

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 XII**

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DE 161

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 12, 2017

vs.

9:04 a.m.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,

Courtroom No. 10D

Defendant.

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

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(Proceedings recorded by mechanical stenography;
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P R O C E E D I N G S

December 12, 2017 9:04 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. I apologize for running a few minutes late. We actually usually start our trials at 9:30 to give me a chance to do a few things, and I was doing a few things and time got away from me. So -- but we're ready to proceed this morning.

So let's go ahead and start with the evidence that we talked about yesterday.

Are we -- the first thing I wanted to deal with was the testimony of Dr. Adkins. So what say you about that?

MS. ALTMAN: Your Honor, we brought with us the -- we have a proffer to be made.

THE COURT: Yeah.

MS. ALTMAN: And we brought with us the exhibits -- Court Exhibit 1, which would be the video; 2, which is the depo; and then 2A, B and C, which are the exhibits.

THE COURT: Okay.

MS. ALTMAN: And we have three copies for the court. So I can give them to whoever you --

1 THE COURT: You can just give them to Ms. Diaz.
2 She'll take care of it. Thank you.

3 MS. ALTMAN: And we have a prepared proffer. We also
4 have a housekeeping matter.

5 THE COURT: Okay.

6 MS. ALTMAN: But I don't know if you want to wait on
7 that.

8 THE COURT: Okay. Well --

9 MS. ALTMAN: And one of those is --

10 THE COURT: So each of these three notebooks contain
11 everything?

12 MS. RIVAUX: Correct, Your Honor.

13 THE COURT: All right. So the video will be Court
14 Exhibit 1. The deposition will be Court Exhibit 2. And the
15 exhibits will be Court Exhibits -- you know, I think since the
16 exhibits are -- well, I guess it doesn't matter. So you've got
17 2A, B, and C; is that correct?

18 MS. ALTMAN: Yes, Your Honor. And I think only one
19 of them has the -- the tabs.

20 THE COURT: That's fine.

21 MS. ALTMAN: That's --

22 THE COURT: That's fine. We'll do it that way.
23 That's fine. All right. I've got that.

24 (Court's Exhibits 1 and 2 received into evidence.)

25 THE COURT: And as I said, after I listen to the

1 proffer from both sides, I will at some other time outside the
2 presence of the parties, I will read Dr. Adkins' deposition,
3 which will be considered evidence in this case like any other
4 evidence.

5 All right. The -- let's go ahead and talk about the
6 exhibits and then we'll get to your housekeeping matter.

7 MS. ALTMAN: Okay.

8 THE COURT: Are there any exhibits that the parties
9 are prepared to put into evidence without objection?

10 MR. HARMON: Your Honor, from the -- I guess I'll say
11 from plaintiff's perspective, there's -- right now we've got
12 two that we are -- I'm sorry, from defendant's perspective, we
13 are open to putting in two of plaintiff's exhibits. There are
14 two we objected to, one that we wanted to ask for a little
15 clarification on from the court. And then there are some
16 exhibits that -- with respect -- that relate to an expert
17 witness that we still are going to discuss.

18 So I think Plaintiff's Exhibit 65 and 66, there's no
19 objection.

20 THE COURT: Okay.

21 MR. HARMON: And one question was Defendant's Exhibit
22 22 yesterday, we just weren't -- at least I wasn't clear
23 whether Your Honor accepted it into evidence or was going to --

24 COURTROOM DEPUTY: It's not in.

25 THE COURT: I don't have it --

1 MR. HARMON: -- consider it.

2 THE COURT: I don't -- what was it?

3 MR. HARMON: It was --

4 MS. RIVAUX: It was one of the letters from the
5 doctor.

6 MR. HARMON: Yeah, Dr. Jacobs' letter to Dr. Sassani.

7 THE COURT: And do we have --

8 MS. DOOLITTLE: I have a copy.

9 MS. RIVAUX: I believe Your Honor reserved on that
10 one.

11 MS. DOOLITTLE: I have a copy, Your Honor, if you'd
12 like to see it.

13 (Judge confers with courtroom deputy.)

14 MS. RIVAUX: I have a copy, Your Honor.

15 THE COURT: Well, I think we got into the discussion
16 of the relevancy of all this and I told you I would take it
17 under advisement and defer on it and determine at a later
18 point --

19 MR. HARMON: Okay.

20 THE COURT: -- whether I was going to consider this
21 or not.

22 MR. HARMON: That's what we thought, too. So we'll
23 stick with what we did in open court on that.

24 THE COURT: Okay. All right. Are there -- so
25 basically we've got Plaintiff's Exhibit 65 and 66 admitted

1 without objection, and that's all I heard by way of the
2 defendants.

3 Are there any -- are there any of the defendant's
4 exhibits that the plaintiff is agreeable to?

5 MS. ALTMAN: Yes, Your Honor. Well, there was a
6 series of exhibits that we received from defendant and we
7 said -- our position is as long as they can lay a foundation
8 with a particular witness that it was documents reviewed and
9 considered by the district in putting together their policy,
10 then we did not object to those particular exhibits.

11 THE COURT: All right. What are their numbers?

12 MS. RIVAUX: Exhibit 28, 33 -- this is Defendant's
13 Exhibit 28.

14 THE COURT: Yeah.

15 MS. RIVAUX: Defendant's Exhibit 33.

16 THE COURT: Yeah.

17 MS. RIVAUX: Defendant's Exhibit 67, page 151 of that
18 particular exhibit, the Bates number.

19 THE COURT: Wait. It's the exhibit, but only one
20 page of it?

21 MS. RIVAUX: That's the request made by the defendant
22 just for that one page of that exhibit. So the way it was
23 marked on their exhibit list, it included multiple pages, and
24 they have requested only that one page of Exhibit 67.

25 THE COURT: Okay.

1 MS. RIVAUX: Defendant's Exhibit 68, Defendant's
2 Exhibit 69, Defendant's Exhibit 70, Defendant's Exhibit 85 with
3 the Bates numbers 1437 through 1526. This one, Your Honor, is
4 similarly situated as to the other ones where it was a larger
5 exhibit, but defendants have requested only those specific
6 pages.

7 THE COURT: All right. On those exhibits where
8 they're not putting in the whole exhibit that was proposed,
9 you're going to need to substitute out the actual pages that
10 are the exhibits and leave out the ones that aren't. So we
11 don't have to do that right now, but -- so that's with respect
12 to Exhibit 67, page 151, that will be the only piece of paper
13 in evidence. And with respect to Exhibit 85, the only pieces
14 of paper that will be in evidence will be 1437 to 1526.

15 All right. What else?

16 MS. RIVAUX: Exhibit 1 -- Defendant's Exhibit 157,
17 Defendant's Exhibit 158, Defendant's Exhibit 159, Defendant's
18 Exhibit 161, Defendant's Exhibit 162, Defendant's Exhibit 163,
19 Defendant's Exhibit 168, Defendant's Exhibit 170, Defendant's
20 Exhibit 171, Defendant's Exhibit 177, Defendant's Exhibit 178,
21 Defendant's Exhibit 179, Defendant's Exhibit 187, Defendant's
22 Exhibit 188, Defendant's Exhibit 189, Defendant's Exhibit 190,
23 Defendant's Exhibit 191, Defendant's Exhibit 203, Defendant's
24 Exhibit 204. And that one also is a -- only specific pages;
25 page 2424, page 2125 through 2128, pages 2138 through 2187,

1 pages 2193 through 2194, 2199 through 2200.

2 THE COURT: All right. Again, all I'm looking for
3 and all the clerk is looking for will be an Exhibit 204 that
4 conforms to those page numbers. We're not going to try to keep
5 track of the page numbers. Somebody needs to substitute in an
6 exhibit that meets those page numbers so we don't have to worry
7 about it.

8 All right. What else?

9 MS. RIVAUX: Defendant's Exhibit 213, Defendant's
10 Exhibit 217, Defendant's Exhibit 223, Defendant's Exhibit 225,
11 Defendant's Exhibit 228. And that's another one where it's
12 only pages 2430 through 2435, 2444 through 2447, 2448, 2449
13 through 2452 and 2478.

14 THE COURT: All right. I'm not going to repeat all
15 those numbers. I'll let Ms. Diaz look on the transcript to
16 make sure she's got all the numbers correct. But with respect
17 to those exhibits just announced by counsel, they're admitted
18 without objection, as is Plaintiff's 65 and 66.

19 MS. RIVAUX: Your Honor, just the one clarification
20 was that we do ask that they make the foundational grounds on
21 those particular exhibits.

22 THE COURT: Well, I suppose if they don't, you'll
23 tell me, right?

24 MS. RIVAUX: Correct, Your Honor.

25 THE COURT: You didn't do a very good job of trading

1 exhibits. They only agreed to two of yours and you agreed to
2 about 30 of theirs but --

3 MS. RIVAUX: We did think we'd come to some
4 agreement.

5 MS. ALTMAN: We're still optimistic, Your Honor.

6 MS. RIVAUX: We did speak to Mr. Harmon and he said
7 he would continue to consider them. And maybe during a break,
8 we can have some more agreement on some of the exhibits.

9 THE COURT: Just seems like you gave away the farm to
10 me.

11 MS. ALTMAN: All right. We take it all back.

12 MR. HARMON: We received a list of about eight
13 exhibits last night and about 30 this morning, so...

14 THE COURT: Okay. I'm just being facetious. I'm not
15 being serious.

16 (Judge confers with courtroom deputy.)

17 THE COURT: And Ms. Diaz is reminding me that I
18 deferred on Defendant's Exhibit 7 which was the safety plan.
19 For the reasons I stated earlier, I'm continuing to defer on
20 that exhibit.

21 Okay. All right. Ms. Altman, you said you had -- so
22 those exhibits are -- can be considered admitted. If counsel
23 becomes concerned that the defendants haven't met their
24 obligations to establish foundation, they can tell me about it
25 and I'll consider withdrawing them.

1 But for purposes of -- the whole point of doing this
2 is that for purposes of the trial, you can assume these are
3 already in evidence, you don't have to move them into evidence,
4 you can publish them, you can do whatever you want with them.
5 And so -- so that's how I'll be treating them.

6 (Plaintiff's Exhibits 65 and 66 received into evidence.)

7 (Defendant's Exhibits 28, 33, 67, 68, 69, 85, 157, 158,
8 159, 161, 162, 163, 168, 170, 171, 177, 178, 179, 187, 188,
9 189, 190, 191, 203, 204, 213, 217, 223, 225 and 228 received
10 into evidence.)

11 THE COURT: Ms. Altman, you said you had a
12 housekeeping matter?

13 MS. ALTMAN: Yes, Your Honor. Like I said, we can
14 move to the proffer. Just to refresh Your Honor's
15 recollection, we had an expert that we were able to reach an
16 accommodation with the defendant to call out of turn.

17 THE COURT: Right.

18 MS. ALTMAN: Her son was having surgery.

19 THE COURT: Right.

20 MS. ALTMAN: Yesterday we got an update, last night
21 late, that her -- although her son had surgery, there were some
22 complications with the surgery. She's not going to be able to
23 travel from New York today to -- to Jacksonville as we had
24 expected. And what we were trying to reach an accommodation to
25 do was to have her go to our New York office and appear by

1 video conference so that she could present live to the court.

2 THE COURT: Yeah.

3 MS. ALTMAN: We have raised that with opposing
4 counsel. They are considering it. And if that's not an
5 option, the only other option, at least that we can think of --
6 perhaps Your Honor has a different option -- would be to submit
7 her affidavit along with the deposition.

8 Of course, our preference is to have her live so that
9 we could admit some exhibits through her. We gave them those
10 exhibits that we want them to agree to anyway. And they may do
11 that. So that becomes less of an issue.

12 But that's our issue.

13 THE COURT: Yeah. Sure.

14 MS. ALTMAN: We can work out the logistics in terms
15 of having her magically appear on the screen. We just wanted
16 to understand what the court's preference was in light of this
17 unforeseen circumstance.

18 THE COURT: Yeah. It's actually not unforeseen. My
19 law clerk, when we granted that request, she said there's no
20 way she's going to be traveling, and she's right. I mean, you
21 know, it was a -- it was a good effort, but, you know, when you
22 have -- when you have a child who has just gone through
23 surgery, the last thing that's going to happen is the mother is
24 going to leave and come testify in some court. So it's not a
25 surprise to me. And what do we want to do about it?

1 So you're proposing that we take her by video, which
2 means that there would be direct exam and cross-exam by video?

3 MS. ALTMAN: Yes, Your Honor. We would either use
4 Skype or some other format like that. It would come through
5 the laptop and be projected on the large screen. We could have
6 a court reporter in our New York office.

7 THE COURT: I mean, is she even going to be
8 available?

9 MS. ALTMAN: She -- well, I'll confirm that. I
10 didn't want to tell her 100 percent to plan it. I did raise it
11 with her and she did indicate a willingness to do that,
12 obviously subject to whatever is going on with her son, which
13 I'll confirm at one of our breaks.

14 THE COURT: Yeah.

15 (Judge confers with law clerk.)

16 THE COURT: Mr. Harmon, what do you think?

17 MR. HARMON: Your Honor, just -- we found about it
18 pretty recently, too. I know we talked to plaintiff's counsel
19 just about a couple of different alternatives. One was the
20 alternative proposed which was to do the video. The other one
21 was to perhaps use Dr. Ehrensaft. She's already been deposed
22 in this case. So to look at that as a potential option. But
23 we just figured it out -- I think we talked at about 8:55. So
24 I think we just haven't really had a chance to digest how to go
25 about it.

1 THE COURT: Okay. Well, here's what -- here's
2 what -- I'm willing to try the video route if people want to
3 try that and have her appear by video if she's even available.

4 If she's not available, I'd be willing to take her
5 deposition -- the previous deposition in lieu of it. I
6 probably would be willing to let you formalize her testimony
7 like you did Dr. Adkins if that turned out to be the right
8 thing to do.

9 I don't want to cause a lot of cost to people of
10 flying to New York and so forth. So hopefully -- I suppose she
11 was supposed to come down here anyway, and so hopefully -- we
12 could probably arrange to have that happen at some time in the
13 future because I'm not -- it's not like I'm going to rule from
14 the bench at the end of the trial, so -- and it is a non-jury
15 trial. So when we have -- when we get the evidence doesn't
16 matter.

17 You know, I could even -- I could even abate the
18 proceedings and bring us back here, but I don't think we need
19 to do all that.

20 So I'm willing to be -- I'm willing to consider any
21 reasonable thing to do. You know, we are fortunate we're not
22 in a jury scenario so we have flexibility.

23 So what I will do is this. We're going to go ahead
24 and get some work done here and then I would say at lunchtime,
25 you-all ought to talk to each other.

1 And, Ms. Altman, in the meantime, maybe somebody can
2 be in contact to make sure that the doctor is even available
3 tomorrow. And then you-all can -- after I come back from the
4 lunch break, y'all can present me with an alternative that
5 you've either agreed to or advocating for and I'll make a
6 decision.

7 MS. ALTMAN: And we appreciate Your Honor's
8 flexibility. Just one little fine point on that. With respect
9 to the existing deposition, that was a deposition the
10 defendants took, so what we would propose if we were to use
11 that option is we use her affidavit and that -- their
12 deposition. And if that was not the court's preference, we
13 would do a deposition preservation like we --

14 THE COURT: If that's going to be good enough for
15 you, it may be good enough for me. I have to confess I don't
16 know that I read her affidavit recently, so I don't know what
17 it says, but if you're saying everything you want her to say is
18 in the affidavit and everything they wanted to get out of her,
19 they got out of the deposition and that -- put it all together
20 and you've got a witness, that would be fine with me, too, if
21 that's what y'all want to do.

22 MS. ALTMAN: I don't want to speak for them.

23 MR. HARMON: We're just trying to figure it out.

24 MS. ALTMAN: And we appreciate everyone's
25 flexibility. Obviously we wish that we were as clairvoyant as

1 your clerk. But we're working with what we've got. And we
2 appreciate everyone's flexibility.

3 Thank you.

4 THE COURT: All right. Thank you.

5 Anything else?

6 The record will reflect that Mr. Adams is not present
7 today, which is something that I suggested. He might want to
8 be in school. It's probably a heck of a lot more fun than
9 being here. So he is not here today, and I assume that's his
10 choice, which is fine.

11 And the other thing I'm being told by my clairvoyant
12 clerk is that either I wasn't clear or -- let's see. I
13 proposed a site visit yesterday.

14 (Judge confers with law clerk.)

15 THE COURT: So just -- the -- I think I proposed this
16 date as January 3rd. It may be like late morning or noontime,
17 something like that, or even -- yeah, probably -- probably
18 noontime, eleven to noon, something like that. And I don't
19 think it will take very long. So -- and the reason, I have
20 some other court later in the afternoon.

21 So that's -- that's the working date that I'm
22 proposing. And at some point before the trial is over, we'll
23 establish whether that's going to be doable or whether we need
24 to have another date. And we'll establish the ground rules for
25 it, most of which I told you yesterday.

1 All right. So Ms. Kasper was getting ready to be
2 cross-examined, right?

3 MR. HARMON: Yes, Your Honor.

4 MS. DOOLITTLE: Your Honor, did you want to -- did
5 you want to hear the Adkins proffer before that?

6 THE COURT: Yeah, sure do. Sorry. That's why I need
7 83 of you. So come on up. So this is your five-minute proffer
8 on what Dr. Adkins would say.

9 MS. RIVAUX: Yes. So thank you, Your Honor.

10 So Dr. Adkins is the unretained treating physician
11 expert. She is a pediatric endocrinologist, and she is the
12 chief and cofounder of the Duke Gender Clinic in North Carolina
13 where she treats over 200 transgender children.

14 She was trained by and she was mentored for this by
15 Dr. Wylie Hembree, who is the lead author in the Endocrine
16 Society clinical guidelines that basically set the standard of
17 care for transitioning -- medical transitioning.

18 You heard through testimony yesterday about the
19 hormone treatments that he received. She oversees that
20 treatment.

21 And in particular what she talks about is -- what she
22 testifies to is the importance of this -- the part of the
23 transition and the treatment and that the treatment, both
24 social and medical transition, is to align the body to match
25 the gender identity so that the -- a transgender person can be

1 indistinguishable from a cisgender person.

2 And so she will talk about the changes that --

3 THE COURT: Can I ask you a question --

4 MS. RIVAUX: Sure.

5 THE COURT: -- that I'm sure shows ignorance, but I
6 kind of get from context what cisgender means, but what is the
7 definition of cisgender?

8 MS. RIVAUX: So cisgender is any person who has their
9 gender identity aligned with their birth -- the sex assigned at
10 their birth.

11 So she will talk specifically about the different
12 physical changes that occur and that will happen to Drew with
13 the -- with the continued treatment. So he's going to have a
14 deeper voice. He is going to start having facial hair. His
15 body composition is going to change.

16 So that is ultimately the goal of the treatment, and
17 that you live in your gender identity from morning to night,
18 all day, and that includes bathroom use.

19 And she is going to talk about how this is something
20 that is part of the recommended treatment, is that when you're
21 transitioning, it's everything. It's not just cutting your
22 hair or using the pronouns. The gender-affirming model is to
23 do it all.

24 And she could also talk about and she will testify
25 about the impact of what it is to have the denial of bathroom

1 access and how that interferes with your ability to transition.

2 She'll also talk about specifically Drew, when he
3 came to her in March of 2016 for the first time when he was
4 first going for the hormone treatments, that he spoke to her
5 about the denial of access to bathrooms at his school, the
6 bathrooms that match his gender identity. And she can talk --
7 and she talks about that specifically.

8 And this is obviously at a time before this lawsuit
9 was ever filed that he was talking to her about this.

10 She also is -- her testimony is also going to be
11 relevant to the heightened scrutiny factors that Your Honor is
12 going to consider in particular as it relates to
13 discrimination.

14 She -- because she works in a gender clinic -- she's
15 the head of the gender clinic and she treats transgender
16 children, she saw the effects of HB2, which was the North
17 Carolina law that was passed to prevent transgender individuals
18 from using bathrooms matching their gender identity in
19 government buildings. And she saw the -- the impact on her
20 patient population directly.

21 She can also talk about -- and her testimony is also
22 relevant to other heightened scrutiny factors, such as the fact
23 that you're transgender does not impact your ability to
24 contribute and function in society.

25 She can talk about -- and she does talk about and

1 testify about the fact that being transgender is immutable.
2 Being transgender cannot be changed. Your gender identity does
3 not change. And those are specific factors that Your Honor is
4 going to consider.

5 She is also -- because she's an endocrinologist, one
6 of the things that she does is she assigns sex to infants at
7 birth. And she understands what it is to -- what the
8 definition of sex is. She will explain and testify as to how
9 there are secondary sex characteristics. So you have your
10 parts, you have your chromosomes, you have your hormones. That
11 doesn't always tell you what a person's sex is.

12 THE COURT: I do recall now that we're talking about
13 Dr. Adkins, she did have an affidavit as well that -- or
14 statement that got into some of this same information, right?

15 MS. RIVAUX: Correct.

16 THE COURT: Because I have read this before -- as
17 you're speaking, I remember I read some of this before.

18 MS. RIVAUX: She's going to be able to explain that
19 and also explain how her work with assigning sex helped codify
20 the understanding of why gender identity is the factor that
21 determines -- is the main factor that you use to determine sex
22 and why when gender identity conflicts with a sex that's
23 assigned at birth, gender identity always overrides whatever
24 the sex that was that was identified at birth.

25 She's also going to talk about the term "biological

1 sex" and how that is a very inaccurate term. It's a term
2 according to the Endocrine Society that is not to be used
3 because it is imprecise. It doesn't consider the specific
4 biological underpinnings of the definition of sex.

5 And in particular, she will also -- in the deposition
6 she also specifically refers to -- we have three exhibits that
7 I tender with the deposition of Dr. Adkins, and in particular,
8 the Endocrine Society clinical guidelines, one that sets the
9 standard of care and that's what she follows. She finds it
10 reliable and authoritative and that a -- that that is the
11 standard is to align the gender identity with the sex assigned
12 at birth -- I'm sorry, the -- to align the body with the gender
13 identity.

14 She also talks about -- she's also a member of the
15 Pediatric Endocrine Society that recently put out a statement
16 that says transgender children and adolescents need a safe and
17 supportive school environment in order to thrive like any young
18 person. Not allowing them to use the restroom that matches
19 their gender identity is a violation of human rights and sends
20 a message of intolerance that will promote further
21 discrimination and segregation.

22 And she says that, you know, part of her medical
23 practice is to understand what these human rights are and
24 that -- to make sure that her patients' human rights are not
25 violated.

1 And she also talked about the position statement of
2 the Endocrine Society that came out in September specifically
3 stating that there is a durable biological underpinning to
4 gender identity that should be considered in policy
5 determinations.

6 So this altogether, Your Honor, is the evidence that
7 we would proffer through Dr. Adkins.

8 THE COURT: Thank you very much.

9 Who's going to -- all right, Counsel.

10 Mr. Barden, do I have that right?

11 DR. BARDEN: Dr. Barden, Mr. Barden.

12 THE COURT: Doctor. I'm sorry. I apologize. It's
13 not written down. And remind me, sir, how do you -- where do
14 you fit into this team?

15 DR. BARDEN: I'm admitted pro hac vice as a scientist
16 specialist.

17 THE COURT: Okay. Working -- but you're a lawyer and
18 a doctor?

19 DR. BARDEN: Yes, sir.

20 THE COURT: Okay. And you are -- so you're working
21 with Mr. Harmon's firm?

22 DR. BARDEN: Yes, I am.

23 THE COURT: All right. You may proceed.

24 DR. BARDEN: The cross-examination of Dr. Adkins in
25 this case is a detailed exploration of her grossly unreliable

1 methodologies, her lack of knowledge, and her lack of error
2 rates. So formally -- Dr. Adkins was formally proffered as a
3 treating physician. She met with Drew for a total of one hour
4 and 15 minutes in the whole case, but she was not offered as an
5 expert in any field or area.

6 At page 51, Dr. Adkins admitted that she has never
7 been awarded a single dollar in federal or state grant funds,
8 thus no state or federal agency of any kind has ever entrusted
9 a single dollar to Dr. Adkins to conduct reliable scientific
10 research.

11 At page 55, we learn that Dr. Adkins has zero science
12 journal editorial board positions. Again, not a single journal
13 has confidence in her ability to review methodological issues.

14 We also learn that Dr. Adkins has zero science awards
15 and she's never published a single article on research
16 methodology.

17 We then discussed Dr. Adkins' reliance upon
18 association position statements and so-called treatment
19 guidelines. Dr. Adkins admitted she did not participate in the
20 creation of any of these statements or guidelines; that she has
21 no idea who did participate; that she has no idea what
22 methodology was used to create such so-called position
23 statements or guidelines.

24 She agreed that these so-called position statements
25 or guidelines are created by voting and voting is not a

1 reliable scientific methodology.

2 She agreed that these position statements are put out
3 by small committees. For example, on page 57, I asked her:
4 "What percentage of these societies do not agree with these
5 position statements?"

6 Dr. Adkins: "I have no idea."

7 On page 62 we learn that Dr. Adkins has zero
8 participation in Drew's diagnosis of gender dysphoria.

9 "Is it true that you have not personally diagnosed
10 any psychological or psychiatric disorder or label for Drew
11 Adams?"

12 Witness: "Yes, that's true."

13 On page 63, we learn that the plaintiff's attorney
14 spent 18 hours preparing Dr. Adkins for her testimony, yet she
15 only saw Drew for one hour and 15 minutes and she has no
16 personal knowledge of his diagnosis.

17 On page 64: "In your 18 hours of discussion with the
18 three plaintiffs' lawyers, did they tell you why they have not
19 called a single witness in this case who actually diagnosed
20 Drew Adams as having gender dysphoria?"

21 "WITNESS: No, we did not have that conversation."

22 On page 64, Dr. Adkins testified she had no idea that
23 Drew Adams had published YouTube statements at which he denied
24 suffering from gender dysphoria.

25 On page 69, Dr. Adkins relies on Kristen Russell, a

1 social worker, for mental health information, someone with no
2 grants, no publications, no evidence that she used any reliable
3 methodologies. And she will not testify in this case.

4 On page 70, we learned that Dr. Adkins only reviewed
5 a subset of Drew's records before beginning a treatment
6 protocol that could sterilize him.

7 Dr. Adkins also relied for the gender dysphoria
8 diagnosis on a therapist in Florida. She could not even
9 remember the therapist's name.

10 Dr. Adkins admitted she has no evidence the therapist
11 in Florida used reliable methodologies. The therapist in
12 Florida will not be testifying in this case.

13 Page 75, Dr. Adkins admitted she's never in the room
14 when anyone diagnosed Drew, and could therefore offer no
15 opinions whatsoever about the reliability of any of the
16 methodologies used.

17 There are no audio or videotapes of any of the
18 diagnoses of Drew. Dr. Adkins admitted she failed to even
19 review the medical records from Florida. She only reviewed a,
20 quote, summary letter which contained zero methodological
21 information.

22 Dr. Adkins relied upon her social worker to check the
23 diagnosis of the Florida therapist, and she has no idea if the
24 social worker did her job.

25 Dr. Adkins admitted she has not kept up on the

1 research, showing the unreliability of clinical interviews.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 On page 103, Dr. Adkins admitted that the diagnosis
22 of gender dysphoria is conversational evidence only, no brain
23 scans, no blood tests, no lab tests, just conversation.

24 On page 109, Dr. Adkins was not informed as to
25 research showing that clinicians like herself are highly

1 unreliable lie detectors, no better than laypersons.

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10 At page 121, we see there's no reliable methodology
11 for the diagnosis as known to Dr. Adkins.

12 "Do you have any idea at all what percentage of the
13 statements made to the therapist in Florida during the
14 diagnostic interview with Drew Adams were false statements?

15 Answer: "I know nothing about those discussions.
16 There's no way for me to know that."

17 My time is limited. I don't know how much more you'd
18 like me to go through.

19 THE COURT: I think you went a little bit over but
20 you can go ahead and finish up.

21 DR. BARDEN: Dr. Adkins failed to generate and test
22 alternative hypotheses, a minimal standard of care. And
23 there's a number of those that we went through.

24 We also went through the history of so-called
25 position statements by professional associations such as the

1 APA, for example, claiming that homosexuality was a mental
2 illness for decades. Again, no methodology in those position
3 statements, no error rates and no discussions of whether the
4 process was reliable or unreliable.

5 Those -- nothing more than the ipse dixit of
6 Dr. Adkins in this case.

7 Thank you, Your Honor.

8 THE COURT: Thank you. All right. I will
9 consider -- I will consider that a proffer from the plaintiff
10 and the defendant of the essential points that they are
11 interested in with Dr. Adkins' testimony. However, I will not
12 substitute that proffer for an actual careful reading of the
13 deposition itself. And I may do some combination of looking at
14 the video and the deposition. But I will, in due course,
15 review and study the deposition of Dr. Adkins and will consider
16 it as evidence in this case.

17 All right. Now are we ready for Ms. Kasper? Okay.

18 Ms. Kasper, if you don't mind getting back on the
19 stand, and Mr. Harmon will have some questions for you.

20 We kind of have a rule that once you take an oath, it
21 counts. We don't have to give it to you again in the morning.
22 It doesn't wear off, so you are under oath.

23 And, Mr. Harmon, you may proceed when you're ready.

24 MR. HARMON: Thank you, Your Honor.

25 **CROSS-EXAMINATION**

1 BY MR. HARMON:

2 Q. Good morning.

3 A. Good morning.

4 Q. We've met before and I've talked to you with some
5 questions before, so I've got just a few more --

6 A. Okay.

7 Q. -- and then maybe no more questions from me.

8 Just in terms of a background, you are not a licensed
9 psychologist, right?

10 A. No.

11 Q. Not a licensed social worker?

12 A. No.

13 Q. What about a licensed mental health counselor?

14 A. No.

15 Q. An endocrinologist?

16 A. No.

17 Q. Okay. Have you ever taught in a K through 12 --
18 kindergarten through 12th grade public school?

19 A. No.

20 Q. Focusing a little bit more now kind of on the facts of the
21 case, before your child was born, the doctor told you the sex;
22 is that right?

23 A. Yes.

24 Q. Okay. And that was female?

25 A. Yes.

1 Q. Okay. And you were able to tell the sex as well because
2 you had an ultrasound, right?

3 A. Yes.

4 Q. And the birth certificate that you obtained within a week
5 or two of the birth indicated female on it?

6 A. Right.

7 Q. Okay. Switching gears a little bit now, fast-forward
8 several years to high school. So we just went from ultrasound
9 to high school in a matter of seconds. Probably what it felt
10 like, right?

11 A. Yes.

12 Q. Okay. So now focusing on high school, if I understand
13 correctly, when your child went to Nease, you and your child
14 advised Nease High School that Drew would be presenting as a
15 male at Nease; is that right?

16 A. I advised Holly Arkin. Drew contacted his teachers
17 directly.

18 Q. Okay. To basically say we want everybody to be clear that
19 Drew will be presenting as male. We'd like to -- and Drew
20 would ask to use the male pronoun when referring to him and
21 things of that nature, right?

22 A. Yes. Uh-huh (affirmative).

23 Q. And if I understand correctly, the first time that you had
24 any discussion about gender-neutral bathrooms was in September
25 of 2015 when your son came home from school and relayed to you

1 the conversation that he had had with Kim Hollis and two other
2 individuals in the guidance office at Nease?

3 A. It was that day, but Holly Arkin actually called me
4 earlier in the day to say this thing happened today at school
5 with Drew.

6 Q. Okay.

7 A. And then Drew came home and told me about it as well.

8 Q. But prior to that day, I guess, ever a time where anybody
9 with St. Johns County School District talked to you about
10 gender-neutral bathrooms?

11 A. Not that I can recall.

12 Q. So is it possible?

13 A. I mean, it's pretty unlikely since the minute he came home
14 that day upset and that Holly called me, I started making
15 appointments with meetings. So had I known before that that
16 was the district rule, I would have been in their office
17 earlier.

18 Q. Okay. So I just want to make sure I understand. You
19 can't recall and it's unlikely, but is it possible?

20 A. I mean, I guess there's --

21 THE COURT: Are you saying it didn't happen? I mean,
22 are you -- do you have reason to think that she did talk to
23 them before?

