknowledgement of the stress or distress that may accompany a youth's realization that the gender they experience themselves as being to be discordant with the gender that would match the sex assigned to them at birth.

33. In preparing for the new ICD 11, there has been extensive field study investigation as to whether a childhood gender diagnosis should exist at all, and if it does, whether it should be renamed "gender incongruence" and be removed from chapters on mental disorders, for the precise reason that it is not a disorder in itself.

34. Presently, within the community of health care community there is much debate as to whether a childhood gender diagnosis should exist. While the overwhelming consensus is that gender nonconformity is not pathological, nonetheless some want to retain the diagnosis for practical reasons related to access to care. Specific concerns among those opposing a childhood mental health gender diagnosis are 1) that having such a diagnosis is in tension with the most recent standards of care which consistently de-pathologize gender nonconformity and transgender identity, and 2) that the diagnosis will be misused by those who are ideologically

opposed to the concept of gender diversity and will use the diagnosis to maintain a stance that transgender ideation or identity is a mental illness, promoting an obsolete notion that such experiences represent a mental illness. The latter concern among opponents to the childhood diagnosis is well-founded, as evidenced in the narrative of Dr. Josephson's expert witness report, as when he states for example, "A transgender individual meets the technical, psychiatric criterion for maintaining a delusion: a false, fixed belief, minimally responsive to reason . . . . A deluded person has the freedom to choose beliefs, and should be respected in that choosing, but he/she does not have the freedom to redefine reality" (Josephson report, para. 25). Even those who have been in favor of retaining the diagnosis indicate that the purpose of doing so is not to label a child as disordered but to clinically identify those children and youth who are suffering from stress or distress related to their gender in order to get them the needed treatment for their angst and the supports to live life more authentically in accordance with their experienced gender identity or expressions rather than in accordance to the sex assigned to them at birth.

35. Perhaps of most significance is that no major health organization, including The American Psychological Association, The World Professional Organization for Transgender Health, and the Endocrine Society, presently recognizes transgender identity as a disorder to be cured but rather as a core component of one's identity that may be accompanied by stress or suffering as a result of poor environmental provisions, such as lack of support, respect, or acceptance of the individuals' authentic gender.

36. Scientific evidence that transgender children function within normal range psychologically can be found in the peer-reviewed studies of Dr. Kristina Olson and her


colleagues at University of Washington. Findings were that children who have been identified as transgender and allowed to socially transition to their affirmed gender, when matched with non-transgender peers, showed no differences in psychological functioning from their non-transgender peers, except for a slight elevation in anxiety symptoms, but even then with no areas of psychiatric measures within a clinical range, meaning that the measures indicate these children are within normal range of all psychological areas of functioning measured and indicated rates similar to their non-transgender peers.

37. Nowhere in the standards of care or clinical and practice guidelines is transgender status referred to as a delusion.

\* \* \* \* \*

38. In conclusion, Dr. Josephson's underlying assumption that being transgender is a disease rather than a natural and healthy variation of humanity is both a violation of present standards of care, in contradiction to both scientific research and clinical or practice guidelines, and a critical flaw in the arguments made in his expert report.

Dated this 2nd day of November, 2017.

A handwritten signature in black ink, reading "Diane Ehrensaft", written over a horizontal line.

Diane Ehrensaft, Ph.D.

# Rebuttal Expert Report of Diane Ehrensaft, Ph.D.

## Exhibit A – Bibliography

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### CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2017, I caused a true and complete copy of the foregoing REBUTTAL EXPERT REPORT OF DIANE EHRENSAFT, Ph.D., to be served upon the following parties hereto via email:

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DE 138



**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,**

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

**v.**

**THE SCHOOL BOARD OF ST. JOHNS  
COUNTY, FLORIDA,**

**Defendant.**

**DEFENDANT'S NOTICE OF FILING PRELIMINARY FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

Defendant, **THE SCHOOL BOARD OF ST. JOHNS COUNTY FLORIDA**, by and through undersigned counsel and pursuant to the Court's Case Management and Scheduling Order [Doc. 59], hereby gives notice of filing its Preliminary Findings of Fact and Conclusions of Law. A copy of the Preliminary Findings of Fact and Conclusions of Law shall be filed as an exhibit to this Notice.

Dated this 7th day of December, 2017.

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Respectfully submitted,

/s/ Terry J. Harmon

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*Counsel for Defendant*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 7th day of December, 2017, a true and correct copy of the foregoing was electronically filed in the U.S. 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/ Michael P. Spellman

**MICHAEL P. SPELLMAN**

DE 138-1

**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,**

**Defendants.**

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**PRELIMINARY FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Court commenced a non-jury trial on December 11, 2017 in this Cause. Based upon the testimony presented and the evidence admitted at trial, and being otherwise fully advised on the matter, the Court makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

**The District**

1. The School Board of St. Johns County, Florida (“School Board”) is the governing body of the St. Johns County School District (“District”), a K-12 school district responsible for the operation, control, and supervision of all public schools located in St. Johns County, Florida. Fla. Stat. §§1001.30; 1001.32(2). Authorized to exercise any power not expressly prohibited by law, Fla. Stat. §1001.32(2), the School Board is made up of five members elected from geographic districts within the County. Among its many duties, the

School Board is responsible for providing “proper attention to [the] health, safety, and other matters relating to the welfare of students.” Fla. Stat. §1001.42(8)(a); see also, Fla. Stat. §1006.07. The School Board is also required to “[e]nsure that all plans and specifications for buildings provide adequately for the safety and well-being of students...” Fla. Stat. §1001.42(11)(b)8.

2. The School Board in St. Johns County appoints the Superintendent, who is responsible for the administration and management of the schools and for the supervision of instruction within the District. Fla. Stat. §1001.32(3); see also, Fla. Stat. §§1001.49; 1001.51 (general powers, duties and responsibilities of district school superintendents). The School Board appointed Tim Forson as its Superintendent in January 2017. Mr. Forson has served the District for almost 37 years total, previously serving as a Deputy Superintendent, high school principal, elementary school principal, teacher, and coach. Prior to Mr. Forson, Dr. Joseph Joyner served as Superintendent.

3. The District operates 36 K-12 schools (excluding alternate, virtual, and charter schools) across a 608 square mile region. With over 4,500 employees, the District enrolls just under 40,000 K-12 students during the 2017-2018 school year. The District has placed first out of 67 counties in total school accountability points for the past eight years and is one of only three A-rated school districts in Florida.

4. The District has always maintained an unwritten policy, consistent with the State’s construction code for educational facilities, that segregates group or multi-user bathrooms by biological sex. There is no evidence the District ever allowed students to use group bathrooms designated for the opposite sex.

5. Each student who enrolls in a District school must complete an enrollment packet, which includes various information about the student. Some information must be supported by documentation, such as proof of residence (to ensure the student lives in the District and in the school's attendance zone), proof of immunizations, and, in the case of a child's sex, a birth certificate or birth registration card, and a physician's medical information. The information in the packet and/or the documentation presented is taken at face value unless the District becomes aware of information that disputes or questions its accuracy.

**The Plaintiff**

6. Plaintiff is presently a junior attending Allen D. Nease High School ("Nease") in Ponte Vedra, Florida, a school within the District.

7. Plaintiff is a biological female. From his birth until the end of the 2014-15 school year, Plaintiff identified consistent with his biological sex.

8. When Plaintiff enrolled in the District as a fourth grader in July of 2010, he submitted an enrollment packet which designated his sex as "female," documented by a State of Florida Birth Registration Card, which consistently marked his sex as "female," and by his physical examination report. From fourth through eighth grade, Plaintiff, like every other girl in the District, used the group restroom sex-segregated for girls, without complaint or incident.

9. Towards the end of the 2014-15 school year, Plaintiff was involved in a traumatic event, after which the District created a "Safety Plan" for Plaintiff, because he was

“triggered” by a variety of self-reported factors, none of which included gender identity issues or bathroom use.

10. Approximately three weeks after the event, Plaintiff watched the May 26, 2015 episode of the Ellen DeGeneres Show, a talk-variety show, which featured Aydian Dowling whose notoriety was due to him possibly becoming the first transgender man on the cover of Men’s Health magazine.<sup>1</sup>

11. After watching Mr. Dowling’s appearance Plaintiff “realized” he might be transgender. Within a few weeks, Plaintiff announced to his family he identified as a male, cut his hair short to appear like a male and began wearing a binder to minimize the appearance of his breasts.

#### **The Development of the District’s Best Practices**

12. Prior to retiring in June 2016, Sallyanne Smith served as the District’s Director of Student Services for many years. At some point between 2012 and 2013, then-Superintendent Dr. Joyner designated Ms. Smith to look into and make District-wide recommendations for handling issues involving transgender students.

13. Ms. Smith put together and led a task force to focus specifically on these recommendations. For the next several months, Ms. Smith and members of the task force took numerous steps to researching issues involving transgender students in an effort towards developing District-wide guidelines. These steps included: attending national conferences on LGBTQ student issues in schools; speaking with staff and administrators from other school

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<sup>1</sup> The segment with Mr. Dowling can be seen on Youtube at this link:  
<https://www.youtube.com/watch?v=LujYm465ntY>

districts; meeting with students who were leaders of or involved in Gay-Straight Alliance clubs in various schools within the District; researching the policies of other school districts within the state and around the nation; reviewing news articles about evolving transgender issues; and hosting focus groups in the community attended by persons representing diverse interests and points of view.

14. After months of work, in March 2015, Ms. Smith composed the task force's draft recommendations for consideration by the District's executive cabinet. Attached to the recommendations was a draft of a table of "Best Practices" for LGBTQ students. For "Restrooms," the task force recommended, "Students will be given access to a gender-neutral restroom and will not be forced to use the restroom corresponding to their biological sex."

15. The task force based its recommendations, and specifically that related to restroom use, on the best interests of all the children in the District, and specifically, the comfort, safety and privacy of every student. From information learned during the research phase, the task force understood that offering the use of a gender-neutral bathroom was appropriate because it maintained the privacy of transgender students as well as other students.

16. In August 2015, Cathy Mittelstadt, then-Associate Superintendent of Student Support Services, presented the final draft of the task force's recommendations to the executive cabinet. After a review by the School Board's lawyer and outside counsel, the executive cabinet approved the recommendations in late August or early September 2015. Entitled "St. Johns County School District Guidelines for LGBTQ students-Follow Best Practices," the document covered various areas, among which included the use of nouns and



pronouns, changing official documents, privacy and the use of restrooms and locker rooms. Relevant to restrooms, the Best Practices authorized an alternative for students from the District's long-standing practice of separating bathrooms based on biological sex, providing "transgender students will be given access to a gender-neutral restroom and will not be required to use the restroom corresponding to their biological sex."

17. The implementation of the Best Practices did not change the underlying prohibition against a student using a bathroom that was inconsistent with his or her biological sex. The District distributed the Best Practices to principals in early September 2015.

18. Although the District distributed the Best Practices after Plaintiff informed it that he identified as transgender, there is no question that the District had developed the Best Practices well in advance of that notification. The Best Practices were not implemented in response to Plaintiff. In fact, the District's teachers and staff were following the Best Practices relating to transgender bathroom usage before they were reduced to writing and distributed.

#### **Plaintiff Enters Nease**

19. Several weeks before the beginning of the 2015-16 school year, Plaintiff's mother contacted school officials and informed them that Plaintiff self-identified as a male and wished to present as a boy at Nease.

20. District staff, including social worker Holly Arkin, then-Nease Principal Kyle Dresback, and others met to discuss and implement a plan to ensure a smooth transition for Plaintiff. In this regard, Mr. Dresback met with each of Plaintiff's teachers to ensure they were aware of and would comply with Plaintiff's desire to be referred to by male nouns and

pronouns. The group also identified a gender-neutral restroom in the administration building (known as the C pod). Mr. Dresback also made arrangements to expedite creating a freshman photograph for Plaintiff's school record and student ID because Plaintiff did not want to use his eighth grade photograph, which showed him as a long-haired female.

21. Ms. Arkin informed Plaintiff's mother by telephone on August 3, 2015 that Plaintiff could use the gender-neutral restroom in C pod instead of the girls' restroom.

22. At the orientation for incoming students, school staff and administrators treated Plaintiff as a boy. For example, in exercises in which participants were segregated by sex, Plaintiff was on the "boys team." During the first week of school, District Guidance Counselor Michelle Sterling showed Plaintiff the location of the gender-neutral bathroom in C pod.

23. Six weeks into the new school year, Mr. Dresback received a complaint from two students that Plaintiff was using the boys' restroom. Mr. Dresback contacted Ms. Arkin, who met with Plaintiff and reiterated that his two options were the girls' restroom, which was consistent with his biological sex, or the gender-neutral bathroom in C pod.

24. Approximately one week later, Plaintiff's mother requested a meeting with Mr. Dresback. On October 9, 2015, Plaintiff's mother and Plaintiff attended a meeting with Mr. Dresback, Ms. Smith, and Ms. Arkin, among others. Plaintiff's mother requested Plaintiff be able to use the boys' restroom since he self-identified as male. District officials again reiterated the District's position, and the two options available to Plaintiff. Plaintiff's mother complained the gender-neutral restroom in C Pod was inconvenient to Plaintiff's

classes, and over the next several weeks, Nease opened three additional gender-neutral restrooms throughout the campus.

25. Since September 2015, Plaintiff has not used a boys' restroom at Nease. Plaintiff has produced no evidence that his use of the gender-neutral restroom has caused any negative impact on his academic performance nor that he has suffered any medical injury or condition or aggravation to any pre-existing condition. Such a cause and effect statement has not been established by any reliable evidence, but rather directly contradicted by Plaintiff who stated that he is no longer suffering. In fact, Plaintiff is a member of the National Honor Society and socially, has many friends and has a girlfriend.

26. In pleadings and in deposition, Plaintiff claims that his one-way walk from some of his classes to the nearest gender-neutral restroom is approximately ten to fifteen minutes. Video evidence pursuant to Plaintiff's Rule 34 inspection, however, confirmed that the furthest possible one-way distance from Plaintiff's class – 4th period –to the nearest gender-neutral restroom actually took three minutes to traverse.

27. Nease opened a building at the beginning of the 2017-18 school year, which provides six additional gender-neutral restrooms, bringing the total to 11. Although Plaintiff does not have any classes in the new building, during the Rule 34 inspection, Plaintiff confirmed he regularly uses at least two of these new restrooms.

#### **Complaints and Community Concerns**

28. The Defendant did not receive any complaints from students about Plaintiff using the boys' restroom other than the one received in the first six weeks of Plaintiff's

freshman year. The evidence, however, is undisputed that after September 22, 2015, Plaintiff has not used a boys' restroom.

29. Independently, certain parents of students and students (excluding Plaintiff and his parents) within 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 the sex assigned at birth (also known as their biological sex). These individuals believe that such a practice would violate the bodily privacy rights of students and raise privacy, safety and welfare concerns.

30. When news of Plaintiff's lawsuit was publicized, the Defendant received a number of complaints from parents and concerned citizens. The number of emails in favor of the Defendant's policy was almost five times greater than those against. In addition, the Defendant received a petition signed by several hundred individuals advocating students use the bathroom consistent with their birth sex.

#### **The DOE/DOJ Guidance**

31. On May 13, 2016, the U.S. Departments of Education ("DOE") and Justice ("DOJ") jointly released a statement of guidance and best practices ("Joint Guidance"). The Guidance was not a rule duly promulgated through the administrative rule-making process, but rather provided an interpretation that federal laws which prohibit discrimination based on sex affect schools' obligations with regard to transgender students. Included within the Joint Guidance was a statement that schools must allow transgender students the opportunity to participate in and access sex-segregated facilities. The Guidance cited no case law or statutory authority, but rather referenced only previous internal pronouncements. Although

the Guidance claimed to “not add requirements to applicable law,” it went on to impose “as a condition of receiving Federal funds” a seismic, and unsupported shift in the interpretation of Title IX and its implementing regulations.

32. On May 18, 2016, in response to the Joint Guidance, Dr. Joyner issued a statement which read, in pertinent part, “I am committed to doing what is right for each and every child. We believe our current practice is lawful and reasonable in that we provide gender-neutral restroom facilities to accommodate privacy and the safety for all students as needed or requested.” The District, therefore, did not change its long-standing sex-segregated bathroom policy nor its Best Practices with respect to restroom use.

33. On February 22, 2017, DOE and DOJ withdrew the Joint Guidance and a prior DOE guidance consistent with the Joint Guidance. In doing so, the Departments emphasized that States and local school districts play the primary role in setting educational policy.

34. On October 4, 2017, Attorney General Jeff Sessions issued a memorandum the subject of which stated “Revised Treatment of Transgender Discrimination Claims Under Title VII of the Civil Rights Act of 1964.” In that memorandum, Attorney General Sessions withdrew a December 14, 2014 memorandum issued by then-Attorney General Eric Holder, and confirmed that Title VII’s express prohibition against discrimination “because ... of sex” does not include gender identity. The memorandum explained, “‘sex’ is ordinarily defined to mean biologically male or female.”

### **The OCR Complaint**

35. In November of 2015, Plaintiff filed a complaint with DOE's Office for Civil Rights ("OCR"). In a December 28, 2015 letter, OCR notified the District of the Plaintiff's complaint, and advised that OCR would investigate the following issue: "Whether school officials have disallowed [Plaintiff] to use restrooms at Nease High School that are consistent with his gender identity, instead requiring him to use separate, gender-neutral employee restrooms, in noncompliance with Title IX." On January 15, 2016, the District notified OCR that it declined to participate in OCR's mediation program. On March 30, 2016, the District, through its legal counsel, responded to OCR's Title IX investigation, and denied any wrongdoing.

### **The Medical Facts<sup>2</sup>**

36. Much has been made by Plaintiff regarding the medicine, science, and terminology behind what it means to be transgender, the diagnosis of gender dysphoria, how transgender people feel, and the necessary treatment protocols. "Biological sex" or "sex" refer to a member of a species in relation to the member's capacity to either donate or receive genetic materials for the purpose of reproduction. A person's sex is encoded in his or her genes at conception.

37. Sex differentiation occurs during fetal development when the presence of a Y chromosome directs the development of gonadal tissue, producing hormones that form male sex organs in tissue that would otherwise develop into female sex organs.

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<sup>2</sup> Should the Court determine that the medical expert testimony is unnecessary to the ultimate determinations in this case, this entire Medical Facts section may be disregarded.

38. “Gender identity” refers to a person’s inner sense of belonging to a particular gender. Although gender usually aligns with biological sex, some individuals may experience discordance between the two, such as, in this case, when a biological female whose has a gender identity of male. These individuals are referred to as “transgender.” When individuals experience significant distress due to discordance between their gender, it is known as gender dysphoria.

39. Plaintiff argues that gender identity is determined at or before birth and is unchangeable, and therefore immutable. However, the established peer review literature and the testimony of Dr. Hruz and Dr. Josephson suggest that this may not be the case. Studies have been done with identical twins that refute this argument and peer reviewed literature suggest that the vast majority, up to 95%, of children who express gender dysphoria revert to a gender identity that is consistent with their biological sex by late adolescence.

40. Currently, there is not enough peer reviewed literature and data to determine the exact cause of gender dysphoria in individuals. Although the data is incomplete, the best evidence suggests that it is a result of a combination of prenatal hormone exposure, genetic variation, and postnatal environmental influences. Further, the limited emerging data does not establish whether any variations between brain functions of transgender and non-transgender individuals are innate and fixed or acquired and malleable. An infant cannot have a gender identity prior to developing the psychological equipment necessary to develop such an identity. The physical realities of an infant’s sex, their chromosomal make up and their genitalia, come first, their thoughts cognitions, and feelings come later.

41. Regarding the use of bathroom facilities in accordance with one's gender identity as a necessary treatment protocol for individuals suffering from gender dysphoria, There is no reliable peer-reviewed scientific studies to support such a statement.

42. It is sufficient to say that the science in this area is rapidly evolving and still unsettled.

43. The diagnosis of gender dysphoria is one which is exclusively based on the subjective complaints (i.e., patients self-reporting) of the person allegedly suffering from it. Plaintiff's self-produced social media video makes clear that Plaintiff understands the symptoms associated with it. It also undercuts the allegations in this case as he repeatedly admits that he does not suffer from gender dysphoria.

### **CONCLUSIONS OF LAW**

Plaintiff's Amended Complaint alleges that Defendant's policy excluding him from using the boys' restroom violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title IX of the Educational Amendments of 1972. Plaintiff seeks declaratory and injunctive relief as well as compensatory damages.

### **INTRODUCTION**

The Supreme Court has long recognized that a State has broad authority to protect the physical, mental, and moral well-being of its youth, than of its adults. See e.g., Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 72-74 (1976); Ginsberg v. New York, 390 U.S. 629, 639-40 (1968); Prince v. Massachusetts, 321 U.S. 158, 170 (1944).

Education is not among the federal government's enumerated powers, but rather one of the many powers reserved to the states and the people, absent a constitutional restriction:



[S]tate governments do not need constitutional authorization to act. The States thus can and do perform many of the vital functions of modern government—punishing street crime, *running public schools*, and zoning property for development, to name but a few—even though the Constitution’s text does not authorize any government to do so.

Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2578 (2012) (emphasis added).

Local control over public education is “deeply rooted” in American tradition. Indeed, “local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.” Milliken v. Bradley, 418 U.S. 717, 741-742 (1974). Judicial restraint should characterize any federal attempt to intervene in public education:

Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint .... By and large, public education in our Nation is committed to the control of state and local authorities.

Epperson v. Arkansas, 393 U.S. 97, 104 (1968). The same is true here. There is no reason for the federal judiciary to interfere in local school privacy policies and shut citizens out of the process.

### **The School Board is Vested with Setting Policy**

As a matter of policy, the School Board follows the Title IX separate bathroom rule, which authorizes separating students on the basis of sex in the interest of bodily privacy. As pointed out in the February 22, 2017 Dear Colleague letter, specifically in reference to the sex segregated facilities authorized by Title IX, states and school district should play the “primary role” in “establishing educational policy.” As the court stated in Texas v. United States:

This case presents the difficult policy issue of balancing the

protection of students' rights and personal privacy ... while ensuring that no student is unnecessarily marginalized while attending school.

\* \* \*

The resolution of this difficult policy issue, however, is not the subject of this Order. Instead the Constitution assigns these policy choices to the appropriate elected and appointed officials, who must follow the proper legal procedure.

201 F. Supp. 3d 810, 815 (N.D. Tex. 2016). Similarly, the court in G.G. ex rel., Grimm v. Gloucester County. School. Bd., 822 F.3d 709, 736 (4th Cir. 2016), vacated and remanded, 137 S.Ct. 1239 (2017) commented, "our Auer analysis complete, we leave policy formulation to the political branches." 822 F.3d at 724.

As the authority directly responsible for the welfare of St. Johns County school children and for establishing school policy, the School Board protects the privacy interests prescribed by the U.S. and Florida Constitutions, and follows the dictates of Title IX authorizing it to separate bathrooms on the basis of biological sex. The School Board's interest in protecting the bathroom privacy of the children in its charge is more immediate and just as important as Congress' in allowing separation of bathrooms on the basis of sex.

#### **THE TITLE IX CLAIM**

Plaintiff claims he has been discriminated against on the basis of sex in violation of Title IX, because Defendant has refused him use of the boys' restrooms at Nease. To succeed, Plaintiff must prove (1) that he was excluded from participation in, denied benefits of, or was subjected to discrimination in an educational program; (2) that the exclusion was on the basis of sex; and (3) that the Defendant receives federal financial assistance. Milward v. Shaheen, 2017 WL 3336471 at \*6 (M.D. Fla. Aug. 4, 2017), reconsidered on other

grounds, 2017 WL 3662432 (M.D. Fla. Aug. 24, 2017). There is no dispute that Defendant receives federal financial assistance.

To accept Plaintiff's theory, the Court must find that the phrase "on the basis of sex" as used in Title IX and its implementing regulations actually means "on the basis of gender identity." There is simply no support for this theory.

Title IX prohibits discrimination "on the basis of sex." 20 U.S.C. §1681(a). Whether the term "sex" refers to biological sex or self-reported gender identity is a question easily answered by plain and ordinary meaning of the statutes unambiguous terms. Such "inquiry begins with a statutory text and ends there as well if the text is unambiguous." BEDROC Ltd., LLC v. United States, 541 U.S. 176, 183 (2004).

As used in Title IX, Congress' use of the term "sex" unambiguously meant the person's actual sex – that is, the sex that an individual possesses by virtue of being born with certain immutable, physiological and biological characteristics such as an alignment of chromosomes and the possession of reproductive organs. "Ordinarily, a word's usage accords with its dictionary definition," Yates v. United States, 135 S.Ct. 1074, 1082 (2015), and in 1972, when Congress enacted Titles IX, "sex" was understood uniformly as referring to the biological or physiological characteristics that constitute a person's sex, and not an internal identification with one gender or the other.<sup>3</sup>

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<sup>3</sup> See Judge Niemeyer's dissent in Grimm, 822 F.3d at 736 (noting dictionaries contemporaneous to Title IX's enactment relied on biological distinctions to define sex, and including the following, among other examples: The Random House College Dictionary 1206 (rev. ed. 1980)("either the male or female division of a species, esp. as differentiated with reference to the reproductive functions"); American Heritage Dictionary 1187 (1976)("the property or quality by which organisms are classified according to their reproductive functions"); The American College Dictionary 1109 (1970)("the sum of the anatomical and physiological differences with reference to which the male and the female are distinguished...")).

Title IX's prohibition on sex discrimination, however, was not an absolute mandate barring all distinctions between men and women, including distinctions tied to biological differences or required by common decency. In fact, the law contained an explicit statutory exemption to protect privacy in intimate sections: "[N]otwithstanding anything to the contrary contained in this chapter, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes." 20 U.S.C. §1686. Shortly after the law's passage, the Department of Education expanded this exemption through implementing regulations it adopted. Specifically, the Department passed a rule allowing but not mandating an educational institution to sex-segregate other facilities to protect privacy: "A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities for students of the other sex." 34 C.F.R. §106.33.

Reviewing the legislative history behind the statutory language and its implementing regulation provides further support for what Congress intended. On the heels of the defeat of the Equal Rights Amendment, Title IX's sponsor, Senator Birch Bayh, stated on the Senate floor that Title IX was meant to serve as a "guarante[e] of equal opportunity in education for men and women," 118 Cong. Rec. 5,808 (1972), and was not "requiring integration of dorms between sexes," 117 Cong. Rec. 30,407 (1971). As Senator Bayh stated, the intent was not to desegregate "the men's locker room," but rather to "provide equal access for women and men students to the educational process and the extracurricular activities in a school..." Id.

The meaning of the term “sex” in Title IX is further confirmed by the many other uses in which Congress has employed the term in legislation enacted both before and after 1972. Never before has it been suggested that Congress meant the word “sex” to refer to something other than anatomy-based distinctions between males and females; in most instances, the context makes clear that an anatomy-based understanding was intended. See 10 U.S.C. §4320 (requiring that the housing provided to army recruits during basic training be limited “to drill sergeants and other training personnel who are the same sex as the recruits housed in that living area”); 19 U.S.C. §1582 (authorizing customs officials “to employ female inspectors for the examination and search of persons of their own sex”); 29 U.S.C. §206(d)(1) (forbidding certain employers from discriminating “between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex”).

In contrast, where Congress has affirmatively decided to proscribe discrimination based on gender identity, it has done so clearly and expressly. In 2009, for example, Congress passed “hate crime” legislation that prohibits inflicting “bodily injury to any person because of [his or her] actual or perceived religion, national origin, gender, sexual orientation, *gender identity*, or disability.” 18 U.S.C. §249(a)(2)(emphasis added). In addition, in 2013, Congress amended portions of the Violence Against Women Act to encompass discrimination “on the basis of actual or perceived race, color, religion, national origin, sex, *gender identity*...sexual orientation, or disability.” 42 U.S.C. §12291(b)(13)(A)(emphasis added); 34 U.S.C § 1229(13)(A) (separating the terms sex and

gender identity). These enactments make plain that Congress recognizes and differentiates between “sex,” “gender,” and “gender identity.”

And while Congress has expanded certain laws to include gender identity as a protected characteristic, notably, it has rejected numerous attempts by its members to expand the scope of Title IX and Title VII. Members of Congress have proposed the Student Non-Discrimination Act of 2015, S. 439 (114th Cong. 2015), that would prohibit discrimination based on sexual orientation or gender identity under Title IX, as well as the Equality Act, S. 1858 (114th Cong. 2015) and S. 106 (115th Cong. 2016) that would prohibit discrimination on the basis of gender identity in Title VII. Congress, however, has repeatedly refused to enact this proposed legislation, rejecting it in various forms.

Although there was no support for grafting gender identity onto the definition of “sex” in either the letter of Title IX or the cases interpreting it, under former President Obama, the Office of Civil Rights (“OCR”) of the United States Department of Education embraced it in a letter to Emily Prince dated January 7, 2015 and in a Dear Colleague letter dated May 13, 2016. Bypassing any semblance of rulemaking, in its Dear Colleague letter, OCR unilaterally announced its edict that schools “must allow transgender students access to [restrooms and locker rooms] consistent with their gender identity” or risk losing federal funding. On August 21, 2016, a federal district court enjoined enforcement of the guidance and held, “[I]t cannot reasonably be disputed that DOE complied with Congressional intent when drawing the distinctions in §106.33 based on the biological differences between male and female students.” Texas v. United States, 201 F. Supp. 3d at 833.

In Grimm, a 2-1 majority of the court gave the OCR gender identity interpretation of "sex" deference under Auer v. Robbins, 519 U.S. 452 (1997) and Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984). Over a vigorous dissent, the court reversed the district court's ruling that the separate bathroom rule (§106.33) was not ambiguous and "clearly allows the School Board to limit bathroom access 'on the basis of sex,' including birth or biological sex." Grimm, 132 F. Supp. 3d. at 746. Presciently, after giving OCR's interpretation Chevron deference, the majority observed that "a subsequent administration choose to implement a different policy ... ." Grimm, 822 F.3d at 724.

By its Dear Colleague letter dated February 22, 2017, OCR and the Civil Rights Division of the United States Department of Justice ("DOJ") repudiated OCR's gender identity interpretation of "sex," expressly withdrawing the statements of policy and guidance reflected in OCR's January 7, 2015 Prince letter and May 13, 2016 letter. OCR and DOJ observed that since the issuance of those letters:

[a] federal district court in Texas held that the term "sex" unambiguously refers to biological sex and that, in any event, the guidance was "legislative and substantive and thus full rulemaking should have occurred prior to the adoption of any such policy." In August of 2016, the Texas court preliminarily enjoined enforcement of the interpretation, and that nationwide injunction has not been overturned.

In addition, the departments believe that, in this context there must be due regard for the primary role of the states and local school districts in establishing educational policy.

Battle, Sandra and Wheeler, II, T.E. (2017, February 22). Dear colleague letter. Washington, DC: U.S. Department of Education, Office for Civil Rights and U.S. Department of Justice. (Emphasis added).

On August 3, 2016, the U.S. Supreme Court stayed the preliminary injunction entered in Grimm by the district court on remand from the Fourth Circuit. 136 S.Ct. 3442 (2016). Following the issuance of the February 22, 2017 Dear Colleague letter that withdrew OCR's previous gender identity guidance, the Supreme Court vacated the Fourth Circuit's decision and remanded the case back to that court "for further consideration in light of the [new] guidance document issued by the Department of Education and the Department of Justice." 137 S.Ct. 1239 (2017).

As the Supreme Court seemed to recognize, the withdrawal of the OCR gender identity guidance letters cut the legs out from under the theory that "sex" includes gender identity, which the Fourth Circuit deferred to in Grimm. Further retreating from that theory, the Attorney General's October 4, 2017 Memorandum reversed the previous administration's interpretation of "sex" to mean gender identity in the analogous Title VII context. The Attorney General advised:

Title VII expressly prohibits discrimination "because of ... sex" and several other protected traits, but it does not refer to gender identity. "Sex" is ordinarily defined to mean biologically male or female. See, e.g., Etsitty v. Utah Transit Auth., 502 F. 3d 1215, 1221-22 (10th Cir. 2007); Hively v. Ivy Tech Cmty. Coll., 853 F.3d 339,362 (7th Cir. 2017) (en banc) (Sykes, J., dissenting) (citing dictionaries). Congress has confirmed this ordinary meaning by expressly prohibiting, in several other statutes, "gender identity" discrimination, which Congress lists in addition to, rather than within, prohibitions on discrimination based on "sex" or "gender." See, e.g., 18 U.S.C. § 249(a)(2); 42 U.S.C. § 13925(b)(13)(A).

\* \* \*

Although Title VII bars "sex stereotypes" insofar as that particular sort of "sex-based consideration[ ]" causes "disparate treatment of men and women," Price Waterhouse v. Hopkins,



490 U.S. 228, 242, 251 (1989) (plurality op.), Title VII in not properly construed to proscribe employment practices (such as sex-specific bathrooms) that take account of the sex of employees but do not impose different burdens on similarly situated members of each sex, see, e.g., Jespersen v. Harrah's Operating Co., Inc., 444 F.3d 1104, 1109-10 (9th Cir. 2006) (en banc).

Without the support of OCR's administrative interpretation and Chevron deference, Plaintiff's argument that for purpose of Title IX, "sex" means gender identity, and only gender identity, collapses. As the better-reasoned decisions recognized, there is nothing ambiguous about the word "sex." Accord Johnston v. University of Pittsburgh, 97 F. Supp. 3d 657, 676 (W.D. Pa. 2015) ("On a plain reading of the statute, the term 'on the basis of sex' in Title IX means nothing more than male and female, under the traditional binary conception of sex consistent with one's birth or biological sex"); Texas v. United States, 201 F. Supp. 3d at 832-33 ("[T]he plain meaning of the term sex as used in §106.33 when it was enacted by DOE following passage of Title IX meant the biological and anatomical differences between male and female students as determined at their birth"); Franciscan Alliance, Inc. v. Burwell, 227 F. Supp. 3d 660, 688 (N.D. Tex. 2016) ("[T]he text, structure, and purpose reveal that the definition of sex in Title IX's prohibition of sex discrimination unambiguously prevented discrimination on the basis of the biological differences between males and females.").

Plaintiff's claim that sex under Title IX also means an individual's gender identity effectively asks this Court to redefine the plain meaning of the term "sex." In doing so, the Court would have to cast aside long standing precedent that requires courts to look at the intent behind a statute at the time it was created. See Thomas Jefferson Univ. v. Shalala, 512

U.S. 504, 512 (1994). Title IX was created and implemented because Congress was concerned about discrimination against women in education. Neal v. Bd. of Trustees of California State Universities, 198 F.3d 763, 766 (9th Cir. 1999).

Accordingly, because there is no legal or historical precedent to support Plaintiff's position that "sex" now means gender identity under Title IX, Defendant's policy does not violate Title IX. In fact, Defendant's policy does exactly what is permitted under Title IX, by separating its toilet, locker room, and shower facilities on the basis of sex. Thus, Plaintiff's Title IX claim must fail.

