

APPEAL NO. 18-13592-EE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

DREW ADAMS,
Plaintiff-Appellee,

v.

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

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

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

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IN THE 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,

Jacksonville, Florida

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

Plaintiff,

December 11, 2017

vs.

9:05 a.m.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,

Courtroom No. 10D

Defendant.

BENCH TRIAL
(VOLUME I OF III - REDACTED)
BEFORE THE HONORABLE TIMOTHY J. CORRIGAN
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

December 11, 2017

9:05 a.m.

- - -

COURT SECURITY OFFICER: All rise. The United States District Court in and for the Middle District of Florida is now in session. The Honorable Timothy J. Corrigan presiding. Please be seated.

THE COURT: Good morning. We're here today for the trial of the case of *Adams versus the School Board of St. Johns County, Florida*. The case is 3:17-cv-739.

Can I go ahead and get appearances, please, starting with the plaintiffs.

MS. ALTMAN: Good morning, Your Honor. Jennifer Altman from the law firm of Pillsbury Winthrop Shaw Pittman on behalf of the plaintiff.

MS. BORELLI: Good morning, Your Honor. Tara Borelli with Lambda Legal & Defense Education Fund, also on behalf of the plaintiff.

MS. DOOLITTLE: Good morning, Your Honor. Kirsten Doolittle on behalf of the plaintiffs. And with us are our clients Drew Adams and Erica Kasper.

MS. RIVAUX: Good morning, Your Honor. Shani Rivaux with the Pillsbury law firm as well on behalf of the plaintiff.

MR. LAPOINTE: Good morning, Your Honor. My name is Markenzy Lapointe on behalf of the plaintiff, also from the

1 same law firm.

2 MR. CAREY: Good morning. Daniel Carey, trial tech
3 for the plaintiff.

4 MR. HARMON: Terry Harmon, Your Honor, Sniffen &
5 Spellman, P.A., on behalf of the school board of St. Johns
6 County.

7 MR. SNIFFEN: Good morning, Your Honor. Rob Sniffen,
8 Sniffen & Spellman, P.A., Tallahassee, on behalf of the
9 defendant school board.

10 MR. KOSTELNIK: Good morning, Your Honor. Kevin
11 Kostelnik, I'm at the same law firm, on behalf of the
12 defendant.

13 MR. FORSON: Tim Forson, superintendent, St. Johns
14 County School District.

15 MR. BARDEN: Good morning, Your Honor. Chris Barden
16 admitted pro hac vice for the defendant.

17 MR. SLANDER: Jeff Slander, Your Honor, Sniffen &
18 Spellman, support for the defendant.

19 MR. WILEY: Trae Wiley, paralegal assistance, Sniffen
20 & Spellman on behalf of the defendant.

21 THE COURT: All right. Well, welcome, everyone. Did
22 I catch everybody?

23 So we're here today for trial of this case. And in
24 preparation for that trial, I've received quite a bit of paper
25 from you-all. I have reviewed all the pleadings that were

1 given to me. I cannot tell you that I've read all 500 pages of
2 the exhibits and so forth, but I -- I'm familiar with them.
3 But I did read all the pleadings.

4 So I read the proposed findings from both sides.
5 I've read the *Daubert* motions. I've read the motions and
6 responses regarding the amicus issue, which I'm going to kind
7 of put off for now. I'll decide that later.

8 And so I feel like -- and then I've also read a good
9 amount of the case law, primarily the cases cited by the
10 parties in their findings of fact and conclusions of law. And
11 I understand from our pretrial conference that we -- that I
12 spent most of the day trying to make sure we were joined on the
13 issues.

14 I'm not sure we're entirely joined, but I felt like
15 after reading the findings of fact that you both proposed
16 that -- that I could see where everybody was going. We'll see
17 what you actually decide to do, but -- but I felt like your
18 findings -- both sides' proposed findings were well done and
19 helped me to kind of set the table for where we're going in the
20 case.

21 Because of that, I don't feel like we need opening
22 statements. We talked about that last time, and so I'm going
23 to be proposing we go straight into the evidence this morning.
24 I do have a couple of preliminary matters before we get
25 started.

1 First of all -- and I didn't think, Ms. Altman, to
2 talk about this at pretrial, but -- I know Mr. Adams is the
3 plaintiff in the case. And, of course, he is welcome to be
4 here the entire trial. But I know he's missing school.

5 And it would be fine with me if he -- if he just
6 testified whenever he's going to testify and then goes back to
7 school. It's not going to affect the way I think about the
8 case. We don't have a jury here.

9 So that -- I'll leave that up to you-all. I want to
10 be clear that he's welcome to be here the entire time, but I
11 certainly am not requiring it, and it may be that he feels like
12 his time is better spent attending to his studies. And so I'll
13 let you-all make those decisions.

14 MS. ALTMAN: We appreciate that, Your Honor.

15 THE COURT: Okay. All right. And, secondly, I
16 haven't made a final decision on this, but it is possible I
17 might want to do a site visit, meaning I want to actually see
18 what these facilities look like and get a better feel for it.
19 And so -- and this is a preliminary -- I just want to kind of
20 alert the parties that I'm thinking about that.

21 I was kind of thinking if I did go out there, it
22 would be better if I went during the holiday break so that I'm
23 not disrupting the students. So I looked at some possible
24 dates.

25 One date I looked at as a possibility would be --

1 because I looked at your schedule, your calendar to see when
2 you were in session and when you were out, one date that I
3 looked at was -- that was also available to me was January 3rd
4 at 11:00 or 11:30 in the morning. I would think I would not be
5 out there more than an hour for sure.

6 That is just a proposed date. We can talk about it
7 later. I just wanted to throw it out there and make sure
8 everybody is thinking about it.

9 And just so everybody is comfortable, I do not need
10 all this. I would only need one lawyer from each side and a
11 school official that can show us around. That's all I would
12 need. It would not be on the record or anything. We wouldn't
13 be making arguments. It would just be literally my law clerk
14 and I being shown the various facilities that we're talking
15 about in this case and getting a feel for what the school looks
16 like and the facilities themselves.

17 So I'm going to ask -- at some reasonable point I'd
18 ask the lawyers for each side to talk to each other and, of
19 course, Superintendent Forson, or whoever would need to make
20 those arrangements.

21 If that January 3rd date works, that's great. If it
22 doesn't work, we can try to come up with another one.

23 As I said, I thought it would be better if that visit
24 occurred while the students weren't in session so I wouldn't
25 disrupt them at all.

1 MS. ALTMAN: Your Honor, before you move on, can I
2 just give a footnote that might inform what you do in that
3 regard?

4 THE COURT: Yeah.

5 MS. ALTMAN: I think we thought that that would be
6 important. We did do a videotaped session of Drew doing the
7 actual walk from each of his classes with the exception of
8 first period because he doesn't typically use the facilities.

9 At that point in time, walking from his classroom,
10 identifying where the boys' restroom is and continuing to walk
11 and going through to the gender-neutral restrooms, and we do
12 have video of that --

13 THE COURT: Okay.

14 MS. ALTMAN: -- for the court. And perhaps the court
15 wants to see that. We are intending to use some of it in our
16 case, and that may inform whether or not you want to do that.

17 THE COURT: Okay.

18 MS. ALTMAN: So I wanted to let you know that.

19 THE COURT: That's fine. I probably still want to go
20 out there, but I appreciate that. But I'll -- none of that is
21 finalized, but I'm going to ask y'all to confer with each other
22 about that possibility.

23 Third thing is, are the parties invoking the rule of
24 sequestration in this case or not? We may have talked about
25 this last time, but I couldn't remember.

1 MS. ALTMAN: We did not, but the plaintiff is.

2 THE COURT: Okay.

3 MR. HARMON: Yes, Your Honor.

4 THE COURT: All right. Then I'm going to ask you to
5 instruct your witnesses that -- other than the parties
6 themselves, who are always welcome to be here, that the -- if
7 you're going to be a witness in the case, you can't be watching
8 the trial or talking about your testimony with anybody until --
9 until after you've testified. And so I'll ask you both to
10 instruct your parties in that way.

11 And, now, I cannot recall -- maybe we talked about
12 it, but did we establish whether that's going to apply to
13 experts or not?

14 MS. ALTMAN: We didn't talk about it, but we do
15 have -- and I think we did talk about we have an informal
16 agreement with the defendant or formal agreement, depending on
17 your perspective, with respect to Dr. Ehrensaft, who is being
18 taken out of order --

19 THE COURT: Okay.

20 MS. ALTMAN: -- and that she will not be present in
21 the courtroom or hear testimony relating to that. But other
22 than that, we have not discussed it.

23 THE COURT: All right. I don't know if any of your
24 experts are here or you intend to have them sit in the trial or
25 don't intend them to, but we need to have a rule and it will be

1 the rule.

2 Mr. Harmon, what's your view of it?

3 MR. HARMON: Our two potential experts are not going
4 to be here today and may not be here tomorrow. But if they do
5 arrive, we may want them to sit in.

6 THE COURT: Okay.

7 MR. HARMON: They may choose not to, though.

8 THE COURT: I generally don't invoke the rule as to
9 experts. So if everybody is happy to have their experts come
10 and go, that's fine with me.

11 Is that all right with you, Ms. Altman, or not?

12 MS. ALTMAN: Yeah. So our other expert is testifying
13 via a deposition that was preserved, but we don't have an issue
14 with respect to the defendant's.

15 THE COURT: Okay. Very good.

16 Okay. Those were the matters, the preliminary
17 matters that I wanted to discuss.

18 Ms. Altman, do you have any preliminary matters that
19 you wish to address at this time?

20 MS. ALTMAN: We do have some preliminary matters,
21 Your Honor. I think Kirsten is going to start us off with
22 that.

23 THE COURT: Okay.

24 MS. DOOLITTLE: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. DOOLITTLE: One preliminary issue concerns the
2 plaintiff's witnesses. We had designated as may-call witnesses
3 the corporate representative for the defendant. And just to
4 give a little bit of context on the order of that -- and the
5 issue, rather, is that the defendant is objecting to our use of
6 their 30(b)(6) deposition transcripts and entering those into
7 evidence or portions thereof.

8 We filed our joint pretrial on November the 29th in
9 which we listed the 30(b)(6) witnesses as may-call witnesses.
10 On the 30th, we actually took the depositions of the
11 defendant's two corporate representatives.

12 THE COURT: And who were they?

13 MS. ALTMAN: Ms. Mittelstadt and Mr. Upchurch, Your
14 Honor.

15 THE COURT: So Mr. Upchurch is a lawyer, right?

16 MS. DOOLITTLE: He is, Your Honor. And the
17 defendants had listed him as a potential witness in the case.

18 THE WITNESS: Okay. So you took a -- you took a
19 corporate deposition of Mr. Upchurch as the representative of
20 the St. Johns County School District?

21 MS. DOOLITTLE: That's who they put up as their --
22 one of their two corporate representatives to testify as to
23 certain topics.

24 THE COURT: And what about Ms. -- is it Mittelstadt,
25 you said?

1 MS. DOOLITTLE: Yes, Your Honor.

2 THE COURT: What was her area of discussion?

3 MS. DOOLITTLE: Ms. Mittelstadt's topics were topics
4 about the policy, the best practices policy and the guidelines,
5 as well as some of the communications.

6 THE COURT: Okay. So you want to call them or do you
7 want to use their depositions as evidence?

8 MS. DOOLITTLE: Your Honor, we would be happy just to
9 submit designations from their deposition transcripts.

10 THE COURT: Okay. And you're saying the --

11 MS. DOOLITTLE: The defendant has objected to that,
12 yes, Your Honor.

13 THE COURT: All right. Mr. Harmon, what's your
14 objection?

15 MR. HARMON: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. HARMON: The objection is just the timing of it.
18 We received, I believe, I apologize if I'm a few hours off, I
19 think at 6 p.m. last night, a list of page and line numbers
20 from the corporate representative deposition, so just we have
21 not had an opportunity to --

22 THE COURT: Well, why don't you -- you want to just
23 bring them in and have them testify and ask the questions you
24 want to ask them?

25 MR. HARMON: I think that goes into another issue

1 that -- about the corporate representative testimony today that
2 you may hear, but -- I guess I'll just launch into it.

3 Another issue we've got is Friday afternoon, Friday
4 about 4 o'clock, plaintiff's counsel said it was either going
5 to utilize deposition transcript testimony without any
6 identification of page, line or was going to call Mr. Upchurch
7 and Ms. Mittelstadt as a witness.

8 We advised them, I think it was either Saturday night
9 or Sunday morning, that we don't know who our corporate
10 representatives are going to be on certain topics because the
11 plaintiff's counsel hasn't given us any indication of what
12 areas of testimony they want a defendant's corporate
13 representative to testify on.

14 Long short story, our corporate representative
15 subpoena designating the areas of discussion for trial, the
16 topics, was e-mailed to us at 6:30 last night and Mr. Upchurch
17 and -- Mr. Upchurch at least was served by a process server at
18 his house at 6:50 this morning.

19 So it would have -- my objection wasn't that we're
20 not going to hear testimony from Ms. Mittelstadt and
21 Mr. Upchurch. We plan on calling them in our case in chief.
22 My concern was not knowing what areas of inquiry plaintiffs
23 wanted from our corporate representative. And it would have
24 helped us to be able to identify who that might be had we
25 received it before the night of trial.

1 THE COURT: Okay. Thank you.

2 MR. HARMON: Thank you.

3 THE COURT: Ms. Altman, you get about 45 seconds and
4 them I'm going to tell you what we're going to do.

5 MS. DOOLITTLE: Thank you, Your Honor.

6 THE COURT: I'm sorry, Ms. Doolittle. So what's
7 going on here? None of this is making much sense to me. Why
8 are you last-minute subpoenaing people and so forth?

9 MS. DOOLITTLE: Well, Your Honor, we asked --
10 consistent with the court's instruction to provide the
11 defendant with the names of the witnesses we would be putting
12 on --

13 THE COURT: Right.

14 MS. DOOLITTLE: -- we included those witnesses in our
15 notice to the defendant on Friday. We asked the defendant if
16 they would agree to accept service for those witnesses since
17 they were objecting -- service of the -- of the subpoenas and
18 they denied -- they rejected that. They said they wouldn't
19 accept service for them.

20 With respect to the --

21 THE COURT: You know, this really isn't very
22 interesting to me. None of this is, really. None of this is
23 very interesting to me. Okay? So here's what's going to
24 happen. They're going to come in. They're going to testify.
25 You're going to cross-examine them. We're not going to use

1 their depositions except for impeachment and that's the way
2 it's going to be.

3 Now, when that happens, I don't much care. I really
4 don't.

5 Are you going to call them anyway?

6 MR. HARMON: Yes, Your Honor.

7 THE COURT: All right. They're going to call them.
8 You can cross-examine them.

9 All right. What's next?

10 MS. DOOLITTLE: Thank you, Your Honor.

11 THE COURT: What's next? Anything else?

12 MS. DOOLITTLE: I'm sorry, Your Honor.

13 (Counsel confer.)

14 MR. LAPOINTE: Your Honor, we have one minor
15 evidentiary issue. Once again, good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. LAPOINTE: You know, we submitted to defendant
18 yesterday a set of pictures, three pictures of the plaintiff
19 that we want to use during his direct examination.

20 THE COURT: They are pictures of him?

21 MR. LAPOINTE: Yes, when he was a baby, that sort of
22 thing.

23 THE COURT: Okay.

24 MR. LAPOINTE: And we asked the defendant would you
25 please allow us to use those without any objection. Now, we

1 recognize at the time those were late disclosures, and as much
2 as the exhibit list was submitted 10 days or 14 days ago. Of
3 course, we -- we feel, Judge, this is such a minor issue, not
4 the kind of stuff we should be bringing before the court --

5 THE COURT: I kind of agree with that. So what's --
6 what's the problem? They don't want you to do it and you want
7 to do it?

8 MR. LAPOINTE: They don't want us to do it.

9 THE COURT: I tell you what. When he's testifying
10 you introduce them and -- try to introduce them, and if they
11 want to object, they will, and I'll make a ruling. How about
12 that?

13 MR. LAPOINTE: I appreciate that, Your Honor.

14 THE COURT: All right. Good. What's next?

15 MS. ALTMAN: That's it, Your Honor.

16 THE COURT: Okay. Anything from the defendant?

17 MR. HARMON: No, Your Honor.

18 THE COURT: All right. Who is your first witness?

19 MS. ALTMAN: Your Honor, the plaintiff is calling
20 Dr. Thomas Aberli.

21 MR. HARMON: Your Honor, may I raise a question?

22 THE COURT: Yes.

23 MR. HARMON: We are cognizant that the party in this
24 case is a minor.

25 THE COURT: Yes.

1 MR. HARMON: And I just wanted to ask that in this
2 particular proceeding -- plaintiff's parent is a material
3 witness. And since the rule has been invoked, we would ask, if
4 possible, that the nonparty not be present when others are
5 testifying.

6 THE COURT: Yeah. I'm not going to do that. I'm
7 going to let the mother sit next to her son. I don't think her
8 testimony is going to change one bit just because she's sitting
9 there.

10 All right. Go.

11 COURTRROOM DEPUTY: Do you solemnly swear that the
12 testimony you are about to give before this court will be the
13 truth, the whole truth, and nothing but the truth, so help you
14 God?

15 THE WITNESS: I do.

16 COURTRROOM DEPUTY: Please state your full name and
17 spell your last name for the record.

18 THE WITNESS: Thomas Anthony Aberli, A-b-e-r-l-i.

19 COURTRROOM DEPUTY: Thank you, sir.

20 **THOMAS ANTHONY ABERLI, PLAINTIFF'S WITNESS, SWORN**

21 **DIRECT EXAMINATION**

22 BY MS. ALTMAN:

23 Q. Good morning, Dr. Aberli. Are you employed?

24 A. Yes.

25 Q. Where?

1 A. With Jefferson County Public Schools.

2 Q. And how large of a student population is that, the school
3 that -- well, let me back up.

4 What is your position with the Jefferson County
5 schools?

6 A. I'm -- I became the principal of Atherton High School in
7 2010. I'm currently on an interim assignment at Highland
8 Middle School since August of 2016, and I'll return to full
9 operational capacity at Atherton in July of this summer.

10 Q. Is it correct that you're currently the principal at both
11 schools?

12 A. Yes.

13 Q. How large is the student population at Atherton High
14 School?

15 A. We're almost at 1500 right now.

16 Q. Can you describe your administrative experience with the
17 Jefferson School District?

18 A. Sure. Well, I guess I have a bachelor of science in
19 education in '97, a master of science in '98, and a doctorate
20 in the educational leadership studies in 2010.

21 I was a -- I was a teacher in Trimble County, which
22 is tobacco farmland about an hour outside of Louisville, for
23 three years. Then I was an assistant principal at South Oldham
24 High School, which is about 20 minutes outside of Louisville, a
25 suburb outside of Louisville.

1 And then from 2001 to 2007, I became the assistant
2 principal of Atherton High School, right in the center of
3 Louisville, in 2007. Then I became principal in January of
4 2010 of Atherton High School.

5 Q. Do you have any appointments by the governor?

6 A. Yes. I was appointed to a couple of committees and task
7 force. I was appointed to the school curriculum assessment and
8 accountability committee by the governor for two years.

9 I was appointed to a bullying prevention task force
10 for one year, in which we provided recommendation on
11 legislation on bullying prevention. I've also been on a
12 principals' advisory committee to the commissioner of education
13 for several years.

14 Q. Do you hold any other positions --

15 THE COURT: I'm assuming Louisville, Kentucky, is
16 what you mean, right? I don't know if you said -- is it
17 Louisville, Kentucky?

18 THE WITNESS: Yes. Sorry.

19 THE COURT: That's all right.

20 BY MS. ALTMAN:

21 Q. What is the Site-Based Decision Making Council?

22 A. Per Kentucky Revised Statutes, per KRS, each school in
23 Kentucky has a policy-making governing body. And our SBDM
24 council, Site-Based Decision Making Council, is actually twice
25 the size required by law. So it's 12 members, so it would be

1 six teachers, four parents, and two administrators.

2 Q. And are you part of that council?

3 A. Yes. I'm the chairperson.

4 Q. And how long have you been on that council?

5 A. I became chairperson when I became principal in January of
6 2010.

7 Q. And you're still the chairperson today?

8 A. Yes. Not -- not of Atherton. Of Highland Middle School.
9 Currently the interim principal of Atherton would be the
10 chairperson.

11 Q. Does Atherton High School have a policy on which restroom
12 a transgender student should use?

13 A. We do.

14 Q. What is that policy?

15 A. The policy states that students use the facilities of
16 their gender identity.

17 Q. Does that policy apply to other sex-segregated facilities
18 like locker rooms?

19 A. It does.

20 Q. When was the policy implemented?

21 A. It was adopted by the council in June of 2014.

22 Q. Was there an interim policy or procedure prior to that?

23 A. There was.

24 Q. And when was that implemented?

25 A. In -- for maybe six weeks prior to the adoption of that

1 policy, I had to make a decision on how to respond to an
2 individual's request. So prior to the adoption of the policy
3 by the council, it fell within my responsibility and authority
4 to have to make a decision unilaterally, so to speak. And,
5 therefore, after some -- after what I felt like was judicious
6 research and investigation, I made the determination that it
7 was my responsibility to accommodate the transgender --
8 transgender students in accordance with their gender identity.

9 THE COURT: Does the policy require the student to
10 use the facility of their gender identity?

11 THE WITNESS: It requires all students to use the
12 facilities of their gender identity, yes. It says "students
13 will use."

14 BY MS. ALTMAN:

15 Q. If a student requested --

16 THE COURT: So it's kind of the opposite of the
17 policy here which requires --

18 THE WITNESS: I'm not familiar with --

19 THE COURT: Well, the policy here is it requires
20 students to use the facility of their, quote, biological sex
21 they were born with.

22 So your policy actually requires them -- a
23 transgender person to use the facility that they identify with
24 in their gender?

25 THE WITNESS: Yes. And that's actually been a -- can

1 I comment on that?

2 THE COURT: Yeah. Sure.

3 THE WITNESS: So through this process, the Site-Based
4 Decision Making Council had brought in what we considered
5 knowledgeable experts on -- to properly inform us so we could
6 make an informed decision. And we actually looked at three
7 different policies. One at the end that we eventually adopted,
8 which we called the L.A. Unified School District policy --
9 because basically a L.A. Unified School District representative
10 contacted me and said, look, you don't have to reinvent the
11 wheel. If you're going to go this direction, here's what you
12 can model it after.

13 An organization called Alliance Defending Freedom,
14 which I understood to be an advocacy organization, they
15 contacted me and stated, look, we don't agree with this policy;
16 we present this policy instead.

17 Which is what you're talking about, a biological sex
18 policy.

19 The third policy would be you just leave it as it is
20 which states, well, the principal determines use of school
21 space.

22 BY MS. ALTMAN:

23 Q. If a -- either a transgender student or a non-transgender
24 student came to you and didn't feel comfortable using the
25 restroom associated with their gender identity, what would you

1 do?

2 A. I mean, if any student comes to me saying they're not
3 comfortable with something, I would first talk with them to
4 understand why they're not comfortable.

5 Then I would also seek -- try to consider in what
6 ways can I provide reasonable accommodations for that
7 individual. And that's actually what our policy states is that
8 any individual wishing to seek increased privacy may request
9 it.

10 THE COURT: Do you have gender-neutral bathrooms as
11 well, or not?

12 THE WITNESS: How do you define gender neutral? Like
13 at your home?

14 THE COURT: Well, unisex that you can use. In other
15 words, a private bathroom --

16 THE WITNESS: A single stall?

17 THE COURT: -- that anybody can use.

18 THE WITNESS: No, sir, we don't have -- we have two
19 single-stall restrooms in the front office that are male and
20 female.

21 BY MS. ALTMAN:

22 Q. And those restrooms, to the extent that a student, again,
23 whether transgender or not transgender, wanted that additional
24 privacy, the school would make that accommodation for them to
25 use those facilities?

1 A. Yes, in accordance with the policy, yes.

2 Q. Has Atherton had any issues implementing its policy?

3 A. No, not internally. Only people wishing to learn more
4 through communicating with us.

5 Q. Were you involved in the development of that policy?

6 A. Yes.

7 Q. What was the catalyst for you and for the Site-Based
8 Decision Making Council to develop a written policy?

9 A. Yeah, that's -- where does the story begin?

10 So the Friday before spring break -- it was in the
11 afternoon. And the Gay-Straight Alliance sponsor came into my
12 office, interrupting my phone call to my wife about -- we were
13 traveling to Destin that afternoon, and said -- shut the door
14 and said, I want to talk with you about something.

15 MR. KOSTELNIK: Your Honor, I'm going to object to
16 hearsay.

17 THE COURT: Yeah. What are we doing here?

18 MS. ALTMAN: I want the court to understand the
19 context in which the issue first arose.

20 THE COURT: Well, maybe he can just tell us without
21 this whole conversation and close the door and all that.

22 How did it come up?

23 THE WITNESS: Okay. Sorry.

24 So the Gay-Straight Alliance sponsor for the school
25 notified me that we have a transgender student preparing to

1 transition. And since I was not familiar with those -- with
2 transgender besides it being the T on the end of LBGT, I had to
3 do research during spring break, which is why I mentioned it
4 was the Friday.

5 BY MS. ALTMAN:

6 Q. What year was this?

7 A. 2014.

8 Q. And you mentioned that you -- you had not been confronted
9 with this before. To your knowledge, were you aware of any
10 other transgender students at the school prior to that time?

11 A. Not to my knowledge.

12 Q. Had you been confronted with addressing restroom or
13 sex-segregated facilities relating to transgender students
14 prior to that time?

15 A. No.

16 Q. So what did you do when you became aware that there was a
17 student that was going to be transitioning at Atherton?

18 A. Well, the first thing I did was pick up the phone and call
19 our district's general counsel and asked if the district has a
20 policy on this issue.

21 And she said no, but that she had some information --
22 I believe she had -- she told me she had recently gone to a
23 school attorney's conference and had some articles I might be
24 interested in. She -- I believe she e-mailed me those
25 articles --

1 MR. KOSTELNIK: Your Honor, I'm going to object to
2 hearsay again.

3 THE COURT: Overruled.

4 Go ahead.

5 THE WITNESS: She e-mailed me those articles. And I
6 printed them off and read through them over the course of the
7 next week, trying to define what this issue or concept was, and
8 get an understanding of how it -- gender identity and what is
9 transgender in the way -- how has it been approached by the
10 courts, how is it being approached in the business world, how
11 is it being defined.

12 BY MS. ALTMAN:

13 Q. Can you describe for the court your individual -- we'll
14 get to the Site-Based Decision Making Council in a minute --

15 A. Okay.

16 Q. -- but can you describe for the court your individual
17 journey with respect to educating yourself and informing
18 yourself about the issue with respect to transgender use of
19 restroom facilities?

20 A. Okay. I mean, my personal path involved multiple levels
21 of explorations. I promise I won't get longwinded in any
22 narratives, but, you know, the first thing I did was have to
23 understand what is this issue or this concept of gender
24 identity and being transgender and is it real.

25 Now I look back and think that's pretty offensive to

1 look at it that way, but is being transgender a real thing?
2 And, you know, the way -- the only information I had to really
3 explore that was how was it being approached by professional
4 organizations or the government by way of court cases or, say,
5 through reading this article, the International Olympic
6 Committee or the NCAA.

7 They were all addressing it maybe in different ways,
8 but everyone was talking about this thing of gender identity
9 and this concept of transgenderism; that there are individuals
10 who identify with a gender that's opposite of the sex that they
11 were assigned at birth.

12 So through that research and reading that article and
13 then communicating with -- I believe I communicated with the
14 general counsel of JCPS, my district, as well as the general
15 counsel of the Kentucky Association of School Administrators,
16 you know, talking with them about, you know, how has this been
17 addressed -- not only in schools, but how has it been addressed
18 in the business world.

19 So what I came to a realization was -- even though
20 I -- I'd had really very little to no experience with
21 transgender people, and very limited experience with any of the
22 LGBT community, that -- I had a general understanding of LGBT
23 in the schools and students, but, you know, now having a
24 concept that was very foreign to me of -- of individuals, and
25 particularly students, who were identifying as a gender

1 opposite of what's on their birth certificate.

2 So my personal, professional exploration on this
3 really had me have to have conversations with people in the
4 community, people on my staff, to talk with them and to ask
5 them uncomfortable questions, you know, what is it that you
6 understand that -- I asked one of the -- a gay staff member --
7 an openly gay staff member, can you tell me what you understand
8 about what it means to be transgender, how is transgender
9 different than these other things that I've heard about in
10 movies or TV shows, to help me understand how to frame this
11 concept.

12 You know, when I'm reading these court cases -- and
13 what I found was --

14 MR. KOSTELNIK: Objection. Narrative, Your Honor.

15 THE COURT: That's okay. Go ahead and ask another
16 question.

17 BY MS. ALTMAN:

18 Q. Did you draw any personal conclusions -- before we get to
19 what the Site-Based Decision Making Council did, did you draw
20 any personal conclusions -- you started with sort of the
21 premise of you had to figure out whether being transgender was
22 a thing. Did you draw any personal conclusions about being
23 whether transgender was a thing?

24 A. Yes.

25 Q. And what was your conclusion after your research that you

1 described in court to the court?

2 A. Based on the court cases that were listed in that 2012
3 article "*Which Way to the Restroom?*" published by the National
4 School Board Association, Council of School Attorneys, as well
5 as a recent court case in Maine in January of 2014, which was
6 just a few months beforehand; prior to that, there was one in
7 Colorado, and prior to that, Arcadia School District in
8 California, I had made the determination that -- I came to the
9 understanding that being transgender was a real thing that the
10 school would have to respond to.

11 Q. Did you draw any conclusions, again, as the principal as
12 opposed to on behalf of the Site-Based Decision Making Council,
13 with regard to whether or not gender identity was a thing you
14 would have to respond to?

15 A. Yes.

16 Q. And what was your understanding or conclusion that you
17 drew?

18 A. Based on my understanding of the -- the decisions in the
19 courts that had been made up to that time, they were respecting
20 the rights of transgender individuals in accordance with their
21 gender identity. And, therefore, it was my responsibility to
22 act in accordance as well.

23 Q. So if I understood your testimony earlier, you said that
24 you created first, for about four to six weeks, an informal
25 procedure that you had the authority as a principal to do? Did

1 I understand you right?

2 A. Yes. In absence of district or local school policy, this
3 fell into the realm of the other myriad of thousands of
4 decisions that I would have to respond to and had authority to
5 make.

6 Q. And so as an initial matter, you made the decision to
7 allow transgender individuals to use sex-segregated facilities
8 associated with their gender identity. Is that accurate?

9 A. That is accurate. And if I may elaborate on what I just
10 said as well.

11 You know, I'd been in consultation with our
12 district's general counsel, with the district administration
13 above me. There are actually three people above me. My
14 immediate supervisor was an assistant superintendent. His
15 supervisor was a chief academic officer. And then, of course,
16 the superintendent of the schools.

17 And, basically, through that multi-week process,
18 two-, three-week process, in which I was kind of doing my own
19 fact-finding -- their determination was that in absence of
20 district policy, this was a local school decision to make in
21 how I respond to it.

22 Q. Was this issue also presented to the Site-Based Decision
23 Making Council?

24 A. Yes.

25 Q. And if I say "council," just so I don't have to say so

1 many words, will you accept that I'm referring to the
2 Site-Based Decision Making Council?

3 A. Yes.

4 Q. Okay. So did you make a decision to present the issue to
5 the council?

6 A. Yes.

7 Q. Why?

8 A. Because --

9 THE COURT: Tell me who they are again.

10 THE WITNESS: Right. So our -- the way our state
11 works is at a school level, there's -- of course, there's a
12 principal who makes the daily operational decisions. The
13 policy-making body for the school, though, as far as school
14 policies, they're all developed, required to be developed
15 through a council of parents, teachers and administrators. And
16 ours was a 12-member council, a 12-member panel of 6 teachers,
17 4 parents and 2 administrators.

18 THE COURT: And that's school specific? It's just
19 for that school?

20 THE WITNESS: For every school in Kentucky with very
21 rare exceptions. But specific to our school is we're twice the
22 size -- minimum size required. Instead of the 6-member council
23 with proportionate representation, we're a 12-member council.

24 BY MS. ALTMAN:

25 Q. And you're the chairman of that council, correct?

1 A. Chairperson.

2 Q. Chairperson.

3 Can you describe for the court why it is you
4 presented the issue to the council if you had the authority as
5 the principal to establish the procedure?

6 A. Yeah. I realize that many in our community are probably
7 starting at ground zero like I was, having very little to no
8 knowledge or the wrong knowledge about what it meant to be
9 transgender. I wanted -- I feel like I've developed a trust
10 relationship with our community through my communication. I've
11 had very high approval ratings as far as the trust in my
12 leadership on our school culture surveys.

13 And I felt like -- even though at the moment, because
14 of the immediacy -- it was a unilateral decision I had to make
15 because it was my responsibility.

16 I also wanted to bring it before our school council
17 and our school community in a way that could get multiple
18 players involved in decision-making, including a decision that
19 may counter my original conclusion.

20 So in talking with the district's general counsel,
21 because I'm trying to figure out how do I -- how do I talk
22 about this with our school community in a way that's not
23 violating the -- violating the child's rights, violating their
24 FERPA rights.

25 And, you know, until -- in talking with the general

1 counsel, we thought, you know, if we looked at this from a
2 standpoint of use of school space, which essentially it is, we
3 could bring this before the council in a general sense and not
4 about this individual kid, what are you doing.

5 Because the council doesn't have a right to deal with
6 individual discipline or sanctioning or control of an
7 individual child, but they do have -- they are a policy-making
8 body that can govern how things operate in the school.

9 Q. Was the steps that the council took to evaluate and openly
10 adopt a policy, was that transparent?

11 A. I did everything that I could think of to be as
12 transparent and open about it as possible. And with as much
13 media attention as it got, I think it definitely proves that it
14 was.

15 My first step in trying to communicate with our
16 community -- well, my first step in communicating on this issue
17 was with the parents.

18 So after a few weeks of my own investigation and
19 research and determination, I brought the parents in, and the
20 child, and said, you know, so what is it what you're looking
21 for, what is it you're asking -- where are you in this
22 transition phase, which was a new terminology for me as well.
23 And, you know, what are the types of things you're asking for.
24 And it's pretty simple.

25 MR. KOSTELNIK: Objection. Narrative.

1 THE COURT: Overruled.

2 THE WITNESS: The child was simply -- the child and
3 the family were just saying, look, I just want to be called by
4 my pronoun, the proper pronoun with which I identify. I want
5 to be called the name of which I identify. And I want to use
6 the facilities of my gender identity.

7 And maybe a little more emotionally, she was like,
8 when you announce birthdays, I want you to announce my real
9 name, that sense of validation of recognizing me for who I am.

10 So communicating with the family, then -- all right.

11 So then --

12 BY MS. ALTMAN:

13 Q. That was the first thing you did after that spring break?

14 A. After the -- after the --

15 Q. The research?

16 A. -- after the two or three weeks after my own research,
17 determination, communication with the district and general
18 counsel, yes.

19 Q. So then you met with the family, correct?

20 A. Yes.

21 Q. And then what happened? What was the next step you took?
22 Maybe we can just go incrementally. What was the next thing
23 you did?

24 A. Yes, ma'am. So after understanding the family's wishes
25 with regards to recognizing the child in accordance with their

1 gender identity, again, in recognizing gender identity and
2 being transgender as a real thing, that means this child who
3 identifies as female, so a transgender female is being -- will
4 be treated as a female in all respects and expected to act in
5 accordance with their gender identity.

6 So my next step was to communicate with the child's
7 teachers and go, look, we have a child who is transitioned,
8 here's what this means, and they're -- the child is requesting
9 to be referred to by the feminine pronoun.

10 And I'll be 100 percent honest with you, that was
11 awkward and uncomfortable for me, as well as the parents, you
12 know, during that time frame.

13 We're all kind of talking. And, you know, they're
14 kind of flip-flopping back and forth, because it's a -- it's a
15 paradigm shift in your head of getting this -- getting ahold of
16 this idea that -- you know, to recognize this child for who
17 they identify as, we're having to change something that we were
18 thinking about originally.

19 So I talked with the teachers of that child. From
20 there, talking with our whole staff. So during the next
21 faculty meeting, which I believe was like the following Tuesday
22 after these initial communications, providing
23 some informational training to our staff on this is -- this is
24 LBGT, here's what the T stands for in LBGT, and this is what it
25 means to be transgender.

1 And I had the Gay-Straight Alliance sponsor who
2 originally brought me that information be the one to present
3 that.

4 Q. Did you reach out to the community at large and certainly
5 your school-based community?

6 A. My next step in -- after I started communicating with the
7 faculty and saying at -- starting this coming Monday, you know,
8 I want you to understand that from here forward, this child
9 will be recognized as female in all respects as every other
10 female would.

11 And that was very mind-bending for all of us. And it
12 was -- it required a lot of understanding and reflection and
13 development of this process among our teachers and our staff,
14 that recognizing this child in accordance with their gender
15 identity, respecting all children in accordance with their
16 gender identity, allowing them -- allowing this child as well
17 as every other child to operate in our school in accordance
18 with their gender identity.

19 So it kept coming back to the global picture, you
20 know, how do we treat all children, not just how do we treat
21 this one child. And with this one particular child at the
22 time, you know, the -- the reason we really had to think about
23 it is they were transitioning, going from one gender identity
24 to -- or going from one sex assigned at birth and the way we
25 recognize this child to recognizing in accordance with their

1 gender identity.