24 MR. HARMON: Yes.

25 THE COURT: All right.

1 MR. HARMON: Yes.

2 THE COURT: All right. So you're not just asking --

3 MR. HARMON: Correct.

4 THE COURT: -- for the heck of it? All right. Go
5 ahead.

6 BY MR. HARMON:

7 Q. I'm just trying to understand -- are you saying absolutely
8 never happened, or you cannot remember whether it happened?

9 A. Well, I mean, I don't like absolutes, but given the
10 context, given the way that we reacted when we did find out,
11 given the way Drew felt, given the way I started reaching out
12 to the district and school immediately, it seems incredibly
13 unlikely that anybody had mentioned it to me before.

14 Q. Okay. Now, in terms of that incident -- I won't call it
15 "the incident," but that day when you had the conversation with
16 Holly Arkin and your son about being called to the front
17 office --

18 A. Yes.

19 Q. -- was it not your understanding at that time that a
20 student had complained about Drew being in the men's restroom?

21 A. I believe Holly might have mentioned it was a student.
22 They didn't tell Drew that, though. He came home and just said
23 it was an anonymous complaint. Either way, we didn't know who
24 it was.

25 Q. Okay. But Ms. Arkin had mentioned to you that it was a

1 student?

2 A. Probably. I believe so.

3 Q. Okay. Did you have any reason to believe at that time it
4 was anybody other than a student?

5 A. I mean, I was just going on what the school was telling
6 me, so I -- I didn't know what to believe. But I -- I guess I
7 just trusted what they were telling me.

8 Q. Okay.

9 MR. HARMON: Your Honor, I've got an exhibit if I can
10 approach.

11 THE COURT: Sure.

12 MR. HARMON: This is going to be, for the record,
13 Defendant's Exhibit 34.

14 BY MR. HARMON:

15 Q. You get the original.

16 A. Okay.

17 MR. HARMON: Your Honor, would you like a copy?

18 THE COURT: Thank you.

19 MS. DOOLITTLE: May we have a copy?

20 THE COURT: It cannot possibly be true that this is
21 the right typeface.

22 MR. HARMON: It is. I can blow it up on this, but
23 I'm not going to read this.

24 THE COURT: All right.

25 MS. DOOLITTLE: Your Honor, can I just get a moment.

1 I didn't have a copy.

2 THE COURT: Sure.

3 BY MR. HARMON:

4 Q. Do you recognize this document?

5 A. I do.

6 Q. What is this document?

7 A. The front page is an e-mail to Holly Arkin. And the
8 attachment is a letter I drafted to then Principal Kyle
9 Dresback at Nease.

10 Q. It looks like this e-mail from you to Holly Arkin is dated
11 September 23rd, 2015?

12 A. Yes.

13 Q. Okay. Was the discussion you had with Ms. Arkin and your
14 son about the conversation about the bathroom close in time to
15 when you sent this e-mail?

16 A. Yes. I want to say it was the very next day or the same
17 day.

18 Q. Okay. Does it appear to be a true and accurate copy?

19 A. Yes.

20 MR. HARMON: At this time, Your Honor, I'd like to
21 move into evidence what has previously been marked as
22 Defendant's Exhibit 34.

23 THE COURT: Any objection?

24 MS. DOOLITTLE: No objection, Your Honor.

25 THE COURT: Be received, Defendant's 34.

1 (Defendant's Exhibit 34 received into evidence.)

2 BY MR. HARMON:

3 Q. Okay. So if we could turn to the second page of that
4 document, which fortunately has the much larger font.

5 A. Yes.

6 Q. The first page of that draft letter you were going to send
7 to Principal Dresback?

8 A. Yes.

9 Q. If we look at that first sentence, it says -- actually the
10 second sentence. "Today Ms. Holly Arkin, district social
11 worker, contacted me to let me know that a student complained
12 about Drew using the boys' restroom at school."

13 A. Okay.

14 Q. Okay. So is it fair to say that at least at that time,
15 looking at this letter, you were told it was a student?

16 A. Sure.

17 Q. Okay. Prior to the conversation that you had with your
18 son that day when he came home from school, had you talked to
19 him at all about bathroom use at Nease High School?

20 A. Not specifically, no.

21 Q. And if I understand, you had a meeting on October 9th,
22 2015, with Holly Arkin, Sallyanne Smith, Kyle Dresback, Christy
23 McKendrick, and your son at school, right?

24 A. Yes.

25 Q. Just so we can help -- we all know who these people are

1 but Holly Arkin is a social worker, right?

2 A. Yes.

3 Q. Sallyanne Smith was a district administrator at the time?

4 A. Director of student services I think, yes.

5 Q. And Kyle Dresback was the principal at the time?

6 A. Yes.

7 Q. And Christy McKendrick was another social worker?

8 A. Another social worker, yes.

9 Q. And during that conversation, you-all talked about
10 bathroom use?

11 A. Yes.

12 Q. And during that conversation, there was discussion about
13 the use of the men's room, right?

14 A. Yes.

15 Q. And the discussion was that Drew was not permitted to use
16 the men's room, correct?

17 A. Right.

18 Q. And if I understand, there was another meeting November
19 23rd, 2015, with just you, Cathy Mittelstadt, and Brennan
20 Asplen?

21 A. Yes.

22 Q. And that was at the district's office, right?

23 A. Yes.

24 Q. Cathy Mittelstadt and Brennan Asplen were administrators
25 at the school?

1 A. Yes.

2 Q. And during that meeting, Ms. Mittelstadt was supportive,
3 right?

4 A. She seemed to be.

5 Q. You talked about various issues during that meeting with
6 respect to transgender students, right?

7 A. Yes.

8 Q. And following that meeting, Ms. Mittelstadt mentioned to
9 you that the district wanted to provide a safe and educational
10 environment for all students.

11 Do you recall that?

12 A. Prior to that meeting or --

13 Q. Following that meeting.

14 A. Following that meeting. Via e-mail?

15 Q. Let me show you, if that might help.

16 A. Okay.

17 MR. HARMON: Your Honor, may I approach again?

18 THE COURT: Yes.

19 MR. HARMON: This is another small font.

20 BY MR. HARMON:

21 Q. Do you recognize this document?

22 A. Yes.

23 Q. Does it look like an e-mail from Cathy Mittelstadt to you
24 dated September 1st, 2015?

25 A. Yes.

1 Q. Does it appear to be a true and accurate copy?

2 A. Yes.

3 MR. HARMON: Your Honor, at this time I'd like to
4 move into evidence Defendant's 39.

5 MS. DOOLITTLE: No objection.

6 THE COURT: Be received.

7 (Defendant's Exhibit 39 received into evidence.)

8 BY MR. HARMON:

9 Q. So it looks like Ms. Mittelstadt sent this e-mail to you
10 about a week or a week and a couple of days after you had had
11 that meeting with her and Mr. Asplen, right?

12 A. Yes.

13 Q. Okay. Would you agree with me that it says in here, as
14 you stated, "Our goal is to provide a safe and educational
15 environment for all students"?

16 A. Yes.

17 Q. Okay. One more document.

18 MR. HARMON: Let the record reflect I'm handing the
19 witness a copy of what's been previously marked as Defendant's
20 Exhibit 20.

21 BY MR. HARMON:

22 Q. And want to ask -- do you recognize this document?

23 A. I do.

24 Q. How do you recognize this document?

25 A. This is a document that I created for Dr. Jacobs.

1 Q. You said this was a document you prepared for Dr. Jacobs?

2 A. Yes.

3 Q. And at the top of that document, it says, "Drew's concerns
4 late August 2016"?

5 A. Yes.

6 Q. Do you recall when you drafted this document?

7 THE COURT: No, it doesn't say "Drew's concerns," it
8 says "Drew concern."

9 MR. HARMON: I'm sorry. "Drew concern." Thank you,
10 Your Honor.

11 BY MR. HARMON:

12 Q. It says "Drew concerns" at the top.

13 A. Yes.

14 Q. Okay. And you drafted this document?

15 A. Yes.

16 Q. And you provided this document to Dr. Jacobs?

17 A. Yes.

18 Q. In the course of medical care?

19 A. In the course of working with her for Drew's best
20 outcomes.

21 Q. Okay. Does it appear to be a true and accurate copy of
22 the document that you -- that you provided to Dr. Jacobs?

23 A. Yes.

24 MR. HARMON: At this time, Your Honor, I'd like to
25 move into evidence what has been previously marked as

1 Defendant's Exhibit 20 into evidence.

2 MS. DOOLITTLE: Your Honor, plaintiff objects on the
3 grounds of relevance. We went through a long discussion
4 yesterday about the issues around gender dysphoria, and the
5 defendant takes the position they're not challenging that or
6 challenging his transgender identity. Given that, I don't
7 understand the relevance of these concerns to the issues before
8 the court in this case.

9 THE COURT: Counsel?

10 MR. HARMON: Yeah, sure. The first issue that we
11 discussed yesterday during his mom's direct examination, which
12 a significant amount of time was spent on, was mental health
13 issues. This document is not being offered with respect to
14 gender dysphoria. It is being offered specifically to damages.

15 And I'd be happy to lay the foundation as to why this
16 document is relevant through the testimony of the witness, but
17 with respect to argument, it's a list --

18 THE COURT: You know, I -- I thought we did this
19 yesterday, but I'm -- I'm not really focused on damages very
20 much.

21 MR. HARMON: I have one question about this document.

22 THE COURT: And, you know -- all right. Go ahead and
23 ask your question.

24 MR. HARMON: One question.

25 THE COURT: And then I'll decide whether I'll admit

1 it or not, but go ahead.

2 BY MR. HARMON:

3 Q. Anywhere in this document, did you mention anything about
4 use of bathrooms at Nease High School?

5 A. This document wasn't about external factors. This was
6 about issues that we wanted to raise with Dr. Jacobs regarding
7 Drew's basically being a normal teenager, things that teenagers
8 do like not be completely honest with their parents, or sneak
9 food out of the kitchen, which both of my kids do. So this
10 document wasn't remotely related to his transgender situation.

11 Q. Is that a yes or a no?

12 A. There was nothing about bathrooms on this document.

13 MR. HARMON: Okay. That's all I have for this
14 witness, Your Honor.

15 THE COURT: That may not be all you have.

16 MR. HARMON: Oh, at the moment.

17 (Counsel confer.)

18 MR. HARMON: So the one, I guess, procedural issue I
19 didn't address is the admission of this document.

20 THE COURT: Yeah, sure.

21 So, ma'am, this -- this was -- you wrote this in
22 August of 2016, so that was --

23 THE WITNESS: Almost a year-and-a-half ago.

24 THE COURT: Okay. Okay. And this was a document you
25 wrote to Dr. Jacobs as part of your effort to apprise her of

1 certain situations that might be relevant to the therapy that
2 Dr. Jacobs was giving to your son?

3 THE WITNESS: Yes. We weren't using Dr. Jacobs
4 exclusively for transgender issues. She was a therapist as a
5 whole for Drew.

6 THE COURT: I tell you what I'm going to do. I'm
7 going to admit the exhibit. I'm going to put it under seal
8 because it contains private therapeutic information. And while
9 I'm doing it, I'll go ahead and put Defendant's Exhibit 7 under
10 seal. When I say I'm going to admit it, I'm going to accept
11 it. I'll have it. Whether I end up relying upon it is a
12 completely different question.

13 I take Ms. Doolittle's point, but I'm going to go
14 ahead and take it. I'm going to put Defendant's Exhibit 20
15 under seal. I'm going to put Defendant's Exhibit 7, the safety
16 plan, under seal at this time, because they contain private
17 therapeutic information that should not be in the public
18 record.

19 (Defendant's Exhibits 7 and 20 received into evidence
20 under seal.)

21 THE COURT: Okay. All right. Anything else?

22 MR. HARMON: Not at this time, Your Honor. Thank
23 you.

24 THE COURT: Okay. Any redirect?

25 MS. DOOLITTLE: Yes, Your Honor.

1 THE COURT: Ms. Diaz.

2 MS. DOOLITTLE: Thank you, Your Honor.

3 **REDIRECT EXAMINATION**

4 BY MS. DOOLITTLE:

5 Q. Briefly, Ms. Kasper. Counsel asked you about some
6 communications that you had had with the school and the
7 district in 2015. Do you recall that testimony?

8 A. Yes.

9 Q. And he asked you about a document I believe that
10 Ms. Mittelstadt sent to you about the district's concern for a
11 safe school environment for all of the children --

12 A. Yes.

13 Q. -- in the district.

14 Do you recall that document?

15 A. Yes.

16 Q. Were you ever asked -- or did you ever provide any
17 information to the OCR investigator about comments that the
18 district may have made about safety and privacy?

19 A. Yes.

20 MR. HARMON: Object to hearsay and beyond the scope
21 of cross.

22 THE COURT: I'm going to overrule it. Go ahead.

23 BY MS. DOOLITTLE:

24 Q. And who was that -- who were those statements made to?

25 A. Roger Mills at the OCR.

1 Q. And he was the OCR investigator assigned to your case?

2 A. Yes.

3 Q. I'm handing you what plaintiffs have marked for
4 identification as Exhibit 13.

5 A. Thank you.

6 THE COURT: Who's got the tiny typewriter? Isn't
7 there a movie coming out now about Matt Damon and --

8 MS. DOOLITTLE: Well, when I first started reading
9 the documents, I had to put these on and a magnifier. I was
10 struggling with it.

11 THE COURT: It's kind of unbelievable. I don't know.

12 MS. DOOLITTLE: She claims to have magical eyes.

13 BY MS. DOOLITTLE:

14 Q. Have you seen these documents before, Ms. Kasper?

15 A. Yes.

16 Q. What is this?

17 A. This is an e-mail chain between myself and Roger Mills.

18 Q. Okay. And is the e-mail at the bottom of the page, is
19 that from Mr. Mills?

20 A. The bottom of the first page, yes.

21 Q. And the e-mail at the top of the page, is that your
22 e-mail?

23 A. Yes.

24 Q. Have you seen this exchange of e-mails before?

25 A. Yes.

1 Q. And is it a true and accurate copy of an e-mail string
2 between you and Mr. Mills?

3 A. Yes.

4 MS. DOOLITTLE: We would move for its admission.

5 THE COURT: Mr. Harmon?

6 MR. HARMON: Your Honor, this is pure hearsay, well
7 beyond the scope of direct, and lacks a foundation at all with
8 respect to OCR investigation with Mr. Mills.

9 THE COURT: What's the purpose of this,
10 Ms. Doolittle?

11 MS. DOOLITTLE: Your Honor, the purpose of the e-mail
12 is to show -- Mr. Harmon asked Ms. Kasper on cross about
13 whether or not the district had ever conveyed to her their
14 concerns around safety. And in this document, there is
15 evidence from Ms. Kasper about what exactly those safety
16 concerns were that were expressed by Mr. Asplen and
17 Ms. Mittelstadt.

18 It is a prior consistent statement. We can reserve
19 it for rebuttal if that's the court's preference, but it goes
20 directly to the issue of any comments that the school made
21 about its safety concerns.

22 THE COURT: Well, I'm going to have to get my glasses
23 to even be able to read it, so I -- so you're trying -- so this
24 is an e-mail from Ms. Kasper to the OCR investigator?

25 MS. DOOLITTLE: Yes, Your Honor. And Mr. Mills, the

1 OCR investigator, had asked Ms. Kasper if the school district
2 had ever identified for her any privacy or safety concerns.

3 He asked her some pointed questions at the bottom of
4 that first page. And then at the top of the first page, she
5 conveys what, if any, comments had been made to her by the
6 school --

7 THE COURT: I'm going to defer on this. It's
8 possible that you could get it in through rebuttal. I think
9 I'd rather hear from the district first as to what their
10 reasoning is before I put in evidence as to what somebody else
11 says their reasoning was.

12 So hold on to this one, Ms. Doolittle, and we'll
13 revisit it. All right?

14 MS. DOOLITTLE: Sure thing. May I just have one
15 moment, please?

16 THE COURT: Yes.

17 MS. DOOLITTLE: Thank you.

18 (Counsel confer.)

19 MS. DOOLITTLE: We have nothing further.

20 THE COURT: Anything else?

21 MS. DOOLITTLE: Your Honor, may I -- just to clarify
22 an issue, is -- other than our rebuttal, I know counsel had
23 made a comment about wanting to call Ms. Adams in their case in
24 chief. And I understand -- we've had a similar discussion
25 around Mr. Upchurch and Ms. Mittelstadt with respect to our

1 request that they be called --

2 THE COURT: Oh, I'm assuming that Mr. Harmon just
3 asked her all the questions he wanted to ask her.

4 Is that right, Mr. Harmon?

5 MR. HARMON: Yes, Your Honor.

6 THE COURT: Okay.

7 MS. DOOLITTLE: Thank you.

8 THE COURT: All right. You may step down, ma'am.
9 Thank you.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 THE COURT: Who is your next witness, please?

13 MR. LAPOINTE: Plaintiff calls Ms. Valbrun-Pope.

14 THE COURT: While she's making her way, I thought I
15 heard you-all mention two people from the Broward system. Is
16 that right?

17 MS. ALTMAN: Yes, Your Honor.

18 THE COURT: Why do we need --

19 MS. ALTMAN: We just published one of them.

20 THE COURT: Why do we need two people from Broward?
21 Why wouldn't one be good enough?

22 MR. LAPOINTE: Your Honor, actually, first let me
23 proffer to the court that this first witness, if it goes beyond
24 25 minutes, I have not done my job.

25 THE COURT: All right. Well, that's -- I like

1 hearing that, but -- but --

2 MR. LAPOINTE: She is an administrator for Broward
3 County and she's going to speak to -- Broward County was one of
4 the first, certainly in this state, who actually adopted the
5 transgender policy consistent with gender identity. And at the
6 time when St. Johns County was going through their own
7 review --

8 THE COURT: I'm not -- you're -- you're taking me way
9 beyond what I'm asking. All I was asking was -- I heard -- I
10 heard that there were going to be two witnesses from Broward
11 County and I was wondering why -- are they going to have
12 different things to say or are they going to be talking about
13 the same thing?

14 MR. LAPOINTE: No, they're actually going to be
15 different. She's going to be talking from the administrator.

16 THE COURT: All right. Go.

17 MR. LAPOINTE: The other is going to be a principal.

18 THE COURT: We'll see. All right. Go ahead.

19 COURTRROOM DEPUTY: Do you solemnly swear that the
20 testimony you are about to give before this court will be the
21 truth, the whole truth, and nothing but the truth, so help you
22 God?

23 THE WITNESS: I do.

24 COURTRROOM DEPUTY: Please state your full name and
25 spell your last name for the record.

1 THE WITNESS: Michaelle Valbrun-Pope. Last name
2 Valbrun. V, as in Victor, a-l-b, as in boy, r-u-n, as in
3 Nancy, dash, Pope, like the Vatican, P-o-p-e.

4 COURTRROOM DEPUTY: Thank you very much. The
5 microphone is right here.

6 THE COURT: You may proceed.

7 MICHAELLE VALBRUN-POPE, PLAINTIFF'S WITNESS, SWORN

8 DIRECT EXAMINATION

9 BY MR. LAPOINTE:

10 Q. Good morning, ma'am. How are you today?

11 A. Good morning.

12 Q. Please go ahead and state your name, please.

13 A. Michaelle Valbrun-Pope.

14 Q. Is it okay to call you Ms. Pope?

15 A. Yes.

16 Q. Okay. Ms. Pope, where are you currently employed?

17 A. Broward County Public Schools.

18 Q. And what is your title at the Broward County Schools?

19 A. I am the executive director of the student support
20 initiative for Broward County.

21 Q. And how long have you been in that position?

22 A. Six years.

23 Q. What did you do before that?

24 A. Before that, I was the director of diversity prevention
25 and intervention. Prior to that, I was an area director where

1 I supervised 28 schools. Prior to that, a principal for nine
2 years, and then a curriculum facilitator -- assistant
3 principal, curriculum facilitator, and teacher.

4 Q. Ms. Pope, you're speaking a little too fast. Slow down a
5 little.

6 A. Okay. I have a tendency to do that.

7 Q. I do too sometimes.

8 So how long have you been at Broward County Public
9 Schools?

10 A. 30 years this year.

11 Q. Okay. Do you get a clock at some point?

12 A. At some point, I hope.

13 Q. Okay. And what are your responsibilities as executive
14 director of student support initiatives?

15 A. I have oversight of seven departments. We really --
16 each -- all those departments were bundled together to do
17 wraparound services for our students to remove barriers to
18 learning. So I have the office of diversity prevention and
19 intervention, which I used to sit as director in. I have the
20 office of equity. I have school social work services, family
21 counseling services. So I have all the nurses and health
22 technicians.

23 We really try and remove barriers, again, for
24 students so that they can learn. So anything that's a learning
25 support intervention is under the student support initiatives

1 department.

2 Q. Now, tell us how many students are in the Broward County
3 Public School system.

4 A. We have 171,000 students.

5 Q. I'm sorry. 100- or 200-?

6 A. I'm sorry. 271,000 students.

7 Q. And how many schools are part of the Broward County
8 system?

9 A. 330-plus if you count off-learning -- off-campus learning
10 centers. We're probably looking at 340 or so.

11 Q. And out of those, how many high schools do you have?

12 A. 33 high schools.

13 Q. And how do you -- in terms of Broward County, how does --
14 how do your high schools compare in terms of size across the
15 country?

16 A. We actually have one of the largest high schools in the
17 nation. And they range -- our high schools range from 1,500
18 students to about over 4,000 students.

19 Q. And how does the district itself rank in size across the
20 country?

21 A. We're the sixth largest in the nation.

22 Q. Ms. Pope, did you -- did there come a time when the
23 Broward County public system had a nondiscrimination policy
24 regarding the transgender students?

25 A. Yes. We've had a nondiscrimination policy since 1974 and

1 it's been amended over time. And we did amend it in 2011 to be
2 inclusive of our transgender students, specifically gender
3 identity, gender expression, sexual orientation. Those were
4 included in the nondiscrimination policy.

5 Q. And were you involved in actually developing that policy?

6 A. Yes. At the time, I was director of diversity.

7 Q. Ma'am, I'm going to show you what's been admitted as
8 Plaintiff's Exhibit 65.

9 MR. LAPOINTE: Just to be clear, if I may confer for
10 a second.

11 THE COURT: Hold on one second.

12 (Judge confers with courtroom deputy.)

13 THE COURT: I'm going to get you to -- Ms. Diaz is
14 going to help you raise your podium there. Your voice is not
15 projecting very well. And sometimes if we get the microphone a
16 little closer to you, it will help us out.

17 MR. LAPOINTE: Thank you, Your Honor.

18 THE COURT: And I'd ask you to keep your voice up,
19 please.

20 MR. LAPOINTE: Thank you, Your Honor. I'm going to
21 do that.

22 Of course, I'm asking Ms. Pope to speak slower, but
23 I'm not keeping mine up.

24 BY MR. LAPOINTE:

25 Q. Now, Ms. Pope, can you see in front of you the actual --

1 is that the nondiscrimination policy statement?

2 A. Yes. Yes, sir.

3 Q. And is that what you were referring to earlier?

4 A. Yes.

5 Q. And I'm going to ask you to please read the part of this
6 that refers to the revision that you're referring to in terms
7 of including the transgender policy.

8 MR. LAPOINTE: Dan, could you, please. Thank you.

9 THE WITNESS: "This policy is established to provide
10 an environment free from discrimination and harassment based
11 upon age, color, disability, gender identity, gender
12 expression, genetic information, marital status, national
13 origin, race, religion, or sexual orientation."

14 BY MR. LAPOINTE:

15 Q. And how did -- you mentioned earlier that this was -- the
16 actual policy itself -- you had a statement back in 1974. And
17 why did you feel the need, that is, the Broward County system
18 to actually revise it to include a transgender policy in there?

19 A. Well, our district, you know, has made a commitment
20 through its mission statement and vision statement to develop
21 and support all students in preparation for tomorrow's world.

22 And we have a saying in the district that all means
23 all. And so being in charge of a wraparound support -- it's a
24 team of 400 of us within the student support initiative
25 division. We recognize that there were some groups of students

1 that we were not meeting their needs and that we were not
2 supporting, and in particular, our transgender students. Our
3 LGBT students, our transgender students were showing up in
4 front of our counselors, our mental health technicians with
5 issues. That told us that we were not serving them well.

6 They were showing up in our homeless population, in
7 our unaccompanied minor population. They were being bullied
8 and they were being discriminated against in our schools.

9 And so it became, you know, our mission and our work
10 to help to shore them up to keep true to our promise to the
11 community as a school system.

12 And we decided that we would call out the LGBT
13 population and that we would specifically address the needs of
14 our transgender students through policy, through guidance,
15 through training and really put in place specific measures to
16 address their needs.

17 Q. Can you please briefly describe the process of that
18 revision and approval of that transgender policy that was
19 included in 2011?

20 A. Our district's rulemaking process calls for several public
21 hearings prior to us developing a policy. So we have to have
22 two advertised public hearings saying that we were going to
23 make this revision to the policy and invite the public to come
24 and give input.

25 From there, that input is brought forward to two

1 board workshops, school board workshops, where our board hears
2 what we receive from the public hearings, the amendments that
3 we -- you know, we're trying to make to the policy. And then
4 moving forward to two board meetings where the policy is heard
5 again. All of these are public events with the public input.

6 And it's heard again at the board meetings before it
7 is adopted by the board.

8 Q. And were there concerns raised from the community for that
9 initiative that the school took at that time with respect to
10 bringing on the transgender policy within its nondiscrimination
11 statement?

12 A. Yes, concerns were raised by community members. And those
13 concerns were heard and those concerns were brought to the
14 board. It's just that -- we had the voice of both sides. We
15 had people who supported and agreed that we should move
16 forward.

17 And our board took the position that we were more
18 compelled to be on the side of students and to keep our promise
19 to our students that we will address their needs and we will
20 support them.

21 Q. Okay. When you say --

22 A. So we moved forward with the policy.

23 Q. When you say you were more compelled to be on the side
24 with the students, did that include transgender and
25 non-transgender students?

1 A. Yes.

2 Q. Ma'am, I want to ask you -- I want to direct your
3 attention to -- to any other guide or material that was
4 developed to implement the nondiscrimination policy. Was there
5 such a thing?

6 A. Often with our policies, we have -- we provide guidance to
7 our schools. We provide guidance documents. We provide
8 curriculum. And so we knew that for this particular piece, we
9 needed to provide very specific guidance to our schools to
10 address some of the -- the barriers to learning that we knew
11 existed and to also have it be well implemented. So we did
12 develop a critical support guide, LGBT Critical Support Guide.

13 Q. Was the school board and the district and everyone
14 involved totally committed to make this work?

15 A. Oh, yes.

16 Q. I'm going to show you now what's been admitted as
17 Plaintiff 66. I'm showing you now what you should be able to
18 see in front of you.

19 (Counsel confer.)

20 BY MR. LAPOINTE:

21 Q. Ma'am, is that the front page of the critical support
22 guide that we just briefly talked about?

23 A. Yes, it is.

24 Q. Now, madam, was this a document that was published through
25 the website and things like that?

1 A. Yes. It's public information. And it is on our
2 Browardschools.com website.

3 Q. And how much of the transgender policy is included -- what
4 sort of space does it take in that guide that we're talking
5 about in terms of the transgender policy itself?

6 A. When we initially published the LGBT Critical Support
7 Guide, we dedicated two -- I think two-and-a-half pages to
8 specifically addressing transgender student needs.

9 We found last year that we really needed to expand
10 that section. So we've provided more guidance around some
11 experiences that we were having with our transgender students;
12 really looking at, you know, affirmed name, the use of
13 pronouns, looking at bathroom use, specifically extracurricular
14 activities, athletics field trips.

15 And that was because of feedback that we received
16 from our school leaders and from our transgender students
17 specifically about some additional guidance that we needed to
18 include. So we did amend the guide to now have a much broader
19 section on addressing the critical needs of transgender
20 students.

21 Q. Now I'm going to take you to the second page of this
22 document. And does that reflect when that document was
23 actually formulated? It would be the first paragraph there.

24 A. Yes. Initially in 2012 -- it took us about a
25 year-and-a-half of working with our community, hearing both --

1 internally and externally, hearing the voices of the students,
2 working with parents, with partners in the community to build
3 it. So it was published in 2012. However, the work really
4 began a year-and-a-half or so prior.

5 So to your question, yes.

6 Q. Now, let me take you to the actual transgender section of
7 this critical guide. I'm going to take you to Bates stamp --
8 excuse me -- 0001608. That would be page 31.

9 MR. LAPOINTE: If you go to page 32 -- page 31 does
10 not have a number at the bottom. So go to page 32 and back up.
11 So that will do it.

12 BY MR. LAPOINTE:

13 Q. I want to refer you to -- we're looking at page 31 of
14 Exhibit 66. Now, let me refer you to paragraph 2 of that. And
15 would you please go ahead and read that to us, please?

16 A. Yes.

17 "The expression of transgender identity or any other
18 form of gender-expansive behavior is a healthy, appropriate and
19 typical aspect of human development. When students are
20 harassed or bullied based on their gender, or others'
21 perception of it, learning often takes a backseat. Instead,
22 students may worry about such things as bullying in the
23 hallway, mistreatment on the school bus, or which restrooms to
24 safely use. Every student who transitions at school is
25 entitled to a safe and supportive environment in which to

1 follow their unique path to being their authentic selves."

2 Q. Now, ma'am, do you agree with that statement?

3 A. Absolutely.

4 Q. Why?

5 A. Well, as I heard my -- as I hear my team members -- we're
6 about 400 strong in the district as a student support
7 initiatives division. We are interventionists. We are school
8 counselors, family counselors, social workers. We are nurses
9 and health technicians. And as I meet with my team, what I
10 heard --

11 MR. KOSTELNIK: Your Honor, I'm going to object to
12 hearsay.

13 THE COURT: I'm going to overrule it. Go ahead.

14 Go ahead.

15 BY MR. LAPOINTE:

16 Q. The judge has instructed you to continue.

17 A. What I heard was that we really needed to provided an
18 additional support to our transgender students that they were
19 worried about where to use the restroom; that they were missing
20 school; that they were cutting, they were attempting suicide.
21 Some committed suicide. And so we took this position that
22 every child matters, every life matters.

23 And as I met some of these students and I've sat
24 myself with some of them, my litmus test was always if this
25 were my child. And so I saw in their faces the face of my

1 child. I heard in their voices --

2 MR. KOSTELNIK: Your Honor, I'm going to object to
3 relevance at this point.

4 THE WITNESS: -- the voice of my child.

5 THE COURT: Excuse me, sir?

6 MR. KOSTELNIK: I'm going to object to relevance.

7 THE COURT: Counsel, what's the relevance?

8 MR. LAPOINTE: Your Honor, I think this is relevant
9 to the concerns that -- the concerns that the district-level
10 people at Broward County actually took into consideration when
11 they were developing this policy; the concern about students,
12 the concern -- all of those things that she herself as an
13 administrator had to take into account. I think that is
14 crucial and relevant to what we're talking about here, Judge.

15 THE COURT: The objection is overruled. Go ahead.

16 Why don't you ask a question.

17 BY MR. LAPOINTE:

18 Q. Yes, ma'am. Actually, I had asked you why did you do that
19 and you were ending your statement as to why, and you were
20 talking about how you were compelled in meeting with students
21 and telling their stories and you were compelled based on sort
22 of the empathy that you had. Just finish your statement on
23 that and we'll move on.

24 A. And what I heard from a team of 400 who are out there
25 serving our population, our general population and why this

1 population, the transgender population, needed to be supported
2 in a different way.

3 Q. Now, ma'am, you just mentioned that -- the things that
4 mattered to you in developing this policy. But do you believe
5 that the actual policy and the critical guide actually
6 addressed those concerns that were important to you? You just
7 mentioned and discussed this now.

8 A. I think the policy and the guide is a beginning. We move
9 on to train our staff. We move on to assure that it's being
10 applied in our schools. And so this is a beginning. And it
11 continues to. The work continues.

12 Q. Ma'am, I'm not going to go through every part of this, but
13 I want to go specifically with respect to the restroom policy,
14 the restroom part of that policy. I'm going to direct your
15 attention to page 40 of Exhibit 66.