### **THE EQUAL PROTECTION CLAIM**

Neither the Defendant's long-standing bathroom policy nor its Best Practices deny Plaintiff equal protection of the law guaranteed by the Fourteenth Amendment. First, neither the policy nor the Best Practices constitutes invidious or purposeful discrimination, but rather reflects a realistic solution based upon the actual physical differences between the sexes. Second, the Defendant's policy is based upon biological sex, and is not unlawful sex stereotyping. Third, the Defendant has a compelling interest in protecting its students' privacy rights, both under the United States Constitution and the Florida Constitution. Finally, Plaintiff cannot show that similarly situated individuals are treated any differently.

#### **The District's Policy Does Not Reflect Invidious Discrimination**

As a threshold matter, the guarantee of equal protection does not exist in a vacuum, but rather "must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons." Romer v. Evans, 517 U.S. 620, 631 (1996). Indeed, the District's policy denying Plaintiff access to his

bathroom of choice only denies him equal protection if it reflects “invidious” discrimination. Personnel Adm’r of Mass. v Feeney, 442 U.S. 256, 274 (1979). As the Court in Feeney explained, “purposeful” discrimination is “the condition that offends the Constitution.” Id. (quoting Swann v. Charlotte-Mecklenburg Bd. of Education, 402 U.S. 1, 16 (1971)).

While the Court has been willing to strike down classifications that reflect “archaic and overbroad” generalizations, Schlesinger v. Ballard, 419 U.S. 498, 508 (1975), or “old notions,” Stanton v. Stanton, 421 U.S. 7, 14 (1975), historically, the Court has been willing to take into account actual differences between the sexes, including physical ones. As Justice Rehnquist noted, the “Court has consistently upheld statutes where “the gender classification is not invidious, but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances.” Michael M. v. Superior Court of Sonoma County, 450 U.S. 464, 469 (1981)(citations omitted). “Physical differences between men and women ... are enduring.” United States v. Virginia, 518 U.S. 515, 533 (1996).

Plaintiff has not been denied access to the boys’ restroom by a policy aimed at transgender students. Rather, the District has denied Plaintiff access to the boys’ room as a function of the even-handed enforcement of the District’s long-standing policy of providing separate bathrooms for boys and girls based on biology. That policy, purely based on the “physical differences between men and women,” Virginia, 518 U.S. at 533, is consistent with Title IX’s implementing rule adopted in 1974, which expressly authorizes schools to provide separate bathroom, locker room and shower facilities for male and female students based on biological sex. 34 C.F.R. §106.33. As such, Defendant has not engaged in purposeful, invidious discrimination. It is simply an incidental and constitutionally permissible

disadvantage of the legitimate classification of students by biological sex for the purpose of bathroom usage, as authorized by Title IX. See Romer, 517 U.S. at 631; Feeney, 442 U.S. at 271-72; Nguyen v. I.N.S., 533 U.S. 53, 60-61 (2001); Johnston, 97 F. Supp. 3d at 670; Carcaño v. North Carolina, 203 F.3d 615, 640, 644 (M.D. N.C. 2016)

### **Applying the Appropriate Scrutiny**

Equal Protection claims are evaluated under one of three tests: rational basis scrutiny, intermediate scrutiny or strict scrutiny. Strict scrutiny is reserved for state “classifications based on race or national origin or classifications affecting fundamental rights,” Clark v. Jeter, 486 U.S. 456, 461 (1988)(citation omitted). Plaintiff cannot establish that transgender individuals are a suspect class subject to a strict scrutiny analysis. Kirkpatrick v. Seligman & Latz, Inc., 475 F. Supp. 145, 147 (M.D. Fla. 1979), aff’d, 636 F.2d 1047 (5th Cir. 1981)(“Transsexuals are not a ‘suspect class’ for purposes of equal protection analysis”). Plaintiff has failed to prove that being transgender is based on an immutable characteristic. See Chapman v. A1 Transport, 229 F.3d 1012, 1036 (11th Cir. 2000) (en banc) (distinguishing between a mutable trait and an impermissible consideration that is a protected category). See also Equal Employment Opportunity Comm’n v. Catastrophe Management Solutions, Case No. 14-13482 at p. 7 (11th Cir. Dec. 5, 2017) (Jordan, J. concurring in denial of rehearing en banc).

Under the intermediate scrutiny standard, Defendant must prove that its justification for denying Plaintiff’s request to use the boys’ bathroom is, “at minimum, substantially related to the furtherance of an important government interest.” Nicholson v. Georgia Dept. of Human Res. (DHR), 918 F.2d 145, 148 (11th Cir. 1990). See also Handley, By & Through

Herron v. Schweiker, 697 F.2d 999, 1003 (11th Cir. 1983) (“[u]nder the...intermediate scrutiny test, classifications based on illegitimacy are invalid if they do not bear an evident and substantial relation to permissible state interests and if they are not carefully tuned to alternative considerations”). Furthermore, the justification for the policy must be “genuine, not hypothesized or invented post hoc in response to litigation.” Virginia, 518 U.S. at 533; Carcaño, 203 F. Supp. 3d at 640.

### **Sex-Stereotyping**

While acknowledging that intermediate scrutiny applies to Defendants’ policy, this case is distinguishable from Glenn v. Brumby, 663 F.3d 1312, 1320 (11th Cir. 2011). In Glenn, the Eleventh Circuit applied intermediate scrutiny in a case involving gender stereotyping of a transgender individual. There, the employer terminated plaintiff because it found her “gender transition was inappropriate, that it would be disruptive, that some people would view it as a moral issue, and that it would make Glenn's coworkers uncomfortable.” Id. at 1314. The plaintiff’s superior testified that he made the decision to terminate based on his perception of the plaintiff as “a man dressed as a woman and made up as a woman,” Id. at 1320, showing direct evidence that plaintiff was fired because of her gender non-conformity.

Glenn, for the most part, followed the Supreme Court’s decision in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989). In that case, Hopkins sued her employer for sex discrimination when it denied her partnership because her demeanor was insufficiently feminine. The Court recognized in the analogous Title VII context that stereotyped remarks could be used as evidence that an employer made a decision based on gender because a woman failed to dress or act like the employer thought a woman should. Id. at 235, 250-51.

Price Waterhouse and Glenn, therefore, stand for the proposition that intermediate scrutiny applies when an employer makes a decision based on a person's demeanor (behavior or acts) which is linked by a stereotype (how a man or woman should dress or behave) to a protected characteristic (a person's sex). This case, however, presents a clearly distinguishable situation.

In both Price Waterhouse and Glenn the plaintiff was subjected to an adverse employment action because the plaintiff did not act or dress in accordance with the stereotype associated with their respective gender. Here, the Defendant is not punishing Plaintiff because he identifies as, acts, or dresses like a male. Rather, Plaintiff's access to common restrooms is based solely on biological sex. The Defendant is making no judgment about Plaintiff's behavior, but using an objective standard which is applicable to all students – males and females alike. It is simply not a stereotype, and therefore not a sex-based distinction, to assign bathroom facilities based on biological sex. “Use of a restroom designated for the opposite sex does not constitute a mere failure to conform to sex stereotypes.” Etsitty v. Utah Transit Auth., 502 F.3d 1215, 1224 (10th Cir. 2007). Stated another way, telling Plaintiff he cannot use the boys' restroom because he is biologically a female is not “sex stereotyping” but a simple acknowledgement of reality.

In addition to following Price Waterhouse on the issue of sex stereotyping, the Glenn court also announced, “A person is defined as transgender because of the perception that his or her behavior transgresses gender. . . “[T]he very acts that define transgender people are those that contradict stereo-types of gender – appropriate stereotyping and behavior.” Id. at 1316 (emphasis added). The court's dicta that transgender people are defined based on

“acts” and “behavior” is contrary to Plaintiff’s allegations in the present case:

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

(Doc. 60 at ¶21) Thus, it is the divergence between gender identity and biological (assigned at birth) sex that defines a person as transgender, not the person’s expected “behavior” or “acts.” It emanates from facts about a person – biological sex on the one hand, and gender identity (“a person’s core internal sense of their own gender.” (Doc. 60 at ¶20) Courts have made it clear that biological sex and the physiological differences between men and women are facts, not stereotypes, and cannot serve as the basis of sex stereotype discrimination. See Nguyen, 533 U.S. at 60-66; Bauer v. Lynda, 812 F.3d 340 (4th Cir. 2016).

In Nguyen, the Supreme Court upheld an INS regulation that treated the children of non-citizen mothers born abroad out of wedlock differently than such children of non-citizen fathers. The Court rejected the argument that the INS policy was based on stereotypes about the roles of mothers and fathers in child-rearing, stating that “the difference does not result from some stereotype, defined as a frame of mind resulting from irrational or uncritical analysis.” Id. Instead, the Court found, “There is nothing irrational or improper in the recognition that at the moment of birth ... the mother’s knowledge of the child and the fact of parenthood have been established in a way not guaranteed in the case of the unwed father. This is not a stereotype.” Id. Finally, the Court concluded:

To fail to acknowledge even our most basic biological differences ... risks making the guarantee of equal protection superficial, and so disserving it. Mechanistic classification of all our differences as stereotypes would operate to obscure

those misconceptions and prejudices that are real. The distinction embodied in the statutory scheme here at issue is not marked by misconception and prejudice, nor does it show disrespect for either class.

Id. So too, the distinction between boys and girls in the District’s separate bathroom policy is based on the very real “basic biological differences” between the sexes, not misconception or prejudice.

**The Privacy of School Children in Sex-Segregated Bathrooms is an Important Government Interest**

The District’s policy of segregating restrooms on the basis of sex promotes the “important government interest” of “the protection of [students’] bodily privacy” by “excluding members of the opposite sex from places in which individuals are likely to engage in intimate bodily functions.” Carcaño, 203 F. Supp. 3d at 641. As Judge Niemeyer explained in his Grimm dissent:

Across societies and throughout history, it has been commonplace and universally accepted to separate public restrooms, locker rooms, and shower facilities on the basis of biological sex in order to address privacy and safety concerns arising from the biological differences between males and females. An individual has a legitimate and important interest in bodily privacy such that his or her nude or partially body, genitalia, and other private parts are not exposed to persons of the opposite biological sex. Indeed, courts have consistently recognized that the need for such privacy is inherent in the nature and dignity of humankind.

\* \* \*

Title IX’s allowance of the separation, based on sex, of living facilities, restrooms, locker rooms and shower facilities rests on the universally accepted concern for bodily privacy that is founded on the biological differences between the sexes.



822 F.3d at 734-735 (emphasis added). The Grimm majority agreed on the fundamental point “that an individual has a legitimate and important interest in bodily privacy such that his or her nude or partially nude body, genitalia, and other private parts are not involuntarily exposed. Id. at 723.

Specifically in the academic setting, courts across the county have consistently recognized separating males and females in the interest of protecting bodily privacy and avoiding the unwanted exposure of one’s body parts. See Virginia, 518 U.S. at 533, 550 n. 19 (recognizing that the two sexes “are not fungible” because of the “enduring” and manifest “[p]hysical differences between men and women,” and that “[a]dmitting women to VMI would undoubtedly require alterations necessary to afford members of each sex privacy from members of the other sex.”); Dawson v. Clayton Cty. Sch. Dist., 830 F.3d 1306, 1313–14 (11th Cir. 2016) (people have a legitimate expectation of privacy in their persons “including an expectation that one should be able to avoid the unwanted exposure of one’s body, especially one’s ‘private parts.’”); Brannum v. Overton County School Bd., 516 F.3d 489, 499 (6th Cir. 2008) (“[A] person of ordinary common sense, to say nothing of professional school administrators, would know without need for specific instruction from a federal court, that teenagers have an inherent personal dignity, a sense of decency and self-respect, and a sensitivity about their bodily privacy that are at the core of their personal liberty...”); Faulkner v. Jones, 10 F.3d 226, 232 (4th Cir. 1993) (recognizing “society’s undisputed approval of separate public restrooms for men and women based on privacy concerns [and observing that] [t]he need for privacy justifies separation and the differences between the genders demand a facility for each gender that is different.”); Beard v. Whitmore Lake Sch.

Dist., 402 F.3d 598, 604 (6th Cir. 2005) (“Students of course have a significant privacy interest in their unclothed bodies.”); Johnston, 97 F. Supp. 3d at 668, 678 (recognizing university’s interest “in providing its students with a safe and comfortable environment consistent with society’s long-held tradition of performing [personal bodily] functions in sex-segregated spaces based on biological or birth sex” and holding that “the University’s policy of separating bathrooms and locker rooms on the basis of birth sex is permissible under Title IX and the United States Constitution.”); Carcaño, 203 F. Supp. 3d at 641 (“All parties agree that bodily privacy qualifies as an important state interest and that sex-segregated facilities are substantially related to that interest.”); Whitaker v. Kenosha Unified School District No. 1 Bd. of Educ., 858 F.3d 1034, 1052 (7th Cir. 2017) (recognizing that school districts have “a legitimate interest in ensuring bathroom privacy rights are protected”).

Females “using a women’s restroom expect [ ] a certain degree of privacy from...members of the opposite sex.” State v. Lawson, 340 P.3d 979, 982 (Wash. Ct. App. 2014). Likewise, teenagers are “embarrass[ed]...when a member of the opposite sex intrudes upon them in the lavatory.” St. Johns Home for Children v. W. Va. Human Rights Comm’n, 375 S.E.2d 769, 771 (W. Va. 1988). Allowing opposite-sex persons to view adolescents in intimate situations, such as showering, risks their “permanent emotional impairment” under the mere “guise of equality.” City of Phila. v. Pa. Human Relations Comm’n, 300 A.2d 97, 103 (Pa. Commw. Ct. 1973).

These privacy interests are why a girls’ locker room has always been “a place that by definition is to be used exclusively by girls and where males are not allowed.” People v. Grunau, No. H015871, 2009 WL5149857, at \*3 (Cal. Ct. App. Dec. 29, 2009). As the

Kentucky Supreme Court observed, traditionally, there is no “mixing of the sexes” in school locker rooms and restrooms. Hendricks v. Commw., 865 S.W.2d 332, 336 (Ky. 1993); McLain v. Bd. of Educ. of Georgetown Cmty. Unit Sch. Dist. No. 3 of Vermilion Cty., 384 N.E.2d 540, 542 (Ill. App. Ct. 1978)(refusing to place male teacher as overseer of school girls’ locker room).

Uniquely, the Defendant’s obligation to protect its students’ privacy rights is not limited by those rights recognized under the United States Constitution. The Defendant must also protect its students’ rights to privacy, including but not limited to bodily privacy, under the express and explicit right to privacy set forth in Article I, Section 23 of the Florida Constitution. See Gainesville Woman Care, LLC v. State, 210 So. 3d 1243, 1246 (Fla. 2017) (finding that under the Florida Constitution the right to privacy is a fundamental right); In re T.W., 551 So. 2d 1186, 1192 (Fla. 1989) (holding that the Florida Constitution’s right to privacy embraces more privacy interests and extends more protection than the Federal Constitution).

This fundamental right guaranteed by the Florida Constitution distinguishes the cases relied upon by Plaintiff for the proposition that the privacy rights of other students are inferior to the bathroom choice of a transgender student. Specifically, the decisions in Grimm, Whitaker, Board of Educ. of the Highland Local School District v. United States Dept. of Educ., 208 F. Supp. 3d 850 (S.D. Ohio 2016), Evancho v Pine-Richland School Dist., 237 F. Supp. 3d 267 (W.D. PA 2017), and Doe by and through Doe v. Boyertown Area School Dist., 2017 WL 3675418 (E.D. PA Aug. 25, 2017), are inapposite as none of the four State Constitutions involved in those cases – Virginia, Wisconsin, Ohio, or Pennsylvania,

respectively – has an express Constitutional right to privacy.

Given the clear intent and meaning of the Title IX separate facilities rules, and the abundance of case law recognizing the importance of protecting bathroom privacy, it cannot be credibly denied that protecting the bathroom privacy of school children is an important government interest. No one disputes the authority of Congress and DOE under Title IX to implement the policy of allowing same sex bathrooms in the interest of student privacy. Nothing has happened since the 1970s to make school bathroom privacy any less important today. Plaintiff does not challenge the authority of Congress and the School District to separate bathrooms based on sex in the interest of privacy. Rather, he advocates reinterpreting the separate bathroom rule's language to suit the transgender policy he advocates. His position thus assumes the validity of the underlying governmental interest, and only takes issue with how to best serve it.

**Separating Bathrooms Based on Biological Sex is Substantially Related to the School Board's Interest in Protecting Bathroom Privacy**

As explained in the preceding sections, the District's same-sex bathroom policy serves the important governmental interest of protecting students' personal privacy. The District's policy not only is substantially related to the protection of student privacy, it directly assures the traditional and expected level of bathroom privacy by keeping biological boys out of the girls' bathroom and vice versa. The Title IX separate bathroom rule employs the same means to achieve the same purpose, yet its validity is not in question. Plaintiff has not explained how the school practice of following the Title IX separate bathroom rule is unconstitutional when the validity of the Title IX rule itself is not in question.

Plaintiff has suggested that the School Board's practice of separating bathrooms on

the basis of biological sex may be problematic as applied in rare hypothetical situations, such as where a student undergoes sex change surgery, or due to extensive hormone therapy, acquires the physical characteristics of the opposite sex. However, intermediate scrutiny does not require that the means for achieving the important government objective must be the least intrusive possible. United States v. Staten, 666 F.3d 154, 159 (9th Cir. 2011); “[T]he fit needs to be reasonable; a perfect fit is not required.” Id. at 162; Carcano, 203 F.Supp.3d at 640.

### **The Board’s Bathroom Policy is Not a Post Hoc Invention**

The evidence is undisputed that the District’s sex-segregated bathroom policy is “genuine,” and was not “hypothesized or invented post hoc in response to litigation.” Carcaño 203 F. Supp. 3d at 640 (quoting Virginia, 518 U.S. at 533). Plaintiff cannot dispute that the Defendant has always maintained sex-segregated multi-user or group bathrooms, even well before the enactment of Title IX. The age and undisputed provenance of the Board’s separate bathroom policy clearly establish that it did not target transgender students. To put it colloquially, the transgender bathroom issue was not even on the radar when Title IX was enacted in the 1970s, much less in the 1950s, when the Defendant’s schools were already separating bathrooms on the basis of biological sex.

In addition, the evidence is clear that the Defendant’s Best Practices were thoroughly researched and in final draft form long before Plaintiff informed the Defendant he was transgender. Again, as with the long-standing policy, there is no evidence to support any inference that the Best Practices were a post hoc invention to respond to Plaintiff’s notification or the filing of his complaint with OCR or this Court.

Unlike the schools in Whitaker and Evancho, the District's separate bathroom policy is long-standing and has been consistently applied. The policy, the Title IX rule which it predated and which authorizes its implementation, and the District's Best Practices all predate Plaintiff's informing the District of his transgender status and his complaints. Unlike the districts in Whitaker and Evancho, the District never allowed Plaintiff to use the boys' bathroom, and then changed its mind in an ad hoc decision in response to threatened litigation. There is nothing about the Board's position in this case to suggest that it was an afterthought, or pretext, prompted by the threat of litigation, as it was in those cases.

**Plaintiff is Not Similarly Situated to His Biological Male Counterparts**

Lastly, to successfully allege an equal protection claim, Plaintiff must establish that the school's policy treats individuals who are similarly situated in all relevant aspects differently. Bumpus v. Watts, 448 Fed. Appx. 3, 5 (11th Cir. 2011); Nordlinger v. Hahn, 505 U.S. 1, 10, (1992). Ultimately, Plaintiff cannot make this showing.

Plaintiff seeks to use the men's restroom at his high school. Plaintiff is not, however, a biological male. He has the biology of a female, including female genitalia. The School Board's policy has always been and remains to distinguish bathroom use based on biological sex. Plaintiff is allowed to use any female restrooms or any of the several gender neutral bathrooms located on his campus, as are all other biological females. Accordingly, because the bathroom policy treats Plaintiff the same as all other individuals who are biological females, it does not violate Plaintiff's equal protection rights.

DE 148

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

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**DREW ADAMS,**

**Plaintiff,**

**vs.**

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

**THE SCHOOL BOARD OF  
ST. JOHNS COUNTY, FLORIDA,**

**Defendant.**

---

**HONORABLE TIMOTHY J. CORRIGAN, UNITED STATES DISTRICT JUDGE**

Courtroom Deputy: Marielena Diaz

Court Reporter: Shannon Bishop

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Appearing for Plaintiff:

Jennifer Altman  
Tara L. Borelli  
Kirsten L. Doolittle  
Shani Rivaux  
Markenzy Lapointe

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Appearing for Defendant:

Terry Joseph Harmon  
Robert Jacob Sniffen  
Kevin Charles Kostelnik  
Jeff Slanker  
Christopher Barden

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**CLERK'S MINUTES**

**PROCEEDINGS OF TRIAL:**

Trial Commenced.

Rule Invoked.

**Plaintiff's Witnesses:** Thomas Aberli, Drew Adams, Erica Adams Kasper

**Plaintiff's Exhibits:** 146, 147, 150, 69, 134, 12, 3, 4

**Defendant's Exhibits:** 133, 238, 14

**Court's Exhibits:** 1, 2

DATE: December 11, 2017

TIME: 9:05 a.m. - 5:06 p.m.  
(Recess: 12:28 p.m. - 1:31 p.m.)



DE 149

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

---

**DREW ADAMS,**

**Plaintiff,**

**vs.**

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

**THE SCHOOL BOARD OF  
ST. JOHNS COUNTY, FLORIDA,**

**Defendant.**

---

**HONORABLE TIMOTHY J. CORRIGAN, UNITED STATES DISTRICT JUDGE**

Courtroom Deputy: Marielena Diaz

Court Reporter: Shannon Bishop

---

Appearing for Plaintiff:

Jennifer Altman  
Tara L. Borelli  
Kirsten L. Doolittle  
Shani Rivaux  
Markenzy Lapointe  
Aryeh Kaplan  
Omar Gonzalez-Pagan

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Appearing for Defendant:

Terry Joseph Harmon  
Robert Jacob Sniffen  
Kevin Charles Kostelnik  
Jeff Slanker  
Christopher Barden

---

**CLERK'S MINUTES**

**PROCEEDINGS OF TRIAL:**

**Plaintiff's Witnesses:** Erica Adams Kasper, Michaelle Valbrun-Pope, Scott Adams, Michelle L. Kefford

**Plaintiff's Exhibits:** 65, 66, 68, 113, 114, 115, 116

**Defendant's Exhibits:** 28, 33, 67, 68, 69, 70, 85, 157, 158, 159, 161, 162, 163, 168, 170, 171, 177, 178, 179, 187, 188, 189, 190, 191, 203, 204, 213, 217, 223, 225, 228, 34, 39, 20 (under seal), 7 (under seal), 27, 66, 90, 160, 172, 174, 36, 142 (under seal), 143 (under seal), 144 (under seal), 145 (under seal), 72, 87

Plaintiff rests his case.

**Defendant's Witnesses:** Sallyanne Smith, Cathy Mittlestadt

DATE: December 12, 2017

TIME: 9:04 a.m. - 4:58 p.m.  
(Recess: 12:02 p.m. - 1:30 p.m.)

DE 150

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

---

**DREW ADAMS,**

**Plaintiff,**

**vs.**

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

**THE SCHOOL BOARD OF  
ST. JOHNS COUNTY, FLORIDA,**

**Defendant.**

---

**HONORABLE TIMOTHY J. CORRIGAN, UNITED STATES DISTRICT JUDGE**

Courtroom Deputy: Marielena Diaz

Court Reporter: Shannon Bishop

---

Appearing for Plaintiff:

Jennifer Altman  
Tara L. Borelli  
Kirsten L. Doolittle  
Shani Rivaux  
Markenzy Lapointe  
Aryeh Kaplan  
Omar Gonzalez-Pagan  
William C. Miller

Appearing for Defendant:

Terry Joseph Harmon  
Robert Jacob Sniffen  
Kevin Charles Kostelnik  
Jeff Slanker  
Christopher Barden

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**CLERK'S MINUTES**

**PROCEEDINGS OF TRIAL:**

**Defendant's Witnesses:** Cathy Mittelstadt, Frank D. Upchurch, III, Lisa Kunze

**Defendant's Exhibits:** 120, 71, 40, 84, 237, 248, 65, 41 (under seal), 42 (under seal),  
43 (under seal), 254, 255

**Plaintiff's Exhibits:** 30, 47, 43, 138

**Court's Exhibits:** 3, 4, 5

DATE: December 13, 2017

TIME: 9:01 a.m. - 3:35 p.m.  
(Recess: 11:55 a.m. - 1:17 p.m.)

DE 151

**DEFENDANT'S OBJECTIONS TO PLAINTIFF'S EXHIBITS**

EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	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	DEC 11 2017	DEC 11 2017	PLAINTIFF0001117	Drew's driver's license	Authenticity; Relevancy
4	DEC 11 2017	DEC 11 2017	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 005831-5832	Nov. 30, 2015 – Email from C. Mittelstadt to E. Kasper	

EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
12	DEC 11 2017	DEC 11 2017	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 been able to change his gender marker in the school system so the roster says he is female	Hearsay
19			SJCSD-D.A. 000700; SJCSD-D.A. 000701; SJCSD-D.A. 000703; SJCSD-D.A. 000704; SJCSD-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			SJCSD-D.A. 000724	Aug. 27, 2016 – Email from E. Kasper to C. Mittelstadt and K. Dresback regarding bathroom access football game	Relevancy; Hearsay

EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
22			SJCSD-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 gender neutral restrooms.	Relevancy; Hearsay
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



EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
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):3132-3154	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
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

EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
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-185.95	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 sexual orientation diversity in children and adolescents in schools.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence

EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
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

EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
44			PLAINTIFF0001396 - 1401	Lopez, X., et al. (2017). Statement on gender- affirmative approach to care from the pediatric endocrine society special interest group on transgender health. Curr. Op. Pediatr. 29:475-480.	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence; Improper Attempt to Introduce Undisclosed Expert Evidence
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

EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
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
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

EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
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
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

EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
59			PLAINTIFF0003742 - 3790	Styne, D.M., et al. (2017). 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 Improper Attempt to Introduce Undisclosed Expert Evidence
60			PLAINTIFF0003791 - 3828	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 - 3838	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

EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
65	DEC 12 2017	DEC 12 2017	PLAINTIFF0001563 - 1568	School Board of Broward County, Florida - Nondiscrimination Policy Statement (No. 4001.1)	Authenticity; Relevancy; Hearsay; Lack of Foundation
66	DEC 12 2017	DEC 12 2017	PLAINTIFF0001569 - 1669	Broward County Public Schools - Lesbian, Gay, Bisexual, Transgender, & Questioning Critical Support Guide (2d Ed., 2016).	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence
67			PLAINTIFF0001692 - 1694	Florida High School Athletic Association, "Who We Are"	Authenticity; Relevancy; Hearsay; Lack of Foundation; Opinion Evidence
68	DEC 12 2017	DEC 12 2017	PLAINTIFF0001735 - 1810	Administrative Policies of the Florida High School Athletic Association, Inc. 2017-18 Edition	Authenticity; Relevancy; Hearsay; Lack of Foundation;
69	DEC 11 2017	DEC 11 2017		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 students	Relevancy; Lack of Foundation
79			SJCSB-DA PRR 001789-1790	Summary of purpose and work of St. Johns County LGBT Task Force	



EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
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 Upchurch) re Concern regarding Drew Adams – info for meeting Oct 9	Hearsay
84			SJCSD-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	
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

EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
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 Ethical Rights and Needs of LGBTQ Students	Relevancy; Lack of Foundation
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			SJCSB-D.A. 000151- SJCSB-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 - 1436	Edits to recommendations from LGBTQ task force	
109			SJCSB-DA PRR 001968-1995	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	DATE IDENTIFIED	DATE ADMITTED	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	DEC 12 2017	DEC 12 2017	SJCSB-DA PRR 001454- SJCSB-DA PRR 001458	CA Safe Schools Coalition	Relevancy; Lack of Foundation
114	DEC 12 2017	DEC 12 2017	SJCSB-DA PRR 001457	Massachusetts Public Schools	Relevancy; Lack of Foundation
115	DEC 12 2017	DEC 12 2017	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	DEC 12 2017	DEC 12 2017	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			SJCSB-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
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	

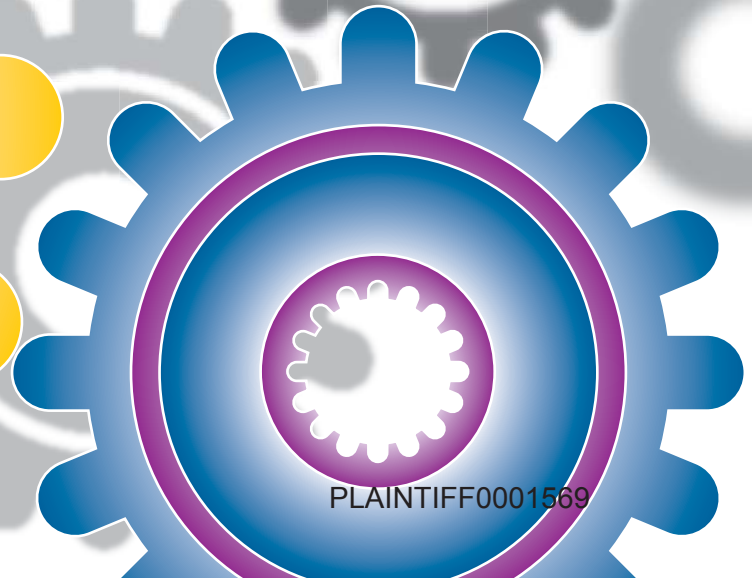
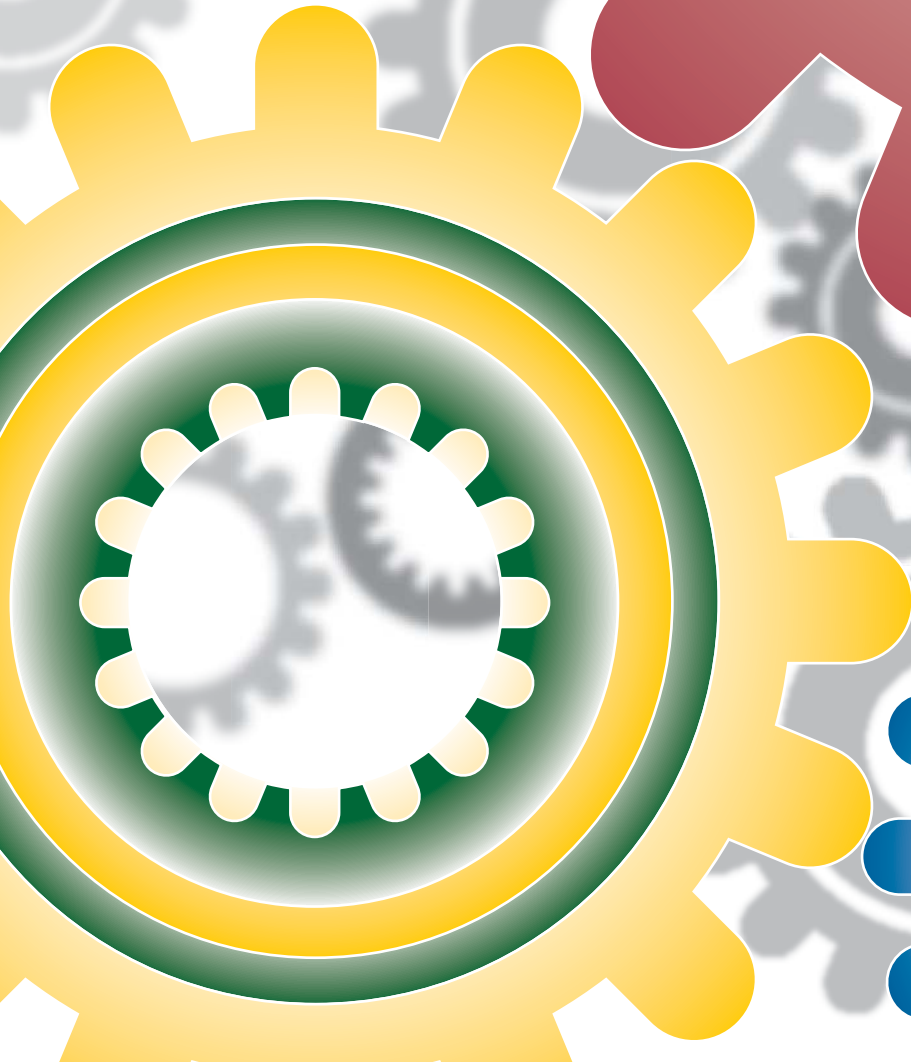
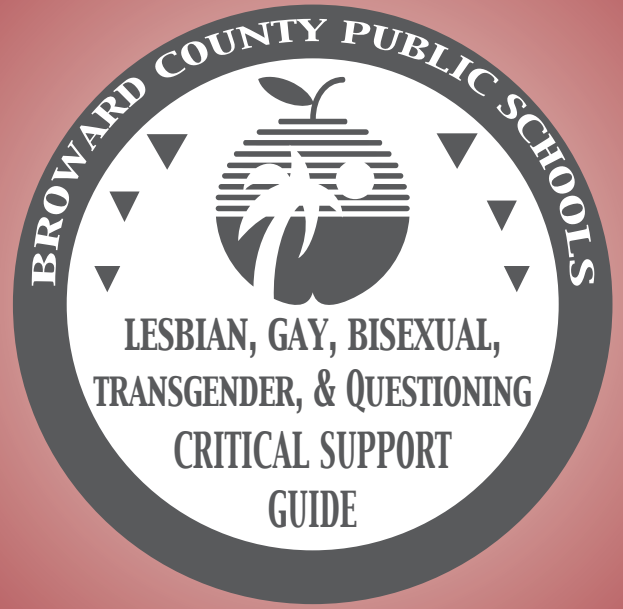
EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
126			PLAINTIFF0001533 - 1534	Nov. 19, 2017, HIPAA Privacy Authorization Form for Dr. Ehrensaft	
127			PLAINTIFF0003724 - 3729	Information for Informed Consent for Adolescents (originally signed June 19, 2016; updated Nov. 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
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

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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	DEC 11 2017	DEC 11 2017	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. Ehrensaff'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

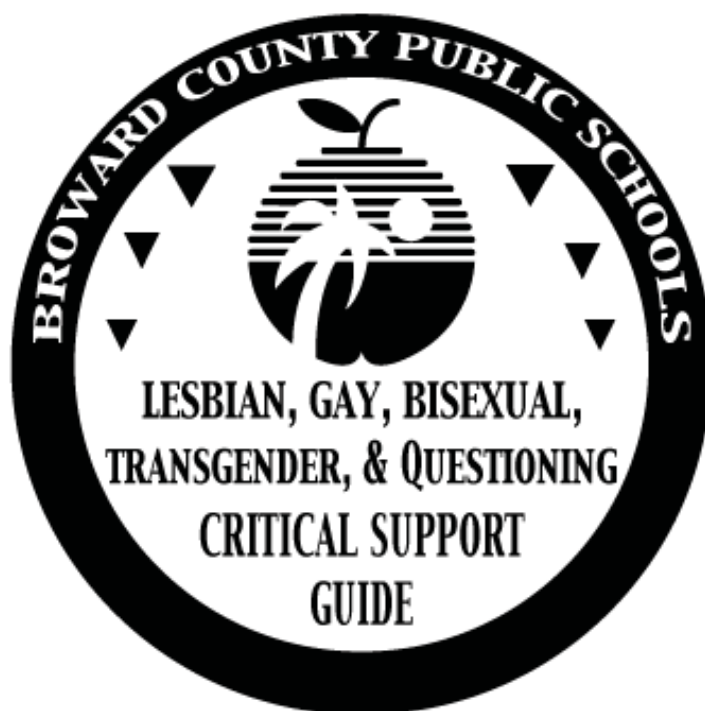
EXHIBIT NUMBER	DATE IDENTIFIED	DATE ADMITTED	BATES NUMBER	DESCRIPTION	OBJECTION
140				All deposition transcripts and exhibits	Relevancy; Hearsay; Lack of Foundation; and other objections stated in deposition.
141				All exhibits necessary for rebuttal	No exhibits identified
142				All impeachment exhibits	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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**FACT:**  
Nationwide, LGBTQ students are four times  
more likely to attempt suicide than their  
heterosexual counterparts.<sup>1</sup>

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<sup>1</sup> U.S. Government study: “Report of the Secretary’s Task Force on Youth Suicide”  
<http://www.eric.ed.gov/PDFS/ED334503.pdf>

## **ACKNOWLEDGMENTS**

This Guide would not have been possible without the unwavering support of the following organizations and individuals:

The School Board of Broward County, which boldly manifested its devotion to the safety of LGBTQ youth by assigning a district "point person" for LGBTQ youth in the Diversity, Prevention & Intervention Department;

The Safe to Be Me Coalition, and the Stonewall National Education Project, formally, Broward Stonewall Education Project, for their commitment and tenacity toward ensuring that lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth are heard and supported in Broward County schools;

The San Francisco Unified School District's Student Support Services Department, from whose website some parts of this Guide have been adapted; and

Broward County LGBTQ youth and their allies, many of whom have bravely shared their experiences as an often-targeted minority population within the school system.