2 Q. Do you have a gender identity?

3 A. Yes, ma'am.

4 Q. Okay.

5 MR. KOSTELNIK: Objection. Relevance.

6 THE COURT: Sustained.

7 BY MS. ALTMAN:

8 Q. Was there a point at which you reached out to the parents
9 in the community, parents of students that were in the school?

10 A. I'm sorry. Would you say that again?

11 Q. Yeah. Did you reach out to the parent community of the
12 parents to students at your school?

13 A. Right. So that's where I was going with that. So after
14 talking with our school faculty -- because I'm allowed to
15 communicate with our faculty, because they're in a position of
16 knowledge. They're interacting with this child. They're in
17 the school building.

18 So, you know, I'm allowed to talk to them about it.
19 But I can't just go send an e-mail going, Hey, you know, this
20 child is all of a sudden going to be, you know, doing something
21 that may upset you, kind of thing.

22 So I met with our district's general counsel and
23 said, so, you know, how -- how can I approach it so it's not a
24 unilateral decision? I don't like the fact that it's solely
25 me. And that's where we came with the -- you know, how can we

1 bring it before the council? And under Kentucky revised
2 statutes --

3 THE COURT: Ms. Altman, excuse me a second.

4 Just one second.

5 If we could -- this is interesting testimony. I'm
6 happy to have it. But we need to kind of move it along a
7 little bit. So let's ask some targeted questions and let's go.

8 THE WITNESS: I'll be more targeted with my answers.

9 THE COURT: Thank you. I appreciate that.

10 THE WITNESS: I know what you're getting at. So I
11 ended up sending a letter to our community. I e-mailed the
12 letter on a Sunday. I handed it out on a piece of paper on a
13 Monday or Tuesday.

14 And during that time frame, there was a Monday Board
15 of Education meeting. So a representative from Alliance
16 Defending Freedom, who was speaking on behalf of -- who stated
17 he was speaking on behalf of our -- of one or two of our
18 families, had stated, We want the Board of Education to
19 intervene on this principal's decision. And that's when it
20 kind of hit the media and became much more covered.

21 BY MS. ALTMAN:

22 Q. So without expanding too much, can we at least walk the
23 court through the specific steps that the Site-Based Decision
24 Making Council, the council who took to evaluate the issue; who
25 they heard from, what they considered, what things they did,

1 and then I'll go through specifically with you the policy
2 itself.

3 A. Right. So the first step -- we had a regularly scheduled
4 meeting coming up and the first step in that letter that I
5 communicated to the community was saying, look, we have an
6 upcoming SBDM council meeting. I want to let you know that
7 we're covering health and wellness policy and this kind of
8 stuff and also reviewing our use of school space policy and we
9 will be discussing the -- the potential addition of a
10 nondiscrimination statement within our use of school space
11 policy to address the issue of gender identity in our schools.

12 So this is my way, as a principal making a unilateral
13 decision, to try to expedite the process real fast and saying,
14 Look, I'm going to put this in your -- in the public eye of our
15 community and put it within the authority and the
16 decision-making of our council to come together collectively
17 and say what they -- what our collective or majority opinion
18 would be on this.

19 Q. Did the council hear from parents in the community?

20 A. Yes. So part of that letter that I sent out was a
21 narrative survey, not a, you know, vote on the survey, but
22 here's information we have regarding gender identity. If you
23 would like to provide feedback to the council, please respond.

24 So when I sent that e-mail out just to our school
25 community, before it hit all the media, over a couple of days,

1 I think I got maybe 30, 40 responses, you know, both people
2 with questions and people supporting it and people just going,
3 I need to learn more about this.

4 When it hit the news media and that letter got linked
5 to social media and everything and it ended up going all around
6 the world because -- I know that because my foreign exchange
7 students that my family's hosted starting replying to it and
8 being part of the survey response -- it provided that
9 opportunity for multiple perspectives to be -- to be
10 understood.

11 Q. And were -- did individuals both pro and con physically
12 and verbally present to the council?

13 A. Yes. So the -- our first step was to meet in a -- in a
14 regularly scheduled meeting. And during a regularly scheduled
15 meeting, our bylaws allowed --

16 THE COURT: So, Ms. Altman, let me interrupt one more
17 second here.

18 MS. ALTMAN: Yes, sir.

19 THE COURT: So this testimony is designed to show me
20 that -- this school went through a process and created a policy
21 that's consistent with what you're advocating for. And I
22 assume the second part of that testimony is going to be that,
23 at least based on what you've submitted to me, that whatever
24 fears there were about it, they haven't materialized. That's
25 what I got out of what you sent to me.

1 And I'm interested in hearing that. I'm not
2 necessarily interested in hearing all the ins and outs about
3 the details of how that all came about. I mean, it's
4 interesting, but -- you could just say, well, somebody else
5 went through another process and came to a different
6 conclusion. And so I guess I just want to make sure that we're
7 staying on point here.

8 MS. ALTMAN: Yeah. I would only add one third thing
9 to the court's bases for the testimony. The third bases would
10 be the same purported concerns that the defendant raised in
11 this case are the same concerns that were raised in this -- in
12 Dr. Aberli's case and other cases.

13 THE COURT: So I get the impression that there was a
14 community process, they arrived at a conclusion, and I'm happy
15 to hear about it. I don't mean I'm not. I just -- we just
16 need to kind of not be so much in the weeds on this specific
17 every step as to how this came about.

18 MS. ALTMAN: Fair enough.

19 THE COURT: So if you could target some questions and
20 ask them and get answers, that would be great. Thank you.

21 MS. ALTMAN: Sure. Sure, Your Honor.

22 BY MS. ALTMAN:

23 Q. So in addition to hearing from parents, both positive and
24 negative, just -- without identifying the substance, can you
25 identify for the court what other evidence the council listened

1 to or received in connection with evaluating what position to
2 take?

3 A. Certainly. So our first step was ultimately creating a
4 nondiscrimination statement and isolated policy that simply
5 recognized gender identity. And at that time, we decided we
6 needed a lot more fact-finding to make any policy that governed
7 how that applies to use of school space.

8 So we went into special called meetings -- special
9 called fact-finding meetings because by that time, with the
10 amount of attention I received -- see, up to that point, I
11 didn't have a lot of information to go off of, but now I was
12 receiving communications from lawyers on both sides of the
13 story, with parents, as well as psychologists and everything
14 else.

15 So in talking with the council, we created an open
16 forum -- all our councils meet in open forum. We had three
17 lawyers come and present, I believe it's 20 minutes each, where
18 basically the question was what information do we need to know
19 with regard to your perspective on gender identity.

20 We had one lawyer from Alliance Defending Freedom who
21 was opposing our -- the policy that ultimately got adopted and
22 was presenting a contrary policy.

23 We also had the general counsel from the Kentucky
24 Association of School Administrators who just kind of was
25 saying there's no real law of the land right now and right now

1 it falls within district or council's authority to make that
2 decision.

3 And just expediting the process, we had -- we had
4 parents who opposed the policy speak so that they had a voice
5 before the council.

6 Ultimately, jumping forward a few weeks, our -- after
7 hearing that information, our council voted to adopt -- fully
8 adopt the nondiscrimination statement policy and voted ten to
9 one in favor of the policy that we ultimately adopted with
10 regard to use of restrooms and school facilities.

11 Q. And that policy is still in effect today?

12 A. Yes.

13 Q. Have there been any issues implementing the policy?

14 A. No.

15 Q. And without going, you know, into each specific instance,
16 can you identify for the court the concerns, if any, that were
17 raised from those who were opposing the policy?

18 MR. KOSTELNIK: Objection. Hearsay.

19 THE COURT: I'll allow it, briefly.

20 THE WITNESS: Right. So the general -- the main
21 concerns -- I mean, I don't think there's any secret here
22 people are talking about, well, is it safe, is there a safety
23 issue and are you violating my child's right to privacy.

24 So that's something I had to explore through my
25 personal research on this as well, you know, and what does it

1 mean "a right to privacy"?

2 What does it mean -- you know, when I was digging
3 into that, what does it mean as far as, you know, bodily
4 integrity, our self-determination of one's self and one's
5 exposure.

6 So those are things that -- every time I looked at
7 it, I was trying to think of how do I apply common sense to
8 this relatively uncommon issue, or uncommon for me, at least,
9 and presenting it -- dealing with our community, as relatively
10 uncommon to most people I was interacting with.

11 So, you know, our approach to that kept looking at it
12 from a big picture; how do we treat all children, not how do we
13 deal with this one kid, but how do we treat all children with
14 regard to --

15 MR. KOSTELNIK: Objection.

16 THE COURT: Ms. Altman, ask a question, please.

17 MS. ALTMAN: Yes.

18 BY MS. ALTMAN:

19 Q. What did you determine with respect to the privacy
20 concerns that were raised?

21 A. Say it again, please.

22 Q. What did you determine with respect to the privacy
23 concerns that were raised? What was your conclusion?

24 A. That the right to privacy applied equally to the
25 transgender children as well as cisgender children as well as

1 any other protected category, and that the same logic and
2 reasoning that was being applied to oppose this policy was
3 equally applied and more so to implement the policy so that
4 we're respecting the rights of these individual children in our
5 school building.

6 Q. What conclusions did you draw with respect to the concerns
7 that were raised vis-à-vis safety?

8 A. Yeah. You know, I deal with school safety every single
9 day. And on this particular issue, I'm thinking in what way
10 will this provide any more potential for violation of safety
11 than exists any other day with or without this policy.

12 So when it comes down to respect -- to acknowledging
13 that transgender children are the -- the -- recognized by their
14 gender identity, it's the -- the same logic would apply to the
15 transgender child as well as the cisgender child.

16 Q. Just to sort of short-circuit or truncate one thing, is
17 the policy you adopted posted anywhere?

18 A. It's posted on our website.

19 Q. And what about the evidence that the council considered?

20 A. We posted everything that the council was reviewing in
21 consideration of this policy, including -- all the survey
22 results are posted -- still posted on our website. They were
23 immediately and they have been ever since, including all the
24 appeals, the -- from the attorneys, the Alliance Defending
25 Freedom attorney, you know, their positions, their

1 perspectives, as well as the -- the appeals process went
2 through three levels. It went through the school council and
3 then it also went through --

4 MR. KOSTELNIK: Objection. Narrative.

5 THE COURT: Overruled. Let's go.

6 Go ahead.

7 THE WITNESS: It went through the local school
8 council in June. It went -- it went through the
9 superintendent, who responded saying, you know, this is within
10 the purview of the school council. But then it was also
11 appealed to a higher level which was a -- a council policy
12 appeals board, which is required by law. And that -- that
13 council consisted of representatives of the teachers union, of
14 the parent organization, several other kind of like union
15 representatives. And their determination also was that this
16 fell within the council's authority and that it did not pose
17 a -- it did not pose an infringement on individuals' rights to
18 privacy or safety.

19 BY MS. ALTMAN:

20 Q. Do you think the policy that was adopted provides a
21 special -- do you think of it as providing a special
22 accommodation for transgender students?

23 A. No. And that's not the way we talked about it throughout
24 that process. It's not the way I look at it. We always look
25 at it as how do we treat all children with regards to their

1 gender identity. We all have a gender identity. How do we
2 treat all children in accordance with their gender identity.

3 Q. In thinking about the policy today, do you believe that
4 allowing transgender students to use a restroom associated with
5 their gender identity is the right decision?

6 MR. KOSTELNIK: Objection. Improper opinion.

7 THE COURT: I'll go ahead and let him answer it. I'm
8 not sure -- are you offering that as an expert opinion? Is it
9 his personal opinion? It -- what am I supposed to do with it?

10 MS. ALTMAN: I'll ask the question --

11 THE COURT: I'm assuming he's going to say it's a
12 good policy.

13 MS. ALTMAN: I'll ask the question differently.

14 THE COURT: All right.

15 BY MS. ALTMAN:

16 Q. Has the council taken any action to reconsider the policy
17 that was adopted?

18 A. No.

19 Q. I know we just spoke about the privacy concerns and the
20 security concerns. One just final point I want to put on that.

21 Can you advise the court whether or not the council
22 actually considered those concerns?

23 A. Yes. There was discussion and reflection on them.

24 Q. On privacy concerns?

25 A. Yes.

1 Q. And on security concerns?

2 A. Yes. In fact, the -- during the -- the -- during the
3 district level appeals it was, I believe, the PTSA president
4 who said based on the information we have, we clearly believe
5 that the school will act to protect the rights of all students
6 and if there were any concerns that arose from the
7 implementation of this policy, that the -- that the
8 administration has the authority and responsibility to act on
9 it.

10 Q. Do you think community value should be considered or
11 factor into the ultimate result?

12 A. Yeah. I mean, I -- I had a parent tell me -- when we were
13 calling the policy the L.A. Unified School District policy
14 simply because basically we took their district policy and
15 turned it into a school-level policy, I was told, you know, if
16 we wanted California law, we would move to California.

17 And, you know, my response to that is, you know, the
18 respect and right and dignity of individuals in California is
19 the same as in Kentucky as it is in Florida or Tennessee or any
20 other Southeastern Conference state. So it's -- it has to do
21 with how we apply -- apply this logic, this common sense to all
22 people.

23 THE COURT: I didn't recognize that the Southeastern
24 Conference was a recognized region of the country, although --

25 THE WITNESS: The most important one.

1 THE COURT: -- having grown up in Florida and you in
2 Kentucky, I guess I can understand it.

3 THE WITNESS: Thank you, sir.

4 BY MS. ALTMAN:

5 Q. How did the policy that was adopted accommodate the
6 privacy interests of non-transgender students?

7 A. I'm sorry. Would you ask it again?

8 Q. Yes. How did the policy that was adopted accommodate the
9 privacy interests of non-transgender students?

10 A. The same way it accommodates the privacy interests of any
11 student who came to us with -- potentially would come to us and
12 say, look, I'm not comfortable with a situation.

13 You know, you have children who may not be
14 comfortable because of their body type of not changing in a
15 communal area or using the restroom in a communal area and you
16 do what you can to provide reasonable accommodations based on
17 that request.

18 What you don't do, though, is compel other people to
19 behave a different way because they make someone else feel
20 uncomfortable. And that was really at the core of what our
21 council was exploring, is the difference between accommodation
22 and discrimination.

23 If I compel someone else to act differently because
24 of my comfort or my perspective, we would be discriminating
25 against them.

1 However, if I had anybody come to me and say, look,
2 you know, I don't feel comfortable changing in a communal
3 locker room and I would like to request some type of
4 accommodation so that I -- to accommodate that right to
5 privacy, then we would look at it, look at our facilities and
6 say, what's -- what's something that's reasonable -- a
7 reasonable accommodation that we could provide to accommodate
8 your discomfort?

9 Q. What would happen if a -- whether the person is
10 transgender or non-transgender, if a person was improperly
11 exposing themselves, whether it's in a restroom or in a locker
12 room? Is there a procedure in place to deal with that?

13 A. Yeah. And if you'll give me just a moment to let me go
14 through my thought process on this, because, you know, I --
15 when you go into the restroom, it's not an issue where people
16 are exposing their genitalia. It's not been my experience that
17 that's the case. I've not had people come to me and say that's
18 the case.

19 However, that's been proposed as a philosophical
20 scenario in which I would say -- if anybody is exposing
21 themselves in a common area, then that's a disciplinary issue
22 that I can deal with. You know, it's actually covered under
23 Kentucky revised statutes under indecent exposure.

24 So, you know, I could address a disciplinary
25 infraction, and even implement a restriction of facility use,

1 based on the -- based on that disciplinary infraction. But
2 what I can't do is anticipate the possibility of something
3 happening and, therefore, create restrictions on people so that
4 others don't potentially have something -- potentially have
5 discomfort.

6 Q. Has there been a significant cost in implementing the
7 policy?

8 A. No. I think the only thing we spent -- I probably spent
9 about \$30 on some -- some curtain rods from Walmart, just to
10 make sure that it -- in the girls locker room -- I hadn't
11 actually been in the girls locker room before.

12 So during this process I talked with our PE teacher
13 and I said, look, are girls -- are they exposed throughout --
14 through this PE process, you know, changing and everything.

15 And she's like, Not -- it's not been our experience.
16 You know, we wish kids would shower --

17 MR. KOSTELNIK: Objection. Narrative.

18 THE COURT: Overruled.

19 THE WITNESS: We wish kids would shower. You know,
20 they go to PE, they get all sweaty, and then they wipe
21 themselves down with paper towels and stink the rest of the
22 day.

23 But, you know, the reality of -- and that's what I
24 keep coming back to, is what is the reality of our dealing with
25 these situations in a practical way in the school building.

1 And it has to do with -- it came back to, you know,
2 exposure is really not an issue that you deal with normally in
3 a restroom.

4 So if it did become an issue, you deal with it as you
5 deal with -- you deal with that child as you would deal with
6 any child who's exposing themselves in that restroom area.

7 BY MS. ALTMAN:

8 Q. Has there been any issues with someone pretending to be
9 transgender to get access to a particular restroom?

10 A. No. And that's -- that is a point of discussion that our
11 council had of, you know, will this just eliminate gender
12 altogether, you know, will boys be using girls' restrooms and
13 vice versa, and this policy all of a sudden just breaks down
14 those walls. And that's not at all what this issue is about.

15 You know, gender identity emphasizes the idea that --
16 that people identify as male and female. So it -- it
17 reinforces this idea of having gender-segregated areas and
18 allowing people to use those -- use those areas in accordance
19 with their identity.

20 Q. Have you had any issues with any transgender students
21 exposing themselves improperly in any of the sex-segregated
22 areas?

23 A. No.

24 Q. In your mind, is a -- giving a transgender person access
25 to a gender-neutral facility or a single-stalled

1 facility sufficient?

2 MR. KOSTELNIK: Objection. Relevance.

3 THE COURT: What's your question again?

4 MS. ALTMAN: My question is -- and I can rephrase

5 it -- is providing a transgender person access to a

6 gender-neutral facility sufficient?

7 THE COURT: Yeah.

8 MS. ALTMAN: I can ask it --

9 MR. KOSTELNIK: I'm not really sure what the
10 witness's expertise in that would be or --

11 MS. ALTMAN: I'll ask it differently.

12 BY MS. ALTMAN:

13 Q. Did the Site-Based Decision Making Council consider
14 whether or not gender-neutral restrooms were an adequate
15 accommodation?

16 A. Yes, we did.

17 Q. And what -- can you describe the process of what you
18 considered and what your conclusion was?

19 A. I can tell you through the process that I've already
20 described we came to the determination that expecting a
21 child -- or compelling someone to use a gender-neutral facility
22 as an accommodation rather than allowing them to use the
23 facilities of their gender identity completely negates the
24 original determination our council made and that is gender
25 identity is a real thing and that boys use the boys' restroom

1 and girls use the girls' restroom and they're expected to do so
2 accordingly.

3 MR. KOSTELNIK: Objection. Improper opinion.

4 THE COURT: Overruled.

5 THE WITNESS: And I won't go into narrative, then. I
6 was just going to say, if someone told my son -- I have a
7 12-year-old son.

8 If someone told my son that because you make other
9 people uncomfortable -- you know, because of his faith or
10 because of his race -- he makes other people feel
11 uncomfortable, so you're going to use this separate area,
12 what's that telling him about the value of himself, and what's
13 that telling the school community about the way we treat those
14 individuals?

15 BY MS. ALTMAN:

16 Q. What if a transgender student would prefer to use a
17 gender-neutral restroom?

18 A. I'm sorry?

19 Q. What if a transgender individual requested to use a
20 gender-neutral or single stall --

21 A. We would accommodate that individual as we would anybody.

22 Q. As part of the analysis, did the council consider whether
23 or not transgender individuals are part of a vulnerable
24 population?

25 A. Part of the fact-finding presentations did -- one of the

1 presenters was from the Louisville youth group, which was a
2 support network for students of LBGT. And they did discuss how
3 LBGT youth are particularly vulnerable populations to suicide,
4 to harassment and to vulnerability within school.

5 Q. And if they -- if part of the evidence that you heard was
6 that they are a vulnerable population, why not require them to
7 use a gender-neutral restroom or a single-stall facility so
8 they would be safe?

9 MR. KOSTELNIK: Your Honor, I'm going to object to
10 lack of foundation and asking for an improper opinion.

11 THE COURT: I'll overrule.

12 THE WITNESS: Does that mean I can answer it?

13 MS. ALTMAN: Yes.

14 THE WITNESS: Would you repeat the question one more
15 time, to make sure I got it right?

16 BY MS. ALTMAN:

17 Q. Yes. If I heard you correctly, some of the evidence that
18 you heard from various sources at the council was that
19 transgender individuals are a vulnerable population.

20 And my question was: Did the council consider
21 whether or not, in order to keep that vulnerable population
22 safe, just put them in single-stall facilities or
23 gender-neutral facilities?

24 A. Yes, we did.

25 Q. And what was your conclusion?

1 A. Well, I'll tell you my professional conclusion prior to it
2 going before the council, because I did reflect on this issue
3 as well, it's my responsibility to provide for the safety of
4 every single child in this school. So I'm not going to say
5 that because I'm scared that I can't provide for the safety of
6 a child that I'm going to force them to do something different
7 than every other child who identifies as they would otherwise
8 do.

9 So when our council was looking through our
10 fact-finding, we had no evidence that indicated that that had
11 been an issue lead -- at our school or really anywhere had been
12 an issue leading up to -- leading up to this decision that it
13 was the responsibility of the school administration to
14 implement school safety procedures for the transgender child as
15 they would for a cisgender child or any child.

16 Q. Would a -- did the council consider whether or not a sex
17 assigned at birth policy would treat everyone equally?

18 A. Yes. That was one of the policies presented by the
19 Alliance Defending Freedom.

20 Q. And what did you conclude? What did the council conclude?

21 A. We concluded that the sex assigned at birth designation
22 basically went back to the foundation -- denying the foundation
23 of what -- what gender identity means and what being
24 transgender meant; that a transgender girl is a girl in all
25 respects and treated as a girl in all respects and a

1 transgender boy accordingly as well.

2 Q. And did the council at the end of the day come to the
3 conclusion that the policy it adopted balanced the rights of --
4 the privacy rights and the rights of transgender students as
5 well as non-transgender students?

6 MR. KOSTELNIK: Objection. Leading.

7 THE COURT: Rephrase, please.

8 MS. ALTMAN: Sure.

9 BY MS. ALTMAN:

10 Q. How did the council balance the interests of transgender
11 students, if it did, the interests of transgender students and
12 non-transgender students in reaching its policy?

13 A. We continually kept coming back to applying common sense
14 to a relatively uncommon issue and how does this thought
15 process and how do these procedures apply to all children in
16 general.

17 So, yes, we considered -- when it comes to all
18 children, whether cisgender or transgendered -- how does this
19 procedure assure for their safety, for their right to privacy,
20 for their dignity, for -- respecting their right to operate
21 within our school in accordance with their identity.

22 MS. ALTMAN: Thank you.

23 I have no further questions, Your Honor.

24 THE COURT: Cross-exam?

25 MR. KOSTELNIK: Thank you, Your Honor.

CROSS-EXAMINATION

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BY MR. KOSTELNIK:

Q. Good morning, Dr. Aberli.

A. Good morning, sir.

Q. Is it A-berli or Ab-erli?

A. A-berli.

Q. A-berli. Okay. Got it right.

How many schools are in the Jefferson County school district?

A. Approximately 176, I believe.

Q. Okay. How many students are enrolled in Jefferson County?

A. I believe about 110,000.

Q. And less than 10 of those schools have enacted a transgender bathroom policy; is that correct?

A. I'm not aware of the number.

Q. You don't know how many other schools in your county have enacted a similar policy as Atherton High School?

A. No. I know there are other schools that have because my son attends one of them.

Q. And the actual school district, Jefferson County, does not have a transgender bathroom policy; is that correct?

A. Correct. It has a nondiscrimination statement that includes gender identity, and that occurred a year after this.

Q. And does that nondiscrimination statement also include the term "sex"?

1 A. For the district, I'm not -- I'm not certain.

2 Q. Well, how about for Atherton High School, they have a
3 nondiscrimination policy, correct?

4 A. Correct.

5 Q. And in that policy, they distinguish between "sex" and
6 "gender identity," do they not?

7 A. I would have to look at the statement if you have it.

8 Q. So I want to talk about the Site-Based Decision Making
9 Council for a minute. Can I just call it "the council"? Is
10 that okay?

11 A. Yes.

12 Q. The council is local to each school; is that correct?

13 A. Yes.

14 Q. Is because they're in the best position to address the
15 issues that arise at the school?

16 A. Well, it's because it's law.

17 Q. Okay. You said you looked at some cases involving issues
18 of transgender bathroom use; is that correct?

19 A. Yes, sir.

20 Q. Did you look at every single case that's ever been tried?

21 A. No.

22 Q. Okay. And you also said in your direct testimony that you
23 had the responsibility to follow the cases you reviewed; is
24 that correct?

25 A. Say that one more time.

1 Q. You testified in direct, and I'm paraphrasing a little
2 bit, but you felt the responsibility to follow the court cases
3 that you reviewed.

4 A. To follow the court cases I reviewed. To use the
5 information that I learned from the court cases, yes.

6 Q. Okay. Did you review any court cases that found against a
7 transgender bathroom policy?

8 A. In the *"Which Way to the Restroom?"* article, the
9 determinations by courts that ruled against the transgender
10 individuals mainly applied in the business place, as I recall,
11 and had very specific circumstances behind it.

12 Q. Are you aware that now certain cases have been decided
13 that rule against transgender bathroom policies?

14 A. I'm not familiar with all the policies, no.

15 Q. While you were going through sort of the development of
16 the school space policy -- and that's Policy 500, correct?

17 A. It's the --

18 Q. The Atherton High School space policy.

19 A. Use of school space, yes.

20 Q. And that deals with the transgender bathroom use, correct?

21 A. Correct. And Policy 6 deals with the nondiscrimination
22 standard.

23 Q. Okay. Sounds like you were concerned about community or
24 local input; is that correct?

25 A. I guess to be specific to what you're saying, after

1 having -- make a determination on what my professional
2 responsibilities were, I was -- wanted to be very transparent
3 with our community in the decision I was making, and wanted to
4 provide parents the opportunity to communicate with me if they
5 had concerns.

6 In fact, I told my secretary -- if you don't mind me
7 going narrative for 10 seconds. I told my secretary, Look,
8 during those essential days, those first critical days, when it
9 was starting to hit the media, what -- when it was going to our
10 community, before it actually hit the media, that if anybody
11 calls, you get me, get me out of my meetings. I want to talk
12 immediately to people, because I want to be able to give them
13 direct access to me so that we can talk through it.

14 Q. Okay. You currently work at Highland Middle School; is
15 that correct?

16 A. Yes, sir.

17 Q. All right. And do they have a transgender bathroom
18 policy?

19 A. They do not.

20 Q. How many students approximately are at Atherton High
21 School?

22 A. Honestly, I think it's 1,475, give or take, right now.

23 Q. And you have two gender-neutral bathrooms for the entire
24 school; is that correct?

25 A. No.

1 Q. And how many do you have?

2 THE COURT: They don't have any.

3 THE WITNESS: Right, no gender-neutral bathrooms.

4 BY MR. KOSTELNIK:

5 Q. There are no gender-neutral bathrooms?

6 A. There are two unisex bathrooms, male and female, one
7 female and one male in the front office.

8 Q. So two single-user bathrooms?

9 A. Correct.

10 Q. Okay.

11 THE COURT: Well, let me make sure I'm understanding.
12 You said two unisex bathrooms, one female and one male. That
13 doesn't sound like -- so you're saying you've got a single
14 stall --

15 THE WITNESS: Female.

16 THE COURT: -- female and a single-stall male
17 bathroom in the office, and other than that, they're just what
18 you would consider traditional men's rooms or boys' rooms
19 and --

20 THE WITNESS: Communal, yes, sir.

21 THE COURT: Okay. Got it.

22 BY MR. KOSTELNIK:

23 Q. You'd agree with me that all students have a right to
24 privacy, correct?

25 A. Absolutely.

1 Q. And you'd agree with me that one of the reasons we
2 separate the bathroom based on girls and boys is to protect
3 those privacy rights, correct?

4 A. Absolutely.

5 Q. And you've actually suspended a few students for going
6 into the bathroom of the opposite sex; is that correct?

7 A. Absolutely, yes.

8 Q. We talked a little bit about the appeals process for the
9 school space policy, use of school space policy. That went up
10 to the highest level, is that my understanding, for the school
11 district?

12 A. Right.

13 Q. But that -- that appeal was only to determine whether or
14 not the school had the right to make that policy, not the
15 policy itself; is that correct?

16 A. Correct. It's not within the purview of the -- the policy
17 appeals board to make a determination whether or not they
18 agreed with the policy but whether or not it's within the
19 authority of the council to make it.

20 Q. And you were talking a little bit about input you got from
21 the school attorney. Do you recall that on direct?

22 A. Which one?

23 Q. The --

24 A. The district attorney or --

25 Q. The district attorney, yes.

1 A. -- the Kentucky school? There's a Kentucky Association of
2 School Administrators general counsel, which is a -- our state
3 organization. And then there's the general counsel for the
4 district as well.

5 Q. So for the district, was he the individual who told you
6 that this was an unsettled area of law?

7 A. She.

8 Q. She. Sorry.

9 A. Yeah. She communicated to me that we do not currently
10 have policy and that we have -- she referred me to the -- to
11 the "*Which Way to the Restroom?*" article, so -- it was the
12 Kentucky Association Administrators general counsel that said,
13 you know, there's -- as far as the -- specifically on this
14 issue, there's no law of the land, is the way he told us.

15 Q. Okay. And you chose, knowing that, to make a local
16 decision for your specific school; is that correct?

17 A. Would you say that one more time?

18 Q. You chose to make a decision as specific to your school,
19 correct?

20 A. I had a responsibility to make a decision.

21 MR. KOSTELNIK: One moment, Your Honor.

22 (Counsel confer.)

23 BY MR. KOSTELNIK:

24 Q. And I asked you a little bit earlier about Policy 6, the
25 nondiscrimination policy and whether they separate sex or

1 gender identity. Do you recall that?

2 A. I recall you asking me that.

3 Q. And you said you would need to review that; is that
4 correct?

5 A. I would like to see the policy if you're asking me to
6 comment on it.

7 Q. If I showed that to you, would that refresh your
8 recollection as to what was said in there?

9 A. It would, yes.

10 Q. And do you remember --

11 THE COURT: I wouldn't mind seeing it myself.
12 Everybody has been talking about it. Are you-all going to put
13 it into evidence or --

14 MR. KOSTELNIK: We were just going to use it to
15 refresh his memory, but we can put it up on the --

16 THE COURT: I just didn't know if anybody was going
17 to give it to me or if we're just going to talk about it.

18 MS. ALTMAN: I don't think it's on the exhibit list,
19 Your Honor.

20 THE COURT: Is it on yours?

21 (Counsel confer.)

22 THE COURT: I mean, aren't you putting forward this
23 witness with a policy? Wouldn't you want me to see what the
24 policy is? I mean, if you don't want me to see it, that's
25 fine, but...

1 MS. ALTMAN: We have it. It's just not on the --

2 THE COURT: It's not -- so you weren't planning to
3 put it into evidence? All right. I'm not going to tell you
4 how to try your case.

5 Go ahead, Counsel.

6 MS. ALTMAN: No, I mean, we -- just give us a second.
7 We just need what he was going to show him.

8 (Counsel confer.)

9 THE COURT: I mean, y'all are talking about 5 and 6
10 and 7 and 8, and I don't know what you're talking about.

11 (Counsel confer.)

12 THE COURT: Sometimes ignorance is bliss, but...

13 THE WITNESS: Your Honor, if I might say, you're more
14 than welcome to come to Atherton any day and talk to our kids,
15 walk around the school building. You said you wanted to do a
16 site visit.

17 THE COURT: I appreciate that.

18 THE WITNESS: I'm like come on out.

19 THE COURT: I appreciate that.

20 THE WITNESS: We've got some very articulate kids.

21 THE COURT: I've never been to Louisville.

22 THE WITNESS: Oh, yeah? Atherton is a great school.

23 THE COURT: I don't mean to throw everybody into a
24 tizzy. Go ahead and finish your exam. You can give it to me
25 later. And if you don't want --

1 MS. ALTMAN: We're just making sure we have enough
2 copies.

3 THE COURT: I understand you say it wasn't on their
4 exhibit list. I would have thought it would have been on
5 yours.

6 MS. ALTMAN: It is. It's Exhibit 63, but the Bates
7 stamp -- the issue is the Bates stamps are different.

8 MR. KOSTELNIK: I'm not planning on entering it, Your
9 Honor, if that helps.

10 MS. ALTMAN: Here you go. All right. So I have
11 these.

12 THE WITNESS: I already know what question he's going
13 to ask.

14 (Counsel confer.)

15 THE COURT: All right. Let counsel finish his
16 questions and then we'll figure it out.

17 All right. Go ahead, sir.

18 BY MR. KOSTELNIK:

19 Q. All right. If I showed you a copy of that policy, would
20 that refresh your recollection?

21 A. It would.

22 THE COURT: Sure, he gets to see it.

23 THE WITNESS: Oops, I'm dropping it. No, okay.

24 MS. ALTMAN: Here's one more.

25 MR. KOSTELNIK: Your Honor, would you like a copy?

1 MS. ALTMAN: That's only 500. That's not 6. I'll
2 get you 6.

3 MR. KOSTELNIK: I have 6.

4 THE COURT: Thank you.

5 BY MR. KOSTELNIK:

6 Q. Okay. Having reviewed that -- having had a chance to
7 review that, does the nondiscrimination policy separate the
8 term "sex" and "gender identity"?

9 A. It does.

10 Q. Okay. And we talked a little bit about Policy 500. Would
11 you be able to recall the definitions listed in that policy?

12 A. Yes. I would like to see it if I'm going to comment on
13 it.

14 THE COURT: Here it is right here.

15 THE WITNESS: Okay.

16 THE COURT: Is this it?

17 MR. KOSTELNIK: 500. Yes.

18 THE COURT: Here. Here you go. I didn't get to
19 finish it, but you go ahead.

20 THE WITNESS: Okay. Here. I think I know what he's
21 going to ask. I got into -- all I need is to visualize it to
22 see.

23 BY MR. KOSTELNIK:

24 Q. No problem.

25 How does Policy 500 define gender identity?

1 A. Thank you.

2 Q. No problem.

3 A. It defines it as: "A personal, internal, deeply rooted
4 identification as female, male or a nonbinary understanding of
5 gender regardless of one's sex assigned at birth. The
6 responsibility for determining an individual's gender identity
7 rests with the individual."

8 Q. And how does that policy define sex?

9 A. Sex: "The biological condition of or quality of being
10 female or male."

11 MR. KOSTELNIK: Okay. One moment.

12 (Counsel confer.)

13 BY MR. KOSTELNIK:

14 Q. So just so I'm clear, both of these policies separate the
15 term "sex" and "gender identity"; is that correct?

16 A. Right. And at the time when we were developing this
17 policy, if I -- I feel like the question allows me to be able
18 to be explicit in my answering of it that the sex means -- when
19 we were writing this, we understood it to mean sex assigned at
20 birth.

21 Q. Okay.

22 A. That, you know, when you talk about sex in a school
23 setting, you're talking about is it an "M" or an "F" on their
24 birth certificates.

25 MR. KOSTELNIK: All right. Nothing further. Thank

1 you.

2 THE COURT: Any redirect?

3 (Counsel confer.)

4 THE COURT: While she's conferring, can I ask you a
5 couple of questions?

6 So I have an Atherton High School -- it's not been
7 put into evidence, but I'm looking at it. It's an Atherton
8 High School school-based decision-making council policy.
9 Policy No. 6, nondiscrimination policy. And that was done in
10 May of 2014. Actually, it was -- it says council reviewed
11 without revision October 6, 2014. Does that mean that's when
12 it becomes effective?

13 THE WITNESS: No, sir. Every year -- we try to every
14 year review all of our policies. So simply stated, we reviewed
15 it and we sought consensus. Yes.

16 THE COURT: And then this school-based
17 decision-making council policy is No. 500 involving school
18 space. And it looks like it was done about the same time.
19 Why -- why is this one No. 6 and this one is No. 500? What --

20 THE WITNESS: The way we organize our policies. The
21 first -- the first single-digit policies are vision statements,
22 family, community involvement, things like that. Whereas,
23 other policies like 500 had to do with facilities.

24 THE COURT: And -- but were these done kind of
25 simultaneously to address this issue?

1 THE WITNESS: When we first met as a council and we
2 had -- kind of the explosion with community involvement and the
3 A team, parents and students and the community coming to speak,
4 that -- our original discussion was simply to be -- to talk
5 about gender identity and a nondiscrimination statement. And
6 that's where this is pulled out of.

7 So that's why you have the May 29th date as the first
8 reading. And by council policy -- and, actually, I think it's
9 under law -- you can't adopt a policy on its first reading. So
10 that's why you have to have two readings.

11 THE COURT: And all I'm really asking you was: Were
12 these done -- it looked like they were done right about the
13 same time.

14 THE WITNESS: Yes, sir.

15 THE COURT: Were these both an effort to address this
16 gender identity issue that you've been talking about?

17 THE WITNESS: Yes. Yes, yes.

18 THE COURT: All right. And my other question is a
19 different one, which is, you indicated that you had -- you have
20 had -- you disciplined students before if they went into the
21 wrong bathroom.

22 Was that -- did those incidents occur before the --
23 this policy, after this policy? Just give me about 30 seconds
24 of -- of the circumstances.

25 THE WITNESS: Sure. In the deposition, the question

1 was whether or not I had ever experienced that. I've had two
2 occasions, once about a decade before at a previous school and
3 I believe once -- and once at Atherton, in which you had a male
4 student who was arguing with a female student. They follow
5 them into the girls' bathroom. So that's clearly a violation
6 and being in an inappropriate area, an unauthorized area.