16 If I can take you to bottom of the paragraph, ma'am.
17 Does that reflect -- do you see "restroom" there?

18 A. Yes.

19 MR. LAPOINTE: Actually, you're at the right place.

20 BY MR. LAPOINTE:

21 Q. Ma'am, could you go ahead and read that to us, please?

22 THE COURT: I tell you what, I can just read it.

23 MR. LAPOINTE: Okay. Great.

24 THE COURT: I'll read it right now.

25 MR. LAPOINTE: Sure.

1 THE COURT: All right. I've read it.

2 MR. LAPOINTE: Thank you, Your Honor.

3 BY MR. LAPOINTE:

4 Q. Ma'am, I want to switch with you a little bit. Can you
5 tell us in your experience, are you aware of any safety issues
6 that have arrived -- that have arisen as a result of that
7 change of the policy that you have formulated and implemented
8 over the years?

9 A. You know, we heard from some of the public that there was
10 some safety concerns that were brought up early on. And so it
11 was important that as we talked about this with our school
12 leaders that we address safety. And we shared with them where
13 in our code of student conduct that we are to address some of
14 the concerns that were raised.

15 However, with 271,000 students, 300 schools, and
16 implementation over the last, I guess, five years, we have not
17 had issues related to safety in the restrooms that are
18 specifically connected to transgender students.

19 Q. Right. There are also sometimes privacy concerns that
20 have been raised in connection to transgender bathroom use.

21 Are you aware of any privacy issues that have been
22 raised that have been an issue for you since the implementation
23 of the critical guide that you have developed?

24 A. That was raised as well in the beginning. And our
25 position and what we share with those folks who are concerned

1 about privacy is that we care about the privacy of all of our
2 students. You know, the use of restroom is a -- is a private
3 issue for all of us, and so we honor the privacy of everyone.

4 So we have not had students complaining about privacy
5 that's involved with the transgender student. And we have not
6 had any issues of that nature in our school since we've been
7 implementing.

8 Q. Have you ever heard from anyone that a transgender student
9 exposed themselves in a bathroom in the Broward County public
10 school system with all the schools and all those students?

11 MR. KOSTELNIK: Objection. Calls for hearsay.

12 THE COURT: Overruled.

13 THE WITNESS: No, I have not heard of a transgender
14 student exposing themselves. In fact, in my personal
15 conversations with transgender students and from what I hear
16 from my team as well, transgender students are not trying to
17 expose parts of their anatomy. That does not align with their
18 gender identity. They are wrapping. They are -- they are
19 looking to be accepted as who they are. So a transgender girl
20 is a girl. A transgender boy is a boy.

21 BY MR. LAPOINTE:

22 Q. I want to ask you, ma'am, in terms of once you published
23 that guide, has any other school -- are you aware of any other
24 schools in Florida that have either copied or followed your
25 district's critical guide?

1 A. We get calls all the time from within the state and
2 outside the state. We share. We share all of our artifacts.
3 We also have put on a conference the last four years where
4 we've had Florida districts and outside districts come to hear
5 about this work specifically.

6 I understand from my LGBT support people that we now
7 have nine -- nine districts in Florida that have taken some of
8 the pieces from our guide and have -- are implementing gender
9 communication plans to help to affirm names and other areas in
10 support of transgender students.

11 Q. And how open are you and your district in helping other
12 districts in formulating and implementing a single plan?

13 A. Me personally, very open. That's why I'm here today.
14 Because I really believe that it's about saving lives. And so
15 we are open. We share everything. We share our artifacts. We
16 share our processes.

17 I've sent teams to other districts to help those
18 districts in developing and planning, or just to have
19 conversations.

20 I've had my counterpart in another district call and
21 we have conversations over the phone. So we're very open to
22 sharing, because, again, we believe it's about saving lives.

23 Q. Ma'am, have you -- in that entire process, going back to
24 2011, have you ever gotten a call from anyone from St. Johns
25 County that have reached out to you for help or consideration

1 with respect to their policy in their district?

2 A. Not to me personally, no.

3 THE COURT: I would have sustained an objection to
4 that question, but nobody made one, so...

5 All right. Go ahead.

6 MR. LAPOINTE: And I'll move on from that line.

7 BY MR. LAPOINTE:

8 Q. How about costs, did it cost the district -- it sounds
9 like you've done a lot. How much money did it cost the
10 district to do all that?

11 A. As I -- as I shared earlier, many of our policies we write
12 guidance documents. We have our internal printing services, so
13 the -- the book was printed internally. So it's really equal
14 costs to the work that we do for our, let's say -- we have an
15 ELL guide for our second language learners, how do we work with
16 our ELL students. We have a guide --

17 THE COURT: I don't really think cost is the issue.

18 MR. LAPOINTE: Okay.

19 THE COURT: I mean, I haven't heard that. If the
20 district wants to tell me that's what the issue is, I'll listen
21 to it. And if they do, I'll consider it, but I -- I don't
22 think that's the issue. So what else you got?

23 MR. LAPOINTE: We have just removed half a page, Your
24 Honor.

25 THE COURT: All right. Mr. Harmon, is cost an issue

1 in this debate or not? If it is, I don't want to cut this
2 witness off, but if it's not, I don't really need to hear about
3 it.

4 MR. HARMON: I don't believe at this time we've
5 raised costs.

6 THE COURT: Yeah, I don't -- okay. Thank you.

7 MR. LAPOINTE: Thank you, Your Honor.

8 BY MR. LAPOINTE:

9 Q. Ma'am, I'm just going to ask you the last question here.

10 Since you actually got into this affair, in terms of
11 formulating this and implementing this, have you seen the
12 concerns that were raised initially -- have you seen them come
13 to fruition?

14 A. No, we haven't. And that's what I think --

15 MR. KOSTELNIK: Objection. Hearsay.

16 THE COURT: Overruled.

17 THE WITNESS: That's what I think keeps us moving in
18 the direction that we're moving. Our board --

19 THE COURT: Hold on a second.

20 Counsel, let me ask you a question. Who -- what --
21 who would be the person to talk about the answers to these
22 questions if not this witness? What's the hearsay objection?
23 Who is the better witness for this testimony?

24 MR. KOSTELNIK: The person that raised the concerns.

25 THE COURT: The person that raised the concerns.

1 Isn't the testimony here the reaction -- receiving concerns and
2 then reaction to them by the district and what the district's
3 experience has been?

4 MR. KOSTELNIK: Yes, Your Honor.

5 THE COURT: Overruled.

6 Go ahead.

7 THE WITNESS: Can you repeat the question?

8 MR. LAPOINTE: It's very difficult, but I'm going to
9 try.

10 BY MR. LAPOINTE:

11 Q. The question I'm going to ask you is --

12 A. The cost?

13 Q. No, we're done with cost.

14 -- is the following: For the issues and concerns
15 that were raised initially, from the various stakeholders,
16 including the parents, whether or not -- not actual -- somewhat
17 on the back end of this, whether or not you have seen those
18 things come to fruition.

19 A. Okay. So the answer is no. And that's what keeps us
20 really doing this work.

21 Our board is an elected board. So they hear from
22 their community members, their constituents, you know,
23 concerns. And so the response right now is that much -- or
24 none of those concerns have really come to fruition in our
25 district schools. And so we're able to say that. We're able

1 to cite that. We're able to talk to them about how it's truly
2 working in our schools and to alleviate some of those fears
3 that they might have had in raising those concerns.

4 Q. And following that, ma'am, would -- is Broward County --
5 do you appreciate the fact that Broward County is different
6 from other districts within Florida and other districts?

7 A. I think there are differences, of course, regional
8 differences. Communities are different. But I also think that
9 there are commonalities in that, you know, as school systems,
10 we have a responsibility to address the needs of our students,
11 every single one that walks through our doors. I believe that,
12 you know, we're -- we're guided by that as school systems to
13 receive, accept, support, and to teach and develop children.

14 So I think there are commonalities and differences in
15 all communities, but school systems have a responsibility to
16 every child that walks through their doors.

17 MR. LAPOINTE: Thank you, ma'am.

18 THE COURT: All right, sir. Can you -- can you
19 estimate for me how long your cross is going to be? Because
20 I'm trying to decide whether to take a break or not.

21 MR. KOSTELNIK: Maybe ten minutes, Your Honor. I'll
22 be quick.

23 THE COURT: Okay. I'll -- we'll go ahead and do that
24 and take our break after that. That will be fine. You may
25 proceed.

1 MR. KOSTELNIK: Thank you, Your Honor.

2 **CROSS-EXAMINATION**

3 BY MR. KOSTELNIK:

4 Q. Good morning, Ms. Valbrun-Pope. Good to see you again.

5 A. Good morning. Same here.

6 Q. Okay. Just a couple of preliminary things. You've never
7 spoken with anyone at St. Johns School District; is that
8 correct?

9 A. I have not.

10 Q. And you were not involved in the creation of any of
11 St. Johns' policies; is that correct?

12 A. No.

13 Q. You don't know the demographics of the St. Johns School
14 District; is that correct?

15 A. No, I do not.

16 Q. I want to talk about Plaintiff's Exhibit 65. It was the
17 nondiscrimination policy of Broward County.

18 Did they give you a hard copy or was it just on the
19 screen?

20 A. I'm not sure what's here. No, I don't have a hard copy.

21 MR. KOSTELNIK: Would you go ahead and put it up on
22 the screen, the first page.

23 MR. LAPOINTE: This is 65?

24 (Counsel confer.)

25 BY MR. KOSTELNIK:

1 Q. Okay. And I believe on direct they pulled out the bottom
2 half of that first paragraph. And in that paragraph, you
3 separate the term "sex" and "gender identity"; is that correct?
4 The policy does?

5 A. Yes.

6 Q. Okay. Now, I want to talk a little bit about this
7 critical support guide. I believe it was Exhibit 66.

8 Now, that's not a board-adopted policy, is that?

9 A. It is a guidance to the policy.

10 Q. So it's not been adopted as a policy by the school
11 district?

12 A. It has been -- it has gone through two board workshops and
13 it's been informed by the board.

14 Q. Okay. Has it been adopted as a policy by the Broward
15 County School District?

16 A. It has not been adopted as a policy at a regular school
17 board meeting, but it has been to two workshops.

18 THE COURT: Actually, that raises a question I was
19 thinking about, and I should know this probably from my
20 reading, but has the policy that we're in litigation over here,
21 that is, if I'm understanding, it's a written best practices
22 and an unwritten policy that prohibits the use by a transgender
23 person of the bathroom of their gender identity as opposed to
24 their biological at birth sex, has that policy been considered
25 and adopted by the school board of St. Johns County?

1 MR. KOSTELNIK: No, Your Honor, because it's
2 considered a best practices.

3 THE COURT: What does that mean it's considered --

4 MR. KOSTELNIK: Well, it's not -- like you said, it's
5 not a board-adopted policy. It's a supplement to the unwritten
6 policy that students are to use the bathroom of their
7 biological sex.

8 THE COURT: So who's the -- who's responsible for it,
9 then? Who's the official that's responsible for the policy?

10 MR. KOSTELNIK: The members of --

11 THE COURT: It's not the school board. Is it the
12 superintendent?

13 MR. KOSTELNIK: It's the members of the committee
14 that formed it that work with the school district, and the
15 superintendent would have been involved as well, yes.

16 THE COURT: But it's being enforced by whom?

17 MR. KOSTELNIK: By the school district.

18 THE COURT: So it's a policy that was adopted by this
19 committee. It's never been adopted by the school board. It's
20 never been adopted by the superintendent. But it's being
21 enforced by the school district to the point of federal
22 litigation?

23 MR. KOSTELNIK: It's being used as a supplement to
24 that unwritten policy that we saw that there was an emerging
25 issue coming dealing with the bathroom --

1 THE COURT: Has the school board adopted that
2 unwritten policy?

3 MR. KOSTELNIK: They use it as an accommodation to
4 their unwritten policy that was long-standing.

5 THE COURT: That's not what I asked you. Has the
6 school board been asked to adopt the policy that we're here
7 about today?

8 MR. HARMON: I can assist as well since it's not
9 witness specific.

10 THE COURT: Sure. That's fine.

11 MR. HARMON: The best practices document has not
12 been -- gone through rule-making, has not been formally adopted
13 as a board policy. It is an accommodation document. Not
14 everything the school does to accommodate the student or assist
15 the student has to go through formal rule-making as a policy.

16 THE COURT: Yeah, but I'm just thinking, here we are
17 in federal court, you're fighting over a -- you're defending a
18 policy of the school district, and the only evidence of it is
19 this best practices written document which was passed by a
20 committee?

21 MR. HARMON: No. No.

22 THE COURT: There's no -- there's no formal --
23 there's no formal position of the district on this policy that
24 we're litigating?

25 MR. HARMON: Well, no, there's -- there's -- the

1 policy that we are litigating --

2 THE COURT: Right.

3 MR. HARMON: -- is the policy of the district that
4 says students need to use the bathroom of their biological sex.

5 THE COURT: Which there's --

6 MR. HARMON: There's nothing written about that.

7 THE COURT: -- there's nothing written down about
8 that.

9 MR. HARMON: It's been the practice of the district
10 for as long as anyone can remember.

11 THE COURT: Okay.

12 MR. HARMON: This best practices document, when LGBTQ
13 students became -- kind of hit the forefront -- you're going to
14 hear this in our case.

15 THE COURT: Okay.

16 MR. HARMON: Once our district staff started seeing
17 some issues, there were some meetings with district staff, not
18 school board level, but district staff to say, hey, we've got
19 this unwritten policy, but we've got -- and we've got other
20 stuff, we've got pronouns, we've got what students can wear to
21 prom, graduation, let's figure out some ways that we can
22 provide some support.

23 THE COURT: But how do I know what we're litigating
24 over is the policy of the school board of St. Johns County?
25 Aren't they the ones that run the school district?

1 MR. HARMON: They're the ones that run the school
2 district.

3 THE COURT: So how do I know that that's their policy
4 if they've never been asked to render a position on it? How do
5 I know that -- I mean, I -- I could guess, maybe, but if we're
6 here litigating in federal court a constitutional issue as to
7 whether this policy violates the Equal Protection Clause or
8 violates Title IX, wouldn't we be -- shouldn't we be litigating
9 that if it's a formal declared policy of the school board of
10 St. Johns County as opposed to a practice document -- best
11 practices document that doesn't even prohibit the thing that
12 you're saying you're against?

13 MR. HARMON: Well, that's -- one of the things that
14 we tried to make clear in this case is our policy, which is
15 also, I would say to Your Honor -- although not formally
16 adopted in our rule book, it -- I think we admitted this in one
17 of our answers to the allegation that that's a practice under
18 1983 as well.

19 So the practice of the district, the policy, the
20 long-standing policy in the district is we separate these
21 bathrooms. That is what we're defending, saying that that's
22 our practice.

23 THE COURT: And by what -- so did the school board of
24 St. Johns County authorize the litigation to defend the policy?

25 MR. HARMON: I wouldn't be standing here if we

1 weren't authorized to defend the policy.

2 THE COURT: But, I mean, was there a vote? I mean, I
3 guess I'm -- I'm kind of wondering what -- how do I know this
4 represents the official position of the St. Johns County School
5 Board?

6 MR. HARMON: I think you will be hearing through the
7 direct testimony --

8 THE COURT: Okay. So you're saying in your case,
9 that will become clear that either the superintendent or the
10 school board or somebody has said this is our policy and we
11 think it's constitutional and we are here to defend it?

12 MR. HARMON: You're going to hear that in our case,
13 yes.

14 THE COURT: All right. Go ahead.

15 BY MR. KOSTELNIK:

16 Q. Broward County School District does not have a written
17 bathroom policy; isn't that true?

18 A. Not one that was board approved. However, it is part of
19 the guidance that's connected to our nondiscrimination policy.

20 Q. So there is no board-approved bathroom policy in Broward
21 County School District?

22 A. No.

23 Q. Okay.

24 A. If I can amend. Unless you consider the school board
25 workshops where the board gave us the go-ahead to move forward,

1 but it wasn't a vote at the school board workshop.

2 THE COURT: Is -- and is it -- ma'am, is that --
3 because it's kind of the same question I'm asking them. The
4 only difference is nobody I guess has sued you, right? And I
5 understand that not everything that happens in a school can be
6 the subject of a school board decision, but it's interesting to
7 me that if this matter is of such public interest and public
8 debate, it would seem to me that it would be brought to the
9 board level for a decision. And so can you explain to me how
10 that worked in Broward County?

11 THE WITNESS: Sure. So --

12 THE COURT: That's the same question I just asked
13 Mr. Harmon about St. Johns County. How do I know that the
14 final policymakers of the school board, how do I know what they
15 think if they've never been asked?

16 THE WITNESS: In our case, they -- they have been
17 asked. And so the guidance that we attached to our policies in
18 Broward have to come before the board in board workshops.

19 And that's also an advertised public meeting where
20 they receive input from the public, they hear from staff, they
21 assert their positions, and then they sanction without a vote
22 to move forward with the guidance.

23 THE COURT: And would there -- is there a capacity in
24 those workshops for a -- the board -- I assume if they don't
25 agree with something, they can say we need to calendar this for

1 a meeting or we need to talk about this some more or --

2 THE WITNESS: Absolutely. They redline the document.
3 They are very clear with staff as to what they want, you know,
4 put in the document, what they want -- the internal and the
5 external community to understand about the work, and they're
6 very verbal about, you know, what goes out.

7 THE COURT: All right. So I understand at least what
8 you're saying about Broward County, and I'll be interested to
9 hear -- Mr. Harmon tells me I'm going to hear about that in
10 their case, so I don't want to get too far into that right now.

11 So, all right, Counsel, you may proceed.

12 MR. KOSTELNIK: Thank you, Your Honor.

13 BY MR. KOSTELNIK:

14 Q. Going to that critical support guide -- again, I don't
15 think you have a copy of that in front of you.

16 MR. KOSTELNIK: Can you pull up page 9 of the
17 critical support guide.

18 MR. CAREY: Which exhibit?

19 MR. KOSTELNIK: 66.

20 MR. CAREY: Need a page number.

21 MR. KOSTELNIK: Page 9.

22 MR. CAREY: Page 9. Sorry.

23 BY MR. KOSTELNIK:

24 Q. Can you go ahead and read to me the definition of
25 biological sex there.

1 A. "A person's physical anatomy/genitalia."

2 Q. Okay.

3 MR. KOSTELNIK: And can you go to page 10, please.

4 BY MR. KOSTELNIK:

5 Q. Can you go ahead and read for me the definition of gender
6 identity.

7 A. "Gender identity refers to a person's internal deeply felt
8 sense of being male or female, boy or girl, or other, for
9 example, a blending of the two. Everyone has a gender identity
10 even if it does not always correspond with the person's
11 biological sex."

12 Q. So that critical support guide recognizes that there is a
13 difference between biological sex and gender identity; is that
14 correct?

15 A. Yes.

16 Q. You'd agree with me that students in your school have a
17 right to privacy, correct?

18 A. Yes. All students.

19 Q. Okay. And one of the reasons for separating the bathrooms
20 between girls and boys is to protect students' privacy rights,
21 correct?

22 A. I think there are many reasons why we in the United
23 States, you know, separate our public restrooms, you know, by
24 sex. You know, part of it is historical. And in many parts of
25 the world, including locally, we have places where that's not

1 the case. And privacy may be one of the reasons.

2 Q. Those are -- privacy is one of the reasons for separating
3 those, correct?

4 A. Privacy may be one of the reasons, yes.

5 Q. And it's possible in Broward County a student could be
6 punished for going in the bathroom of the opposite sex,
7 correct?

8 A. It's possible.

9 Q. And you work at the district's main office, correct?

10 A. Yes.

11 Q. So you're not in the schools -- at a school level?

12 A. No.

13 Q. Okay. So you don't really know if any -- if the concerns
14 that you were asked about on direct were raised at the school
15 level, do you?

16 A. Oh, I absolutely do know.

17 Q. And how do you know? Are you at every high school every
18 day?

19 A. I have a team of 400 who reside in those high schools. So
20 our nurses are assigned to the schools. Our social workers are
21 assigned to the schools. Our family counselors and our school
22 counselors are assigned to the schools. I visit the schools.
23 I'm a regular. And I sit at the table oftentimes with the
24 school leaders as we are addressing the guide, the specifics of
25 the guide. I have been around the table with even a -- a --

1 THE COURT: You don't have to say any more.

2 THE WITNESS: -- with their students or their
3 parents.

4 THE COURT: You want to ask a different question, I
5 assume. That -- that didn't really go too well, did it?

6 MR. KOSTELNIK: Can I have a moment, Your Honor.

7 (Counsel confer.)

8 THE COURT: I've been there myself.

9 MR. KOSTELNIK: One moment.

10 BY MR. KOSTELNIK:

11 Q. Now, Broward County, the actual county, they also have a
12 prohibition on discrimination of gender identity; is that
13 correct?

14 A. I believe so.

15 Q. Okay. And that was adopted around the time that you
16 adopted your policy?

17 A. I'm not sure.

18 Q. When boards meet for a workshop, like the workshop you've
19 discussed about the critical support guide, they don't take any
20 formal action in those settings, do they?

21 A. No, they do not.

22 Q. There's no voting that goes on?

23 A. They don't vote.

24 THE COURT: That's why they're called workshops,
25 right?

1 THE WITNESS: Yeah. But they voice.

2 BY MR. KOSTELNIK:

3 Q. Okay. And you mentioned that St. Johns County School
4 District didn't reach out to you for any guidance; is that
5 correct?

6 A. Not me personally.

7 Q. Okay. Were you aware in 2011, a statewide grand jury made
8 the findings that "The evidence that we've been presented
9 concerning the malfeasance and misfeasance of the Broward
10 County School Board and the senior management of Broward County
11 School District and of the gross mismanagement and apparent
12 ineptitude of so many individuals at so many levels is so
13 overwhelming that we cannot imagine any level of incompetence
14 that we can explain what we've seen"? Were you aware of that?

15 A. No.

16 MR. LAPOINTE: Hold that thought, please. Your
17 Honor, I want to object on -- as to the relevance and also the
18 mere notion that this is what -- the mere notion that counsel
19 would go there is beyond the appeal. But I will just stick
20 with the relevance and 403 objection on this.

21 THE COURT: Counsel, what's the basis for your
22 question and what's the relevancy of it?

23 MR. KOSTELNIK: Well, they're sitting here suggesting
24 we didn't reach out to Broward County for any guidance, and I'm
25 putting forth an explanation of why that would be the case.

1 THE COURT: You know, I told you if you'd made an
2 objection to the question as to whether anybody from St. Johns
3 County reached out to them, I would have sustained it, but you
4 didn't object because you were conferring with your co-counsel
5 and you weren't -- and I don't think it's relevant one way or
6 the other. But I don't think the way you've just raised that
7 issue is a fair way to raise it.

8 I don't have any idea what the context of that grand
9 jury was about. I don't have any idea what the case was about.
10 I don't have any idea what you're talking about. I sustain the
11 objection. Anything else?

12 MR. KOSTELNIK: That's all. Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. LAPOINTE: Can I have a brief redirect, Your
15 Honor?

16 THE COURT: Yes.

17 **REDIRECT EXAMINATION**

18 BY MR. LAPOINTE:

19 Q. Ms. Pope, I just want to go back to 66, please. You
20 were -- I want to go back to page 10, please.

21 Ms. Pope, you were asked to read a couple of
22 definitions. You were asked to read gender identity. Let
23 me -- can you go ahead and just please read gender for me, the
24 definition of gender which is at the top of the page.

25 A. "Unlike a person's biological sex, which is an anatomical

1 term, gender is a social construct specifying the behaviorally
2 and culturally prescribed characteristics men and women are
3 traditionally expected to embody. Gender is now understood to
4 have several components, including gender identity, gender
5 expression, and gender role."

6 MR. LAPOINTE: No more questions, Your Honor.

7 THE COURT: All right. We're going to be in recess
8 for 15 minutes. We'll come back at -- well, let's make it ten
9 after eleven we'll come back.

10 Who is the next witness going to be?

11 MS. DOOLITTLE: Scott Adams, Your Honor.

12 THE COURT: Okay. That's fine.

13 Thank you very much for your testimony, ma'am.

14 All right. We're in recess.

15 COURT SECURITY OFFICER: All rise.

16 (Witness excused.)

17 (Recess, 10:54 a.m. to 11:12 a.m.)

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

20 THE COURT: Go ahead and swear the next witness,
21 please.

22 COURTRROOM DEPUTY: Do you solemnly swear that the
23 testimony you are about to give before this court will be the
24 truth, the whole truth, and nothing but the truth, so help you
25 God?

1 THE WITNESS: I do.

2 COURTRROOM DEPUTY: Please state your full name and
3 spell your last name for the record, sir.

4 THE WITNESS: Scott Adams, A-d-a-m-s.

5 COURTRROOM DEPUTY: Thank you.

6 **SCOTT ADAMS, PLAINTIFF'S WITNESS, SWORN**

7 **DIRECT EXAMINATION**

8 BY MS. DOOLITTLE:

9 Q. Good morning, Mr. Adams.

10 A. Good morning.

11 Q. Are you Drew Adams' father?

12 A. I am.

13 Q. And I understand that you have another son with
14 Ms. Kasper; is that correct?

15 A. I do. Carter.

16 Q. How often -- or do both of the children live in your home?

17 A. They do.

18 Q. And does Ms. Kasper see the children daily?

19 A. Yeah. Nearly every day. She's there in the morning most
20 of the time. If not in the morning, in the afternoon before
21 they get home from school.

22 Q. And does Ms. Kasper stay at your home during the day while
23 the boys are in school?

24 A. Most days, yeah.

25 Q. And what does she do there?

1 A. She works for me.

2 Q. And what kind of work do you do?

3 A. It's a mix of social media marketing, anti-fraud,
4 different things in the Internet space.

5 Q. Is your son transgender?

6 A. He is.

7 Q. Is your son a boy?

8 A. He is.

9 Q. How did you learn that Drew was transgender?

10 A. Drew told us.

11 Q. And when was that?

12 A. Early summer 2015.

13 Q. Before Drew came out to you, had you suspected he may be
14 transgender?

15 A. Yeah, we had thought about it. Just kind of going back
16 over the years from the earliest memories, really, of Drew, he
17 just always wasn't acting like a girl. His mom really wanted,
18 you know, to have him in dresses and things like that and he'd
19 pitch a fit. Just -- I don't think we have a picture of Drew
20 in a dress.

21 Or like my mom would give him a Barbie doll for
22 Christmas and it would be the train or the car and the Barbie
23 doll and the Barbie doll would get pitched aside. You can go
24 back through his whole childhood and see things like that.

25 Q. At the time Drew came out to you and Ms. Kasper, did you

1 ever question whether this might be a phase?

2 A. No, not at all.

3 Q. Did you ever think it could be something he may change his
4 mind about?

5 A. Not at all.

6 Q. After Drew came out, did he speak with you and Ms. Kasper
7 about his desire to transition and to live as a boy?

8 A. Right away.

9 Q. And is that something that you and Ms. Kasper discussed
10 privately?

11 A. Yeah, we did. We discussed that amongst ourselves and
12 then we also started to seek medical help.

13 Q. And when you say you decided to seek medical help, were
14 you involved in going to the appointments and speaking with the
15 different doctors that Drew spoke with during that period?

16 A. I was definitely involved, but I was not at the majority
17 of the appointments.

18 Q. And why was that?

19 A. It just made sense for one to kind of have one voice. And
20 then also during that time frame, I traveled a lot for work.
21 And so Erica would go and take the kids to things like that.
22 And then we would discuss it.

23 Q. And just to be clear, what's the time frame that you're
24 referring to?

25 A. Right about 2015.

1 Q. What was the first step that you can recall that Drew took
2 in his medical transition?

3 A. Medically, the first thing he did was went on
4 Depo-Provera.

5 Q. Is that something that you and Ms. Kasper spoke with --
6 prior to allowing Drew to do that?

7 A. Yeah. We spoke at length on all the medical decisions and
8 really all the decisions overall.

9 Q. And did you agree to allow him to proceed?

10 A. I did.

11 Q. What was the next step in Drew's medical transition?

12 A. Then I think was the testosterone.

13 Q. And that's, I guess, taking testosterone injections or --

14 A. Yeah, injections.

15 Q. Is that something that you and Ms. Kasper discussed
16 privately before allowing Drew to proceed?

17 A. Yeah, we discussed it and decided to go forward.

18 Q. And did you provide your actual consent to the physicians
19 before he was allowed to do that?

20 A. I did.

21 Q. And what was the next piece of Drew's medical transition
22 that you recall?

23 A. I guess medically after testosterone was the top surgery
24 or double mastectomy.

25 Q. And is that something that you also consented to prior to

1 the surgery being performed?

2 A. I did.

3 Q. Did you have any concerns about Drew taking some of the
4 steps in his medical transition?

5 A. Definitely. I don't think -- as a father, I don't see how
6 I couldn't, you know. I definitely had concerns about it. But
7 Erica and I talked about it a lot and then also we discussed it
8 with the medical professionals. And everyone felt that the
9 best thing to do is move forward as quickly as possible.

10 Q. Did you attend any of the appointments with any of Drew's
11 providers?

12 A. Yeah, so there were a lot of times I would take Drew to
13 the appointments and drop him off or walk in the office and
14 make sure he got there and then leave. But there was one that
15 specifically we did a family session with Dr. Jacobs.

16 Q. And when you say it was a family session, who all was
17 present?

18 A. So it was myself, Erica, and Drew. Of course, Drew's
19 brother Carter, and Erica's husband Brian.

20 Q. Okay. And was Drew's treatment discussed in that session?

21 A. Yeah, his treatment was discussed and then just the
22 general, you know, how the family was dealing with the
23 situation. I think she was looking for how supportive we were.

24 Q. How was the family dealing with Drew's transition?

25 A. It was great. There really weren't any issues either with

1 our, you know, immediate group or with our extended family.

2 Q. Do you recall having discussions with Drew the summer
3 before he started Nease?

4 A. Yeah. He was super excited about starting high school but
5 also as starting as a boy.

6 Q. And did Drew choose to go to Nease?

7 A. He did.

8 Q. Why did he choose Nease High School?

9 A. He really wanted to go to Nease because of the IB program.

10 Q. What is the IB program?

11 A. I think it stands for International Baccalaureate. It's a
12 prestigious program that at the end gets you college credit and
13 kind of gives you a leg up on the competition going into
14 college.

15 Q. Do you know if there are any other high schools in the
16 district that have any other IB programs other than Nease?

17 A. As far as I know, no. I believe in our county, our
18 district, that's the only one.

19 Q. Most days after Drew gets home from school, does he talk
20 to you about his day?

21 A. Yeah, definitely.

22 Q. And the first few -- how did the first few weeks of high
23 school go for Drew?

24 A. It really -- just like he went in. He was excited. He
25 was really passionate about, you know, getting good grades in

1 school and enjoying it, making friends, getting involved with
2 all the programs. He loved it.

3 Q. At some point, did you learn that Drew's experience at
4 Nease as you just described it changed?

5 A. Yeah. A few weeks in, whenever we learned that Drew was
6 called -- I don't remember if it was to the principal's office
7 or guidance, but called in to administration and told that he
8 was unable to use the men's room.

9 Q. And how did -- did Drew tell you about that?

10 MR. HARMON: Object to hearsay.

11 THE COURT: Overruled.

12 BY MS. DOOLITTLE:

13 Q. How did that -- that decision by the school -- how did it
14 impact Drew?

15 A. It devastated him. As I just described, he was a super
16 excited kid and he really was excited about going to high
17 school and being a freshman and -- but right when that
18 happened, it was devastating. And he went from -- kind of back
19 to before the stuff started happening, before he transitioned.
20 He was depressed, anxiety-ridden, just, you know -- then every
21 day after that, it's like he's being called out and being
22 treated differently and it hurts him.

23 Q. In the nearly two years since this rule was imposed on
24 Drew, has he continued to talk with you about his concerns or
25 his level of upset regarding about not being able to use the

1 boys' room?

2 A. Yeah. Much less so now that he's learning to deal with
3 it, but it's still -- you know, every once in a while, he
4 brings it up. Probably once a week something comes up that
5 it's upsetting to him. But I think the biggest thing is just
6 that every time he has to use the restroom, he knows that he's
7 different.

8 Q. Have you ever seen Drew be misgendered?

9 A. Yeah, many times. But the big one that stands out is
10 that -- you know, the kids and I have done for the last seven
11 years Brazilian Jiu-Jitsu together.

12 And we went to a tournament -- or not a tournament --
13 a class where a world champion was in town. And the guy is
14 showing us one of his moves that he likes to use and Drew is
15 actually drilling with me.