This publication was made possible through funding from: Centers for Disease Control and Prevention Division of Adolescent School Health (CDC DASH).

## **DEDICATION**

This Guide is dedicated to those who bravely take a stand against injustice  
and give a voice to those who have been silenced.

Your courage is an act of heroism.

## SUPERINTENDENT'S REMARKS

Broward County Public Schools is committed to educating *all* students to reach their highest potential. We are guided, in part, by these core principles: All students will learn when their individual needs are met. Every student has a right to high quality educational opportunities. Respect and dignity are critical, both in and out of the classroom. The diversity of our community is valuable and must be embraced.

Accordingly, Broward County Public Schools recognizes the need to promote safer schools and create more welcoming and affirming learning environments for our gay, lesbian, bisexual, transgender and questioning (LGBTQ) youth, their allies, and students who are perceived to be LGBTQ. Statistics show that LGBTQ youth are four times more likely to attempt suicide than their heterosexual counterparts.<sup>2</sup> And while Broward County's current anti-bullying programs are increasing safety in our schools, there is still much to be done with regard to promoting understanding and respect of LGBTQ students. Findings from a recent Gay, Lesbian, and Straight Education Network (GLSEN) Florida School Climate Survey indicate that nearly all LGBTQ students overhear homophobic and negative remarks at school; most LGBTQ students have been either verbally or physically harassed; and most LGBTQ students feel they have inadequate access to support and resources.<sup>3</sup> Furthermore, research tells us that students who feel safe expressing their true gender identity and/or sexual orientation at school have higher grade-point averages, and better attendance records, than those who do not.<sup>4</sup> The significance of this data cannot be underscored enough; it is a call to action.

To this end, the Diversity, Cultural Outreach & Prevention Department is unveiling this LGBTQ Critical Support Guide, which includes detailed information for administrators regarding LGBTQ issues. The Guide covers topics such as laws, safety, and social guidelines. It will help to enhance our school culture, which will, in turn, enhance our student achievement.

The fundamental purpose of Broward County Public Schools is to educate today's students to succeed in tomorrow's world. I believe this Guide will assist us in developing an informed, engaged, and responsible citizenry; and advance our entire community along the path of excellence.



Robert W. Runcie  
Superintendent of Broward County Public Schools

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<sup>2</sup> U.S. Government study: "Report of the Secretary's Task Force on Youth Suicide"  
<http://www.eric.ed.gov/PDFS/ED334503.pdf>

<sup>3</sup> [http://www.glsen.org/binary-data/GLSEN\\_ATTACHMENTS/file/000/001/1806-2.pdf](http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1806-2.pdf)

<sup>4</sup> <http://www.glsen.org/cgi-bin/iowa/all/news/record/2624.html>

## **INTRODUCTION**

Schools are places where all young people should feel safe and secure. Students who experience acceptance at school are more highly motivated, engaged in learning, and committed to achieving the best possible education.

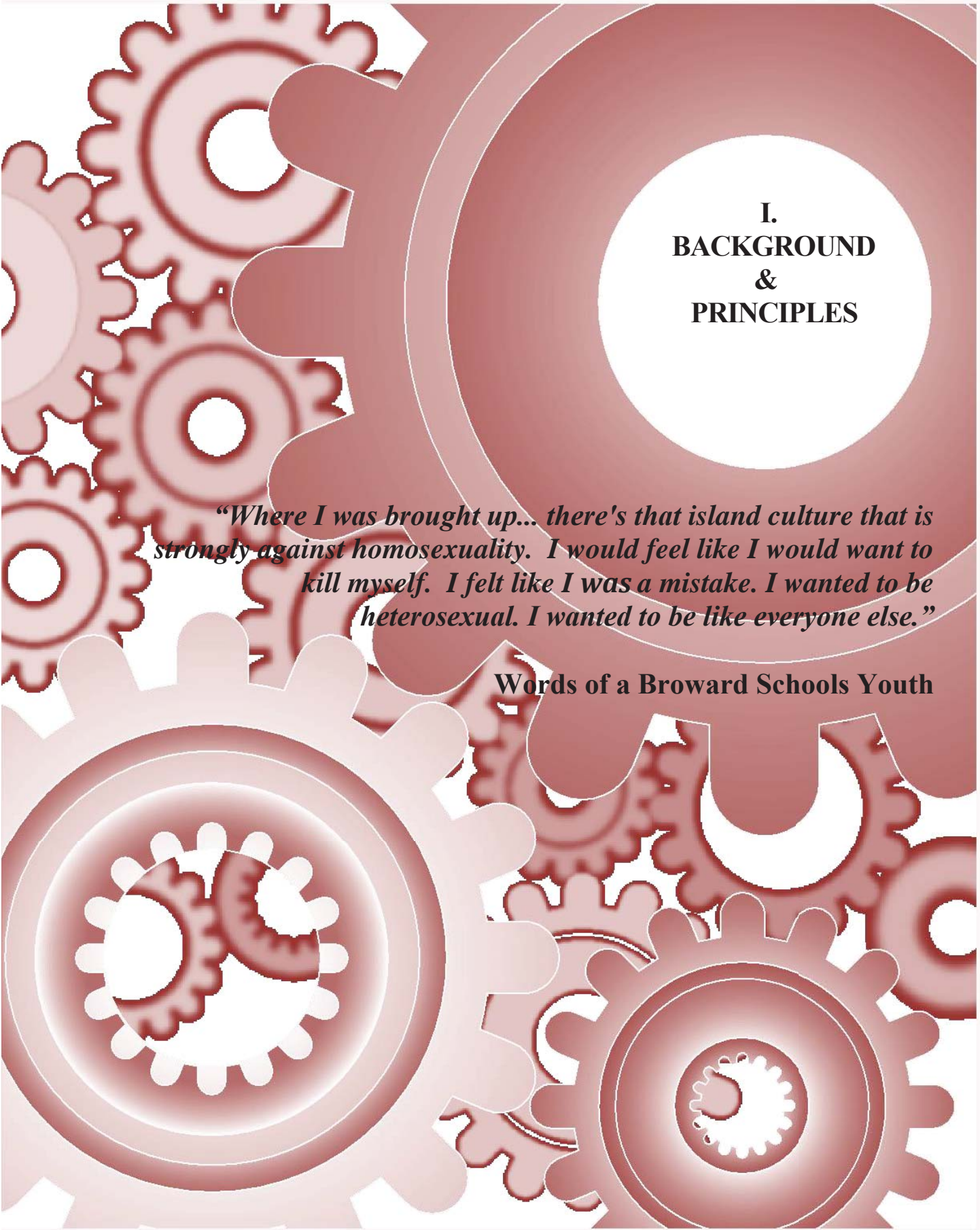
Currently, many schools are not safe places for lesbian, gay, bisexual, transgender, and questioning (hereafter, LGBTQ) and gender-expansive youth. Local and nationwide statistics detailed in the following sections paint a sobering picture of LGBTQ harassment, threats, assaults, and absenteeism due to pervasive safety concerns. Additionally, research suggests minority and marginalized youth from all backgrounds can be impacted positively *or* negatively by the well-being of the LGBTQ community in their schools.

We are pleased that recent safety and prevention efforts have earned the Broward County Public Schools great praise on a national stage. Yet there are still many improvements to be made.

To this end, and in the hopes of assisting school administrators who are in need of both information and support, the members of the Safe to Be Me Coalition, in partnership with Diversity, Prevention & Intervention and the Stonewall National Education Project; with funding granted through Project Bridge – Safe Schools, Healthy Students; and the Centers for Disease Control and Prevention (Division of Adolescent School Health), have drafted this guide.

We are proud to present you with Broward County Public School’s Lesbian, Gay, Bisexual, Transgender, and Questioning Critical Support Guide (hereafter, “the Guide”).





**I.  
BACKGROUND  
&  
PRINCIPLES**

*“Where I was brought up... there's that island culture that is strongly against homosexuality. I would feel like I would want to kill myself. I felt like I was a mistake. I wanted to be heterosexual. I wanted to be like everyone else.”*

**Words of a Broward Schools Youth**

## **A. EXECUTIVE SUMMARY**

This Guide will enhance ongoing efforts to make each Broward K-12 public school a safer place for *all* students—with particular emphasis on the often-targeted community of lesbian, gay, bisexual, transgender or questioning (LGBTQ) students and staff. It further intends to improve the manner in which administrators go about implementing existing federal, state, local laws and policies concerning harassment and discrimination.

We feel this guide is a critical tool at a critical time. All young people—including those who are LGBTQ—have the right to feel safe and secure in the schools they attend. Students who feel accepted at school are more highly motivated, engaged in learning, and committed to achieving the best possible education.

Safety and prevention efforts already established by the State of Florida and the School Board of Broward County have received praise in the broader educational community. Unfortunately, national statistics and even Broward area data suggest the continued harassment, threats, assaults and absenteeism of students who identify or are identified as LBGTO.

The members of the Safe to Be Me Coalition, the Diversity, Prevention & Intervention Department and their community partners, have created this Guide. We believe it has the power to literally save lives. Highlights of the Guide include:

### **Statistics and Terminology**

A 2013 survey conducted by the Gay Lesbian Straight Education Network (GLSEN) indicates that 7 out of 10 LGBTQ students experienced school harassment in the past year. Moreover, 90% of LGBTQ students reported they felt distressed because of anti-gay language. Nationally, rates of attempted suicide for gay and lesbian youth are consistently greater (up to four times as great) than the general youth population. In our own backyard, based on the findings of the 2013 Broward County Public Schools Youth Risk Behavior Survey (YRBS), 11% of sexually active high school students report same sex/both sex sexual contact. With great concern, 49% of students who identify as same sex/both sex reported feeling sad or hopeless and in addition, 21% attempted suicide. Also in our schools, 60% of local Broward County students at a recent Gay-Straight Alliance Summit responded they “frequently” or “often” heard homophobic remarks, most often in classrooms. Forty-five percent of local Broward County youth group attendees stated that teachers or staff members “rarely” or “never” intervened in such conduct.

Definitions are provided for LGBTQ terminology; such as “transgender,” “queer,” and “gender-expansive.”

## **Review of Federal, State and Local Laws & Policies Prohibiting Discrimination and Harassment**

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

Title IX of the Education Amendment Acts of 1972 prohibits gender-biased harassment, such as the harassment of a gender-nonconforming student. Importantly, in May of 2014 the U.S. Department of Education released historic guidelines reaffirming Federal civil rights protections to transgender students. Title IX sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. Also, In May of 2016 the Department of Justice and the Department of Education released guidance for transgender protections in the form a "Dear Colleague Letter on Transgender Students."

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

The School Board of Broward County's Policy 1.5 (Diversity Committee) urges that diversity be promoted. Furthermore, it defines "diversity" as being inclusive of sexual orientation, gender identity, and gender expression.

The Florida Department of Education's Code of Ethics and Principles of Professional Conduct stresses the worth and dignity of every person. In addition, it prohibits discrimination based on sexual orientation, among other characteristics.

## **Creating a Safe Environment for LGBTQ Students**

The need for a united front on student safety issues cannot be overstated. Ways in which administrators can create a safer learning environment for LGBTQ students include:

- Intercepting anti-LGBTQ slurs
- Displaying Safe Space stickers and posters
- Supporting students/staff who are navigating the delicate process of "coming out," while at the same time keeping information strictly confidential (in order not to violate students/staff legally-protected privacy rights)
- Helping students establish and promote a Gay-Straight Alliance (GSA), as permitted by the Federal Equal Access Act

- Ensuring dress codes and social events (i.e., proms, dances, graduations, and yearbooks) are accommodating of the needs of the LGBTQ community.

In short, to the extent certain privileges are available to the “straight” community of students (for example, being able to take a significant other to the prom, or wearing a t-shirt with a non-disruptive political message), those same privileges must be extended to LGBTQ students. To do otherwise could constitute violation of a LGBTQ student’s First Amendment right to freedom of expression. Recent court cases have held non-compliant public schools accountable for such infractions at an exorbitant cost.

### **Guidelines for the Accommodation of Transgender Students**

Transgender students (meaning, students who feel their innate, core sense of self and gender does not match their biological anatomy; i.e., “a boy trapped in a girl’s body” and vice-versa), have a set of unique challenges requiring unique accommodations. Among other considerations, these students must be permitted to:

- Be addressed by the name/gender pronoun with which they are comfortable
- Be permitted to wear clothing that expresses their consistently asserted gender identity; a student has a free speech right to express his/her gender identity through clothes and accessories, as long as they are not a significant disruption to the educational environment
- Use a restroom and/or locker room corresponding to their consistently asserted gender identity (at a minimum, not be forced to use the restroom and/or locker room that corresponds with their biological sex)
- Play on the sports team corresponding with their consistently asserted gender identity

Transgender students are disproportionately targeted for harassment and violence both at home and at school. Accordingly, more than 50% of transgender students report attempting suicide. Transgender individuals must be treated with compassion and sensitivity at every turn.

### **Guidelines for an Inclusive Curriculum**

Broward County School Board Policy 1.5 mandates that “diversity” be promoted in the classroom. Diversity is expressly defined as being inclusive of the LGBTQ community. An inclusive curriculum could include, but is not limited to:

- Literature written by LGBTQ authors
- History including LGBTQ public figures

- Discussions of families including same-sex parents and relevant topics encompassing the diversity of LGB and T young people
- Recognition of national LGBTQ events, such as the Day of Silence and LGBT History Month.

### **Suggested Responses to Parental Concerns**

Concerned parents need to be reassured discussions of LGBTQ issues are not about sex; rather they are about respecting the diverse people who make up our community. Teaching tolerance and an awareness of diverse families is always age-appropriate and not in conflict with any religious beliefs.

This Executive Summary is only a partial view. Please read the Guide in its entirety.

## **B. MISSION STATEMENT**

The mission of the Broward County Public Schools LGBTQ Critical Support Guide is to promote cultural competency by addressing the unique needs of the LGBTQ school community.

Our vision is a safer and more productive learning environment for *all* students, with an emphasis on LGBTQ youth.

In accordance with state, federal, local policies and laws, Broward County Public Schools will continue to provide students, teachers, administrators, and community members the resources needed to make our schools as safe and inclusive as possible.<sup>1</sup>

## **C. BACKGROUND**

In 2008, Florida Statute 1006.147 was passed. This law prohibits bullying or harassment of any student or employee of a Florida public K-12 educational institution; further, it requires each school district to draft a local anti-bullying policy enumerating specific procedures and protected classes.

Broward County's Diversity, Prevention & Intervention Department collaborated with a

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<sup>1</sup>**IMPORTANT NOTE:** While this Guide has been drafted with an eye towards the specific needs of LGBTQ and gender-expansive youth in Broward public schools, LGBTQ adults (i.e., staff, teachers, volunteers, etc.) have legitimate safety concerns as well. The Broward policies cited herein are express in their requirement that Broward employees be similarly protected from harassment and discrimination. To the extent applicable, then, all of the best practices enumerated in this Guide should be modified as needed to address the needs of LGBTQ adults within the Broward County school system. Note that in spring of 2014, GLASEN (Gay, Lesbian and Ally School Employee Network) was created to help ensure safety, support and community to Broward County Public Schools lesbian, gay, bisexual, transgender and questioning employees and allies.)

team of community members, agencies and parents to draft one of Florida's first and most inclusive anti-bullying policies. In early 2009, the Broward County School Board approved Anti-Bullying Policy 5.9, which has proven to be groundbreaking in its inclusion of sexual orientation, gender identity, and gender expression as classes protected against bullying. Additionally, Broward County School Board Policy 4001.1 prohibits discrimination and harassment in our schools against students based on sexual orientation, gender identity, and gender expression.

This Guide is an extension of the principles upon which these policies are based.

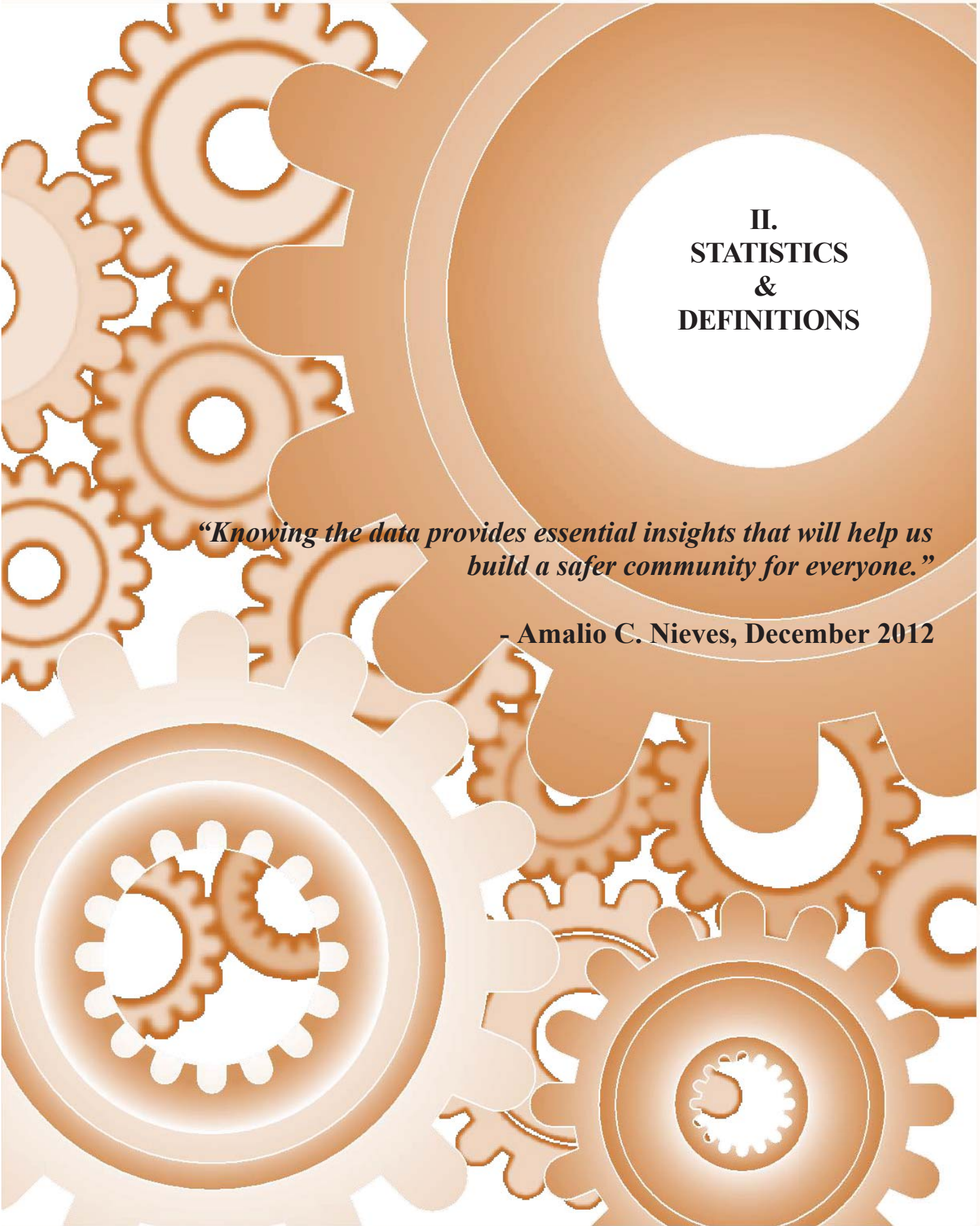
### **Safe to Be Me Coalition**

The Safe to Be Me Coalition was formed in the aftermath of the 2008 Dillard High School tragedy, in which one female student shot and killed another female student due to what was believed to be an unrequited same-sex crush. Leadership from Broward County Public Schools (BCPS) and several community members met to discuss and develop possible solutions to make our schools safer and respectful for all youth, including youth of varying sexual identities. Local and national data further illuminated the critical challenges facing youth who do not identify as straight/heterosexual in our schools and communities.

At subsequent meetings, it was decided that the central focus of the group would be the issues, needs, and protection of LGBTQ students. In 2010 the committee created a mission statement, enumerated goals, and objectives. They named themselves The Safe to Be Me Coalition. Student perspective has always been integral to the Coalition and in 2014 students became regular and active members of the Safe to Be Me Coalition.

At the time of this publication, there are approximately 25 organizations that comprise this Coalition of advocacy and support for the at-risk population of LGBTQ youth, and those perceived as such, in Broward County schools.





**II.  
STATISTICS  
&  
DEFINITIONS**

*“Knowing the data provides essential insights that will help us  
build a safer community for everyone.”*

**- Amalio C. Nieves, December 2012**

## A. THE NECESSITY OF THE GUIDE

One cannot appreciate the critical need for this Guide without first reviewing the very sobering facts and statistics concerning the LGBTQ community in our schools.

Some key figures include the following, which come to us courtesy of the Gay and Lesbian Student Education Network (GLSEN):

- In a 2013 survey of 7,898 middle and high school students, 7 out of 10 LGBTQ students experienced harassment at school in the past year. Over 50% felt “unsafe” because of their sexual orientation and 38% because of their gender expression. Nearly one-third of them, “skipped school at least one day in the past month because of safety concerns”
- Approximately 74% of LGBTQ students reported being “verbally harassed” and 55.2% because of their gender expression, 36% reported being “physically harassed”, and almost 17% reported being “physically assaulted at school in the past year because of your [their] sexual orientation”
- Approximately 12% reported being, “physically assaulted at school in the past year” because of their gender expression
- Approximately 72% heard homophobic remarks, such as "faggot" or "dyke," “frequently” or “often” at school
- Over 50% of students reported they felt unsafe in school because of their sexual orientation, and more than a third felt unsafe because of their gender expression
- 30% of LGBTQ students missed a class at least once and also missed at least one day of school in the past month because of safety concerns, compared to only 8.3% and 6.7% respectively, of a national sample of secondary school students
- Reported grade point average of students who were frequently harassed because of their sexual orientation or gender expression were almost half a grade lower than students who were less often harassed
- Increased levels of victimization corresponded with increased levels of depression, anxiety, and decreased levels of self-esteem
- Being “out” in school had both positive and negative repercussions for LGBTQ students. 96% said being “out” led to higher levels of victimization. However, the majority also reported higher levels of psychological well-being.

Locally, in Broward County, 80 students were recently polled at the 2012 Gay-Straight Alliance Student Leadership Summit. 92% stated, their “greatest support system was from friends”, with teachers ranking second at 38%. 60% of youth said they “frequently or often heard homophobic remarks at school.” These youth further reported homophobic remarks



were heard most often in their classrooms, with negative hallway remarks ranking a close second.

Perhaps most disturbing, the rates of attempted suicide for gay and lesbian youth, ranging from 20% to 42% depending on the survey, are consistently found to be greater than among the general population of youth. Slightly more than 50% of transgender youth report “having attempted suicide.”<sup>1</sup> In our own local Broward youth groups, data gathered in March 2012 indicates 60% of respondents admitted to engaging in self-harm. Almost one-third did not seek help after attempting suicide.

These statistics validate the need for the Guide. Let there be no doubt – education can save lives when it comes to LGBTQ youth. Many face unique challenges based on social stigma and environmental stressors.

## **B. DEFINING “LGBTQ”**

In order to understand this Guide and most effectively support the LGBTQ community in our schools, it is necessary to become familiar with the correct terminology. The definitions below may be referred to when answering classroom questions that may arise, so long as the definitions are modified for age-appropriateness.

Ally: An ally in this context is a straight-identifying person who chooses to align him- or herself with the LGBTQ community. This is the “A” sometimes included in the broader umbrella acronym LGBTQIA.

Androgynous: Having both female and male characteristics – neither distinguishably masculine nor feminine, as in dress, appearance, or behavior.

Biological sex: A person’s physical anatomy/genitalia.

Bisexual: The sexual orientation of a person who is physically and emotionally attracted to both males and females.

Cisgender: A person whose gender identity aligns with those typically associated with the sex assigned to them at birth.

Gay (for grades K-2): A woman who has romantic feelings for another woman; or a man who has romantic feelings for another man.

Gay (for grades 3-12): A term that can apply to either men or women who are physically and emotionally attracted to persons of the same sex. Although “gay” can refer to both men and women, an alternative term for gay women is “lesbian”.

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<sup>1</sup> The National Transgender Discrimination Survey, [http://transequality.org/PDFs/Executive\\_Summary.pdf](http://transequality.org/PDFs/Executive_Summary.pdf).

Gender: Unlike a person’s “biological sex”, which is an anatomical term, “gender” is a social construct specifying the behaviorally and culturally prescribed characteristics men and women are traditionally expected to embody. Gender is now understood to have several components, including gender identity, gender expression, and gender role.

Gender Binary: The notions that there exists only two genders, each solidly fixed, biologically-based and attached to various expectations for behavior, appearance and feelings. The gender system, while predominant in most cultures, is not the only model of gender that exists; more nuanced, non-binary understandings of gender have existed throughout history and across cultures.

Gender Nonconforming/Gender Expansive/Gender Fluid: Conveys a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system. A person who has gender characteristics and/or behaviors that do not conform to traditional or societal gender expectations. Educators have recently reported seeing an increase in gender-nonconforming and non-binary expression at the elementary and middle school levels.

Gender Identity: Refers to a person’s internal, deeply felt sense of being male or female, boy or girl, or other (for example, a blending of the two). Everyone has a gender identity, even if it does not always correspond with the person’s biological sex.

Genderqueer: Blurring the lines around gender identity and sexual orientation, genderqueer individuals typically reject notions of static categories of gender and embrace a fluidity of gender identity and often, though not always, sexual orientation.

Gender Role: The social expectations of how a person should act, think, and/or feel based upon one’s biological sex. This definition includes traditional and stereotypical roles, characteristics, mannerisms and behaviors associated with societal norms of what is male and what is female. These expectations are often stereotypical, such as “Boys like blue and Girls like pink.”

Gender Expression: A person’s physical characteristics, behaviors, and presentation traditionally linked to either masculinity or femininity, such as: appearance, dress, mannerisms, speech patterns and social interactions.

Heterosexism: An overt or tacit bias against homosexuality, rooted in the belief that heterosexuality is superior or the norm.

Heteronormative: The belief system that heterosexuality is the norm; the assumption that heterosexuality is universal and anything other than heterosexuality is unnatural.

Heterosexual: The sexual orientation of a person who is emotionally and sexually attracted to members of the opposite sex. Often referred to as “straight”.

Homophobia: A fear of or aversion to lesbian, gay or bisexual people. May also refer to a fear of or aversion to transgendered people, as an alternative to the lesser-used “transphobia” (see “transphobia” below).

Homosexual: The sexual orientation of a person who is emotionally and sexually attracted to members of their own gender. This is a rather outdated term originating in the medical and psychological communities. Currently, many LGBTQ people prefer the term “lesbian” or “gay”.

Intersex: An intersex person has reproductive or sexual anatomy that doesn’t correspond to the typical notions of “male” or “female”. Previous generations might have referred to an intersex person as a “hermaphrodite”. This is the “I” that is sometimes included in the broader umbrella acronym “LGBTQIA”.

Lesbian (for grades K-2): A woman who has romantic feelings for another woman.

Lesbian (for grades 3-12): A term used to describe a woman who is emotionally and physically attracted to another woman.

LGBTQ: A frequently used acronym that stands for Lesbian, Gay, Bisexual, Transgender, and Questioning (or Queer).

“Out” or “Out of the closet”: A term used to refer to a person whose LGBTQ status is, to some degree, public. Note: It is not always the LGBTQ person who makes this information public. Sometimes it is made public without the LGBTQ person’s knowledge and/or consent. This is called “outing” someone. The act of “outing” an individual can create an at-risk situation.

Queer: An umbrella term used to describe a sexual orientation, gender identity or gender expression that does not conform to dominant societal norms. While “queer” is used as a neutral or even a positive term among many LGBTQ people today, some consider it derogatory as historically it had been used negatively.

Questioning: A person who is uncertain of his/her sexual orientation and/or gender orientation/identity.

Transphobia: A fear or aversion to transgender people.

Transgender (Grades K-5): When a person feels as if he or she has been born into the wrong body. For example, a boy who feels like he is a boy inside but has a girl’s body or a girl who feels like she is a girl inside but has a boy’s body.

Transgender (Grades 6-12): This term describes a person whose gender identity does not match his or her physical anatomy/is different from their sex assigned at birth. Some transgender people hormonally and/or surgically change their bodies to more fully match

their gender identity. Note: There are other meanings for transgender. For more information, please visit <http://www.apa.org/topics/sexuality/transgender.aspx>.

Transition-Social Transition: The process by which a transgender student begins to outwardly express him- or herself as the gender with which he or she identifies. This could mean beginning to wear clothes typically associated with the other gender, asking to be called by a different name or gender pronoun, aligning behaviors and expression with one's authentic gender identity and possibly letting friends, school personnel or family know.





**III.  
KNOW THE LAW**

*“If every person, especially teachers, would not allow me or my friends to get harassed because of who I am, school would be a decent place. Unfortunately, that’s not the case.”*

**Broward Lesbian Youth**

## A. ANTI-DISCRIMINATION LAWS/ POLICIES

### 1. FEDERAL LAW

#### **The 14th Amendment of the U.S. Constitution (Equal Protection)**

The United States Constitution guarantees *all* people equal protection under the law. This means public school officials and employees (who, for purposes of the Guide, should be considered extensions of the state government) may not single out a student for negative treatment based on prejudices against LGBTQ students. Nor may they discriminate against students just because they (or members of the community) disapprove of being gay or because they feel uncomfortable around those who do not conform to traditional gender stereotypes.

The Constitution's equality guarantee also means that public school officials may not turn a blind eye to anti-LGBTQ harassment or treat it less seriously than other forms of harassment. If a public school official deliberately ignores anti-gay or anti-transgender peer abuse, or refuses to apply anti-bullying protections on a nondiscriminatory basis, the official, and even the school district itself, may be held liable for violating students' constitutional rights. *Flores v. Morgan Hill Unified School Dis't.*, 324 F.3d 1130, 1134-5 (9<sup>th</sup> Cir. 2003);<sup>1</sup> *Nabozny v. Podlesny*, 92 F.3d 446, 458 (7<sup>th</sup> Cir. 1996) (\$962,000 in damages after a school failed to intervene in verbal and physical attacks on a student suspected to be gay).

#### **Title IX of the Education Amendment Acts of 1972**

Federal civil rights statutes reinforce anti-discrimination principles as well. Title IX of the Education Amendment Acts of 1972 (Title IX), 20 U.S.C §§ 1681-1688, prohibits discrimination based on sex in education programs and activities that receive federal financial assistance. Although, Title IX does not expressly apply to discrimination based on sexual orientation, it does prohibit gender-based harassment, such as harassment on the basis of student's failure to conform to stereotyped notions of masculinity and femininity.

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<sup>1</sup> The case of *Flores v. Morgan Hill Unified School Dis't.* is particularly noteworthy because the plaintiffs endured a terrible litany of abuses: one boy was repeatedly beaten up by other male students and subjected to violent anti-gay slurs; a girl was subjected to repeated verbal attacks and had pornographic pictures of lesbians taped to her locker; another girl suspected to be gay was taunted with a penis-shaped balloon in the presence of an adult monitor. When these incidents were reported to administrators, the students were either advised not to make a big deal out of them or, worse, the administrators participated in the harassment themselves ("Well if you're not gay, then why are you crying?"). It was ultimately held by the 9<sup>th</sup> Circuit Court of Appeals that if a school knows that anti-LGBTQ harassment is taking place, the school is obligated to take meaningful steps to end it and to protect the students. The case concluded in a \$1.1 million settlement to the plaintiffs.

### **The Student Non-Discrimination Act \*Proposed Legislation\***

On March 10, 2011, the Federal Student Non-Discrimination Act (H.R. 998/S. 555) was introduced to prohibit bullying and harassment in public elementary and secondary schools based on a student’s actual or perceived LGBTQ status. The measure would provide victims with meaningful and effective judicial remedies, modeled after Title IX.

## 2. STATE LAW / POLICY

### **Florida Statute 1000.05**

Florida Statute 1000.05 prohibits discrimination against students and employees in the Florida K-20 public education system on the basis of race, ethnicity, national origin, gender, disability, or marital status.

Note: Florida state law does not currently prohibit discrimination on the basis of sexual orientation, gender identity, or gender expression. This means that currently, Florida is one of the states in which a person can be “fired for being gay”. Counties within Florida, however, are permitted to implement more inclusive ordinances—as Broward County has. See the Broward County Human Rights Act below.

### **Florida Department of Education Code of Ethics 6B-1.001 / 6B-1.006**

According to Section 6B-1.001 of the Code of Ethics of the Education Profession in Florida:

The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

Section 6B-1.006 of the Principles for Professional Conduct for the Education Profession in Florida goes on to state:

Obligation to the student requires that the individual... [s]hall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.