7 The third violation did occur after the adoption of
8 this policy. It had nothing to do with gender identity. It
9 was again another argument, peer conflict issue in which I
10 believe all students involved in those were suspended because
11 they knew they were not allowed in that area.

12 THE COURT: Have you had any such incidents that you
13 could connect to the transgender policy?

14 THE WITNESS: No, sir, not at all.

15 THE COURT: All right. Did you have more questions,
16 Ms. Altman?

17 MS. ALTMAN: No, Your Honor. We have no redirect.
18 But we'd like to -- since these were not on the exhibit -- we'd
19 like to move them into evidence as -- Policy No. 6 as
20 Plaintiff's Exhibit 146 and No. 500 as Plaintiff's Exhibit 147.

21 THE COURT: So they weren't on your exhibit list?

22 MS. ALTMAN: They weren't -- we -- yes, they were,
23 Your Honor, as Exhibit 63. The issue is that Exhibit 63 is
24 actually the unapproved version. It doesn't have those
25 signature blocks in the bottom. I can show you the difference.

1 So we would -- we can substitute it --

2 THE COURT: All right. Any objection to 146, 147,
3 Counsel?

4 MR. KOSTELNIK: No objection, Your Honor.

5 THE COURT: All right. I'll receive Policy No. 6 as
6 146. I'll receive policy No. 500 as 147.

7 (Plaintiff's Exhibits 146 and 147 received into evidence.)

8 THE COURT: Ms. Diaz, you'll need to do whatever it
9 is you do with those. Thank you.

10 MS. ALTMAN: Thank you, Your Honor.

11 THE COURT: All right. Anything else?

12 MS. ALTMAN: No. I'll just say we will make extra
13 copies today and bring them in so that there are additional
14 copies of those since we've admitted them.

15 THE COURT: That's fine.

16 Thank you for your time, sir. Appreciate it.

17 THE WITNESS: Thank you, sir. A pleasure.

18 MS. ALTMAN: Thank you, Dr. Aberli.

19 THE WITNESS: Thank you. Thank you.

20 MR. KOSTELNIK: Your Honor, can I get the copies back
21 from Dr. Aberli?

22 THE COURT: Yeah. Apparently they're valuable.

23 MS. ALTMAN: Can I have one?

24 THE WITNESS: Thank you. Appreciate it.

25 (Witness excused.)

1 THE COURT: All right. Who is the next witness,
2 please?

3 MS. ALTMAN: Your Honor, the plaintiff is going to
4 call Drew Adams.

5 THE COURT: All right. We'll go ahead -- we're going
6 to go ahead and get started with Mr. Adams. We'll probably
7 take a break at some point.

8 MR. LAPOINTE: Sure.

9 THE COURT: So I may have to interrupt you.

10 COURTRROOM DEPUTY: Do you solemnly swear that the
11 testimony you are about to give before this court will be the
12 truth, the whole truth, and nothing but the truth, so help you
13 God?

14 THE WITNESS: I do.

15 COURTRROOM DEPUTY: Please state your full name and
16 spell your last name for the record.

17 THE WITNESS: Drew Taylor Adams, A-d-a-m-s.

18 THE COURT: As a matter of fact, Counsel, would it be
19 better to go ahead and take a break now?

20 MR. LAPOINTE: Preferably, Your Honor.

21 THE COURT: Let's do that. All right. It's 10:30 --
22 10:35. We'll be in recess until 10 minutes to 11, so about 15
23 minutes, and we'll get started right then. Okay?

24 MS. ALTMAN: Thank you, Your Honor.

25 COURT SECURITY OFFICER: All rise.

1 (Recess, 10:34 a.m. to 10:53 a.m.)

2 COURT SECURITY OFFICER: All rise. This Honorable
3 Court is now in session. Please be seated.

4 THE COURT: I neglected this morning to get you-all
5 to introduce the exhibits as to which there's no objection and
6 what brought it back to my mind was the -- the discussion we
7 just had about these exhibits that were admitted.

8 So I'm not going to do that now because I know we
9 want to get to Mr. Adams' testimony, but I do -- I do want to
10 do that so that we can at least have it in evidence, the ones
11 everybody is not objecting to and then we can go from there.
12 So maybe we'll do that right after lunch or something, but...

13 All right. You may proceed.

14 MR. LAPOINTE: Thank you, Your Honor.

15 **DREW TAYLOR ADAMS, PLAINTIFF'S WITNESS, SWORN**

16 **DIRECT EXAMINATION**

17 BY MR. LAPOINTE:

18 Q. Good morning, Drew.

19 A. Good morning.

20 Q. How you doing today?

21 A. I'm good.

22 Q. Are you a little nervous?

23 A. A little bit.

24 Q. I want you to do me a favor. I want you to speak a little
25 bit louder. Okay?

1 A. Okay.

2 THE COURT: And we have water over there for you.

3 And if you need a break, just tell me. Okay?

4 THE WITNESS: Thank you.

5 THE COURT: All right. Go ahead.

6 BY MR. LAPOINTE:

7 Q. So once again, please state your full name.

8 A. Drew Taylor Adams.

9 Q. And how old are you, Drew?

10 A. 17.

11 Q. Where do you live?

12 A. [REDACTED].

13 Q. And do you go by Drew or Mr. Adams?

14 A. Whichever you prefer.

15 Q. All right.

16 THE COURT: And let me just -- obviously, he's 17.

17 But we have a rule in the court -- I'm going to call him

18 Mr. Adams because that's our rule. I don't care if you call

19 him Drew, though. That's fine. It probably makes him more

20 comfortable. That would be fine.

21 MR. LAPOINTE: I appreciate that, Your Honor.

22 BY MR. LAPOINTE:

23 Q. Drew, what do you do for a living?

24 A. I'm a student at Allen D. Nease High School.

25 Q. And Allen Nease High School, in what county is that?

1 A. St. Johns.

2 Q. And how long have you been in school at Nease?

3 A. Since my freshman year, so this is my third year.

4 Q. Before Nease, where did you go to school?

5 A. Landrum Middle School.

6 Q. And Landrum is where?

7 A. In St. Johns County.

8 Q. And prior to going to Landrum, did you go to any other
9 school before that in St. Johns County?

10 A. Yes. PVPV/Rawlins Elementary School.

11 Q. Now, we'll get back to your school in a little bit. I
12 want to talk about your family. Tell us about your mom and
13 dad. Who are they?

14 A. My mom is Erica Adams Kasper and my dad is Scott Adams.

15 Q. Now, starting with your dad, what does he do for a living?

16 A. He works on internet online businesses. He used to do a
17 lot of program stuff.

18 Q. Is that what he does now?

19 A. He does a lot of online businesses, business stuff. He
20 also gives some speeches sometimes.

21 Q. How about mom Erica, what does she do?

22 A. My mom does support work for my dad.

23 Q. Okay. Do you have any siblings?

24 A. Yes.

25 Q. And tell us about that.

1 A. My little brother, Carter.

2 Q. And how old is Carter?

3 A. He's currently 14. He'll be 15 in a couple of days.

4 Q. And does he have a job too?

5 A. He's a student.

6 Q. And where?

7 A. Nease.

8 Q. I want to talk a little bit about where you were born and
9 things like that.

10 Where were you born?

11 A. Near Orlando, Florida.

12 Q. And did you -- how long did you stay in Orlando after your
13 birth?

14 A. I was -- I moved to Texas when I was five.

15 Q. And when you say you moved to Texas, your entire family
16 moved to Texas?

17 A. Part of it. My mom moved to Texas a little bit before.
18 And then my dad, brother and I followed.

19 Q. And when you went to Texas, did you go to school there?

20 A. Yes.

21 Q. And what other schools you went there?

22 A. Stewart Elementary School.

23 Q. And how long did you stay in Texas?

24 A. For a couple of years. I moved back here when I was nine.

25 Q. So you moved to Texas and moved back at nine years old?

1 A. Yes.

2 Q. And when you moved back from Texas to Florida, did you
3 move back to St. Johns County?

4 A. Yes, St. Johns County.

5 Q. And what was the first school you went back to when you
6 came back to Florida?

7 A. PVPV/Rawlings.

8 Q. I want talk a little bit about your grades. What kind of
9 student are you?

10 A. I'm a very good student.

11 Q. What does that mean?

12 A. All As up until about middle school and then As and Bs.

13 Q. Do you have any plans as to what you want to be when you
14 grow up?

15 A. I want to be a doctor.

16 Q. Are you looking at schools right now?

17 A. A few.

18 Q. Which one are you looking at?

19 A. UF, UCF. My mom went to W&L, so I'm looking there.

20 Q. When you say UF, are you referring to University of
21 Florida?

22 A. Yes.

23 Q. Are you thinking about schools like Florida State
24 University?

25 A. Are you saying that because you went there?

1 Q. I'm just asking.

2 Let's talk about your relationship with mom and dad.
3 Please tell us what kind of relationship do you have. Let's
4 start with mom Erica.

5 A. A very good one, I think.

6 Q. Can you elaborate on that? Is she supportive? Is she --
7 tell us about that.

8 A. My mom is one of the biggest supporters of things that I
9 do and one of the biggest influences in my life.

10 Q. And how about in terms of -- when you don't do things
11 right, how does mom deal with that?

12 A. Usually with a stern talking to. Neither of my parents
13 are the yelling type, which I enjoy. But --

14 Q. I guess I should have asked you, you don't do anything
15 wrong anyway, right?

16 A. I can't say that.

17 Q. Now, Drew, are you a boy or a girl?

18 A. I'm a boy.

19 Q. You say that without any hesitation. Why do you believe
20 that?

21 A. I don't have to believe that. I know it with every fiber
22 of my being that I am a boy.

23 Q. And how long have you been a boy?

24 A. Since I came out of the womb.

25 Q. Well, when you were -- let's talk a little bit about when

1 you were born.

2 What was the sex assigned at birth by the doctor who
3 delivered you?

4 A. The doctor -- I've been diagnosed female.

5 Q. And are you familiar with the fact that you got a birth
6 certificate when you're born?

7 A. Yes.

8 Q. Do you know what sex was actually assigned on that birth
9 certificate?

10 A. Female.

11 Q. Do you challenge the fact that your birth certificate has
12 female on there when it was actually issued, your original
13 birth certificate?

14 A. No.

15 Q. Do you dispute the fact when you were born, the doctor
16 actually assigned female as your birth-assigned sex?

17 A. No.

18 Q. So as you sit here today, given the birth-assigned sex as
19 female, and given your birth certificate, what basis are you
20 asserting that you are a boy?

21 A. My gender identity is male. From as far back as I can
22 remember, I've not fit into girl stereotypes. I believe -- or
23 I am a boy, and I know that with every fiber of my being, even
24 if I wasn't aware of it at times.

25 Q. How do you deal with the fact that when you were born,

1 that you were born with certain parts that were identified with
2 being female?

3 A. Can you repeat the question?

4 Q. Well, you said despite -- you know, you've always known
5 that you were a boy. How do you process the fact that when you
6 were born, you were born -- the sex assigned to you was a
7 female? How do you reconcile that, you're saying you are an
8 actual boy?

9 A. Well, I mean, of course, I don't blame the doctor. He was
10 going based off of the external parts, I guess, doing his job,
11 but he was incorrect.

12 Q. Let me ask you a little bit about when you were growing up
13 as a child.

14 Did you wear girls' clothes or boys' clothes?

15 A. Well, define girls' clothes.

16 Q. As a child, did your mother and your parent -- your
17 parents, your family, did they buy you dresses or skirts?

18 A. I would almost flat-out refuse to wear dresses or skirts.

19 Q. And how did that play out with your mother when you
20 refused to wear skirts or dresses?

21 A. They bought me pants.

22 Q. And how about other people within the family structure
23 that weren't living with you, when they were giving you gifts
24 with respect to clothes? What kind of clothes would they give
25 to you?

1 A. Anybody who had spent any time with me knew that I was not
2 a feminine person and did not want feminine things.

3 Q. How about toys, what sort of toys did mom and dad give you
4 when you were a child? I mean when you were very, very young.

5 A. Usually I played with more masculine toys. I remember Hot
6 Wheels and airplanes and dinosaurs. I really liked dinosaurs
7 and still do.

8 Q. Are you saying you were never given a doll?

9 A. I was. The rare occasion I was given a girls' toy, it
10 would stay primarily in its toy box.

11 Q. Can you tell us any experience you had when you were given
12 a doll, what did you do with that doll?

13 A. I remember -- I don't remember specifically, but my mother
14 told me a story of when I had Barbie doll. I held her by the
15 feet and used her to dust the living room and refused to use it
16 as it was intended to be used.

17 Q. And after that experience, did mom give you a doll after
18 that?

19 A. Not that I recall.

20 Q. I know you brought some pictures with you today, a few
21 pictures. I want to show you what's been marked for
22 identification as Plaintiff's Exhibit 150.

23 THE COURT: Are these the ones that there was an
24 objection to? Are these the ones that there's an objection --

25 MR. LAPOINTE: That is correct, Your Honor.

1 THE COURT: Okay.

2 MR. LAPOINTE: This is for identification only, 150.

3 THE COURT: Okay. Are you going to put them into
4 evidence?

5 MR. LAPOINTE: Yes. I'm just going to go through --

6 THE COURT: All right. I'll let you identify them
7 and see if there's an objection and then I'll rule on it. Go
8 ahead.

9 MR. LAPOINTE: Your Honor, you've already indicated
10 we can approach without asking the court?

11 THE COURT: Yes, please.

12 BY MR. LAPOINTE:

13 Q. Drew, you have in front of you a set of photographs --
14 actually, I'm going to call it composite 150. You have
15 three -- is that three different photographs you have?

16 A. Yes.

17 Q. And I want you to take a look at them and let me know when
18 you're finished.

19 A. Okay. I'm finished.

20 Q. And what are those pictures of?

21 A. Me as a baby and as a child.

22 Q. And do those photographs fairly and accurately represent
23 what you were at that time they were taken?

24 A. Yes.

25 MR. LAPOINTE: Plaintiff offers Composite 150.

1 MR. HARMON: Just on relevance, Your Honor.

2 THE COURT: Overruled. They'll be received, 150.

3 (Plaintiff's Exhibit 150 received into evidence.)

4 MR. LAPOINTE: Go ahead and publish?

5 THE COURT: And I understand they were late
6 disclosed. And, you know, I'll try to be even-handed. If
7 there's something that y'all put in at the last minute that
8 it's not prejudicial to anybody, I'll let you do it, too. But
9 I don't see any problem with this. 150 is admitted.

10 Go ahead, sir.

11 BY MR. LAPOINTE:

12 Q. Drew, we have now the first paragraph that is up there, is
13 that you, Drew, the one on the left?

14 A. Yes.

15 Q. It brings a smile to your face?

16 A. Yes.

17 Q. It appears you may have not been fed right before that; is
18 that correct?

19 A. I can't speculate.

20 Q. Now, I want to direct you to the photograph at the bottom
21 right. And tell us about that photograph.

22 A. This was one year Halloween. I was a dinosaur.

23 Q. And tell us about -- what does that mean in terms of
24 you're in a dinosaur outfit versus other outfits you could have
25 worn?

1 A. Well, I really liked dinosaurs. Dinosaurs are seen as
2 more of a masculine thing. So I guess I wore more masculine --
3 I wore more masculine costumes.

4 Q. And at that stage in your life as a child, did your
5 parents support the fact that you preferred to actually wear
6 that sort of thing?

7 A. For Halloween, yes.

8 Q. Right.

9 I want to show you now what is on the top -- and Dan
10 is going to blow it up for me. And on the top, tell us about
11 your experience as a child when you were participating in
12 sports. Were you participating in sports with girls or with
13 boys?

14 A. Well, the teams were coed, but I was usually one of few
15 girls. So I played with almost entirely boys.

16 Q. All right. And was that consistent throughout --
17 throughout your time growing up?

18 A. Yes, although I didn't play sports for very long.

19 Q. Drew, given what we have here in terms of -- we talked
20 about your birth-assigned sex and then things you were wearing.
21 Did you find that strange?

22 A. Did I find what strange?

23 Q. Well, did you have an explanation for the fact that you --
24 you had -- you were born with a certain body part and then
25 everything else about you was inconsistent with that? Did you

1 have an explanation for that as a child?

2 A. I don't think I really consciously thought about it. I
3 just thought I'm Drew; I like these things.

4 Q. Now, let's talk about, you know, your body. We talked
5 about those body parts.

6 How have you felt about your body growing up?

7 A. Well, as a child, I didn't really care. My body is my
8 body and I will do what I want with my body to a certain extent
9 as much as I could as a kid. But then through puberty, I
10 started to hate every aspect of my body.

11 Q. When you say you hated every aspect, what in particular
12 did you hate and what about that part or thing that you hated?

13 A. Well, I hated my hips and my thighs. And looking back,
14 although I didn't really tie it to things that made me look
15 feminine, I only really hated strongly the things that made me
16 look more feminine; my hips, my thighs, my breasts.

17 Q. And when you say you hated those things, did you hate them
18 in an aesthetic fashion? Or did you hate them just the mere
19 fact they were female parts?

20 A. I hated how they looked on me or how they made me look.

21 Q. Did you discuss those feelings with your parents?

22 A. I believe at times.

23 Q. Okay. Did you discuss those feelings with others?

24 A. A few.

25 Q. All right. Did you ever discuss those feelings with any

1 medical or mental health professional?

2 A. Yes.

3 Q. And by mental health professional, what are we talking
4 about?

5 A. A therapist.

6 Q. And were your parents involved in that process?

7 A. In the process of getting therapy, yes.

8 Q. Right.

9 And what was the purpose of getting therapy?

10 A. I had been struggling with some anxiety and depression and
11 wanted therapy.

12 Q. And was there an explanation either from you or from the
13 therapist as to the source of your depression and anxiety?

14 A. Not a super concrete source. We -- I just assumed that --
15 I had done my research -- that I had a mental illness and I
16 just assumed I didn't really have any particular cause.

17 Q. And --

18 THE COURT: Counsel, could we establish a time frame
19 for when this therapy began?

20 MR. LAPOINTE: Sure. Yes, Your Honor.

21 BY MR. LAPOINTE:

22 Q. Please tell us, when did you actually -- did you first
23 seek therapy in connection to your anxiety and depression?

24 A. In February of 2015.

25 Q. And prior to that, you hadn't seen a therapist for that?

1 A. I had seen another therapist briefly in the previous
2 couple of weeks to try to find a therapist that was a best fit
3 for me.

4 Q. So just to be clear, then, for the record, so the very
5 first time, at least a year-wise, would have been 2015?

6 A. Yes.

7 Q. When you saw that therapist that one time, did you -- did
8 you see someone else afterwards?

9 A. Yes. I found a therapist that was a much better fit for
10 my personality.

11 Q. Okay. When you say you found one that was a much better
12 fit, when -- you said that I -- did that process involve your
13 parents as well?

14 A. Yes, strongly. I should have reflected that.

15 Q. And to be clear, when you were -- when those decisions are
16 being made with respect to who you were seeing in terms of the
17 therapist and the conversations with that therapist, who all is
18 involved in that process and conversation?

19 A. Me, my parents.

20 Q. And when you say your parents, between your mom and dad,
21 who is the person who went to these sessions or to visit with
22 these folks the most?

23 A. Usually my mom.

24 Q. Okay. With respect to -- was there any treatment
25 prescribed or anything like that to deal with your anxiety and

1 depression?

2 A. Yes. I was prescribed Zoloft.

3 Q. And did you -- did you take that treatment?

4 A. Yes.

5 Q. Does that treatment help you?

6 A. It did, yes.

7 Q. Did there come a time when you -- when you realized at
8 some point that you were transgender?

9 A. Yes.

10 Q. Okay. And did you understand -- first of all, what is
11 transgender?

12 A. Transgender, as I use the word, means my gender identity
13 is different from the letter that was written on my birth
14 certificate when I was born.

15 Q. How did you come up with finding out what that meant?

16 A. The internet, mostly. Research on the internet.

17 Q. Did you -- now, separate from having seen someone -- when
18 we're talking about a physical therapist -- in connection to
19 your anxiety and your depression, did you see any mental health
20 professional in connection to being transgender?

21 A. Yes.

22 Q. And who was that?

23 A. Which one?

24 Q. Well, let's start with the very first one that you've seen
25 and then we'll go to the next one.

1 A. Can you restate the question?

2 Q. Which was the first therapist or mental health
3 professional that you saw in connection with you being
4 transgender and your gender identity?

5 THE COURT: You mean the name of the person?

6 MR. LAPOINTE: The name of the person, I'm sorry.

7 THE WITNESS: I spoke -- I don't remember which came
8 first, but I told my therapist and I also saw briefly another
9 therapist that was supposed to have expertise in the field of
10 transgender individuals.

11 BY MR. LAPOINTE:

12 Q. Did there come a time when the diagnosis was made by one
13 of the mental health professionals?

14 A. Yes.

15 Q. And what was the diagnosis?

16 A. Gender --

17 MR. HARMON: Object to hearsay and lack of
18 foundation.

19 THE COURT: Overruled.

20 THE WITNESS: Gender dysphoria.

21 BY MR. LAPOINTE:

22 Q. And did they explain what that meant to you?

23 A. Yes.

24 Q. And what was that, the explanation provided to you?

25 A. My gender identity does not match what was written on my

1 birth certificate when I was born.

2 Q. And when that diagnosis was made, were your parents made
3 aware of that diagnosis as well?

4 A. Yes.

5 Q. Once that diagnosis was made by the mental health
6 professional, did they discuss with you how to address the
7 diagnosis, that is the dysphoria you were dealing with?

8 A. Yes.

9 Q. Did they come up with a plan as to how to deal with that?

10 A. I don't know if there was --

11 MR. HARMON: Objection, Your Honor. Hearsay.

12 THE COURT: So are we going to hear from these folks
13 or not or --

14 MR. LAPOINTE: We are, Your Honor. We're not going
15 to get him into any expert-related testimony. I just want to
16 get basic -- this is a foundation, Your Honor, that I'm asking.

17 THE COURT: Well, I think it's okay for him -- for
18 Mr. Adams to say what he -- what he did and what he knows. I
19 guess my question is, are you worried about being able to
20 actually talk to the therapist or what?

21 MR. HARMON: My concern is that none of the mental
22 health counselors, professionals, therapists were identified as
23 witnesses by plaintiff, so I won't have an opportunity to
24 question any of them.

25 THE COURT: All right. I'm going to go ahead -- I

1 understand what you're saying. I'm going to go ahead and
2 listen to Mr. Adams' testimony, but I understand what you're
3 saying and I'll take that into account.

4 Go ahead, sir.

5 MR. LAPOINTE: Sure.

6 BY MR. LAPOINTE:

7 Q. How about this: Drew, what sort of plan was developed for
8 you to address your dysphoria?

9 A. Well, first, social transition, which is the process of
10 doing things like cutting my hair short, wearing masculine
11 clothing, switching to male pronouns, and using the men's
12 rooms. Basically, beginning to live my life as a boy.

13 Q. Okay.

14 THE COURT: Excuse me one second.

15 Counsel, did you not have an opportunity to -- I know
16 they weren't listed as witnesses. But you had their identities
17 through discovery, right?

18 MR. HARMON: Yes. Yes, Your Honor.

19 THE COURT: Okay. So I suppose if you had wanted to
20 pursue it, you would have, right?

21 MR. HARMON: We could have listed them as witnesses
22 in our case if desired, yes.

23 THE COURT: Okay. Thank you, sir.

24 Go ahead, Counsel.

25 BY MR. LAPOINTE:

1 Q. Drew, you threw a few things at me here. Let's talk
2 about -- you mentioned hair?

3 A. Yes. I cut my hair short.

4 Q. And prior to that, you had long hair?

5 A. Yes.

6 Q. Okay. What else? You're talking about -- part of the
7 plan is social -- you're talking about social transition?

8 A. Yes, social transition.

9 Q. Right.

10 And what else was part of the social transitioning?
11 And tell us whether or not you did those things.

12 A. I went through the process of redoing my wardrobe and
13 getting more masculine clothing. I -- my parents helped me a
14 lot with that one. My dad let me look through his closet a
15 little bit.

16 I started using he/him pronouns and asked others to
17 refer to me as he/him. And I started to use the men's room.

18 Q. And when did you actually start using the men's room, the
19 first time you started using the men's room?

20 A. In early summer of 2015. I believe it was either the very
21 end of May or early June.

22 Q. And when you started using the men's room, which men's
23 room were you using in terms of which -- where was that men's
24 room located?

25 A. It was at Disney World.

1 Q. Okay. So we talked about using the men's room. Is there
2 anything else with respect to social conditioning that you
3 started doing?

4 A. I think that's everything.

5 Q. In terms of --

6 THE COURT: Can I ask you a question?

7 THE WITNESS: Yeah.

8 THE COURT: So when you went to this therapy in 2015
9 and you're saying the therapist diagnosed you with -- did they
10 actually use the term "gender dysphoria" to you? Is that what
11 they told you?

12 THE WITNESS: Yes.

13 THE COURT: Okay. Were the things that the therapist
14 recommended -- are the things that you're talking about now,
15 the hair and the wardrobe and so forth, was that -- were those
16 things that were recommended to you? Or were those things you
17 just did after you got the diagnosis?

18 THE WITNESS: Well, I already had begun doing them
19 when -- when I first realized that I was transgender, I started
20 doing them. I -- the clothes thing wasn't really a big switch
21 for me, because I had always been kind of wearing masculine
22 clothing.

23 And the haircut was an easy thing to do because -- it
24 was a haircut. It's not that, like -- it's not super
25 permanent. Like, hair grows back. And these were all, like,

1 kind of -- yeah, yeah, I started doing them almost right away.

2 THE COURT: If I understand what your testimony is,
3 you went to a therapist because you were anxious, you were
4 depressed.

5 Was the -- did you go there thinking you had gender
6 identity or gender dysphoria, or did -- was that something that
7 the therapist told you, that was the first time you had thought
8 about that?

9 THE WITNESS: The first time I went to therapy was
10 just for anxiety and depression, but over the course of a
11 couple of months of therapy, I came to the conclusion, told my
12 parents, and then together we approached the therapist with
13 this idea that I had gender dysphoria. It was just something
14 that she hadn't considered before.

15 THE COURT: Thank you.

16 MR. LAPOINTE: Thank you, Your Honor.

17 BY MR. LAPOINTE:

18 Q. Picking up from the -- from the things that you were doing
19 as part of the process and plan for dealing with the dysphoria,
20 in addition to the social transitioning, was there some other
21 conditioning that had to be taking place?

22 A. Yes. Medical and legal transition are two other branches
23 of the term "transition" that I began exploring or my medical
24 care providers, parents, and I started exploring.

25 Q. Tell us about the medical transition.

1 A. Well, first a birth control to stop menstrual cycles
2 because menstrual cycles are a big source of dysphoria and big
3 source of, like, strong discomfort and discontent.

4 Q. Now, as it relates to that, was it something that you
5 brought up to the therapist or the medical professional or to
6 the mental health professional that was dealing with that, or
7 was it something that the mental health professional actually
8 brought up for you?

9 A. I don't remember who brought it up first, but the decision
10 was made involving every party involved, the medical providers,
11 me, and my parents that this was the right course of action.

12 Q. All right. So that with respect to menstruation. What
13 else in the category of medical transition?

14 A. Several months down the road, I started testosterone,
15 which is the masculine hormone to make my body look more how I
16 identify and make my body match who I am.

17 Q. All right. If you can, can you place a time as to when
18 that started?

19 A. June 9th, 2016.

20 Q. And in terms of -- tell us what that is about. What is
21 the process of testosterone intervention?

22 A. For me, it was a letter from my therapist saying that I
23 had gender dysphoria and that this was the correct course of
24 treatment for me.

25 It was meetings with -- it was multiple meetings with

1 the social workers and endocrinologists. I saw two
2 endocrinologists about this topic. And then there was also a
3 letter from my psychiatrist confirming my diagnosis of gender
4 dysphoria.

5 Q. And now you mentioned endocrinologists. How did an
6 endocrinologist get into the mix?

7 A. My -- I forget who recommended I see an endocrinologist,
8 but in order to -- an endocrinologist is a doctor who deals
9 with hormones. So first for the birth control, to get that
10 prescription and then to start the process of obtaining
11 testosterone. That's all an endocrinologist's work.

12 Q. This is not merely a therapist basically giving you a
13 prescription to do these things?

14 A. No.

15 Q. The endocrinologist has to actually prescribe you those
16 things, correct?

17 A. Yes. Also in that process were blood work to make sure I
18 was healthy enough to go on testosterone.

19 Q. What I'm trying to get at, Drew, is was it a decision that
20 was made and then overnight, the next day you went and did
21 those things?

22 A. No. This was a process of several months, if not the
23 better part of a year. This was considerably over a year or
24 over six months.

25 Q. All right. We talked about two things now. Is there

1 anything else within the medical transition that you -- that
2 you had considered and underwent?

3 A. Yes. I had top surgery, which is a double mastectomy to
4 remove my breasts and masculinize my chest.

5 Q. Well, before we get to that, I'm not sure you mentioned --
6 I don't think we talked about what were you doing in connection
7 with your breasts during social transitioning prior to the
8 medical transition. Let's go back to social transitioning.
9 What is that? Talk to us about in terms of your breasts. What
10 is involved in that with respect to social transitioning?

11 A. Under the masculine clothing umbrella, I think this would
12 fall. I asked my mom for a chest binder, which is a garment
13 that's worn like a tank top that suppresses the breast tissue
14 and makes it look like my chest is flat. And so I was wearing
15 that garment for two years before I was able to get my top
16 surgery. And I thought it would be a lot longer.

17 Q. And how did you feel, first of all, when you first started
18 wearing the binder, as you refer to it?

19 A. Getting my binder in the mail and having it fit and see
20 myself in the mirror, I remember taking pictures sideways in
21 the mirror so I could see how flat I was. I remember that
22 being one of the highlights of -- I remember that moment being
23 probably -- that was probably one of the happier moments of my
24 life.

25 Q. Why is that?

1 A. Because I finally didn't hate what I was seeing in the
2 mirror. I mean, I didn't like my body, but I saw someone
3 looking back at me in the mirror who I identified with. And
4 that was probably the first time I had done that since I was a
5 little kid.

6 Q. Did you -- did you express that feeling of happiness and
7 content to Erica?

8 A. I believe I did, yes.

9 Q. And what was her response to you when you talked about how
10 you were feeling and wearing the binder for the first time?

11 A. She was happy for me, of course, as any parent would be if
12 their kid is doing really good and is happy.

13 Q. Now, let's go back to -- we're in the middle towards the
14 end of the medical transition. Tell us now --

15 THE COURT: Excuse me one second. Can I ask -- can I
16 go back to the therapist for just a second and ask one more
17 question?

18 When you began -- when you went in to begin therapy,
19 at that point, before the therapy, did you consider yourself to
20 be a male?

21 THE WITNESS: I didn't have the vocabulary to really
22 recognize what was going on inside of my head, so no. I
23 thought I was just a very mentally ill girl. I thought I was
24 just very anxious and very depressed and that therapy would
25 help. And I didn't really know much about being transgender or

1 what it really meant.

2 THE COURT: And what -- at what point in the
3 therapeutic process -- when did you either say to yourself or
4 say to somebody else, I'm a boy?

5 THE WITNESS: Very shortly after I figured it out is
6 when I started saying it to other people. But the first time I
7 really thought about it to myself was I -- I know this is
8 probably going to go into a narrative, but this --

9 THE COURT: That's okay. When I ask the question,
10 you can -- you can do a narrative.

11 THE WITNESS: Okay. I wasn't sure about the rules
12 for that.

13 THE COURT: No, that's fine.

14 THE WITNESS: I remember being 14 and watching
15 another transgender man talk about his experiences, talking
16 about how he never identified with himself as a child, talking
17 about how he was always kind of masculine as a child. And I
18 couldn't help think about my childhood and how I never really
19 fit in with the girls, how I never liked all the girly things,
20 how I refused to wear dresses. And I kept thinking about those
21 little moments in my childhood where I didn't really feel right
22 and how I didn't really -- I knew something was wrong, but I
23 didn't really know what it was.

24 But hearing this guy talk about his experiences and
25 what transgender meant, it kind of clicked for me, like now all

1 these moments in my past make sense for the first time in my
2 life.

3 So after watching that, I went home and I did some
4 research. I watched YouTube videos of other transgender men
5 doing the same thing, explaining their transitions, explaining
6 how they figured out they were trans, how they connected those
7 dots.

8 And then that led me into exploring the medical
9 transition, social transition, them talking about wearing
10 binders and talking about how starting testosterone was the
11 happiest day of their lives, like talking about all the changes
12 and like -- I was finally figuring out who I was.

13 THE COURT: And about when was that?

14 THE WITNESS: May of 2015.

15 THE COURT: And where does that fit into with when
16 you were beginning your therapy?

17 THE WITNESS: I started my therapy a couple of months
18 before that.

19 THE COURT: Thank you.

20 Go ahead.

21 MR. LAPOINTE: Thank you, Your Honor.

22 BY MR. LAPOINTE:

23 Q. Now, Drew, just to close the loop on that, you say you
24 actually saw this transgender man, was that -- what was the
25 circumstances of how you actually became exposed to that

1 person?

2 A. It was a transgender man talking about his experiences on
3 *The Ellen Show*.

4 Q. Was that a show that you watch on a regular basis?

5 A. No, I was -- I happened to be at my mom's house and she
6 had it on.

7 Q. So, Drew, back to the medical transition, and I know you
8 were last at the -- the breast surgery, correct?

9 A. Yes.

10 Q. And can you tell us, when did you do that?

11 A. I had top surgery in the end of May this year, 2017.

12 Q. All right. And when you say top surgery, what does that
13 mean in a formal term?

14 A. It's a -- medically it's a double-incision mastectomy with
15 nipple grafts.

16 Q. Okay.

17 A. That's the medical name for the surgery.

18 Q. Okay. And how long did that whole process take?

19 A. Several months. This was a much more rigorous process
20 than that to get testosterone. I had to have extra meetings
21 with my therapist to discuss this in depth. I had to have
22 meetings with my other doctors.

23 I had to do a lot more blood work. I had to get
24 letters from different medical providers that said that I was
25 both mentally stable and medically okay to have the surgery.

1 Q. All right. And throughout that whole process, were mom
2 and dad involved in that process?

3 A. Oh, very. Yeah, they were.

4 Q. Now, Drew, if you could just give us kind of an update,
5 how has all of this worked out for you?

6 A. Fantastic. I'm -- it's like that moment with the binder,
7 but, like, every day and every step I take, I feel even better.
8 And I don't hate myself anymore. And I don't hate the person I
9 am. I don't hate my body anymore. There are some parts I
10 don't like, of course, but I don't look at myself and think all
11 those negative thoughts anymore.

12 Q. Now, you talked about the medical transition. That's what
13 we're talking about. Are those the only steps that are
14 involved in medical transition?

15 A. With my age, those are the only steps I can take right
16 now.

17 Q. Is there another step potentially down the road?

18 A. Yeah. There's the possibility of an extractomy, which is
19 the removal of the uterus, and maybe bottom surgery, which I'm
20 pretty sure that one is a little bit self-explanatory. But
21 those are far down the line, much more complicated procedures.
22 I have to be at least 18 to do those, and I'm not even going to
23 start thinking about that right now.

24 Q. Drew, having gone through quite a bit, how can you be sure
25 you will not regret this down the road?

1 A. Well, first, looking back on my life up to this point and
2 thinking about my happiest moments, the happiest moments of my
3 life have been big moments in my transition; when I started
4 testosterone, when I first put on the binder, when I first saw
5 my chest after surgery.

6 Being that happy is not -- I don't think that's
7 something that I will ever regret. I know with every fiber of
8 my being that every step I've taken so far has been the right
9 one because I'm -- I'm happy. I'm, for the most part -- I
10 mean, yeah, I still have the -- the depression and anxiety
11 sometimes, but I'm able to cope with that and I'm able to --
12 I'm able to live with myself again.

13 Q. In terms of -- now, you mentioned there were three
14 transition phases. You talk about the social transition. You
15 just talked about the medical transition. And you also talk
16 about the legal transition. Before we get to that, I'd like to
17 talk -- go back a little bit on the social transition.

18 What does it mean for you for the social transition
19 for you to be able to actually use the boys' room?

20 A. It's a statement to everyone around me that I am a boy.
21 It's confirming my identity and confirming who I am, that I'm a
22 boy. And it means a lot to me to be able to express who I am
23 with such a simple action because I'm just -- I'm just like
24 every other boy; I use the men's bathroom without thinking
25 about it.

1 Q. Drew, let me ask you this. Earlier the court took a break
2 before your testimony. What restroom did you use --

3 A. The men's bathroom.

4 Q. -- in this courthouse?

5 A. The men's bathroom.

6 Q. And when you actually went to the men's bathroom, were
7 there other men in there?

8 A. Yes.

9 Q. And were there any problems when you went into the
10 bathroom next door, the boys' room next door, when you were
11 using that bathroom?

12 A. No.

13 Q. Did anyone complain?

14 A. No.

15 Q. Did anyone even notice you?

16 A. I don't think so.

17 Q. Did anyone ever have an opportunity to see you naked in
18 that bathroom?

19 A. No.

20 Q. Did you have an opportunity to see anyone naked in that
21 bathroom next door?

22 A. No.

23 Q. Will you tell us a little bit about what's been the
24 response -- first of all, let's talk about the legal
25 transition. What does that entail?

1 A. It's changing legal documents like my driver's license, my
2 birth certificate, passport, stuff like that, school records,
3 to reflect who I am.