16 And the guy came over, you know, this -- in Drew's
17 eyes, this hero, world champion, to actually tell him he's
18 doing a great job, but he says "she." And it was -- it was
19 devastating. You know, Drew -- Drew actually ended up in a
20 corner not participating in the whole class after that. He was
21 just so upset about that.

22 MS. DOOLITTLE: Nothing further.

23 THE COURT: Cross-exam?

24 **CROSS-EXAMINATION**

25 BY MR. HARMON:

1 Q. Good morning.

2 A. Hey.

3 Q. I don't know if you remember me. I'm Terry Harmon. I
4 think we chatted once before.

5 A. Yeah, I do.

6 Q. If I heard you on direct, you said that the doctors, from
7 what you were told, that everyone said to move forward as
8 quickly as possible?

9 A. That is correct.

10 Q. Is that with the transition?

11 A. Yeah.

12 Q. Were you aware that a Dr. Asernelly felt that everything
13 should slow down until age 18?

14 A. I'm not aware of that.

15 Q. You've never taught in a K through 12 public school,
16 right?

17 A. No.

18 Q. And never taught in a K through 12 school on school
19 operation issues?

20 A. No.

21 Q. You've never spoken to any of your son's teachers at Nease
22 High School, have you?

23 A. I don't remember if I have or not, but most likely not.

24 Q. And you've never talked to any administrators at Nease
25 High School, right?

1 A. No. As we talked about before, we've got things kind of
2 divided where for the most part Erica handles those
3 administrative duties and then we -- that -- though we speak as
4 one voice and we discuss everything. You know, every meeting
5 she has, we then discuss afterwards.

6 Q. So in terms of you speaking with any of the
7 administrators, is that you have not?

8 A. I have not.

9 Q. Okay. And you've not read the district's written best
10 practices document for LGBTQ students, have you?

11 A. I have not, no.

12 MR. HARMON: Just one moment, Your Honor.

13 (Counsel confer.)

14 MR. HARMON: No further questions.

15 THE COURT: Anything else?

16 MS. DOOLITTLE: Nothing, Your Honor.

17 THE COURT: Thank you for your time, sir.

18 Who is the next witness?

19 (Witness excused.)

20 MR. GONZALEZ-PAGAN: Thank you, Your Honor. I'm Omar
21 Gonzalez-Pagan for the plaintiff, and we're going to call
22 Michelle Kefford.

23 MR. KOSTELNIK: Your Honor, I respectfully ask
24 Ms. Kefford -- we're going to launch an ongoing objection as to
25 relevance and as to cumulative as we've heard about Broward

1 County's policy. I don't think this witness is necessary.

2 THE COURT: I was kind of wondering about that
3 myself. What's the -- what's the difference?

4 MR. GONZALEZ-PAGAN: Thank you, Your Honor.

5 Counsel objected to this line of questioning in
6 cross-examination of Ms. Pope, actually tried to distinguish
7 between the on-the-ground level administration from a high
8 school principal to a district-level administrator.

9 Ms. Kefford is a principal within the Broward County
10 school system, has worked directly with transgender students at
11 her school, and she will have tight -- no more than 30 minutes
12 of testimony specifically of her experience implementing those
13 policies at the school level.

14 THE COURT: Yeah. All right. I'm going to let you
15 do it. I do wonder whether there's some cumulative aspect to
16 it, so I'm going to ask you to cut to the chase. Gosh, I would
17 almost think it could be 15 minutes, but we'll see. Go ahead.

18 MR. GONZALEZ-PAGAN: Understood, Your Honor.

19 THE COURT: All right.

20 COURTROOM DEPUTY: Do you solemnly swear that the
21 testimony you are about to give before this court will be the
22 truth, the whole truth, and nothing but the truth, so help you
23 God?

24 THE WITNESS: I do.

25 COURTROOM DEPUTY: Please state your full name and

1 spell your last name for the record.

2 THE WITNESS: Michelle Kefford, K-e-f-f-o-r-d.

3 COURTROOM DEPUTY: Thank you.

4 MICHELLE KEFFORD, PLAINTIFF'S WITNESS, SWORN

5 DIRECT EXAMINATION

6 BY MR. GONZALEZ-PAGAN:

7 Q. Good morning, Ms. Kefford.

8 A. Good morning.

9 Q. Are you currently employed?

10 A. Yes.

11 Q. Where do you work?

12 A. I'm a principal at Charles W. Flanagan High School in
13 Broward County, Florida.

14 Q. Okay. Could you just provide us a little bit of your
15 educational background beginning with college?

16 A. Absolutely. I have a bachelor's degree in biology from
17 Florida State University. I have a master's degree in science
18 education from Florida International University. And I have a
19 master's in educational leadership from Florida Atlantic
20 University.

21 Q. And can you please walk us a little bit through your
22 career before becoming the principal at Flanagan High School?

23 A. Sure. I was a biology teacher at the high school level in
24 Broward County, Marjory Stoneman Douglas High School.

25 Subsequent to that, I was named as the assistant principal at

1 Western High School also in Broward County. I also served as
2 the assistant principal at Boyd Anderson High School in Broward
3 County. And I'm currently at Flanagan where I have been the
4 principal. This is my seventh year.

5 Q. And, Ms. Kefford, I think you and I shared that we're fast
6 talkers.

7 A. Yes.

8 Q. So for the purposes of the court and the court reporter,
9 we'll try to slow down.

10 A. I apologize.

11 Q. Ms. Kefford, is it fair to say that your entire
12 professional career has been dedicated to secondary education?

13 A. Yes.

14 Q. How many students are at Flanagan High School?

15 A. We have just over 2600 students.

16 Q. And as a principal, have you worked with transgender
17 students?

18 A. I have.

19 Q. How many?

20 A. I can't give you an exact number, but I would say close to
21 about a dozen.

22 Q. Are there any policies specific to your -- the school
23 district in your school that apply to transgender students?

24 A. We have a -- a nondiscrimination policy in Broward County
25 public schools that is adhered to at all levels. We also have

1 a set of guidelines that are specific to transgender students
2 and the LGBTQ community we serve.

3 MR. GONZALEZ-PAGAN: Your Honor, if I may approach.

4 THE COURT: You may.

5 MR. GONZALEZ-PAGAN: Ms. Kefford, I'm showing you
6 what has already been admitted as Plaintiff's Exhibit 66.

7 THE WITNESS: Thank you.

8 BY MR. GONZALEZ-PAGAN:

9 Q. Do you recognize this document?

10 A. I do.

11 Q. Is this one of the documents that you just referred to?

12 A. Yes, this is.

13 Q. How do you recognize this document?

14 A. This is a document that was produced through our school
15 district. I actually was one of the individuals who worked on
16 creating this particular edition of the document.

17 Q. And as a principal, do you know if principals are able to
18 disregard the guide -- guidance set forth through this
19 document?

20 A. No, they are not.

21 Q. What is the bathroom policy with regard to transgender
22 students --

23 A. Our --

24 Q. -- set forth in the guidance document?

25 A. Our policy with regard to transgender students is a child

1 is permitted to use the restroom that aligns with his or her
2 gender identity.

3 Q. And what is the policy with regards to locker rooms?

4 A. The same policy applies. The child, depending on their
5 gender identity, will utilize the locker room that he or she
6 identifies with.

7 Q. And you mentioned that you helped revise this document.

8 A. Yes.

9 Q. How did that come about?

10 A. I actually got involved with this work because I had
11 transgender students enroll in my school, and at the time, I
12 had no knowledge or experience with these children, so I
13 thought it was important that I educate myself.

14 I became closely involved with our department of
15 diversity and subsequently became the trainer for our district.
16 So I've gone around and trained every administrator in Broward
17 County on the policies that are within the document.

18 And I also currently serve as a point person if
19 administrators, teachers, any staff member in Broward County
20 has a question related to dealing with transgender students.

21 Q. Ms. Kefford, I'm going to refer you to page 41 of the
22 document. Can you please read the first two paragraphs.

23 A. Under "locker rooms"?

24 Q. Just before "locker rooms."

25 A. "Some transgender students may not be comfortable using

1 sex-segregated restrooms. If so, using a safe and adequate
2 alternative such as a single stall, gender-neutral restroom,
3 i.e., the office restroom, staff restroom, health office,
4 et cetera. As a proactive action, administrators should take
5 steps to identify gender-neutral restrooms on campus. Note
6 that a gender-neutral restroom may be used by any student at a
7 school, transgender or otherwise, who desires increased
8 privacy, regardless of the underlying reason. However, the
9 single-user bathroom may not be given as the only option for
10 transgender students."

11 Q. And Principal Kefford, do you agree with what you just
12 read?

13 A. I do.

14 Q. What's the rationale for this policy?

15 A. For having the gender-neutral restroom as not the only
16 option, is that what you're asking me about?

17 Q. Correct.

18 A. Okay. So the gender-neutral restroom is for any student,
19 not just a transgender student. For whatever reason, they want
20 extended privacy. There's no reason that the child should be
21 made to be segregated in a separate area simply because they're
22 transgender. That's discriminatory.

23 Q. Okay. And have you implemented the gender-neutral
24 alternative policy as well as the transgender restroom policy
25 in your experience as a principal?

1 A. Yes, we have that as an option. Any transgender student
2 I've ever worked with engages in a conversation with me about
3 their comfort level which restroom they'd like to use; if
4 applicable, which locker room they'd like to use, and then the
5 transgender child will make that determination based on his or
6 her comfort level.

7 Q. And the accommodations with regards to gender-neutral
8 restrooms, that applies to all students, right?

9 A. Absolutely. We have some students for whatever reason who
10 wanted additional privacy, they can utilize that gender-neutral
11 restroom as well.

12 Q. Have you ever had to apply that policy with regards to a
13 non-transgender student?

14 A. We've had students in the past for a variety of reasons or
15 staff members who wanted additional privacy and they would
16 prefer a single-stall unit and they're provided that
17 opportunity.

18 Q. When you were revising this critical support guide, did
19 you consider having a policy in which transgender students
20 would just use a gender-neutral restroom?

21 A. No.

22 Q. Why not?

23 A. It's discriminatory.

24 Q. How is that so?

25 A. I don't feel that it's appropriate, nor did the committee

1 I worked with, to tell a child -- part of being transgender is
2 if you're, for example, a female to male transition, for all
3 intents and purposes, you're a male. Part of that -- part of
4 that experience of being a male would give you an opportunity
5 to utilize facilities used by other male students.

6 Q. What is the Broward County Public School's policy with
7 regards to participation of transgender students in high school
8 athletics?

9 A. We are governed by the Florida High School Athletic
10 Association. Their policies and procedures clearly indicate
11 that a student can participate in -- or on the sports team
12 based upon the gender they identify with.

13 Q. And what is the Florida Athletic Association?

14 A. That's the governing body of all high school sports in our
15 state.

16 Q. Is it authorized by the State of Florida?

17 A. I believe it is, yes.

18 Q. Is it an official entity of the State of Florida?

19 A. Yes.

20 Q. Does Flanagan High School participate in interscholastic
21 sports in Florida?

22 A. We do.

23 Q. And do you follow the Florida High School Athletic
24 Association policies?

25 A. We do.

1 MR. GONZALEZ-PAGAN: Your Honor, if I may approach
2 the witness.

3 THE COURT: Yes.

4 BY MR. GONZALEZ-PAGAN:

5 Q. Ms. Kefford, I'm showing you what has been premarked as
6 Plaintiff's Exhibit 68. Do you recognize this document?

7 A. Yes.

8 Q. What is it?

9 A. This is the Florida High School Athletic Association's
10 administrative policies.

11 MR. GONZALEZ-PAGAN: Your Honor, at this point, I
12 would move to enter Plaintiff's Exhibit 68 into evidence.

13 MR. KOSTELNIK: Your Honor, I'm going to object to
14 relevancy. Plaintiff has already testified he doesn't play
15 sports. I don't see how this document is relevant at all to
16 the facts at issue in this case.

17 THE COURT: Counsel?

18 MR. GONZALEZ-PAGAN: Your Honor, this is a governing
19 body applying to all high schools within the state of Florida.
20 It applies a policy that is inconsistent with the policy by the
21 St. Johns County School District. I think that would be
22 informative to the specific issues of this case.

23 THE COURT: All right. I'm going to overrule the
24 objection and admit the exhibit. It will be Plaintiff's 68.

25 (Plaintiff's Exhibit 68 received into evidence.)

1 THE COURT: You may proceed.

2 BY GONZALEZ-PAGAN:

3 Q. Ms. Kefford, can I refer you --

4 THE COURT: And let me just say further, this witness
5 may not be an expert on these policies, although I'm sure she
6 has to implement them a lot, but it seems to me that these
7 would be the type of matters that the court could take judicial
8 notice of even in the absence of a witness, so -- so you may
9 proceed.

10 MR. GONZALEZ-PAGAN: Thank you, Your Honor.

11 BY GONZALEZ-PAGAN:

12 Q. Ms. Kefford, I'm going to refer you to the eighth page of
13 the exhibit. It's labeled page 48. Can you please read
14 heading 4.3 and the first sentence following that heading?

15 A. Yes.

16 "Gender Identity Participation. All eligible
17 students should have the opportunity to participate in
18 interscholastic athletics in a manner that is consistent with
19 their gender identity and expression irrespective of the gender
20 listed on a student's birth certificate and/or records."

21 Q. Are all high schools in the state of Florida participating
22 in interscholastic athletics to abide by these policies?

23 A. Yes.

24 Q. Ms. Kefford, I want to walk back now to your experience
25 implementing these policies with regard to restrooms.

1 Have you had any non-transgender students complain
2 about that policy?

3 A. Never.

4 Q. Have you had any parents complain about that policy?

5 A. I have not.

6 Q. How would you deal with a situation in which a
7 non-transgender student objected to using the restroom with a
8 transgender student?

9 MR. KOSTELNIK: Objection. Relevance and calls for
10 speculation.

11 THE COURT: Overruled.

12 THE WITNESS: Answer?

13 BY GONZALEZ-PAGAN:

14 Q. You may answer.

15 A. If we had a child who was a cisgender child who objected
16 to a transgender child using the bathroom aligned with their
17 gender identity -- I first need to say that we could never
18 disclose that a child is transgender. It's a violation of
19 their privacy.

20 So what I would do, as with any student who has any
21 concern with regard to a restroom or any other facility -- I
22 would have a conversation with that child who has an issue and
23 find them an alternative where they are comfortable.

24 Q. All right. Have you had any safety issues implementing
25 the policy with regards to transgender students using the

1 restroom consistent with their identity?

2 A. I have not.

3 Q. Have there been any problems with other students'
4 treatment of transgender students at your high school?

5 A. No. Our kids are very accepting.

6 Q. Are transgender students a minority of the children you
7 deal with as a principal?

8 A. Yes.

9 Q. Why would you value the needs or concerns of a minority of
10 the group of students over others?

11 A. My job, not just professionally but morally and ethically,
12 is for the needs of every child that I serve. I'm a parent.
13 Every one of my kids is somebody's child. So -- sorry. My
14 commitment is to every child regardless of what percentage of
15 the population they make up.

16 Q. Have you ever encountered a situation in which a
17 non-transgender child pretended to be transgender in order to
18 gain access to the restroom opposite to their gender identity?

19 A. I didn't, no. And I've never heard of a child doing that.

20 Q. What would you do if a child misbehaved in the restroom?

21 A. If a child misbehaved in the restroom, they would be
22 disciplined according to our Broward County School Board
23 discipline matrix which outlines consequences for the
24 disciplines and transaction.

25 Q. Would this apply to transgender and non-transgender

1 students?

2 A. Of course.

3 Q. Have you ever encountered a situation in which a
4 transgender student exposed their genitals to somebody else in
5 the restroom?

6 A. No. I don't understand why a transgender child would want
7 to do that. They want to identify with a gender that they
8 associate with. Drawing attention to their genitals would be
9 contrary to them as a transgender student or child.

10 Q. Do you believe that your policy addresses the privacy of
11 all your students?

12 A. I do.

13 Q. How does it do that?

14 A. We have an opportunity for any child, regardless of their
15 need or comfort level, to use facilities according to how
16 comfortable they feel because we have a gender-neutral bathroom
17 that's not for transgender students, that's for all students
18 who may need privacy for whatever reason. Locker room
19 facilities, we have some kids -- I will give you an example. I
20 had a child who had a skin condition who was not comfortable
21 changing in front of -- you know, in front of peers. So we
22 found an alternate location in that locker room to provide that
23 student with additional privacy.

24 Q. Do you believe that the Broward County Public Schools'
25 policy is the right way to go about treating transgender

1 students?

2 A. 100 percent.

3 Q. Principal Kefford, Broward County is different from
4 St. Johns County; is that right?

5 A. I don't have an intimate knowledge of St. Johns County, so
6 I don't -- I assume that we both service students from pre-K to
7 12th grade, so I would assume there are differences, but there
8 are some similarities as well.

9 Q. What are those similarities?

10 A. We service kids. I don't care what county you're in, what
11 state you're in, the bottom line is we have an obligation to
12 serve kids and serve kids in the manner that's respectful and
13 in a manner that protects each child in a manner that provides
14 children with opportunities that will help that child to grow
15 and succeed not just academically but socially and emotionally
16 as well.

17 MR. GONZALEZ-PAGAN: Thank you, Principal Kefford.

18 THE COURT: So, ma'am --

19 THE WITNESS: Yeah.

20 THE COURT: -- you say -- how many transgender
21 students do you -- have you worked with over the years?

22 THE WITNESS: I've worked with over the years
23 probably close to a dozen, directly close to a dozen. But I do
24 a lot of work with all of the other schools in our district.
25 I'm one of the point persons, so I have the opportunity to

1 assist with other issues and situations as they arise. But my
2 own personal interaction has been close to a dozen.

3 THE COURT: And I guess what I'm wondering is how
4 does it come to your attention that somebody is transgender?

5 THE WITNESS: Very good question. So what happens is
6 the child will usually -- we don't come out and say, hey, are
7 you transgender? We don't treat a child in that manner. But a
8 child will generally come and have a conversation with a staff
9 member, whether it be a teacher, whether it be a guidance
10 counselor, whether it be myself.

11 I've been doing this work for a few years now, so --
12 as an example, I have a child who's now a tenth grader with me
13 who was matriculating from eighth grade to ninth grade last
14 year.

15 That child actually sent me an e-mail the day before
16 school started and said: Hi, I'm a transgender student. I
17 heard from my friends that you do a lot of work in our
18 district. Can you help me? I want to make sure my teachers
19 use my affirm name, use my correct pronouns.

20 And in that case, I actually set up a meeting with
21 that child the next morning, worked through that, made sure all
22 my teachers were aware of his affirm name, his preferred
23 pronoun so when he went into class that first day of school, he
24 was not misgendered or misnamed.

25 Did I answer your question?

1 THE COURT: Yes, ma'am. What I'm trying to figure
2 out is how this comes up, this bathroom issue. You have a
3 policy on it. Does it -- does it ever come up?

4 THE WITNESS: Yes, it does come up.

5 THE COURT: And how does it come up? How does it
6 present itself?

7 THE WITNESS: So generally speaking, it's part of the
8 conversation we have with children who identify as transgender.
9 So we will have kids -- in all the cases I've experienced, we
10 have kids who have entrusted an adult with this transition.
11 I'm going through a transition. In some cases, the parents are
12 on board and aware. And in other cases, they're not; the
13 parents aren't supportive. So the school may be the only
14 outlet that child has where he or she feels supported.

15 So when the conversation is initiated, there's a
16 whole series of questions that we go through with the child.
17 We want to make sure, number one, do you have -- is there an
18 affirmed name you go by. Some of them will go by the name
19 given to them at birth. Some of them have a name that is more
20 aligned with their gender identity. Which pronouns do you
21 prefer to be called by and all of those questions are asked for
22 that child.

23 In addition, we cover the restrooms, and I always ask
24 a child what is your comfort level with the restrooms. I have
25 some kids who are very early in the transition who wanted to

1 use a gender-neutral bathroom. They weren't at a place where
2 they wanted to use that facility that was aligned with their
3 gender identity.

4 In other cases, students are very evolved with their
5 transition and they want to go into the -- the bathroom with
6 their -- that aligns with their gender identity. So it's
7 really very personal.

8 Every case is different. So it's not like a one size
9 fits all with these cases.

10 But to answer your question, every case I've worked
11 with, there has been communication with some trusted adult at
12 the school and that adult reaches out to someone who has
13 experience with the issues and then they get walked through
14 that process.

15 THE COURT: If a child matriculates to your high
16 school, what are the official records that the school has that
17 discloses the gender of the student?

18 THE WITNESS: The child? So the child's birth
19 certificate will have the gender assigned at birth. That
20 doesn't -- that doesn't go away. There is -- we actually
21 instituted a policy in our district where, on our official
22 student data panel, we have an affirmed name column. That is
23 something that's relatively new.

24 That way if the child -- and I'll give you an
25 example. One of my transgender students had an affirmed name

1 of Ray, so that was not the birth name. So on that affirmed
2 column, we typed in "Ray."

3 That affirmed column populates our grade book,
4 populates BASIS, which is our student information center,
5 populates another database called Virtual Counselor, so that
6 that child's affirmed name is changed on all of those
7 databases. We can even -- and I have changed names on -- in
8 the yearbook on the student ID based on their affirmed name.

9 So you have the birth certificate that is there,
10 however, the legal name, unless it's changed through the
11 courts, will remain the legal name, but for all of -- for all
12 intents and purposes at the school level, the affirmed name is
13 utilized.

14 THE COURT: We had evidence in this case yesterday
15 that the plaintiff in this case, Mr. Adams, actually was able
16 to get his birth certificate changed so that his birth
17 certificate now reads that he's a male.

18 THE WITNESS: Yes.

19 THE COURT: If a student who had already transitioned
20 presented themselves to you with a birth certificate that said,
21 for example, that they were male and they were transgender, is
22 the only way you would know they were transgender if they told
23 you?

24 THE WITNESS: Correct, or if someone had the
25 conversation with the child. There's definitely a

1 conversational element that goes along with it. Now, if you
2 have a child who's transitioned earlier in life, you know -- we
3 have a child who -- who resides in our area who transitioned at
4 the elementary level. So that child -- those records were
5 already reflective of that child's change. So that came with
6 the child.

7 In my experience with these kids, they are so
8 grateful for the conversation. They're so grateful that
9 someone has taken the time to have a conversation with their --
10 you know, about their comfort level and what services they
11 need, and they're very open to speak about it.

12 THE COURT: And I know you're not necessarily here as
13 a medical expert, but you sure have dealt with a lot of
14 students over the years. And I'll just say this as an
15 observation and ask you to react to it.

16 At best, the high school years can be confusing for
17 young people, can be difficult. They're trying to figure out
18 who they are and what they're about and so forth.

19 Is there -- have you had occasion in dealing with any
20 persons who identified themselves as transgender or identified
21 themselves in some other way, do these individuals -- do you
22 ever suggest to these individuals that they seek medical or
23 therapeutic advice, or what -- how involved do you as a
24 principal get into the actual decision-making and transitioning
25 and searching that the student is doing?

1 THE WITNESS: So we obviously provide resources to
2 the student. We have a department that -- that deals directly
3 with transgender issues. That's the department that I worked
4 closely with in providing trainings to all of our staff in the
5 district. So we will refer them to agencies.

6 There are different levels of involvement as far as
7 the parents are concerned. In some cases, the parents are not
8 accepting at all, so the only source of support that child may
9 have is at the school level. So we will provide resources to
10 the child, people they can talk to, people they can communicate
11 with.

12 THE COURT: And how does that work? What's the
13 legalities involved there? If you have a minor child whose
14 parents are raising their children and you have them at school
15 and they're expressing goals and ideas to you as to what
16 they -- how they want to live, how do you deal with that?

17 THE WITNESS: So it's always safety for the child.
18 Legally even if a child comes out as gay, lesbian, bisexual,
19 the child comes out they're pregnant, we legally can't disclose
20 that to the parent. It could put that child's life at risk.
21 And it's unfortunate that that's the reality, but we do have
22 situations where, you know, the kid's safety is concerned. So
23 that is the primary concern is that the child -- is the safety
24 of the child.

25 Providing resources and access to resources for

1 children, I think to not do that would be criminal. I mean, we
2 have to get them the support that they need. The suicide rate
3 alone is so high, especially in this group of kids. We want to
4 make sure these kids have somewhere to turn, they have an
5 outlet.

6 I worked with a particular case that's in my head
7 with a parent who was hungry for help, who said, I don't know
8 what I'm dealing with here, this is very new to me. We don't
9 have -- it's not like my kid's having an algebra issue and I
10 can talk to my neighbor who had the same thing. I don't know
11 who to turn to. I don't have any friends who have transgender
12 kids. What do I do?

13 And in that case, we involve the parents as well with
14 the resources. So it's very -- it's very case-by-case with
15 these kids.

16 THE COURT: How big is your school again?

17 THE WITNESS: Just over 2600.

18 THE COURT: Do you have any way to know how many of
19 those students are transgender?

20 THE WITNESS: The kids that we wouldn't necessarily
21 know about, maybe kids who are questioning their gender
22 identity, in my experience, a lot of kids question it for, it
23 varies, different amounts of time before they come and they
24 really kind of seek assistance with that.

25 We do have a GSA, a Gay-Straight Alliance, where our

1 kids come together from all different facets, our transgender
2 kids, gay, bisexual kids and straight students who they just
3 want to come to support each other. So sometimes, you know,
4 you'll have situations that are -- I'll have situations that
5 are brought to me or other staff members with, hey, I think
6 this kid needs some support and that will initiate a
7 conversation with that child.

8 THE COURT: And I guess I'm just asking you, do you
9 have any idea out of 2600 students, how many transgender
10 students might be at your school?

11 THE WITNESS: I have two right now.

12 THE COURT: Two?

13 THE WITNESS: Uh-huh (affirmative) currently. I've
14 had others that have graduated, but I have two currently.

15 THE COURT: Do you provide the same type of resource
16 and information and assistance for a student who is considering
17 coming out as gay or is considering some other life decision?
18 Do you get involved with students like that as well?

19 THE WITNESS: Of course. We -- you know, my school
20 is -- we're very student centered and we've been very
21 successful and I -- my opinion is that it is a direct
22 correlation to that level of relationship we have with our
23 kids. So whatever -- we have kids who are facing all different
24 kinds of things, from divorce to, you know, disability. Any --
25 any kind of issue those kids are facing, we provide resources

1 and support for those kids, absolutely.

2 THE COURT: This is -- this is an issue that prompts
3 strong feelings from many.

4 THE WITNESS: Uh-huh (affirmative).

5 THE COURT: Including many parents of other students
6 and so forth. At least that's what I'm being told in this
7 case.

8 Have you experienced that or have you dealt with the
9 other side of the parent who is concerned for the safety or
10 privacy or -- I guess those are the primary issues that are
11 cited to us, that they're just concerned that allowing a person
12 who is biologically a different sex than -- than the bathroom
13 is demarked [sic], that that's going to create a privacy or a
14 security issue or a safety issue or some other problem for the
15 students who aren't -- who don't -- don't have -- who don't
16 identify that way? Have you dealt with parents like that?
17 Have you had that issue? Has that -- was that something that
18 was a problem in Broward County? Can you talk to me about that
19 a little bit?

20 THE WITNESS: Sure. So my experience has been the
21 problem doesn't lie with the students. I haven't heard of a
22 case anywhere -- and I work with a lot of the schools -- with
23 any child having an issue with a transgender child using the
24 bathroom that aligns with their gender identity.

25 There are adults -- not at my school -- I've never

1 had a parent or a teacher or any staff member have a concern,
2 communicate a concern, safety or privacy or anything else
3 related to transgender student bathroom use.

4 I have had, when I've done my trainings with
5 administrators and adults where I'll have an adult say, well, I
6 don't agree with, you know -- with a transgender student, I
7 don't agree with all this transgender stuff.

8 And I'll say, well, you may not agree with it, but
9 your personal feelings don't override our obligation
10 professionally, morally, and ethically to provide services for
11 our kids that ensure that our kids feel accepted, they feel
12 safe, they feel protected.

13 I've never heard of any case anywhere where there was
14 a transgender child or adult, for that matter, who went into a
15 restroom to engage in any kind of inappropriate predatory
16 behavior. I've never heard of that.

17 So my opinion of it, based on my experience, is that
18 people are afraid of what they don't understand. And I think a
19 lot of that fear comes from they haven't experienced it, they
20 don't know enough about it, and the first thing that comes to
21 mind is this person wants to go into this bathroom for some
22 other purpose.

23 That's not the reality. The reality is this child --
24 and I'm going to use my students -- primarily I've worked with
25 female-to-male transition. These male kids just want to be

1 accepted as a male. And part of that is going into the male
2 bathroom.

3 You know, when you're -- when you identify -- I'll
4 use myself. A cisgender female identifies as a female, always
5 have. I would be mortified if someone said to me, nope, you've
6 got to use this bathroom over here. Why? I'm a female. I
7 identify as a female. Why can't I use the female bathroom?

8 So I just think it's a lack of understanding of
9 really all these kids want to do is use the restroom.

10 You know, we talk about privacy. Every bathroom,
11 male or female, has stalls. So if you have a concern with
12 privacy, you can use a stall in any -- in any case. Or if you
13 have a concern with privacy, you can use a single-stall
14 bathroom.

15 So, I mean, there are options for kids depending on
16 their level of comfort for whatever reason.

17 THE COURT: Thank you, ma'am.

18 THE WITNESS: You're welcome.

19 THE COURT: Cross-examination?

20 MR. KOSTELNIK: Thank you, Your Honor.

21 **CROSS-EXAMINATION**

22 BY MR. KOSTELNIK:

23 Q. Ms. Kefford, good to see you again. Go 'Noles.

24 A. Absolutely.

25 THE COURT: I do not understand the Florida State

1 prevalence.

2 THE WITNESS: It's a 'Nole nation apparently.

3 THE COURT: Well, it's all over this trial. I don't
4 know. All right.

5 MR. KOSTELNIK: All right. I'll be brief.

6 BY MR. KOSTELNIK:

7 Q. Principal Kefford --

8 THE COURT: For the record, my brother went there.

9 THE WITNESS: We like him.

10 THE COURT: Go ahead.

11 BY MR. KOSTELNIK:

12 Q. Principal Kefford, you've never spoken with any parents in
13 the St. Johns County School District; is that correct?

14 A. Not to my knowledge.

15 Q. You've never spoken with any of the students in the
16 St. Johns County School District; is that correct?

17 A. Not to my knowledge.

18 Q. You never spoke with any of the teachers at the St. Johns
19 County School District?

20 A. Not to my knowledge, no.

21 Q. You've never spoken with any of the St. Johns County
22 School District administrators; is that correct?

23 A. I don't believe so, no.

24 Q. And you weren't involved in creating the St. Johns County
25 School District's best practices; is that correct?

1 A. No.

2 MR. KOSTELNIK: Okay. That's all I have. Thank you.

3 THE WITNESS: Okay.

4 THE COURT: Anything else, sir?

5 MR. GONZALEZ-PAGAN: Brief redirect, Your Honor.

6 THE COURT: Couldn't be much.

7 MR. GONZALEZ-PAGAN: One question, Your Honor.

8 THE COURT: All right.

9 **REDIRECT EXAMINATION**

10 BY MR. GONZALEZ-PAGAN:

11 Q. Principal Kefford, the court had asked you a few questions
12 about what are the options discussed with transgender students
13 when they're transitioning in school.

14 A. Uh-huh (affirmative).

15 Q. I would just point you to page 41 of the critical support
16 guide, Plaintiff's Exhibit 66.

17 Could you please read that first paragraph at the
18 very top.

19 A. Yes.

20 "In all cases, the principal should be clear with the
21 students and parents/guardian, if appropriate, if the student
22 may access the restroom, locker room and changing facility that
23 corresponds to the student's affirmed gender identity."

24 Q. And you agree with that statement?

25 A. Yes.

1 Q. And is that what you do as the principal at Flanagan High
2 School?

3 A. Yes, it is.

4 Q. And what you train other school administrators as a
5 trainer in Broward County?

6 A. Yes.

7 THE COURT: All right. That's three questions, not
8 one.

9 All right. Thank you very much for your time, ma'am.
10 Appreciate it.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 THE COURT: Who is the next witness?