### 3. LOCAL POLICY

#### **Broward County Human Rights Act**

The Broward County Code and Ordinance Chapter 16 ½ (The Broward County Human Rights Act), prohibits, in part, discrimination in employment on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, and gender expression/identity.

#### **Policy 4001.1**

The School Board of Broward County's Non-Discrimination Policy Statement 4001.1 states, in part:

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

#### **Policy 1.5**

The School Board of Broward County's Policy 1.5 (Diversity Committee) states:

We believe that diversity should be promoted... so that education is enhanced in a diverse, inclusive setting... Diversity shall be defined as a broad concept that includes gender, race, ethnicity, socioeconomic background, linguistic differences, exceptional abilities, sexual orientation, gender identity and expression, variations of talents and abilities, and special needs.

The School Board of Broward County, Florida prohibits any policy or procedure, which results in discrimination on the basis of age, color, disability, gender, national origin, marital status, race, religion or sexual orientation.

Broward County School Board policies specifically identify gender identity, gender expression, and sexual orientation as being protected from discrimination. In other words, LGBTQ students cannot be treated differently from non-LGBTQ students. To do so would constitute blatant discrimination in violation of the policies.



## **B. ANTI-BULLYING LAWS / POLICIES**

### **1. FEDERAL LAW**

#### **The Safe Schools Improvement Act \*Proposed Legislation\***

On March 8, 2013, the Federal Safe Schools Improvement Act was reintroduced in the Senate as a proposed amendment to the Elementary and Secondary Education Act. This legislation would require public schools to implement a comprehensive anti-bullying policy that enumerates sexual orientation and gender identity as protected categories, among others. It would further require schools to include LGBTQ bullying and harassment data in their statewide needs assessment reporting.

### **2. STATE LAW**

Jeffrey Johnston was a 15-year-old Cape Coral, FL, student who committed suicide after enduring more than two years of bullying. It began in seventh grade, when he and his girlfriend broke up. Some kids called him a stalker. Others made fun of his chapped lips and said he had herpes.

His mother was a teacher in the same school Jeffrey attended.

When Jeffrey started 8<sup>th</sup> grade, students at his school hacked into an online video game he'd spent the summer creating. They filled it with hateful messages. One of the students started an online journal where humiliating messages about Jeffrey were posted. One read: "Jeff is a faggot." Followed by, "He needs to die."

After the video game incident, Jeffrey threatened to kill himself. His mother kept him out of school for two weeks.

Jeffrey reported the bullying to the school. The principal warned the aggressors. He indicated he was powerless to do more because no school policy covered conduct in cyberspace.

By Jeffrey's freshman year in high school, the aggressors were at another school. However, the taunts continued online. When he could not take it anymore, Jeffrey hanged himself in his closet using his book bag strap.

His suicide note read, "I'll never get over 8<sup>th</sup> grade."

*“A bully doesn’t have to be eye-to-eye to bully someone. Sometimes he or she gets into cyberspace, and then there’s no place to hide from their torment. With the keyboard as his weapon, the bully violated the sanctity of my home and murdered my child just as surely as if he had crawled through a broken window and choked the life from Jeff with his bare hands. It was not a death that was quick and merciful. It was carried out with lies, rumors and calculated cruelty portioned out day by day.”*

– Debbie Johnston, mother of Jeffrey Johnston

In large part due to the tireless efforts of Debbie Johnston following her son’s suicide, Florida Statute 1006.147 (The Jeffrey Johnston Stand Up for All Students Act) was passed.

### **Florida Statute 1006.147**

Florida Statute 1006.147, enacted in May 2008, created a statewide prohibition of the bullying or harassment of any student or employee of a public K-12 educational institution; whether at a school, on a school bus, or via electronic device.

The law requires each individual school district to implement a policy outlining the consequences of harassment; the consequences for a wrongful accusation of harassment; and the procedure for immediately notifying the parents of both the victim and the perpetrator of the alleged bullying or harassment. The statute leaves it up to the individual school districts to enumerate specific categories (i.e., race, disability, sexual orientation, etc.) for which bullying is specifically prohibited.

Critically, the law provides that “...distribution of safe schools funds to a school district... is contingent upon... the Department of Education’s approval of the school district’s bullying and harassment policy.” This means there is actual funding at stake for a non-compliant school.

In July 2008, Broward County was the first school district in Florida to approve an anti-bullying policy in compliance with the Jeffrey Johnston Stand Up For All Students Act.

## **3. LOCAL POLICY**

### **Policy 5.9**

The School Board of Broward County’s Policy 5.9 (Anti-Bullying) prohibits the bullying, harassment, cyberstalking, and cyberbullying of any student or employee on the basis of any one of the following protected categories: sex, race, color, religion, national origin, age, disability, marital status, socio-economic background, ancestry/ethnicity, linguistic preference, political beliefs, social/family background, gender, gender identity, gender expression and sexual orientation.

The policy characterizes “bullying” as:

... systematically and chronically inflicting physical hurt or psychological distress on one or more students or employees.

[Bullying] is further defined as: unwanted purposeful written, verbal, nonverbal or physical behavior, including but not limited to any threatening, insulting or dehumanizing gestures, by an adult or student, that has the potential to create an intimidating, hostile or offensive educational environment or cause long-term damage, cause discomfort or humiliation; or reasonably interfere with the individual’s school performance or participation, is carried out repeatedly and is often characterized by an imbalance of power.

Broward County Public Schools’ policy is intentionally broad; it goes on to state that “...though an incident... may occur off-campus and may not entail threats of acts to occur during school hours, if a student’s ability to receive an education or a school’s ability to provide an education is significantly impaired... disciplinary sanctions may be issued.”

Once a report of bullying is received by the school administration, the school must initiate an investigation within two (2) days, and complete the investigation within ten (10) days of its initiation. An appeal can be filed within five (5) days of the decision.

Additional information regarding bullying and harassment can be found at [www.BrowardPrevention.org](http://www.BrowardPrevention.org) and in the Broward County Public Schools Student Code of Conduct.

\* \* \* \*

This overview demonstrates that the legal landscape already exists. School administrators do not have to feel they are “reinventing the wheel”. Courageous teachers do not have to wonder if they are putting their jobs in jeopardy by standing up for targeted students. Rather, our founding fathers, state legislators and The School Board of Broward County members have given us the tools and the resources to empower the entire school community.







**IV.  
CREATING A  
SAFE SPACE  
FOR  
LGBTQ STUDENTS**

*“One thing that changed the game for me was when a teacher said she would not allow any sort of negative language about race, gender, status, or orientation in her classroom.”*

**Broward Gay Youth**

## **A. ANTI-LGBTQ LANGUAGE**

Statistics tell us that anti-LGBTQ slurs and bias toward gender-expansive youth abound in our schools, regardless of whether the target of the slur is actually gay, or just perceived to be gay. Here are some guidelines for intervening in anti-LGBTQ language (i.e., “dyke,” “faggot,” “no homo,” etc.), the most common of which is the intended insult, “That’s so gay!”

### **Stop It**

Keep it simple with quick responses. You could say:

“We don’t use *gay* as a put-down in this class”

“It’s not OK to say *that’s so gay*”

“It’s not OK to use that phrase”

“What did you mean by that?”

“You may not have meant to be hurtful, but when you use the word *gay* to mean something is bad or stupid, it is hurtful”

“Do you know why that comment is hurtful?”

If you have the time and opportunity to educate on the spot, do it. If you don’t, be sure to make time later.

### **Educate**

Whether explained at the moment of the incident or shortly after, be absolutely clear with students that when they use the word “gay” as an insult, they are being disrespectful. Calling something or someone “gay” is hurtful not only to the target (who may or may not be gay) but also to others who may have parents, neighbors, friends or other family members who are gay.

### **Be Proactive**

Create an environment of respect and caring for all students in your class and school. Establish clear school-wide and classroom policies against name-calling and hurtful teasing. If you have been hearing the phrase, “That’s so gay!” at school, be explicit that rules against name-calling include this phrase and other anti-gay put-downs.

### **Don’t Ignore It**

Ignoring name-calling and hurtful teasing allows it to continue and possibly get worse. If other students do not see action, they get the message there is nothing wrong with it. Harassment does not go away on its own.

### **Don't Be Afraid of Making the Situation Worse**

Almost any response is better than ignoring the situation. You may not know exactly what to say. However, you must stop the harassment. Taking action reaffirms limits. Interrupting name-calling is not always easy. Experience will help you to become more comfortable handling future situations. In addition, you can always go back to the student and say or do something else if you feel you did not respond effectively.

### **Don't Excuse the Behavior**

Saying, "Josh doesn't really know what it means," or "Sarah was only joking," excuses hurtful behavior.

### **Don't Try to Judge How Upset the Target Is**

We have no way of knowing how a student is really feeling. Often, targets are embarrassed and pretend they were not offended or hurt. Saying "Michael didn't seem upset by Laura's remark" trivializes the child's feelings. It tells the harasser it is OK to make hurtful comments. It teaches both the child targeted and also anyone within hearing range they will not be protected from harassment.

### **Don't Worry About the Tables Being Turned**

If you are worried a student will respond to your correction by saying something like, "What do you care... are YOU gay?" prepare a response in advance. An example of your response may be, "My own personal life is completely irrelevant here; bullying is forbidden at this school" or "Actually, I am – which has absolutely nothing to do with the fact that your comment is inappropriate." Note: Use your professional judgment and be in touch with what you personally are comfortable disclosing to your students.

## **B. SAFE SPACE POSTERS / STICKERS**

It only takes one person to make a potentially life-changing difference for a youth who is suffering. While there are many ways in which teachers and administrators can facilitate a safe environment for vulnerable LGBTQ students, one of the most widely recognized methods is by displaying a Safe Space poster or sticker. Samples of BCPS Safe Zone posters and sticker can be viewed in Appendix J of this Guide; and are also available online or by mail from BCPS – Department of Diversity, Prevention & Intervention at [www.BrowardPrevention.org](http://www.BrowardPrevention.org). For additional resources, please also visit GLSEN at [www.SafeSpace.glsen.org](http://www.SafeSpace.glsen.org) and [www.GSANetwork.org](http://www.GSANetwork.org).

By displaying a Safe Space sticker or poster in a hallway, in a classroom, or on a door, a teacher or administrator creates a visible and easily identifiable network of LGBTQ community members and allies. In other words, a teacher or administrator does not need

to be LGBTQ in order to display the symbol. When a student sees this poster/sticker in someone's classroom or office, he or she can presume that teacher or administrator:

- a) is accepting of LGBTQ individuals
- b) has basic knowledge about issues of sexual orientation and gender identity
- c) is willing to provide resources and support

Broward County Public Schools supports teachers/staff who choose to display a Safe Space sticker or poster. A teacher should not let fear of parent reaction dissuade him or her from going public with LGBTQ support. **Remember, our utmost responsibility is to ensure the safety and security of all students.**

### C. "COMING OUT"

Some schools may try to silence students who are open about their sexual orientation or gender identity. Federal courts have found students have a Constitutional right to be "out" at school if they want to be. See, e.g., *Sterling v. Borough of Minersville*, 232 F.3d. 190, 196 n.4 (3d Cir. 2000) (holding that information about one's sexual orientation is "intrinsically private"); *C.N. v. Wolf*, 410 F.Supp. 2d 894, 903 (C.D. Cal. 2005) (even a student who is out at school has the right to control who in their family knows about their LGBTQ status: "[t]he fact that [the student's sexual orientation] is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of information").

In the seminal case, *Tinker v. Des Moines*, the U.S. Supreme Court ruled that students don't "shed their constitutional rights to freedom of speech at the schoolhouse gate." The only time a school can restrict an individual student's free speech is when it causes significant disruption in the classroom. (*Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)). For example, a student disruptively standing up and yelling, "I'm gay!" in the middle of class would not be protected speech. On the other hand, a student talking with a friend at school about being gay between classes or at lunch is permitted.

#### 1. TALKING TO STUDENTS

In our society most people are presumed to be heterosexual. There is no need for a heterosexual person to make a statement to others that discloses his or her sexual orientation. Similarly, most people feel their gender is aligned with their biological sex. They typically have no need to disclose their gender identity.

However, LGBTQ people have the right to decide when, and how to reveal to others their sexual orientation or gender identity (or even the fact that they are questioning their orientation or identity). This is often a delicate and emotional process.

It is an unfortunate reality – LGBTQ youth commonly experience parental rejection because of their sexual orientation or gender identity. Indeed, studies have shown



approximately one-third of LGBTQ youth are victims of physical violence by a family member after the teen “comes out” or their sexual orientation is disclosed. A 2006 Child Welfare League of America study found a high proportion of LGBTQ youth in state-run foster care facilities leave home or are banished from their homes as a result of conflict related to their sexual orientation or gender identity.<sup>1</sup> Even more recently, data generated by The Family Acceptance Project in 2009 indicates gay and transgender teens rejected by their parents and caregivers are:

- More than eight times more likely to have attempted suicide
- Nearly six times as likely to report high levels of depression
- More than three times as likely to use illegal drugs
- More than three times as likely to be at high risk for HIV and other STDs.<sup>2</sup>

The degree to which teachers and administrators need to be sensitive about this issue, cannot be overstated.

### **If a Student Comes Out to You:**

- Offer support
- Be a role model of acceptance
- Appreciate the student’s courage
- Listen, listen, listen
- Assure and respect confidentiality
- Demonstrate understanding, acceptance and compassion
- Be prepared to give a referral for resources and/or for emotional support
- Remember the student has not changed.<sup>3</sup>

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<sup>1</sup> CWLA Best Practices Guidelines for Serving LGBT Youth in Out-of-Home Care  
<http://www.lsc-sf.org/wp-content/uploads/bestpracticeslgbtyouth.pdf>

<sup>2</sup> [http://familyproject.sfsu.edu/files/FAP\\_English%20Booklet\\_pst.pdf](http://familyproject.sfsu.edu/files/FAP_English%20Booklet_pst.pdf).

<sup>3</sup> Please note: These guidelines similarly apply to a teacher or staff member who “comes out” to a principal, administrator, or peer. Broward County anti-discrimination policies are clear that adults also have the right to be treated equally, regardless of actual or perceived LGBTQ status. Being a safe school means that all members of the school community—teachers and staff included—feel protected against bias and harassment.

**What Not to Say:**

- “I knew it!”
- “Are you sure? Are you confused?”
- “This is just a phase”
- “You just haven’t found the right woman/man”
- “Shhhh, don’t tell anyone”
- “You’re too young to know”
- “You should come out to everyone and be honest”
- “You can’t be gay, you’ve had relationships with people of the opposite sex.”

In short, it is a compliment when a student trusts you enough to come out to you. It is up to you to prove yourself worthy of that trust. Barring extenuating circumstances in which you fear for the student’s safety, value confidentiality above all else.

**2. TALKING TO PARENTS/GUARDIANS**

As stated above, federal courts have repeatedly held the Constitution prohibits government officials from disclosing information about a person’s gay, lesbian or bisexual orientation, except under limited circumstances. The expression of sexual orientation is an innately personal choice [*Sterling v. Borough of Minersville*, 232 F.3d 190, 196 n.4 (3d Cir. 2000); *C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005)]. Therefore, just as teachers and school administrators cannot discourage a student from being “out” at school, they also cannot encourage (or even force) a student to be “out” at home. It is up to the student, and the student alone, to decide where and when to be open about his or her LGBTQ status.

Occasionally, a parent may contact teachers, guidance counselors, or administrators to ask if their child has confided in them about his/her sexual orientation, or if it is suspected their child may be gay. With the very limited exception involving the imminent fear of physical harm, it is never appropriate to divulge the sexual orientation of a student to a parent.

If a teacher, guidance counselor, or administrator is asked these questions, an appropriate response to the parent may be:

“Based on policy and federal guidelines, I cannot divulge whether your child and I have had any such confidential conversations, as even students are legally afforded rights of privacy. If you suspect your child may be gay, I suggest that you speak directly to your child. Furthermore, I recommend that you contact your local PFLAG (Parents, Families and Friends of Lesbians and Gays) chapter. You don’t have to be certain of your child’s sexual orientation to ask questions or attend a meeting.”

**IMPORTANT:** It is imperative that these guidelines regarding confidentiality be kept clearly in mind when communicating with parents or guardians about bullying or other misconduct. To the extent that administrators must relay the exact wording of an altercation due to reporting requirements, care should be used to neutralize potentially

incriminating language that was used. For example, if a student suspected to be gay is called a “faggot” by an aggressor, the parent might be told, “Mrs. Smith, your son was involved in an altercation today as the result of being bullied by another student who called him a ‘faggot.’ Unfortunately, this term is frequently used by students as a generalized put-down.” Failure to practice discretion regarding language could place a student in a hostile, dangerous, or even life-threatening, environment. Please contact the Diversity, Prevention & Intervention Department at (754) 321-1655 before contacting parents or guardians if you have any questions or concerns about this issue.

## D. INCLUSIVE LANGUAGE

### Become Aware of the Language You Use

It is only natural that our own experiences shape the language we use. However, sometimes without even realizing it, our words convey messages about the world that may not always be fair or accurate. For example, it is common parlance to refer to a student’s parents as “Your mom and dad.” The fact is, not every student is being raised by a mother and a father. Some students are being raised by a single parent; by a grandparent; and still others by two moms or two dads. By perpetuating the stereotype of a traditional nuclear family—or taking it as a given that all boys will grow up to marry girls (and vice versa)—we inadvertently alienate our students who have non-traditional families, or are themselves LGBTQ. Simply becoming aware of the presumptions that affect our word choices is the first step in cultivating a more inclusive classroom experience.<sup>1</sup>

## E. GAY-STRAIGHT ALLIANCES

*“Just the mere presence of the GSA at my school helped me feel like I was not alone. I gotta say, it helped me to survive in school and made being at home and closeted more tolerable. Please let teachers and principals know how much my GSA helped save me.”*

- Broward County student

Gay-Straight Alliances (GSAs) are student clubs, just like the Drama Club or Key Club, allowing students with a common interest to get together and have events or discussions about that interest. GSAs are made up of students of any sexual orientation; in fact, many GSA members are straight-identifying youth. GSAs can be support groups, or educational or civic clubs dedicated to making the school and community a safer space for all individuals.

Under the Federal Equal Access Act (20 U.S.C. §§ 4071-74), a public school permitting any non-curricular club (meaning, a club that does not directly relate to a class taught at

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<sup>1</sup> Keep these suggestions in mind when teaching existing curriculum; materials may be out-of-date or completely void of LGBT issues.

school) must also allow students to form a GSA. In addition, according to the Equal Access Act, the school must treat the GSA the same as it does any other non-curricular club in terms of access to facilities, resources, and opportunities to advertise.

The 2007, 2009, 2011 and 2013 National School Climate Surveys conducted by GLSEN found that students who had a GSA at their school reported hearing fewer homophobic remarks. The students surveyed experienced less harassment and assault because of their orientation and gender expression. In addition, they were more likely to report incidents of harassment and assault, and were less likely to feel unsafe because of their orientation or gender expression. This was true regardless of whether the respondent actually joined the GSA club.

Parents may have questions about a GSA. Answer parents' questions as honestly as possible, but be exceedingly careful not to accidentally "out" a student. \* Remember a student could be out at school, but NOT out at home. Furthermore, students have a legal right to privacy and confidentiality when it comes to their sexual orientation. Remind parents the club is a gay and straight alliance. Therefore, a student is not making any statement about his or her orientation or identity simply by participating in the club.

For additional information about how to start, or supervise a GSA, contact the Diversity, Cultural Outreach & Prevention Department.

\* Note: Not all GSA members identify as gay, lesbian, bisexual, transgender and questioning; many members are often "straight" allies.

## **F. PROMS / DANCES**

Federal court cases have held that any policy or action excluding same-sex couples from proms and dances, as well as any policy adopted as a pretext for such discrimination, violates students' rights to free expression and association as guaranteed by the First Amendment to the United States Constitution [*See, i.e., Fricke v. Lynch*, 491 F. Supp. 381, 382 (D.R.I. 1980)].

The Itawamba County School District in Mississippi was sued because a young woman's school would not allow her to bring a same-sex date to the prom. Ultimately, the school cancelled the prom entirely rather than allow the student bring her partner as a date. The court determined the student's First Amendment rights were violated when her school cancelled the prom [*McMillen v. Itawamba County School Districts*, 702 F. Supp. 2d 699 (N.D. Miss. 2010)].

Schools may set general dress standards for prom, such as the requirement of formal attire. A school must not dictate that only biological males may wear tuxedos, and only biological females may wear dresses [*See, i.e., Logan v. Gary Cmty. Sch. Corp.*, 2008 U.S. Dist. LEXIS 79390, \*\*10-11 (N.D. Ind. Sept. 25, 2008)].

## G. DRESS CODE

Some students may want to wear gender-nonconforming attire to school, to the prom, to graduation ceremonies, or in yearbook photographs. Schools are permitted to have a dress code, but it must be enforced equally among all students, irrespective of sexual orientation, gender expression, or gender identity. [*Doe v. Yunits*, No. 00-1060-A, 2000 Mass. Super. LEXIS 491 Mass. Super. Ct. Oct. 11, 2000: A student has a free speech right to express their gender identity through clothing as long as it is not significantly disruptive].

Remember, in order for clothes to meet this standard, the disruption must be significant and objectively provable to other people. Clothing cannot be qualified as “significantly disruptive” simply because a teacher or administrator personally considers the message to be offensive.

Other students may want to wear T-shirts and accessories expressing a pro-LGBTQ message. Again, restrictions on political messages are permissible as long as they are enforced uniformly among all students and viewpoints. Recently, in Holmes County, Florida, the school board banned students from wearing pro-gay slogans such as “I Support My Gay Friends” and “Gay? Fine by Me.” A student sued the school and won; the school board was ordered to pay \$325,000 for the student’s legal fees and expenses [*Gillman v. School Board for Holmes County, Florida*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008): The messages on the clothing was not vulgar or obscene, but rather an expression of tolerance and fairness. The school board acted in violation of the student’s free speech rights].

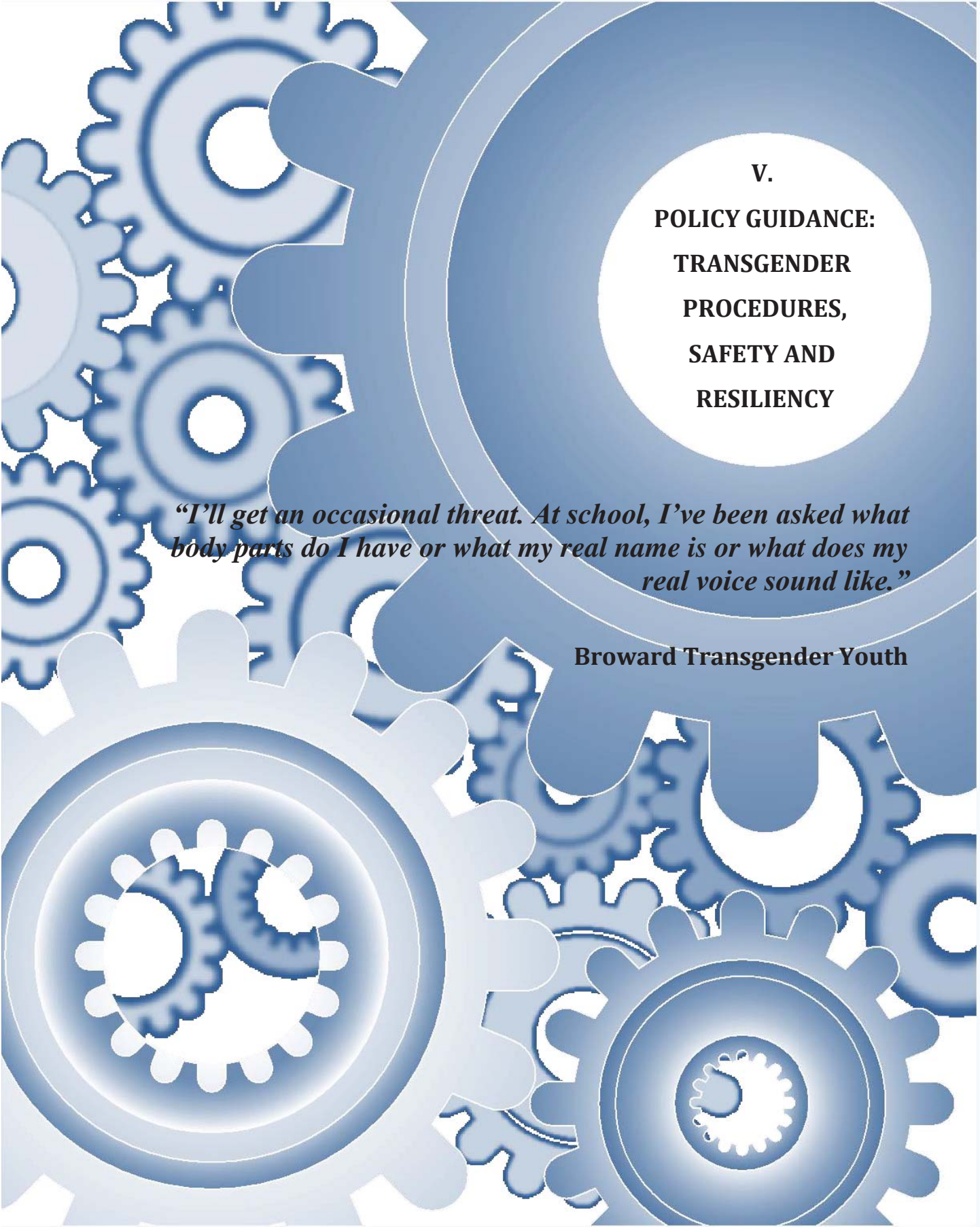
\* \* \* \*

The overarching theme in the creation of a safe environment for LGBTQ students is equal protection. For example, if you do not allow insults based on racial minority groups, then do not allow insults based on sexual minority groups. If you do allow after-school clubs, then do allow GSAs. If straight students can take their significant others to the prom, then gay students can take their significant others to the prom. The list goes on and on.

When faced with a potentially thorny question from an LGBTQ student, always ask yourself if your answer would be the same if it were a straight student. Be careful not to allow your personal views about orientation, gender identity, and gender expression to unfairly influence the result.







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

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

**Broward Transgender Youth**

## INTRODUCTION

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

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

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

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

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



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

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

## **ACKNOWLEDGEMENTS**

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

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

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

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

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

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

## **NAMES AND PRONOUNS**

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

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

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

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

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

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

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

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

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

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

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

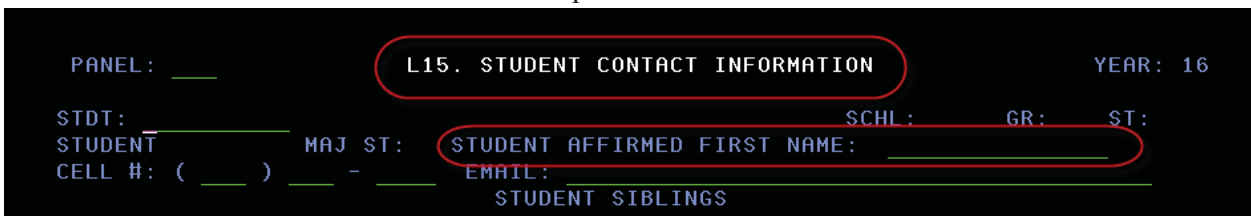
**Privacy and Electronic Databases**

A. TERMS (Total Educational Resource Management System)

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



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



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

B. BASIS (Behavioral and Academic Support Information System)

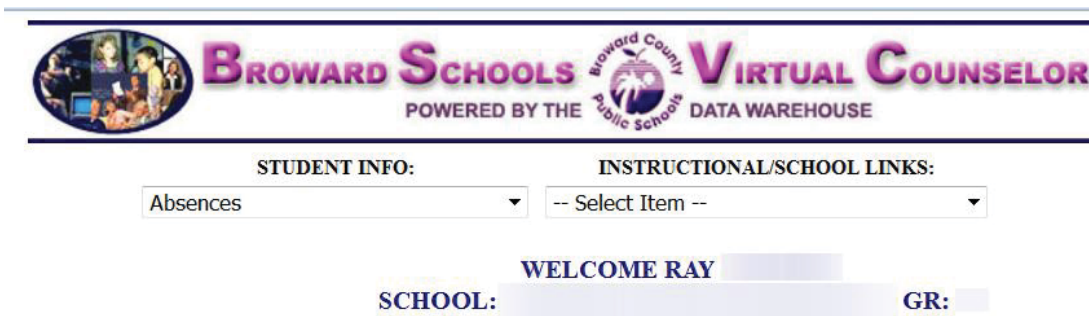
In the student detail grids of BASIS the affirmed first name will be denoted with an asterisk (\*). The asterisk will indicate that the student’s official name is different from the student’s affirmed name. From any student grid, double click on the student’s row to bring up the student’s individual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

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



C. Virtual Counselor

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



D. Pinnacle

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

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

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

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

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

### **Transferring to a New School**

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

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

### **General Knowledge**

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

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

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

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

### **Restrooms**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Student Transitions**

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

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

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

### **Developmentally Appropriate Protocols**

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

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

### **Grades PK-5**

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

### **Grades 6-12**

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

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

### **Education and Training**

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

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

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

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

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

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

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

## **Conclusion**

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

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

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





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

### **Introduction**

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

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

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

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

### **Parent/Guardian Involvement**

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

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

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

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

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

### **Student Safety**

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

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

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

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

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

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

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

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

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

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

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

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

**Use of Restrooms**

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

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

**Extracurricular Activities**

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

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

**Overnight Field Trips**

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

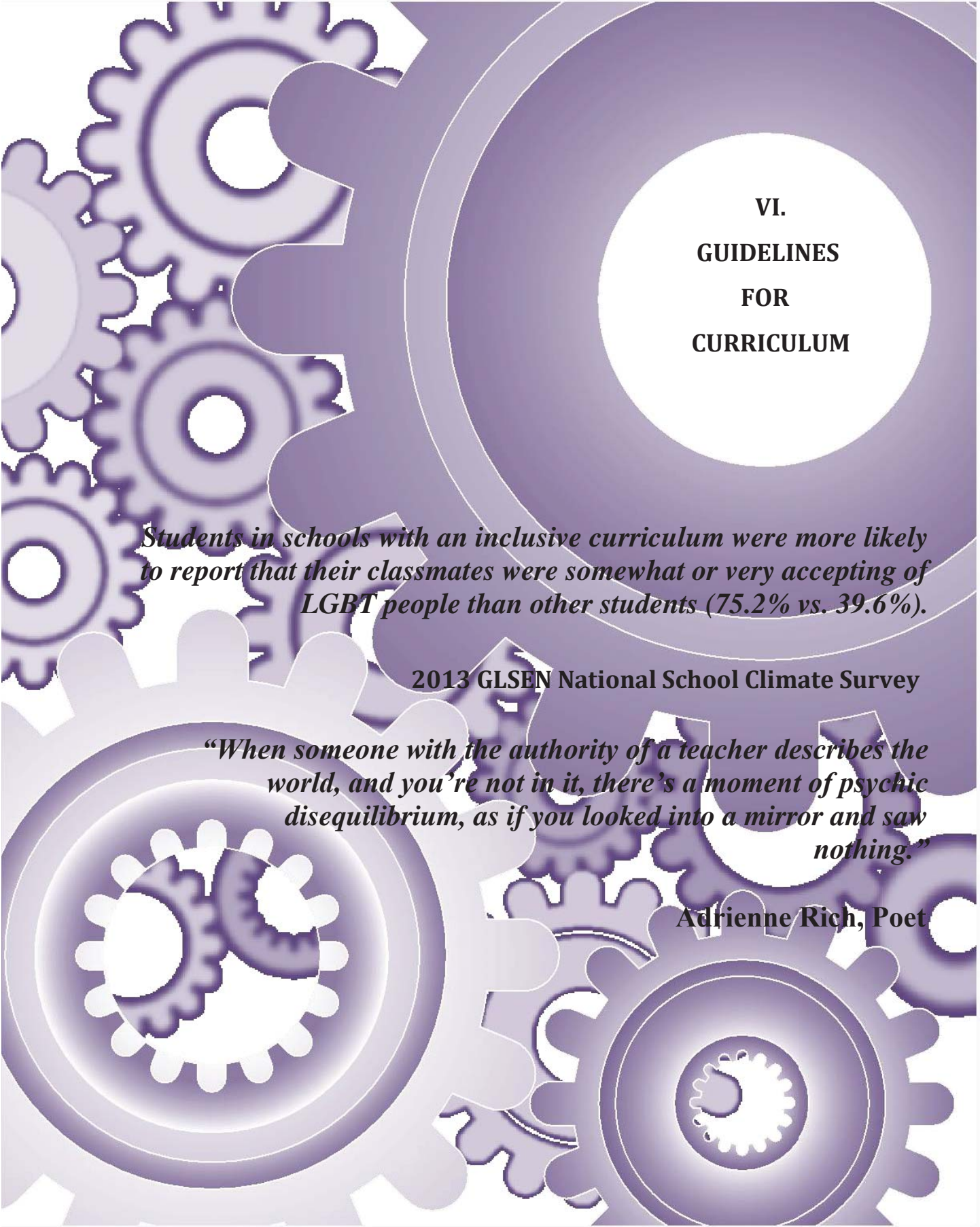
- Spoken with you about if the student is out at school, out with particular students only, or out with parent(s)/guardian?
- Spoken with you about which roommates are being requested for field trips, if any?

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

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







**VI.  
GUIDELINES  
FOR  
CURRICULUM**

*Students in schools with an inclusive curriculum were more likely to report that their classmates were somewhat or very accepting of LGBT people than other students (75.2% vs. 39.6%).*

**2013 GLSEN National School Climate Survey**

*“When someone with the authority of a teacher describes the world, and you’re not in it, there’s a moment of psychic disequilibrium, as if you looked into a mirror and saw nothing.”*

**Adrienne Rich, Poet**

## OVERVIEW

Numerous leading professional organizations support incorporation of LGBTQ-inclusive materials in school curricula, including the American Academy of Pediatrics, the American Association of School Administrators, the American School Health Association, and the National Association of School Social Workers.

In fact, LGBTQ-inclusiveness is expressly advocated by the School Board of Broward County Policy 1.5 (Diversity Committee):

We believe that diversity should be promoted so that... education is enhanced in a diverse, inclusive setting.

Diversity shall be defined as a broad concept that includes gender, race, ethnicity, socioeconomic background, linguistic differences, exceptional abilities, sexual orientation, gender identity and expression, variations of talents and abilities, and special needs.