4 Q. Well, let's talk about that. Tell us in terms of the
5 legal transition -- before you tell us, was that also part of
6 the plan that was provided and discussed with you by the
7 appropriate mental health professional?

8 A. Yes.

9 Q. Tell us what are the steps. And did you do those steps?

10 A. First -- the first thing I did was get my -- at the time
11 it was my learner's permit, now it's my driver's license. I
12 got the gender marker changed on that, which required a letter
13 from a psychiatrist saying that I was undergoing gender
14 transition, which I obtained.

15 Q. Okay. So what does it mean for you now to have a driver's
16 license actually designated that actually has male in there for
17 you?

18 A. It means that the state -- the State of Florida and the
19 United States recognizes me as who I am, a boy, and that means
20 everything to me.

21 Q. And when you go to certain state agencies and the like,
22 how would they treat you?

23 A. As a boy.

24 MR. HARMON: Object to relevance.

25 THE COURT: Overruled.

1 THE WITNESS: I'm treated as a boy in every aspect of
2 my life.

3 BY MR. LAPOINTE:

4 Q. Okay. When -- we just talked about the driver's license.
5 What else? What is the next step in the legal transition?

6 A. Well, there's no particular order to these steps, it's
7 just changing a bunch of documents, but the next thing I
8 remember doing is I got my birth certificate changed to say
9 male.

10 Q. When you say "I got my birth certificate changed," what
11 does that mean?

12 A. My mother did most of the paperwork for that, my mother
13 and I and -- my parents and I.

14 Q. All right. I would be very impressed if you did because
15 my son is not that industrious, but that's a different issue.

16 When did you actually do the actual certificate?

17 A. My birth certificate was changed a couple of months ago,
18 actually.

19 Q. Okay.

20 A. I think September.

21 Q. What does it mean for you to have a birth certificate now
22 that says -- that has "boy" in it as opposed to your original
23 birth certificate we talked about earlier?

24 A. It corrected a mistake that has been impacting my life
25 since I was born. It corrected a mistake that dictated my life

1 since I was born.

2 Q. When you go to places and you present your birth
3 certificate, do those places -- do those places accept the
4 representations that are made in that birth certificate that
5 you are a boy?

6 A. Yes.

7 Q. Is there anything else on the legal transitioning?

8 A. There's a plethora of legal documents like my passport
9 that I just haven't gotten around to going to get changed, but
10 I could very easily go get that changed right after I leave
11 here today.

12 Q. What would you need for that passport?

13 A. I'm not sure about the specifics, but I'm more than
14 certain that the same letter that was needed for my driver's
15 license and/or my birth certificate would more than suffice.

16 Q. Now, Drew, having gone through all these things, you've
17 told us how your mom and dad feel about these things, how do
18 your peers -- your friends feel about what you've gone through?

19 A. I have a lot of support from my friends and the people in
20 the community. If anybody has not been, like -- if anybody has
21 been outright hostile, I haven't -- they haven't told me about
22 it.

23 Q. All right. Have you -- have you experienced any negative
24 reaction from your classmates?

25 A. I remember a single negative comment I think in freshman

1 year, but other than that, no. Everyone has been very
2 supportive or at least neutral.

3 Q. In your entire school, have you actually experienced any
4 negative reaction from students?

5 A. To -- to what specifically?

6 Q. Well, the fact that you are transitioning and you've been
7 engaging in the transition both social and medical.

8 A. No.

9 Q. Drew, did there come a time when you and your parents
10 actually informed the school that you were a transgender and
11 you were actually going through the transition?

12 A. Yes.

13 Q. Do you recall when that was?

14 A. The summer before my freshman year started, which was
15 2015.

16 Q. And at that time, did the school say anything to you?

17 A. Not to me, no.

18 Q. Okay. Did anyone at the school at that time say to you
19 that you could not use the boys' room as part of your
20 transition?

21 A. No one said that.

22 Q. Okay. Did there come a time when you actually started
23 using the bathroom at Nease High School?

24 A. Yes.

25 Q. And when was that?

1 A. It was when I started school, August of 2015.

2 Q. And just to be clear, August of what year?

3 A. 2015.

4 Q. And how did that make you feel, to be able to walk into
5 the boys' room at Nease High School?

6 A. I felt like -- what's the word? -- I felt like I belonged
7 as much as someone can belong in a bathroom.

8 Q. Did anybody pay any attention to you when you started
9 using the boys' room at Nease?

10 A. Not that I know of, no.

11 Q. Was it any different than your experience that you had
12 today at the bathroom next door when you went to Nease?

13 A. Well, this bathroom is a little bit cleaner, but no, no
14 different.

15 Q. You don't say.

16 For how long did you actually use the bathroom before
17 that?

18 A. About six weeks.

19 Q. During that time, did any problem occur in connection to
20 your use of a bathroom at Nease?

21 A. No.

22 Q. Any student come up to you and complain about the fact
23 that you were using it?

24 A. No.

25 Q. At any time when you were at Nease, did you ever see

1 anybody naked in that bathroom?

2 A. No.

3 Q. Anybody ever saw you naked --

4 A. No.

5 Q. -- in the bathroom?

6 A. No.

7 Q. Did you try to look at anyone else that was using the
8 bathroom?

9 A. No.

10 Q. Did there come a time when you could no longer use the
11 boys' bathroom?

12 A. Yes.

13 Q. Tell us about that.

14 A. In the middle of September, an announcement over the loud
15 speaker in my AP European history class told the class -- or
16 announced to the class can Drew Adams please come to the
17 office. That's not really a common occurrence for someone to
18 be called down to the office without the words "to be checked
19 out for the day" after, so everyone automatically assumed I was
20 in trouble, including me.

21 MR. HARMON: Objection. Speculation, Your Honor.

22 THE COURT: Overruled.

23 THE WITNESS: Including me. I -- during the walk to
24 the office, I thought of every possible thing I could have done
25 even remotely wrong in the past six weeks as far back as the

1 beginning of the school year. I couldn't think of anything.

2 I got to the office and I told them that my name had
3 been called that I should go down to the office. And they
4 directed me to guidance. When I got to guidance, they directed
5 me into the office of my guidance counselor, Ms. Hollis.

6 I walked in there. There were three people in the
7 room. Ms. Hollis was sitting at her desk. And two other
8 people were standing. I don't remember the identities of these
9 people, but they were school administrators.

10 They told me to sit down. So I sat down. And
11 Ms. Hollis, who did most of the talking in this meeting, told
12 me that there had been an anonymous complaint that I was in the
13 men's bathroom and that I could no longer do that; I had to use
14 the gender-neutral bathroom only that was in the office. And
15 she pointed down the hall in the direction of that bathroom.

16 BY MR. LAPOINTE:

17 Q. Did they provide you a name of the student who actually
18 complained?

19 A. No. And I don't think -- I don't remember if they
20 clarified if it was a student or anyone.

21 Q. Did they say whether or not you actually did anything
22 wrong or the term of time that you had been using the boys'
23 room at that time?

24 A. I had asked did I do anything wrong. And they said no. I
25 was -- when they said I couldn't use the bathroom, I was so

1 confused. I was shocked. I had thought that for sure I was in
2 trouble. Because why else would they call me?

3 And it felt like I was in trouble, even when they
4 were saying it -- even when they were saying that I wasn't in
5 trouble, it felt like some sort of punishment.

6 I started thinking about what I did in the bathroom,
7 like, did I do something wrong inside the bathroom, is that why
8 they're, like, revoking my bathroom access? But they said I
9 didn't do anything wrong and then dismissed me back to class
10 and wrote me a pass to class.

11 I was in shock and very confused for most of the day,
12 at least for that class. And I was angry, because I didn't do
13 anything wrong. Why are they punishing me? Because it felt
14 like a punishment. It felt like a slap in the face. I was
15 living in every aspect of my life as a boy and now they're
16 taking that away from me. And I didn't know what I did wrong.

17 Q. Now, what did it mean to you -- I understand how you
18 felt -- going forward that you could no longer use the boys'
19 room?

20 A. It meant that the school didn't see me as a boy. It meant
21 that the school refused to accept who I was. It made a
22 statement to the rest of the student body that the school did
23 not accept who I was and, therefore, why should the students
24 accept who I am since the school doesn't. It alienated me from
25 the rest of the boys. It put me in a special box where, like,

1 that -- that -- all the other boys get to do one thing and I
2 have to do something else and I can't do what the rest of the
3 boys do.

4 It was humiliating and it caused -- it caused me a
5 lot of anxiety and depression and it still does every day when
6 I have to walk past the men's room because I know that every
7 other boy is allowed to go in there, just not me.

8 Q. Did the individual -- the school personnel that actually
9 sat you down and talked to you that day, did they provide you
10 with an alternative place where you could actually use a
11 bathroom?

12 A. Yes. At the time they gave me the option to use the
13 gender-neutral bathroom.

14 Q. And what was wrong with that?

15 A. It's considerably farther away, out of the way,
16 inconvenient. It usually requires me walking past men's rooms.
17 It makes a statement to the school that -- or to the rest of
18 the people at the school that I'm somehow different or I'm
19 somehow separate or I'm something that needs to be separate;
20 that I'm something that needs to be put away and not in the
21 commonplace and not in with the rest of the student body.

22 Q. Did they also give you the option of using the girls'
23 room?

24 A. I don't remember if that was said in that meeting, but,
25 yes, I did have the option to use the girls' room.

1 Q. Why couldn't you use the girls' room?

2 A. Because the amount of anxiety just doing -- just thinking
3 about doing that causes me right now is -- I can't do that.
4 It's an insult to my identity and it's an insult to me as a
5 person.

6 Q. Since that time when you had that meeting with the school
7 personnel, have you been using the boys' room? What bathroom
8 have you been using at Nease?

9 A. Since then? The gender-neutral bathroom.

10 Q. Okay. How about outside of Nease in terms of public
11 bathrooms throughout your life?

12 A. Everywhere else I -- in -- everywhere else I am, I use the
13 boys' bathroom.

14 Q. Are there -- you talked about some of them had -- some of
15 these gender-neutral bathroom were at some distance. Can you
16 talk to us about what difficulty that actually created for you
17 to actually have to use some of these gender-neutral bathrooms?

18 A. I -- as I stated before, the biggest thing is the
19 depression and anxiety and the isolation. Every time I --

20 Q. I'm sorry -- I'm sorry to cut you off a little bit. I'm
21 talking about in terms of physical difficulty, not -- not the
22 emotional difficulty that you talked about. Physical
23 difficulty.

24 A. Oh, okay. My apologies.

25 Well, first, the class -- just the distance is

1 considerably farther than the distance to the men's room. So
2 I'm missing more valuable class time. And then, of course, the
3 discomfort of having to think about where -- when can I use the
4 bathroom, what class is least important so I can go use the
5 bathroom and take that extra time.

6 It's something I have to think about every day from
7 the moment I wake up. When I'm having breakfast, how much am I
8 drinking? Is this going to cause me problems later? Will I
9 have to use the bathroom more than anticipated, more than I
10 planned? I plan that every day.

11 I walk with my friends to the cafeteria in the
12 morning. They get drinks, I don't, because I know that's going
13 to cause me problems later. I usually don't drink anything
14 until lunch. I usually -- even at lunch I don't drink more
15 than a single can of soda and usually that's just for the
16 caffeine for my later classes. If I didn't need that caffeine,
17 I probably wouldn't drink anything at lunch.

18 So it's something I have to think about and live with
19 every day.

20 Q. What if you had -- Drew, what if you had an emergency
21 where you needed to use the bathroom right then and there
22 because of something you ate the night before that didn't go
23 well with you, what would you do in terms of whether you use
24 the gender-neutral bathroom or the boys' room?

25 A. Like, I can't use the boys' room, so I would risk it and

1 go to the gender-neutral bathroom.

2 Q. I want to talk to you about -- we talked about the
3 distance -- the walk from your classroom to the gender-neutral
4 bathroom.

5 Can you speak to -- at the time, when you were told
6 that you had used the gender-neutral bathroom, how many
7 gender-neutral bathrooms they had at that time and what was the
8 distance at that time from those gender-neutral bathrooms?

9 A. In that meeting, there was a single gender-neutral
10 bathroom that was from any particular corner of -- it's a big
11 school -- from any particular corner of the school, it could be
12 up to -- I don't know, a good couple-minute walk.

13 Q. Did you have an opportunity to actually show -- to
14 actually record how long it took to walk from your class to
15 this gender-neutral bathroom the last couple of weeks?

16 A. For the school year and utilizing whichever bathroom was
17 closer, since more have been either built or opened, yes.

18 Q. Okay. And who all was there when -- when that happened,
19 when you actually took somebody -- somebody came to the school
20 and actually recorded one of your trips from class to the
21 gender-neutral bathroom?

22 A. It was me, a camera person, Kirsten, my mother, and the
23 principal of my school, and one opposing law person -- lawyer.

24 Q. All right. So by Kirsten, you meant Ms. Doolittle?

25 A. Yes. I'm sorry.

1 Q. And, now, when you actually did the walkthrough -- let's
2 call it that. And that would be the representatives only of
3 your classes today and things today; is that correct?

4 A. Yes.

5 MR. LAPOINTE: At this point, we do not have an
6 objection playing -- but I believe it's Plaintiff's 70. And
7 we're going to publish, Your Honor.

8 THE COURT: Yeah, that's fine. 78 is what it's
9 numbered?

10 MR. LAPOINTE: 7-0.

11 THE COURT: 7-0.

12 (Judge confers with courtroom deputy.)

13 THE COURT: Do you have any objection, Mr. Harmon?

14 MR. HARMON: I just -- my only --

15 MR. LAPOINTE: Hold that --

16 THE COURT: I tell you what, we can't have more than
17 one person talking about a time. So let's just...

18 All right. Mr. Harmon, do you have an objection?

19 MR. HARMON: My only position would be that we play
20 the entire video, not a select piece of it.

21 THE COURT: And how long is it?

22 MR. HARMON: Not very long, I don't think. I'm not
23 sure of the entire --

24 THE COURT: How long is the piece? No, I'm
25 talking --

1 MR. HARMON: Okay.

2 THE COURT: It's your exhibit. How long is it?

3 MR. LAPOINTE: Your Honor, we have numerous little
4 bits, and we only going to play two of them. If you want to
5 play some other -- Your Honor, I'm sorry.

6 If opposing counsel wants to play some other one,
7 that's fine with us. But we didn't bring them in, it's my
8 understanding, the others to play right now. But he certainly
9 feels free to do so.

10 THE COURT: Okay.

11 MR. HARMON: I would just object on completeness
12 grounds.

13 THE COURT: Well, I'll let you -- you do have the
14 whole video. If you want to play it, I'll let you do that.
15 Sure.

16 Go ahead, sir.

17 So is this 70, Exhibit 70?

18 MR. LAPOINTE: That's correct, Your Honor.

19 THE COURT: All right. I'll admit Exhibit 70 and
20 allow you to publish it.

21 Go ahead.

22 (Video played.)

23 THE COURT: I assume you walked the shortest way to
24 it?

25 THE WITNESS: I did, yes.

1 BY MR. LAPOINTE:

2 Q. So, Drew, this is the fourth -- this is the one that is
3 nearest to the fourth period; is that correct?

4 A. Yes.

5 Q. And if you have to go, really go, you have -- do you have
6 to go through that process --

7 A. Yes.

8 Q. -- to use the bathroom?

9 MR. LAPOINTE: My apologies, Your Honor. In terms of
10 the exhibit, it is actually No. 69. I'm sorry. We said 70.

11 THE COURT: All right. Well, I'll admit it as 69.

12 Is that excerpt the only part of the video that you
13 want to play?

14 MR. LAPOINTE: There's one more and that's it for us.

15 THE COURT: Is it all part of Exhibit 69?

16 MR. LAPOINTE: It is composite 69.

17 THE COURT: All right. Do you want to play it now or
18 later?

19 MR. LAPOINTE: I want to play it right now, Your
20 Honor.

21 THE COURT: All right. Go ahead.

22 (Plaintiff's Exhibit 69 received into evidence.)

23 (Video played.)

24 THE COURT: Mr. Adams, I didn't see you on that
25 walk -- I didn't see you identify a men's room. Did you pass a

1 men's room or not?

2 THE WITNESS: Not directly but it was across a
3 hallway -- one hallway over -- there's two rows of portables.
4 The gender-neutral bathroom -- or the gendered bathroom is in
5 the other row of portables. I passed it on my other walk.

6 BY MR. LAPOINTE:

7 Q. If I can just follow up on that. Are there boys' rooms
8 that are closer from this period than the gender-neutral
9 bathrooms that you actually just went through with us on
10 Composite Exhibit 69?

11 A. Much closer, yes.

12 Q. And we noticed that when you were actually walking, there
13 were no other students -- there were no traffic. Why is that,
14 Drew?

15 A. Because this was after school.

16 Q. And during school, is there traffic when you're actually
17 having to walk to the gender-neutral bathroom?

18 A. Yes.

19 Q. Drew, I want to talk to you a little bit about your social
20 media presence and some of the organizations that you're
21 actually involved in.

22 Can you please tell the court what are some of the
23 organizations you're involved in and why?

24 A. Well, I started volunteering at hospitals when I was 14,
25 starting with St. Vincent's Riverside and then the Mayo Clinic

1 over the summer. I've done two summers at each so far and
2 continue -- and I want to continue doing that next summer.

3 I also work with a number of LGBT-oriented
4 organizations such as the Gay Lesbian Straight Education
5 Network, GLSEN; The Trevor Project, Point of Pride. And I do a
6 lot of work with JASMYN, which is local.

7 Q. And what is JASMYN?

8 A. Huh?

9 Q. What is JASMYN?

10 A. JASMYN stands for Jacksonville Area Sexual Minority Youth
11 Network. It's the -- it's an acronym that basically covers
12 LGBT help in Jacksonville.

13 Q. And why are you involved with these organizations? I
14 mean, you've told us that you're involved with some
15 organizations that are non-related to LGBT in terms of the
16 hospital work that you do, but why are you involved in those
17 other organizations like JASMYN and groups?

18 A. Because I know what it's like to be a depressed LGBT kid
19 without the resources or, like, without help, and I don't want
20 anyone else to feel that way. I don't want anyone else to feel
21 depressed and alone and -- and hopeless. So I think the more
22 work I do with these organizations the better chance I have of
23 impacting someone's life and ultimately saving lives, because
24 these organizations save lives and -- including mine, I think.

25 Q. And have you -- in terms of social media, by that I mean

1 YouTube and some of the other stuff, have you used those media
2 to actually reach out to other folks?
3 A. Absolutely. That's the entire purpose of my social media,
4 because when I was researching what trans meant and learning
5 about other transgender people, one of my primary sources of
6 information was YouTube videos of other transgender men
7 explaining their experiences. And I firmly believe if I hadn't
8 seen those videos and if I hadn't done that research and I
9 hadn't heard those stories I don't think I'd be alive right
10 now.

11 MR. LAPOINTE: No more questions, Your Honor.

12 THE COURT: All right. Let's go ahead and start the
13 cross-examination. We may have to take a lunch break somewhere
14 in here, but let's go ahead and start the cross.

15 **CROSS-EXAMINATION**

16 BY MR. HARMON:

17 Q. Good afternoon.

18 A. Hi.

19 Q. So I went to Florida State, too, and your counsel went to
20 Florida State. Between the two of us, no chance?

21 A. Just not what I'm looking into right now.

22 Q. Okay. Thought I'd ask.

23 Thanks for being here today. I'll let you know up
24 front I'm going to ask you some questions that may make you
25 uncomfortable. And I'm not doing it intentionally. So if you

1 need a break at any point or anything like that, just let me
2 know.

3 A. Okay.

4 Q. This lawsuit right now that you've got against the
5 St. Johns County School District has been going on since June
6 of 2017, right?

7 A. Yes.

8 Q. And you've talked to some of your friends at school about
9 this lawsuit, right?

10 A. Yes.

11 Q. If I heard you right on direct examination with your
12 counsel, your peers and those around you at school have been
13 supportive of you, right?

14 A. Yes.

15 Q. Now, I want to go back a little bit in time. I think you
16 mentioned on direct examination that the doctor identified you
17 at birth -- assigned you at birth being a female, right?

18 A. Yes.

19 Q. Do you know why?

20 A. Based on my external genitalia.

21 Q. What does that mean?

22 A. The parts.

23 Q. The characteristics of being a female?

24 A. Just the parts, I think, the external genitalia parts.

25 Q. And in elementary school, you were identified as a female,

1 right?

2 A. In elementary school, I -- I'm not sure if I -- I didn't
3 know any better -- I didn't know there was an option to not be
4 a girl. I didn't know that -- I didn't know what transgender
5 meant. I didn't know that was a possibility. So as much as I
6 can -- or as much as a kid can have a solid identity, I guess
7 so, although I don't think I really had a good sense of my
8 identity in terms of gender. I was just kind of Drew.

9 Q. You didn't tell anybody in middle school that you were a
10 boy, right?

11 A. Not until May of 2015.

12 Q. That would have been the end of eighth grade?

13 A. Yes.

14 Q. So up until that point in time, when it came to being in
15 school, you did not identify to others as being a boy; is that
16 fair?

17 A. That is correct.

18 Q. And you'd never used a boys' bathroom in middle school,
19 right?

20 A. I accidentally walked into one in the third -- or, like,
21 first grade, but, no, I have not.

22 Q. In which grade?

23 A. I think first grade. I didn't read the sign correctly.

24 Q. Did you walk right out?

25 A. When I realized, yeah.

1 Q. Why did you walk right out?

2 A. Because I had been told that's not where I belong.

3 Q. And in middle school, you used female restrooms when you
4 used the restrooms at school, right?

5 A. Yes.

6 Q. Do you know a psychiatrist named Dr. Pai?

7 A. Yes.

8 Q. That's P-a-i?

9 A. Yes.

10 Q. And Dr. Pai diagnosed you with anxiety and depression in
11 2015?

12 A. Yes.

13 Q. And if I heard you correctly on direct, you started taking
14 Zoloft in February of 2015 for anxiety and depression?

15 A. Yes.

16 Q. Do you know a Dr. Claudia Rojas?

17 A. Yes.

18 Q. Dr. Claudia Rojas, was she a therapist?

19 A. Yes.

20 Q. Were you also seeing her around the same time for
21 depression and anxiety?

22 A. I saw her a single time when I was trying to find a
23 therapist that I liked and that worked well with me.

24 Q. Do you recall what time frame that was when you saw
25 Dr. Rojas?

1 A. I believe it was the end of January of 2015.

2 Q. Okay. So prior to being diagnosed with depression and
3 anxiety with Dr. Pai, had you already been seeing a therapist
4 for these issues?

5 A. Yes.

6 Q. These issues with depression and anxiety, did they not
7 first start during the fall of 2014 because of issues you had
8 with a relationship with a girlfriend?

9 A. No.

10 Q. Okay. When did they first start to you, your issues with
11 depression and anxiety?

12 A. Sometime in middle school. I'm not really sure when a
13 good solid starting point was for those, but in -- probably in
14 seventh grade.

15 Q. So that would have been 2014?

16 A. In the fall of 2014, but not for those reasons.

17 Q. So the 2014/2015 school year, seventh grade, is when you
18 first started having issues with depression and anxiety?

19 A. Yes, that's fair.

20 Q. Okay. Fall would have been sometime between August 2014
21 and September of 2015?

22 A. Yes.

23 Q. And Dr. Naomi Jacobs, I think you mentioned her as a
24 therapist you had seen, right?

25 A. Yes.

1 Q. Also for issues with depression and anxiety?

2 A. Yes.

3 Q. When you first started seeing her?

4 A. Yes.

5 Q. And that would have been also in early 2015?

6 A. Yes.

7 Q. Okay. And at the time that you started seeing Dr. Jacobs,
8 you attributed your depression and anxiety to bullying and a
9 mental illness, right?

10 A. Yes.

11 Q. And you were seeing Dr. Jacobs on a weekly basis at the
12 time?

13 A. Yes.

14 Q. And you're seeing her on an as-needed basis now, right?

15 A. Yes.

16 Q. So the frequency with which you seek therapeutic
17 intervention for anxiety and depression has decreased?

18 A. Yes.

19 Q. And when you met with Dr. Jacobs, your mother was not
20 present for each session, right?

21 A. The way my therapy sessions usually work is the therapist
22 would talk to me alone and then talk to my mother and I, either
23 my mother alone, or together.

24 Q. So there were times in your session with Dr. Jacobs where
25 it was just you and Dr. Jacobs alone?

1 A. Yes.

2 Q. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 MR. HARMON: One moment, Your Honor.

9 Your Honor, may I approach the witness?

10 THE COURT: Yes.

11 MR. HARMON: Thank you.

12 BY MR. HARMON:

13 Q. Just for the record, do you recall me taking your
14 deposition in this case?

15 MR. LAPOINTE: Actually, Your Honor, may I have an
16 actual copy?

17 MR. HARMON: Sure.

18 (Counsel confer.)

19 THE COURT: You don't have your own copy of your
20 plaintiff's deposition?

21 MR. LAPOINTE: We can -- we should be able to find
22 it -- we should be able to find it.

23 THE COURT: All right.

24 THE WITNESS: I believe there are a lot of boxes.

25 THE COURT: Well, I understand that. I would imagine

1 when somebody is being examined, it wouldn't be too hard to
2 think that their deposition might come into play, right?

3 MR. LAPOINTE: Couldn't agree more, Your Honor.

4 MR. HARMON: You got it? Okay.

5 BY MR. HARMON:

6 Q. So just again, I'll ask you, do you remember me taking
7 your deposition on this case -- in this case on November 1st,
8 2017?

9 A. Yes.

10 Q. And Mr. Lapointe, he was present at that deposition,
11 right?

12 A. Yes.

13 Q. Were you under oath at that time?

14 A. Yes.

15 Q. You're under oath today, too, correct?

16 A. Yes.

17 Q. Can I please direct your attention, it's in front of you,
18 to page 37 of the document?

19 A. Yes.

20 Q. Okay. And specifically lines 3 through 5, and I'll read
21 this.

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 Do you see that?

1 A. Yes.

2 Q. That's different from your testimony though, today, isn't
3 it?

4 A. It was a different question today.

5 MR. HARMON: Okay. Could I have the court reporter
6 read the question back that I asked today, just prior to the
7 deposition, please?

8 MR. LAPOINTE: Your Honor -- can I interpose a
9 relevance objection on this, Your Honor?

10 THE COURT: Well, I don't know it's irrelevant. I'm
11 not sure it's worth all this, but we'll see. Just -- why don't
12 you -- Mr. Adams, tell him why you think it's a different
13 question and maybe he'll ask you the question differently.
14 What did you understand the question to be today?

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 THE COURT: All right. What's your next question,
23 Counsel?

24 BY MR. HARMON:

25 Q. That's the dispute?

1 A. Yes.

2 Q. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

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[REDACTED]

BY MR. HARMON:

Q. On direct examination you talked about --

THE COURT: Actually, let's go to lunch. We do need to break because I do have another matter I need to attend to over the lunch hour.

So, Mr. Adams, the way this works is you -- of

1 course, you can talk to your lawyers, but don't talk to anybody
2 about your testimony over lunch, okay? And go have lunch.

3 And let's go ahead and -- and be back at 1:30. Okay?

4 And everybody can leave all their stuff.

5 Tell me what we're going to do this afternoon after
6 we complete Mr. Adams' testimony just so I'm understanding.

7 MS. ALTMAN: Your Honor, after Mr. Adams is done
8 testifying, we intend to put on Dr. Adkins, who is one of
9 plaintiff's experts. That will be by video deposition, a
10 preservation deposition.

11 Her direct examination was, I think, just around an
12 hour. There has been a conferral situation because the
13 cross-examination was approximately two-and-a-half hours.

14 And so we asked whether or not they wanted to just
15 play that in their case. They want it to be played
16 consecutively. We certainly defer to the court as to what the
17 court's preference is.

18 THE COURT: You want the whole thing? Who is in
19 charge of that witness?

20 MS. ALTMAN: Oh, well, the -- on the defense side or
21 on the plaintiff --

22 THE COURT: No, I'm talking to the defense.

23 MS. ALTMAN: Okay.

24 THE COURT: Who is in charge of that witness?

25 Oh, y'all are looking all at each other?

1 MR. HARMON: I'm standing here, so I'll talk. I
2 assume when plaintiff had indicated they wanted to perpetuate
3 the trial testimony that we would be playing the direct and the
4 cross.

5 THE COURT: That's fine.

6 MR. HARMON: That's what I assumed.

7 THE COURT: She said your cross is two-and-a-half
8 hours.

9 MR. HARMON: Yes.

10 THE COURT: Is it two-and-a-half hours?

11 MR. HARMON: I have not reviewed the time of it, but
12 it sounds about accurate.

13 THE COURT: So it's an hour-and-a-half longer than
14 the direct?

15 MR. HARMON: Sounds about right, yes.

16 THE COURT: Okay. Well, if that's what we're going
17 to do, that's what we'll do.

18 MS. RIVAUX: And, Your Honor, I'll just add one
19 issue -- it's not really an issue. But there, obviously,
20 were -- since it was a trial preservation deposition, there are
21 objections made and preserved for the record. I don't know if
22 that's something you want to really address now or something
23 that you want to keep under advisement and just play it
24 through.

25 THE COURT: No. I'll just address it at the time. I

1 mean, if somebody makes an objection, I'll rule on it just like
2 they're sitting there. And we can turn it off for a minute and
3 I'll rule, if that's what we need. I don't know how many
4 objections there were.

5 MS. RIVAUX: There were quite a significant amount of
6 objections.

7 THE COURT: Why? All right. Well, then I won't
8 rule -- no, I'll just listen to the video and I'll rule on the
9 objections afterwards. I'm not going to stop and start the
10 thing if it's going to be a lot.

11 MS. RIVAUX: It will be. And I have a copy of the
12 transcript for you if you'd like.

13 THE COURT: So who was objecting to what? Everybody
14 was objecting to everything?

15 MS. RIVAUX: We were objecting as we thought, I
16 think, was appropriate.

17 THE COURT: To the questions?

18 MS. RIVAUX: To the questions, correct.

19 THE COURT: Okay.

20 MS. RIVAUX: And answers.

21 THE COURT: And were they objecting to your
22 questions? Or were you just objecting to theirs?

23 MS. RIVAUX: I think both.

24 THE COURT: Okay. So three-and-a-half hours of a
25 video deposition with lots of objections. What's not to love?

1 COURT SECURITY OFFICER: All rise.

2 (Recess, 12:28 p.m. to 1:31 p.m.)

3 COURT SECURITY OFFICER: All rise. This Honorable
4 Court is now in session. Please be seated.

5 THE COURT: Go ahead.

6 BY MR. HARMON:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. We're back. Have you rethought Florida State admissions?
10 No?

11 A. No.

12 Q. Okay. I'll move on. I won't ask that one again.

13 So when --

14 THE COURT: Asked and answered.

15 MR. HARMON: Yeah. That's where I was going with
16 that.

17 BY MR. HARMON:

18 Q. So I kind of want to change gears a little bit from where
19 we were talking prior to lunch to now and talk a little bit --
20 just very briefly about that *Ellen Show* that you discussed
21 during your direct examination.

22 Was that around May of 2015?

23 A. Yes.

24 Q. Okay. And if I understand correctly, within two to three
25 days of watching that show is when you told your mom that you

1 were transgender; is that right?

2 A. Yes.

3 Q. Okay. Did you want to take a drink? I saw you pour
4 water.

5 A. Thanks.

6 Q. All right. I won't ask you a question in the middle of
7 that. Good?

8 A. Uh-huh.

9 Q. Okay. Did you tell some friends at school around that
10 time, too?

11 A. Very limited number of friends, yes.

12 Q. Okay. At some point over that summer of eighth grade
13 going into ninth grade, you posted on your public Instagram
14 pages that you were transgender and a boy; is that right?

15 A. Yes.

16 Q. Okay. And do you remember a Dr. Asermley?

17 A. Yes.

18 Q. Do you recall within a month of that *Ellen Show* going to
19 see Dr. Asermley?

20 A. Yes.

21 Q. Do you remember one of the things you discussed with
22 Dr. Asermley is starting testosterone?

23 A. Yes.

24 Q. And Dr. Asermley's advice to you at that time was not to
25 do anything medical-wise as part of your transition until you

1 were 18; is that right?

2 A. Yes. However, that is not in accordance with the WPATH
3 standards of care.

4 Q. She told you not to do anything until 18, is that what she
5 said?

6 A. Yes.

7 Q. Now going into actual high school, ninth grade year, do
8 you know who Michelle Sterling is?

9 A. I know of her as an administrator at my school.

10 Q. Was there ever a time that you met with Ms. Sterling to
11 discuss gender-neutral bathrooms at Nease High School?

12 A. I don't remember if she was in the initial meeting when I
13 was pulled out of class. She might have been one of those
14 people. But outside of that, no.

15 Q. So when you say during the meeting you were pulled out,
16 are you referring to the September of 2015 meeting?

17 A. Yes.

18 Q. Okay. So prior to September of 2015, did Michelle
19 Sterling at Nease High School ever discuss gender-neutral
20 bathrooms with you?

21 A. No.

22 Q. Okay. And before you started high school, do you remember
23 having a discussion with your mom about bathroom use at Nease
24 High School?

25 A. Yes.

1 Q. Do you remember a conversation that you had with your mom
2 about some discussion she had had with somebody named Holly
3 Arkin?

4 A. Yes.

5 Q. Okay. And, specifically, your mom had talked about -- to
6 Holly Arkin about you coming to high school and presenting as a
7 male, right?

8 A. Yes.

9 Q. And Holly Arkin, she was a social worker employed by the
10 school district, right?

11 A. Yes.

12 Q. And you had worked with her on some different things in
13 middle school; is that right?

14 A. Yes.

15 Q. And if I'm correct, did your mom tell you that she had
16 spoken to Holly Arkin about you using the men's room and Holly
17 Arkin told you no problem?

18 A. I remember that.

19 Q. That's what your mom told you?

20 A. Well, I don't remember if the word "bathroom" was used. I
21 remember my mom saying that I would be presenting as a male in
22 all aspects of my life and that Holly Arkin said something to
23 the effect of that that shouldn't be an issue.

24 Q. Okay. But you never talked to Holly Arkin about that,
25 right?

1 A. No.

2 Q. Are you aware as you sit here today that your mom had
3 discussed with Ms. Arkin prior to your freshman year at Nease
4 that there were gender-neutral bathrooms available on campus
5 for you?

6 A. Can you repeat the question?

7 Q. Sure. As you sit here today, are you aware that Holly
8 Arkin had spoken to your mom prior to you starting ninth grade
9 about the location of gender-neutral bathrooms on campus?

10 A. That sounds familiar, but I don't recall specifically.

11 Q. Okay. What part of what I said sounds familiar?

12 A. It sounds like -- it sounds like I've heard it before, but
13 it is not something I remember hearing at the time. I feel
14 like I came to know that later.

15 Q. Okay. Did you come to know that through talking to your
16 mom?

17 A. No.

18 Q. Okay. How did you come to know that?

19 A. I think I heard about it from my legal team.

20 Q. Okay. Did your mom ever tell you that she had spoken to
21 Holly Arkin about the availability of gender-neutral restrooms
22 before you started at Nease High School?

23 A. I don't remember that happening, no.

24 Q. Okay. If your mom knew that and didn't tell you, would
25 that be a difficult thing to learn now?

1 A. She would have told me.

2 Q. Okay. And your mom never told you that Holly Arkin told
3 her that it was okay for you to use the boys' restrooms at
4 Nease, right?

5 A. My mom told me that Holly Arkin said there would be no
6 problem whatsoever in any -- she didn't have any concerns about
7 me being a male in every aspect of my life.

8 Q. But specifically, not just from a general perspective, but
9 specific to the bathrooms, did your mom -- let me rephrase
10 that. Your mom never told you specifically that Holly Arkin
11 said it was okay for you to use the men's restroom at Nease;
12 isn't that right?

13 A. I don't recall that being said.

14 MR. LAPOINTE: Confusion. Objection.

15 THE COURT: I'm a little confused myself. What are
16 we doing here? I mean, first of all, mom is sitting right
17 there, so I guess you could ask her when she gets on the stand.

18 MR. HARMON: Correct.

19 THE COURT: But what's the point of this going to be?

20 MR. HARMON: Sure. Plaintiff -- well, I'll just
21 state it out loud since we're in a bench trial. At a
22 deposition previously when I talked to plaintiff, I asked
23 plaintiff whether his mom had ever told him that Holly Arkin
24 said it was okay for him to use the restroom, the men's
25 restroom, and he answered no. And today what the answer I'm

1 getting is Holly Arkin said it was okay for me to act like a
2 male in all aspects at school. But when I asked that specific
3 question at deposition, the answer was no.

4 THE COURT: But if you hadn't brought it up, we
5 wouldn't be talking about it at all. What I'm asking you is
6 what does it have to do with anything? I mean, it wasn't asked
7 on direct, was it?

8 MR. HARMON: Well, what was brought out on direct
9 examination was the first time plaintiff had ever been told and
10 that his mom had told him that he -- that she had ever been
11 told that he was not allowed to use the boys' bathroom was when
12 he was called down to the office in September of 2015.

13 THE COURT: And you're trying to prove otherwise?

14 MR. HARMON: Yes.

15 THE COURT: Is Holly Arkin going to testify?

16 MR. HARMON: Mom is going to testify later --

17 THE COURT: Okay.

18 MR. HARMON: -- I believe. She's also listed as one
19 of our witnesses, too.

20 THE COURT: Okay. Okay. Well, go ahead.

21 MR. HARMON: I'm just trying to -- okay.

22 THE COURT: All right. I tell you what, Mr. Adams,
23 just listen carefully to the question and just answer it the
24 best you can. Go ahead.