14 MS. ALTMAN: Your Honor, our next witness would be
15 Dr. Ehrensaft, and that's the one we have the issue.

16 THE COURT: Oh, okay. And that's the one we had held
17 over to tomorrow, but now she can't come?

18 MS. ALTMAN: Right.

19 THE COURT: Okay.

20 MS. ALTMAN: And I think we're supposed to confer I
21 think at -- after lunch, I think is what they said. So we'll
22 have more information for the court -- we're also going to
23 reach out to Dr. Ehrensaft during lunch.

24 THE COURT: Sure. That's fine. So who -- do you
25 have additional witnesses besides her?

1 MS. ALTMAN: No, we don't have additional witnesses.
2 We do have requests for admissions that we can either read into
3 the record without --

4 THE COURT: No, we won't be doing that, no. I'll --

5 MS. ALTMAN: So we can do whatever the court wants us
6 to do with those, but we have some requests for admissions that
7 we'd like to put into the record --

8 THE COURT: Okay.

9 MS. ALTMAN: -- so either as an exhibit --

10 THE COURT: Well, and that -- aren't there a couple
11 of them they wanted to get out of, right, and that we -- we
12 need to talk about that, too, so. We'll do that.

13 But other than your expert, are you done with
14 witnesses?

15 MS. ALTMAN: Yes, Your Honor.

16 THE COURT: Okay. So, Mr. Harmon, what are you going
17 to -- what's your plan?

18 MR. HARMON: Our first witness -- just kind of a
19 witness layout for today?

20 THE COURT: Yeah. I'm just wondering -- also I'm
21 wondering whether we should do something now or go to lunch or
22 what we should do. So what's your -- because obviously we're
23 not going to hear from Dr. Ehrensaft today because she's not
24 here and -- so they're pretty much done with their witnesses.
25 We'll talk about this admissions thing. So I think the case is

1 now turned over to you. So I'm just trying to figure out what
2 your -- what your plan is.

3 MR. HARMON: Yeah, I would -- if I could make a
4 recommendation.

5 THE COURT: Yeah.

6 MR. HARMON: I think figuring out what to do with
7 Dr. Ehrensaft is -- whether to just move the transcript and the
8 affidavit, her declaration, into the evidence, then that
9 constituting plaintiff resting its case, may impact some of our
10 presentation.

11 THE COURT: Okay.

12 MR. HARMON: But in terms of witnesses, our first
13 witness we intend to call is probably a little bit lengthy and
14 I would say a natural lunch break is probably good.

15 THE COURT: Okay. Who is that witness?

16 MR. HARMON: Sallyanne Smith.

17 THE COURT: Okay. All right. All right. We'll go
18 ahead and take our lunch now, then. I've got a couple of
19 things I need to do, too. So -- and y'all have got a little
20 bit of work. Why don't we go ahead and take an hour and 15
21 minutes. So 1:15. Does that give y'all enough time to talk
22 about things and do things? I can do 1:30 if you'd rather.
23 Let's do 1:30. And I'm doing that so that we've got
24 Dr. Ehrensaft nailed down.

25 We'll talk about the admissions when I come back and

1 then you'll call your witness and we're ready to go.

2 MR. HARMON: Yes, Your Honor.

3 THE COURT: If we can have all that done, that will
4 be -- that will be a good lunch period. Plus you got to eat.

5 MS. ALTMAN: Thank you.

6 THE COURT: So we will be in recess until 1:30.
7 We'll come back. We'll figure out what we're doing with the
8 expert. We'll do the admissions and any argument I need on
9 them. The plaintiff will then rest and then I'll call
10 Mr. Harmon -- call on Mr. Harmon to call his first witness.

11 MS. ALTMAN: Yes, Your Honor. We also ask that they
12 get back to us on the exhibits as well, because we want to put
13 those in before we rest.

14 THE COURT: All right. Well, they got a whole extra
15 15 minutes now. All right. So we're at 1:30.

16 COURT SECURITY OFFICER: All rise.

17 (Recess, 12:02 p.m. to 1:30 p.m.)

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

20 THE COURT: All right. Where are we? Anybody?

21 MS. ALTMAN: Good afternoon, Your Honor.

22 THE COURT: Where are we?

23 MS. ALTMAN: So I don't know, maybe we want to start
24 with the Dr. Ehrensaft issue first.

25 THE COURT: Sure. All right.

1 MS. ALTMAN: I believe we have an agreement in
2 principle and that agreement is we would submit to the court a
3 declaration that was already submitted by Dr. Ehrensaft along
4 with her deposition. I believe there's a video component to it
5 as well as a -- you know, a paper construct of it as well as
6 the exhibits that were attendant to that deposition. And the
7 plaintiff would reserve the right to call her by video if there
8 was the need, which I hope would not be the case, for any
9 rebuttal testimony, depending upon what the defendants put in
10 in their case through their experts.

11 THE COURT: Okay. Mr. Harmon, is that the agreement?

12 MR. HARMON: Yes, Your Honor. Just with two pieces
13 of clarification. The declaration would need to be the
14 declaration that I believe -- I just want to clarify. I don't
15 know if we have done that. Not the expert report that was
16 prepared by Dr. Ehrensaft, but the actual declaration that was
17 filed in the proceeding.

18 And then with respect to Dr. Ehrensaft being called
19 as a rebuttal witness, obviously, as long as it's limited to
20 rebuttal and it's during this week of trial, not at some other
21 later point in time.

22 THE COURT: Okay. All right. So do we have the
23 declaration and do we have the transcript and do we have the
24 video ready to tender?

25 MS. ALTMAN: Well, we have all of those things. What

1 we would need to do is what we did yesterday, which is prepare
2 the compendium as we did for Dr. Adkins to tender to the court
3 first thing tomorrow morning.

4 THE COURT: Okay. That's fine. All right. We'll do
5 that first thing in the morning. All right. That would be --

6 MS. ALTMAN: Would that be Court Exhibit 3?

7 COURTROOM DEPUTY: Yes.

8 THE COURT: Yes.

9 All right. That will take care of Dr. Ehrensaft. So
10 what else does the plaintiff want to do before they rest their
11 case? You mentioned the admissions. Who's handling that?

12 Okay. Isn't that what you said? I didn't make that
13 up, right? That's what you told me?

14 MS. ALTMAN: Yes --

15 THE COURT: Okay.

16 MS. ALTMAN: -- I did.

17 THE COURT: And who's in charge of it? Got to be
18 somebody in charge of it. There's eight of you over there.
19 There's got to be somebody in charge of it.

20 MS. ALTMAN: Right. It's like Winn-Dixie; everybody
21 is a manager. So just one second. We do have -- I think we
22 may have left it in the other room. So I apologize. Someone
23 will get it.

24 And I was not sure, Your Honor, whether you want us
25 to -- to submit the document and identify the ones that we

1 would want to put on in our case in chief.

2 THE COURT: Sure.

3 MS. ALTMAN: So would you like me to read into the
4 record the numbers for the ones -- what is the court's
5 preference? I can read it --

6 THE COURT: I don't know. I need to see the document
7 before I can tell you what I want.

8 MS. ALTMAN: Okay.

9 THE COURT: So somebody surely has it.

10 MS. ALTMAN: I do. It's now in my hand. The only
11 ones that we would not --

12 THE COURT: I feel like I'm catching you by surprise,
13 but this is what you --

14 MS. ALTMAN: Oh, I don't know what gives you that
15 idea.

16 THE COURT: I mean, it doesn't matter to me if you
17 put them in or not. I just thought that's what you wanted to
18 do.

19 MS. ALTMAN: I apologize, Your Honor. I was focused
20 on the exhibits, which is where I thought we were going next,
21 to try to reach the agreement, so I had not moved forward that
22 quickly. So I apologize.

23 So the only ones we would not want to introduce in
24 evidence in plaintiff's case in chief are Nos. 9 and 12. So
25 other ones we would, they would be the ones that are

1 highlighted in yellow. Other than 9 and 12.

2 THE COURT: And, Mr. Harmon, have you seen these, or
3 not?

4 MR. HARMON: I've seen them because I helped draft
5 them, but in terms of knowing which ones are standing before
6 you, I have no idea.

7 THE COURT: All right. Well, here's -- here's the
8 document, and you can look at it and you can tell me --
9 apparently the ones that are highlighted -- the ones that are
10 highlighted are the one you want, right, Ms. Altman?

11 MS. ALTMAN: Yes, other than 9 and 12.

12 MR. HARMON: So every single --

13 THE COURT: But I don't get it. 9 and 12 were
14 highlighted, right?

15 MS. ALTMAN: Right. That's what I'm saying. The
16 ones that are highlighted other than 9 and 12. 9 and 12 are,
17 in fact, highlighted, but we're not going to use that in our
18 case.

19 THE COURT: Okay. So all you're looking at,
20 Mr. Harmon, are the highlighted ones, except for 9 and 12.

21 MS. ALTMAN: Right.

22 MR. HARMON: Not 9 and 12.

23 Would Your Honor like me to write these down and hand
24 them back to you as we go through them?

25 THE COURT: Whatever. I guess I'm just looking for

1 ones you're objecting to. I don't --

2 MR. HARMON: Let's do that.

3 THE COURT: I'm not sure -- the ones in there that
4 you were objecting to before, I'm not sure if any of those are
5 included in that list or not. You filed a motion to --

6 MR. HARMON: Yeah.

7 THE COURT: -- that you -- that you said you admitted
8 something and now you regret it.

9 MR. HARMON: Yeah. It was an error. But I'm not
10 sure which of those -- I'll know which two they are when I see
11 this list.

12 THE COURT: All right. I tell you what. Why don't
13 y'all work on this on your own time.

14 What's next?

15 MS. ALTMAN: I just want to point out to the court
16 that neither of the two that he contested are highlighted.

17 THE COURT: Let's do it this way. Obviously I caught
18 you by surprise and I didn't mean to. So I tell you what.
19 You-all -- next break or something, why don't -- why don't --

20 MS. ALTMAN: Sorry.

21 THE COURT: Next break, why don't y'all figure out
22 what you're doing, tell them, and you can figure out what
23 you're doing, and then you can tell me. How about that?

24 MS. ALTMAN: Yes, Your Honor. What we'll do is make
25 a list of the ones we would like --

1 THE COURT: Whatever you do is fine with me, just --
2 okay.

3 All right. What's next? Is the plaintiff -- other
4 than these admissions, is the plaintiff going to rest?

5 MS. ALTMAN: We want to talk about some agreements
6 that are agreed to as --

7 (Counsel confer.)

8 MS. ALTMAN: So we talked to counsel and we have some
9 limited agreement on exhibits, and that's Plaintiff's Exhibit
10 113, 114, 115 --

11 THE COURT: Whoa, whoa. So these are coming into
12 evidence without objection?

13 MS. ALTMAN: Yes, Your Honor.

14 THE COURT: These are coming into evidence without
15 objection is what you're telling me?

16 MS. ALTMAN: That's my understanding, Your Honor.

17 THE COURT: Okay. What's the numbers?

18 MS. ALTMAN: 113.

19 THE COURT: Okay.

20 MS. ALTMAN: Plaintiff's 113, 114, 115, and 116.

21 THE COURT: Okay.

22 MS. ALTMAN: We had provided them a much longer list.

23 Some of those they said they would agree because they were

24 listed in the bibliography so they would admit it for the

25 purposes of saying our expert relied on it, but not

1 substantively. Obviously for our purposes, that doesn't really
2 work so we would want them admitted, so I don't think we have
3 an agreement on those.

4 THE COURT: So there is an agreement on 113, 114,
5 115, and 116?

6 MS. ALTMAN: Yes, Your Honor.

7 THE COURT: All right. Mr. Harmon, right?

8 MR. HARMON: Yes, Your Honor.

9 THE COURT: Be received without objection Plaintiff's
10 113, 114, 115, 116.

11 MR. HARMON: Yes, Your Honor.

12 (Plaintiff's Exhibits 113, 114, 115, and 116 received into
13 evidence.)

14 MS. ALTMAN: And then there's another subset, Your
15 Honor. We had filed a request for judicial notice.

16 THE COURT: Okay. And what are they?

17 MS. ALTMAN: Those identified certain documents.

18 THE COURT: I remember reading it. I don't -- do I
19 have it?

20 (Judge confers with law clerk.)

21 THE COURT: Do you have that available, Ms. Altman,
22 so I can review what you're asking me to do?

23 MS. ALTMAN: Yes. Yes, Your Honor.

24 And if my memory serves me right, I believe it was
25 fully briefed, meaning I believe they have responded.

1 THE COURT: No, I read it all. I'm just not sure I
2 have it. So I assume you do?

3 MS. ALTMAN: Yes, Your Honor.

4 THE COURT: All right. I tell you what. Why don't
5 we do the same thing with the admissions.

6 What else you got? Anything else? Because I'd
7 rather just use our time here to have witnesses while y'all --
8 you can look through the papers some other time.

9 MS. ALTMAN: Okay.

10 THE COURT: So is that going to be -- other than the
11 admissions and the judicial notice request, is the plaintiff
12 prepared to rest?

13 MS. ALTMAN: Yes, Your Honor.

14 THE COURT: Okay. Is that a yes?

15 MS. ALTMAN: I'm sorry. I said yes, Your Honor.

16 THE COURT: Okay.

17 MS. ALTMAN: Not loud enough.

18 THE COURT: It didn't sound like you really were
19 sure.

20 Okay. All right. So the plaintiff has rested.
21 And -- yes, ma'am.

22 MS. ALTMAN: I don't know --

23 THE COURT: So the answer was no.

24 MS. ALTMAN: No, it's not no. It's a maybe. It's --
25 the only question I have, for Dr. Adkins, you wanted a proffer.

1 I forgot to ask if you want the same --

2 THE COURT: Yeah. I'll take one -- if we're still in
3 session in the morning, which it sounds like we might be, I'll
4 take five minutes from each of you about the doctor. That
5 would be fine.

6 MS. ALTMAN: Okay.

7 THE COURT: Do you pronounce it Rivaux?

8 MS. RIVAUX: Yes, Your Honor.

9 THE COURT: Okay. You're the proffer person?

10 MS. RIVAUX: Yeah.

11 THE COURT: Okay. Yeah, I'll be happy to hear a
12 proffer. And, Mr. Harmon, you get -- you or somebody on your
13 team gets five minutes of rebuttal proffer.

14 Okay. So other than admissions and the judicial
15 notice, both of which are going to appear at some point when
16 everybody is ready, and the proffer of the expert tomorrow,
17 which will be accompanied by the affidavit of the witness, the
18 deposition, and the video and exhibits that go with it, is the
19 plaintiff finished presenting its case in chief?

20 MS. ALTMAN: Yes, Your Honor.

21 THE COURT: Okay. So now, Mr. Harmon, I turn to the
22 school district. And your first witness is whom?

23 MR. HARMON: Your Honor, I have two procedural
24 matters if I could address quickly.

25 THE COURT: Sure. Yeah.

1 MR. HARMON: I don't know procedurally, since
2 plaintiff has not rested in this case, if now is the
3 appropriate case to move for involuntarily dismissal for
4 judgment on the record.

5 THE COURT: Sure. Sure.

6 MR. HARMON: And in --

7 THE COURT: I mean, I'll just assume that the
8 expert's testimony is in and so forth. It's fine. Go ahead.

9 MR. HARMON: I'll just be brief since Your Honor is
10 indicating we want to move on. We would just submit that based
11 on the evidence that has been forwarded by plaintiff in
12 plaintiff's case in chief, that plaintiff has failed to
13 establish a cause of action or a harm under Title IX or the
14 Equal Protection Clause and has not called any witness or
15 introduced any documentary exhibit to demonstrate that the
16 defendant violated any law in this proceeding.

17 THE COURT: So under Rule 52(c) of the Federal Rules
18 of Civil Procedure, if a party has been fully heard on an issue
19 during a non-jury trial and the court finds against the party
20 on that issue, the court may enter judgment against the party
21 on a claim or defense. The court may, however, decline to
22 render any judgment until the close of the evidence.

23 The court here declines to render any judgment until
24 the close of the evidence.

25 All right. Who is your first witness?

1 MR. HARMON: Sallyanne Smith, Your Honor.

2 THE COURT: Okay.

3 MR. SNIFFEN: May I get a point of clarification from
4 the other side? I just want to make sure when we said that the
5 proffer would be for Dr. Adkins, it's for Dr. Ehrensaft.

6 THE COURT: Yes. I'm sorry. I think the question
7 was: Are we going to be able to do the same ones for Dr. --
8 are we going to be having a similar procedure for Dr. Ehrensaft
9 that we did for Dr. Adkins?

10 MR. SNIFFEN: Yes, sir.

11 THE COURT: And the answer is yes.

12 MR. SNIFFEN: Thank you.

13 THE COURT: How you doing?

14 THE WITNESS: Hi. Good. How are you?

15 COURTRROOM DEPUTY: Do you solemnly swear that the
16 testimony you are about to give before this court will be the
17 truth, the whole truth, and nothing but the truth, so help you
18 God?

19 THE WITNESS: I do.

20 COURTRROOM DEPUTY: Please state your full name and
21 spell your last name for the record.

22 THE WITNESS: Sallyanne Smith. It's S-m-i-t-h.

23 COURTRROOM DEPUTY: Thank you, ma'am. Please be
24 seated.

25 THE WITNESS: Thank you.

1 **SALLYANNE SMITH, PLAINTIFF'S WITNESS, SWORN**

2 **DIRECT EXAMINATION**

3 BY MR. HARMON:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. Could you please state your name for the record if you
7 have not already done so?

8 A. I already have, but I'll do it again. Sallyanne Smith.

9 Q. And, Ms. Smith, where do you currently reside?

10 A. St. Augustine, Florida.

11 Q. And how long have you resided in St. Augustine, Florida,
12 approximately?

13 A. Approximately 20 years.

14 Q. Okay. And if we could, I want to talk a little bit about
15 your educational background.

16 Could you kind of tell the court your college and
17 postcollege training, if any?

18 A. Yes. I had -- I received my teaching degree and started
19 out as an elementary teacher and then I went back and got my
20 master's degree in administration supervision and moved into
21 administration.

22 Q. So when did you get your teaching degree?

23 A. 1970 -- nope, 1973.

24 Q. Okay. And where did you get that from?

25 A. Butler University in Indianapolis.

1 Q. Did you say a master's degree?

2 A. I got my master's degree from the University of Central
3 Florida in Orlando.

4 Q. What area was your master's degree in?

5 A. Education administration supervision.

6 Q. When did you get your master's degree?

7 A. I think it was about 1980 -- '80. Right in there
8 somewhere.

9 Q. And did you say there was a third thing else after your
10 master's that you obtained?

11 A. Well, I received many certifications so I could go on.
12 And I was training teachers at the time. So I received some
13 additional certifications, *7 Habits* -- Covey's *7 Habits*,
14 Myers-Briggs, working with student teachers. A lot of things
15 in working with the adults.

16 Q. Okay. Are you currently licensed by the Department of
17 Education in any areas?

18 A. Yes.

19 Q. Okay. What are your current certifications?

20 A. K through -- I think that goes up to eight and early
21 childhood and administration supervision.

22 Q. So K through eight, is that one?

23 A. Yes.

24 Q. And then what were the other ones?

25 A. Early childhood education.

1 Q. Okay.

2 A. And then administration supervision.

3 Q. Okay. Are you currently employed?

4 A. No. I'm retired.

5 Q. When did you retire?

6 A. In June of 2016.

7 Q. Okay. If you wouldn't mind, if you could, take us through
8 your employment experience in the education field.

9 A. Okay. I started as an elementary schoolteacher. Then I
10 became a curriculum coordinator in Duval County. Then I became
11 an assistant principal at an elementary school.

12 Then I joined the district staff in Duval County
13 professional development and I became a visiting professor at
14 the University of North Florida for three years training
15 teachers.

16 Then I came down to St. Johns County and became the
17 prekindergarten coordinator. And then I was promoted to
18 director of special programs, which was a catch-all for lots of
19 different programs, the Head Start, Title I programs, a lot of
20 at-risk programs.

21 And then I became director of student services and
22 that's where I was for the last 11 years of my career.

23 Q. Okay. So approximately how long were you an elementary
24 teacher out of the gate?

25 A. I think six years.

1 Q. Okay. And then a coordinator after that?

2 A. I was a curriculum coordinator at an elementary school.

3 Q. Okay. For about how long?

4 A. I did that for two years.

5 Q. Then did you say principal after that?

6 A. I became assistant principal at an elementary school in
7 Duval County.

8 Q. How long was that for?

9 A. Two years -- yes, two years. Then I was asked to join the
10 professional development team at the district. So I went down
11 there and then I was -- was with them, I think, a year or two
12 and then three years at University of North Florida.

13 Q. Training teachers, is that what --

14 A. Yes.

15 Q. So then after University of North Florida, is that when
16 you came to St. Johns County?

17 A. Yes.

18 Q. So that would have been approximately 1996?

19 A. I would say right in there, within a year or so.

20 Q. And how long did you serve as a pre-K coordinator?

21 A. I think it was about four years.

22 Q. And what does a pre-K coordinator do?

23 A. It was the early childhood programs that we had in the
24 county at that time. It was mostly -- it was before the day of
25 VPK, which is voluntary prekindergarten, and the State wasn't

1 supporting it or wasn't funding it at that time, so it was all
2 the prekindergarten programs preparing children for
3 kindergarten.

4 Q. Okay. And how long did you do that for in that position?

5 A. I think about four years.

6 Q. Okay. And then the next, if I understood you, you became
7 a director --

8 A. Of special --

9 Q. -- of special programs?

10 A. -- programs, yes.

11 Q. What is -- can you kind of just give an overview of that
12 position?

13 A. It was kind of a catch-all for all the departments -- all
14 the programs that didn't fit specific departments. So I had
15 the Title 1, which was all the low income programs. I had the
16 Head Start programs. I had all the early childhood programs.
17 I had marine science. Just kind of a mismatch -- mix/match of
18 different programs that just didn't fit in other departments
19 that were mostly all non-academic programs. So I was in the
20 area of working with students on non-academic needs.

21 Q. Okay. How long did you serve in that role?

22 A. I think about two or three years.

23 Q. Approximately?

24 A. Yes.

25 Q. And then if I understood, until your retirement, you had

1 served as the director of student services for 11 years?

2 A. Yes. About 11 years, yes.

3 Q. Okay. Can you kind of give an overview of -- what is
4 student services?

5 A. Student services addresses all the at-risk programs and
6 students in the county. Again, it was all the non-academic
7 issues. I had all the homeless children. We had over 800 when
8 I retired. All the students that were on probation. All the
9 students who had mental health issues. I was over all the
10 nurses in the schools at that time, so all of the physical
11 conditions that students had. I also had -- was in charge of
12 all the guidance counselors at that time and charter schools.
13 And I'm trying to think what else. That's probably it.

14 And I would just -- every once in a while, our
15 superintendent would just give me something else that needed to
16 be handled with -- mostly with at-risk students.

17 Q. What about transgender students, did you work with
18 transgender students as a director of student services in any
19 capacity?

20 A. I did.

21 Q. Okay. When you were in your different positions, let's
22 just focus on the recent time frame, who was your supervisor in
23 2016?

24 A. In 2016, I believe that was when Cathy Mittelstadt came
25 on.

1 Q. Okay. Do you recall who your supervisor was in 2015?

2 A. Yes. It was Tim Forson.

3 Q. Okay. Do you recall approximately how long Cathy
4 Mittelstadt was your supervisor, the time period?

5 A. I believe it was just that one year.

6 Q. And when you say "year," does it go by school year?

7 A. School year, yes.

8 Q. That would have been the 2015-2016?

9 A. Right. I think she began July 1st, and that was the
10 calendar year for the school district, until June 30th.

11 Q. In your -- when you were working as a director of student
12 services, did you work with any particular individuals at the
13 district in terms of positions?

14 A. Yes. I worked with many of the different district
15 directors, executive directors, social superintendents and the
16 superintendent occasionally.

17 Q. Did you work with -- with anyone in school-based
18 situations?

19 A. Yes. I worked with administrators, guidance counselors,
20 occasionally teachers, but usually they would filter their
21 concerns to the administrators and then I would get a call from
22 the administrators.

23 Q. Have you ever heard the word "transgender" before?

24 A. Yes.

25 Q. What does, to your understanding, the word "transgender"

1 mean?

2 A. Well, I had attended a conference and that's where I got
3 the definition that I kind of kept in my head, that it was a --
4 a person who had the biological sex -- one biological sex of
5 one gender and the brain of the other gender. That's the way
6 it was explained to us at the conference.

7 Q. Okay. Have you ever heard the acronym LGBT?

8 A. Yes.

9 Q. Do you know what that stands for?

10 A. You're going to ask me all these things after I'm retired.

11 Q. Is it lesbian, gay --

12 A. Lesbian, gay -- let's see, LGBT --

13 Q. -- transgender and questionable?

14 A. Yeah. I really do know that. I've just been away for a
15 while.

16 Q. In your time when you were employed with the St. Johns
17 County School District, have you ever had any involvement
18 working with transgender and LGBTQ student issues as a whole?

19 A. Yes.

20 Q. Okay. In what capacity were you in when you worked on
21 those issues?

22 A. Well, when I -- an administrator had an issue with a
23 transgender or even one of the gay or lesbian students, they
24 often would call me and ask my advice on how to handle certain
25 situations.

1 Q. Okay. And you mentioned before a conference. Could
2 you -- what did you mean by you went to a conference?

3 A. There was a conference in Fort Lauderdale. It was a
4 national LGBTQ conference. And I sent one of my mental health
5 therapists the first year that we started working with the
6 transgender population and with the lesbian/gay community a
7 little bit more. And then the second year, I went and took
8 another one of my counselors. And then the third year, Cathy
9 Mittelstadt went with another one of my staff who handles the
10 bullying. So we really tried to become informed about what we
11 were dealing with.

12 Q. Okay. So do you recall approximately what year it was
13 that you started working on LGBTQ student issues?

14 A. I think the first call was from a principal -- it was in
15 2012.

16 Q. And do you recall when you went to a conference, what
17 year?

18 A. 2014, I believe.

19 Q. Okay. And then do you recall the year that anyone else
20 from the district that you worked with went to LGBTQ student
21 conferences?

22 A. Yes. I sent my mental health counselor in 2013. I went
23 in 2014 and I sent two other people in 2015.

24 Q. Okay. Did you do any independent research yourself, aside
25 from conferences, to educate yourself on LGBTQ student issues?

1 A. A lot. I pulled up many, many articles. I went to the --
2 to the clubs at the school, the GSA clubs and talked to
3 students. I contacted JASMYN, which is a group in Duval County
4 that works with those students and they came down and met with
5 me.

6 We tried to gather every bit of information we could
7 so we could support those children.

8 Q. At that time, what were some of the transgender student
9 issues you had learned about?

10 A. Well, the first one that I was confronted with went --
11 from a principal was a transgender student that wanted to be
12 called a different name, wanted to be called the opposite
13 gender name and wanted use of a different -- the other pronoun.
14 So that was my first -- the first thing that came to me that I
15 needed to handle.

16 So I did contact our school district attorney to just
17 get his take on what he suggested I should do. I called other
18 people that were in my position in other counties and asked
19 what they were doing. I read a lot of articles, talked to my
20 mental health counselors. We spent a lot of time trying to
21 figure out where to go with this.

22 Q. Okay. And what did you ultimately do with respect to that
23 first issue on pronoun use?

24 A. Well, I went to my supervisor, who was Mr. Forson at the
25 time, and I just explained to him that this was up and coming.

1 And he spoke with the superintendent and that's the way the
2 hierarchy normally worked. I would go to my supervisor and he
3 would go to the superintendent. And I did get a call from the
4 superintendent at that time, Dr. Joiner --

5 Q. And --

6 A. -- and he --

7 Q. I'm sorry. I didn't mean to interrupt you.

8 A. No, that's okay.

9 He asked me if -- he just wanted me to explain what
10 the issue was. And I explained this was kind of a dilemma.
11 The different principals didn't know how to handle this and
12 some were doing one thing and some were doing the other because
13 then we started getting other calls. And I just recommended to
14 Dr. Joiner that we come up with some kind of practices and he
15 needed to get something out to the school saying this is the
16 way this should be handled in the schools.

17 Q. And that's with pronouns?

18 A. Yes.

19 Q. Okay.

20 A. And he did that.

21 Q. And ultimately did you give any advice about how to
22 address that particular student's request to be identified by
23 their pronoun?

24 A. He asked me what I thought and I just explained to him
25 what all I had learned at the conference and that I -- he asked

1 me what I thought about calling them the other name and all
2 that. And I said it wasn't impacting any other students,
3 wasn't hurting anybody. I felt in my mind it was okay, but it
4 was his decision.

5 So he originally -- eventually put out a directive to
6 the principals saying that they should honor that and call the
7 student by the other name and use the other pronoun.

8 Q. So you were the director of student services for 11 years.
9 What was the school district's policy with respect to bathroom
10 use in the school district?

11 A. Well, it was basically that the biological sex boys use
12 the boys' room and biological sex girls use the girls' room.
13 We never had an issue before that. Nothing that I dealt with.

14 Q. And you were employed by the school district for how many
15 years?

16 A. By St. Johns County?

17 Q. Yes.

18 A. I think 17 years.

19 Q. In your approximate 17 years in the school district, did
20 the district ever allow students to use the bathroom that was
21 different from their biological sex?

22 A. Just occasionally the neutral bathroom if a child had a
23 physical disability or something like that. We weren't dealing
24 with the transgender issue at that time, but there were other
25 students that just needed privacy, and that was always allowed.

1 Q. Were biological boys allowed to go into the biological
2 girls bathroom?

3 A. No.

4 Q. Do you know who Laura Barkett is?

5 A. Yes.

6 Q. And, I'm sorry, what about biological girls going into the
7 biological boys bathroom?

8 A. No.

9 Q. And was it that way -- that way your entire time at the
10 school district?

11 A. Yes.

12 Q. And who is Laura Barkett?

13 A. Laura Barkett is a mental health therapist that I had
14 hired, and she's a part of the student services department.

15 Q. Did she work with you in any capacity with respect to
16 transgender students and LGBTQ student issues as a whole?

17 A. Yes. She had a great deal of knowledge about the
18 transgender students and any -- anyone that fell into that
19 LGBTQ group of students. And we had many, many meetings. And
20 she was very helpful to me in just kind of learning about it
21 and giving her advice.

22 Q. When you say we had many, many meetings, was there ever a
23 time that you focused more specifically on LGBTQ student
24 issues?

25 A. Yes.

1 Q. What do you recall about that?

2 A. Well, the more questions that were coming in, the more I
3 realized we needed to come up with some policy because we
4 didn't have any. So we formed a task force group and I
5 invited -- I tried to get every perspective at that table. So
6 we had some district administrators, we had some principals, we
7 had some attorneys, we had guidance counselors, mental health
8 therapists. We all sat around the table and I explained this
9 was an issue that we needed to start looking into and to come
10 up with a policy for that.

11 Q. Do you recall approximately the time frame of that, when
12 that first started?

13 A. I'm thinking around 2013 or so. It was after I started
14 getting the calls in 2012 and I kind of moved into the next
15 school year.

16 Q. In any of your time in working with -- you called it a
17 task force?

18 A. Yes.

19 Q. Were there any school-based meetings to address any
20 transgender issues?

21 A. Yes.

22 Q. What do you recall about those?

23 A. I sent some of my staff members out to the school. They
24 met with the guidance counselors. They went to some of the --
25 the gay and lesbian clubs. They had different names at

1 different high schools. But they sat in. I went to several of
2 them myself. We talked with the students.

3 They brought a lot of the information back. I sent
4 e-mails out to the principals and to the assistant principals,
5 the deans and the guidance counselors and just said we're
6 getting ready to put together some policies, please send any --
7 any information that you would like to the table, come to the
8 meeting if you would like, but we need to get your opinion on
9 this.

10 Q. Okay. Is there ever a time you work with the district on
11 something called a focus group?

12 A. Yes.

13 Q. What was the focus group?

14 A. After we had the -- it was a very large group of people.
15 So we decided at that point to kind of narrow the scope and
16 have what we call a focus group of maybe six or eight people
17 who would get the information from others and bring it to the
18 table and become a working team with me. It was going to take
19 more time. So we just kind of narrowed the -- the group at
20 that time.

21 Q. Okay.

22 MR. HARMON: Your Honor, with the next -- just for
23 housekeeping, I've got a lot of exhibits to go through with
24 this particular witness.