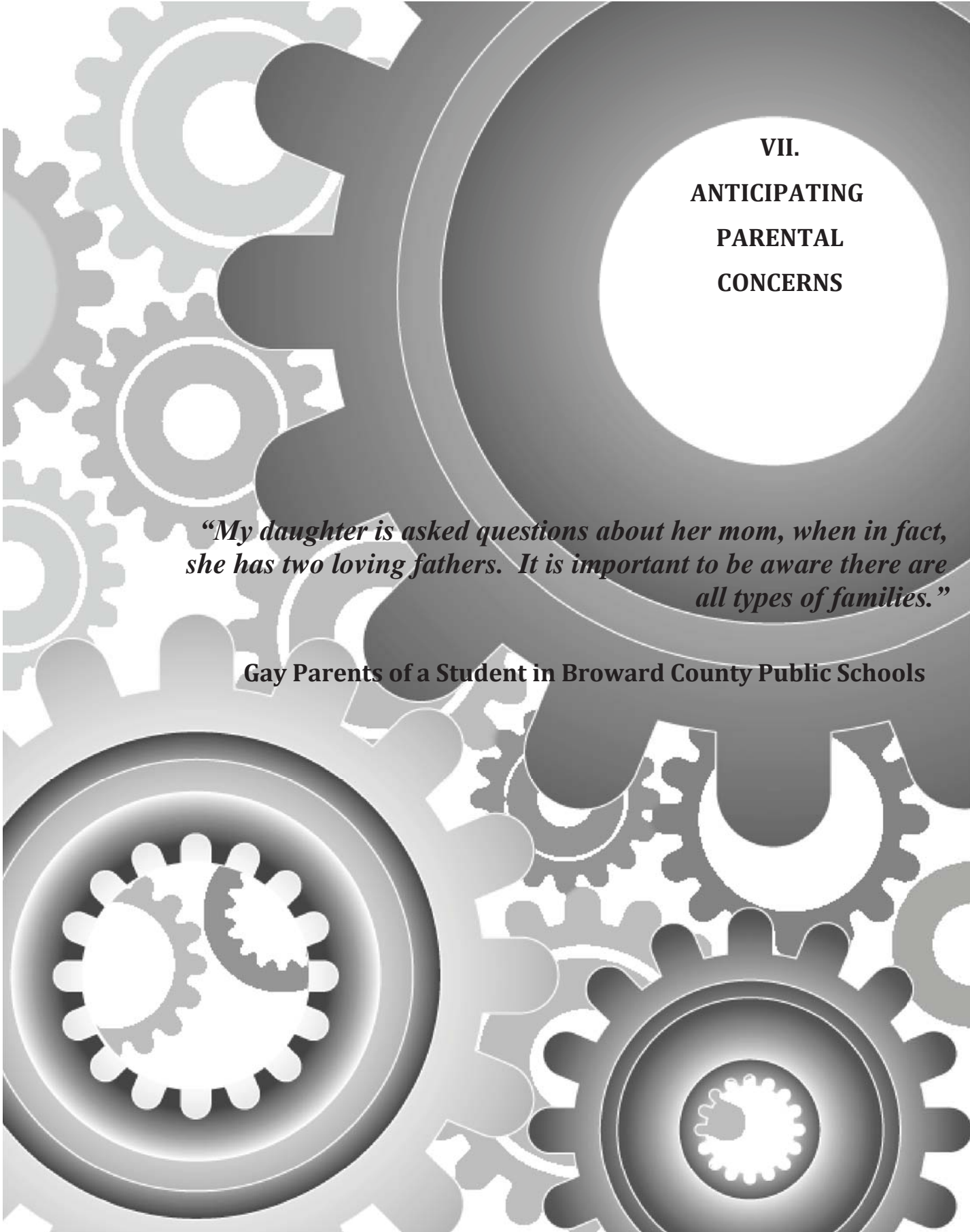
This means teachers can, and should, include affirmative topics about LGBTQ persons in curriculum and classroom discussions. No parental notification is needed for these classroom discussions, as LGBTQ-inclusiveness does not constitute a discussion about human sexuality or family life as described by Policy 6000.1 of BCPS's Family Life and Human Sexuality component.

Some ways to promote LGBTQ-inclusiveness in curriculum are:

- History, social studies and civics: discuss LGBTQ rights, activists, political figures, and key events
- English, literature, and humanities: discuss LGBTQ authors and artists as well as plays, novels or films with LGBTQ characters
- Family Diversity (especially at the elementary school level): provide examples of diverse families, including LGBTQ parents and same-sex couples when discussing families in the classroom. This allows LGBTQ students, and students with LGBTQ family members, to feel normalized and included in the classroom experience
- Celebrate LGBTQ Events: for example, LGBTQ History Month in October, Pride Month in June, and the National Day of Silence in April.

For more information on resources and support, go to [www.BrowardPrevention.org](http://www.BrowardPrevention.org).





**VII.  
ANTICIPATING  
PARENTAL  
CONCERNS**

*“My daughter is asked questions about her mom, when in fact, she has two loving fathers. It is important to be aware there are all types of families.”*

**Gay Parents of a Student in Broward County Public Schools**

## QUESTION & ANSWERS

Parents in your community may have concerns about the discussion of sexual orientation and/or gender identity in a school setting. Below are some common questions and suggested answers.

**Q: Why are we spending time on LGBTQ topics? What does this have to do with school?**

A: One of the most common forms of verbal harassment heard at schools targets staff or students who are perceived to be LGBTQ. This harassment can lead to physical violence, which can cause permanent bodily damage; and/or social exclusion, which can cause permanent emotional damage. By preemptively addressing anti-gay bias, we create safer schools for all students, and teach respect for the remarkable diversity of the community at large.

**Q: How does this apply to us? There are no openly gay kids at our school.**

A: Just because parents and staff may not know of any LGBTQ students, it does not mean they are not in the classrooms, or that students do not have LGBTQ caregivers or relatives at home. School sites must be safe for all students, as well as LGBTQ parents, caregivers, family members, and staff.

**Q: Aren't our children too young to begin a discussion of LGBTQ issues?**

A: By addressing LGBTQ issues in school, we are NOT talking about SEX with your children – we are talking about family, identity, and respect for others.

In today's world, our children are being regularly exposed to LGBTQ issues. Children see marriage equality being discussed on national news broadcasts, and they watch TV and movies that discuss, satirize, and possibly even ridicule LGBTQ people. Our obligation as educators is to confront stereotypes and address inappropriate language to make schools safe for all students and families. Again, these discussions are not about sex or sexual activity or body parts, but are about respect for differences.

**Q: What if the parents at our school aren't ready to be confronted with LGBTQ topics?**

A: The School Board of Broward County's Non-Discrimination Policy 4001.1 and Anti-Bullying Policy 5.9, expressly prohibit the discrimination and harassment of students and staff on the basis of sexual orientation, gender identity, and gender expression. Accordingly, we have an obligation to address LGBTQ issues in our ongoing efforts to create safe environments for all students and staff.



**Q: What about the religious beliefs of our families?**

A: Our students and their families are entitled to their personal religious beliefs. Because the U.S. government was founded upon the separation of church and state, religious beliefs cannot be permitted to shape the climate of a public school. The focus of the Guide is directed toward the outward conduct of our students and staff, fostering mutual respect in order to make our schools a safe place for all who enter.

In other words, mutual respect between people does not infringe upon any religious beliefs; and it is a critical component of a thriving society. Every member of the community must feel safe and valued in order for the community as a whole to succeed.

**Q: Aren't our students too young to know about their sexual orientation?**

A: Children come to an awareness of their sexual orientation at different stages. By giving students the opportunity to ask questions and seek answers, we affirm them in every step of their journey towards maturation. Moreover, we encourage our school community to display compassion towards the unique trials and tribulations of LGBTQ family members and friends.

**Q: There are so few LGBTQ students. Other student issues are more pressing – why not focus on them?**

A: Insults and slurs about LGBTQ persons – or those who are perceived to be – are far more common than any other verbal attacks on school sites. Harassment cannot be tolerated on any level.

Furthermore, LGBTQ students come from all cultural, racial, and socio-economic backgrounds. These young people are 3-4 times more likely to attempt suicide than their straight-identifying counterparts, and are nearly seven times more likely to be threatened or injured at school.

Finally, this issue concerns not only LGBTQ youth: straight-identifying youth are also impacted by anti-LGBTQ aggression because it is so pervasive. When one subgroup of the school community feels threatened, the entire school culture is adversely affected. We owe it to all of our students to make Broward County Public Schools a model of mutual respect and celebrated diversity.

LGBTQ students may be a minority within our schools, but the challenges they face are anything but minor.





**APPENDICES**

## APPENDIX A

### LGBTQ Resources

It is beneficial for individuals facing LGBTQ challenges to be provided with additional information and support outside of school. Please make your guidance office and school staff aware of the following list of resources.

### **Resources for Lesbian, Gay, Bisexual, Transgender & Questioning Students**

#### Crisis Hotlines

##### **Broward 2-1-1**

2-1-1 or 954.537.0211

Provides 24-hour comprehensive Helpline and support services for individuals in our community seeking crisis intervention assistance and/or information and referrals to health and human services in Broward County

<http://www.211-broward.org>

##### **The Trevor Project**

24/7 crisis intervention and suicide prevention for LGBTQ youth

1.866-4-U-TREVOR

<http://www.TrevorProject.org>

##### **Youth Runaway Hotline**

Keeps runaway, homeless and at risk youth safe and off the streets

1-800-RUNAWAY

<http://www.1800runaway.org>

**Other Resources**

- **Broward County Public Schools, Student Support Initiatives**  
The mission of the Office of Student Support Initiatives is to enhance student success and achievement. The Office supports school communities to improve school climate, safety, attendance, behavior, student health and well-being through high-quality professional development, technical assistance, targeted services, and the dissemination of current and relevant research-based prevention, intervention, and corrective resources. Three of the primary departments in the Office dedicated to assisting the needs of students, teachers, parents, and community are:
  - ✓ **Diversity, Prevention & Intervention Department**  
Employs culturally competent family counselors and prevention specialists to implement anti-drug and anti-violence education services. Fosters an appreciation for diversity, including those who identify as LGBTQ.  
754.321.1655  
<http://www.BrowardPrevention.org>
  - ✓ **Exceptional Student and Support Services Department**  
Provides a wide array of support services for students, staff, and families in the Broward County Schools. The department is comprised of several services delivery areas, including: child abuse and neglect, dependency and delinquency, family counseling, homeless education, high school graduation initiatives, school social work and attendance services.  
754. 321.3436  
<http://www.Broward.k12.fl.us/StudentSupport/ssd/index.html>
  - ✓ **Coordinated Student Health Services**  
Represents an expansion of the traditional elements of school health – education, services and environment – to embrace a broader mission, one in which collaboration with community resources are fostered and everyone in the school shares the responsibility for promoting good health. Realizing this mission requires the mobilization of social, intellectual, physical and mental health needs of students. This contributes to the well-being of the school staff, and creates a healthful school environment for everyone.  
754. 321.1575  
<http://www.browardhealthservices.com>
  - ✓ **EEO Compliance**  
The Equal Educational Opportunities Department (EEO) is charged with the responsibility of monitoring, coordinating, and recommending action aimed toward the Board's policy of equal opportunity in education and employment. The department also assures the district's compliance with Federal, State and Board regulations pertaining to equal opportunity and equal access.  
754. 321.2150  
<http://www.Broward.k12.fl.us/EEO/index.htm>

- **American Civil Liberties Union of Florida (ACLU)**  
Investigates and/or litigates civil liberties matters concerning individual freedom and constitutional rights. Division devoted specifically to LGBT issues.  
786.363.2700  
<http://www.aclufll.org>
- **Aqua Foundation for Women**  
Serves as the funding catalyst for lesbian, bisexual and transgender wellness and equality in South Florida through scholarships, grants and initiatives for LBT women.  
305.576.2782  
<http://www.aquafoundation.org>
- **Equality Florida**  
Statewide agency dedicated to securing full equality for Florida's lesbian, gay, bisexual, and transgender (LGBT) residents.  
<http://www.Equalityflorida.org>
- **Gay Lesbian Straight Education Network (GLSEN)**  
The leading national education organization focused on ensuring safety for all students. Provides resources, research, and model policies.  
<http://www.GLSEN.org>
- **GLASEN**  
**Gay, Lesbian Ally School Education Network of Broward Schools**  
Established in 2014, the mission of GLASEN is to promote safety, support, and community for Broward County Public School's lesbian, gay, bisexual, transgender and questioning (LGBTQ) employees. This goal is to be accomplished through advocacy, education, partnerships and community building so a healthy and safe environment will be instituted for a collective acceptance of diversity among our staff, students and community.  
Email: [Steve.Frazier@browardschools.com](mailto:Steve.Frazier@browardschools.com)
- **GSA Network**  
A youth leadership organization linking GSAs to one another and community resources through peer support, leadership development, and training.  
<http://www.Gsanetwork.org>

- **Legal Aid Service of Broward County, Inc. (LAS)**  
Since 1973, LAS has provided high quality free civil legal assistance to the economically disadvantaged in Broward County to improve the living conditions of low-income persons and to encourage self-sufficiency. A variety of legal issues are addressed, including those benefiting the LGBT community through projects such as the Broward Human Rights Initiative (BHRI) which protects the civil rights of those discriminated against based on sexual orientation or gender identity.  
954.765.8950  
<http://www.legalaid.org/broward>
- **Office for Civil Rights, U.S. Department of Education**  
Regional office serving Florida; can be contacted in the event of a violation.  
404. 974.9406  
<http://www.2.ed.gov/about/offices/list/ocr/index.html>
- **Parents and Friends of Lesbians and Gays (PFLAG)**  
Promotes the health and well-being of lesbian and gay individuals, as well as their family and friends, through support, education, and advocacy. Broward PFLAG support groups meet in Fort Lauderdale, Coral Springs and Cooper City.  
954.665.7002  
<http://www.pflagbroward.com>
- **Planned Parenthood**  
The mission of Planned Parenthood of South Florida and the Treasure Coast, Inc. is to provide comprehensive sexual health care through the provision of clinical services, education and advocacy. Planned Parenthood does so by responding to the needs of those seeking services, and by protecting and respecting the essential privacy rights, dignity and culture of each individual.  
561.848.6402  
<http://www.plannedparenthood.org>
- **Police Department LGBTQ School Liaisons**  
Captain Al Xiques and Detective Mike Silver  
954.435.6537  
954.431.2200

- **Pride Center at Equality Park**  
Provides information, education, advocacy, support, human services, cultural experiences and social opportunities [www.glccsf.org](http://www.glccsf.org). For over 20 years, The Pride Center has provided a warm, welcoming and safe space for the LGBTQ community. They offer services essential to people's well-being. The campus also serves as a community's gathering space, with over 25,000 people of all ages attending the groups, events and functions hosted each year.  
954.463.9005  
<http://www.Pridecenterflorida.org>
- **Safe Schools South Florida**  
Provides support, education and advocacy for LGBT, questioning youth and their straight allies, especially through the network of school Gay-Straight Alliances and educator training programs.  
305.576.2126  
<http://www.SafeSchoolsSouthFlorida.org>
- **Stonewall National Museum & Archives (SNMA)**  
SNMA one of the country's largest LGBTQ circulating book, film, programs, exhibitions, and special event. Stonewall is a publicly accessible cultural and educational resource that preserves, interprets and shares the remarkable heritage of the LGBT community. The museum is one of the largest circulating book and film programs in the U.S., holding thousands of books, DVDs and historical fact archives. Stonewall also manages Stonewall National Education Project (SNEP) which creates safe and affirming school environments through LGBTQ education and history.  
954.763.8565  
<http://www.StonewallNationalMuseum.org>
- **SunServe**  
Professional psycho-social mental health services and social events for LGBTQ youth ages 13-21 and their families, including specified services for transgender youth and families (NOTE: two counseling sessions can be provided before parental notification is required.)  
954.764.5150  
<http://www.SunServeYouth.org>
- **TeenSpace211**  
A confidential and interactive website for teens looking for information, support, and resources to help cope with today's tough teen issues.  
<http://www.TeenSpace211.org>



- **The Humanity Project**  
The Humanity Project creates innovative collaborations that solve social problems such as bullying. The project's Anti-bullying Through the Arts program teaches bystanders to aid bullying victims. The group also offers a cutting-edge website for disengaged LGBT teens and 'tweens, created by GSA and other students, called [www.thp4kids.com](http://www.thp4kids.com).  
954.205.2722  
<http://www.thehumanityproject.com>
- **Welcoming Schools**  
A Project of the Human Rights Campaign Foundation  
Offers tools, lessons and resources on embracing family diversity, avoiding gender stereotyping and ending bullying and name-calling in elementary schools.  
<http://www.elcomingSchools.org>
- **The Yes Institute**  
Yes Institute provides powerful, action-oriented dialogue and quality research-based education on gender and orientation topics. Their mission is to prevent suicide and ensure the healthy development of all youth through powerful communication and education. Includes parent and student LGB and T speakers, parent to parent conversation for those in need and connections to gender-focused social and medical services.  
305.663.7195  
<http://www.YesInstitute.org>

### Miami-based Services

- **The Alliance for GLBTQ Youth**  
The Alliance for GLBTQ Youth coordinates a full range of quality services through partnerships with many Miami-Dade County service organizations, serving youth, families and their communities while advocating for equal rights and status of all youth regardless of their real or perceived sexual orientation or gender identity/expression.  
305.899.8087  
<http://www.glbtqalliance.org>

- **Pridelines**

Pridelines provides safe space, psychosocial support, skills-building, leadership development and referrals for South Florida's LGBTQ youth ages 14-24. It provides nightly support, skills-building or leadership development/mentoring groups; weekend youth enrichment activities; referral to health, mental health and support services.

305.571.9601

<http://www.pridelines.org>

### **Palm Beach-based Services**

- **Compass Gay & Lesbian Community Center of the Palm Beaches**

Compass aims to diminish stereotypes by challenging long-standing misconceptions about the character of the lesbian, gay, bisexual and transgender community. Compass accomplishes this by emboldening our youth, promoting pride in our community, and acting as an educator, advocate, health service provider, and focal point for community organizing.

561.533.9699

<http://www.compassglcc.com>

### **Health and Wellness**

- **AIDS Healthcare Foundation (AHF)**

AHF offers complete HIV medical care and provides clients with access to additional specialists, medications and services.

1.888.aids care

<http://www.hivcare.org>

- **Broward County Health Department**

The mission of Broward County Health Department is to protect, prevent and improve the health of all people in Florida through integrated state, county and community efforts.

954.467.4723

<http://Browardchd.org>

**Broward County Health Department: Countywide HIV Testing Sites**

<http://www.browardgreaterthan.org/hiv-test-locations/>

- **Center for Disease Control and Prevention (CDC)**  
These pages provide information and resources on some of the health issues and inequities affecting LGBT communities. Links to other information sources and resources are also provided. Some of this information is designed for members of the general public. Other information has been developed for health care providers, public health professionals, and public health students.  
<http://www.CDC.gov/LGBTHealth/>
- **Care Resource**  
Care Resource provides comprehensive primary medical and preventative care, including health, oral and mental health/substance abuse services to all individuals in our community. Through education, prevention, research, care, treatment and support services. Care Resource's mission is to improve the health and overall quality of life for our diverse South Florida communities in need with demonstrated excellence in the multicultural field of HIV/AIDS.  
305.576.1234  
<http://www.Careresource.org>
- **Children's Diagnostic and Treatment Center (CDTC)**  
The mission of the CDTC is to provide medical care, case management and social services to children and adolescents, as well as to provide support for their families.  
954.728.8080  
<http://www.Childrensdiagnostic.org>
- **Latinos Salud**  
Latinos Salud is a safe space for Latino gay young men and their partners to find friends, support and resources. Thirteen staff members hail from Brazil, Colombia, Costa Rica, Chile, Cuba, the Dominican Republic, Ecuador, Haiti, Mexico, Puerto Rico and Venezuela. Staff members work to make a stronger community.  
954.765.6239  
<http://www.latinosalud.org>

- **The Poverello Center**  
The Poverello Center is a Bridge of Hope and Life Support for people living with HIV/AIDS providing clients with food and nutritional supplies through its Food Bank as well as clothing, housewares and medical supplies through its Thrift Store. It operates a Health Annex that provides a Full Service Gym complete with holistic therapies and a “Safe Place” with meeting rooms and games for its clients to gather at no charge.  
954-561-3663  
<http://www.poverello.org>
- **The South Florida Lesbian, Bisexual and Transgender Health Directory**  
Established in 2013, The South Florida Lesbian, Bisexual and Transgender Health Directory is made possible by a grant from Aqua Foundation for Women. The directory contains medical provider listings gathered directly from providers, local search platforms, and patient recommendations regarding lesbian, bisexual and transgender friendly physicians. All listings have been verified. Listing in the LBThealth.org directory does not imply endorsement or recommendation.  
<http://www.lbthealth.org/>
- **World AIDS Museum**  
The mission of the World AIDS Museum is to increase awareness and decrease stigma of HIV/AIDS by documenting the history of HIV/AIDS, remembering the people, educating people about HIV/AIDS, enlightening the world about the continuing tragedy and empowering the survivors.  
954.815.2550  
<http://www.worldaidsmuseum.com>

### **Recreational and Social**

Listing does not imply endorsement or recommendation by Broward County Public Schools.

- **ArtsUnited Inc.**  
ArtsUnited’s mission is to present a positive message about the LGBT community through the fine arts. The mission is accomplished by organizing art exhibits and performances by LGBT artists and performers in public venues throughout the community. ArtsUnited presents over 25 programs throughout the year.  
954.462.8190  
<http://www.artsunitedflorida.com>

- **Island City Stage**  
Island City Stage is a professional, non-profit (501c3) theatre that produces plays and musicals that explore the values, history, issues and humor that impact the LGBT and Progressive communities. Founded by artists with years of Broadway, film, television and regional theatre experience, ICS promises an evening that will entertain and engage you.  
954.678.1496  
<http://www.islandcitystage.org>
- **Fort Lauderdale/Miami Gay & Lesbian Film Festival**  
The film festival's mission is to entertain, educate and inspire the LGBTQ community and the general public to encourage a sense of community through the presentation of international and culturally diverse film, video and other media that offer historical and/or contemporary perspectives on the LGBT experience.  
305.751.6305  
<http://www.mglff.com>
- **South Florida Pride Wind Ensemble: Youth Pride Band Program**  
The South Florida Pride Wind Ensemble has been entertaining audiences for 27 years. SFPWE performs three concerts per year at the Broward Center for the Performing Arts. Their component organizations include a jazz ensemble, marching band, and steel drum band. These groups can be seen at many events throughout South Florida.  
Email: [info@pridewindensemble.org](mailto:info@pridewindensemble.org)  
<http://www.pridewindensemble.org>
- **Women in Network**  
Women in Network (WIN) is a South Florida community organization dedicated to the development, leadership, and empowerment of LBT women, their friends and supporters. WIN is a non-profit group providing professional and business networking opportunities, social and recreational events, advocacy efforts, health and educational programs, and philanthropic and scholarship support.  
954.463.9005  
<http://www.womeninnetwork.com>
- **LGBT Visitor Center**  
The LGBT Visitor Center in Miami Beach is supported by the MDGLCC Foundation Inc. and exists to support the education, travel and tourism outreach efforts for the Miami-Dade Gay & Lesbian Chamber of Commerce. The LGBT Visitor Center provides a space that highlights valuable resources and information for all.  
305.397.8914  
<http://www.gogaymiami.com>

## APPENDIX B

### Youth with LGBTQ Parents – Helpful Facts

In the United States alone, there are millions of people with one or more lesbian, gay, bisexual, transgender, and/or queer (LGBTQ) parent(s). While research shows there are no significant developmental differences or negative effects on children of LGBTQ parents, these youth do report facing significantly more prejudice and discrimination due to societal homophobia and transphobia (see p.9 for definitions). Youth report schools are key places where they face intolerance – from peers, teachers, school administration, and school systems affected by the homophobia in our society.

According to a 2001 study, students who have LGBTQ parents experience harassment at the same rate as students who themselves are gay. In addition:

- Six million to 14 million children in the United States have one or more lesbian, gay, bisexual, transgender, and/or queer parent (Johnson & O'Connor, 2002).
- The 2000 Census was the first time the US Government captured info regarding same-sex households and found that same-sex couples live in 99.3% of US counties.
- A growing body of scientific literature demonstrates that children who grow up with one or more LGBTQ parents fare as well in emotional, cognitive, social and sexual functioning as do children whose parents are heterosexual (American Academy of Pediatrics, 2002).
- People with LGBTQ parents have the same incidence of homosexuality as the general population. Research studies have found that growing up with LGBTQ parents does not have an effect on the sexual orientation of their children (Anderssen, Amlie, & Ytteroy, 2002).
- Studies have shown people with LGBTQ parents may be more open-minded about a wide variety of things than people with straight parents (Stacy & Biblarz, 2001).
- African-American lesbians are the group within the LGBTQ community that is most likely to be raising children (US Census, 2000)
- On measures of psychosocial well-being, school functioning, romantic relationships and behaviors, teens with same-sex parents are as well-adjusted as their peers with opposite-sex parents. A more important predictor of teens' psychological and social adjustment is the quality of the relationships they have with their parents (Wainright, Russell, & Patterson, 2004, based on data from the National Longitudinal Study of Adolescent Health, 2004).

Almost half of the participants in Ray and Gregory's (2001) study of children ages seven to eleven years old with lesbian and gay parents had experienced teasing in relation to their

parent's sexuality, and a large number of the children heard anti-gay sentiments and gay jokes, often on a daily basis.

### **References**

C.O.L.A.G.E.

Children of Lesbians and Gays Everywhere - for people with a lesbian, gay, bisexual, transgender or queer parent (<http://www.colage.org/>). In My Shoes: Stories of Youth with LGBTQ Parents (Discussion and Action Guide) a Youth-Produced Documentary Film By and About Youth with LGBTQ Parents.

## APPENDIX C

### **Tips To Create Safer, More Inclusive School Communities for LGTBO Families**

- a. Be aware that some children have LGBTQ parents.  
Some LGBTQ parents do not attend school functions (they do not share their status - e.g., only one parent may be registered with the school).
- b. Ensure school forms include place for same-sex couples (e.g., rather than forms with "mother and father" - use "Parent or Guardian 1, Parent or Guardian 2..." which is also inclusive of children living with grandparents, etc.).
- c. Encourage teachers to check with LGBTQ parents about how they want to handle class activities and projects around Mother's Day, Father's Day, etc.
- d. Ensure LGBTQ issues are part of anti-bullying training for teachers, staff, and students.
- e. Provide teachers with guidance and support on how to handle both overt and covert insults and anti-gay comments (e.g., "That's so gay," "You can't have two Dads; you have to have a Mom. Everyone has a Mom.>").
- f. When teaching about LGBTQ parenting, be inclusive of a broad range of family structures (same-sex parenting is not so different from other family structures – such as families headed by one parent, or by a grandparent, or by other extended family members).
- g. Let all parents know that the principal, assistant principal and others are open and respectful about LGBTQ issues (e.g., in newsletters to parents, orientations, etc.) – so they know they can trust administration is inclusive.
- h. Have books in the library inclusive of LGBTQ experiences and different family structures.
- i. Acknowledge children of same-sex couples have two equally important parents (the biological parent is not more important).
- j. For the younger grades, use the term “room Moms” but “room parents”.
- k. Inform PTA, school staff, and other organizations associated with schools about LGBTQ families, including but not limited to bus drivers, cafeteria workers, after care workers, providers, agencies, etc.
- l. Many resources, messages, support, and strategies for dealing with other forms of diversity apply similarly to families headed by one or two LGBTQ parents.
- m. Principals and teachers must recognize the journey of the child – he/she is subject to



all the externalized homophobic attitudes in the environment – societal, governmental, peer group etc. Children of LGBTQ parent(s) want to be considered as mainstream children – no different from their peer groups. They will experience the same feelings as LGBTQ youth – denial, repression, etc. They need an adult in the school environment to help them feel that their difference as a child of lesbian, gay, bisexual or transgender parent(s) is as respected, as any other minority would expect to be respected.

- n. Children of LGBTQ parents(s) may feel embarrassed by their difference. They may not want others to know their parents are two moms or two dads and may fabricate a more “normalized” home environment. When their home environment is exposed to others, they may experience the same feelings LGBTQ kids do when they are “outed” – bullying, isolation, etc. Also and conversely, some children will feel comfortable and proud of their family and will talk freely about their two dads or two moms.
- o. School administrators should first become aware and sensitized about the journey of the LGBTQ individual because this will help them to more effectively understand the child of an LGBTQ headed household.

## APPENDIX D

### Tips for Teachers: Understanding and Supporting Students Whose Parents or Guardians are LGBTQ

#### 1. Don't make assumptions

- a. About the sexual orientation of students or their family members.
- b. About the structure of their family and who they consider family (kids might be raised by a sibling, a grandparent, in foster care).
- c. That students and their families do *or do not* want their sexual orientation and family structure disclosed (ask, tell me about your family and who you would like included in discussions about your family; what are the names your child uses to refer to your family members; how open are you about your relationship with people outside of your family; what do you share about how your children came to be with you).

#### 2. Choice of language matters

Be inclusive, rather than unintentionally or intentionally excluding some students through your choice of words.

- a. Change forms and community documents to use neutral and inclusive language e.g. list parent/guardian (not mother and father) and provide multiple lines to accommodate blended families.
- b. Address letters to parents/guardians.
- c. On Mother's and Father's day, give options to create more than one card/gift.
- d. List all parent/guardian names in school directory (with permission).
- e. Incorporate different types of families into discussions and examples, and use the words "lesbian" and "gay" (*not* "homosexual") in your classroom and in the school so all become familiar with and acknowledge the existence all families.
- f. Include all family announcements (with permission) in class newsletters that announce family celebration (e.g. births, weddings/unions, adoptions, second-parent adoptions).
- g. Find out from students whom they consider their family and what names the student uses for them (e.g. Mommy and Mama, Papa and Daddy). Become comfortable and natural in conversations with and about students in using their choice of terms (e.g. "ask your moms" or "Heather's dads had a celebration for her...").
- h. Be non-judgmental in answering student questions.

- i. Encourage students to *be secure in who they are*. Work to build strong, resilient students and have *real* conversations with them, supporting them to be strong enough to be proud of who's in their family.

### **3. Use an Anti-Bias Curriculum that Incorporates and Addresses the Issues of LGBTQ-Headed Families**

- a. Seek out anti-bias curricula and resources that model inclusiveness, making sure all types of families are incorporated into your curriculum and into your classroom discussions and conversation (ask families if they have suggestions of books and resources).
- b. In school and classroom libraries, on reading lists, and in stories that you read to your class, include books and resources reflecting different family structures, including LGBTQ-headed families.

### **4. Create a School and Classroom Environment Inclusive of All**

- a. In classroom displays, showcasing of books in the school library, in posters, community and family news displayed on walls and hallways, make sure all kinds of families and individuals are reflected.
- b. Actions of teachers and administrators model inclusiveness and non-discrimination. When school administrators and teachers use terms like “lesbian” and “gay” as a natural and normal part of discussions, this sends a powerful message to students and their families.

Helen Mongan-Rallis & Annie Rees, UMD Professional Day, January 27, 2012.

## References

1. C.O.L.A.G.E. : Children of Lesbians And Gays Everywhere  
For people with a lesbian, gay, bisexual, transgender or queer parent  
<http://www.colage.org/>
2. Creating Safe Schools for Lesbian and Gay Students: A resource guide for school staff. Youth Pride (1997)  
<http://twood.tripod.com/guide.html>
3. Gay themed picture books for children  
<http://booksforkidsingayfamilies.blogspot.com/>
4. Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgendered Parents and Their Children in Our Nation's K-12 Schools. Kosciw, J.G. & Diaz, E.M. (2008). Report from GLSEN in partnership with COLAGE and Family Equality Council  
[http://www.glsen.org/binary-data/GLSEN\\_ATTACHMENTS/file/000/001/1104-1.pdf](http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/000/001/1104-1.pdf)
5. Lesbian and Gay Parents and Their Children: Research on the Family Life Cycle. APA book  
<http://www.apa.org/pubs/books/4318061.aspx>
6. Multi-Cultural Children's Literature: Gay/Lesbian/Bisexual Themes  
<http://frankrogers.home.mindspring.com/multi.html#Gay/Lesbian/Bisexual>
7. Opening Doors: Lesbian and Gay Parents and Schools - Pride Family Coalition  
<http://www.familypride.org/publications/openingdoors.pdf>
8. Pre-K & Elementary Teachers' Resources: books, curricula, videos, web sites and music  
[http://www.safeschoolscoalition.org/rg-teachers\\_elementary.html](http://www.safeschoolscoalition.org/rg-teachers_elementary.html)
9. Safe and Caring Schools for Lesbian and Gay Youth - A Teacher's Guide  
[http://www.sacsc.ca/PDF%20files/Resources/Lesbian\\_&\\_Gay\\_Youth.pdf](http://www.sacsc.ca/PDF%20files/Resources/Lesbian_&_Gay_Youth.pdf)
10. The Center: Lesbian, Gay, Bisexual & Transgender Community Center - Articles and Resources  
<http://www.gaycenter.org/families/articles>

## APPENDIX E

### **Some Tips to Create Safer, More Inclusive School Communities for LGBTQ Staff**

- a. LGBTQ educators share the same values of teaching and caring for children as other teachers. They are committed to the well-being of their students. They have chosen to be educators to help children thrive.
- b. Knowing an educator is lesbian or gay is not going to make a child lesbian or gay. Most LGBT individuals were raised by and surrounded by non-LGBTQ people. Being LGBTQ is about how someone feels inside.
- c. Knowing someone is LGBTQ may help to dispel hurtful stereotypes youth may have heard. Knowing someone who is gay may help young people stop using “gay” as an insult. Knowing someone who is gay may stop those insults from building up into physical and emotional harassment.
- d. When an educator mentions his or her partner – whether it is a boyfriend/girlfriend or husband/wife, and whether or not the partner is of the same sex or the other sex, that educator is talking about one aspect of her or himself. When educators mention their partners, they are talking about people in their lives who are important to them. This is an aspect having little impact on the educator’s quality as a teacher.
- e. Most teachers share something about their lives with students. Students may know Mrs. Jones is married to Mr. Jones, Ms. Washington has two children, Mr. Garcia took a vacation to the Grand Canyon with his family over the summer or Ms. Reilly is single. When a teacher is openly LGBT, they are sharing this type of information with students – not information about intimate details of their lives.
- f. If an educator is transgender, many more discussions may be necessary to help people understand what this means. For more information contact the Gender Education Center at <http://www.DebraDavis.org>.
- g. Discrimination based on sexual orientation is unfair and in many states it is illegal. Over half of the U.S. population lives in states or cities prohibiting discrimination based on sexual orientation, and almost 40 per cent live in places protecting transgender people from discrimination.