25 THE WITNESS: I'll do my best.

1 THE COURT: Sure.

2 BY MR. HARMON:

3 Q. Did your mom ever tell you that Holly Arkin said it was
4 okay to use the boys' restroom?

5 A. No.

6 Q. Okay. And if I understood, you used the boys' restroom
7 for about six weeks at Nease?

8 A. Yes.

9 Q. Okay. And when you used the men's room at Nease High
10 School, you used it approximately once --

11 THE COURT: And is no the answer you wanted? So
12 that's consistent, you're saying, then?

13 MR. HARMON: Plaintiff's answer about what Holly
14 Arkin had said?

15 THE COURT: Yes.

16 MR. HARMON: Yes.

17 THE COURT: That's what you wanted --

18 MR. HARMON: That was consistent, yes.

19 THE COURT: Okay. All right. Go ahead.

20 MR. HARMON: That's the answer.

21 THE COURT: Okay.

22 BY MR. HARMON:

23 Q. So talking about the use of the men's restroom at Nease
24 High School, that -- I guess it was the first six weeks of
25 school?

1 A. Yes.

2 Q. Before that meeting with Kim Hollis and some others in the
3 office?

4 A. That's correct.

5 Q. With respect to the frequency of bathroom use, you had
6 used the bathroom once per day or once every two days during
7 that time period; is that right?

8 A. Approximately.

9 Q. Okay. And the first time, I guess, that you had learned
10 about gender-neutral restrooms was when you were pulled out of
11 class over the intercom speaker in September of 2015, right?

12 A. Yes.

13 Q. And you said it was unusual the way that you were called
14 over the intercom?

15 A. Yes. It's out of the day-to-day proceedings.

16 Q. But you're not in every class every day when students get
17 called down to the office; is that correct?

18 A. That's correct.

19 Q. And you went down to guidance that day, right?

20 A. Yes.

21 Q. And you met with Kim --

22 THE COURT: How does it work, does the intercom just
23 go to the specific class or --

24 THE WITNESS: Yes.

25 THE COURT: All right. Go ahead.

1 BY MR. HARMON:

2 Q. I think if I heard correctly, you met with Kim Hollis, who
3 was a guidance counselor, and two other people?

4 A. That's what I remember, yes.

5 Q. Okay. And I guess I heard your testimony you were told
6 there was an anonymous complaint you were seen in the men's
7 room; is that right?

8 A. Yes.

9 Q. And you were told at that time you're not allowed to go in
10 there anymore?

11 A. Yes.

12 Q. But you don't know whether or not you asked them if it was
13 a staff member that complained or a student that complained, do
14 you?

15 A. I don't think I asked, no.

16 Q. And you talked to your mom later in the day about this?

17 A. Yes.

18 Q. Do you remember her being upset with this policy?

19 A. Yes.

20 Q. And since that day, that would have been start of freshman
21 year, you're now close to halfway through junior year?

22 A. Yes.

23 Q. You've used the gender-neutral restrooms ever since that
24 time?

25 A. Yes.

1 Q. Okay. On direct examination, you mentioned that one
2 student made a comment about you during your freshman year, but
3 other than that, you haven't had any problems; is that right?

4 A. Yes.

5 Q. What was the comment?

6 A. It was -- I was leaving the gender-neutral bathroom in the
7 office and -- I think these were the interns who were working
8 in the office at the time, because the office has interns --
9 when students have a free class, they intern for a teacher or
10 the office. And one said, watch out, there's a girl, slash,
11 boy in there when I was leaving.

12 Q. Okay. And you told a reporter, a news reporter about that
13 comment, right?

14 A. Yes.

15 Q. But you did not tell anybody at the school district about
16 that comment, right?

17 A. Yes.

18 Q. Okay. I think your comment was, "One person leaving the
19 bathroom said to someone behind me, 'Watch out, there's a boy,
20 slash, girl in there.'"

21 Is that the comment?

22 A. Yeah. It was -- that was the way it was.

23 Q. So this was a single-stall, gender-neutral bathroom in the
24 office?

25 A. Yes.

1 Q. So somebody was coming out of the bathroom, right?

2 A. I was walking towards the bathroom.

3 Q. And you were going in?

4 A. Yes.

5 Q. And somebody was standing behind you?

6 A. Yes.

7 Q. And the person coming out said, "Watch out, there's a
8 boy/girl in there" -- or, excuse me -- "a boy, slash, girl in
9 there?"

10 A. I think -- I think at the time I had walked into the
11 bathroom and then was -- was closing the door when I heard
12 this. I don't have the best recollection of this. It was a
13 long time ago. But that's the best to my recollection.

14 Q. And you told that same news reporter that, surprisingly,
15 no one got murdered and no children got raped, right?

16 A. Yes.

17 Q. Do you remember having a meeting around October of 2015
18 with Holly Arkin, then Principal Kyle Dresback, and Sallyanne
19 Smith?

20 A. Yes.

21 Q. Principal -- it was Principal Dresback back then, right?

22 A. Yes.

23 Q. And Sallyanne Smith, do you know who she was?

24 A. I knew her as just an administrator.

25 Q. Okay. And during that meeting, was your mom present?

1 A. Yes.

2 Q. Okay. Do you remember if anybody else was there?

3 A. I don't think so, no.

4 Q. Okay. That -- at that meeting, you had hoped that the
5 school would change its policy, right?

6 A. Yes.

7 Q. And you understood the policy at that time to be that you
8 could not use the men's room; is that right?

9 A. Yes.

10 Q. And somebody during that meeting said to you that it was a
11 district policy, right?

12 A. Yes.

13 Q. And during that meeting, there were references to best
14 practices, right?

15 A. Yes.

16 Q. And best practices at that meeting was that students could
17 choose between the bathroom of their biological sex and the
18 gender-neutral bathroom, right?

19 A. I don't -- I don't think that best practices -- I never
20 saw that best practices.

21 Q. Okay. But you mentioned just a moment ago that best
22 practices was discussed during the meeting?

23 A. There were loose references to the best practices in the
24 context of Drew is not allowed to use the men's bathroom.

25 Q. Okay. But the best practices during that meeting was

1 transgender students could choose the bathroom of their
2 biological sex or a gender-neutral bathroom, right?

3 MR. LAPOINTE: Objection, Your Honor. Assumes facts
4 not in evidence. He's already testified he never has seen --

5 THE COURT: I'll let him answer. If he knows what
6 was discussed as best practices, he'll say so. If he doesn't,
7 he'll say so.

8 Mr. Adams, can you answer the question the best you
9 can, please.

10 THE WITNESS: I remember them saying that best
11 practices was that transgender people could use the
12 gender-neutral bathrooms. I don't remember them saying the
13 bathroom of the biological sex, as you say it.

14 BY MR. HARMON:

15 Q. Okay. Do you still have that deposition transcript in
16 front of you?

17 A. Yes.

18 Q. I'm going to ask you to take a look at page 134. And I'm
19 going to bring it to you. Page 134, lines 3 through 15. And
20 just read that to yourself for a moment.

21 A. Which lines?

22 Q. Lines 3 through 15.

23 A. Okay.

24 Q. Okay. So when you were at that meeting, in terms of what
25 the best practices were, isn't it fair to say that what you

1 were told was trans students -- transgender students could use
2 gender-neutral bathrooms or they could choose the bathroom of
3 their biological sex?

4 Reading that, does that refresh your recollection as
5 to whether that was stated during that meeting?

6 A. Yes.

7 Q. And that's what they said during that meeting was what the
8 best practices was, right?

9 A. It was said during one of the meetings. I'm not sure
10 which meeting it was.

11 Q. Okay. One of the meetings at campus -- on campus?

12 A. Yes.

13 Q. Okay.

14 A. The memory of those meetings is rather fuzzy because they
15 were all very similar and they were all in a short period of
16 time, so distinguishing between each meeting is a little bit
17 difficult for me.

18 Q. And even before this lawsuit was filed in this case in
19 June of 2017, someone at the district said to you that
20 biological sex meant someone's sex assigned at birth or sex
21 that is determined by genitals, right?

22 MR. LAPOINTE: Objection. Misstating the evidence.

23 THE COURT: Even before this lawsuit was filed,
24 someone at the district said to you that biological sex -- can
25 you -- ask that question again. Who are we talking about,

1 someone at the district?

2 BY MR. HARMON:

3 Q. At any time prior to this lawsuit, did anybody employed or
4 anybody that worked at the St. Johns County School District, to
5 your knowledge, say to you that biological sex meant someone's
6 sex assigned at birth?

7 A. The definition can vary. The definitions of biological
8 sex that I've seen from the district have varied very -- have
9 varied quite a bit.

10 Q. Have you seen any definitions of biological sex in writing
11 from the district?

12 A. What time period are we talking about?

13 Q. Ever.

14 A. No.

15 Q. Okay. Did anybody -- who at the school district provided
16 a definition of biological sex to you?

17 MR. LAPOINTE: Objection. Foundation.

18 THE COURT: I'll let him answer it if he can.

19 Go ahead, Mr. Adams, if you can answer it.

20 THE WITNESS: I don't recall.

21 BY MR. HARMON:

22 Q. Okay. Have you --

23 THE COURT: Isn't that what the policy is?

24 MR. HARMON: What's that, Your Honor, the definition
25 of biological sex?

1 THE COURT: No. Isn't -- isn't the policy of the
2 district that you have to use the bathroom that corresponds to
3 your biological sex?

4 MR. HARMON: Yes.

5 THE COURT: Okay. Go ahead.

6 BY MR. HARMON:

7 Q. At the time this lawsuit was filed in June of 2017, were
8 you aware that the district had written best practices
9 guidelines for LGBTQ students?

10 A. I heard they existed. I had not seen them.

11 Q. Had you -- had your mom ever discussed them with you?

12 A. My mom, like me, had not seen them.

13 Q. Before the lawsuit?

14 A. Correct.

15 Q. Do you remember a meeting in November of 2015 at Nease
16 High School with -- I'm sorry. Strike that.

17 Dr. Adkins, I want to talk a little bit about
18 Dr. Adkins. She's a --

19 THE COURT: I asked you a question a minute ago about
20 what the policy says. Is the policy actually written down?

21 MR. HARMON: There's a long-standing district
22 practice separating bathrooms based on biological sex, and then
23 there's a written best practices guidelines document that was
24 created in August of 2015.

25 THE COURT: And does it use the term "biological

1 sex"?

2 MR. HARMON: It does in that one, yes, Your Honor.

3 THE COURT: So is that what the district considers to
4 be the policy?

5 MR. HARMON: The district's long-standing policy is
6 biological sex separating bathrooms based on biological sex.
7 The best practices guidelines document was created to provide
8 guidance to a certain small segment of the population where the
9 schools had seen some emerging issues, one of them being proms,
10 pronouns, bathroom use -- it wasn't a transgender policy. It
11 was guidelines to address emerging needs of LGBTQ students.

12 THE COURT: So I guess I just don't -- I'm not
13 understanding what the question -- the line of questioning you
14 asked Mr. Adams, what was it designed to show, then?

15 MR. HARMON: I was trying to understand that at the
16 time of that meeting in October of 2015, which would have been
17 well before any OCR investigation or any lawsuit, that the
18 district specified to Mr. Adams what its policy and practice
19 was with respect to student bathroom use, what it was
20 understood to be at that time.

21 THE COURT: And that's just designed to show that
22 y'all didn't come up with that policy after they complained, is
23 that -- that's what it's -- that's what you're trying to do?

24 MR. HARMON: Yes.

25 THE COURT: Because that's one of the issues in the

1 law?

2 MR. HARMON: Yes. It's just to show that this best
3 practices wasn't something we pulled out of our pocket; that it
4 had been in the works.

5 THE COURT: All right. Go ahead.

6 BY MR. HARMON:

7 Q. Dr. Adkins, we'll talk a little bit about her, she's a
8 pediatric endocrinologist in North Carolina; is that right?

9 A. Yes.

10 Q. And that's somebody you have seen for testosterone
11 treatments, right?

12 A. Yes.

13 Q. And you've seen her three times total?

14 A. Yes.

15 Q. The first would have been in March of 2016; correct?

16 A. That's correct.

17 Q. And this would have been spring break of sophomore --
18 freshman year, right?

19 A. Yes.

20 Q. And the first time was a preliminary visit to see her
21 about testosterone?

22 A. Yes.

23 Q. And you saw her for about 15 minutes?

24 A. Give or take.

25 Q. And while you were there, you spoke to someone else about

1 mental health type issues, correct?

2 A. Yes. I spoke to a social worker to discuss my transition
3 and my mental health.

4 Q. Okay. The second time that you went to see Dr. Adkins was
5 in June of 2016, right?

6 A. Yes.

7 Q. And you recorded a public segment for NPR radio on the
8 drive to get the testosterone treatment, right?

9 A. Yes.

10 Q. And when you got to the clinic in June of 2016, NPR was
11 ready to record and open the doors for you to go into the
12 clinic, right?

13 A. The doors were automatic.

14 Q. But they were there?

15 A. Yes, they were there.

16 Q. And they filmed you while you were there?

17 A. No, they recorded audio.

18 MR. LAPOINTE: Your Honor, relevance.

19 THE COURT: I'm going to allow it.

20 BY MR. HARMON:

21 Q. They filmed you while you were there?

22 A. No.

23 THE COURT: NPR is radio, isn't it?

24 BY MR. HARMON:

25 Q. Was there any time any media there took any images of you,

1 whether NPR or anyone else?

2 A. They took a single photograph.

3 Q. What was the photograph of?

4 A. My mom and I.

5 Q. Okay. Just what were you doing in the photograph?

6 A. Smiling.

7 Q. Okay. Do you remember receiving medical treatment in the
8 photograph?

9 A. Oh, yes. There's another photograph that my mother took,
10 I think.

11 Q. Okay.

12 A. That was not taken by the reporters. I think that's what
13 you're referring to.

14 Q. Okay. What was that one of?

15 A. It was a picture of me in a chair giving myself my first
16 shot of testosterone and the radio people were standing there
17 recording.

18 Q. That was placed on social media, right?

19 A. Yes.

20 Q. Okay. And then the third and final time that you went to
21 see Dr. Adkins was in August of 2017 as of now, right?

22 A. Yes.

23 Q. I say final time. You've not been since then?

24 A. That's correct.

25 Q. And that was a checkup for your testosterone treatments,

1 right?

2 A. Yes.

3 Q. So three total times you've seen Dr. Adkins, right?

4 A. Yes.

5 Q. The first was for 15 minutes?

6 A. Yes.

7 Q. How long was the second?

8 A. I don't remember specifically, but it was probably about a
9 half an hour.

10 Q. Okay. And approximately how long was the third?

11 A. I'd say about the same.

12 Q. So about an hour and 15 minutes, approximately, combined?

13 A. Approximately.

14 Q. Okay. Towards the end of your freshman year of high
15 school, do you remember meeting with Cathy Mittelstadt and your
16 mom at Nease High School?

17 A. Yes.

18 Q. And Ms. Mittelstadt was nice to you during that meeting,
19 right?

20 A. Yes.

21 Q. She was an administrator with the school district?

22 A. Yes.

23 Q. And kind of talk a little bit about sophomore year real
24 quick. Going into sophomore year, you were excited about
25 starting school, right?

1 A. As excited as I can be about starting school.

2 Q. And when school started, you went to your first football
3 game on campus?

4 A. Yes.

5 Q. Okay. And when you went to that football game, you had no
6 problem finding gender-neutral bathrooms at the football field
7 that you could use, right?

8 A. Well, that -- I didn't need to use the bathroom during any
9 football games that year, I don't think.

10 Q. Aside from using them, my question is just knowing where
11 those gender-neutral bathrooms were, you had no problem knowing
12 where they were, right?

13 A. Yeah, they were in the middle of the hallway in the
14 stadium. It was very easy to spot.

15 Q. Okay. Did you know -- well, strike that.

16 With respect to how you've been treated by
17 administration at Nease High School, staff have referred to you
18 by the male pronoun, right?

19 A. Yes.

20 Q. They call you Mr. Adams, right?

21 A. Yes.

22 Q. And from my understanding, they treat you as a male
23 student in all aspects except when it comes to bathroom use; is
24 that fair?

25 A. Yes.

1 Q. So do you remember during your direct examination being
2 asked questions about how long it took you to walk to the
3 gender-neutral bathrooms?

4 A. Yes.

5 Q. And I think you had -- we watched two videos, right?

6 A. Yes.

7 Q. And one of them was from your second period class?

8 A. Yes.

9 Q. And one of them was from your fourth period class?

10 A. Yes.

11 Q. Okay. Have you asked anybody this school year at Nease
12 where all of the gender-neutral bathrooms are located?

13 A. No.

14 Q. And when it comes to -- you have seven classes right now,
15 right?

16 A. Yes.

17 Q. And your first period class, you don't use the restroom
18 during that class?

19 THE COURT: When you say you haven't asked anybody
20 where all the gender-neutral bathrooms are, do you already know
21 where they are?

22 THE WITNESS: Most of them, yes. And if I don't, I
23 know the general area. Like, for example, I know there are
24 several in the new building; however, I have no classes in the
25 new building and, therefore, no need to know.

1 BY MR. HARMON:

2 Q. So first period, you don't use the bathroom, right?

3 A. Almost never.

4 Q. Okay. And we watched second and fourth period, right?

5 A. Yes.

6 Q. When is lunch?

7 A. After fourth period.

8 Q. Okay. And isn't it true that every time you have used the
9 bathroom this year, it has been during class?

10 A. Yes.

11 Q. Okay. So when on direct examination you were asked
12 whether or not the videos accounted for student traffic, that
13 wouldn't really necessarily matter if you were only using the
14 bathroom during class, right?

15 A. There is still some traffic during class. It's minimal,
16 but it's there. There's always some people in the hallways.

17 Q. Not enough to where you're being blocked and can't walk
18 to -- at the same pace that you walked in that video, though,
19 right?

20 A. That's correct.

21 Q. And when it comes to the number of times that -- the
22 frequency with which you use bathrooms this year, it's my
23 understanding that you use the bathroom once a day or twice a
24 day now --

25 A. Yes.

1 Q. -- approximately?

2 And during the time you had been using the men's
3 room, you only used the bathroom once a day or once every other
4 day, right?

5 A. Yes.

6 Q. So the frequency has picked up as of your junior year of
7 high school, right?

8 A. Yes.

9 Q. Okay.

10 A. I can -- I have an explanation for that.

11 Q. In terms of estimating --

12 MR. LAPOINTE: Objection. Excuse me. The witness
13 didn't finish his answer.

14 THE COURT: Go ahead and finish if you wanted to say
15 something else.

16 THE WITNESS: Yeah, I would. I believe the -- the
17 reason for that increase is in freshman year, I'd just been
18 used to holding it for longer. I still didn't enjoy leaving
19 class to go to the bathroom. I don't think anyone enjoys
20 leaving to go to the bathroom. So I would try to hold it for
21 longer. And that was then exacerbated by the policy.

22 Now, as opposed to then, I think I've made a -- a
23 deal with myself that I wouldn't put myself through unnecessary
24 discomfort, so I use the bathroom more frequently.

25 I also -- over the past two years, I think I also put

1 myself in situations that made it harder for me to concentrate
2 on schoolwork and stuff. And knowing that this year will be
3 harder, I've taken a lot of time to make sure that there's
4 nothing else distracting me, so I am using the bathroom a
5 little bit more frequently.

6 BY MR. HARMON:

7 Q. Has nothing to do with the fact that you filed a lawsuit
8 alleging irreparable harm?

9 A. It has nothing to do with that.

10 Q. Okay. And I think on direct examination you were asked
11 about being filmed back in, I think, November of this year on
12 campus with your counsel, one of the attorneys for the school
13 district, and an administrator and a videographer; is that
14 right?

15 A. I think that's everyone, yes.

16 Q. Okay. And -- now, during that filming session, you filmed
17 the time it took to walk to the men's room and the
18 gender-neutral restroom for all seven of your classes, right?

19 A. Yes.

20 Q. Okay. And you were only shown the video for having to
21 walk to your second period and your fourth period, right?

22 A. Yes.

23 Q. Okay. And I think approximately the second period took
24 two minutes and eight seconds?

25 A. I don't know the exact --

1 Q. The video says what it says?

2 A. Yes, if the video says that, then, yes.

3 Q. Would it surprise you to know that those two videos were
4 the two longest walks of all seven of your classes?

5 A. No.

6 MR. HARMON: Your Honor, at this time I'm going to
7 play -- I think it's listed as Defendant's 133. I think it's
8 the same video that plaintiff had listed as -- I think it was
9 63. But they're pretty short. If we can just play all seven
10 of them.

11 THE COURT: We have to play all seven of them?

12 MR. HARMON: Yeah.

13 THE COURT: We already saw two of them, right?

14 MR. HARMON: Well, the other ones are significantly
15 shorter, so we should be able to speed through that pretty
16 quickly.

17 THE COURT: Okay. You can just tell me how long it
18 took, couldn't you?

19 MR. HARMON: I can ask plaintiff if he recalls.

20 THE COURT: Well, he's not going to recall. Okay,
21 I'll watch it. I'm not going to tell you how to do your job.

22 MR. HARMON: I just want to play 3, 5, 6, and 7. I
23 don't need to play the other two.

24 THE COURT: Are you admitting this into evidence?

25 MR. HARMON: Yes, Your Honor.

1 THE COURT: Mr. Harmon [sic], any objection?

2 MR. LAPOINTE: No objection.

3 THE COURT: They're received. Yeah. I don't think I
4 need to see the ones I've already seen.

5 MR. HARMON: Yeah, we're not going to play those.

6 (Defendant's Exhibit 133 received into evidence.)

7 (Video played.)

8 BY MR. HARMON:

9 Q. So would you agree with me in your third period class, it
10 took about 48 to 49 seconds to walk to the gender-neutral
11 bathroom?

12 A. Yes.

13 Q. Okay.

14 (Video played.)

15 BY MR. HARMON:

16 Q. This is the walk to the men's room?

17 A. Yes.

18 (Video played.)

19 BY MR. HARMON:

20 Q. Okay. So that was about 12 seconds, right?

21 A. Yes.

22 (Video played.)

23 BY MR. HARMON:

24 Q. So a 36-second difference for third period?

25 A. Yes.

1 Q. Okay. Now, in fourth -- fifth period, I understand
2 correctly -- before we play that video -- you don't use the
3 bathroom during fifth period; is that right?

4 A. Almost never.

5 Q. Okay. So if you almost never use that we'll leave that --
6 we won't play that one, but let's play sixth period.

7 A. Sixth period has a gender-neutral bathroom inside of the
8 classroom.

9 Q. Okay. Let's play that video.

10 (Video played.)

11 BY MR. HARMON:

12 Q. So about eight or nine seconds to go to the bathroom in
13 sixth period; is that right?

14 A. Yes.

15 Q. And then let's look at the last, which is seventh period.
16 We'll start with men's and then we'll do gender-neutral.

17 (Video played.)

18 BY MR. HARMON:

19 Q. So about 33 seconds to get to the men's bathroom in
20 seventh period?

21 A. Yes.

22 Q. Okay. Let's check seventh period gender-neutral.

23 (Video played.)

24 BY MR. HARMON:

25 Q. So would you agree seventh period gender-neutral bathroom

1 took about 32 to 34 seconds?

2 A. Yes.

3 Q. So pretty much the exact same distance as the men's
4 bathroom?

5 A. For one class, yes.

6 Q. For one class, right?

7 And in sixth period, you have a bathroom in the
8 classroom, right?

9 A. Yes.

10 Q. All right. Fifth period, you don't use the bathroom?
11 Pretty much never, right?

12 A. That's correct.

13 Q. And third period I think we established it was a 36-second
14 longer walk to go from the men's room versus the gender-neutral
15 restroom, right?

16 A. Yes.

17 Q. And in first period, you rarely ever use the bathroom?

18 A. Correct.

19 Q. Okay. The two longer ones, walks, would be second and
20 fourth period?

21 A. Yes.

22 Q. Other students during the school day --

23 MR. HARMON: Actually, let me rewind that. Your
24 Honor, I don't know if I ever formally moved Defendant's
25 Exhibit 133 into evidence, but I'd like to do so now.

1 THE COURT: We already did that.

2 MR. HARMON: Okay. I remember no objection, but I
3 want to make sure.

4 BY MR. HARMON:

5 Q. So when it comes to leaving class to go to the bathroom
6 other students do that, right?

7 A. Yes.

8 Q. It's fair to say any one student on any given day leaves
9 class to go to the bathroom, right?

10 A. Yes.

11 Q. You have not told anybody at the St. Johns County School
12 District about having any urinary or bladder problems, have
13 you?

14 A. No.

15 Q. You have not seen any medical professionals about any
16 bladder or urinary problems, have you?

17 MR. LAPOINTE: Objection, Your Honor. Relevance.

18 MR. HARMON: I'd be happy to do that.

19 THE COURT: Okay.

20 MR. HARMON: It's alleged in the complaint and in the
21 student's declaration that having to hold it causes bladder and
22 urinary tract infections. Dr. Ehrensaft also addressed that in
23 her expert report.

24 THE COURT: Okay. Go ahead.

25 MR. LAPOINTE: Your Honor, if I may, actually there's

1 somebody who deals with that and it's a urologist and they
2 haven't brought one here to testify about that. Asking the
3 witness that is --

4 THE COURT: He's just asked him if he's had any such
5 problems. And if the answer to that is no, it's no.

6 All right. Go ahead.

7 BY MR. HARMON:

8 Q. Okay. Do you know a Dr. Ehrensaft?

9 A. Yes.

10 Q. Who is Dr. Ehrensaft?

11 A. A -- an expert witness in this case.

12 Q. Do you know what she does?

13 A. Yes.

14 Q. What's that?

15 A. She works with transgender patients.

16 Q. Okay. Do you know what her -- what she's a doctor in, if
17 anything?

18 A. I forget if she's a doctor in psychiatry or endocrinology,
19 but one of those.

20 Q. And you've talked to Dr. Ehrensaft personally, right?

21 A. Yes.

22 Q. She's actually a medical professional out in Oakland,
23 California, right?

24 A. Yes.

25 Q. And I think you talked to her three times about your

1 transition, your childhood, and things about your life?

2 A. Yes.

3 Q. And that was over the internet?

4 A. It was over a video chat program.

5 Q. Okay. And you can see each other's faces?

6 A. Yes.

7 Q. And you were alone during these video chats, right?

8 A. Yes.

9 Q. It was just you and Dr. Ehrensaft?

10 A. Yes.

11 Q. Each session with Dr. Ehrensaft lasts about an hour?

12 A. Yes.

13 Q. Okay. And do you recall whether or not you talked to
14 Dr. Ehrensaft during your three discussions with her about what
15 had happened when you were pulled out of class in September of
16 2015?

17 A. I believe that came up, yes.

18 Q. What do you recall specifically telling Dr. Ehrensaft
19 about that?

20 A. I don't remember most of the specifics of that call.

21 Q. Okay. Now, Dr. Ehrensaft had a list of topics she wanted
22 to cover with you, right?

23 A. Yes.

24 Q. Okay. And is it fair to say that she's the one who
25 directed the conversation?

1 A. Yes. She asked me a lot of questions.

2 Q. And you found her through your legal team, right?

3 A. Yes.

4 Q. Did you discuss with Dr. Ehrensaft any interpersonal
5 issues you may have had with any students or relationships?

6 A. Yes.

7 Q. Okay. What do you specifically recall discussing with
8 Dr. Ehrensaft?

9 A. Past relationships with students or with people.

10 Q. Did you talk to her about all the issues you had had in
11 the past with other students?

12 MR. LAPOINTE: Your Honor, objection. Relevance.

13 THE COURT: Mr. Harmon?

14 MR. HARMON: Yes, Your Honor. Unless something has
15 changed in this case, I expect plaintiff will be calling
16 Dr. Ehrensaft on Wednesday to start the day to talk about
17 everything Mr. Adams told her about her childhood -- about his
18 childhood, about schooling, about relationships, all of which
19 formed the bases of Dr. Ehrensaft's purported expert testimony,
20 unless something has changed. I do think what plaintiff told
21 Dr. Ehrensaft is certainly relevant to this case.

22 THE COURT: All right. Counsel?

23 MR. LAPOINTE: I would simply ask for a vagueness
24 objection to specifically point out which time he's referring
25 to for the witness.

1 THE COURT: All right. You may proceed, sir.

2 MR. HARMON: Okay. With the vagueness objection.

3 BY MR. HARMON:

4 Q. Do you know a student with the initials D.D.?

5 A. Yes.

6 Q. Did you talk to Dr. Ehrensaft about a relationship with a
7 student with the initials D.D.?

8 A. I believe so, yes.

9 Q. You're sure?

10 A. Yes.

11 Q. Okay. Do you still have that deposition transcript in
12 front of you?

13 A. Yes.

14 Q. Could you turn to page 231?

15 A. 2- what?

16 Q. 231. And then take a look at line 22 through 24 and just
17 read that to yourself.

18 A. Okay.

19 Q. Okay. Did you talk to Dr. Ehrensaft about your
20 relationship with D.D.?

21 A. I believe so.

22 Q. Okay. When I took your deposition on November 1st, did
23 you remember that?

24 A. No.

25 Q. Okay.

1 MR. LAPOINTE: Objection. Improper impeachment. The
2 question that was asked initially was whether or not he
3 actually discussed this with Dr. Ehrensaft. In fact, he says
4 initially he didn't believe so. He was uncertain. This
5 impeachment here does not match what counsel is trying to do
6 here.

7 THE COURT: Well, I guess we just need to do it the
8 right way, which is that, Mr. Harmon, you ask Mr. Adams a
9 question --

10 MR. HARMON: Okay.

11 THE COURT: -- and he'll answer it. And then if his
12 answer is inconsistent with a statement he made in his
13 deposition, you can point to the specific question and the
14 specific answer and you can ask Mr. Adams to explain the
15 inconsistency. That's the way we'll do it.

16 So what is your precise question to Mr. Adams first?

17 BY MR. HARMON:

18 Q. Did you talk to Dr. Ehrensaft about your relationship with
19 a student named D.D.?

20 A. I'm not sure for 100 percent certainty, but I believe it
21 came up.

22 Q. Okay. Do you know a student with the first name beginning
23 with the letter E?

24 A. Yes.

25 Q. Did you talk to Dr. Ehrensaft at all about any of the

1 issues that you had with a student whose first name started
2 with the letter E?

3 A. I don't remember if I did or not.

4 Q. Okay. Could you look at the deposition page in front of
5 you, lines 16 through 18, and ask [sic] me if that helps
6 refresh your recollection as to whether or not you recall
7 Dr. -- talking to Dr. Ehrensaft about any issues you had with
8 E.

9 A. I see the page.

10 Q. Okay. Does that refresh your recollection at all as to
11 whether you had that discussion?

12 A. I don't think I did.

13 Q. Okay. What about with a student with the initials K -- do
14 you know a student whose first name starts with K?

15 A. Yes.

16 Q. Did you talk to Dr. Ehrensaft about your feelings about K?

17 A. I don't believe I did.

18 Q. Okay. What about a student with the first name -- or
19 somebody with the first name R, do you know any students with
20 the first name R?

21 A. Yes.

22 Q. Did you talk to Dr. Ehrensaft about any issues with a
23 student R?

24 A. I don't think I did.

25 Q. Okay.

1 A. And the reason why I didn't is because those were a long
2 time ago --

3 Q. Okay.

4 A. -- so I didn't think they were relevant anymore.

5 Q. But you talked to Dr. Ehrensaft about a lot of things,
6 right, from a long time ago?

7 A. Yes, my childhood and stuff like that. But I didn't think
8 individual incidents or individual people from a long time ago
9 were relevant.

10 Q. So you were selective with what you told Dr. Ehrensaft?

11 MR. LAPOINTE: Objection. Argumentative.

12 THE COURT: Sustained.

13 BY MR. HARMON:

14 Q. Have you been to every bathroom at every school in the
15 St. Johns school district?

16 A. No.

17 Q. So when it comes to the different elementary schools,
18 middle schools in the district, what those bathrooms look like,
19 you can't necessarily speak to that, can you?

20 A. No.

21 Q. Do you recall rushing through your therapy sessions
22 sometimes with Dr. Jacobs?

23 A. I wouldn't call it rushing. Maybe not making it go longer
24 than it had to.

25 Q. So you would not say that you were in a rush to finish

1 your meetings with Dr. Jacobs?

2 A. I don't think I would use the word "rush."

3 Q. Okay. How would you describe it?

4 A. If I didn't have anything else to say that I thought was
5 important to discuss, then I would let her end the meeting.

6 Q. Did you -- now, Dr. Jacobs was supposed to help you with
7 mental health issues, right?

8 A. Yes.

9 Q. And is it fair to say that you don't believe that you
10 necessarily utilized that?

11 A. Yes.

12 Q. Is that a "yes" to my question?

13 A. Yes.

14 Q. Okay. Sorry.

15 And you didn't really talk about all that was
16 bothering you with Dr. Jacobs, right?

17 A. If there was something bothering me, then I would most
18 likely talk about it. Sometimes -- if it was on my mind at the
19 time, I would have talked about it.

20 Q. Okay. Now, at some point in time, you were taken off of
21 Zoloft, right?

22 A. Yes.

23 Q. Do you recall when that was?

24 A. It was around the end of December, early January of 2017.

25 Q. And Dr. Pai actually recommended that you stop taking it,

1 right?

2 A. Yes.

3 Q. Dr. Pai was a psychiatrist?

4 A. Yes.

5 Q. And you're not seeing Dr. Pai anymore, right?

6 A. No.

7 Q. And you were taking that Zoloft at the time that -- you
8 stopped taking it in December/January -- December '16/January
9 '17 for depression and anxiety, right?

10 A. Yes.

11 Q. And you've not taken any medications for anxiety or
12 depression since January 2017, right?

13 A. That's correct.

14 MR. HARMON: May I have just one moment, Your Honor,
15 to confer?

16 THE COURT: Sure. Sure.

17 (Counsel confer.)

18 BY MR. HARMON:

19 Q. Do you remember being shown these pictures --

20 A. Yes.

21 Q. -- on direct examination? And I think one of them was of
22 you dressed as a dinosaur?

23 A. Yes.

24 Q. And I think you said that you dressed and did things that
25 were more masculine, right?

1 A. Yes.

2 Q. Isn't it gender stereotyping, though, to assume that just
3 because you like dinosaurs, that's a masculine thing?

4 MR. LAPOINTE: Objection. Argumentative.

5 THE COURT: I'll let him answer.

6 THE WITNESS: Everything I did was masculine, not
7 just the dinosaur costume.

8 BY MR. HARMON:

9 Q. But didn't you say that things that you did that were
10 masculine, like dressing like a dinosaur -- you don't have to
11 be a boy to like dinosaurs, right?

12 A. That's correct.

13 Q. Okay. And, really, whether a person is feminine or
14 masculine has no bearing at all on their gender identity,
15 right?

16 A. Yes. But there was a time in my childhood where I didn't
17 really know that gender mattered or that gender -- I didn't
18 really have a gender identity because I didn't really know what
19 those terms meant.

20 Everything I did was masculine. My friends were
21 boys. I thought I was just like them. I thought I was --
22 these are just my friends. These are the people I hang out
23 with. And for a while, I was really happy like that. I was
24 comfortable like that, living basically as a boy. I didn't
25 really know the difference between he/him and she/her pronouns,

1 and I didn't really care. I was comfortable and happy.

2 Q. But you have a more familiar understanding with all that
3 now, right?

4 A. Yes.

5 Q. So talking right now, specifically, we're talking about
6 gender identity, I think you defined that during your direct
7 examination, right?

8 A. Yes.

9 Q. Gender identity to you does not depend on whether an
10 individual is masculine or feminine, right?

11 A. That's correct.

12 Q. If someone says that they are a boy to you, they are a
13 boy, right?

14 A. Yes.

15 Q. And if somebody says that they are a girl, in your view,
16 they are a girl, right?

17 A. If someone says that their gender identity is a boy or
18 girl, then I believe them.

19 Q. Okay. And if somebody says they are non-binary, then we
20 treat them as non-binary, right?

21 MR. LAPOINTE: Objection as to non-binary.

22 BY MR. HARMON:

23 Q. Do you know what non-binary means?

24 A. I know some people choose to identify with that label.

25 Q. Okay. Is that what you -- when I say "non-binary," what

1 that means to you?

2 A. You would have to ask somebody who identifies as
3 non-binary specifically what that means.

4 Q. What does it mean to you?

5 A. I don't have the best understanding of the term because
6 I -- I am a boy. I don't identify with that term. But if I
7 had to give -- speculate as to a specific definition, I would
8 say neither male -- neither girl or boy.

9 Q. Okay. And if somebody were to say that they were
10 non-binary, based on your definition of it, to you we would
11 treat that person as being non-binary, correct?

12 A. Define treating someone as non-binary.

13 Q. Okay. Do you ever remember making public statements on
14 YouTube about how non-binary individuals are to be treated?

15 MR. LAPOINTE: Objection on relevancy, Judge.

16 THE COURT: I'll allow it.

17 THE WITNESS: Yes.

18 BY MR. HARMON:

19 Q. Okay. What do you remember?

20 A. I remember saying that we should respect people for
21 whatever labels they choose to put upon themselves.

22 Q. So a person to you -- let me make sure I understand
23 this -- who elects to label their gender identity as non-binary
24 means that that person does not label themselves as male or
25 female, right?

1 MR. LAPOINTE: Objection. Confusion. I don't
2 understand the question.

3 THE COURT: Go ahead.

4 BY MR. HARMON:

5 Q. Do you understand my question?

6 A. I think so. Can you rephrase it or restate it?

7 Q. Sure. When referring to an individual's gender identity,
8 if an individual views their gender identity as being
9 non-binary, it is your position that we should respect that,
10 correct?