25 THE COURT: Okay.

1 MR. HARMON: So it will be --

2 THE COURT: And they're not admitted already?

3 MR. HARMON: No.

4 THE COURT: Okay. All right.

5 MS. ALTMAN: Your Honor, are those the ones that were
6 the foundation exhibits?

7 THE COURT: I admitted a bunch of them this morning.
8 So do you have a record of what was admitted this morning?

9 MR. HARMON: Yes.

10 MS. ALTMAN: We do. And if my memory serves me
11 right, I thought they were admitted and then we had an issue
12 about the foundation and you said just to object at the time if
13 it wasn't properly laid.

14 THE COURT: Right. But I don't know if this -- I
15 don't know if these are the same exhibits.

16 MR. HARMON: These are not. There's some that are,
17 some that are not, but I'd like to --

18 THE COURT: That's fine. Go ahead.

19 MR. HARMON: When we get to those, I think I'll hold
20 it out.

21 THE COURT: All right.

22 Is it a copy of it? I'll just take the whole set.

23 MR. HARMON: That's what I figured would be easier.

24 THE COURT: And I assume you'll show your opponents
25 as well?

1 MR. HARMON: Absolutely.

2 (Counsel confer.)

3 BY MR. HARMON:

4 Q. I just handed you a document that I've marked as
5 Defendant's Exhibit 27 and would like to see if you recognize
6 that document.

7 A. Yes, I do.

8 Q. And how do you recognize that document?

9 A. I sent this e-mail to high school principals and to who
10 was my supervisor at that time -- no, actually, I'm sorry,
11 Cathy Mittelstadt was a principal at that time. So, yes, these
12 were the high school principals and I was letting them know
13 that we were -- that we were joining a task force.

14 Q. Does it appear to be a true and accurate copy of the
15 e-mail?

16 A. Yes.

17 MR. HARMON: At this time, I'd like to move in
18 Defendant's Exhibit 27.

19 THE COURT: Be received without objection.

20 (Defendant's Exhibit 27 received into evidence.)

21 BY MR. HARMON:

22 Q. Okay. So this an e-mail from you to high school
23 principals dated September 23rd, 2014?

24 A. Yes.

25 Q. What was the purpose of sending this e-mail at that time?

1 A. Well, it was to communicate with them that this was an
2 issue that we were going to be addressing and I -- I don't know
3 who all has a copy, but it does say on here that I'd like to
4 hear from the club sponsors so we can understand what we can do
5 to support these students.

6 Q. And the individuals that received this, Cathy Mittelstadt,
7 Kyle Dresback and the rest of those, who were they?

8 A. At that time, they were high school principals. These
9 were all the high schools.

10 Q. Okay.

11 THE COURT: Who has got the -- who's -- which counsel
12 is handling this witness?

13 MR. LAPOINTE: I am, Your Honor.

14 THE COURT: All right. I'm looking through this
15 stuff and it appears to be all documents that have to do with
16 the work that the witness is testifying about. And are you
17 aware of any objections you're going to have to any of these?

18 (Counsel confer.)

19 MR. HARMON: I'll represent, Your Honor, I provided
20 the list of these yesterday evening at about 9:30.

21 THE COURT: In the evening?

22 MR. HARMON: Yes. We don't do the mornings. Well,
23 we do, but we're here.

24 THE COURT: So have you looked through these,
25 Counsel, or not? Do we have to do them one by one?

1 MS. ALTMAN: Well, my understanding -- that's why I
2 raised the issue a minute ago was my understanding is some of
3 these are ones that he had not given us and he's just going to
4 be calling out and some are.

5 The ones that he had provided us, we put on the
6 record already earlier that we agreed subject to foundation to
7 that when we had that list if we need it, but there's others
8 he's calling out that were not provided, so we don't know.

9 MR. HARMON: Your Honor, every document on this list
10 was e-mailed last night at 9:30, every document in this stack.
11 And I received feedback to some, but not all.

12 MS. ALTMAN: Okay. Then I misunderstood what you
13 just said. I thought you said you were calling out some --

14 THE COURT: Let's just go. Let's just go, then, if
15 we can't -- let's just go.

16 MR. HARMON: Okay.

17 THE COURT: I mean, I'm looking at these -- I don't
18 really see anything that is objectionable assuming the witness
19 is going to say she used those materials in her work.

20 MR. HARMON: Your Honor, I can short-circuit that.
21 There's some minutes from focus group meetings and then there's
22 materials that Ms. Smith is going to testify that she saw and
23 that were reviewed at some point by the district in leading up
24 to creating the best practices. That's what I intend to do
25 with most of this stack with the exception, I think, of -- the

1 best practices are in there. We may have a little more inquiry
2 on that, and some e-mail -- couple of e-mails.

3 MR. LAPOINTE: Your Honor, if I may just add, we're
4 not -- we're not here to object on e-mails which Ms. Sallyanne
5 Smith was an author or recipient on. Obviously if there's
6 something we haven't looked at, we will certainly consider it.
7 But in terms of those e-mails, we're not objecting to defendant
8 moving them in even though there are some, you know, peripheral
9 hearsay that we may have a problem with, but we're not
10 objecting to those. But there are certain things -- what we
11 don't want is certain documents to come in as part of the pile
12 under the guise of, well, those things were reviewed. Those,
13 we want a foundation to be laid.

14 THE COURT: Fine. We'll just do it the old-fashioned
15 way. Let's go.

16 BY MR. HARMON:

17 Q. So I think we were on 66. Let me double-check that. Does
18 that sound right? Yes. 66.

19 Can you take a look at Exhibit 66 and see if you
20 recognize that?

21 A. Yes, I do.

22 Q. And what is Exhibit 66 comprised of?

23 A. It was about scheduling another meeting for LGBTQ. And
24 then I heard back from different personnel at the school and I
25 think their response -- some of their responses are on here.

1 I sent -- the original message went to the principals
2 and now I was going to the club sponsors, and that's on here,
3 the e-mails that I sent to them as well.

4 And then the last one is a gentleman from our ESE
5 department who sent information because he was not able to
6 attend the meeting.

7 Q. Did you receive that e-mail?

8 A. Yes.

9 MR. HARMON: Your Honor, I'd like to move in
10 Defendant's Exhibit 66.

11 MR. LAPOINTE: Without objection, Your Honor.

12 THE COURT: Be received.

13 (Defendant's Exhibit 66 received into evidence.)

14 BY MR. HARMON:

15 Q. Did the task force, in working on LGBTQ student issues,
16 did it involve club sponsors at the school levels?

17 A. Yes.

18 Q. Okay. What specifically do you recall about the task
19 force's involvement at the school level?

20 A. Well, they brought a lot of their perspectives and their
21 views. Obviously different perspectives from different people.
22 That was why I tried to have a diversity of people at the
23 table. So I had some district personnel people that were
24 superior to my position, attorneys that gave us some
25 information, club sponsors telling us how the students felt

1 about certain things, and a mental health therapist that talked
2 about any concerns that they felt this would present for
3 students.

4 Q. The next document I'm going to ask if you have -- I'll
5 just bring them each to you. It's going to be Exhibit 90.

6 MR. HARMON: Defendant's Exhibit 90, which, I
7 believe, Your Honor, might be -- yes.

8 THE COURT: I got it.

9 BY MR. HARMON:

10 Q. Just see if you recognize that document.

11 A. Yes. This was the minutes from the focus group. It lists
12 everyone who attended. And then I had a secretary who sat
13 there and really just put down the different comments that were
14 made by different people.

15 Q. Okay. Were you at this meeting?

16 A. Yes.

17 Q. Have you seen these minutes before today?

18 A. Yes.

19 Q. Did these -- does this document appear to be a true and
20 accurate copy of the minutes from the meeting?

21 A. Yes.

22 MR. HARMON: Your Honor, I'd like to move Defendant's
23 Exhibit 90 into evidence.

24 MR. LAPOINTE: I would object to relevance on this,
25 Your Honor.

1 THE COURT: What's your objection?

2 MR. LAPOINTE: Relevance.

3 THE COURT: Meaning what?

4 MR. LAPOINTE: Well, we don't know what this has to
5 do with the issues in the case.

6 THE COURT: All right. Mr. Harmon, what's the
7 relevance?

8 MR. HARMON: Well, one of the allegations being made
9 in this case is that the -- the allegation in this case is that
10 the school district prepared a policy that was intentionally
11 discriminatory against a certain segment of the population and
12 arguments about the way that the school district handled a
13 transgender student. And I certainly think in light of the
14 fact that in the plaintiff's case in chief, we spent a lot of
15 time talking about how --

16 THE COURT: What's this doing for me? What are you
17 trying to establish?

18 MR. HARMON: What I am trying to establish is what
19 the school district did in preparing the best practices
20 document.

21 THE COURT: So this is all part of the run-up to the
22 best practices?

23 MR. HARMON: This is all part of --

24 THE COURT: The objection is overruled. Be received.
25 So that's Exhibit 90.

1 (Defendant's Exhibit 90 received into evidence.)

2 BY MR. HARMON:

3 Q. So this is October 8, 2014, when this meeting happened?

4 A. Yes, sir.

5 Q. Okay. At that meeting, you know, do you recall what the
6 purpose of it was with respect to LGBTQ students?

7 A. Yes. It was to decide what we'd needed to do in order to
8 develop some kind of best practices or policy for St. Johns
9 County.

10 Q. Okay. The next document I'm going to hand you is what's
11 been previously marked as Defendant's Exhibit 69 and see if you
12 recognize that document.

13 A. Yes. This is the agenda for our task force meeting.

14 Q. Okay. And were you present at that meeting?

15 A. Yes. I facilitated the meeting, yes.

16 Q. And does this appear to be a true and accurate copy --

17 THE COURT: No objection, right?

18 MR. LAPOINTE: No, Your Honor.

19 THE COURT: Okay. Be received.

20 MR. HARMON: Thank you.

21 BY MR. HARMON:

22 Q. So at that meeting --

23 THE COURT: 69. Go ahead.

24 MR. HARMON: Sorry, Your Honor.

25 BY MR. HARMON:

1 Q. -- November 5th of 2014, was one of the things that the
2 task force looked at is how other school districts had been
3 handling LGBTQ student issues?

4 A. Yes.

5 Q. So at this time, you're about a year or so into really
6 focusing on LGBTQ student issues?

7 A. Yes.

8 MR. HARMON: The next document I'm going to approach
9 the witness with is Exhibit 70.

10 MR. LAPOINTE: No objection, Your Honor.

11 THE COURT: Be received, 70.

12 (Defendant's Exhibit 70 received into evidence.)

13 BY MR. HARMON:

14 Q. Okay. Can you talk -- this is a November 5th, 2014,
15 meeting titled "LGBTQ Focus Group." Do you see that?

16 A. Yes, sir.

17 Q. And the attendees at this meeting that -- in addition to
18 yourself, who are the other individuals that we see on there?

19 A. Mental health therapists, my coordinator for bullying.
20 Kathleen Emerson was also a mental health intern we had on
21 staff. I had a person from the guidance department, both at
22 the district and several from high schools. And then the
23 St. Augustine High was a club sponsor for one of the gay and
24 lesbian groups there. And the ones from Creekside, I believe
25 those were also teacher sponsors, if I remember correctly.

1 Q. Okay. And was this meeting to address LGBTQ student
2 issues?

3 A. Yes. It was specifically for that purpose.

4 Q. Okay. If you look at the last page of the document on the
5 back, it says, "Proceed in phases."

6 A. Yes.

7 Q. So at this time, it looks like phase 1 is research and
8 information gathering; is that right?

9 A. That's correct.

10 Q. And then obviously we can see what else is on here, but
11 were you-all at the time looking at how other school districts
12 in the state of Florida had handled these issues?

13 A. Yes.

14 Q. Was every school district the same?

15 A. No.

16 MR. HARMON: The next, Your Honor, I'm going to
17 approach the witness with is Defendant's 67.

18 BY MR. HARMON:

19 Q. Does this document look familiar to you?

20 A. Yes, it does.

21 Q. What is this document?

22 A. This was another meeting of our task force. We had had a
23 plan of action in phases and then certain people were to come
24 back with the information that I had asked them to gather.

25 Q. Okay. Does this appear to be a true and accurate copy of

1 the agenda?

2 A. Yes, it is.

3 MR. HARMON: Your Honor, I'd like to move Defendant's
4 Exhibit 67 into evidence.

5 MR. LAPOINTE: Your Honor, we'd object on that one
6 simply because on the back of that page, there are
7 handwritten -- there are handwritten statements that are made
8 and there's no reliability as to those. We'd object on hearsay
9 and relevance because we don't know what those are.

10 MR. HARMON: So we're only looking at the front side
11 of -- I'm sorry, 151, just the agenda. There's no back. For
12 some reason, you have a back, but I'm only looking at the front
13 anyway.

14 MR. LAPOINTE: Then without objection, Your Honor.

15 THE COURT: Be received, 67.

16 BY MR. HARMON:

17 Q. So who -- looking at this document, who is Megan Wall?

18 A. She is an attorney for the community legal aid in
19 St. Johns County. And she's been involved in several of our
20 mental health issues. She would come in and sit on different
21 committees as a consultant, so I asked her to be a part of this
22 one.

23 Q. Was she an employee of the St. Johns County School
24 District?

25 A. No.

1 Q. And it lists on here Broward County Public Schools
2 critical support guide. Do you see that?

3 A. Yes.

4 Q. Was that one of the documents that the LGBTQ task force
5 had seen in the information-gathering state?

6 A. Yes. We brought that back from the conference and so we
7 shared it with the task force.

8 Q. Okay.

9 (Counsel confer.)

10 MR. HARMON: Your Honor, I'm going to approach the
11 witness with Defendant's Exhibit 68. I can certainly lay the
12 foundation, but I'm going to ask it be introduced into
13 evidence.

14 THE COURT: Any objection?

15 MR. LAPOINTE: None, Your Honor.

16 THE COURT: Be received, 68.

17 BY MR. HARMON:

18 Q. Okay. What are we looking at here? What is this
19 document?

20 A. This is the minutes of another focus group that was held
21 later on in February. We continued to meet, so, yeah, these
22 were more minutes.

23 Q. So February 8, 2015; is that correct?

24 A. That's right.

25 Q. And the names at the top are all these individuals that

1 were present at that meeting?

2 A. Yes.

3 Q. Okay. And during that meeting, were bathroom use issues
4 discussed?

5 A. Yes, they certainly were. I'm trying to remember. Yes.

6 Q. If you need to look at the document, it's okay.

7 A. Yeah.

8 Q. If we're looking at the -- page 1 of the document -- see
9 where it says "Discussion"?

10 A. Yes.

11 Q. Okay. It says -- see where it says -- fifth line down, it
12 says, "Provide choices for bathrooms but can't be required to
13 use." Okay?

14 A. Yes.

15 Q. At that time -- here we are in 2015 -- was the student --
16 was the school district's practice -- excuse me, policy at that
17 time still to require students to use the bathroom of their
18 biological sex?

19 A. We had also offered to use the neutral bathrooms at that
20 point.

21 Q. Okay. But in terms of the -- the policy, was that a
22 written policy?

23 A. No.

24 Q. Okay. Were transgender students forced to use
25 gender-neutral bathrooms?

1 A. No, not at all. In fact, we encouraged them to use the
2 neutral for their privacy and their comfort.

3 Q. Okay. Do you recall about how long this meeting was?

4 A. How long it lasted, you mean?

5 Q. Yeah. Just roughly.

6 A. Oh, gosh. I would say probably two hours. It was a long
7 meeting. You can kind of tell by the minutes everything that
8 was discussed.

9 Q. Okay. And was this part still of information gathering?

10 A. Yes. But it was also -- yes, it was. They were bringing
11 back information, sharing thoughts, bringing other people's
12 thoughts into it. And we just -- we were trying to be really
13 proactive as to what we could do to prevent any problems coming
14 in the future, so we were trying to think of all the different
15 kinds of scenarios that could occur depending on the policy we
16 would come up with.

17 Q. Did y'all talk about pronouns at that meeting, use of
18 pronouns?

19 A. I'm thinking we did. And I guess I have to look real
20 quick here to see.

21 Q. It's okay.

22 A. Yeah. By that time, the directive had already gone out
23 that they were to use the pronoun of their gender identity. So
24 that wasn't an issue anymore. It may have come up in here.
25 Again, I'd have to just go through and remember everything that

1 was discussed.

2 Q. That's okay. But these minutes, do they just reflect some
3 of the topics that were discussed during that meeting?

4 A. Yes. Yes.

5 Q. Okay.

6 MR. HARMON: Your Honor, I'm going to approach the
7 witness with what's been previously marked as Defendant's
8 Exhibit 28. I'm going to request to move that into evidence,
9 but -- if I could move it in at this time.

10 MR. LAPOINTE: Without objection, Your Honor.

11 THE COURT: Be received.

12 BY MR. HARMON:

13 Q. Okay. So this looks like an e-mail from you to a list of
14 individuals on March 3rd, 2015?

15 A. Yes.

16 Q. Okay. Who are those individuals? Was it a -- I guess if
17 you could describe --

18 A. They were people that were -- had been serving on the
19 focus committee.

20 Q. Okay. This is still an e-mail to the focus group?

21 A. Yes.

22 Q. And is this a -- it says in the e-mail, "Attached is the
23 recommendation and backup meeting resulting from our last
24 meeting. Please review and respond by the end of the workday."

25 A. Yes. What had happened, I took all the information, met

1 with my staff, and we put together recommendations that would
2 go to the executive cabinet because they're the ones that made
3 the ultimate decision. I just gathered the information and
4 then was moving on to my supervisor for review.

5 Q. So let's talk about that. The executive cabinet, who
6 is -- what is the executive cabinet?

7 A. It's comprised of the superintendent, the assistant or
8 associate superintendent, I'm not sure what they call them
9 right now, any of the executive directors. I believe they have
10 a principal who sits on there as well. But they're really the
11 decision-making group for the school district.

12 Q. Okay. And did the task force -- does the task force
13 create best practices?

14 A. Just recommendations. They didn't actually put together
15 the practices. We gathered all the information, put it
16 together, and then, of course, I had to review it and then pass
17 it on to my -- my supervisor who would then take it to the
18 executive cabinet for them to discuss and then make their final
19 decision.

20 Q. And how many individuals do you remember approximately
21 were on the executive cabinet?

22 A. Oh, gosh, I'd have to guess. But maybe 14, 15, somewhere
23 in that -- I would -- I was not on the executive cabinet, so
24 I'm not sure, but I would say probably about that many.

25 Q. Okay. And now, if I read your e-mail correctly, this is a

1 recommendation being made to the task force at that time?

2 A. From the task force, yes.

3 Q. Okay.

4 A. Uh-huh (affirmative).

5 Q. Is this the final draft of what the task force actually
6 sent to the executive cabinet? Or is this a working draft?

7 A. It was a working draft and then we -- we actually sent a
8 form that looked like best practices.

9 Q. Okay. So this is still --

10 A. Oh, here it is. It's right on here. Sorry. The Florida
11 law versus best practices, that's what -- we had to put all of
12 that together.

13 Q. Okay.

14 A. A lot of this information I had gathered at the
15 conference.

16 Q. Okay. So this is as of March of 2015, the draft of the
17 best practices?

18 A. Yes, sir.

19 Q. Can you turn -- see on the -- I guess let's go to the
20 first page of the best practices, which is Bates page 1095.

21 A. Okay.

22 Q. Is that some of the different recommendations --

23 A. Yes.

24 Q. -- that came up?

25 And what's the Florida law column supposed to be? Is

1 that a summary of Florida law?

2 A. It's a summary of Florida -- yeah. Most of this was from
3 the conference. This is -- this is already prepared by the --
4 many of the conference people.

5 Q. And the best practices, where did you -- where did the
6 task force, to your knowledge, come up with these different
7 best practices?

8 A. Well, again, we looked at the draft that had come from --
9 the example -- the sample that had come from the conference and
10 discussed it and did a little modifying here and there, but
11 basically this is a lot of what the conference had recommended.

12 Q. Okay. And if we go to restrooms, that's on page -- second
13 page of the document?

14 A. Yes.

15 Q. Okay. It says, "There is no specific federal or Florida
16 state law that requires schools to allow a transgender student
17 to the restroom corresponding" -- "student access to the
18 restroom corresponding to their consistently asserted gender
19 identity."

20 Was that one of the things that was put in there?

21 A. Yes.

22 Q. Okay. And at the time, it looks like the recommendation
23 was that students will be given access to a gender-neutral
24 restroom and will not be forced to use the restroom
25 corresponding to their biological sex?

1 A. That's correct.

2 Q. Okay. At the time this draft was created, was it the
3 policy of the district that students were required to use the
4 bathroom of their biological sex?

5 A. Yes.

6 Q. Okay. And what is the intent of the task force at the
7 time of making the recommendation to include this language in
8 this document?

9 A. To support the transgender student and still not create
10 any kind of a conflict or issue with other students. Because
11 we had to look at all of the students and how it would impact
12 them.

13 Q. Do you recall what some of the thoughts were on how it
14 could impact other students?

15 A. Yes. The safety issue.

16 Q. What specifically?

17 A. Well, it -- first of all, actually for Drew, we wanted to
18 make sure that Drew was safe, because we were talking about a
19 different biological sex in a restroom with the other
20 biological sex. Those were concerns.

21 Q. Let's go -- rewind a little bit. We're talking March of
22 2015.

23 A. Oh, okay.

24 Q. We'll talk about down the line.

25 A. Okay. Sorry.

1 Q. So at the time you're working through the best practices
2 here in March of 2015, when you were talking about some of the
3 issues with other students, do you recall what -- any of the
4 issues that the task force may have discussed?

5 A. Other issues regarding the transgender students?

6 Q. With this bathroom piece.

7 A. With the bathroom piece.

8 Q. Yeah. You mentioned safety was one?

9 A. Yeah. Safety -- the fact we don't have cameras in
10 bathrooms. We don't have supervised areas. So the bathrooms
11 are always an area where we're concerned about what goes on in
12 there with students for whatever reason.

13 Q. What about privacy?

14 A. Privacy, absolutely privacy as well.

15 Q. What do you recall, as you're sitting here today, about
16 privacy?

17 A. Well, we knew that girls go in there to change their
18 clothes. You know, girls go in there to put on makeup. And
19 they like the privacy of just being with other girls.

20 And then the same with the males as well. And not
21 all the males are always in the stalls. So we always have to
22 look at that issue and who else would walk in.

23 Q. Okay.

24 MR. HARMON: Your Honor, the next stack of documents
25 that I've got I'm going to hand the witness and I'm going to go

1 through them each one by one. But I will represent that
2 these -- well, let's just go through it. I was trying to get a
3 stipulation on this, but let's just go through these one by
4 one.

5 BY MR. HARMON:

6 Q. I'm going to start with Defendant's Exhibit 85. Do you
7 recognize the documents? And please take your time because I
8 know I just handed you a big stack. Take a look through
9 Exhibit 85.

10 A. This is student code of conduct from another county which
11 I had requested because I wanted to see what other counties had
12 regarding anything with gender identity.

13 Q. So if you go through that stack -- let's just -- that
14 first exhibit, 85.

15 A. Is this all 85 here? Where does 85 end?

16 Q. It should be stapled separately.

17 A. Okay. I got it.

18 THE COURT: It says Seminole County on the top of it.

19 THE WITNESS: I got it.

20 THE COURT: So you asked Seminole County to send you
21 their policy so you could look at them?

22 THE WITNESS: Yes.

23 THE COURT: Any objection to 85?

24 MR. LAPOINTE: Your Honor, as long as she read and
25 considered it, no objection.

1 THE COURT: Be received.

2 BY MR. HARMON:

3 Q. Is 85, this stack here, just a collection of various
4 policies --

5 A. Okay.

6 Q. -- that were gathered?

7 A. Yep, from all different counties throughout Florida.

8 Q. And other states?

9 A. I did request some from other states. I'm trying to see
10 if they're here. Yes, there are. California -- yes,
11 different -- I tried to get kind of a variety of perspectives.

12 Q. Let me approach. It looks like the staple came off on
13 you.

14 A. Yeah. Okay. That's all --

15 Q. Yeah, that's where we were at.

16 THE COURT: Is the point here, Mr. Harmon, not so
17 much what's actually in these documents but the fact that --
18 that they were sought as part of the effort to understand what
19 other places were doing and to give that matter consideration
20 as part of the overall consideration? Is that really what the
21 point is?

22 MR. HARMON: Yes, Your Honor. And I don't believe
23 the -- these next series of documents are all the ones we
24 attached this morning. I believe the only standing objection
25 to their admission was foundation.

1 And I'm just going to hand it and say -- I'm not
2 going to go through each piece of paper with this witness. I'm
3 just going to ask for the foundation part.

4 THE COURT: Okay. All right.

5 BY MR. HARMON:

6 Q. So could you just -- let's just go through these. With
7 Exhibit 157 --

8 A. Yes.

9 THE COURT: Well, they won't object to -- this is
10 Broward County?

11 MR. HARMON: Yeah.

12 THE COURT: So they like that. 157. All right.

13 BY MR. HARMON:

14 Q. Does that look --

15 A. Yes.

16 Q. You heard the questions I just had with the court. I'm
17 trying to see if these were documents that you recall looking
18 at.

19 THE COURT: 158, 159, all Broward County.

20 THE WITNESS: I looked at all these and my staff as
21 well, some of my staff.

22 BY MR. HARMON:

23 Q. 159?

24 A. Yes.

25 THE COURT: They're already in. Already put them in.

1 BY MR. HARMON:

2 Q. 160?

3 THE COURT: It's in.

4 (Defendant's Exhibit 160 received into evidence.)

5 MR. HARMON: Okay. Then I'll just go through the
6 list, Your Honor.

7 BY MR. HARMON:

8 Q. 161, 162, 163, 168, 170, 171, 172, 174, 177, 178? You
9 keeping up?

10 A. Yep. I've seen them all.

11 Q. 179, 187?

12 A. Did you say 187?

13 Q. 187?

14 A. 187, yes.

15 Q. What about 188?

16 A. Yes. That's from the code of conduct. That's our county.

17 Q. 189?

18 A. Yes. This is information we pulled offline.

19 Q. 190?

20 A. Yes. This is information. Some of them my mental health
21 therapist brought to me and others we pulled up online.

22 Q. 191?

23 A. Yes.

24 Q. 19- -- I'm sorry, 203?

25 A. Yep. Got that online.

1 Q. Okay. 204?

2 THE COURT: Can you tell me what this is, because
3 it's a little unclear from looking at what 204 is.

4 MR. HARMON: Yeah.

5 THE WITNESS: Me or --

6 THE COURT: Yeah. If you know, ma'am.

7 BY MR. HARMON:

8 Q. If you know.

9 THE COURT: It doesn't have any kind of a title on
10 it. I'm just wondering what it is.

11 THE WITNESS: I would Google like "transgender" and
12 "schools" and then I would just print anything that I thought
13 was applicable to it, and this was one of them.

14 THE COURT: Okay.

15 BY MR. HARMON:

16 Q. And there's a couple of different things in 204. It's
17 more than just one. Just kind of flip through them all and
18 make sure these appear to be things that you had seen.

19 A. Yes, I recall all this. It was on Title IX at that time.
20 I was trying to educate myself a little bit more about the
21 that. So a lot of that is what is pulled off of there.

22 Q. Okay. What about 213? We're almost done.

23 A. Oh, this was Florida High School Athletic Association,
24 because one of the concerns we had was how will we handle this
25 in athletics, so I tried to gather information from the FHAA

1 [sic].

2 Q. Okay. What about 2017?

3 A. Volusia County information, yes.

4 Q. 223?

5 A. These were others that I pulled offline when I Googled.

6 Q. 225?

7 A. Yep, pulled offline.

8 Q. What about 228?

9 A. Yeah. This was Duval County, information on a conference
10 they had. And I -- if I remember correctly, I did send someone
11 to this. This was a local one, a local conference regarding
12 LGBTQ. JASMYN was a part of this. And they had recommended
13 that we go to this. I didn't, but one of my staff did.

14 THE COURT: Any objection to any of these, Counsel?

15 MR. LAPOINTE: Absolutely not, Your Honor.

16 THE COURT: All right. Then all of those will be
17 received.

18 (Defendant's Exhibits 172 and 174 received into evidence.)

19 BY MR. HARMON:

20 Q. Can you tell me again, JASMYN, what -- why you were -- why
21 your staff was attending any JASMYN meetings?

22 A. Well, I met several of the staff members in JASMYN when I
23 went to the conference and I was able to -- I was actually in a
24 work group with them and they divided us up and they had given
25 me their card and said if you ever have any questions how to

1 support those students, call us. So I did. And they actually
2 came down and met with us. They were very helpful to us.

3 Q. Did you utilize the input that you received from JASMYN
4 while working on the best practices document?

5 A. Yes, I did.

6 Q. What about input from the GSA clubs?

7 A. Yes. We attended those clubs. And actually JASMYN --
8 some of the JASMYN staff went with me to some of those clubs
9 and we took notes, just informal notes and brought that
10 information back as well.

11 Q. Okay. I think we might -- I'm going to approach with
12 Exhibit 33 and see if you recognize that document.

13 A. Yes, I do.

14 Q. What does that document appear to be?

15 A. This is -- this was a draft of -- again, we took
16 information we had gathered at the conference and put together
17 what we felt was an appropriate draft for guidelines. Just
18 recommendation. I don't make a decision on what is used. But
19 we prepared it.

20 Q. Why were the best practices documents -- why were you
21 trying to put them in writing?

22 A. So that we were consistent throughout the county. I had
23 been getting calls from administrators, what do we do.
24 Different things were going on at different schools, and it was
25 important that we put something out so we were consistent with

1 those students and that we were communicating also to the
2 teachers on how to work with those and best support those kids.

3 Q. In terms of bathroom use, was there ever a time to your
4 knowledge that the district was inconsistent with its
5 long-standing practice of requiring students to use the
6 bathroom of their biological sex?

7 A. Not to my knowledge at all.

8 Q. Were you responsible for finalizing the best practices?

9 A. The draft.

10 Q. Okay.

11 A. Finalizing the draft of --

12 Q. The draft to go to the executive --

13 A. Yes.

14 Q. Okay. Were you director of student services when best
15 practices was actually finalized?

16 A. Yes.

17 Q. Okay. Were you responsible for finalizing best practices?

18 A. No. The cabinet was.

19 Q. Do you know who Cathy Mittelstadt is?

20 A. Yes.

21 Q. What, if anything, was Cathy Mittelstadt's role with
22 respect to best practices?

23 A. She came in -- I think it was maybe 2015 and became my
24 supervisor. Mr. Forson moved on to something else and she was
25 my supervisor so I spent a lot of time with her explaining to

1 her what we -- what this project was about. And so she worked
2 with me on it a little bit, mostly to educate herself on what
3 we had done, and then she took it from there because she was
4 the contact for our department at the executive cabinet.

5 Q. So was Ms. Mittelstadt the one who ultimately took --
6 ultimately responsible for finalizing the best practices with
7 cabinet?

8 A. Yes.

9 Q. Were you out of that process at that time?

10 A. I was finished with my job at that point on this, yes.

11 Q. Okay. Do you recall approximately what time that was,
12 what month that was, when and year if you can, when
13 Ms. Mittelstadt took over the best practices?

14 A. I think she came in the beginning of July, so I'm thinking
15 it was later towards the end of the summer, beginning of the
16 school year.

17 Q. Okay.

18 A. It was within just a few months, really. She wanted to
19 know exactly what was going on with this.

20 Q. Okay. Did you talk to her about what the task force had
21 been working on?

22 A. Yes. I explained everything. I showed her our notes.
23 She asked me a lot of questions. Yeah, we spent a lot of time
24 on it.

25 Q. So going back when I first started talking to you and you

1 had mentioned Drew Adams -- do you know Drew Adams?

2 A. Yes.

3 Q. Okay. When did you first meet Drew Adams?

4 A. I had gotten a call from the principal at Nease where Drew
5 was a student, and he told me that Drew had requested to use
6 the opposite bathroom and would I come out and meet with Drew
7 and his mom. And so I did that. And I brought two of my -- a
8 counselor who had been working with Drew from my department
9 went out with me and then another therapist who had been
10 attending conferences and was involved in this as well. So we
11 all sat together at Nease.