### **References**

Adapted from <http://www.welcomingSchools.org>

## APPENDIX F

### Critical Support Guide Summary

- **The Numbers**  
 Statistics concerning LGBTQ students suggest a problem we can no longer ignore: 9 of 10 LGBTQ youth have been harassed at school; 2 of 3 feel unsafe there; 1 of 3 skip school as a result. Harassment results in lower grade-point averages, and LGBTQ kids are at a dramatically increased risk for self-harm and attempted suicide (especially those with unsupportive families).
- **The Vocabulary**  
 Relevant terminology: **Gender Identity** (the gender a person identifies with psychologically, even if in conflict with biological gender). **Gender Expression** (masculine or feminine conduct or dress). **Transgender** (someone who feels trapped in the wrong body and may or may not seek medical intervention). **Gender-nonconforming** (someone whose gender expression is not traditionally associated with his/her biological sex, i.e., a tomboy). **Heterosexism** (pervasive presumptions that everyone is straight). **Questioning** (an in-flux state of exploring one's sexual orientation or gender identity, not uncommon in youth).
- **Discrimination is Illegal**  
 LGBTQ harassment/discrimination is forbidden under federal law (Constitutional Equal Protection) as well as local Broward County policies (Non-Discrimination Policy 4001.1 and Anti-Bullying Policy 5.9). In a public school environment, a person can't be treated differently just because he/she is, or is perceived to be, LGBTQ.
- **LGBTQ Students Have Legal Rights**  
 Students have the right to be "out" at school, even if they are NOT "out" at home. Schools may NOT violate student confidentiality by "outing" a student to parents/guardians. LGBTQ students are permitted to bring same-sex dates to prom. Transgender students may wear gender-nonconforming clothes to school, proms, yearbook pictures, graduation.
- **Intervention is Required**  
 Under Broward County Public School Board Policy 4000.1 (Anti-Discrimination) and Policy 5.9 (Anti-Bullying) our schools must intervene when witnessing or having been informed of anti-LGBTQ harassment and/or bullying.
- **Many Ways to Help**  
 Create a safer environment:

  - Intervene in "That's so gay"
  - Display Safe Space stickers/posters
  - Express compassion to students who "come out" to you
  - Keep such information strictly confidential, even from parents

- Use inclusive language and diverse family examples
  - Support your GSA
  - Embrace more inclusive curriculum/books/historical figures (as required by SBBC Policy 1.5 on Diversity)
  - Accommodate an openly transgender student’s requests re: name, gender pronoun, bathrooms, locker rooms, and sports teams
- **We Have your Back**  
Do not fear parental backlash. Response examples:
    - LGBTQ students are disproportionately at-risk
    - The District has an obligation to keep all students and staff safe
    - We are not teaching about sex when discussing identity and family diversity
    - We are focusing on outward demonstrations of mutual respect and not challenging any personal religious beliefs
    - We cannot have a great school without a great school culture in which every student feels welcome and valuable.

## APPENDIX G

### Federal Support Letter

June 14, 2011

Dear Colleagues:

Harassment and bullying are serious problems in our schools, and lesbian, gay, bisexual, and transgender (LGBT) students are the targets of disproportionate shares of these problems. Thirty-two percent of students aged 12-18 experienced verbal or physical bullying during the 2007-2008 school year;<sup>1</sup> and, according to a recent survey, more than 90 percent of LGBT students in grades 6 through 12 reported being verbally harassed — and almost half reported being physically harassed — during the 2008-2009 school year.<sup>2</sup> High levels of harassment and bullying correlate with poorer educational outcomes, lower future aspirations, frequent school absenteeism, and lower grade-point averages.<sup>3</sup> Recent tragedies involving LGBT students and students perceived to be LGBT only underscore the need for safer schools.

Gay-straight alliances (GSAs) and similar student-initiated groups addressing LGBT issues can play an important role in promoting safer schools and creating more welcoming learning environments. Nationwide, students are forming these groups in part to combat bullying and harassment of LGBT students and to promote understanding and respect in the school community. Although the efforts of these groups focus primarily on the needs of LGBT students, students who have LGBT family members and friends, and students who are perceived to be LGBT, messages of respect, tolerance, and inclusion benefit all our students. By encouraging dialogue and providing supportive resources, these groups can help make schools safe and affirming environments for everyone.

But in spite of the positive effect these groups can have in schools, some such groups have been unlawfully excluded from school grounds, prevented from forming, or denied access to school resources. These same barriers have sometimes been used to target religious and other student groups, leading Congress to pass the Equal Access Act.

In 1984, Congress passed and President Ronald Reagan signed into law the Equal Access Act, requiring public secondary schools to provide equal access for extracurricular clubs. Rooted in principles of equal treatment and freedom of expression, the Act protects

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<sup>1</sup> Dinkes, R., Kemp, J., and Baum, K. (2010). Indicators of School Crime and Safety: 2010. (NCES 2010-012/NCJ 228478). 42 National Center for Education Statistics: Washington, DC.

<sup>2</sup> Kosciw, J. G., Greytak, E. A., Diaz, E. M., and Bartkiewicz, M. J. (2010). The 2009 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools, 26, New York: GLSEN.

<sup>3</sup> GLSEN, at 46-8.



student-initiated groups of all types. As one of my predecessors, Secretary Richard W. Riley, pointed out in guidance concerning the Equal Access Act and religious clubs more than a decade ago, we “protect our own freedoms by respecting the freedom of others who differ from us.”<sup>4</sup> By allowing students to discuss difficult issues openly and honestly, in a civil manner, our schools become forums for combating ignorance, bigotry, hatred, and discrimination.

The Act requires public secondary schools to treat all student-initiated groups equally, regardless of the religious, political, philosophical, or other subject matters discussed at their meetings. Its protections apply to groups that address issues relating to LGBT students and matters involving sexual orientation and gender identity, just as they apply to religious and other student groups.

Today, the U.S. Department of Education’s General Counsel, Charles P. Rose, is issuing a set of legal guidelines affirming the principles that prevent unlawful discrimination against any student-initiated groups. We intend for these guidelines to provide schools with the information and resources they need to help ensure that all students, including LGBT and gender nonconforming students, have a safe place to learn, meet, share experiences, and discuss matters that are important to them.

Although specific implementation of the Equal Access Act depends upon contextual circumstances, these guidelines reflect basic obligations imposed on public school officials by the Act and the First Amendment to the U.S. Constitution. The general rule, approved by the U.S. Supreme Court, is that a public high school that allows at least one noncurricular student group to meet on school grounds during no-instructional time (e.g., lunch, recess, or before or after school) may not deny similar access to other noncurricular student groups, regardless of the religious, political, philosophical, or other subject matters that the groups address.

I encourage every school district to make sure that its administrators, faculty members, staff, students, and parents are familiar with these principles in order to protect the rights of all students — regardless of religion, political or philosophical views, sexual orientation, or gender identity. I also urge school districts to use the guidelines to develop or improve district policies. In doing so, school officials may find it helpful to explain to the school community that the Equal Access Act requires public schools to afford equal treatment to all noncurricular student organizations, including GSAs and other groups that focus on issues related to LGBT students, sexual orientation, or gender identity. Officials need not endorse any particular student organization, but federal law requires that they afford all student groups the same opportunities to form, to convene on school grounds, and to have access to the same resources available to other student groups.

The process of revising or developing an equal-access policy offers an opportunity for school officials to engage their community in an open dialogue on the equal treatment of

<sup>4</sup> U.S. Department of Education, “Secretary’s Guidelines on Religious Expression in Public Schools,” August 1995, <http://www2.ed.gov/Speeches/08-1995/religion.html>.

all noncurricular student organizations. It is important to remember, therefore, that the Equal Access Act's requirements are a bare legal minimum. I invite and encourage you to go beyond what the law requires in order to increase students' sense of belonging in the school and to help students, teachers, and parents recognize the core values behind our principles of free speech. As noted in our October 2010 Dear Colleague Letter and December 2010 guidance regarding anti-bullying policies, I applaud such policies as positive steps toward ensuring equal access to education for all students.

Thank you for your work on behalf of our nation's children.

Sincerely,  
Arne Duncan

## APPENDIX H

### Federal Support Letter

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance.<sup>1</sup> This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is significant guidance.<sup>2</sup> This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at [ocr@ed.gov](mailto:ocr@ed.gov) or 800-421-3481 (TDD 800-877-8339); or DOJ at [education@usdoj.gov](mailto:education@usdoj.gov) or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The examples in that document are taken from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.<sup>3</sup>

### **Terminology**

- ❖ *Gender identity* refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.
- ❖ *Sex assigned at birth* refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.

- ❖ *Transgender* describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.
- ❖ *Gender transition* refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity. Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

### **Compliance with Title IX**

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations. The Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Departments' interpretation is consistent with courts' and other agencies' interpretations of Federal laws prohibiting sex discrimination.

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity. Because transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to restrictions imposed by state or local law in their place of birth or residence),<sup>7</sup> requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students.

### *1. Safe and Nondiscriminatory Environment*

Schools have a responsibility to provide a safe and nondiscriminatory environment for all students, including transgender students. Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly. If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX. For a more detailed discussion of Title IX requirements related to sex-based harassment, see guidance documents from ED's Office for Civil Rights (OCR) that are specific to this topic.

### *2. Identification Documents, Names, and Pronouns*

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.

### *3. Sex-Segregated Activities and Facilities*

Title IX's implementing regulations permit a school to provide sex-segregated restrooms, locker rooms, shower facilities, housing, and athletic teams, as well as single-sex classes under certain circumstances. When a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.

- ❖ **Restrooms and Locker Rooms.** A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity. A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.
- ❖ **Athletics.** Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport. A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (i.e., the same gender identity) or others' discomfort with transgender students.

- Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport.
- ❖ **Single-Sex Classes.** Although separating students by sex in classes and activities is generally prohibited, non-vocational elementary and secondary schools may offer non-vocational single-sex classes and extracurricular activities under certain circumstances. When offering such classes and activities, a school must allow transgender students to participate consistent with their gender identity.
  - ❖ **Single-Sex Schools.** Title IX does not apply to the admissions policies of certain educational institutions, including non-vocational elementary and secondary schools, and private undergraduate colleges. Those schools are therefore permitted under Title IX to set their own sex-based admissions policies. Nothing in Title IX prohibits a private undergraduate women's college from admitting transgender women if it so chooses.
  - ❖ **Social Fraternities and Sororities.** Title IX does not apply to the membership practices of social fraternities and sororities. Those organizations are therefore permitted under Title IX to set their own policies regarding the sex, including gender identity, of their members. Nothing in Title IX prohibits a fraternity from admitting transgender men or a sorority from admitting transgender women if it so chooses.
  - ❖ **Housing and Overnight Accommodations.** Title IX allows a school to provide separate housing on the basis of sex, but a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students. Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.
  - ❖ **Other Sex-Specific Activities and Rules.** Unless expressly authorized by Title IX or its implementing regulations, a school may not segregate or otherwise distinguish students on the basis of their sex, including gender identity, in any school activities or the application of any school rule. Likewise, a school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity (e.g., in yearbook photographs, at school dances, or at graduation ceremonies).

#### ***4. Privacy and Education Records***

Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students' educational rights or opportunities by failing to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth. Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA). A school may maintain records with this information, but such records should be kept confidential.

- ❖ **Disclosure of Personally Identifiable Information from Education Records.** FERPA generally prevents the nonconsensual disclosure of PII from a student's education records; one exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information. Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) PII from education records to the school community may violate FERPA and interfere with transgender students' right under Title IX to be treated consistent with their gender identity.
- ❖ **Disclosure of Directory Information.** Under FERPA's implementing regulations, a school may disclose appropriately designated directory information from a student's education record if disclosure would not generally be considered harmful or an invasion of privacy. Directory information may include a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. School officials may not designate students' sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy. A school also must allow eligible students (i.e., students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student's directory information.
- ❖ **Amendment or Correction of Education Records.** A school may receive requests to correct a student's education records to make them consistent with the student's gender identity. Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.

- Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student's education records that is inaccurate, misleading, or in violation of the student's privacy rights. If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the requestor's comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.
- Under Title IX, a school must respond to a request to amend information related to a student's transgender status consistent with its general practices for amending other students' records. If a student or parent complains about the school's handling of such a request, the school must promptly and equitably resolve the complaint under the school's Title IX grievance procedures.

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We appreciate the work that many schools, state agencies, and other organizations have undertaken to make educational programs and activities welcoming, safe, and inclusive for all students.

Sincerely,

/s/  
Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
U.S. Department of Education

/s/  
Vanita Gupta  
Principal Deputy Assistant Attorney  
General for Civil Rights  
U.S. Department of Justice

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<sup>1</sup> 20 U.S.C. §§ 1681–1688; 34 C.F.R. Pt. 106; 28 C.F.R. Pt. 54. In this letter, the term schools refers to recipients of Federal financial assistance at all educational levels, including school districts, colleges, and universities. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a) (3); 34 C.F.R. §106.12(a).

<sup>2</sup> Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), [www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf).

<sup>3</sup> ED, Examples of Policies and Emerging Practices for Supporting Transgender Students (May 13, 2016), [www.ed.gov/oese/osh/e/emergingpractices.pdf](http://www.ed.gov/oese/osh/e/emergingpractices.pdf). OCR also posts many of its resolution agreements in cases involving transgender students online at [www.ed.gov/ocr/lgbt.html](http://www.ed.gov/ocr/lgbt.html). While these agreements address fact-specific cases, and therefore do not state general policy, they identify examples of ways OCR and recipients have resolved some issues addressed in this guidance.

(For full list of footnotes, please see <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf>)



## APPENDIX I

### **BCPS Talking Points**

1. Existing non-discrimination policy requires that we treat LGBTQ students, staff, and families the same as we treat straight students, staff, and parents. To do otherwise constitutes discrimination in violation of Broward County Public Schools (BCPS) Non-Discrimination Policy Statement 4001.1.  
(For example, either all teachers must be allowed to talk about their weekends, or no teachers are allowed to talk about their weekends. Either all student couples must be allowed to hold hands or kiss in the hallway, or no students are allowed to hold hands or kiss in the hallway).
2. BCPS's Policy 1.5 (Diversity Committee) expressly states that diversity should be promoted. Diversity under this policy includes, but is not limited to, sexual orientation, gender expression, and gender identity.
3. BCPS's Anti-Bullying Policy 5.9 expressly prohibits bullying and harassment based on sexual orientation, gender expression, and gender identity.
4. This is not about sex; this is about safety. Students and staff are entitled to express their identity at school without putting themselves at risk for discrimination, harassment, or bullying.
5. Transgender students: While there is not yet state or federal law on transgender issues, gender identity and gender expression are included as protected categories in BCPS's Non-Discrimination Policy 4001.1 and Anti-Bullying Policy 5.9. BCPS *Policy Guidance: Transgender Procedures Safety and Resiliency* is the guiding document in our District. The requests of transgender students should be honored. It is important to note Title IX's addition of gender identity and expression as protected discrimination categories in May 2014 and the May 2016 "Dear Colleague Letter on Transgender Students" by the Department of Justice and the Department of Education.

## APPENDIX J

### Everyday Inclusion: Tips for Teaching More Inclusively

Beyond teaching the kinds of lessons and incorporating the kinds of resources included in the toolkit, what educators do and say as they teach or design and implement classroom routines has a great deal to do with students' learning in a safe, respectful and inclusive environment. Educators engaged in this work should try to:

- **Expand students' knowledge of diversity by explosion them to role models through literature, lessons, and classroom guests.** Make sure your students have the opportunity to choose books that portray diverse families as well as men and women outside of gender stereotypes. Seek out classroom speakers, such as women engineers, to present to your class; you might consider using local professional chapters (such as the association for women in Science or Hispanic National Bar Association) to find speakers to invite.
- **Make sure the analogies you use when teaching don't rely on hetero-normative or gender-normative images or viewpoints.** A hetero-normative view point is one that expresses heterosexuality as a given instead of being one of many possibilities. Such a view point can translate into the development of all kinds of images that reinforce the view. The assumption (reinforced by imagery and practices) that a boy will grow up and marry a women is based on such a view point. A gender-normative image, on the other is one that delimits the possibilities for children of either gender by reinforcing stereotype expectations such as boys preferring to play only with blocks while girls preferring dramatic play in a kitchen. The *Ready, Set, Respect!* Lesson titled, "What are Little Boys and Girls Made Of?" addresses this. Both hetero- and gender- norming can find their way in to practice for instance, the use of boy/girl attraction as a way of teaching north/south poles of magnets in a science lesson is but one example of how this happens.
- **Find ways of grouping and lining up students other than "boys here, girls there" or "boys do this, girls do that."** While some students may enjoy these ways of separating the class, they can isolate other students who may feel uncomfortable conforming to gender-based stereotypes. Consider other ways of organizing students such as a birthday month or dividing the class into two consisting groups like one's and two's.
- **Monitor choice activity time to ensure that students are not segregating themselves by gender.** If you notice this occurring, form groups based on some other characteristics such as birthday months.
- **Use inclusive language when refereeing to students, families, or others outside of the classroom. Build knowledge of vocabulary like ally, respect, diverse, etc...** By using more inclusive language ourselves, we help students develop more respectful and inclusive vocabularies.
- **Become more aware of the ways that you support gender stereotypes in your expectations of students and their work and intervene when you hear students making gender-based assumptions.** This might be one of the most difficult tips because bias in our expectations usually goes unobserved. Do you expect the boys in your classroom to be more adventuresome or the girls more organized? Do you assume certain students want to participate or not participate in activities because they are a boy or a girl? Challenging these assumptions can be difficult but this work will help you create a more inclusive environment for all of your students.
- **Write math problems with context that include a variety of family structures and gender-expressions.** For example, "Rosa and her dads were at the store and wanted to buy three boxes of pasta. If each cost \$.75, how much will all three boxes cost?" Or "Darren wants to bake a special cake for his grandmother. The original recipe calls for 2 cups of flower. If he is doubling the recipe, how much flower does he need?"
- **Integrate Ready, Set, Respect! (And other GLSEN) lessons to address conflicts and utilize teachable moments that arise around gender, diverse families, and bullying/name-calling!** Draw on these age-appropriate resources to build a more inclusive classroom.
- **Connect students' experiences with learning. Practicing respectful attitudes and behaviors takes work.** When students "slip," positively help them recall lesson(s) that relate. Encourage them to practice harder, don't shame them.

### APPENDIX K

### BCPS Safe Zone Posters



## The LGBTQ Critical Support Guide

An invaluable resource to every principal and administrator committed to making schools safer for ALL students. In addition to providing definitions of relevant terminology and statistics on LGBTQ youth risk factors, it provides best practice guidelines regarding:

- Legal standards: How to adhere to local, state, and federal anti-discrimination laws and policies;
- Confidentiality: What to do when a student “comes out”;
- Social situations: Navigating dress code variations and same-sex dates to prom;
- Transgender students: How to be supportive during a student’s transition;
- Potential backlash: Explaining this is not about teaching sex or converting personal beliefs; this is about creating a school climate in which all students are respected and allowed to thrive.

For too long, educators have been ill-equipped to address the complex social and legal issues surrounding LGBTQ youth. With the LGBTQ Critical Resource Guide, schools now have straightforward guidelines based on straightforward laws and policies.

The goal is making our schools safer. This book is a crucial first step in achieving it.



The School Board of Broward County, Florida, prohibits any policy or procedure which results in discrimination on the basis of age, color, disability, gender identity, gender expression, national origin, marital status, race, religion, sex or sexual orientation. Individuals who wish to file a discrimination and/or harassment complaint may call the Executive Director, Benefits & EEO Compliance at 754-321-2150 or Teletype Machine (TTY) 754-321-2158. Individuals with disabilities requesting accommodations under the American with Disabilities Act Amendments Act of 2008, (ADAAA) may call Equal Educational Opportunities (EEO) at 754-321-2150 or Teletype Machine (TTY) 754-321-2158. [www.BrowardSchools.com](http://www.BrowardSchools.com) or [www.BrowardPrevention.org](http://www.BrowardPrevention.org)

DE 152

**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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**DEFENDANT'S NOTICE OF FILING ITS SECOND AMENDED FINAL RULE  
26(a)(3) PRETRIAL DISCLOSURES**

**Amended to Omit Exhibit 60 and Add Exhibit 253 Only**

Defendant, **the School Board of St. Johns County, Florida**, pursuant to Rule 26(a)(3) of the Federal Rules of Civil Procedure, M.D. Fla. Loc. R. 3.06, and agreement of the parties, hereby gives notice of filing the following Rule 26(a)(3) pretrial disclosures:

**I. RULE 26(a)(3)(A)(i) and (ii): IDENTIFICATION OF WITNESSES**

**a. Witnesses Defendant Expects to Call**

1. James (Tim) Forson
2. Frank D. Upchurch, III, Esq.
3. Cathy Mittelstadt
4. Sallyanne Smith
5. Kyle Dresback
6. Lisa Kunze
7. Dr. Allan Josephson (Expert)
8. Dr. Paul Hruz (Expert)

**b. 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. Records Custodian for St. Johns County School District
8. Records Custodian for medical providers

\* This list does not include potential impeachment witnesses.

**II. EXHIBITS**

No.	Date Identified	Date Admitted	Description	Bates No	Objection
1.			Authorization for Treatment by Dr. Naomi Jacobs (Def. Depo 1).	PLTF860-	
2.			History Form for Dr. Naomi Jacobs (Def. Depo 1).	PLTF861	
3.			Patient Rights and Responsibilities for Dr. Naomi Jacobs (Def. Depo 1).	PLTF862	
4.			Evaluation Report by Dr. Naomi Jacobs dated February 17, 2015 (Def. Depo 1).	PLTF863- PLTF864	
5.			Email dated April 24, 2015, from E. Adams to J. Johnson (Def. Depo 2).	SJCSD-DA 427	
6.			Baptist Health Parent Intake Questionnaire dated May 14, 2015 (Def. Depo 3).	PLTF189- PLTF190	
7. <i>sealed</i>	<i>DEC 12 2017</i>	<i>DEC 12 2017</i>	St. Johns County School District Safety Plan dated May 14, 2015 (Def. Depo 4).	SJCSD-DA 51-52	
8.			Email dated May 18, 2015, from E. Adams to V. Golden (Def. Depo 5).	SJCSD DA 477-78	
9.			Client Intake Questionnaire for J. Asermely dated June 25, 2015 (Def. Depo 6).	PLTF 835- 836	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
10.			J. Asermely Session Notes for June 25, 2015 (Def. Depo 6).	PLTF837	
11.			Acknowledgment of Notice of Privacy Rights for J. Asermely dated June 25, 2015 (Def. Depo 6).	PLTF838	
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.	DEC 11 2017	DEC 11 2017	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. Sealed	DEC 12 2017	DEC 12 2017	Document from Dr. Naomi Jacob's records (Def. Depo 13).	SJCSD-DA 3222	
21.			Baptist Medical Survey dated March 13, 2017 (Def. Depo 14).	SJCSD-DA 3166	
22.			Letter from Dr. Naomi Jacobs to Dr. Sassani dated April 25, 2017 (Def. Depo 15).	SJCSD-DA 3226	



No.	Date Identified	Date Admitted	Description	Bates No	Objection
23.			Article from Florida Times-Union dated June 13, 2016, entitled "Transgender Students Seek to Counter Opposition, Fears Over Bathrooms" (Def. Depo 16).		
24.			Email chain between A. Linsky, K. Dresback and Plaintiff dated September 25, 2015 (Def. Depo 17).	SJCSB-DA PRR 507-508	
25.			Email from L. Maalouf to Plaintiff dated November 1, 2016 (Def. Depo 18).	SJCSD-DA 742	
26.			Email from E. Adams to C. Mittelstadt and B. Asplen dated November 30, 2015.	SJCSB-DA PRR 579	
27.	DEC 12 2017	DEC 12 2017	Email from S. Smith to T. Forson dated September 23, 2014.	SJCSB-DA 17199	
28.	DEC 12 2017	DEC 12 2017	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	
32.			Ninth grade class schedule for Plaintiff	SJCSD-DA 010	
33.	DEC 12 2017	DEC 12 2017	St. Johns County School District Guidelines for	SJCSD-DA 011-012	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
			LGBTQ students – Follow Best Practices (2015-16)		
34.	DEC 12 2017	DEC 12 2017	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.	DEC 12 2017	DEC 12 2017	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.	DEC 12 2017	DEC 12 2017	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.	SJCSD-DA 025-032	
41.			Student Attendance Report for Plaintiff dated July 14, 2017.	SJCSD-DA 149-150	
42.			Course and Grade Information for Plaintiff from 2014-2017.	SJCSD-DA 036-038	
43.			Eleventh grade class schedule for Plaintiff.	SJCSD-Adams 905	
44.			1979 Building Plans for Nease High School: Bldgs C, F and G.	SJCSD-Adams 906	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
45.			1979 Building Plans for Nease High School: Bldg J.	SJCSD-Adams 907	
46.			1979 Building Plans for Nease High School: Bldgs K, L and O.	SJCSD-Adams 908	
47.			2008 Nease High School Floor Plan	SJCSD-Adams 909	
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	
51.			8/12/15 e School Plus note re use of C-Pod bathroom	SJCSD-Adams 892	
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	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
54.			8/16/16 e School plus note re "verbal attack"	SJCSD-Adams 895	
55.			12/14/16 e School plus note re rumors	SJCSD-Adams 896	
56.			8/16/16 Student Statement	SJCSD-Adams 897	
57.			Email from E. Adams to B. Blue dated January 25, 2016.	SJCSD-Adams 898-899	
58.			Statement by [student] about Plaintiff.	SJCSD-Adams 900	
59.			Statement by Plaintiff re incident with [student].	SJCSD-Adams 901	
60.			OMITTED		
61.			Student Information Sheet for Plaintiff (9 <sup>th</sup> grade)	SJCSD-Adams 903	
62.			Incident Report dated November 14, 2016.	SJCSD-Adams 904	
63.			E-School Plus Notes re Plaintiff	SJCSB-DA 920	
64.			H. Arkin encounters with Plaintiff	SJCSB-DA 921	
65.			Student Codes of Conduct for 2015-2018	SJCSB-DA 982-1231	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
66.	DEC 12 2017	DEC 12 2017	Emails from S. Smith to LGBTQ Task Force re various meetings in 2014-15	SJCSB-DA PRR 1098-1116	
67.	DEC 12 2017	DEC 12 2017	Agenda for LGBTQ Task Force Meeting dated February 18, 2015 (with handwritten notes).	SJCSD-DA 151-152	
68.	DEC 12 2017	DEC 12 2017	Minutes for LGBTQ Focus Group Meeting held February 18, 2015	SJCSB-DA PRR 1619-1622	
69.	DEC 12 2017	DEC 12 2017	LGBTQ Focus Group Meeting Agenda dated November 5, 2014.	SJCSB-DA PRR 1613	
70.	DEC 12 2017	DEC 12 2017	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	
72.	DEC 12 2017	DEC 12 2017	Email from C. Mittelstadt to F. Upchurch dated August 12, 2015, with draft of Best Practices.	SJCSD-DA 1377-1380	
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	
75.			Email chain between A. Linsky and Plaintiff dated July 17, 2017.	SJCSB-DA PRR 222-223	
76.			Email from Plaintiff to A. Linsky dated July 12, 2017.	SJCSB-DA PRR 225	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
77.			Email chain between A. Linsky and Plaintiff dated July 7 & 8, 2017.	SJCSB-DA PRR 226-227	
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	
80.			Emails re HOPE curriculum	SJCSB-DA PRR 261-83, DA 753-794	
81.			Emails re GSA	SJCSB-DA PRR 284-88, 371-76, DA 668-699, 749	
82.			Email chain between Plaintiff and H. Farson dated August 19, 2016.	SJCSB-DA PRR 341	
83.			Email chain between Plaintiff and K. Dresback dated September 25, 2015.	SJCSB DA PRR 389-90	
84.			U.S. Department of Justice Dear Colleague Letter dated May 13, 2016, on Transgender Students	SJCSB-DA PRR 1731-39	
85.	DEC 12 2017	DEC 12 2017	Policies and guidelines from other school districts re gender identity and transgender issues	SJCSB-DA PRR 1437- 1526, 2533- 2610	
86.			A.L.E.R.T. Guide for 2017-18 (includes Best Practices)	SJCSB-DA PRR 1559- 1566	
87.	DEC 12 2017	DEC 12 2017	Principal and Asst. Principal Meetings where Best Practices implementation discussed	SJCSB-DA PRR 1567-69	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
88.			Docs re conferences attended by S. Smith and others re LGBTQ rights.	See SJCSB-DA PRR 1895-1928	
89.			Email from G. Freeman to S. Smith and others re LGBTQ Meeting Summary.	SJCSB-DA PRR 1605-1606	
90.	DEC 12 2017	DEC 12 2017	Minutes from Children's Behavioral Focus Group Meeting held October 8, 2014.	SJCSB-DA PRR 1610-1612	
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	
92.			High School Feedback from 9/10 AP Meeting on LGBTQ Guidelines.	SJCSB-DA PRR 1768-1770	
93.			Agenda for Initial Meeting of LGBTQ Committee on September 19, 2014.	SJCSB-DA PRR 1771-1788	
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	
96.			Email chain between E. Adams and H. Arkin dated September 22, 2015.	SJCSD-DA 520	
97.			Email from E. Adams to H. Arkin dated October 27, 2015.	SJCSD-DA 548	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
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	
102.			Email from E. Adams to H. Arkin dated August 13, 2016.	SJCSD-DA 714	
103.			Email from E. Adams to H. Arkin dated August 15, 2016.	SJCSD-DA 715	
104.			Email from E. Adams to H. Arkin dated August 23, 2016.	SJCSD-DA 723	
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	
107.			Email from K. Dresback to Plaintiff dated February 22, 2017.	SJCSD-DA 784-785	
108.			Email chain between K. Dresback and Plaintiff dated February 22, 2017.	SJCSD-DA 799	
109.			Email chain between L. Kunze, Plaintiff and J.A. dated March 6 & 8, 2017.	SJCSD-DA 801	
110.			Letter from N. Jacobs to K. Russell dated May 31, 2016.	SJCSD-DA 3220-3221	
111.			Letter from Dr. Jacobs to Dr. Sassani dated April 25, 2017.	SJCSD-DA 3226-3227	



No.	Date Identified	Date Admitted	Description	Bates No	Objection
112.			Medical records from Duke Health	SJCSB-DA 18024-18126	
113.			Medical records from Dr. Naomi Jacobs	SJCSB-DA 3197-3231	
114.			Medical records from Dr. Kamalesh Pai	SJCSB-DA 18323-18342	
115.			Medical records from Baptist Medical South	SJCSB-DA 18940-18986	
116.			Medical records from Baptist Pediatrics	SJCSB-DA 3154-3196	
117.			Medical records from Nemours Children's Clinic	SJCSB-DA 18169-18322	
118.			Medical records from Wolfson Children's Hospital	SJCSB-DA 18432-18939	
119.			Medical records from Take Shape Plastic Surgery	SJCSB-DA 18127-18168	
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	
122.			SJCSB Policy 2.16 Prohibiting Discrimination, Including Sexual and Other Forms of Harassment	SJCSB-DA PRR 2059- 2062	
123.			Email from Plaintiff to D. Ousley dated April 28, 2015	SJCSD-DA 435	
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	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
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	
130.			Emails between E. Adams and DOE OCR	KASPER 88-113, 180-247	
131.			SJCSD High School Student Progression Plan 2017-2018	SJCSB-DA 2218-2296	
132.			SJCSD Parent Resource Guide for 2017-18	SJCSB-DA 2092-2171	
133.	DEC 11 2017	DEC 11 2017	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	
135.			2010 Article from Association for Psychological	HRUZ 1588-1620	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
			Science entitled "Pitfalls and Opportunities in Nonverbal and Verbal Lie Detection"		
136.			2004 Article from Journal of Academy of Psychiatry Law entitled "A Cautionary Lesson from Simulated Patients"	HRUZ 1621-1622	
137.			2001 Article from Journal of American Academy of Psychiatry Law entitled "Commentary – Informed Consent in Psychotherapy – A Multidisciplinary Perspective"	HRUZ 1628-1634	
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	
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	
140.			1997 APA Article entitled: Irreconcilable Conflict Between Therapeutic and Forensic Roles	HRUZ 1571-1578	
141.			WPATH Standards of Care for the Health of Transsexual,	Adkins Depo 3	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
			Transgender, and Gender Nonconforming People		
142. sealed	DEC 12 2017	DEC 12 2017	2010-11 St. Johns County School District Student Information/Entry Form dated July 30, 2010	SJCSD-DA 0053-0054	
143. sealed	DEC 12 2017	DEC 12 2017	SJCSD Home Language Survey dated August 2, 2010	SJCSD-DA 0055	
144. sealed	DEC 12 2017	DEC 12 2017	Florida Department of Health School Entry Health Exam dated July 29, 2010	SJCSD-DA 0069	
145. sealed	DEC 12 2017	DEC 12 2017	Plaintiff Birth Certificate issued December 18, 2000	SJCSD-DA 70	
146.			OMITTED		
147.			OMITTED		
148.			OMITTED		
149.			OMITTED		
150.			SJCSD Checklist for Gifted Characteristics dated November 25, 2013.	SJCSD-DA 141	
151.			SJCSD Checklist for Gifted Characteristics dated December 3, 2013	SJCSD-DA 142	
152.			Assessment by Hope Haven Children's Clinic and Family Center dated September 16, 2013.	SJCSD-DA 143-145	
153.			Discipline Narrative History dated November 12, 2013.	SJCSD-DA 148	
154.			SJCSD Student Record for Plaintiff	SJCSD-DA 033-44	
155.			February 2015 Council of School Attorneys Inquiry & Analysis re Title IX and Gender Identity Issues	SJCSD-DA PRR 013-023	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
156.			Article re Advocates or Employees: First Amendment Claims Brought by Special Ed Teachers	SJCSB-DA PRR 024-028	
157.	DEC 12 2017	DEC 12 2017	Broward County Public Schools LGBTQ Critical Support Guide Appendix F – Guide Summary	SJCSB-DA PRR 029-030	
158.	DEC 12 2017	DEC 12 2017	Broward County Public Schools LGBTQ Critical Support Guide Appendix G – Federal Support Letter dated June 14, 2011	SJCSB-DA PRR 031-033	
159.	DEC 12 2017	DEC 12 2017	Broward County Public Schools LGBTQ Critical Support Guide – The Necessity of the Guide	SJCSB-DA PRR 034-035	
160.	DEC 12 2017	DEC 12 2017	July 24, 2013 Department of Justice, Office of Public Affairs Press Release re Arcadia, California Agreement	SJCSB-DA PRR 036-037	
161.	DEC 12 2017	DEC 12 2017	October 2012 Fact Sheet from the National Women’s Law Center re Title IX Protections	SJCSB-DA PRR 1531-33	
162.	DEC 12 2017	DEC 12 2017	Stonewall National Education Project Symposium Schedule for January 21, 2015 - Building Safe and Supportive Schools for LGBTQ Youth	SJCSB-DA PRR 1534-36	
163.	DEC 12 2017	DEC 12 2017	National Center for Transgender Equality April 2014 Outline re Rights at School	SJCSB-DA PRR 1539-42	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
164.			Draft of SJCSB Chapter 2.0 School Board Governance and Organization (Restroom Policy)	SJCSB-DA PRR 1543-1551, 2050-58	
165.			Broward County Public Schools Critical Support Guide - 2012		
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	
168.	DEC 12 2017	DEC 12 2017	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	
170.	DEC 12 2017	DEC 12 2017	2014-15 FHSA Handbook Excerpt re Gender Identity Participation	SJCSB-DA PRR 1607-08	
171.	DEC 12 2017	DEC 12 2017	2010- A Legal Handbook for LGBT Floridians and Their Families	SJCSB-DA PRR 1628-78	
172.	DEC 12 2017	DEC 12 2017	Stonewell National Education Project Release re 2014 Symposium on LGBT Youth	SJCSB-DA PRR 1681-85	
173.			Palm Beach County Safe Schools Handout re Ideas for Applying Strategic Language to Situations Involving Homophobic Remarks	SJCSB-DA PRR 1687-91	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
174.	DEC 12 2017	DEC 12 2017	2011 ASCA Article entitled "The Children Already Know"	SJCSB-DA PRR 1697	
175.			Sun Sentinel Article dated January 21, 2014, re Stonewall	SJCSB-DA PRR 1698-1700	
176.			Legally Speaking article entitled "Disciplining Students for Off-Campus Text Messaging/Social Networking"	SJCSB-DA PRR 1702-05	
177.	DEC 12 2017	DEC 12 2017	Brochure re Safe Schools of South Florida	SJCSB-DA PRR 1706-08	
178.	DEC 12 2017	DEC 12 2017	2014 Florida Statewide LGBTQ District Collaborative Conference Agenda	SJCSB-DA PRR 1709-13	
179.	DEC 12 2017	DEC 12 2017	2009 California Safe Schools Coalition Research Brief 9 – Understanding Differences Between Schools in Overall LGBT School Safety	SJCSB-DA PRR 1714-17	
180.			LRP Conference from October 27, 2016, re Transgender Students' Rights: Legal Issues and Practical Concerns for Your District	SJCSB-DA PRR 1722-30	
181.			Injunction Order from Texas v. US dated August 21, 2016	SJCSB-DA PRR 1740-61	
182.			Email chain between C. McKendrick and M. Sterling re LGBTQ training dated December 1, 2016	SJCSB-DA PRR 1762	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
183.			2016 FAQ from National School Boards Association re Addressing a Transgender Student	SJCSB-DA PRR 1763	
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	
186.			Brochure entitled "I Think I Might Be Transgender, Now What Do I Do?"	SJCSB-DA PRR 1823-1838	
187.	DEC 12 2017	DEC 12 2017	The Daytona Beach News-Journal article dated June 8, 2011, "Flagler Schools Expand Policies on Bullying and Harassment."	SJCSB-DA PRR 1872	
188.	DEC 12 2017	DEC 12 2017	SJCSB Draft Policy 511.2 re Bullying and Harassment	SJCSB-DA PRR 1873-75	
189.	DEC 12 2017	DEC 12 2017	New York Department of Education Guidelines for Transgender Students	SJCSB-DA PRR 1876-78	
190.	DEC 12 2017	DEC 12 2017	Article re Gender Neutral Bathrooms: (Hopefully) Coming to a City Near You	SJCSB-DA PRR 1879-80	
191.	DEC 12 2017	DEC 12 2017	Brochure re Gender Spectrum Services – Training and Support	SJCSB-DA PRR 1881-94	
192.			Agenda, notes and other documents from May 13- 15, 2015 Stonewall Conference in Ft. Lauderdale	SJCSB-DA PRR 1895-1927	