11 A. Yes.

12 Q. Okay. And that would include all things that come with
13 not specifically identifying as being male or female, correct?

14 MR. LAPOINTE: Objection as to foundation. It's not
15 a question. As to all these --

16 THE COURT: I understand that Mr. Adams isn't an
17 expert in this area, and I'm not holding him to that. I'm
18 allowing -- I'm allowing the questions because I think they're
19 probably allowable and apparently -- I don't know what was on
20 this YouTube video, but I'm letting Mr. Harmon ask the
21 questions.

22 What's your question, sir?

23 MR. HARMON: Yes.

24 BY MR. HARMON:

25 Q. Again, it was --

1 THE COURT: Obviously, Mr. Adams can only answer the
2 questions to the best of his ability.

3 Go ahead.

4 BY MR. HARMON:

5 Q. I think you've answered it at this point.

6 When you saw a -- I think it was Dr. Jacobs in
7 February of 2015 -- that was the first time you had ever seen
8 Dr. Jacobs, right?

9 A. Yes.

10 Q. Dr. Jacobs has never diagnosed you with gender dysphoria,
11 has she?

12 A. I believe she has, yes.

13 Q. She's a therapist, right?

14 A. Yes.

15 Q. And your position is that a therapist diagnosed you with
16 that?

17 A. I'm not sure who did the official on-paper diagnosing, but
18 Dr. Jacobs says that I have gender dysphoria.

19 Q. Okay. And that may have been based on some other person's
20 diagnosis, right?

21 MR. LAPOINTE: Objection. Counsel testifying.

22 THE COURT: I'm going to sustain that. I'm not sure
23 even what that means exactly.

24 BY MR. HARMON:

25 Q. Do you know who originally diagnosed you with gender

1 dysphoria?

2 A. Dr. Jacobs was the first person who told me that I have
3 gender dysphoria.

4 Q. Okay. When?

5 A. In May -- late May of 2015.

6 Q. Okay. You talked about using the men's room in the
7 courthouse during one of our breaks earlier, right?

8 A. Yes.

9 Q. Were there any school-aged children in that bathroom?

10 A. No.

11 Q. You had mentioned earlier during your direct examination
12 about not being sure at this time whether or not you were going
13 to proceed with -- I think you called it bottom surgery?

14 A. That's correct.

15 Q. Okay. What is that?

16 A. Well, it's the surgery on the genitals to change the
17 appearance of them. I'm trying to explain this in --

18 Q. I'm trying to ask it as well --

19 A. -- not very crude language.

20 Q. Likewise.

21 A. Which I'm sure you can understand the meaning of that.

22 THE COURT: It's okay.

23 BY MR. HARMON:

24 Q. I'm trying to ask this in the same manner.

25 Do you have the genitals of a female?

1 A. What do you mean by that?

2 Q. Do you have a vagina?

3 A. Yes.

4 Q. Okay. Have you ever stated to the public that you do not
5 have dysphoria?

6 A. At the time I meant body dysphoria, but I think I used the
7 word "dysphoria."

8 Q. Okay.

9 MR. HARMON: I'm going to play, Your Honor, a brief
10 exhibit -- I think it's about a two-minute video that's
11 previously listed as Defense Exhibit 238.

12 THE COURT: And what is it?

13 MR. HARMON: It's a short YouTube video of plaintiff
14 discussing gender dysphoria.

15 THE COURT: And what date was it?

16 MR. HARMON: I believe -- well, I can ask once I get
17 the video going exactly when plaintiff recorded it.

18 THE COURT: Wouldn't it have a YouTube posting date?

19 MR. HARMON: That's not how it was provided to us.

20 THE COURT: Okay.

21 MR. HARMON: We had to -- we obtained it in discovery
22 because they were taken off YouTube. So I'm not sure of the
23 exact dates. They don't have the properties.

24 THE WITNESS: They were not taken off of YouTube.

25 They were just private --

1 MR. HARMON: Okay. They were made -- that's what I
2 meant. I couldn't access those.

3 THE WITNESS: Yeah. And you said it was about
4 discussing gender dysphoria?

5 BY MR. HARMON:

6 Q. Dysphoria.

7 A. It was discussing body dysphoria.

8 Q. "Dysphoria" is what I guess I used.

9 MR. HARMON: So it's Defendant's Exhibit 23.

10 THE COURT: All right. Any objection?

11 MR. LAPOINTE: Yes, Your Honor. Objection for both
12 on relevance and we also have a motion in limine on that, Your
13 Honor, on the use of social media by the defendant in this
14 case.

15 THE COURT: Well, wouldn't -- wouldn't statements
16 that Mr. Adams made, even out-of-court statements that bear on
17 his situation that we're talking about here in this trial,
18 wouldn't they be relevant?

19 MR. LAPOINTE: Just one moment.

20 (Counsel confer.)

21 MR. LAPOINTE: Here's the issue, Your Honor. This is
22 not related to any of the issues in the case as it relates to
23 the damages that I believe that were discussed was an issue in
24 this case.

25 THE COURT: All right.

1 MR. LAPOINTE: So what is the point of actually going
2 into that other than to prejudice the court with that?

3 THE COURT: Well, how about if I just promise you I
4 won't be prejudiced and I watch it anyway. Seriously, I mean,
5 this is a nonjury trial.

6 MR. LAPOINTE: Yes, sir.

7 THE COURT: And, you know, if this is Mr. Adams
8 talking about some of these issues, then I'm happy to hear it.
9 If it's not relevant or if I don't think it's persuasive or if
10 I think he's talking about something different than Mr. Harmon
11 thinks he's talking about, then I'll -- then I'll consider it
12 accordingly.

13 MR. LAPOINTE: I appreciate that, Your Honor. I just
14 want to lodge the objection.

15 THE COURT: All right. Overruled.

16 Go ahead.

17 MR. HARMON: And can I just ask -- when you pull it
18 up, before you press play, I just had a question on it for
19 plaintiff. It's the one that's labeled -- I think it's "My
20 Dysphoria." Yep. That one.

21 (Video played.)

22 MR. HARMON: Can you pause it.

23 BY MR. HARMON:

24 Q. Do you recall when you made this video?

25 A. I don't remember the specific month. I believe it was

1 around February or March of this year.

2 Q. Okay. And is that you that made that video?

3 A. Yes.

4 Q. Okay. Is that before this lawsuit was filed?

5 A. Yes.

6 Q. Okay.

7 THE COURT: Hold on one second. Just for the record,
8 the court reporter will not try to transcribe what's being said
9 on the video. The video will be the best evidence and record
10 evidence of what was said. And it's Defendant's Exhibit 238;
11 is that correct?

12 COURTROOM DEPUTY: Yes, sir.

13 MR. HARMON: 238.

14 THE COURT: All right. I'll admit it over objection.
15 And go ahead and finish playing it out.

16 (Video played.)

17 (Defendant's Exhibit 238 received into evidence.)

18 MR. HARMON: That's it. And may I have just one more
19 moment to confer, Your Honor?

20 THE COURT: Sure.

21 (Counsel confer.)

22 MR. HARMON: Just to clarify, Your Honor, was that
23 admitted?

24 THE COURT: Yes.

25 MR. HARMON: Okay. No further questions at this

1 time.

2 THE COURT: Redirect?

3 MR. LAPOINTE: Yes, Your Honor.

4 **REDIRECT EXAMINATION**

5 BY MR. LAPOINTE:

6 Q. Drew, I'm going to go back to the video that counsel
7 landed on a little bit.

8 First of all, would you please tell the court, why do
9 you do those videos and put them on YouTube?

10 A. Because --

11 MR. HARMON: Object to asked and answered.

12 THE COURT: Overruled.

13 THE WITNESS: Because when I was just discovering all
14 this information about transgender people, a lot of the
15 information I got was from watching other trans guys on
16 YouTube, and I feel like I owe it to myself and the community
17 to put my story out there and put as much information as I can
18 out there because some young trans guy might stumble across it
19 and it might improve their situation.

20 BY MR. LAPOINTE:

21 Q. And when you are actually doing those videos for YouTube,
22 what are you trying -- what kind of -- what are you trying to
23 portray to those who are going to be watching you?

24 A. I want people to know the happy moments. I want people to
25 know the best moments. I want people to feel empowered and

1 feel joy and feel like whatever bad situation they're currently
2 in, that it gets better.

3 Q. And when you're actually on that video -- you're sharing
4 those happy moments. Does that mean you do not have unhappy
5 moments?

6 A. I have a lot of unhappy moments, as well as happy moments.

7 Q. And why do you choose to share the happy, uplifting
8 moments with the world versus the unhappy perhaps or depressing
9 moments?

10 A. Because I don't think it would help anyone to just go on
11 social media and be super depressing. And I want to tell
12 people and tell myself that I'm getting better and I'm happy.
13 Even if I'm not happy all the time, even if I still have
14 depression and anxiety, I want to at least put on a brave face
15 for those who might need to see one.

16 Q. And one of the things that counsel was asking you about
17 was this issue of whether or not you have dysphoria and you
18 asserting that you do not have dysphoria.

19 A. In the video I didn't specify, but I should have. I was
20 referring to body dysphoria. That is discomfort and hatred of
21 my body. And, honestly, in that video, I think I was lying to
22 myself.

23 I was dealing with a lot of issues with my body. And
24 I was trying to convince myself that it was okay and that I was
25 fine. And I don't think that was true, especially with regards

1 to my chest.

2 I was wearing this uncomfortable, sweaty, tight
3 binder garment. That's the chest binder I was talking about
4 earlier. And I didn't see getting out of that for years. I
5 thought I would be stuck wearing that thing every single day,
6 every waking moment of every day within the safety margins.

7 So I was trying to cope. I was trying to deal with
8 this situation as best I could, and I was trying to put on a
9 brave face.

10 Q. So not sharing the fact -- at that time you were actually
11 talking to these people, you're saying you're doing all right,
12 does any one of those people, do they know you're wearing a
13 binder at the time?

14 A. Yes.

15 Q. Who does?

16 A. People --

17 MR. HARMON: Object to lack of foundation.
18 Speculation.

19 THE COURT: Overruled.

20 THE WITNESS: Anybody who was wearing -- who --
21 anybody who wears a binder knows what wearing a binder looks
22 like. So the trans people who are watching knew what that
23 looked like.

24 BY MR. LAPOINTE:

25 Q. Okay. Now, you were saying how happy you were. Can you

1 tell the court, what did you do in terms of medical transition
2 steps subsequent to that video?

3 A. I had top surgery in May of 2017.

4 Q. Can you reconcile the fact that you were telling the
5 people in that YouTube video that you were happy with your
6 body -- how long after that did you have top surgery?

7 A. A couple of months.

8 Q. Then two months later, you went on to have top surgery,
9 can you reconcile that?

10 A. I didn't think I would have top surgery within years of
11 posting that video. The fact that I had it so soon was frankly
12 a surprise to me, which is not to say that the process was --
13 was short. No, as I said earlier, it's a long process to get
14 that surgery; I just thought it would take a lot longer. It
15 did take a while to accumulate all the letters that was
16 necessary and all the blood work that was necessary. But I
17 thought I would be stuck in the binder for years.

18 Q. Drew, let me go back to the line of questioning regarding
19 bathroom use that counsel discussed with you. Just can you
20 tell the court, when you go into the bathroom, what do you do?

21 A. I walk in, go into a stall, close the door, lock it, use
22 the bathroom, leave the stall, wash my hands, and leave.

23 Q. And you were asked earlier whether or not you knew --
24 whether or not there was any school children in the bathroom
25 that was next door. Do you recall that?

1 A. I do recall.

2 Q. And your answer was no; is that correct?

3 A. Aside from me, there were no school children.

4 Q. Well, how would you know if there was any school children
5 in the stall next to you?

6 A. One of -- the stalls had -- I was in a line to use one of
7 the stalls. One of the stalls was out of order. The other two
8 stalls had people coming and going from them.

9 Q. But my question to you, though, once you're inside a
10 stall, are you able to see what's going on in the next stall?

11 A. No.

12 Q. You were asked a number of questions about the walkthrough
13 from some of your classes to -- to the gender-neutral bathroom.
14 Do you recall that?

15 A. Yes.

16 Q. First of all, do the gender-neutral bathroom walkthroughs
17 that you did, were they reflective of today or were they
18 reflective of when you -- when you were using -- when you
19 started using the boys' room back when you actually became
20 transgender?

21 A. Today.

22 Q. I'm sorry?

23 A. They're reflective of today.

24 Q. Okay. And they showed you -- counsel showed you a couple
25 of clips that were a little shorter than some of the clips that

1 you -- that I showed you, correct?

2 A. Yes.

3 Q. That was fourth grade, correct, the one that I showed you?

4 A. Yes, fourth period.

5 Q. Now, tell us, were you actually walking -- what is that
6 four-minute -- the one I showed you or what counsel showed you,
7 how does it feel to take that walk from your classroom to the
8 gender-neutral bathroom?

9 A. It's one of the least -- one of my least favorite parts of
10 the day. It gives me a lot of anxiety. It feels almost like a
11 walk of shame. Because I know that the school sees me as less
12 of a person, less of a boy, certainly, than my peers. It gives
13 me a lot of anxiety.

14 It sends the message that I don't belong. Even if
15 there's not very many people in the hallway, it feels like
16 there's a thousand eyes on me.

17 It feels like I'm a big troublemaker that the school
18 has to separate from the rest of the student body. It feels
19 like -- it feels like the school doesn't think I'm even worthy
20 of occupying the same space as my classmates. It's
21 humiliating.

22 It puts a target on my back. I routinely -- when I'm
23 walking to the bathroom, sometimes I'll watch my back. I'll
24 look behind me, make sure no one is looking at me, even if
25 that's -- even if I'm just paranoid, you never know who's

1 watching. You never know who might have a problem with me.

2 And because I'm using a special bathroom and I'm
3 oftentimes passing a men's bathroom, everybody knows I'm
4 different, and I just want to fit in. So it's the opposite of
5 what I want.

6 Q. Do you know when you use the actual gender-neutral
7 bathroom, do you know whether or not other people are able to
8 use that bathroom, are allowed to use that bathroom?

9 A. Everyone is allowed to use that bathroom.

10 Q. And when you actually leave your classroom to go to a
11 gender-neutral bathroom, what happens if there's somebody using
12 that bathroom?

13 A. That very rarely happens. The only times that has
14 happened are in the C pod administration building, and that's
15 only because the interns who are in that pod are using that
16 bathroom, or it's a staff member who's using that bathroom.
17 But if there's someone in it, I wait.

18 Q. Okay. And when you walk past -- when you go into the
19 gender-neutral bathroom and you happen to see a men's room or
20 boys' room there, how does that feel with walking past the
21 boys' room?

22 A. That's absolutely humiliating. It makes me feel like --
23 again, that it -- it emphasizes the fact that the school
24 doesn't agree I'm a real boy; that the school doesn't see me as
25 equal to my peers; that the school thinks that I'm some -- some

1 troublemaker that deserves to be separated. Even if I know I
2 didn't do anything wrong -- they said I didn't do anything
3 wrong, but every time I pass that bathroom, it feels like a
4 punch in the stomach and a reminder I am somehow different from
5 everybody. And in high school, being different doesn't tend to
6 go well.

7 MR. LAPOINTE: May I have a brief moment, Your Honor?
8 (Counsel confer.)

9 MR. LAPOINTE: No more questions, Your Honor.

10 THE COURT: Recross?

11 MR. HARMON: No, Your Honor.

12 THE COURT: Thank you, Mr. Adams. You may step down.

13 THE WITNESS: What would you like to do with the
14 documents?

15 THE COURT: You just leave them all right there.
16 They'll take care of it. I'll leave it up to you, your mom and
17 your lawyers whether you stay or you go back to school. I
18 don't know, it may be too late today, but I'll leave that all
19 up to you. Okay?

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: Thank you.

22 (Judge confers with courtroom deputy.)

23 (Witness excused.)

24 THE COURT: Are there exhibits that are agreed to
25 that can be put into evidence without objection or not? Have

1 y'all talked about that or not?

2 MS. RIVAUX: Your Honor, we did send -- before the
3 lunch break, we did confer over a list of exhibits that the
4 defendants had given us. I had sent an e-mail to Mr. Harmon
5 about our comments, basically that we didn't object only -- as
6 long as their witness could lay the foundation that it was
7 documents that they actual reviewed or considered before
8 adopting the policy. And I also sent them a list of exhibits
9 that we would like to use, but I haven't heard back yet, but I
10 haven't been checking my e-mail so I don't know.

11 MR. HARMON: I don't know, was that e-mail sent
12 today?

13 MS. RIVAUX: Yes.

14 MR. HARMON: Oh, I haven't looked at my e-mail since
15 we've been here, so I'm sorry.

16 THE COURT: Okay. Why don't y'all talk about it
17 overnight and maybe we can introduce some evidence in the
18 morning that -- that's agreed to.

19 All right. Is the next witness this Dr. Adkins?

20 MS. ALTMAN: Yes, the next witness, Your Honor, is
21 the trial preservation deposition of Dr. Adkins. She's the
22 plaintiff's treating endocrinologist -- pediatric
23 endocrinologist.

24 THE COURT: So, you know, I was thinking over lunch
25 about what we were getting ready to do, and this is why I don't

1 like trial preservation depositions or don't like using
2 depositions as evidence in trial because no matter how much you
3 know it's for trial, people still act like it's not, and that's
4 why you get three-and-a-half-hour depositions instead of -- if
5 this witness was on the stand, I guarantee you -- I mean, I'd
6 leave after a period -- I guarantee you it would not take
7 three-and-a-half hours. So it's a little disappointing to hear
8 that that's the way it went and all these objections and so
9 forth.

10 Let me throw something out to you. What if I watched
11 the beginning of the deposition and maybe if -- if Mr. Harmon
12 wanted me to, the beginning of the cross-examination, and then
13 I promise to read the rest of it? Is that acceptable or do
14 y'all feel like that Dr. Adkins is somebody I need to be
15 watching for three-and-a-half hours?

16 And the only reason I would even watch a little of it
17 is just to get a feel for who she is and see her and so forth
18 so that when I'm reading it, I would have a better feel for
19 what I'm doing.

20 It's just an idea. If y'all really feel like it's
21 important to your case that I watch the three-and-a-half-hour
22 video, I will, but it's a thought.

23 MS. ALTMAN: We appreciate it, Your Honor. Can we
24 just have a minute to confer?

25 THE COURT: Sure.

1 MS. ALTMAN: And stating the obvious, obviously,
2 plaintiff is very comfortable with you only watching an hour of
3 that depo, the first hour. Just throwing that out as a second
4 option.

5 THE COURT: Yeah, I don't think I can do that. I
6 guess I could stop after an hour of cross so then each person
7 would have had exactly the same amount of time with the
8 witness, but I bet you Mr. Harmon might think that his best
9 stuff was in the last hour-and-a-half.

10 MS. ALTMAN: We would accept that as a third option.

11 THE COURT: All right. All right. Y'all want to
12 confer or what do you want to do?

13 I tell you what, let's -- it's five to three. Let's
14 go ahead and take a break. It's -- I'll come back at ten
15 after -- if we do something like that, who would the next
16 witness after that be?

17 MS. ALTMAN: It would be Erica.

18 THE COURT: Okay. And that probably would take a
19 while. Yeah. So think about that. Okay. Ten after. We'll
20 be back.

21 COURT SECURITY OFFICER: All rise.

22 (Recess, 2:57 p.m. to 3:14 p.m.)

23 COURT SECURITY OFFICER: All rise. This Honorable
24 Court is now in session. Please be seated.

25 THE COURT: What did y'all figure out?

1 MS. RIVAUX: Your Honor, we had an opportunity to
2 confer and we are fine if you want -- Your Honor wants to
3 review the video or the transcript on -- at your own time. The
4 only request that we would make would be that the court
5 reporter receive a copy so we make sure that the transcript
6 gets into the record fully.

7 THE COURT: Well, the court reporter wouldn't
8 transcribe it. It would just -- we would -- what we do is take
9 the transcript and make it Court Exhibit No. 1 and then it's,
10 in effect, part of the record of the case. So that's how we
11 handle it.

12 And is that satisfactory to you, Mr. Harmon?

13 MR. HARMON: Yes, Your Honor.

14 THE COURT: Okay. And you're just willing to have me
15 just do it; you don't need me to even watch a little bit of it
16 or anything?

17 MS. RIVAUX: I think we're fine with that, Your
18 Honor.

19 THE COURT: And let me say this. I think that's
20 fine, and especially since this is an expert witness, I think
21 it's fine. And, you know, I was kind of giving you a hard time
22 about the length of it, justifiably, but -- but, you know, I
23 would listen to it or watch it if I really felt like it was
24 important. But I think if I read it, I think, frankly, I'll
25 get maybe more out of it. And so I -- that's what I'm planning

1 to do, then.

2 So what's Ms. Altman whispering to you? Anything you
3 want me to -- anything you want me to know?

4 MS. RIVAUX: Only, Your Honor, that we prefer you --
5 if you do want to watch any portion of it, we can have you
6 watch it.

7 THE COURT: I tell you what you can do. Why don't
8 you put both the video and the transcript in to -- we'll take
9 the video as Court Exhibit 1, and we'll take the transcript as
10 Court Exhibit 2. And if I want to see what she -- how she
11 presents or anything, I can look at it. But my primary
12 objective would be to read it, which I will do, and, of course,
13 I'll assure you I'll do it. So let's do that.

14 Are you prepared to put that in now or do you want to
15 do it another time or what?

16 MS. RIVAUX: We have a copy of the transcript now,
17 but we could just do it tomorrow morning.

18 THE COURT: Okay.

19 MS. RIVAUX: The only one other thing that I don't
20 think we had a chance to talk about is that there were three
21 exhibits that we had referenced in our direct examination. We
22 do have those available now for the court.

23 THE COURT: I tell you what. When you give it all to
24 me in the morning when we do it all, if you will tender those
25 exhibits. I assume they have exhibit numbers and everything,

1 right?

2 MS. RIVAUX: They do, Your Honor.

3 THE COURT: And then if Mr. Harmon wants to object,
4 I'll listen and make my decisions. It may end up I'll defer
5 until I've actually read the transcript, but you can tender
6 them as exhibits along with the video along with the
7 transcript.

8 MS. RIVAUX: Absolutely. Thank you, Your Honor.

9 THE COURT: All right. Good. Very good.

10 All right. Then who is Mr. Adams' next witness,
11 then?

12 MS. ALTMAN: It would be Erica Adams Kasper.

13 COURTRROOM DEPUTY: Do you solemnly swear that the
14 testimony you are about to give before this court will be the
15 truth, the whole truth, and nothing but the truth, so help you
16 God?

17 THE WITNESS: I do.

18 COURTRROOM DEPUTY: Please state your full name and
19 spell your last name for the record.

20 THE WITNESS: Erica Adams Kasper, K-a-s-p-e-r.

21 COURTRROOM DEPUTY: Thank you.

22 THE WITNESS: You're welcome.

23 **ERICA ADAMS KASPER, PLAINTIFF'S WITNESS, SWORN**

24 **DIRECT EXAMINATION**

25 BY MS. DOOLITTLE:

1 Q. Good afternoon, Ms. Kasper. Can you please state your
2 full name for the record.

3 A. Erica Adams Kasper.

4 Q. And Ms. Kasper, are you Drew Adams' mother?

5 A. Yes.

6 Q. Do you have any other children besides Drew?

7 A. I do.

8 Q. And who is that?

9 A. My son Carter.

10 Q. Are you married to Drew and Carter's father?

11 A. No.

12 Q. What is his name?

13 A. Scott Adams.

14 Q. Were you and Mr. Adams married?

15 A. Yes.

16 Q. What years were you married?

17 A. 1999 to 2005.

18 Q. And since your divorce, who have Drew and Carter lived
19 with?

20 A. Primarily with their dad.

21 Q. And you heard earlier that Drew went through the different
22 periods of time where your family lived in Florida and Texas as
23 well. Can you explain to the court the nature of your
24 parenting relationship that you and Mr. Adams have been
25 operating under since your divorce?

1 A. Sure. We thought it best that the kids live with one
2 parent and not go back and forth between two parents as that's
3 unstable for the kids. So the kids live with their dad and I
4 come and go. I have a key to his place. He has a key to my
5 place. But that way the kids get to stay in one place with all
6 their things and their room and they get to be stable.

7 Q. During the school week, do you come to Mr. Adams' house
8 every morning?

9 A. Just about every morning, yes.

10 Q. And are you there in the afternoons when the kids get home
11 from school?

12 A. Most days, yes.

13 Q. Do you stay at Mr. Adams' house during the day?

14 A. Yes.

15 Q. And why is that?

16 A. Because I work for him.

17 Q. Are you the homework parent?

18 A. Well, they're in high school now, so there's not much I
19 can help them with on homework. But I'm the one that kind of
20 follows up and makes sure they get their work done.

21 Q. Does Drew take his study seriously?

22 A. Yes.

23 Q. How do you know that?

24 A. He's in a very rigorous academic program, the
25 International Baccalaureate program, which requires a minimum

1 performance level to maintain. He's a member of the National
2 Honor Society, which also requires a minimum level to maintain.
3 And I see him making big plans for his future that require him
4 to be very focused on his studies.

5 Q. And is Drew in his junior year?

6 A. Yes.

7 Q. Is Drew currently on track to pursue any scholarship
8 opportunities upon graduation?

9 A. Yes. He's on track for the Bright Future scholarship in
10 the state of Florida.

11 Q. Does that require a certain GPA as well?

12 A. It requires a certain GPA, test scores, and service hours.

13 Q. About how many hours a day does Drew spend on his studies?

14 A. I would say one to two. He takes breaks in between
15 subjects, but roughly one to two.

16 Q. And what is your understanding of Drew's plans for after
17 high school?

18 A. He wants to go to college and then to medical school.

19 Q. Not Florida State?

20 A. Apparently not, no.

21 Q. I want to talk with you a little bit about Drew's mental
22 health.

23 A. Okay.

24 Q. You heard some of that testimony from Drew earlier today.

25 Has Drew -- when did you first notice Drew struggling

1 with depression?

2 A. Well, it was a gradual onset. It's not like it's
3 different from one day to the next. But it was middle school,
4 so approximately sixth, seventh grade that he gradually began
5 to show signs of it.

6 Q. And how did you realize that that was becoming an issue
7 for Drew?

8 A. Well, he was becoming more withdrawn, spending long hours
9 in his room by himself sometimes in the dark, losing interest
10 in the things he used to find fun. Just noncommunicative.
11 Just a lot of the standard signs of depression.

12 Q. Is that something that you and Mr. Adams talked about as
13 Drew's parents?

14 A. Yes.

15 Q. What action did you take, if any, to help Drew with Drew's
16 depression?

17 A. Well, we spoke to Drew a great deal, and then we started
18 looking for a therapist and a psychiatrist that were --
19 specialties in adolescent care.

20 Q. And who were the -- who were the therapists and the
21 psychiatrist that you -- that Drew began treating with?

22 A. Dr. Jacobs for psychology and Dr. Pai for psychiatry.

23 Q. And at some point, did Drew's depression began to improve
24 or abate?

25 A. Yes.

1 Q. When was that?

2 A. When he came out as transgender.

3 Q. Approximately when was that?

4 A. Approximately the end of May 2015.

5 Q. Can you explain to the court how you learned that Drew was
6 transgender?

7 A. Well, I mean, in retrospect, there were a million tiny
8 things that we probably should have picked up on leading up to
9 that, but that we just didn't have a name for, or weren't
10 really familiar with the concept of transgender.

11 But the minute that I sort of realized that this was
12 his identity was when we were at my house watching TV and there
13 was a transgender man on TV and he was speaking about his
14 experience. And I could see that Drew was completely riveted
15 by this show.

16 And I could see the wheels turning for him. And I
17 could see things falling into place for him. And that moment
18 was like a light-bulb moment for me. It was like, oh, aha, now
19 all of a sudden things leading up to this point made sense.

20 Q. When you say -- I think you mentioned a couple times there
21 were other things that now seem to make sense to you. What are
22 you referring to?

23 A. Well, I mean, Drew was never a feminine child. Drew, you
24 know, liked outer space and dinosaurs. And it wasn't even so
25 much what he liked, it was what he didn't like, didn't like

1 princesses, didn't like pink, didn't like skirts, didn't like
2 to play, you know, princess tea party, things like that.

3 You know, what he wanted to do was race cars and push
4 dinosaurs around and, you know, go to the science center. So
5 those -- that was part of it. But I mean, he just never -- he
6 never clicked with any of the female things, the standard
7 female stereotype things.

8 Q. Did you ever try to engage Drew just the two of you in any
9 of those more, to use your words, sort of stereotypical female
10 or feminine activities?

11 A. Yes.

12 Q. And can you tell us about that?

13 A. Yeah. When Drew was about 12 or 13, we had a weekend -- I
14 like to take the kids sometimes one on one for a weekend away
15 just the two of us, and that weekend I scheduled pedicures for
16 us because I thought, hey, this is a great mother/daughter
17 bonding thing to do. And Drew hated every minute of it and
18 when it was over said, I'm never doing that again. And just
19 nothing about that was remotely pleasant for him, so I was
20 disappointed. I -- you know, we couldn't do pedicures anymore.

21 Q. Is this -- at some point did you have an actual
22 conversation when Drew told you he was transgender?

23 A. Yes.

24 Q. Tell us about that.

25 A. That was several days after I seen him react to seeing a

1 trans person on TV. And he -- as I waited for him to sort of
2 bring it to me, I did my own research and things like that.
3 And a few days later, he sent me a message on Facebook and
4 said, "Can I have a binder?"

5 And I went to him and said, "Are you transgender?"

6 And he said, "Yes."

7 Q. How was that, receiving that news?

8 A. At that moment, it wasn't a surprise because I had sort of
9 put it all together for myself before that. I knew that things
10 were going to get difficult for him. It's not a great world to
11 live in if you're different, if you're transgender. But it was
12 also a relief that he came to me with it, that he felt
13 comfortable talking to me about it, and that we finally had an
14 answer for all the things that had been missing in his
15 identity.

16 Q. As his mother, though, did you feel a personal sense of
17 loss when Drew told you he was transgender and he would be
18 living his life as a boy?

19 A. I mean, yeah, there was definitely an element of loss.
20 It's not -- you're not losing a child. Your child is still
21 there, but you're losing the future that you thought you were
22 going to have with your child.

23 You know, I had pictured, you know, having a daughter
24 that would wear my wedding dress. That was never going to
25 happen now. So there is an element of loss, in the sense of

1 what you think is ahead of you is no longer ahead of you. But
2 now it's just a different journey.

3 Q. Did you notice any changes in Drew after he came out to
4 you --

5 A. Yes.

6 Q. -- that summer?

7 And what did you notice?

8 A. I mean, it was absolutely remarkable the change in him.
9 He went from this quiet, withdrawn, depressed kid to this very
10 outgoing, positive, bright, confident kid. It was a complete
11 180.

12 Q. At some point after Drew had discussed this with you and
13 with Mr. Adams, did Drew ask if he could begin to transition?

14 A. Well, I think that was -- the request for the binder was
15 his first step towards asking us to help him transition.

16 Q. And was that something that you and Mr. Adams talked
17 about?

18 A. Yes.

19 Q. And at some point, did you agree to purchase it for him?

20 A. Yes.

21 Q. How did you and Mr. Adams reach the decision to allow Drew
22 to take that first step and start wearing a binder?

23 A. Well, we talked, you know, amongst ourselves and with Drew
24 and brought Drew's therapist into the mix in speaking about
25 Drew's transition and trying to get a complete team of both our

1 family and professionals that would help guide us on this
2 journey.

3 Q. And who was the therapist that you were referring to?

4 A. Dr. Jacobs.

5 Q. At this point was -- and, I'm sorry, I believe you stated
6 it, but when was this that Drew came out to you?

7 A. End of May 2015.

8 Q. And during that period, was Drew seeing Dr. Jacobs on a
9 regular basis?

10 A. Yes.

11 Q. About how often was Drew treating with Dr. Jacobs?

12 A. About weekly.

13 Q. Did Dr. Jacobs believe it was in Drew's best interest to
14 begin transitioning?

15 A. Yes.

16 MR. HARMON: Objection. Hearsay. Lack of
17 foundation.

18 THE COURT: Overruled.

19 THE WITNESS: Yes, she did.

20 BY MS. DOOLITTLE:

21 Q. And was Drew ever diagnosed with any medical condition
22 related to his transgender?

23 A. Yes.

24 Q. What was that?

25 A. Gender dysphoria.

1 Q. Who diagnosed Drew with gender dysphoria?

2 A. We had three providers tell us he had gender dysphoria,
3 Dr. Jacobs, Dr. De La Hunt, who is the division chief of
4 pediatrics at Nemours, and the team at the Duke Gender Clinic.

5 MR. HARMON: Objection. Hearsay, again, Your Honor.

6 THE COURT: So I guess, Mr. Harmon, are we going to
7 hear from any of these folks or not?

8 MR. HARMON: They have not been listed.

9 THE COURT: Listed as experts. Okay.

10 MR. HARMON: Listed as treating physicians in any
11 Rule 26 disclosures or in the trial witness lists by plaintiff.

12 THE COURT: So is this like the first you've ever
13 heard of this or -- or what?

14 MR. HARMON: Well, I had discussed at the pretrial
15 conference that we did not believe gender dysphoria was
16 relevant. And plaintiff indicated that they were going to put
17 on evidence that there has been a gender dysphoria diagnosis.
18 And I think that burden is on plaintiff to introduce
19 non-hearsay testimony to establish when and who diagnosed
20 plaintiff with that and the treatment. And none of these
21 individuals that are repeating what doctors said -- none of
22 those doctors are going to testify in this case.

23 THE COURT: And do you have any medical records?

24 MR. HARMON: I do have medical records, but none of
25 these doctors are going to testify.

1 THE COURT: Okay. All right. Ms. Doolittle, what's
2 your response?

3 MS. DOOLITTLE: Thank you, Your Honor. These
4 providers have been listed in our -- through our disclosures
5 since the beginning. The defendant does have all of the
6 medical records from these providers, and, in fact, on Friday
7 obtained a signed certification from Dr. Jacobs basically
8 authenticating her set that she signed for a declaration for
9 them authenticating her medical records for Drew.

10 In addition, Your Honor, this testimony can be used
11 for non-hearsay purposes for effect on the listener and --

12 THE COURT: Well, am I supposed to -- am I supposed
13 to, in effect, find that Mr. Adams does have gender dysphoria
14 to the extent it's relevant -- we may have to talk about
15 that -- based on him saying that that's what the doctor said
16 and based upon his mom saying that's what the doctor said? Is
17 that going to be the basis upon which I'm going to determine
18 that he does?

19 MS. DOOLITTLE: Well, Your Honor, I think the issue
20 is whether he's transgender --

21 THE COURT: Right.

22 MS. DOOLITTLE: -- and whether he's been harmed in
23 this case by the defendant's policies. And we are presenting a
24 lot of evidence about different types of harm. One of those
25 types of harm is his gender dysphoria was exacerbated.

1 Mr. Adams testified that he received that diagnosis.
2 He knows he has that diagnosis.

3 Ms. Kasper, you know, to the extent that she was, you
4 know, consenting to fairly significant medical treatment was
5 doing so on the basis of those diagnoses and those providers'
6 recommendations.

7 And we also do have -- we also do have Dr. Jacobs',
8 you know, certification that these are her regularly kept
9 business records, and those are coming into evidence as well.

10 THE COURT: Thank you.

11 Mr. Harmon, you get the last word and then I'll --

12 MR. HARMON: Yes, Your Honor. Other than Dr. Adkins
13 and Dr. Ehrensaft, at no point in any Rule 26 disclosure in
14 this case did plaintiff list Dr. Pai, Dr. De La Hunt,
15 Dr. Jacobs, or anybody else who treated plaintiff. So to stand
16 in trial -- in the middle of trial and allege that those
17 witnesses' testimony are relevant, I think would run afoul of
18 Rule 26. We can certainly pull those disclosures out.

19 The only individuals who are here to talk about
20 gender dysphoria and treatment are simply repeating what
21 non-disclosed witnesses, who have never been listed in this
22 case as having any discoverable information -- this is a -- you
23 know, again, I've argued I don't think gender dysphoria is
24 relevant to this case.

25 But plaintiff is making it a relevant issue. And I

1 think if that is the case, plaintiff has the burden of putting
2 in non-hearsay testimony with records that have methodological
3 information, not simply Dr. Ehrensaft and Dr. Adkins attempting
4 to repeat hearsay statements from individuals who are not
5 testifying in this case.

6 MS. DOOLITTLE: Your Honor, may I make one more
7 point?

8 THE COURT: Sure.

9 MS. DOOLITTLE: Dr. Adkins also testifies about this
10 in her deposition and her diagnosis, so -- and how she came to
11 rely on that information.

12 THE COURT: Didn't I hear today she's only seen him
13 for, like, an hour total or something?

14 MR. HARMON: She did not diagnose him.

15 MS. DOOLITTLE: Well, she --

16 THE COURT: Hey. Whoa, whoa, whoa.

17 MR. HARMON: Sorry, Your Honor.

18 THE COURT: You know, that's not the way this works.

19 MR. HARMON: I appreciate that. I apologize.

20 THE COURT: Yes, ma'am.

21 MS. DOOLITTLE: And I apologize for speaking over
22 Mr. Harmon. But my understanding is that she relies on, and
23 we're about to proffer them to the court, Dr. Jacobs' letters
24 to Dr. Adkins and to other providers, in which she talks about
25 her treatment with Drew and her diagnosis and the fact that his

1 parents are supportive and they consented to that course of
2 therapy and treatment.