12 Q. Do you recall why the meeting was called?

13 A. Yes. It had to do with Drew requesting to use the
14 opposite gender restroom.

15 Q. Okay. The men's restroom?

16 A. Yes.

17 Q. Okay.

18 MR. HARMON: I approach, Your Honor, with Defendant's
19 Exhibit 36.

20 BY MR. HARMON:

21 Q. And I apologize for the small writing.

22 A. That's okay.

23 Q. Just to see if you recognize that document.

24 A. Oh, yeah.

25 Q. If you can see it.

1 A. Okay.

2 Q. What is this document?

3 A. This is an e-mail I received from Drew's mother after our
4 meeting.

5 Q. Okay.

6 A. Very pleasant message.

7 Q. And was that e-mail received on October 12th, 2015?

8 A. Yes.

9 Q. Does this appear to be a true and accurate copy of the
10 e-mail you received?

11 A. Yes.

12 MR. HARMON: Your Honor, at this time I'd request to
13 move Exhibit -- Defendant's Exhibit 36 into evidence.

14 MR. LAPOINTE: Your Honor, may I have a brief moment?
15 I'm just reading quickly.

16 Without objection, Your Honor.

17 THE COURT: Be received, Defendant's 36.

18 (Defendant's Exhibit 36 received into evidence.)

19 BY MR. HARMON:

20 Q. Okay. So that document you've got in front of you, it
21 says -- mom has written in this e-mail it looks like to you
22 only?

23 A. Yes.

24 Q. And says, "Thanks for the meeting on Friday morning."

25 Do you see that?

1 A. Yes.

2 Q. In the second paragraph it says, "I wanted to ask whether
3 there's anything else I can help" -- "I can do to help you at
4 any level. I know you said that things like the bathroom
5 options and gender markers in the computer system are not
6 changeable at the school level and must come from the
7 district."

8 Do you recall anything that you said specifically
9 about why bathroom options and gender markers needed to come
10 from the district?

11 A. Well, I tried to make it clear it wasn't my decision at
12 all. I couldn't sit there and say, okay, you can use the other
13 restroom. It was a district decision and we had a process in
14 place to create a policy that would address that.

15 Q. And was the district decision based on the long-standing
16 practice, unwritten policy, of requiring students to use the
17 bathroom of their biological sex?

18 A. Yes.

19 MR. HARMON: Just one moment, Your Honor.

20 (Counsel confer.)

21 MR. HARMON: No further questions at this time.

22 Sorry --

23 MR. LAPOINTE: That's okay.

24 MR. HARMON: -- I've got a lot of stuff to get.

25 (Counsel confer.)

1 MR. LAPOINTE: May I proceed, Your Honor?

2 THE COURT: You may.

3 **CROSS-EXAMINATION**

4 BY MR. LAPOINTE:

5 Q. Good afternoon, Ms. Mittelstadt [sic].

6 A. Good afternoon.

7 Q. It's been a while.

8 A. Smith.

9 Q. It's been a while. It's good to see you, though.

10 A. Thank you.

11 Q. Good to see you.

12 A. It's nice to see you, too.

13 Q. Yes, indeed. Indeed. We've had some times.

14 A. Yes.

15 THE COURT: We don't have any of the FSU thing going
16 here?

17 THE WITNESS: No.

18 MR. LAPOINTE: Not quite, Your Honor.

19 THE COURT: All right.

20 MR. LAPOINTE: On that, Your Honor, I will say, if I
21 may just indulge myself.

22 THE COURT: Do you really need to?

23 MR. LAPOINTE: Just a little bit. If FSU is good,
24 they are. There's nothing I can say about that.

25 THE COURT: All right.

1 BY MR. LAPOINTE:

2 Q. Ms. Mittelstadt, I want to show you the last document you
3 were shown.

4 A. I'm Ms. Smith, just so you know.

5 Q. Ms. Smith. My apologies.

6 A. That's okay.

7 Q. Yes. I should know your name well.

8 A. That's okay. No problem.

9 THE COURT: Are you sure you're examining the right
10 witness?

11 MR. LAPOINTE: I am. I am. At this point, I don't
12 know, actually. I think he should be doing this.

13 BY MR. LAPOINTE:

14 Q. All right. Why don't we start over?

15 A. Okay. That's fine.

16 Q. Ms. Smith, why don't we look at Exhibit 36, which is
17 what -- where counsel left off.

18 A. Yes.

19 Q. You were -- you were shown this particular e-mail from --
20 it says from Erica. That would be Erica Adams, correct?

21 A. Yes, yes, correct.

22 Q. She's sitting right here.

23 Ma'am, nowhere in that e-mail does it say that you
24 actually told Mr. -- Ms. Adams that there was a policy with
25 respect to bathroom use and that Drew could not use the

1 bathroom associated with his gender identity. Nowhere in that
2 e-mail is that said; is that correct?

3 A. I'm sorry? I didn't hear the last part of what you just
4 said.

5 Q. Sure. In that e-mail you just went through --

6 A. Yes.

7 Q. -- there's nowhere in there that indicates that you said
8 to Ms. Adams that Drew could not use the males' bathroom?

9 A. No, we had -- we showed her the copy of the best practices
10 and it was written right on there. The one that you saw
11 earlier that says "or neutral," we had that at the meeting.

12 Q. I'm focusing just on this e-mail, this e-mail that was
13 shown to you.

14 A. Yes.

15 Q. You would agree this e-mail does not say that you
16 actually -- let's go with that. It doesn't say -- I want to
17 make sure I read it right. Why don't we just read it,
18 Ms. Mittelstadt. That may help.

19 THE COURT: You keep calling the witness the wrong
20 name.

21 MR. LAPOINTE: I'm sorry. I apologize. Your Honor,
22 I spent a lot of time deposing some of these witnesses. My
23 apologies. And I've deposed the same witnesses.

24 I apologize to you, Ms. Smith.

25 THE WITNESS: That's okay.

1 MR. LAPOINTE: And I apologize to you, the court.
2 Surely I'm sorry. I'm going to try my best not to confuse that
3 with you.

4 BY MR. LAPOINTE:

5 Q. Why don't we -- Ms. Smith, it says, "Thank you again for
6 facilitating the meeting on Friday morning with Drew and the
7 administration. Thought it went very well. Appreciate all
8 that you and your team do to help the progress of students'
9 rights in St. Johns County and beyond."

10 Ms. Smith, are we together on this?

11 A. Yes.

12 Q. And it says, "I wanted to ask whether there is anything
13 else I can do to help you at any level. I know you said things
14 like the bathroom options and gender markers in the computer
15 system are not changeable at the school level and must come
16 from the district."

17 You agree that doesn't say there that you told her
18 that Drew could not use the males' bathroom, that statement by
19 itself? You agree with that, ma'am?

20 A. Well, no, because it says things like the bathroom
21 options, which we did discuss and that she says that they are
22 not changeable. And that's exactly what I had said.

23 Q. Well, in terms of bathroom options, we don't know what
24 sort of options that you discussed with Ms. Adams and this
25 e-mail does not say that, does it, ma'am?

1 A. No, it doesn't say that, but it -- to me, it's kind of
2 insinuated because she wrote it.

3 Q. I appreciate that, ma'am. I'm just going with what does
4 this e-mail say and what does -- this e-mail does not say.

5 A. Okay.

6 Q. Okay? And if we go -- if we continue, it says, "So I
7 wondered whether I could assist further by reaching out to the
8 superintendent, attending a school board meeting or doing
9 anything else you might need." Right?

10 A. Right.

11 Q. Okay. "I would love to see some positive changes made
12 that could impact Drew while he's still attending Nease, but I
13 know that county government can move quite slowly, that many
14 are resistant to change."

15 Again, ma'am, you're with me on this, right?

16 A. Yes.

17 THE COURT: Is there a point to this?

18 MR. LAPOINTE: I wanted to establish the fact this
19 e-mail is not saying what it is purported to say.

20 THE COURT: All right. Well, it says what it says
21 and she's already talked about it. So what's your question?

22 MR. LAPOINTE: I'm moving on, Your Honor.

23 BY MR. LAPOINTE:

24 Q. Ms. Smith, you testified -- let me just talk to you about
25 the guidelines. You spent some time going over the guidelines,

1 how it was made.

2 A. Yes.

3 Q. And how long did you actually -- the process from the time
4 you started to the time you ended, how long did that all take
5 place?

6 A. I would say about two years.

7 Q. Okay. And your part of that was how long of those two
8 years?

9 A. About two years.

10 Q. And during that time, ma'am, you've attended I believe two
11 conferences?

12 A. I attended one, but I had my staff attending other
13 conferences as well.

14 Q. So you attended one conference?

15 A. Yes.

16 Q. And your staff, who are you referring to?

17 A. Laura Barkett, my -- she was my primary -- was primary
18 mental health therapist for the school district. She was my
19 head mental health therapist. So she went. Another therapist
20 went.

21 The -- our staff member who handles all the bullying
22 went. Cathy Mittelstadt went when she came. Of course, I
23 went. And then we -- that was just the conference. But we
24 also attended the JASMYN group meetings. We went to the
25 schools. We did a lot of work on this.

1 Q. I understand, ma'am. I'm staying with the conferences
2 right now.

3 A. Okay.

4 Q. So so far you've attended one conference and then your
5 staff attended another conference; is that correct?

6 A. Well, yes, but it was three different conferences over the
7 three -- over a three-year period.

8 Q. Right. So you attended three conferences?

9 A. Not me personally, but representatives from my department,
10 yes.

11 Q. The other things you said you did was you actually pulled
12 out documents offline and you met with JASMYN.

13 How many times have you met with JASMYN?

14 A. I think twice if I remember. They came down and went with
15 me to some of the clubs at the high school. And then I met
16 with them another time -- I talked with them on the phone, but
17 I also sat with them down at the conference and talked with
18 them at length.

19 Q. And when you met with JASMYN, they didn't say to you that
20 transgender children should not be allowed to use the bathroom
21 according to their gender identity; they didn't say that to
22 you, did they?

23 A. Say that again, that they said what?

24 Q. When you met with JASMYN --

25 A. Yeah.

1 Q. -- with respect to bathroom use by transgender students,
2 JASMYN did not suggest to you -- or did not say to you that
3 transgender children should not be allowed to use the bathroom
4 consistent with their gender identity; they didn't say that to
5 you, did they?

6 A. We didn't really talk about bathrooms. Basically we
7 talked about how every county has to do what they think is best
8 and how to support students. We never specifically talked
9 about the bathroom incident.

10 Q. So what about --

11 A. Or issue. Excuse me.

12 Q. Please, after you. My apologies.

13 A. I'm done.

14 Q. Okay. What did you talk to JASMYN about in connection to
15 transgender children?

16 A. How to best support them, what they might be going
17 through, what they might be feeling, what a transgender was, or
18 is. I was trying to put myself in the shoes of a transgender
19 and really understand that child so the school district could
20 be supportive.

21 I found also, though, that JASMYN totally understood
22 that we had to look at all of the students and all of our
23 policies would have to impact the entire school district. I
24 found them very nice to work with and they were understanding
25 of them.

1 Q. All right. Did JASMYN say to you that transgender
2 children, that they had a right to be treated fairly and
3 equally? Did JASMYN say that to you?

4 A. Yes. As well as we would treat any other students, yes,
5 they said that.

6 THE COURT: Excuse me, Counsel, one second. Can I
7 ask somebody to give me the exhibit number that has the best
8 practices in it so I can look at it? I had it yesterday, but
9 I --

10 MR. HARMON: Yes, Your Honor. I believe Defendant's
11 Exhibit 33 is the final draft.

12 THE COURT: All right.

13 MR. HARMON: It's not in evidence, but I'm going to
14 move it in with the next witness -- with this witness.

15 THE COURT: So we don't have it? We had it
16 yesterday. It was attached to some e-mail or something.

17 MR. LAPOINTE: We actually have -- we have, Your
18 Honor -- I can look --

19 THE COURT: I tell you what. Is that it right there?

20 MR. HARMON: If 33 is in evidence, this is it.

21 THE COURT: I thought it was. Defendant's 33.

22 MR. HARMON: Yes. You should have that.

23 (Counsel confer.)

24 MS. ALTMAN: It's also Plaintiff's 14, Your Honor.

25 THE COURT: Okay. Let me find one of the others of

1 those.

2 MR. LAPOINTE: We're going to get you a copy.

3 MS. ALTMAN: Defendant's 14. I apologize.

4 MR. LAPOINTE: Can we get an extra copy of 14 for the
5 court. I'll give you mine, Your Honor, and I'll wait for 14
6 from someone else.

7 THE COURT: We don't have it?

8 (Judge confers with courtroom deputy.)

9 THE COURT: All right. I'm told by Ms. Diaz that
10 we -- we, meaning you, are not doing a tremendous job of
11 keeping the exhibits straight.

12 And so you're going to have to spend some time with
13 her and make sure that all the exhibits are -- the ones that
14 are in evidence that we have up here in a -- in an appropriate
15 format. So I'm looking at -- well, somebody handed me --

16 (Judge confers with courtroom deputy.)

17 THE COURT: Yeah. 66. Is this it? Defendant's 66?

18 MR. LAPOINTE: Your Honor, I'm not sure. I haven't
19 introduced any evidence with this witness.

20 THE COURT: That's not it, Mari.

21 (Judge confers with courtroom deputy.)

22 THE COURT: So --

23 MR. HARMON: Your Honor, Defendant's Exhibit 33 I
24 think is -- should be still in front of you from the stack we
25 had with Ms. Smith. I'd be happy to bring you a copy of mine

1 if you need it.

2 (Counsel confer.)

3 COURTRROOM DEPUTY: I have a stack I need to look
4 through.

5 MS. DOOLITTLE: I have one right here.

6 THE COURT: I just want to make sure -- I'm looking
7 at one now. I just want to make sure it's the final version.

8 So 33 is the final version, Mr. Harmon?

9 MR. HARMON: Yes, Your Honor.

10 MR. LAPOINTE: Just let me know, Your Honor.

11 THE COURT: Not yet until I can actually get it.
12 You don't see it?

13 COURTRROOM DEPUTY: I'm looking through the entire
14 stack looking for it.

15 THE COURT: Just get it, Mr. Harmon. Give it to
16 Ms. Diaz. Thank you.

17 All right. So this is the final version, Mr. Harmon?

18 MR. HARMON: Yes, Your Honor.

19 THE COURT: All right. Thank you.

20 You may proceed, sir.

21 MR. LAPOINTE: Thank you, Your Honor.

22 BY MR. LAPOINTE:

23 Q. Ms. Smith, we were last talking about the things you
24 learned from JASMYN.

25 A. Yes.

1 Q. And I'm just going to close on that, ma'am.

2 JASMYN didn't say to you, you didn't -- you couldn't
3 treat transgender children fairly and equally like
4 non-transgender children; is that correct? They never said
5 that you?

6 A. They --

7 Q. They didn't say you couldn't -- they didn't say that you
8 could treat transgender children in discriminatory way? They
9 never said that to you, did they?

10 A. They said they should be treated equally and fairly like
11 other children.

12 Q. Okay. Now I'm going to look at the guidelines the court
13 has in his hand, Exhibit 33.

14 A. Yes.

15 Q. Do you have that with you, ma'am?

16 A. Yes, sir.

17 Q. Okay.

18 THE COURT: How did you get it?

19 THE WITNESS: It was in this pile. I could have
20 given it to you.

21 Yeah, that's it.

22 BY MR. LAPOINTE:

23 Q. It is now on every screen, I believe.

24 Now, let me refer to you -- to the bottom part of the
25 policy -- of the guidelines. It says "Restrooms."

1 A. Yes, sir.

2 Q. All right. And it reads, "Transgender students will be
3 given access to a gender-neutral restroom and will not be
4 required to use the restroom corresponding to their biological
5 sex."

6 And you've read this many times, right, ma'am?

7 A. Yes.

8 Q. In fact, you were part of making this document.

9 Ma'am, would you agree with me that this statement in
10 terms of transgender -- bathroom use does not say that a
11 transgender child cannot use a bathroom that is consistent with
12 their gender identity?

13 A. It says what they'll be given access to. To me, that's
14 pretty clear.

15 Q. Well, let's look at it.

16 A. It doesn't say that they're given access to something
17 else.

18 Q. Sure. Let's look at it one part at a time. It says
19 transgender student will be given access to a gender-neutral
20 bathroom, right?

21 A. Correct.

22 Q. And then it says, "They will not be required to use the
23 restroom corresponding to their biological sex"?

24 A. Correct.

25 Q. But it doesn't say, would you -- if you bear with me,

1 ma'am, that they will be required to use the restroom
2 corresponding to their biological sex. Do you agree with that?

3 A. We would -- we did not require them to use the bathroom
4 corresponding to their -- yeah, we never forced them to do
5 that.

6 Q. But would you agree that that statement of the guide -- as
7 far as a transgender student being able to use the bathroom,
8 it -- it doesn't preclude them from using a bathroom that is
9 consistent with their gender identity, just from that reading?

10 A. I just -- I think it's clear -- it's basically saying this
11 is what you will have access to. To me, that's very clear.

12 Q. Where does it say a transgender child will not have access
13 to a bathroom --

14 A. It doesn't say on that. It just says what they have
15 access to. And that's what we were telling them. You have
16 access to neutral as well as the biological sex restroom, but
17 we certainly would never require that, so here is your other
18 option: Access to a neutral-gender bathroom.

19 Q. Would you say, ma'am, even in that language, it doesn't
20 say exclusively, even though having access to?

21 A. I don't think it had to.

22 Q. Okay. Fair enough, ma'am.

23 Ma'am, let's talk a little bit about those
24 guidelines. Had it ever been actually published to the
25 parents?

1 A. Well, I don't know. I actually retired after this point,
2 so once the guidelines came out and the cabinet recommended
3 them, I'm not sure -- it was not in my hands anymore. It went
4 to Cathy Mittelstadt. So I'm not sure at that point what they
5 did with it. I honestly don't know.

6 Q. Ma'am, you just testified that you were in charge of
7 actually coming up with these guidelines. At least initially,
8 that was your job, correct?

9 A. Correct.

10 Q. And as part of your job, you looked at all the things that
11 you needed to do to come up -- to come up with the guidelines
12 that address all those issues; is that correct?

13 A. Yes, the draft.

14 Q. Sure.

15 A. Yeah.

16 Q. And part of that would have been whether or not parents
17 needed to have notice, right, transgender -- the parents of
18 transgender children needed to have notice of what the school
19 district required. Would you agree with that, ma'am?

20 A. No. I'm not understanding what you're saying, I guess. I
21 mean, I had -- I had explained it to Drew's mom. We were very
22 open. We showed this. I told her where we were with it. She
23 was very cordial. We had a great conversation.

24 Q. I understand that.

25 A. But this was just a draft. We don't put everything out to

1 the public in a draft form. It's the cabinet that has to
2 decide if this is what they want it to be.

3 Q. Let's talk about the final. You say in the draft -- as
4 far as you're concerned, you couldn't publish a draft. I'm
5 with you.

6 A. Correct.

7 Q. Let's talk about the final one. At the end of the day,
8 you had a final product, correct?

9 A. Right.

10 Q. My question to you, is there anything here that shows that
11 that final product was to be published, was to be given to
12 parents in any way for a parent to know what those things were
13 with respect to a transgender?

14 A. That wouldn't have been part of my job. That would have
15 been after it left me. So it may be a question for
16 Ms. Mittelstadt. But my piece of the work was finished at that
17 point, my task.

18 Q. Okay. How about in terms of students, did you consider
19 whether or not that guideline with respect to what students
20 were supposed to do with respect to what kind of bathroom they
21 were supposed to use, they were supposed to be provided notice
22 with that guideline, did you actually have anything to do with
23 that, ma'am?

24 A. We had student input as we were creating the draft. That
25 was why I contacted the club sponsors because they worked

1 directly with the students. So they brought the concerns of
2 the students to our task force. So, yes, we did get the input
3 of students.

4 Q. Now, what I'm asking you, though, is different. How many
5 student -- I mean, how much input did you get from the
6 students?

7 A. How much what?

8 Q. How much input did you get from the students?

9 A. Whatever the sponsors brought to the task force. They all
10 met with their students. I met with students. I also met with
11 transgender students when I went to the conference. I talked
12 with them one on one because I wanted to learn what their needs
13 were as well.

14 So there was a lot of student participation in all of
15 this.

16 And if I can just say something else, we actually had
17 a mental health conference in our county later on and I invited
18 Drew and I think his mom, if I remember correctly, to go to
19 that, because I wanted them involved in all of this. It was
20 never meant to keep them out, ever.

21 Q. I understand that, ma'am. My apologies.

22 A. Okay.

23 Q. I must have confused you. And --

24 THE COURT: What he's asking you is did -- was it
25 your responsibility to publish these practices to the students

1 so the students would know what the policies were?

2 THE WITNESS: No, that wasn't my responsibility.

3 THE COURT: All right. Thank you.

4 What's your next question?

5 BY MR. LAPOINTE:

6 Q. My next question to you, ma'am, is are you aware that
7 those guidelines or policies, however you refer to them, they
8 were never published to students? Are you aware of that,
9 ma'am?

10 A. Again, I retired after this. I honestly don't know the
11 answer to that.

12 Q. Thank you, ma'am.

13 You mentioned earlier -- you talked briefly about the
14 policy in terms of transgender children are not supposed to use
15 the bathroom that is different from their -- what you call
16 biological sex. How do you enforce that rule, ma'am?

17 A. How do I enforce that rule?

18 Q. How does the school enforce that rule? Was there an
19 enforcement part to that rule when you were actually devising
20 and formulating that rule?

21 A. Well, once it becomes a policy of some type -- and, again,
22 that's -- my job was over at that point. It may go and be a
23 part of the school board rules. It could be a part of the
24 student code of conduct. And all of that would have happened
25 after I left. And it was not part of the job of a director of

1 student services to enter into that part. That's the job of
2 the cabinet and then whoever they delegate that to.

3 Q. Would you agree, though, ma'am, there's no way you can
4 tell -- you can tell whether or not a transgender student is in
5 the bathroom, is there?

6 A. Well, it depends. I mean, we know who some of the
7 transgender students are.

8 Q. Well, unless a transgender student actually declares
9 himself or went to the school and said I'm a transgender
10 student and I need to have some sort of accommodation, you do
11 not have a way of being able to tell who's a transgender
12 student or who's not a transgender student?

13 A. That's a possibility. I can't say for sure. But it's a
14 possibility, I suppose. It's kind of hypothetical. But
15 it's -- it's a possibility.

16 Q. Well, ma'am, there's -- there's only one way you can tell.
17 You'd have to be able to check certain parts of that student,
18 isn't that right, ma'am?

19 A. Well, that would be totally inappropriate. We would never
20 do that. So, like I said, possibly.

21 Q. Right.

22 A. I don't know. You know, transgender students are kind of
23 all in different phases of where they are with transgenering.
24 So some we may be able to tell, some we may not.

25 I don't know that much about that to be able to

1 answer that. As far as recognizing a transgender student, I
2 don't know that I could do that completely.

3 Q. So as the person who was in charge at least to put up the
4 first part of this policy, you're saying you don't know how
5 to -- whether or not a transgender student could be identified?
6 You don't know that?

7 A. That wasn't my task at all.

8 Q. Okay.

9 A. My task was strictly to put information together for
10 guidelines.

11 Q. Let me ask you now about -- again, I want to see how you
12 enforce those things. If a student was to come from another
13 district and they come in with their birth certificate --
14 transgender child comes in with a birth certificate that says
15 their gender identity, they come in with a driver's license,
16 would St. Johns admit that student in their school?

17 A. You mean as a certain gender?

18 Q. That's right. They come --

19 A. It's based on the records in the registration packet.
20 It's based on the birth certificate, any physicals. There are
21 forms that are filled out where a box is checked female or
22 male. We specifically go by that unless we had a court order
23 to do anything different. But we have to use what's on that
24 registration packet.

25 Q. So you could have a situation where you have a transfer

1 student, say, from Broward County, a transfer transgender
2 student, let's say a -- changed to male who shows up who had
3 their birth certificate from that -- prior to coming to
4 St. Johns and they register, you would have a transgender
5 student basically violating your policy because you would know;
6 is that correct, ma'am?

7 A. I would go specifically by the paperwork. Whatever I see
8 is what we would go by.

9 Q. Okay. Now, ma'am, you actually enforce that rule
10 strictly, that is the rule we just talked about here, the
11 restroom use, that is, the school?

12 A. Did the school enforce it? Is that what you're asking me?

13 Q. Very strictly, that is you've got to use either the
14 gender-neutral bathroom or -- or a bathroom that is
15 corresponding to your birth-assigned sex or biological sex?

16 A. Once this is put out to staff, it's expected that they
17 would follow this because it's -- it's -- it's approved by the
18 executive cabinet at that point, and they're the
19 decision-making body.

20 Q. Let's switch gears a little bit. What would you do --
21 what is the district's position where if you have a -- if you
22 have a transgender girl, for instance, who has gone through
23 certain transitioning, they have enhanced breasts, they have
24 long hair, and they look like a girl in any way, in all kind of
25 ways, according to your policy, where should that transgender

1 girl go to the bathroom?

2 A. Either a neutral bathroom or the bathroom of -- what their
3 biological sex is.

4 Q. What if that transgender girl decides I will not go to the
5 gender-neutral bathroom, where would you require that
6 transgender student to go to the bathroom?

7 A. It would either be the biological sex, but I would
8 recommend the neutral.

9 Q. Right. I want you to assume that student says, I will not
10 do this, I will not go through the embarrassment of going to a
11 gender-neutral bathroom because I'm a girl. Where would you at
12 that point then -- where would you require that student -- that
13 transgender girl to go to a bathroom?

14 A. I would say you --

15 MR. HARMON: Objection to relevance and speculation.

16 THE COURT: Overruled.

17 THE WITNESS: Do you want me to answer?

18 BY MR. LAPOINTE:

19 Q. I think the court has instructed you to answer.

20 A. Okay. I would say it is your choice, but here are the two
21 choices.

22 Q. So you would be okay with a transgender girl who has fully
23 enhanced breasts, long hair to the shoulders, lipstick, who
24 looks like a girl in all respects, if they choose not to go to
25 the gender-neutral, to go to a boys' room because they -- their

1 biological or birth-assigned sex is male; is that correct?

2 A. That would be their choice, because we're offering them an
3 alternative which is -- which are any of the neutral bathrooms
4 in the school. So to me, that is the choice of the student.

5 Q. One of the things you mentioned earlier is your concern
6 was that you had safety concerns. You remember that, ma'am?

7 A. Yes, sir.

8 Q. How would it be -- how would the safety concern be
9 actually -- how would the safety -- how would it be safe for a
10 transgender girl, from your perspective under the circumstances
11 I described, to have to go to a boys bathroom?

12 MR. HARMON: Object to ambiguity and compound.

13 THE COURT: Overruled.

14 THE WITNESS: Could you repeat that again? I'm
15 sorry.

16 BY MR. LAPOINTE:

17 Q. You testified earlier that safety is a concern for you?

18 A. Yes.

19 Q. And safety -- the concern you have is that you don't want
20 a transgender person, whether that be a girl or a boy, to be
21 subject to certain assault or whatever it may be. Am I
22 correct?

23 A. That could be part of it, yes. It's not it completely,
24 but part of it, yes.

25 Q. All right. And my question to you, ma'am, is how would it

1 be safe -- how would your safety concerns be attended to if you
2 have a girl, a transgender girl, with girls' parts, in terms of
3 her breasts and everything else, except for her genitals -- how
4 would that be safe for her to have to go to a boys' bathroom,
5 if that girl refused to use a gender-neutral bathroom? Tell us
6 how that would be safe.

7 A. Well, I would recommend to the child that they use the
8 neutral one because I think they are safer there. And, again,
9 those are the two choices. And it's certainly up to the
10 student. But I would recommend the neutral -- the neutral
11 bathroom. That seemed to me to be comfortable and safe with
12 all the parties involved.

13 Q. Okay. What if that -- what if that transgender girl had
14 an emergency, she had to go, and the -- and the gender-neutral
15 bathroom is far away and that transgender girl had a choice
16 either to go to the boys' room or the girls' room right next to
17 each other, which one she should go to?

18 A. Well, that's hard to answer because I don't think any of
19 the neutral ones are that far away. They're not real far away.
20 So to me it's not different than another student who just needs
21 to go to the bathroom. And that's always an issue with -- they
22 have to get to class and they have to get to a restroom and
23 they're not always close to their room, so I guess I just don't
24 see the relevance of that. I'm sorry. I just don't see that
25 as an issue.

1 Q. Ma'am, with all due respect, you'd have to agree that for
2 that child who has to go and who has to go at that time --

3 A. Yeah.

4 Q. -- it's relevant to her to be able to go to a restroom
5 that is close to her. And my question to you is -- I just want
6 you to assume for the sake of argument that that particular
7 gender-neutral bathroom is five minutes away or four minutes
8 from her class and she's got diarrhea coming down on her, all
9 right --

10 THE COURT: If I take the point --

11 BY MR. LAPOINTE:

12 Q. -- and she needs to do --

13 THE COURT: -- if I take the point that under the
14 policy, the only two choices would be a gender-neutral or a
15 bathroom in accordance with biological sex at birth despite the
16 appearance or transition of the individual, if I take that
17 point and understand it, can we talk about something else?

18 MR. LAPOINTE: Yes, Your Honor, of course.

19 THE COURT: Okay.

20 BY MR. LAPOINTE:

21 Q. Ma'am, you talked about earlier that you went through a
22 great deal of research to come up with the guidelines. Do you
23 recall that, ma'am?

24 A. Yes, sir.

25 Q. And you -- you went through a number of things. You

1 looked at different districts. You looked at -- can you tell
2 us some of the districts you looked at?

3 A. Well, surrounding districts in Florida -- particularly
4 because I knew Florida didn't have a lot of laws yet. So I was
5 kind of wondering what my peer colleagues were doing with it in
6 other counties.

7 So we looked at Volusia and Flagler and Duval and
8 Clay, maybe Putnam. I honestly can't remember exactly, but I
9 tried to get surrounding ones. And then I tried to get some
10 others throughout the country.

11 THE COURT: Counsel, can you tell me how much longer
12 you're going to be, please?

13 MR. LAPOINTE: Not terribly long. I would say maybe
14 30 minutes, Your Honor, but -- it depends. I mean, it may be
15 less.

16 THE COURT: Okay. Let's go ahead and take our
17 afternoon break. It's 20 after three. We'll take a -- I
18 guess -- I've got a couple of things to do. Let's take 20
19 minutes. So it's 20 minutes to four.

20 I'm going to ask you to consider how much longer you
21 need, okay.

22 MR. LAPOINTE: It won't be long, Your Honor.

23 THE COURT: All right. And, ma'am, you can take a
24 break. And sorry to hold you over, but we'll get you out of
25 here as soon as we can.

1 THE WITNESS: No problem.

2 THE COURT: All right. We're in recess.

3 COURT SECURITY OFFICER: All rise.

4 (Recess, 3:20 p.m. to 3:41 p.m.)

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

7 MR. LAPOINTE: Thank you, Your Honor.

8 BY MR. LAPOINTE:

9 Q. Ms. Smith, how you doing again?

10 A. Good. Thanks.

11 Q. Ms. Smith, will you please articulate for us the specific
12 safety concerns that you have with respect to transgender
13 bathroom use?

14 A. My specific --

15 Q. When you were actually putting this -- these guidelines
16 together, what specific safety concerns that you had.

17 A. Well, there's always safety concerns when you're dealing
18 with restrooms in schools because they're not supervised.
19 There's no cameras in there. Kids are kids. We don't know
20 what they will do in there.

21 So in my mind, it was just adding another element
22 that could be a potential safety issue possibly for the
23 transgender student or any other students that are in there.

24 THE COURT: Can you say what the safety concern is?
25 What are you worried about?

1 THE WITNESS: Well, privacy. I think -- when a girl
2 goes into a girls' restroom, she feels that she has the privacy
3 to change clothes in there, to go to the bathroom, to refresh
4 her makeup. They talk to other girls. It's kind of like a guy
5 on the golf course; the women talk in the restrooms, you know.
6 And to have someone else in there that may or may not make them
7 feel uncomfortable, I think that's an issue we have to look at.
8 It's not just for the transgender child, but it's for the
9 other.