No.	Date Identified	Date Admitted	Description	Bates No	Objection
193.			A Guide for Schools Responding to Questions About U.S. DOE Guidance on Rights of Transgender Students	SJCSB-DA PRR 1929-33	
194.			Misc. Journal Articles re Transgender issues	SJCSB-DA PRR 1939-46	
195.			Fact Sheet: Transgender & Gender Nonconforming Youth in Schools by the Sylvia Law Project	SJCSB-DA PRR 1947-50	
196.			Schools in Transition: A Guide for Supporting Transgender Students in K-12 Schools	SJCSB-DA PRR 1951-62	
197.			October 2015 ASCA School Counselor article "Transgender and Gender Nonconforming Students: Advocate for Best Practices"	SJCSB-DA PRR 1963-66	
198.			2015 Abstract re G.G. v. Gloucester County School Board	SJCSB-DA PRR 1967	
199.			Draft Anti-discrimination Training Power Point re Gender Identity	SJCSB-DA PRR 1996-2001	
200.			Implementing Lessons that Matter – The Impact of LGBTQ-Inclusive Curriculum on Student Safety, Well-Being and Achievement	SJCSB-DA PRR 2002-2049	
201.			SJCSB Policy 5.02 re Non-Discriminatory Admission of Students	SJCSB-DA PRR 2059	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
202.			SJCSB Policy 511.2 re Bullying and Harassment	SJCSB-DA PRR 2070-72	
203.	DEC 12 2017	DEC 12 2017	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	
204.	DEC 12 2017	DEC 12 2017	Misc. Research compiled and reviewed by District personnel prior to implementation of Best Practices	SJCSB-DA PRR 2114-2236	
205.			Lambda Legal Publication entitled "Out, Safe & Respected"	SJCSB-DA PRR 2208-2236	
206.			Lambda Legal Facts: Gays and Lesbian Youth in Schools	SJCSB-DA PRR 2204-07	
207.			9 Things to Know About Title IX	SJCSB-DA PRR 2201-03	
208.			MSNBC article dated April 30, 2014, entitled "Transgender Students Protected Under Title IX, DOE Says."	SJCSB-DA PRR 2199-2200	
209.			US DOE Know Your Rights: Title IX Requires Your School to Address Sexual Violence	SJCSB-DA PRR 2204-07	
210.			2014 Article re School Board Answers Transgender Students' Complaint re Gloucester High	SJCSB-DA PRR 2195-96	
211.			SJCSB Policy 4.06 re Student Clubs and Organizations	SJCSB-DA PRR 2193-94	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
212.			US DOE Questions and Answers on Title IX and Sexual Violence dated April 29, 2014	SJCSB-DA PRR 2135-2187	
213.	DEC 12 2017	DEC 12 2017	FHSAA January 2013 BOD Meeting Agenda Item re Proposed Gender Participation Policy	SJCSB-DA PRR 2237-39	
214.			US DOE Examples of Policies and Emerging Practices for Supporting Transgender Students – May 2016	SJCSB-DA PRR 2240-73	
215.			GLSEN 2011 National School Climate Survey Executive Summary	SJCSB-DA PRR 2292-2304	
216.			Abstracts of Safe Schools Improvement Act of 2013 and Student Non-Discrimination Act of 2013	SJCSB- DA PRR 2282	
217.	DEC 12 2017	DEC 12 2017	Misc. News Articles re Orange, Volusia and Escambia Counties development of transgender polices	SJCSB-DA PRR 2283-85	
218.			Misc. materials re Bullying in St. Johns County Schools	SJCSB-DA PRR 2308-11	
219.			San Francisco State University 2009 Publication re Helping Families with Lesbian, Gay, Bisexual and Transgender Children	SJCSB-DA PRR 2312-34	
220.			2012 Publication: An Ally's Guide to Issues Facing LGBT Americans	SJCSB-DA PRR 2335-49	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
221.			An Ally's Guide to Terminology: Talking About LGBT People and Equality	SJCSB-DA PRR 2350-59	
222.			Best Practices: A Teaching Tolerance Guide by the Southern Poverty Law Center	SJCSB-DA PRR 2360-63	
223.	DEC 12 2017	DEC 12 2017	Transgender Law Center - Transgender and Gender Non-conforming Youth – Recommendations for Schools	SJCSB-DA PRR 2364-69	
224.			Student Codes of Conduct from other Florida school districts re Bullying and Harassment	SJCSB-DA PRR 2370-2382	
225.	DEC 12 2017	DEC 12 2017	Buzzfeed Article re GG. v. Gloucester County School Board	SJCSB-DA PRR 2383-85	
226.			2012 NSBA publication re Respecting the Rights of Transgender Youths in the School System	SJCSB-DA PRR 2386-99	
227.			Toronto District School Board Guidelines for the Accommodation of Transgender and Gender Non-Conforming Students and Staff	SJCSB-DA PRR 2400-29	
228.	DEC 12 2017	DEC 12 2017	Misc. research and training materials re development and implementation of transgender policies.	SJCSB-DA PRR 2430-2532	
229.			Seminar Materials for "Transgender Students in K-12: Navigating	SJCSB-DA PRR 2611-13	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
			Accommodations and Avoiding Litigation”		
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	
232.			Duke Children’s Hospital and Health Center Information for Informed Consent for Adolescents	PLTF 1097-1102	
233.			Treatment records from J. Asermely, LCSW, LCC	PLTF 835-838	
234.			Articles cited by Dr. Josephson in October 30, 2017, and November 3, 2017, Expert Reports	JOSEPHSON 001-522	
235.			Articles cited by Dr. Hruz in November 2, 2017, Expert Report	HRUZ 1-249, 250-1455	
236.			Article: “St. Johns County will continue to provide gender-neutral bathrooms” published May 18, 2016	SJCSB-DA 18992-18996	
237.			February 22, 2017, Dear Colleague letter issued by U.S. Departments of Justice and Education	SJCSB-DA 18989-18991	
238.	DEC 11 2017	DEC 11 2017	Plaintiff YouTube Video Titled, “MY DYSPHORIA”	PLAINTIFF 0001113	
239.			Plaintiff YouTube Video Titled, “Mental Health + Resources)	PLAINTIFF 0001112	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
240.			Plaintiff 4/11/17 Facebook Post re: Kroger Bathrooms	PLAINTIFF 0003012	
241.			Plaintiff 3/23/17 Facebook Post re: Gender Neutral-Bathrooms	PLAINTIFF 0003030	
242.			Plaintiff's 2/17/17 Facebook Post re: Medications	PLAINTIFF 0003074	
243.			Plaintiff's parent's Facebook Post w/ media	PLAINTIFF 0003140	
244.			Plaintiff 3/10/17 Facebook Post re: 3 <sup>rd</sup> bathroom	PLAINTIFF 0003288	
245.			Billing Records from Duke Health	Awaiting records	
246.			Article entitled "Transseksualiteit en Psychotherapie" (Dutch version)	Adkins Depo Exh 4	
247.			Article entitled "Transsexuality and Psychotherapy" (English version)	Adkins Depo Exh 5	
248.			Attorney General Memorandum dated October 4, 2017	SJCSB-DA 18987-18988	
249.			(Proposed) Equality Act, 115 <sup>th</sup> Congress: Introduced as S 1006 and HR 2282	<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%5">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%5</a>	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
				<p>C%22%22%5D%7D&amp;r=1</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>	
250.			(Proposed) Equality Act, 114 <sup>th</sup> Congress; S 1858 and HR 3185	<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=2">https://www.congress.gov/bill/114th-congress/house-bill/3185/text?q=%7B%22search%22%3A%5B%22114hr3185%22%5D%7D&amp;r=2</a></p>	

No.	Date Identified	Date Admitted	Description	Bates No	Objection
				3A%5B%22114hr3185%22%5D%7D&r=3	
251.			(Proposed) Student Non-Discrimination Act of 2015, S439 and HR 846	<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>  <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>	
252.			All documents listed by Plaintiff in Plaintiff's Disclosures		
253.			Signed Statements from Individuals Regarding Separation of Bathrooms Based on Birth Gender	SJCSB-DA 18997-19020	

Dated this 29th day of November, 2017.



Respectfully submitted,

/s/ Terry J. Harmon

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*Counsel for St. Johns County School Board*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 29th day of November, 2017, a true and correct copy of the foregoing was electronically filed in the U.S. 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 152-1

**Defendant's Exhibit 7  
(Under Seal)**

DE 152-2

**From:** [Holly L. Arkin](#)  
**To:** [Erica Adams](#)  
**Subject:** RE: Quick questions about LGBT training for district schools  
**Date:** Thursday, March 17, 2016 3:20:04 PM  
**Attachments:** [LGBTQ Best Practices.pdf](#)

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Hi Erica – I am really glad Drew is doing so well. You must be so proud of him! Good luck on the 5k I am sure you both will do great!  
The “Best Practices” were given to the principals at the beginning of the year and they are located on District Website. I have attached them for you.  
There have been two district wide in-services which included a piece on LGBTQ. I think we are making some progress, as always, things take time. Please feel free to contact Sallyanne Smith, the Director of Student Services if you have any further questions or concerns.  
Thank you so much for your continued support and involvement on such an important issues.

Best Regards,  
Holly

**From:** Erica Adams [mailto:amiker@yahoo.com]  
**Sent:** Tuesday, March 15, 2016 4:06 PM  
**To:** Holly L. Arkin <Holly.Aркиn@stjohns.k12.fl.us>  
**Subject:** Quick questions about LGBT training for district schools

Hi there, Holly! I hope your spring is going well. I had a couple of questions that I hoped you could help me with.

I was told that the district provides some “Best Practices” materials to school principals at the start of the school year, which include best practices for LGBT students. Would it be possible for me to get a copy of those materials, or any other training materials used? I have learned that some of the schools with trans or gender-fluid students have held trainings for the administrators and teachers specifically for those students, but I don't recall anything like that happening at Nease earlier in the school year for Drew, so I wanted to see if maybe I missed something.

Additionally, were materials given to all teachers, bus drivers, support staff, etc. regarding LGBT students? And if trainings are held in all schools, are they annual so that teachers new to the district can receive them?

I apologize for all the questions, but I am trying to learn as much as I can about the district's best practices and policies for LGBT kids. I very much want to help the district move forward, and I've offered my help at the district level to participate in trainings, seminars, etc (I know you have, too). So far, no one has taken me up on my offer, but I'm hopeful that they eventually will. Maybe you and I together can help them move forward in LGBT policies and spread some education and information to the schools! Whatever is needed, I'm happy and eager to help.

Thank you so much for all you've done to help Drew this year and last. He's enjoying being a part of the county's youth council for strategic planning, so thank you again for putting Dennis in touch with him! Drew has done a lot of research and writing for the team and looks forward to the next meeting later this month. He's also been busy with his own endeavors: Last fall, he launched an online shop of LGBT and gender non-binary temporary tattoos that he designs himself, and he's participating in the JASMYN Strides for Pride 5K next month. We're in training to see if we can actually run the whole thing... For us non-runners, it's a challenge! But he's doing great and working hard, and I really couldn't be prouder of him. He's even donating 1,000 of his temporary tattoos out of his own pocket to the event, so each goody bag will have a rainbow flag tattoo in it. He can't wait to see people wearing them! :)

Have a great rest of the week! Hope to hear from you soon.

Cheers,  
Erica Adams

**St Johns County School District  
Guidelines for LGBTQ students-Follow Best Practices**

<b>Florida Law</b>	<b>Best Practices</b>
<p><b>Bullying/Harassment</b>  <b>The Federal Law Title IX and F.S. 1006.147</b>                      prohibits bullying and harassment of all students.</p>	<p><b>Bullying/Harassment</b>                      Schools will follow the district policy prohibiting bullying and harassment, addressing any incident against an LGBTQ student the same way they would address an incident against any other student, unless the bullying/harassment is based on a student's LGBTQ status, in which case the matter may need to be addressed through the District's anti-discriminatory policy. (contact Student Services or HR)</p>
<p><b>Official Documents</b>                      Documentation from a Florida court is required to reflect a change in name and/or gender in a student's official school records.</p>	<p><b>Official Documents</b>                      Schools will only modify student records to reflect a change in name or gender upon receipt of such documentation from a Florida court. While official student records must contain the student's legal name, schools should permit the use of "_____" in unofficial student records to assist staff in calling the student by the preferred name.</p>
<p><b>Names and Pronouns</b>                      There is no federal or Florida state law that requires schools to call a student by a requested name or use gender pronouns consistent with their gender identity.</p>	<p><b>Names and Pronouns</b>                      Schools will use the name and gender pronoun corresponding to his/her consistently asserted gender identity upon request of the parent or student.</p>
<p><b>GSA Clubs at School</b>                      Under the <b>Federal Equal Access Act</b>, a public school permitting any non-curricular club must also allow students to form a GSA. The school must also treat the GSA the same as it does any other non-curricular club in terms of access to facilities, resources, and opportunities to advertise.</p>	<p><b>GSA Clubs at School</b>                      Schools will permit students to form GSA clubs. The clubs will comply with S.B. Rule 4.06 "Student Clubs and Organizations."</p>
<p><b>Coming Out</b>                      Federal courts have found students have a constitutional right to be "out" at school if they want to be. Although students have the <b>First Amendment right to free speech</b>, a school can restrict a student's free speech when it causes significant disruption in the classroom.</p>	<p><b>Coming Out</b>                      Schools will not try to silence students who are open about their sexual orientation or transgender identity, or who question their orientation or gender identity. Restricting a student's free speech may occur if it: (1) causes, substantial disruption with the school's work or material interference with school activities; (2) impinges upon the rights of other students to be secure and let alone; or (3) the school reasonably forecasts it will cause a substantial disruption with the school's work or material interference with school activities.</p>
<p><b>Privacy</b>                      The <b>U.S. Supreme Court recognizes the federal constitutional right to privacy</b>, which extends to students in a school setting.</p>	<p><b>Privacy</b>                      School personnel will not unnecessarily disclose any information about a students' sexual orientation, transgender identity or questions they may have about their sexual orientation or gender identity to third parties.</p>
<p><b>Restrooms</b>                      There is <b>no specific federal or Florida state law</b> that requires schools to allow a transgender student access to the restroom corresponding to their consistently asserted transgender identity.</p>	<p><b>Restrooms</b>                      Transgender students will be given access to a gender-neutral restroom and will not be required to use the restroom corresponding to their biological sex.</p>

Florida Law	Best Practices
<p><b>Athletics</b>                      The Federal law Title IX ensures the safety and inclusion of transgender students in all school-sponsored activities (Department of Education, 2014).                      No federal or Florida state law requires schools to allow a transgender student to play on a team consistent with their gender identity and expression.                      Florida High School Athletics Association (FHSAA) policy provides transgender students with the opportunity to seek review of his/her eligibility through the FHSAA Gender Identity Eligibility Review Process.</p>	<p><b>Athletics</b>                      FHSAA policy was updated stating transgender students should have the opportunity to participate in athletics consistent with their gender identity and expression and a student may seek review of his/her eligibility through the FHSAA Gender Identity Eligibility Review Process.</p>
<p><b>Locker Rooms</b>                      There is no specific federal or Florida state law that requires schools to allow a transgender student access to the locker room corresponding to their consistently asserted transgender identity.</p>	<p><b>Locker Rooms</b>                      Schools will provide a transgender student with available accommodations that best meets the needs and privacy concerns of all students. Transgender students will not be forced to use the locker room corresponding to their biological sex.</p>
<p><b>Dress</b>                      Gender expression is protected by the U.S. Constitution and Title IX. This right to free expression includes choice of clothes. As long as what is worn would be appropriate if worn by other students, then a student should be able to wear that clothing even if it isn't stereotypically associated with their biological gender.</p>	<p><b>Dress</b>                      Schools will allow transgender students to wear clothing in accordance with their consistently asserted gender identity as long as what is worn is in accordance with dress code policy and gender standards.</p>
<p><b>Prom/Dances</b>                      The Federal law Title IX and First Amendment Federal court cases prohibits excluding same-sex couples from school-sponsored proms and dances.</p>	<p><b>Prom/Dances</b>                      Schools will allow same-sex couples to attend school sponsored proms and dances.                      Schools will not dictate that only biological males may wear tuxedos, and only biological females may wear dresses.                      Schools will review the request for transgender students running for Prom King/Queen, taking into consideration the safety of the student.</p>
<p><b>Gender Segregation</b>                      There is no Federal or Florida state law on the issue of gender segregation for school activities (i.e. classroom activities, field trips, PE class, etc.)</p>	<p><b>Gender Segregation</b>                      It is recommended that teachers separate students alphabetically rather than by sex for school activities.                      Note: This does not include gender specific curriculum such as puberty.</p>
<p><b>Overnight Field Trips</b>                      There is no Federal or Florida state law requiring school personnel to adhere to the requests of an LGBTQ student.</p>	<p><b>Overnight Field Study</b>                      Because of the complexity of field study issues, they will be handled on a case by case basis.</p>



DE 152-3

**Defendant's Exhibit 20  
(Under Seal)**

DE 152-4

**From:** [Sallyanne Smith](#)  
**To:** [Tim Forson](#)  
**Cc:** [Jessica DeVoe](#); [Sharon Carcaba](#)  
**Subject:** FW: LGBTQ Task Force  
**Date:** Tuesday, September 23, 2014 11:23:52 AM

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Tim,  
Sorry. Meant to copy you on this.

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**From:** Sallyanne Smith  
**Sent:** Tuesday, September 23, 2014 11:19 AM  
**To:** Cathy Mittelstadt; Kyle Dresback; Dawn Sapp; Clay Carmichael; Steve McCormick; Randy Johnson  
**Cc:** Laura Barkett  
**Subject:** LGBTQ Task Force

High School Principals,  
We have currently formed a district task force to address issues and needs regarding our LGBTQ (lesbian, gay, bisexual, transgender, questioning) population. The task force would like to hear from your club sponsor so we can better understand the support that our students need from the school district as well as the need for protocol regarding school procedures. We may, at some point, form subcommittees that will focus on the specific needs. Your representative may want to be involved in that as well. Meetings (probably just a few) will be scheduled on early start Wednesdays if that works for you. Please confirm with me the name of your club sponsor and your approval of their participation by the end of this week. I will contact them directly and copy you on all communication.

Thanks so much for all you do,

*Sallyanne Smith  
Director for Student Services  
St. Johns County School District  
904-547-7536*

DE 152-5

**Jessica DeVoe**

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**From:** Sallyanne Smith  
**Sent:** Tuesday, March 03, 2015 9:14 AM  
**To:** Brennan Asplen; Christina H. Langston; George Freeman; Jeanette Murphy; Laura Barkett; Leslie Shugart; Michelle Curtin; Paul Abbatinozzi; Phyllis Ingram  
**Cc:** Jessica DeVoe  
**Subject:** FW: Message from KM\_454e  
**Attachments:** SSOPS-KMB4515030309070.pdf

Task Force,  
Attached is the recommendation and back up information resulting from our last LGBTQ Task Force meeting. Please review it and respond by the end of the workday tomorrow (Wednesday) with any comments for modification. Thanks for your time.

Sallyanne Smith  
Director for Student Services  
St. Johns County School District  
904-547-7536

**From:** noreply@stjohns.k12.fl.us [mailto:noreply@stjohns.k12.fl.us]  
**Sent:** Tuesday, March 03, 2015 9:08 AM  
**To:** Sallyanne Smith  
**Subject:** Message from KM\_454e

February 2015

## Recommendations from the LGBTQ Task Force to Executive Cabinet

### I. Background

Protecting students against bullying and harassment is the purpose of School Board policy 3.21 – Prohibiting Bullying and Harassment. LGBTQ have been identified as a category of students that are more vulnerable to bullying and harassment. The National School Climate Survey conducted by GLSEN in 2011 reported that:

- 82% of LGBT youth had problems during the previous year with bullying about sexual orientation.
- 64% felt unsafe at school due to sexual orientation.
- 44% felt unsafe at school due to gender identification.
- 32% did not go to school for at least one day because of feeling unsafe.
- LGBT teenagers are two or three times more likely to attempt suicide than other teens ([stopbullying.gov](http://stopbullying.gov)).

In St. Johns County, Student Services has seen:

- An increase in the number of LGBTQ students that have been Baker Acted.
- An increase in the number of LGBTQ students in our schools.
- An increase in the number of LGBTQ clubs and participants in the high schools.

The issues of LGBTQ students is coming to the forefront in the nation and Florida. Just to name a few:

- As of the 2013-14 school year, The Department of Education now collects data on LGBT bullying and harassment requiring schools to report instances of bullying or harassment based on perceived sexual orientation and religion along with bullying or harassment based on race, sex, and disability.
- The 2015 edition of the Youth Risk Behavior Survey (part of the Florida Youth Survey administered to St. Johns County high school students in February), asked if students can best be described as gay or lesbian, heterosexual, bisexual, or "not sure." That survey also asks questions about such issues as bullying, suicidal thoughts, and drug use.
- In 2014, The Office for Civil Rights (OCR) in the U.S. Department of Education issued official guidance which makes clear that transgender students are protected from discrimination under Title IX. Specifically, the guidance states that "Title IX's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and OCR accepts such complaints for investigation."

The [stopbullying.gov](http://stopbullying.gov) website (partnered with the Department of Education), provides information on what schools and communities can do for LGBTQ students:

1. Development of clear policies on bullying. Schools can consider adding sexual orientation and gender identity to their bullying policies (Office of Civil Rights, 2010).
2. Train staff and volunteers in bullying prevention awareness.
3. Provide additional support.
4. Create safe environments for all children.

## **II. Specific Recommendations from the LGBTQ Task Force**

### **1. Add specific language that includes sexual orientation and gender identity/expression to School Board Policy 3.21 Prohibiting Bullying and Harassment and/or School Board Policy 2.16 Prohibiting Discrimination, Including Sexual and Other Forms of Harassment.**

- Currently St. Johns County does not have any language specifically using the words sexual orientation, gender identity, or gender expression in either the policy Prohibiting Bullying and Harassment or the policy Prohibiting Discrimination, Including Sexual and Other Forms of Harassment. Our county would join the surrounding counties of Duval, Clay, Putnam, Flagler, and Volusia that already include suggested wording in either their Bullying and Harassment policy or Discrimination and Harassment policy. See Appendix A of surrounding counties policy excerpts.

By including this wording in our policy, it sends the message to the school community that no one should be treated differently because of an admitted or presumed sexual orientation and would follow the recommendations of the Office of Civil Rights.

### **2. Consider providing training to teachers and school-based staff as additional support.**

Staff that understand the category of LGBTQ students will have a positive impact on their success at school and provide a safe and respectful environment for all.

Recommendations for training staff:

- Develop and include slides on specific risks for LGBTQ students in the annual bullying and harassment staff training.
- Incorporate slides in mental health presentations by Student Services staff on awareness of issues that affect LGBTQ students.
- Provide a Safe Zones training for interested teachers and school-based staff. The Safe Zones Ally Program conveys the message that the person displaying the safe zone symbol will be understanding, supportive and trustworthy if an LGBTQ student needs help, advice or just someone with whom s/he can talk.

### **3. Creating a Safe Environment through LGBTQ Best Practice Guidelines**

A school's utmost responsibility is to ensure the safety and security of all students. The overarching theme in the creation of a safe environment for LGBTQ students is equal protection. Students who experience acceptance at school are more highly motivated, engaged in learning, and committed to achieving the best possible education.

As our county grows, we are experiencing an increase in LGBTQ issues at the schools. A small number of elementary schools, multiple middle schools, and every high school are dealing with LGBTQ issues. School administrators continue to contact the district office for direction in these matters.

- The task force requests the Executive Cabinet to review Appendix B and consider approval for Best Practice Guidelines for St. Johns County School District to ensure Federal and Civil Right laws are followed.



## APPENDIX A

Surrounding counties policies that have added recommended language on sexual orientation and gender identity/expression.

### **Clay County** added the following language under the "Definitions" section of their policy **1.12 Anti-Bullying and Harassment**

*"Bullying", "Cyberbullying", "Harassment", and "Discrimination" (hereinafter referred to as bullying for the purpose of this policy) also encompass, but are not limited to unwanted harm towards a student or employee in regard to their real or perceived: sex, race, color, religion, national origin, age, disability (physical, mental or educational), marital status, socio-economic background, ancestry, ethnicity, gender, gender identity or expression, linguistic preference, political beliefs, sexual orientation, or social/family background or being viewed as different in its education programs or admissions to education programs and therefore prohibits bullying of any student or school district employee by any board member, district employee, consultant, contractor, agent, visitor, volunteer, student, or other person in the school or outside the school at school-sponsored events, on school buses, and at training facilities or training programs sponsored by the district."*

### **Putnam County** added the language into the definitions section of their policy **517.01 - BULLYING AND HARASSMENT**

#### **Definitions**

*"Bullying" includes "cyberbullying" and means systematically and chronically inflicting physical hurt or psychological distress on one (1) or more students or employees. It is defined as any unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an adult or student, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual's school performance or participation; and may involve:*

- A. *teasing;*
- B. *threats;*
- C. *intimidation;*
- D. *stalking;*
- E. *cyberstalking;*
- F. *physical violence;*
- G. *theft;*
- H. *sexual, religious, disability, sexual orientation including gender identity expression, or racial harassment;*
- I. *public or private humiliation;*
- J. *destruction of property; and*
- K. *social exclusion."*

### **Volusia County** includes the statement in the General Statement of their **Policy Against Bullying and Harassment – Number 525**

#### **General Statement**

*"It is the policy of the Volusia County School District that all of its students and school employees have an educational setting that is safe, secure, and free from harassment and*

*bullying of any kind. The district will not tolerate bullying and harassment of any type. Conduct that constitutes bullying and harassment, as defined herein, is prohibited. Issues regarding sexual harassment, and harassment based upon race, color, sex, religion, national origin, marital status, age, political beliefs, sexual orientation, or disability shall be dealt with under School Board Policy 509, Prohibition of Harassment."*

**Duval County** added the language in their policy **Prohibiting Discrimination and Harassment 10.10**

*I. Discrimination*

*"A. No person shall, on the basis of a person's actual or perceived identity with regard to race, color, religion, gender, age, marital status, disability, sexual orientation, political or religious beliefs, national or ethnic origin, veteran status, or any other distinguishing physical or personality characteristics, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity or in any employment conditions or practices conducted by this School District, except as provided by law."*

*"B. The School Board shall admit students to District schools, program, and classes without regard to a student's actual or perceived identity with regard to race, color, religion, gender, age, marital status, disability, sexual orientation, political or religious beliefs, national or ethnic origin, veteran status, or any other distinguishing physical or personality characteristics."*

*IV. Definition of Other Forms of Prohibited Harassment*

*"A. Illegal harassment on the basis of any other characteristic protected by state or federal law is strictly prohibited. This includes verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her actual or perceived identity with regard to race, color, religion, gender, age, marital status, disability, sexual orientation, political or religious beliefs, national or ethnic origin, veteran status, any other distinguishing physical or personality characteristics, or any other characteristic protected by law that..."*

*"B. Bullying*

*Bullying and harassment based on a student's actual or perceived identity with regard to race, color, national origin, gender, disability, sexual orientation, religion, or any other distinguishing characteristics that may be defined by federal, state or local law, that..."*

**Flagler County** includes language in their policy **Prohibiting Discrimination, Including Sexual and Other Forms of Harassment - Number 217**

*I. Policy Against Discrimination*

*"No person shall, on the basis of race, color, religion, gender, age, marital status, sexual orientation, disability, political or religious beliefs, national or ethnic origin, or genetic information, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity, or in any employment conditions or practices conducted by this School District, except as provided by law."*

**Appendix B****LGBTQ Students  
Florida Law vs Best Practices**

<b>Florida Law</b>	<b>Best Practices</b>
<p><b>Bullying/Harassment</b>  <b>The Federal Law Title IX and F.S. 1006.147</b> prohibits bullying and harassment of all students.</p>	<p><b>Bullying/Harassment</b>  Schools will follow the district policy prohibiting bullying and harassment, addressing any incident against an LGBTQ student the same way they would address an incident against any other student.</p>
<p><b>Official Documents</b>  <b>Documentation from a Florida court</b> is required to reflect a name change and/or gender in a student's official school records.</p>	<p><b>Official Documents</b>  Schools will only modify student records to reflect a name change and/or gender upon receipt of such documentation from a Florida court.</p>
<p><b>Names and Pronouns</b>  There is <b>no federal or Florida state law</b> that requires schools to call a student by a requested name or use gender pronouns consistent with their gender identity.</p>	<p><b>Names and Pronouns</b>  Schools will use the name and gender pronoun corresponding to his/her consistently asserted gender identity upon request of the parent.</p>
<p><b>GSA Clubs at School</b>  Under the <b>Federal Equal Access Act</b>, a public school permitting any non-curricular club must also allow students to form a GSA. The school must also treat the GSA the same as it does any other non-curricular club in terms of access to facilities, resources, and opportunities to advertise.</p>	<p><b>GSA Clubs at School</b>  Schools will permit students to form GSA clubs. The clubs will comply with S.B. Rule 4.06 "Student Clubs and Organizations".</p>
<p><b>Coming Out</b>  <b>Federal courts</b> have found students have a constitutional right to be "out" at school if they want to be. Although students have the <b>First Amendment right to free speech</b>, a school can restrict a student's free speech when it causes significant disruption in the classroom.</p>	<p><b>Coming Out</b>  Schools will not try to silence students who are open about their sexual orientation or gender identity. Restricting a student's free speech may occur if it causes significant disruption in the school setting.</p>
<p><b>Privacy</b>  The <b>U.S. Supreme Court recognizes the federal constitutional right to privacy</b>, which extends to students in a school setting. Students have the constitutional right to share or withhold information about their sexual orientation or gender identity from their parents, teachers, and other parties, and it is against the law for school officials to disclose, or compel students to disclose that information.</p>	<p><b>Privacy</b>  School personnel will not disclose any information about a student's sexual orientation or gender identity to anyone including parents, other teachers, and other parties without the permission of the LGBTQ student.</p>

<p><b>Restrooms</b></p> <p>There is <b>no specific federal or Florida state law</b> that requires schools to allow a transgender student access to the restroom corresponding to their consistently asserted gender identity.</p>	<p><b>Restrooms</b></p> <p>Students will be given access to a gender-neutral restroom and will not be forced to use the restroom corresponding to their biological sex.</p>
<p><b>Athletics</b></p> <p><b>The Federal law Title IX</b> ensures the safety and inclusion of transgender students in all school-sponsored activities (Department of Education, 2014).</p> <p><b>No federal or Florida state law</b> requires schools to allow a transgender student to play on a team consistent with their gender identity and expression.</p> <p><b>Florida High School Athletics Association (FHSAA) policy</b> provides transgender students with the opportunity to seek review of his/her eligibility through the FHSAA Gender Identify Eligibility Review Process.</p>	<p><b>Athletics</b></p> <p>FHSAA policy was updated stating transgender students should have the opportunity to participate in athletics consistent with their gender identity and expression and a student may seek review of his/her eligibility through the FHSAA Gender Identify Eligibility Review Process.</p>
<p><b>Locker Rooms</b></p> <p>There is <b>no specific federal or Florida state law</b> that requires schools to allow a transgender student access to the locker room corresponding to their consistently asserted gender identity.</p>	<p><b>Locker Rooms</b></p> <p>Schools will provide a transgender student with available accommodations that best meets the needs and privacy concerns of all students. Transgender students will not be forced to use the locker room corresponding to their biological sex.</p>
<p><b>Dress</b></p> <p>Gender expression is protected by the <b>U.S. Constitution and Title IX</b>. This right to free expression includes choice of clothes. As long as what is worn would be appropriate if worn by other students, then a student should be able to wear that clothing even if it isn't stereotypically associated with their gender.</p>	<p><b>Dress</b></p> <p>Schools will allow transgender students to wear clothing in accordance with their consistently asserted gender identity as long as what is worn is in accordance with dress code policy and gender standards.</p>
<p><b>Prom/Dances</b></p> <p><b>The Federal law Title IX and First Amendment Federal court cases</b> prohibits excluding same-sex couples from school-sponsored proms and dances.</p> <p>The ACLU states that at present, there have been no reported court decisions on this issue, but the First Amendment and the Equal Protection Clause should protect the right to freely express gender identity as a prom king or queen candidate.</p>	<p><b>Prom/Dances</b></p> <p>Schools will allow same-sex couples to attend school sponsored proms and dances.</p> <p>Schools will not dictate that only biological males may wear tuxedos, and only biological females may wear dresses.</p> <p>Schools will review the request for transgender students running for Prom King/Queen, taking into consideration the safety of the student.</p>