3 THE COURT: Okay. Well, I'm going to use the
4 flexibility allowed me in a non-jury trial. I'm going to let
5 you put on the evidence. But I don't think it's a bad point
6 that if you -- if the plaintiff wants me to find that Mr. Adams
7 has gender dysphoria and that that somehow means something in
8 this case, I'm not sure that the testimony -- the lay testimony
9 of Mr. Adams himself, or of his mother, is going to be
10 sufficient to do that. And if you didn't provide another way
11 to do it, then -- then you'll just have to live with your
12 record.

13 But I'm -- so I'm going to -- I guess I'm overruling
14 the objection. I'm going to let you ask the questions. I
15 mean, I don't think it's a problem for somebody to say I've
16 been acting or I was -- for example, if somebody says the
17 doctor prescribed medication to me because I have high blood
18 pressure, well, I mean, is that hearsay? Yeah. But who cares?

19 And maybe this is a little bit like that, but if it's
20 going to be important or if it's going to be relied on, you
21 know, what's the diagnosis, why was it made, what are the
22 indications for it and all those things, and I don't know that
23 these lay witnesses are really confident to talk about that.

24 So I'm going to let you do it, but I'm just telling
25 you that the weight I give to it and the use you try to make of

1 it may end up being problematic if this is the only record
2 you're able to make.

3 MS. DOOLITTLE: Thank you, Your Honor.

4 THE COURT: All right. So that's my -- I'm going to
5 overrule but with a caveat.

6 MR. HARMON: I apologize for interrupting counsel.

7 THE COURT: I understand.

8 All right. Go ahead.

9 MS. DOOLITTLE: Thank you, Your Honor.

10 BY MS. DOOLITTLE:

11 Q. And I may be repeating myself. I apologize. You
12 mentioned Dr. De La Hunt?

13 A. Yes.

14 Q. Who is Dr. De La Hunt?

15 A. Dr. De La Hunt is the division chief of psychiatry at
16 Nemours.

17 Q. I believe you also mentioned another provider in addition
18 to Dr. Jacobs and Dr. De La Hunt. Who was that?

19 A. That was the Duke Gender Clinic.

20 Q. And who in particular from Duke had discussed gender
21 dysphoria with you?

22 A. I believe it was Kristen Russell.

23 Q. And who is she?

24 A. She's the social worker that works at that clinic.

25 Q. What was your understanding from speaking with your

1 providers about the proper course of treatment for Drew?

2 A. My understanding was that Drew would socially transition,
3 that that would be the first step, and that medical transition
4 would be something that we discussed and figure out a plan for
5 down the road for him.

6 Q. And what was your understanding as to why it was important
7 for Drew to be allowed to socially transition?

8 A. Because as part of the treatment for gender dysphoria,
9 living as the gender that you identify as ameliorates a lot of
10 the negativity, a lot of the depression, anxiety, things like
11 that. So it was important that he be allowed to live as a boy.

12 Q. Did you and Mr. Adams discuss that advice that you were
13 receiving about allowing Drew to socially transition?

14 A. Yes.

15 Q. And what did you ultimately decide together?

16 A. We decided it was the right thing to do.

17 Q. Did Drew begin taking those steps the summer after his
18 eighth grade year?

19 A. Yes.

20 Q. And what were some of the steps that he took to socially
21 transition?

22 A. He started wearing the binder. He chopped his hair off.
23 He started wearing more masculine clothes. He started using a
24 men's restroom. He started using male pronouns. I think
25 that's most of it.

1 Q. Did Drew have a summer job between eighth and ninth grade?

2 A. Sort of. He had a summer volunteership.

3 Q. And what was that?

4 A. He volunteered at St. Vincent's Riverside hospital.

5 Q. Did he present to the hospital and the people working
6 there as a boy?

7 A. Yes.

8 Q. To your knowledge, did he have any problems there
9 interacting with the other employees or patients as a boy?

10 A. No.

11 Q. Do you know whether he used the male restroom when he was
12 interning at St. Vincent's?

13 A. As far as I know, he did.

14 Q. And did he have any problems doing that?

15 A. No.

16 Q. At some point, did Drew begin taking steps to medically
17 transition?

18 A. Yes.

19 Q. And when was that?

20 A. The first step was August of 2015.

21 Q. And what was -- what was the component of his medical
22 transition that he began in August?

23 A. That was the Depo-Provera shots to stop his periods.

24 Q. And which provider were you working with who prescribed
25 the Depo-Provera?

1 A. At that time, it was Dr. Gagliardi.

2 Q. And who is Dr. Gagliardi affiliated with?

3 A. She's a pediatric endocrinologist at Nemours.

4 Q. Here in Jacksonville?

5 A. Yes.

6 Q. Is that something that you and Mr. Adams discussed as
7 Drew's parents?

8 A. Yes.

9 Q. Who was the provider who took sort of the ultimate lead in
10 advising Drew and your family about Drew's medical transition?

11 A. Dr. Adkins, I think, would be the lead.

12 Q. And who was Dr. Adkins affiliated with?

13 A. She is the pediatric endocrinologist out of the Duke
14 Medical Center in North Carolina.

15 Q. And how was it that you ended up learning about
16 Dr. Adkins?

17 A. We -- our local pediatric endocrinologist, Dr. Gagliardi,
18 had said that she wanted to refer us out of state to a gender
19 clinic specifically for adolescents, and this is one of the
20 clinics she recommended, so we reached out to them first.

21 Q. Was it your understanding that that doctor -- that was
22 sort of a specialty area for Dr. Adkins was in treating
23 transgender youth and adolescents?

24 A. Yes.

25 Q. And I believe you mentioned Ms. Russell. Did she also

1 have that specialty?

2 A. Yes.

3 Q. What -- when did Drew first go up to Duke?

4 A. March of 2016.

5 Q. And did you go with him?

6 A. Yes.

7 Q. Who did you meet with when you went to Duke in March?

8 A. We met with Dr. Adkins, Kristen Russell and a variety of
9 nurses and techs.

10 Q. And what happened at that point?

11 A. That was largely an intake appointment. It was for us to
12 get to know the doctor and for the doctor to get to know us, to
13 learn a lot about Drew's medical history, to order blood work.
14 Also Drew went and spoke with Kristen Russell at length about
15 his own, you know, mental health and his experiences and his
16 transition, so they could get a complete picture of Drew's
17 history.

18 Q. Did Drew receive a prescription for testosterone at that
19 appointment?

20 A. No.

21 Q. Why not?

22 A. Because that's just not how the protocol works. They
23 needed to get to know us, get to know Drew, needed to get the
24 blood work done, needed a complete picture of who Drew was and
25 how his health was before taking a step like that.

1 Q. What was the first step that Dr. Adkins recommended with
2 respect to Drew's medical transition?

3 A. That was the testosterone.

4 Q. And when did that -- when did she make that
5 recommendation?

6 A. That was in June of 2016.

7 Q. Was that something that you and Mr. Adams discussed as
8 Drew's parents?

9 A. Yes.

10 Q. And did you and Mr. Adams consent to Drew starting the
11 course of testosterone?

12 A. Yes.

13 Q. Did Dr. Adkins or the -- the providers at Duke, did they
14 require any documentation from Dr. Jacobs or any other
15 providers before they would provide that prescription for Drew?

16 A. Yes.

17 Q. And what was it that they provided?

18 A. They needed a letter from Dr. Jacobs to attest to Drew's
19 mental health, to reinforce the diagnosis of gender dysphoria,
20 and to basically sign off on his readiness to start
21 testosterone.

22 Q. And did they explain why they wanted that information?

23 A. Yes.

24 Q. Did you ask Dr. Jacobs if she would provide that letter?

25 A. Yes.

1 Q. And did she provide it?

2 A. Yes.

3 Q. Did Dr. Jacobs show you the letter that she was going to
4 be providing the staff at the Duke clinic?

5 A. Yes.

6 MS. DOOLITTLE: Your Honor, I have a packet of
7 exhibits for you for this witness. Would now be the
8 appropriate time to --

9 THE COURT: That's fine.

10 MS. DOOLITTLE: -- provide those?

11 THE COURT: And I take it, Mr. Harmon, these would
12 also be -- you're going to be objecting to these as well on the
13 same grounds?

14 MR. HARMON: I'm not sure what they are yet.

15 MS. DOOLITTLE: I haven't got there.

16 THE COURT: Oh, I'm sorry. I thought y'all -- I
17 understood this to be correspondence -- is this correspondence
18 between the providers and the family?

19 MS. DOOLITTLE: Well, Your Honor, I'm going to hand
20 you-all the exhibits that I intend to use for the witness, but
21 the first one is correspondence from Dr. Jacobs to --

22 THE COURT: All right. We'll take them one at a
23 time.

24 MS. DOOLITTLE: Oh, you want them one at a time?

25 THE COURT: No, no. I mean, I -- we'll talk about

1 them one at a time. Go ahead.

2 BY MS. DOOLITTLE:

3 Q. Ms. Kasper, I've handed you what we've marked for
4 identification as Plaintiff's Exhibit 134.

5 Have you seen this document before?

6 A. Yes.

7 Q. Is this the letter that Dr. Jacobs wrote in response to
8 your request?

9 A. Yes.

10 Q. Is this a true and accurate copy of the letter?

11 A. Yes.

12 MS. DOOLITTLE: We would move for its admission.

13 THE COURT: All right. Mr. Harmon?

14 MR. HARMON: Yes, Your Honor. A couple of
15 different -- lack of foundation, in terms of when this letter
16 was reviewed. Hearsay, with respect to the contents of the
17 letter. And an objection as improper attempt to introduce
18 medical and expert opinions without having previously disclosed
19 these individuals on any witness list in this case.

20 THE COURT: All right. I'm -- may I --

21 Ms. Doolittle, you're going to say the same thing you said to
22 me last time?

23 MS. DOOLITTLE: Yes, Your Honor. Although I would
24 tender to the court the affidavit of records custodian -- it
25 was an 803(6), a 902(11) affidavit that the defendants obtained

1 from Dr. Jacobs just this Friday afternoon seemingly under --
2 it appears as though the defendant intends to use these records
3 as well that they're objecting to for the plaintiff's use.

4 THE COURT: All right. Are you -- are you going to
5 use these records, Mr. Harmon?

6 MR. HARMON: I'm not sure, Your Honor.

7 THE COURT: Okay. Well, okay. Well, actually, I'm
8 looking at -- it says Defendant's Exhibit 22.

9 MS. DOOLITTLE: That's the second exhibit, Your
10 Honor.

11 THE COURT: Yeah, I know. But this is a letter from
12 Dr. Jacobs to Dr. Sassani. That's the defendant's exhibit.
13 Another defendant exhibit, No. 14, from -- okay. That's not a
14 doctor deal. That's different.

15 All right. Well, I'm not sure it -- obviously,
16 Mr. Harmon, you're not going to be able to have it both ways.

17 MR. HARMON: Absolutely, Your Honor.

18 THE COURT: So we'll -- I will -- I'm going to go
19 ahead and admit Plaintiff's 134 subject to Mr. Harmon's
20 objection and subject to my decision as to whether this whole
21 area is -- has been proven up sufficiently depending on what
22 use is made of it. So I'll accept it with that caveat.
23 Plaintiff's 134 is received. Go ahead.

24 (Plaintiff's Exhibit 134 received into evidence.)

25 MS. DOOLITTLE: Thank you, Your Honor.

1 BY MS. DOOLITTLE:

2 Q. Did Dr. Jacobs provide or give notice to Ms. Russell about
3 Drew's diagnosis of gender dysphoria?

4 A. Yes.

5 Q. And can you direct the court to where that is in the
6 letter?

7 A. That is the fourth paragraph, the second sentence.

8 Q. Okay. Can you just read that aloud for the court briefly.

9 A. "He meets the DSM-5 criteria for gender dysphoria in
10 adolescence."

11 Q. And in Dr. Jacobs's letter, does she address the position
12 you and Mr. Adams had with respect to Drew receiving this care
13 and this treatment?

14 A. Yes.

15 Q. And can you identify that for the court, please.

16 A. That's the third paragraph, third sentence, I believe.

17 Q. Can you read that sentence aloud?

18 A. "He has good relationships with his parents who have
19 provided informed consent to hormone treatment and will support
20 him throughout the process."

21 THE COURT: So, Ms. Doolittle --

22 MS. DOOLITTLE: Yes, sir.

23 THE COURT: -- can you tell me why you wouldn't -- if
24 this was something you wanted to prove, can you tell me why you
25 wouldn't have listed and brought one of these providers in?

1 MS. DOOLITTLE: Well, Your Honor, we do have a
2 witness whose deposition you will receive through the video.

3 THE COURT: Dr. Adkins?

4 MS. DOOLITTLE: Thank you. Dr. Adkins.

5 THE COURT: Right.

6 MS. DOOLITTLE: And Dr. Adkins is the person who
7 relies -- and they formed their own assessment of Drew, and,
8 you know, having the treatment and the condition.

9 Dr. Jacobs has been listed as a provider of Drew and
10 they've had the medical records for months.

11 We actually -- to be frank, we didn't realize that
12 the defendant was going to contest the issues around Drew's
13 transgender identity and the fact he had gender dysphoria until
14 pretty close to the final pretrial conference.

15 THE COURT: Okay. I understand. Go ahead.

16 MS. DOOLITTLE: Thank you.

17 BY MS. DOOLITTLE:

18 Q. How did Drew feel about being able to start the
19 testosterone injections?

20 A. He was excited. He was ecstatic. He said it was one of
21 the happiest days of his life.

22 Q. Is Drew still taking testosterone as part of his
23 transition?

24 A. Yes.

25 Q. Is that something he does on a weekly basis?

1 A. Yes.

2 Q. Has Drew taken any additional steps with respect to his
3 medical transition?

4 A. Yes.

5 Q. And what are those?

6 A. He had a double mastectomy.

7 Q. And who recommended that next phase of his transition?

8 A. Dr. Jacobs, Dr. Adkins, all the providers were pretty much
9 on board with that.

10 Q. Is that something that you and Mr. Adams discussed
11 privately as Drew's parents?

12 A. Oh, yes.

13 Q. And how did you reach the decision to, just as his
14 parents, allow Drew to move forward with that procedure?

15 A. Well, we, you know, talked at great length together about
16 it. We talked to Drew about it. We did some of our own
17 research. You know, we trusted our medical team. And in the
18 end, we ultimately decided it was the right thing to do.

19 Q. And who was the provider who performed the surgery?

20 A. Dr. Sassani.

21 Q. Is he in Jacksonville?

22 A. No, he's in Fort Lauderdale.

23 Q. Did Dr. Sassani provide any sort of similar documentation
24 from any of Drew's providers before he would agree to perform
25 the surgery?

1 A. Yes. He also needed a letter from Drew's therapist to
2 attest to Drew's diagnosis and also attest to Drew's fitness
3 for surgery.

4 Q. Did you see the letter that Dr. Jacobs provided for
5 Dr. Sassani?

6 A. Yes.

7 Q. Was the letter ultimately provided?

8 A. Yes.

9 Q. And did Drew have that surgery?

10 A. Yes.

11 Q. Ms. Kasper, I'm handing you what has been marked by
12 defendant for identification as Exhibit 22. Have you seen this
13 document before?

14 A. Yes.

15 Q. And what is this?

16 A. This is the letter that Dr. Jacobs wrote to Dr. Sassani.

17 Q. Is this a true and accurate copy of the letter?

18 A. Yes.

19 MS. DOOLITTLE: Your Honor, we would move for its
20 admission.

21 THE COURT: Mr. Harmon?

22 MR. HARMON: Yes, Your Honor. I don't know if I
23 should repeat my prior objection.

24 THE COURT: Yeah. Well, it says Defendant's Exhibit
25 22, so...

1 MR. HARMON: Right.

2 THE COURT: So you must -- somebody must have -- on
3 your side, must have thought it was okay, right?

4 MR. HARMON: Well, sometimes going into a trial you
5 list things and you don't use them for certain reasons. And we
6 listed that, but I would -- for the same reasons that I
7 objected to the previous --

8 THE COURT: Yeah, I mean -- I'm understanding. I
9 mean, this is a letter between two doctors. And obviously, you
10 know, Ms. Kasper can know -- maybe she's seen it before, but
11 certainly wouldn't be able to have any personal information
12 about -- about it. So I -- I am -- I understand what's being
13 said.

14 As I said, I'm kind of interested that it -- it's
15 your exhibit and now you don't want it in evidence, but -- so
16 I -- I don't know, Ms. Doolittle, it's a little bit -- I'm a
17 little bit betwixt and between here.

18 I guess you're telling me if you had known that they
19 were going to be objecting to it, you might have gone about
20 proving this up a little differently? Is that what I'm --

21 MS. DOOLITTLE: Yes --

22 THE COURT: Is that what I'm getting from you?

23 MS. DOOLITTLE: Yes, Your Honor, I think partially it
24 is. It was -- and we conveyed it to the court at the pretrial
25 it was a surprising position to us that they were challenging

1 his status and challenging the diagnoses and challenging the
2 treatment, challenging the parents, you know, whether the
3 parents gave informed consent, whether the parents knew what
4 was going on. Those are all things that, frankly, we haven't
5 seen in other cases raising similar issues. And so we felt
6 that given that was a challenge, that we had to address it.

7 You know, with respect to Ms. Kasper, her use of
8 these documents and her knowledge of these documents does show
9 that she -- you know, she was given information, she was acting
10 on that information, and giving notice to other providers.

11 THE COURT: All right. Mr. Harmon, what is it
12 that -- is it the position of the school board that Mr. Adams
13 doesn't have gender dysphoria?

14 MR. HARMON: Your Honor, we denied in our answer in
15 this case that plaintiff had gender dysphoria. This is not a
16 surprise. The issue in this case --

17 THE COURT: And what does that mean to you? I mean,
18 why -- what does that go to?

19 MR. HARMON: Well, I believe if I recall at the
20 pretrial, plaintiff's counsel identified five areas that needed
21 to be proved to win this case. One of them was that plaintiff
22 has gender dysphoria.

23 And when you don't disclose in discovery any
24 witnesses who are going to speak to that and you expect to walk
25 in a trial and it's going to be an admitted fact -- I mean, we

1 have a right to dispute that.

2 We disputed it in the answer. We disputed it at the
3 pretrial. And we actually at one point were looking at
4 potentially calling these witnesses, but we decided not to.

5 And I don't think this is anything more than
6 whipsawing a party when you try to get in a bunch of medical
7 records from a bunch of people to prove a fact that you needed
8 to use to prove your case in chief through expert-type
9 testimony witnesses who are not disclosed at any point in
10 any --

11 THE COURT: So why did you make it an exhibit,
12 then --

13 MR. HARMON: To --

14 THE COURT: -- if it was so irrelevant?

15 MR. HARMON: Well, Your Honor, to the extent it
16 became an issue in the case --

17 THE COURT: Yeah.

18 MR. HARMON: -- plaintiff had represented at the
19 pretrial conference and has represented throughout this case
20 that plaintiff has gender dysphoria, we intended to address
21 that allegation if it came up. And I think if Your Honor
22 recalled at the pretrial, plaintiff's counsel moved to exclude
23 any medical records from the case. And now we've gone through
24 a bunch of medical records.

25 We did not believe this was a medical record trial,

1 but plaintiff identified gender dysphoria as one of those five
2 things that needed to be proven to win the case. So I don't
3 know how you could show that at pretrial and say I need to
4 prove this but not list any of the people who could have come
5 to this trial and testify to that fact.

6 THE COURT: Ms. Doolittle, what is the role of gender
7 dysphoria in this case? I mean, if I'm -- if I'm -- and, of
8 course, as -- what was the first witness's name, Dr. -- this
9 morning?

10 MS. DOOLITTLE: Aberli.

11 THE COURT: You know, as he said -- all this is an
12 education to me as well, but what I read, what I thought I read
13 was that a person who is transgender does not necessarily
14 suffer from gender dysphoria, but that doesn't mean they're not
15 transgender.

16 Dysphoria is an actual distress, right, or it's a
17 conflict between the sex assigned at birth and the -- and the
18 gender identity that the person holds themselves to have? And
19 so it's a state of, for lack of a better term, distress, right?

20 MS. DOOLITTLE: Yes, Your Honor.

21 THE COURT: And I suppose if I'm understanding what
22 I'm reading, a transgender person who is completely comfortable
23 with everything about their situation would not necessarily be
24 suffering from gender dysphoria, right?

25 MS. DOOLITTLE: That's my understanding, Your Honor.

1 THE COURT: So what is the role of proving Mr. Adams
2 has gender dysphoria as it relates to this case? I mean, he
3 doesn't have to have gender dysphoria -- I mean, either the
4 bathroom policy is constitutional or it isn't, but that's based
5 on transgender, not on gender dysphoria, isn't it?

6 MS. DOOLITTLE: I agree, Your Honor.

7 THE COURT: And so what are we doing?

8 MS. DOOLITTLE: I'm sorry if I wasn't clear. I tried
9 to address this earlier when the first objection was made.
10 This goes to a particular part of our harm. It is not all of
11 our harm. To the extent --

12 THE COURT: You mean the emotional distress -- you
13 know, I -- I'm not telling you how to try your case. I'm not
14 telling you how to try your case. But if, if, and it's a big
15 "if," if it violates Mr. Adams' constitutional rights -- I'm
16 going to say this as a -- as a -- I don't want to be saying
17 this as if this is the way I'm ruling or as there's not more to
18 it than this, but as I was thinking about this -- and I'll say
19 it to you and get you to react to it -- if Mr. Adams'
20 transgender identity is protected by the law and if it violates
21 either his Title IX rights or his equal protection rights for
22 the school district to have a policy that doesn't allow him to
23 use a restroom that is congruent with his gender identity, all
24 ifs, I'm willing to assume that having to walk past a bathroom
25 that you think you ought to be able to use and having to walk

1 somewhere else to use the bathroom, I'm willing to assume that
2 carries with it some level of anxiety, distress, you know -- I
3 mean, it's -- and y'all always told me all along this wasn't
4 about money. You know, I'm willing to assume that it causes
5 some level of distress.

6 I tried to talk about nominal damages. Y'all told me
7 that wasn't good enough. I don't know why, but it's not good
8 enough.

9 And so I just don't know whether we need to be doing
10 this.

11 MS. DOOLITTLE: Your Honor --

12 THE COURT: Are we going to -- do we really need to
13 be proving what Mr. Adams' level of discomfort was or how
14 distressed he was or how bad he felt, or -- is that really what
15 we need to be doing?

16 Or is it just the fact of -- that he can't -- based
17 on his gender identity, he can't use the restroom that
18 everybody else of his gender identity can use, and that that in
19 and of itself is an event that the law would protect?

20 MS. DOOLITTLE: I agree that that is an event on its
21 face that the law would protect. However, the defendant is
22 challenging his status -- his entire transgender identity.

23 THE COURT: Are they really?

24 MS. DOOLITTLE: I think they are, Your Honor.

25 THE COURT: Are y'all going to bring in those two

1 experts and say this isn't a real thing and it's a delusion and
2 all that? Is that going to be your position in this case?

3 MR. HARMON: The position in this case is that -- and
4 we're not contesting it, that plaintiff identifies as
5 transgender, and, under our school district policy, we do not
6 allow students to use the bathroom of their gender identity.
7 And for plaintiff's purpose, the way the policy was applied to
8 him is he wanted to use the bathroom as a boy.

9 So I think Your Honor hit the nail on the head. I
10 don't believe that the level of dysphoria or the status of
11 transition of an individual matters. Plaintiff's theory of the
12 case is that an individual's gender identity defines their
13 bathroom use. So whether --

14 THE COURT: And haven't the cases -- and, again,
15 Mr. Harmon, I'm not -- you know, isn't the real question in
16 this case whether this violates -- whether your policy violates
17 the constitution or not?

18 MR. HARMON: Yes, that's exactly the case, yes.

19 THE COURT: And -- but the other cases that have
20 found that similar policies do violate the constitution -- the
21 issue of whether or not the plaintiff has been distressed by
22 it -- and I'm trying to think of all the cases I read, the
23 Seventh Circuit case, the Pennsylvania case, the Ohio case -- I
24 just don't -- you're not -- it doesn't seem to me you're going
25 to try to win the case by saying, yes, we're violating his

1 rights, but it's not causing him any harm. That's not -- is
2 that -- that's not the way you're trying to win the case, is
3 it?

4 MR. HARMON: What we're trying to do to prevail in
5 this case is to show that our policy is not discriminatory. We
6 are not -- defendant is not raising the issue of gender
7 dysphoria. I think the relevance to the analysis -- if I just
8 heard plaintiff correctly, it's relevant to the issue of
9 damages.

10 I would also point out at the pretrial, when it came
11 to damages, plaintiff was pretty strongly suggesting that these
12 were, as pled, garden variety. So I don't know why we're
13 bringing in records from social workers and therapists to talk
14 about garden variety, which plaintiff could certainly do on its
15 own, but I have to be able to defend the school board if we're
16 going to go down this path that we don't want to go down.

17 THE COURT: So, Ms. Doolittle, when Mr. Adams was on
18 the stand, I think he was asked the questions you ask somebody
19 when an event has occurred about which they're complaining and
20 you're seeking emotional distress damages. And a plaintiff,
21 under the law, is fully capable of testifying to that emotional
22 distress, without any expert opinion or not.

23 Now, sometimes people bring in expert opinion because
24 they want to bolster it or they're asking for a lot of money
25 and they want to have an expert that backs it up. But did not

1 Mr. Adams today testify to his distress that the -- did he not
2 testify that the policy was -- caused him distress?

3 MS. DOOLITTLE: Yes, Your Honor.

4 THE COURT: And isn't that good enough?

5 MS. DOOLITTLE: Yes, Your Honor. And to be totally
6 honest, this was my -- I was about to turn to the questions
7 regarding her experience with Nease and talking with the
8 administrators. It was a -- it was intended to be a very
9 short --

10 THE COURT: Well, that ship sailed.

11 MS. DOOLITTLE: That's right.

12 THE COURT: All right. But I think it's an important
13 point. It's the same thing we were talking about at pretrial,
14 and I couldn't understand -- and it's almost like you-all
15 wanted to -- you were afraid they were going to dispute it, so
16 you wanted to prove it. And they were afraid you were going to
17 prove it, so they wanted to be able to dispute it. And I just
18 am not sure that I need it.

19 MS. DOOLITTLE: Okay.

20 THE COURT: But I'm always -- always hesitant to tell
21 people what they shouldn't be proving or what they don't need
22 to prove. But on the other hand, if -- if Mr. Adams in the
23 '50s in Jacksonville was black and he had to walk past a white
24 bathroom to go to the bathroom that was marked "colored," would
25 we need experts to say that that was humiliating or that was

1 distressful to Mr. Adams?

2 MS. DOOLITTLE: No.

3 THE COURT: And I'm not suggesting and I don't want
4 Mr. Harmon to get upset by the analogy, but -- because I don't
5 know what the answer in this case is. But if the answer is --
6 if the answer to the question of whether the school board has
7 violated either Mr. Adams' Title IX rights or his equal
8 protection rights is yes -- if it turns out to be yes, I'm
9 willing to -- I'm willing to assume that that policy causes him
10 some level of distress or discomfort that the law would
11 recognize.

12 And if that's all I need to do to make this case
13 about what it really is about, I'm willing to do that. And,
14 Mr. Harmon, I don't even think you would disagree with that,
15 would you?

16 MR. HARMON: We think this is a legal issue, Your
17 Honor, and have been representing that for quite some time.

18 THE COURT: Now, there's a lot more to it.
19 There's -- because somebody can -- even if you assume -- and,
20 again, please, please, please understand I have not made any
21 decisions, because if you read the cases, if you read -- you
22 know, you have guidance from the -- the department of -- was it
23 Department of Justice or Department of Education that switched
24 sides on this?

25 MS. DOOLITTLE: Department of Education.

1 THE COURT: Department of Education. You have
2 guidance from them that says one thing. Now you have guidance
3 from them that's withdrawn. I mean, these are difficult,
4 difficult issues that the law is grappling with all over the
5 country. And so I have not made any decisions. I'm going to
6 listen and try to understand.

7 But I'd rather have us be talking about what we're
8 really talking about and not what we're not really talking
9 about.

10 MS. DOOLITTLE: Fair enough, Your Honor.

11 THE COURT: Okay. All right. So I'm going to --
12 I'll take Defendant's 22 under advisement and then,
13 Ms. Doolittle, you said you were going to move on to something
14 else?

15 MS. DOOLITTLE: Yes, Your Honor.

16 THE COURT: So why don't you do that. I tell you
17 what -- by the way, is it about 100 degrees in here? Yeah. I
18 apologize. And I also apologize that one of our restrooms is
19 out. We're going to -- as you probably know, the judiciary is
20 actually just a mere tenant in this building. We are -- we --
21 this is a GSA building and so when something is not the way we
22 need it -- even though people think judges have so much power,
23 we don't just get to say, "Air conditioning, be better" or
24 "Bathroom, be fixed"; we have to actually get GSA to try to do
25 it for us, and I'm sure that somebody is looking into all that.

1 All right. It's five after four.

2 Ma'am, why don't you take a break, too. I'm sure
3 you're tired of sitting up there. We'll come back at 4:15. I
4 will be stopping at five because it gets dark and also the
5 building closes at 5:30. And in order to get everybody out of
6 here, we'll be stopping at five. So we'll go another 45
7 minutes. Okay? 4:15.

8 MS. DOOLITTLE: Thank you.

9 COURT SECURITY OFFICER: All rise.

10 (Recess, 4:06 p.m. to 4:18 p.m.)

11 COURT SECURITY OFFICER: All rise. This Honorable
12 Court is now in session. Please be seated.

13 THE COURT: Did you get a break?

14 THE WITNESS: I did. Thank you.

15 MS. DOOLITTLE: Thank you, Your Honor.

16 BY MS. DOOLITTLE:

17 Q. Ms. Kasper, I believe you testified that Drew came out as
18 transgender to you the summer before his ninth grade year; is
19 that correct?

20 A. Yes.

21 Q. Before the school year started, did you reach out to
22 anyone at Nease High School to inform them that Drew would be
23 attending as a boy?

24 A. I reached out to someone at the district, yes.

25 Q. And who was that?

1 A. Holly Arkin.

2 Q. And who is Ms. Arkin?

3 A. She was in the student services department at the
4 district.

5 Q. And did you know her prior to that summer?

6 A. Yes.

7 Q. And why did you reach out to Ms. Arkin?

8 A. I wanted to let her know that Drew was transitioning and
9 would be attending high school as a boy, and so I sent her an
10 e-mail.

11 Q. Did you receive a response from Ms. Arkin to that e-mail?

12 A. That e-mail I received an "out of office for the summer"
13 response.

14 Q. Did you subsequently connect with Ms. Arkin before the
15 school year started?

16 A. Yes.

17 Q. And was that through e-mail or telephone?

18 A. We had a phone call and then we had an e-mail chain that
19 went into the school year.

20 Q. Before the school year started, did anyone convey to you
21 that Drew would not be permitted to use the boys' restrooms at
22 the school?

23 A. No.

24 Q. Was there any discussion at all about bathrooms or locker
25 rooms at the school?

1 A. Not that I can recall.

2 Q. Was Drew excited to start high school?

3 A. I mean, as excited as you can be to start school.

4 Q. Did Drew have any problems his first few weeks at Nease?

5 A. Not that I know of.

6 Q. At some point did the school begin to treat Drew
7 differently from the other boys because he was transgender?

8 A. Yes.

9 Q. And when was that?

10 A. That was the end of September 2015.

11 Q. And what happened?

12 A. He was taken out of class and taken to the guidance office
13 and told that he could no longer use the male restrooms.

14 Q. How did you learn about that?

15 A. Holly Arkin called me to tell me about it, and then also
16 Drew told me when he got home from school.

17 Q. What did Ms. Arkin say when she called you?

18 A. That Drew had been taken out of class, that she wanted to
19 make me aware this had happened, and that he had been told not
20 to use the boy restrooms because there had been an anonymous
21 complaint.

22 Q. Did she explain why he would not be allowed to use the
23 boys' restrooms?

24 A. She said there was a complaint and since he was
25 transgender, he would not be allowed to use them.

1 Q. At the time that the complaint was brought to Drew's
2 attention, how many gender-neutral restrooms were there on the
3 campus?

4 A. At the time, I knew of two. There was the one in the C
5 pod and the one that was inside the art classroom, so it was
6 not particularly accessible.

7 Q. What did you do upon learning that Drew had been called
8 out of class and was being told he could not use the boys'
9 restroom at the school?

10 A. Well, I sent an e-mail to Holly saying I think we need to
11 have a meeting now with some administrators about this issue.
12 I also wrote letters to both the principal and the
13 superintendent about the issue.

14 Q. Did you ever receive a response to the letters that you
15 wrote to the principal or the superintendent?

16 A. Not a written response but we had meetings.

17 Q. What was the first meeting that you had with anyone from
18 the school or the district about that issue?

19 A. October 9th of 2015.

20 Q. And who was present?

21 A. That was Drew and myself, at the time Principal Kyle
22 Dresback, Sallyanne Smith, Holly Arkin, and Christy McKendrick.

23 Q. And who is Sallyanne Smith?

24 A. Sallyanne Smith was the director of student services.

25 Q. And I believe you mentioned Christy McKendrick?

1 A. Yes.

2 Q. Who was that?

3 A. She was in Sallyanne Smith's department.

4 Q. Who took the lead from the school in speaking at that
5 meeting?

6 A. Sallyanne Smith.

7 Q. And what was the position then Ms. Smith conveyed?

8 A. She was very sympathetic, I guess is a good word. She
9 seemed very friendly. She said they had just recently gone to
10 a conference about transgender issues, so she expressed she
11 understood a lot of these issues, but that this was a
12 district-level rule and they couldn't change it at the school
13 level.

14 Q. At the meeting, did anyone from the school or the district
15 ask you if you thought Drew might be lying about his
16 transgender identity?

17 A. No.

18 Q. Did anyone ask if you thought this might be a phase for
19 Drew?

20 A. No.

21 Q. Did anyone from the school or the district -- district
22 state they did not believe that Drew was transgender?

23 A. No.

24 Q. And in that meeting, were you shown the policy that the
25 school seemed to be relying upon to exclude Drew from the

1 restroom?

2 A. I was not shown the policy at that meeting, no.

3 Q. After your meeting in October, did you follow up with
4 anyone at the district?

5 A. Yes. I scheduled a meeting with Brennan Asplen and Cathy
6 Mittelstadt at the district level.

7 Q. And who were they?

8 A. I believe they were assistant superintendent and associate
9 superintendent at the time.

10 Q. And what was -- why did you ask for that meeting?

11 A. Because I wanted to meet with someone at the district
12 level since I was told that this was a district-level policy.
13 And I was hoping to bring education and resources and convince
14 them to change the policy.

15 Q. And when did that meeting take place?

16 A. That was near the end of November 2015.

17 Q. And what did Ms. Mittelstadt convey to you with respect to
18 the district's position in that meeting?

19 A. She seemed sympathetic to our situation, but she
20 reiterated that the district's best practice was for Drew to
21 use the gender-neutral restrooms.

22 Q. And what about Mr. Asplen? What was the position that
23 he -- if any, that he took in that meeting?

24 A. Mr. Asplen seemed very concerned with nudity and also with
25 what other parents thought.

1 Regarding the nudity, he described a scenario in
2 which what if a transgender girl were to come out of a stall
3 and wave her penis around. So that was a hypothetical that he
4 brought up.

5 And then regarding the parents, he said that in his
6 estimation, 98 percent of the parents in our district would not
7 understand or agree with letting Drew use the restroom that
8 conforms to his gender identity. And also they were more
9 concerned with being sued by the parent of a non-transgender
10 student than they were by us.

11 Q. Did Mr. Asplen explain the basis for any of those
12 concerns?

13 A. No.

14 Q. Did he describe to you any specific examples of things
15 that had happened at the school that supported those concerns?

16 A. No.

17 Q. Did he talk to you about the basis of his belief that 98
18 percent of the parents would be unsupportive of allowing Drew
19 to use the restroom?

20 A. No.

21 Q. At some point did you take any action outside of the
22 school or the district to address the district's exclusion of
23 Drew from the boys' room?

24 A. Yes.

25 THE COURT: And I apologize, Ms. Doolittle. I lost

1 the thread there. This gentleman -- is it Mittelstadt? Is
2 that how you say the name?

3 MS. DOOLITTLE: Mittelstadt, Cathy Mittelstadt.

4 THE COURT: What is his position?

5 MS. DOOLITTLE: I'm sorry. Cathy Mittelstadt.

6 THE COURT: I'm sorry. It's a woman. Okay.

7 MS. DOOLITTLE: I can ask the witness.

8 THE COURT: Who are you attributing these last set of
9 statements to?

10 MS. DOOLITTLE: My apologies.

11 THE COURT: I'm sure you did it fine. I just want to
12 make sure I'm following.

13 MS. DOOLITTLE: I asked her what position did
14 Mr. Asplen take in that meeting and that's who -- that's the
15 person she's attributing those responses to.

16 THE COURT: And what's -- what was his position?

17 MS. DOOLITTLE: Brennan Asplen.

18 BY MS. DOOLITTLE:

19 Q. Ms. Kasper, can you explain your understanding of
20 Mr. Asplen's position?

21 A. I believe at the time he was either like an assistant
22 superintendent or -- I think now he's now a deputy
23 superintendent or something like that.

24 THE COURT: And he's the one that made the statements
25 about the scenarios and so forth that you just described?

1 THE WITNESS: Yes.

2 THE COURT: Okay. Thank you.

3 BY MS. DOOLITTLE:

4 Q. And just to clean it up, what was Ms. Mittelstadt's
5 position at the time you had that meeting?

6 A. Again, it would be like an associate superintendent
7 position.

8 Q. How did you respond to Mr. Asplen's comments about his
9 concerns about nudity?

10 A. Well, I expressed that I had personally never seen any
11 nudity in a restroom. And I also pointed out that behavior
12 such as flashing, harassment, molestation, anything of that
13 nature is already against the rules and there are already ways
14 to discipline students for that sort of behavior whether they
15 be trans or not.

16 Q. And at some point, did you take some action outside of the
17 school and outside of the district about the district's
18 exclusion of Drew from the boys' restroom?

19 A. Yes.

20 Q. And what did you do?

21 A. I contacted the Office of Civil Rights of the Department
22 of Education.

23 Q. And did you file a complaint with them?

24 A. I did.

25 Q. When was that?

1 A. That was, I believe, the last week of November 2015.

2 Q. And what was -- what were you complaining about?

3 A. I was complaining that the district was violating Drew's
4 Title IX rights by keeping him out of the men's room.

5 Q. Did OCR -- I'm referring to the Office of Civil Rights --
6 did OCR initiate an investigation into your complaint?

7 A. They did.

8 Q. When was that?

9 A. Just shortly after I filed my complaint. I can't remember
10 exactly. It was December-ish.

11 Q. Of 2015?

12 A. Yes.

13 Q. And was an investigator assigned?

14 A. Yes.

15 Q. And who was that?

16 A. Roger Mills.

17 Q. And how long were you in regular communication with
18 Mr. Mills after you filed your complaint?

19 A. Approximately nine -- nine to ten months.

20 Q. And when did -- when did your regular communication with
21 Mr. Mills stop?

22 A. Late August of 2016.

23 Q. Have you received any notice from OCR that your complaint
24 or your case has been closed?

25 A. No.

1 Q. After you filed the complaint with OCR, did you continue
2 to meet with school or district officials about the district's
3 rule on restroom use?

4 A. Yes.

5 Q. Why did you do that?

6 A. I wanted to continue to keep the dialogue open with them.
7 I wanted to make myself available to them. I kept offering
8 myself as a means to help educate the population, educate the
9 administrators. And I also wanted to hopefully convince them
10 to change their policy so that the OCR could close their
11 investigation and be done with it.

12 Q. Did the school or the district ever take you up on any of
13 your offers to come in and work with them to educate other
14 teachers or parents or administrators?

15 A. No.

16 Q. Did you ever actually see the policy that the district was
17 relying upon to exclude Drew from the restroom?

18 A. Yes.

19 Q. When was that?

20 A. March of 2016.

21 Q. And who provided that policy to you?

22 A. I requested it from Holly Arkin.

23 Q. And how did you come to get it, to obtain it?

24 A. She e-mailed it to me.

25 Q. I'm handing you what's been marked as Defendant's Exhibit

1 14.

2 A. Thank you.

3 Q. It's a three-page document. Have you seen Defendant's
4 Exhibit 14 before?

5 A. Yes.

6 Q. And what is this?

7 A. The first page is the e-mail exchange between myself and
8 Holly. And the next few pages are the district's guidelines
9 for LGBT students.

10 Q. And what is the date of the e-mail that you sent to
11 Ms. Arkin?

12 A. March 15th.

13 Q. 2016?

14 A. 2016, yes.

15 Q. And the e-mail on top of that, what is that?

16 A. That's her response, March 17th of 2016.

17 Q. And are the e-mails attached to Defendant's Exhibit 14 and
18 the policy attached to that -- are those true and accurate
19 copies of the communication you received with Ms. Arkin?

20 A. Yes.

21 MS. DOOLITTLE: And we would move for its admission.

22 MR. HARMON: No objection.

23 THE COURT: Be received. So I guess it's marked
24 Defendant's 14, so I'll receive it that way. Defendant's 14
25 will be received.

1 (Defendant's Exhibit 14 received into evidence.)

2 BY MS. DOOLITTLE:

3 Q. I believe you just testified that the date of the e-mail
4 was around March 15, 2016; is that correct?

5 A. Yes.

6 Q. Is this the first time that you saw the policy that the
7 district was relying upon with respect to the restroom issue?

8 A. This was the first time I saw it in writing. It had been
9 referred to as the best practices in previous meetings, but
10 this was my first time looking at it.

11 Q. I'd like to ask you some questions about that policy. So
12 if you can turn to the second page of the exhibit, which is the
13 first page of the policy, I guess.

14 A. Yes.

15 Q. Where on the policy does it refer to the rules
16 concerning -- or the guideline concerning restroom use?

17 A. At the bottom of the first page.

18 Q. And can you read what the best practices is for restroom
19 use with respect to transgender policy?

20 A. "Transgender students will be given access to a
21 gender-neutral restroom and will not be required to use the
22 restroom corresponding to their biological sex."

23 Q. And do the guidelines -- do the best practices also
24 address pronoun use for transgender students?

25 A. Yes.

1 Q. And can you identify where that is for the court?

2 A. That is the third cell down on the same page.

3 Q. Okay. Can you read that aloud for the court?

4 A. "Schools will use the name and gender pronoun
5 corresponding to his or her consistently asserted gender
6 identity upon request of the parent or student."

7 Q. With respect to the language -- I'm sorry, let me just
8 back up for a moment.

9 Did you ever see a rule from the district or the
10 school in writing that said that students had to use the -- the
11 long-standing policy from the school that students had to use
12 the restroom that corresponds with their biological sex? Have
13 you ever seen that in writing?

14 A. No. No.

15 Q. Do the -- and just one other question about the best
16 practices guidelines. Do they address how to handle
17 transgender students who want to participate in athletics?

18 A. Yes.

19 Q. And where is that?

20 A. That is the top of page 2 of the guidelines.

21 Q. And what's your understanding of what the -- the best
22 practices for students who want to participate in sports?

23 A. It says, "The Florida High School Athletics Association
24 policy was updated stating transgender students should have the
25 opportunity to participate in athletics consistent with their

1 gender identity and expression, and a student may seek review
2 of his or her eligibility through the FHSA through the gender
3 availability review process."

4 Q. So I understand this document was given to you on your
5 request in March of 2016, correct?

6 A. Yes.

7 Q. And I believe you testified a minute ago about your
8 meeting with the school regarding these concerns was in early
9 2015?

10 A. Yes.

11 Q. In that eight-month period, or whatever it may be, did
12 anyone ever show you this best practices document?

13 A. Not in writing, no.

14 Q. They just talked about it verbally?

15 A. They referenced it as their best practices.

16 Q. Did you have any meetings with the school or the district
17 after you received the best practices policy in March?

18 A. Yes.

19 Q. When was your next meeting?

20 A. In April of 2016.

21 Q. And who was that meeting with?

22 A. That was with Cathy Mittelstadt and Holly Arkin.

23 Q. Did you ask for the meeting?

24 A. I did.

25 Q. And why did you ask for a meeting in April?

1 A. Because I was trying to continue to make myself available
2 to them to educate. I had additional studies and research that
3 had come out since our previous meetings that I wanted to share
4 and -- again in the hopes of convincing them to change their
5 policy.

6 Q. And I believe you stated it was Ms. Mittelstadt who
7 attended?

8 A. Yes.

9 Q. Did anyone else attend?

10 A. Holly Arkin.

11 Q. And who led that meeting?

12 A. Cathy Mittelstadt led that meeting.

13 Q. And what was discussed? What was the substance of that
14 conversation?

15 A. It was very similar to our previous conversations. I
16 presented the information and education I had brought and she
17 responded. I pointed out that many counties in Florida are
18 accommodating transgender students by allowing them to use the
19 restroom that matches their gender identity. I referenced
20 Broward County as one of those, and she responded we're not as
21 progressive as Broward County and we are just not there yet.

22 She did acknowledge that it was a civil rights issue.
23 She seemed sympathetic in that regard, but she said they would
24 not be changing their best practices.

25 Q. Did you have any --

1 THE COURT: Can I ask a question?

2 Is this -- so, Mr. Harmon, is this -- this best
3 practices under restrooms, is this the policy that is at issue
4 in this case?

5 MR. HARMON: The written best practices document,
6 yes.

7 THE COURT: That's -- so this -- is this the only
8 place that's written down what the school district's policy is
9 about transgender and bathroom use?

10 MR. HARMON: It would be in the best practices
11 document, yeah. There --

12 THE COURT: So -- I'm sorry. Go ahead.

13 MR. HARMON: I was going to say there are some drafts
14 as well. I just wanted to double-check that the final draft
15 that's marked as an exhibit is the same thing that you're
16 looking at that was attached to that e-mail. I believe it is
17 but that's where this --

18 THE COURT: Well, where -- where does it say in this
19 policy that Mr. Adams can't use the men's room?

20 MR. HARMON: Well, the district's long-standing
21 policy is that students are required to use the bathroom of
22 their biological sex. The best practices document, because
23 there were certain students who did not want to do that, gave
24 an accommodation to say that students will not be required to
25 use the bathroom of their biological sex, which was the policy.

1 The accommodation there being that they would be given access
2 to a gender-neutral restroom in lieu of having to go to the
3 bathroom of their biological sex.

4 THE COURT: It says, "Transgender students will be
5 given access to gender-neutral restroom and will not be
6 required to use the restroom corresponding to their biological
7 sex."

8 MR. HARMON: Correct.

9 THE COURT: It doesn't say that they can't use the
10 restroom corresponding with their gender identity.

11 MR. HARMON: This written best practices document
12 does not say that, but that is the district's long-standing,
13 well-known historical practice.

14 THE COURT: And where is that written down?

15 MR. HARMON: That is not written down. There is no
16 written policy going back in time as best we could find that
17 says --

18 THE COURT: You're just relying -- and I'm not -- I'm
19 not --

20 MR. HARMON: No, no.

21 THE COURT: You're just relying on the fact that it
22 was understood that boys will use the boys' room and girls will
23 use the girls' room and that -- is that the long-standing
24 practice you're talking about?

25 MR. HARMON: Yes, but it was also enforced and also

1 supported by Title IX. This was -- this document, as you'll
2 hear in our case, was brought out because emerging issues were
3 arising where students did not want to use the bathroom of
4 their biological sex. So they tried to accommodate that by
5 giving this option to use a gender-neutral bathroom and not
6 mandating that the students have to go to the bathroom of their
7 biological sex.

8 THE COURT: You're saying that -- you're saying --
9 this is just me trying to understand this. The only place in
10 the St. Johns County School District that anybody will find a
11 policy, a written-down policy about restroom use by transgender
12 students is right here?

13 MR. HARMON: Yes.

14 THE COURT: All right. And it says, "Transgender
15 students will be given access to a gender-neutral restroom and
16 will not be required to use the restroom corresponding to their
17 biological sex."

18 That's it? That's all it says?

19 MR. HARMON: Yes. Yes.

20 THE COURT: Okay.

21 MR. HARMON: But students were required to use the
22 bathroom of their biological sex forever, until these were
23 created, to help provide additional --

24 THE COURT: So if Mr. Adams were to, contrary -- or
25 any transgender student were contrary to what you believe the

1 school district's policy to be -- if he were to say,
2 hypothetically -- well, let's not make it him. Let's make it
3 another transgender.

4 If they were to purposely go in to the restroom that
5 corresponds to their gender identity and they were caught doing
6 so by the school district, and the school district was citing
7 them as being in violation of school district policy, where --
8 what would the school district cite as that policy?

9 MR. HARMON: I think that's something that
10 Ms. Mittelstadt and Ms. Smith may be speaking to. I think what
11 they would do is treat that hypothetical that you provided on a
12 case-by-case basis.

13 In terms of the first time a student did that,
14 they -- I think what you will hear is they would not
15 discipline. But if a student did that a second time, that
16 would be repeated misconduct, and that they would discipline
17 them in their policies for repeated misconduct.

18 THE COURT: I don't think you're understanding my
19 question. What would be -- what would be the charge, so to
20 speak? In other words, if somebody did that, what -- what
21 would be the written policy that they would be charged with
22 violating?

23 MR. HARMON: Without having the policy manual in
24 front of me, I'm assuming, without having Ms. Mittelstadt to be
25 able to help answer that, that it would be a form of

1 misconduct.

2 THE COURT: But in order to have misconduct, you have
3 to -- you have to have a rule, right?

4 MR. HARMON: Well, we --

5 THE COURT: Is this the rule?

6 MR. HARMON: The rule --

7 THE COURT: Is this best practices the rule?

8 MR. HARMON: As an example, Your Honor, I don't
9 believe the school district has a written policy that says
10 during PE class, girls have to wear shirts. But during PE
11 classes, there are times when boys don't wear shirts. If a
12 girl were not to wear a shirt, that would be an act of
13 misconduct. Is there a written school board policy that says
14 during PE girls must wear shirts? No. That's --

15 THE COURT: So you're saying that the policy of the
16 school district is that if a transgender student uses the
17 restroom corresponding to their gender identity, not their
18 biological sex, that that would just be considered misconduct
19 and would be punished as any other misconduct would be in the
20 school district?

21 MR. HARMON: If any student used the bathroom
22 different from their biological sex, that would be a form of
23 misconduct. But, again, I would rather Ms. Mittelstadt be able
24 to answer the --

25 THE COURT: All right. You know, as you read and

1 learn -- and then I'm reading -- I heard there was no written
2 policy until this best practices and I'm reading the -- the
3 best practices and it occurred to me that there's nothing in
4 here really telling Mr. Adams he cannot use the men's room,
5 because it says, "Transgender students will be given access to
6 gender-neutral restrooms" -- okay, so they're given access.

7 MR. HARMON: Right.

8 THE COURT: -- "and will not be required to use the
9 restroom corresponding to their biological sex," which, in
10 Mr. Adams' case, would be the girls' room, right?

11 MR. HARMON: Right.

12 THE COURT: But it doesn't really say he can't use
13 the men's room.

14 MR. HARMON: It goes back to what I said. The
15 district's long-standing practice as applied to its student
16 body has always been enforced in that. There is not a written
17 policy that specifically says you must use the bathroom of your
18 biological sex. That is the way the district has done it.
19 That's what Title IX says that you can do and the district has
20 followed Title IX.

21 This was in response -- and I think you'll hear this
22 in our case.

23 THE COURT: Okay.

24 MR. HARMON: This was in response to an emerging
25 issue.

1 THE COURT: Okay. All right. That's fine. And I'm
2 not -- I mean, obviously these are things we'll be talking
3 about. I just -- as I'm -- I mean, I guess I have a little bit
4 of a luxury in a non-jury setting of being able to just ask
5 questions when they occur to me, and I had not studied -- I
6 mean, I had read the policy before, but I hadn't thought of it
7 as being the only place written down that states what the
8 policy is.

9 All right. Go ahead, Ms. Doolittle.

10 MS. DOOLITTLE: Thank you.

11 BY MS. DOOLITTLE:

12 Q. Ms. Kasper, on that topic, before we go back to the
13 exhibit, was Drew ever told if he continued to use the boys'
14 restroom that he would be subject to some sort of discipline or
15 corrective action by the school?

16 A. I'm not sure if he was told that or not.

17 Q. With respect to what we had just introduced -- sorry about
18 that.

19 I asked you about a meeting that you had with
20 Ms. Mittelstadt a little bit more towards the end of the year.
21 I believe that was in April of 2016.

22 I've handed you -- and I believe you testified that
23 you -- sort of the substance of that meeting that you had some
24 follow-up communication with Ms. Mittelstadt about the
25 substance of that meeting.

1 I handed you what plaintiff has marked for
2 identification as Plaintiff's Exhibit 12. Do you have that
3 before you?

4 A. Yes.

5 Q. Have you seen this document before?

6 A. Yes.

7 Q. And what is it?

8 A. This is the e-mail I sent to Cathy Mittelstadt and Holly
9 Arkin after our meeting to follow up and reiterate what had
10 been said and again to offer myself as available to help
11 educate.

12 Q. And it seems as though there's also -- you sent an
13 attachment to that e-mail?

14 A. Yes.

15 Q. And what is that attachment?

16 A. The attachment is documents produced by Gender Spectrum,
17 and they are designed to help school districts address concerns
18 from parents in the community when they accommodate trans kids.
19 So they anticipate the kind of questions that parents might ask
20 like why is the school making such a big deal about this or who
21 is protecting my child and it gives them bullet points as
22 answers they can use to help ease the accommodation of the
23 trans students.

24 Q. Is this a true and accurate copy of the e-mail and the
25 attachment that you sent to Ms. Mittelstadt and Holly Arkin?

1 A. Yes.

2 Q. And what's the date of that e-mail?

3 A. April 9th, 2016.

4 MS. DOOLITTLE: We would move for its admission.

5 MR. HARMON: Just giving it one quick breeze if
6 that's okay.

7 THE COURT: That's the littlest type I've ever seen.

8 MS. DOOLITTLE: I know.

9 MR. HARMON: Just object to hearsay.

10 THE COURT: I'll overrule the objection and admit the
11 exhibit.

12 (Plaintiff's Exhibit 12 received into evidence.)

13 BY MS. DOOLITTLE:

14 Q. Ms. Kasper, in the e-mail, did you sort of go over the
15 points that you and Ms. Mittelstadt had talked about in that
16 meeting?

17 A. Yes.

18 Q. Did you address her comment about her recognition that
19 this was a civil rights issue?

20 A. Yes.

21 Q. And where is that?

22 A. That's the first sentence of the fourth paragraph.

23 Q. And can you read that paragraph aloud for us, the fourth
24 paragraph?

25 A. Sure.

1 "I appreciate that everyone in the room yesterday
2 recognized that this is ultimately a civil rights issue. With
3 the overwhelming evidence that transgender people are not trans
4 by choice, that they are not predators, and that they are not
5 pretending to be anything, it can be nothing less.

6 "Additionally, with the ever-growing pile of evidence
7 that support and acceptance are the most important factors for
8 trans youth in order to prevent anxiety, depression, suicide
9 and other negative outcomes" --

10 THE COURT: Can you slow down just a second because
11 she's got to write all that down. Thanks.

12 THE WITNESS: I'm sorry.

13 THE COURT: Go ahead.

14 THE WITNESS: -- "the urgency of the situation
15 becomes increasingly clear. While we may not be the most
16 progressive county in the state, we also don't want to be among
17 those who hold off on necessary progress until forced by law or
18 by intervention on the federal level. To do what's right is to
19 do what's right regardless of who agrees, and the stakes
20 couldn't be higher for the kids in the district who need the
21 support the most."

22 BY MS. DOOLITTLE:

23 Q. Did you feel that there was a sense of urgency with
24 respect to your son and the way in which the school was
25 excluding him from the boys' restroom?

1 A. Yes.

2 Q. What -- what was the basis for that sense of urgency? Why
3 did you feel that way?

4 A. Well, I mean, he was continuing to be forced to use
5 gender-neutral bathrooms, which, you know, he told me how that
6 made him feel and how it was a longer walk to most of his
7 classes and things like that.

8 And it felt like -- you know, the OCR investigation
9 was taking a long time, as they do, and the progress that I was
10 making with the school wasn't much in the way of progress. The
11 meetings I was having, I was getting the same answer: We're
12 doing our best practices, that's all we're going to do, we're
13 not that progressive, we're not there yet.

14 So -- so, yes, there was definitely a sense of
15 urgency.

16 Q. What were your observations of how this impacted Drew on a
17 day-to-day basis?

18 A. Well, I knew that he was holding it a lot at school. He
19 would come home and run to the bathroom frequently, so I knew
20 that was impacting him. I knew he was watching his fluid
21 intake. I knew that -- he and I had spoken about how he sort
22 of planned his day with respect to where to go to the bathroom.

23 MR. HARMON: Object to hearsay, Your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: He told me how it made him feel. I

1 mean, we didn't speak every day about it but, you know, when we
2 did speak about it, he told me how it made him feel different
3 and isolated and just how embarrassing it was he had to use
4 this other bathroom.

5 BY MS. DOOLITTLE:

6 Q. How has the district's rule regarding the bathroom, how
7 has that impacted Drew's ability to transition, from your
8 perspective?

9 A. Well, my understanding of social transition is you live
10 100 percent as the gender that you identify with. So what that
11 means for Drew is the short hair, the -- you know, the
12 masculine clothing, the male pronouns, and being able to use
13 male facilities in public.

14 And not being able to use a men's room at school
15 brings that social transition to sort of a screeching halt.
16 That everywhere else and every other aspect in his life he can
17 be a normal boy. At school, he can't.

18 Q. Are there any times outside of just the regular class day
19 where Drew -- different from the other kids, where Drew has to
20 affirmatively go and ask permission to be allowed to go use the
21 bathroom?

22 A. Yes.

23 MR. HARMON: Object, Your Honor. Speculation and
24 lack of foundation.

25 THE COURT: Speculation and lack of foundation,

1 what -- why wouldn't he -- why wouldn't she be able to answer
2 that?

3 MR. HARMON: Because she's not a student at the
4 school to see what Drew does and who he goes to ask permission
5 from. She's just repeating -- well, she's speculating about an
6 event that she wasn't present for. I mean, certainly plaintiff
7 could make that statement, but mom's not in the school.

8 THE COURT: All right. I'm going to overrule the
9 objection. Go ahead. I mean, I understand what you're saying,
10 but do you want Mr. Adams to be called back up and have him
11 asked the same question?

12 MR. HARMON: He had an opportunity to testify, Your
13 Honor, and I prefer not to do that, but...

14 THE COURT: Go ahead and answer the question.

15 THE WITNESS: Currently at the school on Mondays,
16 Wednesdays, and Fridays, the students are confined to a set
17 area around the cafeteria during their lunch period. In that
18 area, there is a gendered restroom, a male and female restroom,
19 but there are no gender-neutral restrooms.

20 The area is bounded by closed doors in some areas and
21 other egresses are guarded by administrators who stand there
22 and make sure students don't pass.

23 When I found out about this arrangement, I reached
24 out to the principal and asked her what should Drew do if he
25 needs to use the restroom during lunch, and she said he needs

1 to approach one of the physical guardians of the exits and say,
2 "I'm Drew. I need to go use the gender-neutral restroom. Can
3 you please let me pass."

4 BY MS. DOOLITTLE:

5 Q. And when you say there are other gendered restrooms in
6 that contained area, did you mean there's boys' restrooms and
7 girls' restrooms?

8 A. Yes, there's a men's restroom and a ladies' room.

9 Q. And did Drew talk to you about that?

10 A. Yes. That's how I found out about that situation and
11 reached out to the principal.

12 Q. Was he upset about it?

13 A. Yes.

14 Q. I believe you heard Drew testify in response to some
15 questions about his legal transition?

16 A. Yes.

17 Q. And he --

18 MR. HARMON: Objection, Your Honor. Leading.

19 THE COURT: Overruled.

20 BY MS. DOOLITTLE:

21 Q. And he gave you some credit that you helped him with some
22 of that?

23 A. Yes.

24 Q. Did Drew get his driver's license updated to reflect his
25 correct gender?

1 A. Yes.

2 Q. Did you help him with that?

3 A. I did.

4 Q. What did you do to help get his driver's license changed?

5 A. We had to get a letter from a medical provider of a
6 certain category to attest that Drew was undergoing treatment
7 for gender transition and take that letter to the DMV.

8 Q. Did you help Drew with that?

9 A. Yes.

10 Q. Who did you get the letter from?

11 A. Dr. De La Hunt.

12 Q. And when did you provide that letter to the DMV?

13 Around -- about when was that?

14 A. Oh, gosh, I want to say it was probably shortly before
15 Drew got his actual license.

16 Q. And so was that in 2016?

17 A. Yeah, it was 2016, I believe.

18 Q. Okay. I'd like to hand you what we've marked for
19 identification as Plaintiff's Exhibit 3.

20 A. Thank you.

21 Q. Have you seen this document before?

22 A. Yes.

23 Q. What is it?

24 A. This is Drew's driver's license.

25 Q. Other than the redactions, is it true and --

1 THE COURT: I am a little uncertain, Ms. Doolittle,
2 why, if y'all wanted to get some of these things in, why you
3 didn't do it through Mr. Adams while he was on the stand. I
4 mean, why didn't you ask him about the driver's license?

5 MS. DOOLITTLE: Your Honor, we would have. We were
6 trying not to burden Drew with a bunch of documents. We just
7 thought it might make him a little nervous, to be really honest
8 about it.

9 THE COURT: All right. Go ahead.

10 MS. DOOLITTLE: Okay.

11 BY MS. DOOLITTLE:

12 Q. Is this an accurate copy of Drew's current driver's
13 license?

14 A. Yes.

15 MS. DOOLITTLE: May we publish, Your Honor?

16 THE COURT: Any objection to it, Mr. Harmon?

17 MR. HARMON: Just the relevance of it, but other than
18 that, no.

19 THE COURT: Okay. Well --

20 MS. DOOLITTLE: I can --

21 THE COURT: -- is it irrelevant -- is the point of
22 this that the DMV folks allowed Mr. Adams to change his gender
23 identity on the driver's license?

24 MS. DOOLITTLE: Your Honor, the proffer is going to
25 be that the DMV changed it, we presented it to the school, and

1 he still isn't allowed to use the boys' restroom.

2 THE COURT: Overruled. Plaintiff's 3 will be
3 received. You can publish it.

4 (Plaintiff's Exhibit 3 received into evidence.)

5 BY MS. DOOLITTLE:

6 Q. Is there a gender marker on Drew's current license?

7 A. Yes.

8 Q. Is that where it says "sex"?

9 A. Yes.

10 Q. And what's the letter after the word "sex"?

11 A. M.

12 Q. Was Drew's driver's license given to the high school at
13 some point after that?

14 A. A copy of it was, yes.

15 Q. And do you know when that was?

16 A. That was last spring, like April, May-ish.

17 Q. Sophomore year?

18 A. Sophomore, yes.

19 Q. And since then, has the school allowed Drew to use the
20 boys' room?

21 A. No.

22 THE COURT: Is that a -- I mean, maybe we'll get into
23 this, but is there a state statute or regulation or -- what
24 governs whether the DMV will allow a person to change their
25 gender identity on their driver's license?

1 MS. DOOLITTLE: I believe there's a series of
2 criteria that have to be met. And there was more letters from
3 the provider, but I --

4 THE COURT: But, I mean, is it written in law or
5 written in regulation or -- how do you -- I assume there has to
6 be some written-down place that allows that, because it's a --
7 it's probably not a very common thing to have happen, right,
8 given the relatively low number of transgender persons in the
9 population as a whole?

10 MS. DOOLITTLE: Yes, Your Honor. I can ask the
11 witness, if you'd like.

12 THE COURT: I guess if she knows, sure. Go ahead.

13 BY MS. DOOLITTLE:

14 Q. Ms. Kasper, how did you learn what the steps were to help
15 Drew get his driver's license changed?

16 A. I went to the DMV website.

17 Q. Okay. Did they -- did they cite to any statute or
18 anything that you can even remember?

19 A. What I saw was a memo that had been issued to all of their
20 locations, I think in 2011, that said this is how we will
21 handle this. If someone presents this letter from a provider
22 from these categories, we change the gender marker. So it was
23 on, like, DMV letterhead.

24 Q. Okay. Thank you.

25 Did you also assist your son in getting his birth

1 certificate changed?

2 A. Yes.

3 Q. And when was that?

4 A. That was just a few months ago, September/October-ish.

5 Q. Of 2017?

6 A. '17, yes.

7 Q. And what were the -- how did you go about doing that?

8 A. For that, in the state of Florida, you have to provide
9 the -- the Bureau of Vital Statistics with a letter from a
10 surgeon that says this person has undergone gender-affirming
11 surgery.

12 Q. And were you able to provide that letter?

13 A. Yes.

14 Q. And who was that from?

15 A. Dr. Sassani.

16 THE COURT: Same question, Ms. Doolittle. Is that a
17 state law or regulation?

18 MS. DOOLITTLE: I think it is. What I would like to
19 do, if it's okay with the court, is just to provide -- we can
20 either provide a brief, sort of, notice on that.

21 THE COURT: That's fine.

22 MS. DOOLITTLE: I don't want to give you the wrong
23 answer.

24 THE COURT: That's fine. That's fine.

25 MS. DOOLITTLE: Thank you, Your Honor.

1 BY MS. DOOLITTLE:

2 Q. Were you able to get his birth certificate updated?

3 THE COURT: Because I'm interested in what the State
4 of Florida -- what its laws and regulations are regarding the
5 recognition of transgender individuals and the ability to
6 change official records to reflect that. I mean, I understand
7 that it happened, but I'm just interested in -- by what
8 authority those entities operate.

9 MS. DOOLITTLE: Yes, Your Honor. We can get that.
10 We'll have that information for the court in the morning.

11 BY MS. DOOLITTLE:

12 Q. Were you able to get the birth certificate changed?

13 A. Yes.

14 MS. DOOLITTLE: Oh, Your Honor, I'd like to move for
15 the admission of the driver's license.

16 THE COURT: You did.

17 MS. DOOLITTLE: Okay. Sorry.

18 BY MS. DOOLITTLE:

19 Q. I'm handing you what will be marked as Plaintiff's Exhibit

20 4. Have you seen that document before?

21 A. Yes.

22 Q. What is it?

23 A. This is Drew's birth certificate.

24 Q. Is this the one that you helped to get updated?

25 A. Yes.

1 Q. Does it appear to be a true and accurate record?

2 A. Yes.

3 MS. DOOLITTLE: We'd move for the admission of
4 Plaintiff's Exhibit 4.

5 THE COURT: Any objection?

6 MR. HARMON: Not at this time, Your Honor.

7 THE COURT: All right. Plaintiff's 4 will be
8 admitted.

9 (Plaintiff's Exhibit 4 received into evidence.)

10 MS. DOOLITTLE: And ask to publish, please.

11 THE COURT: Yes.

12 BY MS. DOOLITTLE:

13 Q. And Mr. Adams' date of birth is redacted, but otherwise is
14 this what is currently his birth certificate on record with the
15 State?

16 A. Yes.

17 Q. And was this document presented to the school?

18 A. Yes.

19 Q. And when was this document presented?

20 A. October -- shortly after we got it.

21 Q. Okay. October 2017?

22 A. Yes.

23 Q. So very recently.

24 And has this -- has the school allowed Drew to begin
25 using the male restroom after receiving this updated birth

1 certificate?

2 A. No.

3 Q. And does the birth certificate reflect a male marker for
4 sex?

5 A. Yes.

6 Q. And where is that?

7 A. Under the redacted birth date.

8 Q. Thank you.

9 MS. DOOLITTLE: Can I just have one moment, Your
10 Honor?

11 THE COURT: Yes, you can. And with respect to the
12 two issues I asked you about, the authority of the driver's
13 license to change the gender identity --

14 MS. DOOLITTLE: Yes, Your Honor.

15 THE COURT: -- the DMV, the authority of the state
16 Bureau of Vital Statistics to change the certificate of birth
17 to reflect Mr. Adams' gender identity, I want to make sure I'm
18 fair to both sides on that. I'll let you -- and whether we do
19 it tomorrow or posttrial, I know everybody's kind of trying to
20 get the trial in, but probably what I would do is allow you to
21 file maybe something like a request for judicial notice or
22 something --

23 MS. DOOLITTLE: Okay.

24 THE COURT: -- and list the regulations or laws. And
25 I would let Mr. Harmon, if he wants to, on behalf of the school

1 district, file a response to that and so I can at least have
2 that in front of me. Because it does seem to me that to the
3 extent that you're trying to rely on the fact that the DMV and
4 the Bureau of Vital Statistics apparently has recognized
5 Mr. Adams as a male, I'm interested in the source of the legal
6 authority for them to do that.

7 MS. DOOLITTLE: Yes, Your Honor. Thank you.

8 (Counsel confer.)

9 MS. DOOLITTLE: We have nothing further, Your Honor.

10 THE COURT: All right. Well, this is perfect timing,
11 then.

12 Ma'am, I'll ask you not to describe -- or talk about
13 your testimony overnight since you're tendered for
14 cross-examination. And if you'll be back here in the morning.

15 I guess we'll go ahead and start at nine again to try
16 to get as much done as we can. I sometimes don't start my
17 trials until 9:30 to give me a chance to do a few other things,
18 but we'll go ahead and start at nine to make sure we're working
19 a full day.

20 And so Ms. Kasper will be on the stand for
21 cross-examination.

22 Mr. Harmon, are you doing that cross or who's doing
23 it?

24 MR. HARMON: It will be me, Your Honor.

25 THE COURT: Do you have an estimate of how long it

1 might be? You know, I'm not going to hold you to it.

2 MR. HARMON: Yeah. No, no. If I were to --
3 accounting for the fact that lawyers always underestimate how
4 long it takes.

5 THE COURT: I'm going to add time to what you tell
6 me. I'm just asking you.

7 MR. HARMON: Okay. As long as we've made that known,
8 I'm going to guess 30 minutes.

9 THE COURT: Okay. So --

10 MR. HARMON: More like two hours.

11 THE COURT: I was going to say more like an hour. So
12 then let me hear from the plaintiff how -- what other witnesses
13 will be called tomorrow and in what order, please.

14 MS. DOOLITTLE: Yes, Your Honor.

15 THE COURT: Ms. Altman, if you're the one with the
16 info, just give it to me.

17 MS. ALTMAN: That would be great.

18 Yes, Your Honor. After Ms. Kasper, it will be
19 Ms. Pope, who is an administrator in the Broward County School
20 District.

21 It will be Scott Adams, the father of Drew Adams.
22 Then it will be Ms. Kefford, who is a principal in the Broward
23 County School District. And Dr. Ehrensaft will be, per the
24 agreement, on Thursday -- Wednesday morning.

25 THE COURT: Out of turn. Okay.

1 MS. ALTMAN: Yes. And then we still have the open
2 issue vis-à-vis the corporate representatives.

3 THE COURT: Okay. The way we're going to resolve
4 that is that the defendants promised me they're going to call
5 them and that will assure their appearance and that way you'll
6 have the ability to cross-examine them so you'll get to ask
7 them whatever you want.

8 MS. ALTMAN: And so we're still willing to make an
9 accommodation to read into the record the few things we need as
10 well.

11 Just another note. We've not received from the
12 defendants any identification of their witnesses.

13 THE COURT: Well, the way it usually works is -- it's
14 the party in control that I worry about. But it sounds like
15 it's possible -- since we're taking your expert out of turn, it
16 sounds like it's possible you might finish with your other
17 witnesses.

18 So, Mr. Harmon, I'll ask you who your first couple of
19 witnesses will be, because it may be -- we may start tomorrow
20 with your case depending on how long it takes.

21 MR. HARMON: Yes, Your Honor.

22 THE COURT: So what do we have -- what do we have in
23 store?

24 MR. HARMON: I discussed this with plaintiff's
25 counsel about two hours ago that we anticipate leading off with

1 Sallyanne Smith.

2 THE COURT: Okay.

3 MR. HARMON: And then perhaps Cathy Mittelstadt and
4 Frank Upchurch.

5 THE COURT: Okay. All right. That probably would do
6 us, right?

7 MR. HARMON: I'm going to estimate that Sallyanne
8 Smith will probably be a little lengthy because of the --
9 the --

10 THE COURT: All right. So that probably fills up our
11 day.

12 MR. HARMON: Yes.

13 THE COURT: Because I do want to make sure we're
14 using our time wisely. So we'll go nine to five tomorrow with
15 the breaks we've had today.

16 And you can go ahead and step down, ma'am. Thank
17 you.

18 Is there anything else that -- okay. And we're going
19 to start in the morning -- without fail, we're going to
20 start -- we'll start with the -- tendering the Dr. Adkins video
21 and transcript.

22 I think I would like -- just so I have context, I
23 think I would like five minutes each side of Dr. Adkins. In
24 other words, five minutes of what Dr. Adkins talked about and
25 why it's important, and five minutes of why, you know, you

1 don't think it's important or you don't think whatever she had
2 to say was relevant. And that will at least just give me a
3 context that I can place it in with the rest of the evidence.

4 I will promise you I will go back and read the full
5 thing, but -- and I'll keep you to the five minutes, but be --
6 I just want you to essentially be prepared to make a proffer of
7 her direct, what the important essence of it was. And if you
8 could make a proffer of the cross either as to qualifications
9 or as to her opinions as to why -- why you don't think I ought
10 to be considering it.

11 So let's do that. We'll get that into evidence. And
12 then I'm also going to accept into evidence any agreed
13 exhibits.

14 And so I'm going to ask you to talk overnight and
15 then I'll go ahead and admit those so we don't have to do
16 that other times. And then we'll go ahead and resume with
17 Ms. Kasper. Okay?

18 Anything else from the plaintiff?

19 Anything else from you, Mr. Harmon?

20 MR. HARMON: No, Your Honor.

21 THE COURT: Please do not make the mistake of
22 thinking that by the questions that I ask, that you know what
23 the answer is going to be, because I don't know what the answer
24 is going to be, so -- but I -- I want to feel free to ask
25 questions and to test things and to think about things, but it

1 doesn't mean I have made up my mind about anything whatsoever.
2 And hopefully by the end of it, I'll have asked each of you
3 enough hard questions that everybody will realize that.

4 But I don't want anybody leaving here today thinking
5 that anything has been decided or that I'm leaning one way or
6 another way. Just not true. Not true. I am a complete open
7 book, because this is -- I am learning and deciding at the same
8 time. And I'm going to wait and hear all the evidence. And so
9 I just want everybody to feel comfortable with that.

10 All right. We're in recess.

11 COURT SECURITY OFFICER: All rise.

12 MS. ALTMAN: Thank you, Your Honor.

13 (The proceedings adjourned at 5:06 p.m.)

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CERTIFICATE

UNITED STATES DISTRICT COURT)
)
MIDDLE DISTRICT OF FLORIDA)

I hereby certify that the foregoing transcript is a true and correct computer-aided transcription of my stenotype notes taken at the time and place indicated herein.

DATED this 15th day of December, 2017.

s/Shannon M. Bishop
Shannon M. Bishop, RDR, CRR