<p><b>Gender Segregation</b>                  There is <b>no Federal or Florida state law</b> on the issue of gender segregation for school activities (i.e. classroom activities, field trips, PE class, etc.)</p>	<p><b>Gender Segregation</b>                  It is recommended that teachers separate students alphabetically rather than by sex for school activities. <b>Note:</b> This does not include gender specific curriculum such as puberty.</p>
<p><b>Safe Zones</b>                  There is <b>no Federal or Florida state law</b> requiring school personnel to display posters/stickers indicating a safe zone for LGBTQ students.</p>	<p><b>Safe Zones</b>                  Teachers and other school-based staff have the option to display a small sticker or poster in their classroom to designate a safe zone for LGBTQ students. A mandatory training must be completed before a safe zone symbol is displayed.</p>
<p><b>Overnight Field Trips</b>                  There is <b>no Federal or Florida state law</b> requiring school personnel to adhere to the requests of an LGBTQ student.</p>	<p><b>Overnight Field Trips</b>                  Because of the complexity of field trip issues, these cases will be handled on a one to one basis.</p>

Researched and compiled by Student Services staff  
 February, 2015

DE 152-6

**St Johns County School District  
Guidelines for LGBTQ students-Follow Best Practices**

**DEFENDANT'S  
EXHIBIT  
33**

SJCSD-D.A. 000011

<b>Florida Law</b>	<b>Best Practices</b>
<p><b>Bullying/Harassment</b> The Federal Law Title IX and F.S. 1006.147 prohibits bullying and harassment of all students.</p>	<p><b>Bullying/Harassment</b> Schools will follow the district policy prohibiting bullying and harassment, addressing any incident against an LGBTQ student the same way they would address an incident against any other student, unless the bullying/harassment is based on a student's LGBTQ status, in which case the matter may need to be addressed through the District's anti-discriminatory policy. (contact Student Services or HR)</p>
<p><b>Official Documents</b> Documentation from a Florida court is required to reflect a change in name and/or gender in a student's official school records.</p>	<p><b>Official Documents</b> Schools will only modify student records to reflect a change in name or gender upon receipt of such documentation from a Florida court. While official student records must contain the student's legal name, schools should permit the use of "_____" in unofficial student records to assist staff in calling the student by the preferred name.</p>
<p><b>Names and Pronouns</b> There is no federal or Florida state law that requires schools to call a student by a requested name or use gender pronouns consistent with their gender identity.</p>	<p><b>Names and Pronouns</b> Schools will use the name and gender pronoun corresponding to his/her consistently asserted gender identity upon request of the parent or student.</p>
<p><b>GSA Clubs at School</b> Under the Federal Equal Access Act, a public school permitting any non-curricular club must also allow students to form a GSA. The school must also treat the GSA the same as it does any other non-curricular club in terms of access to facilities, resources, and opportunities to advertise.</p>	<p><b>GSA Clubs at School</b> Schools will permit students to form GSA clubs. The clubs will comply with S.B. Rule 4.06 "Student Clubs and Organizations".</p>
<p><b>Coming Out</b> Federal courts have found students have a constitutional right to be "out" at school if they want to be. Although students have the First Amendment right to free speech, a school can restrict a student's free speech when it causes significant disruption in the classroom.</p>	<p><b>Coming Out</b> Schools will not try to silence students who are open about their sexual orientation or transgender identity, or who question their orientation or gender identity. Restricting a student's free speech may occur if it: (1) causes, substantial disruption with the school's work or material interference with school activities; (2) impinges upon the rights of other students to be secure and let alone; or (3) the school reasonably forecasts it will cause a substantial disruption with the school's work or material interference with school activities.</p>
<p><b>Privacy</b> The U.S. Supreme Court recognizes the federal constitutional right to privacy, which extends to students in a school setting.</p>	<p><b>Privacy</b> School personnel will not unnecessarily disclose any information about a students' sexual orientation, transgender identity or questions they may have about their sexual orientation or gender identity to third parties.</p>
<p><b>Restrooms</b> There is no specific federal or Florida state law that requires schools to allow a transgender student access to the restroom corresponding to their consistently asserted transgender identity.</p>	<p><b>Restrooms</b> Transgender students will be given access to a gender-neutral restroom and will not be required to use the restroom corresponding to their biological sex.</p>

<b>Florida Law</b>	<b>Best Practices</b>
<p><b>Athletics</b>  <b>The Federal law Title IX</b> ensures the safety and inclusion of transgender students in all school-sponsored activities (Department of Education, 2014).</p> <p><b>No federal or Florida state law</b> requires schools to allow a transgender student to play on a team consistent with their gender identity and expression.</p> <p><b>Florida High School Athletics Association (FHSAA) policy</b> provides transgender students with the opportunity to seek review of his/her eligibility through the FHSAA Gender Identify Eligibility Review Process.</p>	<p><b>Athletics</b>                      FHSAA policy was updated stating transgender students should have the opportunity to participate in athletics consistent with their gender identity and expression and a student may seek review of his/her eligibility through the FHSAA Gender Identify Eligibility Review Process.</p>
<p><b>Locker Rooms</b>                      There is <b>no specific federal or Florida state law</b> that requires schools to allow a transgender student access to the locker room corresponding to their consistently asserted transgender identity.</p>	<p><b>Locker Rooms</b>                      Schools will provide a transgender student with available accommodations that best meets the needs and privacy concerns of all students. Transgender students will not be forced to use the locker room corresponding to their biological sex.</p>
<p><b>Dress</b>                      Gender expression is protected by the <b>U.S. Constitution and Title IX</b>. This right to free expression includes choice of clothes. As long as what is worn would be appropriate if worn by other students, then a student should be able to wear that clothing even if it isn't stereotypically associated with their biological gender.</p>	<p><b>Dress</b>                      Schools will allow transgender students to wear clothing in accordance with their consistently asserted gender identity as long as what is worn is in accordance with dress code policy and gender standards.</p>
<p><b>Prom/Dances</b>  <b>The Federal law Title IX and First Amendment Federal court cases</b> prohibits excluding same-sex couples from school-sponsored proms and dances.</p>	<p><b>Prom/Dances</b>                      Schools will allow same-sex couples to attend school sponsored proms and dances.</p> <p>Schools will not dictate that only biological males may wear tuxedos, and only biological females may wear dresses.</p> <p>Schools will review the request for transgender students running for Prom King/Queen, taking into consideration the safety of the student.</p>
<p><b>Gender Segregation</b>                      There is <b>no Federal or Florida state law</b> on the issue of gender segregation for school activities (i.e. classroom activities, field trips, PE class, etc.)</p>	<p><b>Gender Segregation</b>                      It is recommended that teachers separate students alphabetically rather than by sex for school activities.  <b>Note:</b> This does not include gender specific curriculum such as puberty.</p>
<p><b>Overnight Field Trips</b>                      There is <b>no Federal or Florida state law</b> requiring school personnel to adhere to the requests of an LGBTQ student.</p>	<p><b>Overnight Field Study</b>                      Because of the complexity of field study issues, they will be handled on a case by case basis.</p>



DE 152-7

DEFENDANT'S  
EXHIBIT  
34

**Subject:** Letter to principal  
**From:** amiker@yahoo.com  
**Sent:** 9/23/2015 1:08:28 PM  
**To:** holly.arkin@stjohns.k12.fl.us  
**Attachment:** Letter to Mr Dresback Sept 22.docx

Hi there, Holly -

I'm attaching the letter I wrote for Mr Dresback. I have not sent it to him yet; I was hoping for your feedback first. I have a similar one ready to send to Dr Joyner. Please let me know what you think and if you have any suggestions.

Also, when you get a sec, please let me know whom to contact at the Child Summit to get Drew possibly added to the panel. He's very excited about advocating for himself and the trans community at that event.

Thank you again for everything!

Erica Adams

Erica Adams  
84 Perdido Key Ct  
Ponte Vedra, FL 32081

Mr Kyle Dresback, Principal  
Nease High School  
Ponte Vedra, FL 32081

Mr Dresback,

I am writing to you to express concern over a situation at Nease involving our son, Drew. Today, Ms Holly Arkin, District Social Worker, contacted me to let me know that a student complained about Drew using the boys' restroom at school. Drew was brought into the counselor's office and told that he may use only the gender-neutral restrooms on campus. You see, Drew is transgender, assigned female at birth but identifying and living as male. Unfortunately, requiring Drew to forgo the restrooms that match his gender identity in favor of gender neutrality is both harmful and inconvenient.

First, the inconvenience: There are only two gender-neutral restrooms at Nease. One is in the C pod, nowhere near most of Drew's classes, so using it would mean Drew having to hurry back and forth across campus, passing other bathrooms along the way. The other is in K pod, but it appears that the only way to reach it is through a classroom, which isn't feasible when class is in session (please correct me if this information is in error, but Drew could find no other access to that restroom when he looked for it). So even assuming that separate-but-equal is reasonable for trans-student bathroom use, the available facilities for Drew are difficult to access.

A far greater concern, however, is the harm. Across the country, doctors, parents and school districts are learning about gender identity and discovering the damage that isolating transgender students can cause. Forcing transgender kids to use gender-neutral restrooms, while their cisgender counterparts are allowed to use "normal" restrooms, makes a clear point that transgender students are somehow abnormal. That point is accepted by students and administration alike, and the student is treated accordingly. As it happens, Drew is not the only transgender student at Nease, so actions taken toward him resonate with other students who are perhaps not as supported by family and friends as Drew.

Fortunately, thanks to our increased understanding of gender and the needs of transgender students, the law is evolving. The U.S. Department of Education, Office for Civil Rights, and the U.S Department of Justice Civil Rights Division have recently changed the definitions and descriptions of the coverages under Title IX to include transgender students. Under these new rules, Drew has the legal right to use the male bathrooms. We feel that requiring him to use a teacher's bathroom, unisex bathroom, or any bathroom other than the boys' bathroom that all of his male classmates use is a form of sex discrimination as defined under Title IX, in the fact that it singles him out and calls attention to him being "different."

The U.S Department of Education, Office for Civil Rights, and the U.S Department of Justice Civil Rights Division define "gender-based discrimination" as a form of sex discrimination, and refers to differential treatment or harassment of a student based on the student's sex, including gender identity, gender expression, and nonconformity with gender stereotypes, that results in the denial or limitation of education services, benefits, or opportunities. Conduct may constitute gender-based discrimination regardless of the actual or perceived sex, gender identity, or sexual orientation of the persons experiencing or engaging in the conduct.

The U.S Department of Education, Office for Civil Rights, and the U.S. Department of Justice Civil Rights Division upheld these rules in the case of their Resolution Agreement between the OCR and DOJ and the Arcadia Unified School District. Here is a link to the resolution agreement for your review:

<http://www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf>

Pursuant to Title IX, we are requesting the following stipulations:

1. Provide Drew access to sex-specific facilities designated for male students at school consistent with his gender identity; however, Drew may request access to private facilities based on safety concerns;
2. Provide Drew access to sex-specific facilities designated for male students at all District-sponsored activities, including overnight events and extracurricular activities on and off campus, consistent with his gender identity; however Drew may request access to private facilities based on safety concerns;
3. Treat Drew the same as other male students in all respects in the education programs and activities offered by the District; and
4. Ensure that any school records containing Drew's assigned sex, if any, are treated as confidential, personally identifiable information; are maintained separately from his records; and are not disclosed to any District employees, students, or others without the consent of Drew's parents.

I know that you and others at Nease have concerns regarding transgender students being allowed to live as they identify. If it helps put your mind at ease, despite fears to the contrary, there have been exactly zero cases of a transgender student harassing, assaulting or otherwise harming a cisgender student in a school restroom. Drew, like other transgender students across the U.S., simply wants the right to use a toilet in their preferred restroom and be left alone in the process. Much, I imagine, as cisgender boys do when they use a restroom. And if the concern is one for Drew's safety in a male facility, well, the reality is that Nease has a responsibility to keep all students safe from bullying and harassment, and while keeping Drew isolated might keep him out of harm's way, it is neither fair nor right to do so.

Drew is a smart, dedicated student in the IB program who is confident in who he is and who he aspires to be. Neither he nor I wish to make anyone uncomfortable, but discomfort is not a valid reason to restrict an individual student's rights. Fifty years ago, many people were uncomfortable sharing a restroom with African-American individuals, but in the end, their discomfort did not trump anyone's right to use a bathroom facility.

I would be grateful if Drew's father and I could meet with you and any other administrators in person to discuss any questions you may have and to set up a Support Plan for Drew to ensure that he is comfortable and safe while attending your facilities. We are happy to work with you and with Ms Arkin to facilitate trainings, share informative studies and do whatever else is needed to help Nease High School be a safe, secure environment of learning for all students. Please contact us at your earliest convenience.

Cheers,

Erica Adams

DE 152-8

DEFENDANT'S  
EXHIBIT  
36

**Subject:** Follow-up from last weekend's meeting  
**From:** erica@topsecretsurfer.com  
**Sent:** 10/12/2015 3:25:14 PM  
**To:** sallyanne.smith@stjohns.k12.fl.us  
**Attachment:**

Hi there, Ms Smith,

Thank you again for facilitating the meeting on Friday morning with Drew and the administration! I thought it went very well. I appreciate all that you and your team do to help the progress of students' rights in St Johns County and beyond.

I wanted to ask whether there's anything else I can do to help you, at any level. I know you had said that things like the bathroom options and gender markers in the computer system are not changeable at the school level and must come from the district, so I wondered whether I could assist further by reaching out to the superintendent, attending a school board meeting or doing anything else you might need.

I would love to see some positive changes made that could impact Drew while he's still attending Nease, but I know that county government can move quite slowly and that many are resistant to change. Many districts across the country are facing lawsuits because of their disinclination to accommodate transgender students, but I have faith that St Johns can take steps in the right direction on its own. To that end, I am at your disposal!

Please let me know how I can help further, and thank you again, so much, for all you do!

--  
**Erica Adams Kasper**

Director of Communications  
TopSecretSurfer  
erica@topsecretsurfer.com  
<http://www.topsecretsurfer.com>

DEFENDANT'S  
EXHIBIT  
36

**Subject:** Follow-up from last weekend's meeting  
**From:** erica@topsecretssurfer.com  
**Sent:** 10/12/2015 3:25:14 PM  
**To:** sallyanne.smith@stjohns.k12.fl.us  
**Attachment:**

Hi there, Ms Smith,

Thank you again for facilitating the meeting on Friday morning with Drew and the administration! I thought it went very well. I appreciate all that you and your team do to help the progress of students' rights in St Johns County and beyond.

I wanted to ask whether there's anything else I can do to help you, at any level. I know you had said that things like the bathroom options and gender markers in the computer system are not changeable at the school level and must come from the district, so I wondered whether I could assist further by reaching out to the superintendent, attending a school board meeting or doing anything else you might need.

I would love to see some positive changes made that could impact Drew while he's still attending Nease, but I know that county government can move quite slowly and that many are resistant to change. Many districts across the country are facing lawsuits because of their disinclination to accommodate transgender students, but I have faith that St Johns can take steps in the right direction on its own. To that end, I am at your disposal!

Please let me know how I can help further, and thank you again, so much, for all you do!

--  
**Erica Adams Kasper**

Director of Communications  
TopSecretSurfer  
erica@topsecretssurfer.com  
<http://www.topsecretssurfer.com>



DE 152-9

DEFENDANT'S  
EXHIBIT  
39

**Subject:** RE: Transgender student rights - a followup  
**From:** cathy.mittelstadt@stjohns.k12.fl.us  
**Sent:** 12/1/2015 4:03:04 PM  
**To:** erica@topsecretssurfer.com  
**Attachment:** [image001.jpg](#), [image003.jpg](#)

Hello Mrs. Adams-  
I hope your family had a wonderful holiday. Thank you for sharing the resources below. As you stated, our goal is to provide a safe and educational environment for all students. The Student Support Services Team continues to receive Staff Development and explore recommendations for our district regarding next steps.

Thank you for taking time to meet, and know that I value the information you have shared.

All the best-



Cathy Mittelstadt  
Associate Superintendent of Student Support Services  
St. Johns County School District  
47 Orange Street, St. Augustine, Florida 32084  
904-547-7723

"You are here, what you do"

**DE 152-10**

UPCHURCH, BAILEY AND UPCHURCH, P.A.

DEFENDANT'S  
EXHIBIT  
40

JOHN D. BAILEY, JR.  
FRANK D. UPCHURCH III

DONALD W. WALLIS  
SIDNEY F. ANSBACHER

KATHERINE GAERTNER JONES  
MICHAEL A. SIRAGUSA

STEPHEN A. FAUSTINI  
ALLYSON BOYLES CURRIE

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Established 1925

780 North Ponce de Leon Boulevard  
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Facsimile (904) 825-4862

Please reply to:  
Post Office Drawer 3007  
St. Augustine, Florida 32085-3007

OF COUNSEL:

TRACY WILSON UPCHURCH

FRANK D. UPCHURCH, SR.  
(1894-1986)

HAMILTON D. UPCHURCH  
(1925-2008)

FRANK D. UPCHURCH, JR.  
(1922-2012)

March 30, 2016

**VIA FEDERAL EXPRESS**  
**Tracking No. 7759 9756 6171**

Mr. Roger Mills  
U.S. Department of Education  
Office of Civil Rights, Region IV  
61 Forsyth Street S.W., Suite 19T10  
Atlanta, Georgia 30303-8927

Re: OCR Complaint No. 04-16-110

Dear Mr. Mills:

The purpose of this letter is to state the St. Johns County School District's legal position in regard to the D.A. Title IX investigation.

Background

D.A. was born a biological female. Prior to the 2015-16 school year, she was enrolled in St. Johns County schools as a female, and presented as a girl.

In the spring of 2015, D.A. was accepted into the IB program at Nease High School. During the summer, D.A.'s mother contacted school officials<sup>1</sup> and informed them that D.A. self-identified as a male and wished to present as a boy at Nease. The week before school started, school officials met with D.A. and his mother to make sure that the transition would go smoothly. They were supportive and accommodating, allowing D.A. to dress and present as a boy and making sure staff used his preferred name and pronoun. School officials expedited getting his freshman photograph made for his school record and student ID after he told them that he didn't want his 8th grade photograph used on an interim basis because it showed him as a girl, with long hair. School officials also referred him to community groups and events in support of his interest in transgender and LBGTQ issues and activities.

School officials made arrangements for D.A. to use a gender neutral restroom located at the main entrance. In September, the dean received complaints from two

<sup>1</sup> References to "school officials" include Nease staff and District social worker Holly Arkin who had worked with D.A. in middle school and assisted with his support at Nease.

Mr. Roger Mills

March 30, 2016

Page 2

students that D.A. was using the boys' restroom. School officials met with D.A. and his mother and explained that he should use the gender neutral restroom. No disciplinary action was taken. When he complained that restroom wasn't conveniently located to his classes, school officials converted a staff restroom in Pod K to a gender neutral facility, where it is more conveniently located to his classes.

In January, the school opened another gender neutral restroom. The gender neutral restrooms are appropriately labelled, and open to all students.

#### Overview

At Nease High School, the District provides separate restroom facilities on the basis of sex, as well as gender-neutral facilities. The girls' and boys' restrooms are designated for biological females and biological males, respectively.

We acknowledge that in various correspondence and administrative guidance, the Office of Civil Rights has taken the position that a transgender student should be allowed to use restroom facilities consistent with their gender identity. However, we respectfully disagree that it is a Title IX violation for a school to adhere to the traditional, ubiquitous and perfectly lawful practice of assigning student restroom usage on the basis of biological sex. See, Faulkner v. Jones, 10 F.2d 226, 232 (4th Cir. 1993) (recognizing "society's undisputed approval of separate public restrooms for men and women based on privacy concerns," and that the "need for privacy justifies separation") (emphasis added); Virginia v. United States, 518 U.S. 515, 550, at n. 19 (1996) ("Admitting women to VMI would undoubtedly require alterations necessary to afford members of each sex privacy from members of the other sex").

Indeed, Title IX regulations expressly authorize schools to provide separate restrooms on the basis of sex. Section 106.33 states:

**A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.**

34 C.F.R. § 106.33 (emphasis added). Title IX regulations also authorize educational institutions to consider an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex. 34 C.F.R. § 106.61. Title IX itself authorizes institutions to maintain "separate living facilities for the different sexes." 20 U.S.C.A. § 1686.

Denying a biological female who identifies as a male access to the boys' restroom is not discrimination because of transgender status or gender stereotyping in violation of Title IX. D.A. is not denied access to the boys' restroom because he is transgender or because he does not conform to gender stereotypes. D.A. is not allowed to use the boys'

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restroom because, and only because, the boys' restroom is designated for biological males and D.A. is not a biological male. D.A. is not being discriminated against because of sex, but is being treated exactly the same as all other students, whose access to group restrooms is likewise determined by their biological sex. That is the antithesis of discrimination.

Nevertheless, the school was sensitive to D.A.'s concerns about restroom usage, and made gender neutral facilities available to him. That is a common sense solution. See, Kastl v. Maricopa County Community College District, 325 Fed. Appx. 492, at n. 1 (9th Cir. 2009); Grimm v. Gloucester County School Board, 2015 WL 5560190 (E.D. Va. 2015) ("Grimm"); Johnston v. Univ. of Pittsburgh, 97 F.Supp.3d 657, 661 (W.D. Pa. 2015) ("Johnston"); Doe v. Clark County School Dist., 2008 WL 4372872 (D. Nev. 2008). It protected the bodily privacy of both D.A. and the boys using the boys' restrooms by allowing them to perform personal bodily functions "consistent with society's long-held tradition of performing such functions in sex-segregated spaces based on biological or birth sex." Johnston, 97 F.Supp.3d at 668. The importance of the school's interest in protecting its students' right to bodily privacy in the use of restrooms cannot be seriously questioned. Grimm, 2015 WL 5560190, and cases cited therein, at pp. 21-23.

#### The Title IX Restroom Cases

The courts have consistently rejected OCR's view that it is a Title IX violation to deny a transgender student the use of the restroom that matches the student's gender identity rather than his or her biological sex. E.g., Johnston, 97 F.Supp.3d at 661 ("This case presents one central question: whether a university, receiving federal funds, engages in unlawful discrimination, in violation of the United State Constitution and federal and state statutes, when it prohibits a transgender male student from sex-segregated restrooms ... designated for men on the university campus. The simple answer is no."); Grimm, 2015 WL 5560190, at p. 8 (Section 106.33 "clearly allows the School Board to limit restroom access 'on the basis of sex,' including birth or biological sex."); Clark County School Dist., 2008 WL 4372872, at p. 4 ("Since Mary Doe would have had access to a [gender neutral] restroom had she actually enrolled at GVHS, Plaintiffs cannot possibly establish the first key element required for a Title IX claim."). See also, Johnson v. Fresh Mark, Inc., 337 F. Supp.2d. 996, 1000 (N.D. Ohio 2003) (employer did not violate Title VII when it "only required [the transgender] plaintiff to conform to the accepted principles established for gender-distinct [male and female] public restrooms."); Etsitty v. Utah Transit Authority, 502 F.3d 1215, 1225 (10th Cir. 2007) ("Because an employer's requirement that employees use restrooms matching their biological sex does not expose biological males to disadvantageous terms and does not discriminate against employees who fail to conform to gender stereotypes, [the employer's] proffered reason of concern over restroom usage is not discriminatory on the basis of sex."); Michaels v. Akal Security, Inc., 2010 WL 2573988, at p. 4 (D. Co. 2010) ("Etsitty precludes such a [Title VII] claim based solely upon restrictions on Plaintiff's usage" of restrooms "to those comparable with her anatomical gender pending proof of her gender reassignment surgery."); Goins v. West Group, 635 N.W.2d 717 (Minn. 2001) (employer's "designation of restroom facilities

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based solely on biological gender does not violate the MHRA [Minnesota Human Rights Act]”); Hispanic Aids Forum v. Estate of Bruno, 16 A.D.3d 294 (Ct. App. 2005) (“defendant’s designation of restroom use, applied uniformly, on the basis of ‘biological gender,’ rather than biological self-image, was not discrimination.”).

#### OCR’s Reliance on Title VII Caselaw is Misplaced

None of the cases relied upon by the OCR as stated in the Statement of Interest submitted in support of the plaintiffs in Grimm hold that separating restrooms on the basis of biological sex is a violation of Title IX. Rather, OCR primarily relies upon Title VII cases.

With all due respect, we question the value of Title VII transgender discrimination caselaw in the context of a Title IX transgender restroom discrimination claim. Although Title VII and Title IX both prohibit discrimination “because of sex,” Title IX and its regulations expressly create an exception for toilet facilities, locker rooms and housing, authorizing separate facilities “on the basis of sex.” 34 C.F.R. § 106.33; 20 U.S.C.A. § 1686. **There is no separate restroom exception to discrimination on the basis of sex under Title VII.**

We recognize that under Title VII, an argument can be made that preventing a transgender employee from using the group restroom consistent with his or her gender identity is unlawful discrimination “because of sex.” However, that argument is not credible in the Title IX context. If it is discrimination to assign students to separate restrooms by biological sex, it is lawful discrimination under Title IX because of Section 106.33. E.g., Grimm, 2015 WL 5560190 at p. 12; Johnston, 97 F.Supp.3d at 678. For that reason, Schroer v. Billington, 577 F.Supp.2d 293, 306 (D.D.C. 2008), Lusardi v. McHugh, 2015 WL 1607756 (EEOC 2015), Macy v. Holder, 2012 WL 1435995 (EEOC 2012), and other Title VII cases that embrace the view that making an employment decision based on transgender status is discrimination “because of sex” in violation of Title VII are not persuasive in the context of this investigation. Even assuming arguendo that denying a transgender student use of the restroom that aligns with his or her gender identity is discrimination “because of sex,” it is not unlawful discrimination in violation of Title IX, because Section 106.33 authorizes schools to assign students to separate restroom according to their biological sex.

For the same reason, the argument that transgender is now a protected class under Title VII does not translate to Title IX transgender restroom cases. Accordingly, it cannot be said that Ulane v. Eastern Airlines, 742 F.2d 1081 (7th Cir. 1984), and its progeny are no longer good law in that context. See, Johnston, 97 F.Supp.3d at 676; Etsitty v. Utah Transit Auth., 502 F.3d at 1221-22; Holloway v. Arthur Andersen & Co., 566 F.2d 659, 662-63 (9th Cir. 1977); Sommer v. Budget Mktg., 667 F.2d 748, 750 (8th Cir. 1982); Eure v. Sage Corp., 61 F.Supp.3d 651, 655 (W.D. Tex. 2014); Lopez v. River Oaks Imaging &

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Diagnostic Grp., Inc., 542 F.Supp.2d 653, 658 (S.D. Tex. 2008); and Sweet v. Mulberry Lutheran Home, 2003 WL 21525058, at p. 2 (S.D. Ind. 2003).

Furthermore, it is important to recognize that most of the Title VII cases cited by OCR were based on the gender non-conformity theory developed in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989). The Title VII violations in those cases were based on allegations and evidence that the employer was motivated to take adverse employment action by animus toward the transgender plaintiff, stemming from the plaintiff's failure to conform to sex stereotypes about how men and women should look and act, in some cases including the plaintiff's decision to transition from one sex to another. For example, in Schroer, the court concluded that the Library of Congress violated Title VII when senior staff members changed their minds about hiring the plaintiff after learning that she was undergoing a male to female transition. The court concluded:

In refusing to hire Diane Schroer because her appearance and background did not comport with the decisionmaker's sex stereotypes about how men and women should act and appear, and in response to Schroer's decision to transition, legally, culturally, and physically, from male to female, the Library of Congress violated Title VII's prohibition on sex discrimination.

577 F.Supp.2d at 308. See also, Smith v. City of Salem, Ohio, 378 F.3d 566, 572 (6th Cir. 2004) ("Having alleged that his failure to conform to sex stereotypes concerning how a man should look and behave was the driving force behind Defendants' actions, Smith has sufficiently pleaded claims of sex stereotyping and gender discrimination."); Macy, 2012 WL 143995, at p. 3 (complaint alleged discrimination based on "sex stereotyping, sex discrimination based under transition/change of sex and sex discrimination based gender identity."); Schwenk v. Hartford, 204 F.3d 1187, 1201 (9th Cir. 2000) (discussing Title VII gender stereotype cases).

In the typical case of Title VII transgender discrimination, the employer made a decision to fire, not hire or discipline a transgender person. The decision was made on a personal level, about the individual employee and his or her particular circumstances, and was subject to the employer's gender bias and stereotyping. The plaintiff alleged and in some cases proved that the employer was motivated by animus towards the plaintiff, because the plaintiff's appearance and behavior did not conform to the employer's gender stereotypes about how men and women should look and act. See, Price Waterhouse and cases cited in Glenn v. Brumby, 663 F.3d 1312, 1317-1319 (10th Cir. 2011).

Unlike the employment action in the Title VII cases, the decision to exclude D.A. from the boys' restroom was not personal, and was not motivated by bias on account of D.A.'s individual traits and circumstances. Rather, the school dispassionately followed Section 106.33 and the District's Guidelines and Best Practices for LGBTQ students. D.A.



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was not allowed to use the boys' restrooms because they are designated for biological males and he is a biological female. Unquestionably, D.A. was treated the same as any other biologically female student. Likewise, a biologically male transgender student would not be allowed to use the girls' restrooms because they are designated for biological females. Accordingly, the school did not treat D.A. differently from other students, and there was no Title IX violation.

On the contrary, we submit it would have been a prima facie Title IX violation to treat D.A. "differently" and in a "different manner" from other students and allow him, a biological female, to use the boys' restroom, when all other students must use the restroom designated for their biological sex. Title IX regulations expressly prohibit such disparate treatment. 34 C.F.R. §§ 31(b)(1) - (7).

#### The Meaning of "Sex" as Used in Section 106.33

OCR cites Price Waterhouse and other authorities for the proposition that "sex" now "encompasses" gender identity as well as biological sex. However, as the court recognized in Grimm, it does not follow that gender identity has supplanted biological sex in the context of separate sex restrooms authorized by Section 106.33. While sex may encompass gender identity for some purposes (mainly in gender stereotyping analysis), it does not follow that gender identity has now completely replaced biological sex for purpose of student access to separate boys' and girls' restrooms, particularly in the face of Section 106.33. See, discussion in Grimm, 2015 WL 5560190, at pages 7-9.

#### OCR's Anatomy- Based Gender Stereotype Theory

In its Statement of Interest in Grimm, the government advanced the theory that designating separate restrooms on the basis of biological sex constitutes unlawful gender stereotyping about "the relationship between one's gender identity and anatomy," and "what it means to be a boy." Statement of Interest, at pp. 11 and 13. OCR's reliance on Kastl v. Maricopa County Community College District, 2004 WL 2008954 (D. Ariz. 2004), in support of this theory is misplaced. The case does not suggest any such thing.

Kastl was an adjunct college faculty member, who was transitioning from male to female. She was terminated from her position when she defied the college's directive to use the men's restroom until such time as she provided proof that she had completed sex-change surgery. Significantly, Kastl did not challenge the validity of the college's policy of providing separate restrooms based on genital anatomy. Rather, in her complaint, Kastl alleged that she was a biological female and was being denied the use of the restroom designated for biological females. Id. at pp. 1-2. Based on those allegations, the court declined to dismiss her Title IX claim.

The court did comment that "neither a woman with male genitalia nor a man with stereotypically female anatomy, such as breasts, may be deprived of a benefit or privilege of employment by reason of that nonconforming trait." Id. at p. 2. The court made that

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observation in the context of Kastl's allegation that she was a biological female, although she still had male genitalia. The court was saying that because Kastl (allegedly) was a biological female, her nonconforming anatomical characteristics would not disqualify her from using the women's restroom. The court was not embracing OCR's anatomy-based gender stereotype theory - that it is unlawful gender stereotype discrimination to refuse a biological female the use of the men's restroom because her female anatomy does not conform with her male gender identity. Rather, the court was addressing nonconformity between anatomy and biological sex, not anatomy and gender identity, as OCR would have it.

In Kastl II, 2006 WL 2460636, at p. 6 (D. Ariz. 2006), the court denied Kastl's motion for summary judgment because "she has provided no evidence that she was a biological female and member of a protected class while she was employed by Defendant."

On appeal, in Kastl III, 325 Fed. Appx. at 492, the court affirmed the summary judgment in favor of the college. Noting that "it is unlawful to discriminate against a transgender (or any other person) because he or she does not behave in accordance with an employer's expectations for men or women," the court disagreed with the district court and found that Kastl had stated a prima facie Title VII claim. Id. at 493 (emphasis added). However, the court affirmed the summary judgment, because the plaintiff failed to refute the college's evidence that it was motivated by safety concerns. Although the court did not elaborate on what "nonconforming behavior" motivated the college's decision, it is clear the court was not referring to Kastl's nonconforming anatomy.

Significantly, in a footnote, the appellate court suggested that a gender neutral restroom would have been an acceptable solution:

We note that the parties do not appear to have considered any type of accommodation that would have permitted Kastl to use a restroom other than those dedicated to men. After all, Kastl identified and presented full-time as female, and she argued to MCCCDC that the men's restroom was not only inappropriate for but also potentially dangerous to her.

325 Fed. Appx. at 492, n.1. This is yet more evidence that Kastl does not support OCR's interpretation of Title IX to require restroom assignment based solely on gender identity. If that had been the court's view, the court would not have been concerned with Kastl's biological sex and would have summarily decided the case in her favor, as it was clear that Kastl's gender identity was female.

In fact, Kastl supports the District's position in this investigation. Like the District, its view was that it was not Kastl's gender identity or anatomy, but rather her biological sex that was determinative of whether she could use the women's restroom. It also signaled that it would have been an acceptable accommodation to provide her with access to a gender neutral restroom, as the District did for D.A.

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Conclusion

For the reasons stated above, we respectfully request OCR to find that there was no Title IX violation in D.A.'s case.

Sincerely,



Frank D. Upchurch III

FDUIII/cs

DE 152-11

**Defendant's Exhibit 41  
(Under Seal)**

DE 152-12

**Defendant's Exhibit 42  
(Under Seal)**

DE 152-13



**Defendant's Exhibit 43  
(Under Seal)**