10 The other concern -- and again I had to look at the
11 big picture of what this might open up. There's another
12 population of people that we learned at the conference, it's
13 called gender fluid, and some days they feel they're a boy and
14 some days they feel they're a girl. So potentially a boy could
15 come, the football quarterback could come in and say I feel
16 like a girl today and so I want to be able to use the girls'
17 room. Well, how do we know if that's accurate? How do we know
18 what that person's intention is?

19 THE COURT: And in your research of all these other
20 school districts and in your research to create this policy,
21 were you made aware of any actual situations where things like
22 that actually happened?

23 THE WITNESS: No. I was made aware of the potential.
24 And that was discussed at the conference, that we had to look
25 at the whole picture; that this wasn't just one isolated thing.

1 That students can come in now and as kids do, they can kind of
2 stretch the truth and try to create the same scenario and then
3 these students end up in the restroom and we have no way of
4 supervising restrooms.

5 So we have to look at the potential of that and try
6 to prevent any kind of issues -- you have to always think that
7 way in education, what are kids -- what could they possibly be
8 doing? And that was one of the things, to try to be proactive
9 and stay ahead of those things, rather than --

10 THE COURT: If any -- if any child, any student
11 misbehaves in a bathroom, that is, exposes themselves or
12 bullies somebody or whatever it might be, regardless of their
13 gender, would they be subject to discipline?

14 THE WITNESS: Yeah, they certainly would. It would
15 be handled on a case by case, because you're going to hear
16 different versions, of course, of what happened in there,
17 because none of us are in there.

18 THE COURT: Right.

19 THE WITNESS: But, yes, absolutely. We want to try
20 to avoid the discipline and be preventive from these things
21 happening.

22 THE COURT: And does -- does it ever -- does the
23 issue of whether -- and part of your task force in looking at
24 these issues, LGBTQ issues, did the issue of same sex come up?
25 That is, did the issue of whether a person who is a homosexual

1 who is presumably in the restroom with others who are not
2 homosexual but of the same sex, does that issue come up as a
3 safety issue or privacy issue?

4 THE WITNESS: Partially. Just like everything else;
5 what are the possibilities of what can happen?

6 THE COURT: And is there any policy with respect to
7 homosexuals not being allowed to go into bathrooms where
8 other -- other individuals of the same sex who are
9 heterosexual?

10 THE WITNESS: Not to my knowledge, no.

11 THE COURT: Okay. Was that discussed in the best
12 practices?

13 THE WITNESS: The possibility of all kinds of things
14 came out. How best do you come up with a policy that will
15 prevent as many possible incidents as possible.

16 And, you know, I worked with the children that had
17 mental health issues. So there are a lot of children with all
18 kinds of issues.

19 THE COURT: Right.

20 THE WITNESS: And you never know what you're going to
21 get in there. So you try to do the best you can to prevent
22 those things from happening.

23 THE COURT: The schools that you surveyed -- and we
24 know -- we know that Broward County was one of them because I
25 saw your paper. We heard from the Broward County folks

1 earlier. They have a different policy.

2 THE WITNESS: Yes.

3 THE COURT: Their policy is they do allow a person to
4 use whatever restroom corresponds to their gender identity.

5 THE WITNESS: Correct.

6 THE COURT: Apparently there are other school
7 districts around the country -- we heard from somebody from
8 Kentucky yesterday that allows that. I know there are other
9 districts that are more in your -- in line with yours.

10 THE WITNESS: Right.

11 THE COURT: Did your committee or your task force
12 discuss whether such a policy as Broward has would be an
13 alternative?

14 THE WITNESS: Yes, they did. And then the issues
15 came up, but what if. What if this situation -- the
16 gender-fluid issue came up several times because it's so easy
17 for other kids to kind of play that term for different reasons.

18 THE COURT: And, again, are there any documented
19 incidents of that really happening?

20 THE WITNESS: Not to my knowledge. It was just --

21 THE COURT: A possibility.

22 THE WITNESS: -- possibilities and trying to prevent
23 things from happening.

24 THE COURT: And the other stated concern I've heard
25 throughout this trial is besides safety, there's privacy.

1 THE WITNESS: Yes.

2 THE COURT: In a restroom such as this, as I
3 understand it in a typical men or boys' room, there are
4 urinals, but there's also stalls just like there are in a
5 women's room.

6 THE WITNESS: Correct.

7 THE COURT: So people can go into a stall, close it,
8 use the facilities, come out, wash their hands and leave. So
9 what is the privacy issue with respect to a transgender -- in
10 this case, Mr. Adams is a transgender boy. He's a boy and he
11 wants to use the men's room, although biologically when he was
12 born, he was a female. What is the privacy issue that comes
13 into play when Mr. Adams walks into a men's room, goes into a
14 stall, goes to the bathroom -- locks the stall, goes to the
15 bathroom, unlocks the stall, comes out, washes his hands and
16 leaves, what is the privacy issue that is of concern there?

17 THE WITNESS: I think in a perfect world, that would
18 work. But, again, when you have other students going in there
19 for whatever reason, are they going to bullying him? Are they
20 going to assault him? Are they going to make fun of him? We
21 don't know those things, but those things happen in schools
22 because we have children with all kinds of issues.

23 THE COURT: So does the policy, then, really --
24 because counsel was asking you -- can you -- would you agree
25 with me that a person who has transitioned to -- from -- from

1 becoming -- from a girl to a boy, or transitioned from a boy to
2 a girl and has attributes of their gender identity such as in
3 the case of a girl, as counsel asked, a girl now has long hair
4 and they have developed breasts and has undergone maybe therapy
5 to make themselves look more feminine, do you perceive any
6 safety or privacy issues when that individual who was born a
7 boy goes into the boys' room?

8 THE WITNESS: If he was born a boy --

9 THE COURT: He now looks like a girl because he's a
10 girl and now --

11 THE WITNESS: Right, right. I see what you're
12 saying.

13 THE COURT: -- now under your policy, his two choices
14 are to go to a gender-neutral or to go into the boys' room.

15 THE WITNESS: Right.

16 THE COURT: Do you perceive any safety or security or
17 privacy issues with respect to that scenario?

18 THE WITNESS: Yes. And I think that's why we would
19 recommend the gender-neutral.

20 THE COURT: So, really, what the policy comes down to
21 is that -- is it -- I don't -- I shouldn't -- I don't want to
22 put words in your mouth.

23 Does the policy come down to in the case of a
24 transgender student that the district wants you to use a
25 gender-neutral bathroom?

1 THE WITNESS: I think for the safety and comfort of
2 every child, that would be the solution for St. Johns County.
3 And, again, every county is different in what they feel
4 comfortable with.

5 THE COURT: All right. Sure. Thank you, ma'am.

6 THE WITNESS: You're welcome.

7 MR. LAPOINTE: May I have a brief moment, Your Honor?

8 THE COURT: Yes.

9 (Counsel confer.)

10 MR. LAPOINTE: Your Honor, in the spirit of the
11 Marine Corps of stop digging, you're in the hole, no more
12 questions, Your Honor.

13 THE COURT: Thank you. Let me ask you one more
14 question, ma'am. And let me ask you the same question with
15 respect -- you've answered with respect to safety, but you --
16 you mentioned privacy is another issue.

17 THE WITNESS: Yes.

18 THE COURT: Have you had any -- in your research and
19 your talking to other districts and looking at the best
20 practices, were there any reported incidents of privacy
21 breaches that occurred as a result of a transgender student
22 using a bathroom that's different than their biological sex?

23 THE WITNESS: Not to my knowledge -- you mean in
24 St. Johns County or anywhere?

25 THE COURT: Well, anything that was reported to you.

1 I assume you're looking at -- when you're talking about safety
2 and privacy as being motivating --

3 THE WITNESS: Yes.

4 THE COURT: -- issues, I assume you're looking at
5 best practices around the country, you're looking at other
6 districts, you're looking at St. Johns. And I'm just asking
7 you -- I understand that those are articulated ideas or
8 potential as you say. I'm asking you are you aware of any
9 actual documented cases where something like that has occurred?

10 THE WITNESS: I'm not aware of that.

11 THE COURT: And with respect to the restroom policy,
12 I know counsel asked you this question and I just want to go
13 over it with you. Do you have that in front of you, No. 33?

14 THE WITNESS: Yes. Uh-huh (affirmative).

15 THE COURT: Look at "Restrooms." Transgender
16 students will be given access to a gender-neutral restroom.
17 Okay. That's true, right?

18 THE WITNESS: Yes.

19 THE COURT: And will not be required to use the
20 restroom corresponding to the biological sex. So in Mr. Adams'
21 case, he will not be required to use the restroom -- the girls'
22 restroom, right?

23 THE WITNESS: Correct.

24 THE COURT: All right. What does that say about why
25 he can't use the men's room?

1 THE WITNESS: It doesn't say that. It just says
2 here's what he can do. We're not saying what he can't do.
3 We're saying what he can do.

4 THE COURT: And to your knowledge, is there anyplace
5 where it says what he can't do?

6 THE WITNESS: In St. Johns County?

7 THE COURT: Yes.

8 THE WITNESS: Not to my knowledge. I don't know if
9 anything has been modified since I left.

10 THE COURT: Okay. All right.

11 Any further questions?

12 MR. HARMON: Just briefly, Your Honor.

13 THE COURT: Sure.

14 **REDIRECT EXAMINATION**

15 BY MR. HARMON:

16 Q. To your knowledge, are the boys and girls signs on the
17 bathroom -- bathrooms at St. Johns County schools, when you
18 were there, on the outside of the bathroom or on the inside of
19 the bathroom?

20 A. On the outside, to my knowledge.

21 Q. Okay. Do you -- does St. Johns County put "boys" and
22 "girls" signs on each individual stall?

23 A. No.

24 Q. Okay. So when a student is entering a bathroom in
25 St. Johns County, when they open the door to go in, the sign

1 will tell them if they're going into a boys' room or a girls'
2 room?

3 A. Correct.

4 Q. Okay. And when you were considering privacy issues with
5 the LGBTQ task force, were there privacy issues inside of that
6 bathroom outside of the stall?

7 A. Yes.

8 Q. Students changing clothes?

9 A. Yes.

10 Q. Students doing makeup?

11 A. Right.

12 MR. LAPOINTE: Objection. Leading, Your Honor.

13 THE COURT: I'll overrule.

14 BY MR. HARMON:

15 Q. So is it fair to say that in terms of the privacy
16 concerns, it was more than just what goes on inside of a single
17 stall within a bathroom?

18 MR. LAPOINTE: That's really leading, Your Honor.

19 THE COURT: You are kind of -- if you want -- you
20 want to make a closing argument right now or you want to ask a
21 question?

22 MR. HARMON: I mean, I'm always willing to make a
23 closing if Your Honor will entertain it, but...

24 THE COURT: All right. I think it's a fair question,
25 but why don't you ask her a question and let her answer it.

1 BY MR. HARMON:

2 Q. When you were considering privacy issues within the
3 bathroom, what areas of the bathroom did you take into
4 consideration?

5 A. Mostly outside of the stalls. Remember, the bathrooms are
6 not supervised, so that's always an issue, an area where kids
7 are where there's no supervision. So outside of the stalls,
8 you don't know if they go in the stalls and close the door, we
9 don't know. Some do, probably. Some don't.

10 Q. Are there times to your knowledge where there may be
11 multiple students in the bathroom but not inside of the stall?

12 A. Oh, yes. Definitely.

13 MR. HARMON: One moment, Your Honor.

14 (Counsel confer.)

15 MR. HARMON: No further questions.

16 THE COURT: Thank you for your time.

17 THE WITNESS: Okay. Thank you.

18 THE COURT: Enjoy your retirement.

19 THE WITNESS: Thank you.

20 THE COURT: Who is the next witness, please?

21 MR. HARMON: Cathy Mittelstadt, Your Honor.

22 Your Honor, is Ms. Smith released? She was going to
23 stay and watch.

24 THE COURT: It's okay, right? No problem?

25 MR. HARMON: Just making sure. She's not listed --

1 THE COURT: Yeah, you're welcome to stay, ma'am.

2 THE WITNESS: Just for a little while.

3 (Witness excused.)

4 (Ms. Mittelstadt enters the courtroom.)

5 THE COURT: Just for the record, I'll be stopping
6 just a few minutes before five, so hopefully we can get the
7 witness completed.

8 But come on up, ma'am.

9 If not, then she may have to come back.

10 COURTROOM 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: Yes, I do.

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

17 THE WITNESS: Cathy Ann Mittelstadt. Last name is
18 M-i-t-t-e-l-s-t-a-d-t.

19 COURTROOM DEPUTY: Thank you. Please be seated.

20 THE COURT: Don't worry about me over here. I'm just
21 tired of sitting.

22 THE WITNESS: You're stretching. I completely
23 understand.

24 THE COURT: All right.

25 **CATHY ANN MITTELSTADT, DEFENDANT'S WITNESS, SWORN**

DIRECT EXAMINATION

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BY MR. HARMON:

Q. Good afternoon.

A. Good afternoon.

Q. Where do you reside, Ms. Mittelstadt?

A. I live in Flagler County.

Q. Okay. And how long have you lived in Flagler County?

A. Over 15 years.

Q. Okay. Can you give us a little background of your education --

THE COURT: They don't make you live in the county?

THE WITNESS: No, sir.

THE COURT: Okay.

BY MR. HARMON:

Q. Can you give us a little bit of your educational background?

A. Sure. I received my undergrad in health and physical education from the University of North Carolina in Chapel Hill in 1988. After that, I earned my master's degree in adaptive physical education at the University of Central Florida in Orlando. And after that, I earned my specialist in educational leadership from Nova University.

Q. Okay. And when was -- do you recall approximately when you obtained those?

A. '88 was my undergrad. Would have been -- in the '90s

1 would have been my master's degree and my specialist's degree.

2 Q. Okay. Are you currently licensed in any areas?

3 A. I am a certified principal in the state of Florida for the
4 Florida Department of Education. Also I carry a certification
5 for my teaching and physical education and a coaching
6 endorsement.

7 Q. Okay. And can you take us through kind of your employment
8 history, if you can.

9 A. From St. Johns or you want me to go back?

10 Q. Let's start with most recent and going back as far as you
11 can.

12 A. Sure. Most recently, I'm currently serving as the deputy
13 of -- superintendent for operations at St. Johns School
14 District. I've held that position for coming up on one year.
15 Prior to that, I was the associate superintendent for student
16 support services. I held that position for a year-and-a-half.
17 Prior to that, I was the principal at St. Augustine High School
18 for six years. Prior to that, I was the principal at R.J.
19 Murray Middle School for three years. Prior to that, I was
20 assistant principal at Pedro Menendez High School for two
21 years. And prior to that, I was assistant principal at Fruit
22 Cove Middle School, which would have been my first position in
23 St. Johns County.

24 Q. So how long total have you been employed with the
25 St. Johns County School District?

1 A. This is my 16th year.

2 Q. What about prior to St. Johns County, did you work in any
3 educational capacity?

4 A. Yes. I was in Orange County, worked for Orange County
5 Public Schools for ten years as an assistant principal, a dean
6 of students, and a coach and teacher.

7 Q. So moving on a little bit now from your background,
8 talking about St. Johns County schools, what is the school
9 district's student bathroom policy?

10 A. We currently use what we consider a sex-segregated, where
11 our boys go to the boys' designated restrooms and the girls go
12 to the girls' designated bathrooms.

13 Q. How long has that been the policy in St. Johns County to
14 your knowledge?

15 A. Prior to my existence and working in St. Johns County, way
16 back as long as I can attest to being an employee here for the
17 district.

18 Q. Does that apply in all schools equally?

19 A. Yes, sir. The one difference would be our primary through
20 third grade, we do have single-stall restrooms which can be
21 used by either boys or girls.

22 Q. And when it comes to that being the policy, is it written?

23 A. No, it's just ingrained in us.

24 Q. Is it enforced?

25 A. Yes, it is.

1 Q. How is it enforced, to your knowledge?

2 A. We have a student code of conduct that all of our leaders
3 at our schools follow in terms of managing our student
4 populations within the -- each of the various schools.

5 Q. And if a student of one sex were to go into the bathroom
6 of another sex, what are some of the possible infractions under
7 the district's code of conduct?

8 A. It would be inappropriate misbehavior and a school
9 official would have the latitude to follow various consequences
10 ranging from level one, which could be just a conversation and
11 a redirect. If it was repeated misbehavior over time, it could
12 be escalated to a higher level which would have more severe
13 consequences.

14 Q. And you said inappropriate behavior. Is it considered
15 misconduct under the policy?

16 A. Yes. You're misusing our restrooms.

17 Q. Have you ever in your time at the district had to deal
18 with the policy that you just stated as applied to a
19 transgender student?

20 A. Yes. In my experience as a principal at St. Augustine
21 high school, we had a transgender student, and we made an
22 accommodation for that student.

23 Q. Okay. Without identifying the student, was the -- was
24 that transgender student permitted to use a bathroom that was
25 different than their biological sex?

1 A. We afforded them an accommodation of going to a
2 gender-neutral restroom.

3 Q. Were they forced to go to a gender-neutral restroom?

4 A. No. We allowed them the option of continuing to use the
5 one that's their biological sex or we gave them this other
6 accommodation.

7 Q. And when you talk about biological sex, are you familiar
8 with the district's enrollment process?

9 A. Yes.

10 Q. What, to your knowledge, if you could explain, is the
11 district's enrollment process?

12 A. When a student enrolls in our county at any of our
13 schools, there's an enrollment package, which includes a
14 multiple group of forms, including a district enrollment packet
15 that they complete. Their immunization records are presented
16 to the enrolling school official, a copy of their physical, a
17 birth certificate, and a proof of their residency.

18 Q. Is that provided at the time of enrollment?

19 A. Yes, sir.

20 MR. HARMON: Your Honor, may I approach?

21 THE COURT: Yes.

22 MR. HARMON: For the record, I'm going to show the
23 witness what's been previously marked as Defendant's Exhibit
24 142 and ask if the witness recognizes that document.

25 THE WITNESS: Yes.

1 BY MR. HARMON:

2 Q. What does this document appear to be?

3 A. This is the enrollment documentation for St. Johns County
4 School District. It's a student information entry sheet.

5 Q. Okay. Is the student's name on this Drew Adams?

6 A. It is.

7 Q. And we -- obviously, there's some redactions on there,
8 where you see the black bars. To your understanding, does this
9 appear to be a true and accurate copy of the student
10 information entry form related to Drew Adams?

11 A. Yes.

12 MR. HARMON: Your Honor, at this time, we'd like to
13 move this document into evidence.

14 MR. KAPLAN: Your Honor, subject to the necessary
15 redactions and additional protections, I see that -- I don't
16 know if it needs to be under seal -- other information is
17 included.

18 THE COURT: Does it need to be? I'm happy to put it
19 under seal if you want to because it does have some e-mail and
20 other identifying information.

21 MR. KAPLAN: Your Honor, that would be our
22 preference.

23 THE COURT: Okay. Defendant's 142 will be admitted
24 and placed under seal.

25 (Defendant's Exhibit 142 received into evidence under

1 seal.)

2 BY MR. HARMON:

3 Q. Is this a document that is received at the enrollment --
4 at the enrollment packet?

5 A. Yes, it is.

6 Q. At the top of that document, is there a spot for the
7 enroll of -- enrollee to identify gender as a male or female?

8 A. Yes. We have a gender male box and a gender female box.

9 Q. What does this one say?

10 A. This one acknowledged with an X on the female.

11 MR. HARMON: I'm going to approach the witness with a
12 document marked as Defendant's Exhibit 143. And I would say
13 this probably falls within the same type of document as the
14 last one.

15 BY MR. HARMON:

16 Q. Do you recognize this document?

17 A. I do.

18 Q. How do you recognize this document?

19 A. This is another enrollment form that we have our families
20 complete. This is a home language survey.

21 Q. Is that related to Drew Adams?

22 A. It is.

23 MR. HARMON: Your Honor, I'd like to -- subject to
24 the same limitations in terms of --

25 THE COURT: Be admitted, 143, under seal.

1 (Defendant's Exhibit 143 received into evidence under
2 seal.)

3 BY MR. HARMON:

4 Q. I'm sorry if I already asked this. But is this document
5 included in the enrollment packet?

6 A. Yes.

7 Q. And is there a place for the student to identify whether
8 they're male or female?

9 A. Yes. Again, we have a gender box, male and female, and
10 female is also X'd in.

11 Q. I'm going to hand you two documents because I think this
12 will be the last of these.

13 MR. HARMON: And, Your Honor, I'll represent these
14 are similar in terms of the privacy, same as the enrollment
15 packet. This is the last two.

16 THE COURT: Any objection to these, Counsel?

17 MR. KAPLAN: Your Honor, subject to the same
18 conditions previously articulated, no objection.

19 THE COURT: Defendant's 144, which is the State of
20 Florida school entry health exam, Defendant's 145, which is the
21 social security card, will be admitted and under seal.

22 (Defendant's Exhibits 144 and 145 received into evidence
23 under seal.)

24 BY MR. HARMON:

25 Q. And do these -- what are these two documents?

1 A. These are two more enrollment documents that we collected
2 from a parent or guardian upon enrollment in our county.

3 Q. Okay. Do these appear to be related to the plaintiff in
4 this case?

5 A. Yes, they are.

6 Q. Does --

7 THE COURT: Counsel, you may have done this, but --
8 these are all basically the same date, but can you establish
9 the date of these documents or the ballpark date?

10 MR. HARMON: Yeah.

11 BY MR. HARMON:

12 Q. If you can go back -- do you have 142?

13 A. I do.

14 Q. On the back, there's a notarization page. Do you see
15 that?

16 A. Yes.

17 Q. Does it look like that -- 142 is notarized on July 30,
18 2010?

19 A. Yes, it is.

20 Q. Okay. And then if you look at 143, does that appear to be
21 a document dated August 2nd, 2010?

22 A. Yes.

23 Q. And Exhibit 144, does that appear to be a document dated
24 July 29, 2010?

25 A. It is.

1 Q. And then are 145 -- is not dated?

2 A. Correct.

3 Q. Those documents -- those four documents, is that the
4 entire enrollment package when a student enrolls in the
5 district or are there other materials?

6 A. There would be proof of residency, like a copy of the
7 light bill or phone bill or something acknowledging the
8 family's residence.

9 Q. Okay. So all of those documents that we just looked to,
10 are they related to plaintiff's enrollment in the district?

11 A. They are, yes.

12 Q. Do all of those documents identify plaintiff as a female,
13 with the exception of the social security card?

14 A. Yes.

15 Q. Okay. So I was on the topic of asking how the district
16 goes about determining a student's sex for purposes of its
17 bathroom policy. I think your testimony was in the enrollment
18 process?

19 A. Yes.

20 Q. Okay. The exercise that we just went through in looking
21 at those four documents, is that how the district would
22 determine a student's sex?

23 A. It is. We would take all of these into consideration and
24 then we would complete the entry into our computer database.

25 Q. And once a student enrolls and identifies their sex in the

1 enrollment documents, is that student treated for purposes of
2 the bathroom policy as that sex moving forward?

3 A. Yes.

4 Q. What if they wanted to change their identified pronoun to
5 the opposite sex?

6 A. We would work with the student and family in that regard.

7 Q. What if the student wanted to use the bathroom of their
8 opposite of their enrolling sex?

9 A. Opposite of their enrolling sex?

10 Q. Yeah. Like, for instance, Drew Adams enrolled as a female
11 in the St. Johns County School District, if Drew Adams wanted
12 to use the men's restroom, would he be permitted to under the
13 district's policy?

14 A. No.

15 Q. Is there a process that the district uses to determine
16 whether a student is transgender?

17 A. That's an individual basis. That individual would have to
18 come forward and acknowledge that to a school official.

19 Q. Aside from what we've already talked about before, I think
20 you had mentioned one instance as a principal where you worked
21 with a transgender student.

22 Are there any other instances in your time in
23 St. Johns County where you worked on transgender student
24 issues?

25 A. Only in the capacity of serving as associate

1 superintendent for support services and working with the
2 student services team.

3 Q. And what do you recall from that, if you can kind of
4 explain that to the court?

5 A. So in my previous position as associate superintendent for
6 student support services -- when I came on board, I worked with
7 all my directors regarding -- as a district, making sure we are
8 meeting the needs of all students as they perform academically.

9 And one of our directors brought forward a long-going
10 process in which she had been working with her team on creating
11 some guidelines to help our school officials in working with
12 students who were LGBTQ.

13 Q. Who is that director?

14 A. Sallyanne Smith.

15 Q. Do you recall approximately when you first may have spoken
16 to Ms. Smith about the best practices work?

17 A. When I came on board July of 2015, we talked about
18 creating a guideline and she mentioned that she already had
19 been undertaking quite a journey in collecting lots of
20 information on how to help our school principals.

21 Q. Did you do anything to educate yourself on any LGBTQ
22 student issues?

23 A. In my experience as a principal, of course, I went through
24 that process. And, in addition, when I came on board, I worked
25 with our mental health counselors and the social workers that

1 were within Ms. Smith's department regarding understanding the
2 level of how they're working with students at our school sites
3 and they shared resources and references along the way.

4 Q. So when you met with -- what about conferences? Sorry.
5 I'm going to switch up a little bit.

6 Have you ever been to an LGBTQ student conference?

7 A. I attended one in the spring of 2016.

8 Q. Okay. And I think you mentioned in July of 2015 is
9 approximately when you met with Ms. Smith to discuss what her
10 team had been working on?

11 A. That's correct.

12 Q. Okay. What, if any, was your role with respect to the
13 best practices at that time when you met with Ms. Smith? What
14 were you supposed to be doing?

15 A. My role was to understand the complexity of what her team
16 had been working through in order to bring this to my
17 supervisor. So if it was something that we were going to bring
18 forward and share with all of our school leaders, we wanted to
19 make sure that we brought good knowledge and depth of
20 information and that whole process to the cabinet.

21 So my supervisor at that time would have been Brennan
22 Asplen, who I would have relayed that information up the chain.

23 Q. Okay. And then you mentioned the cabinet. What's the
24 cabinet?

25 A. The superintendent established an executive cabinet made

1 of higher-level directors that would meet on a weekly basis to
2 discuss a myriad of situations or initiatives or things that
3 our district was working through.

4 MR. HARMON: I'm going to grab a document, Your
5 Honor. You can assume which document I'm looking for, right?
6 It's been passed around to everybody, so...

7 THE COURT: They got you on a scavenger hunt.

8 MR. HARMON: I'm going to help the witness get to it.

9 THE COURT: What are we looking for?

10 MR. HARMON: The best practices, Defendant's Exhibit
11 33.

12 THE COURT: I got my own copy, so I'm holding on to
13 it.

14 MR. HARMON: You do it. You're the one that needs it
15 the most.

16 Let me find it for you.

17 THE WITNESS: I've got the enrollment.

18 MR. HARMON: We're going to get it. Don't worry.
19 There we go.

20 THE COURT: If I had known we were going to have so
21 much trouble, I would have made you put it on a poster board or
22 something so that we could all have it.

23 All right. Everybody got it?

24 MR. HARMON: Yes. I think with it being one of the
25 more important documents, we'd have hundreds of them.

1 (Counsel confer.)

2 MS. ALTMAN: Terry, we can pull it up on the screen.

3 MR. HARMON: We're good. We're all good.

4 BY MR. HARMON:

5 Q. Okay. Do you recognize that document?

6 A. I do.

7 Q. What is that document?

8 A. It's the St. Johns County School District guidelines for
9 LGBTQ students to follow our best practices at our school
10 sites.

11 Q. Okay. Were you at all involved in the drafting process
12 related to this document?

13 A. No, sir.

14 Q. Were you at all involved in -- maybe I can rephrase that.
15 Before this document was finalized, had you seen any drafts of
16 it?

17 A. Yes.

18 Q. Okay. Was there anybody that you worked with at the
19 school district when it came to looking at drafts?

20 A. Sallyanne Smith's team.

21 Q. Okay. Do you know a Frank Upchurch?

22 A. Yes.

23 Q. Had you ever communicated with Mr. Upchurch about best
24 practices?

25 A. I did when we had come to a point where we felt this was

1 a -- perhaps going to be something that we utilized, we wanted
2 to make sure our legal counsel had eyes on it, so we pushed it
3 through to his office.

4 THE COURT: Ms. Jones testified there was some kind
5 of a transition where you were -- she wasn't originally
6 reporting to you on this, but then she was.

7 Can you tell me what that -- tell me how that worked?
8 Did you come in to a different position or something?

9 THE WITNESS: I did. The position of associate
10 superintendent for student support services was a newly created
11 position, and so when I took over that role, Sallyanne Smith
12 had previously reported to --

13 THE COURT: Now I did it, right? I called her
14 Ms. Jones and it's Ms. Smith. I apologize. I don't know
15 why --

16 THE WITNESS: And I know who you were talking about.

17 THE COURT: They did it to me. I had it right. We
18 had -- we've been having trouble calling her by her right name.
19 I do apologize.

20 Go ahead, ma'am.

21 THE WITNESS: So, yes, so she previously reported to
22 superintendent -- associate superintendent of operations at the
23 time would have been Mr. Forson. But when I came on board, her
24 department was reassigned to fall within the framework of my
25 new leadership that had been established by the district in the

1 org chart.

2 THE COURT: And so what did that mean with respect to
3 your responsibility for this -- for this best practices policy?

4 THE WITNESS: I was to familiarize myself with where
5 her team was regarding working through this development and
6 then as we started to create a model here for us to utilize in
7 the school, bring it back to cabinet for further approval,
8 discussion, and then final implementation.

9 THE COURT: Thank you.

10 MR. HARMON: Almost. Okay.

11 BY MR. HARMON:

12 Q. Okay. I'm going to hand you a document that I've marked
13 for identification as Defendant's Exhibit 2 and see if -- 72
14 and see if you recognize that document.

15 A. Yes, I do. It's an e-mail that I sent to Mr. Upchurch.

16 MR. HARMON: Your Honor, I can -- I'd like to move
17 this document into evidence as Defendant's 72.

18 THE COURT: Any objection?

19 MR. KAPLAN: Your Honor, there's no objection.

20 THE COURT: Be received, Defendant's 72.

21 (Defendant's Exhibit 72 received into evidence.)

22 BY MR. HARMON:

23 Q. So on August 12, 2015, does this e-mail reflect -- what
24 does this e-mail reflect?

25 A. A brief explanation to the lawyer regarding our

1 superintendent's request for quick review from his lens
2 regarding Ms. Smith's team's efforts on putting together our
3 guidelines.

4 Q. And is the attachment a draft of the best practices?

5 A. It is.

6 Q. Okay. So as of August 12th, 2015, had the best practices
7 document been finalized?

8 A. No, sir.

9 Q. Okay. Now, do you recall discussing at any point the best
10 practices document with the cabinet?

11 A. Yes.

12 Q. Do you recall approximately when that was or when that
13 was?

14 A. Right around the same time frame.

15 Q. Okay. And was it something where you presented the draft
16 to the team to discuss or --

17 A. Yes. I --

18 MR. KAPLAN: Objection to leading, Your Honor.

19 THE COURT: Ask a question, please.

20 BY MR. HARMON:

21 Q. Can you talk to us -- or what, if anything, did you
22 discuss with the cabinet with respect to the best practices
23 document?

24 A. Sure. I brought this draft forward, gave copies to
25 members of the cabinet that were in attendance on that Friday

1 meeting, and we went through the various sections, had
2 conversations.

3 I talked about Sallyanne's team's commitment into
4 bringing this forward to create this level of where they were
5 at this point. And throughout the course of the cabinet
6 discussions, various members of -- various directors under
7 Dr. Joyner would have asked questions.

8 THE COURT: And what's the time frame on this, ma'am?

9 THE WITNESS: Cabinet typically meets on a Friday, so
10 this presentation would have been right around the same time
11 frame as this e-mail going back and forth with the lawyer.

12 THE COURT: So that's when, August of 2015?

13 THE WITNESS: Yes.

14 THE COURT: Okay. Thank you.

15 MR. HARMON: Your Honor, I'm going to approach with
16 the document and hand to the witness Defendant's Exhibit 87 and
17 see if the witness recognizes Defendant's Exhibit 87.

18 THE WITNESS: I do.

19 BY MR. HARMON:

20 Q. And how do you recognize that document?

21 A. This is an assistant principals' meeting agenda which
22 frames out presenters to our assistant principals and the
23 topics that we would be discussing.

24 Q. Okay. And does this appear to be a true and accurate copy
25 of the agenda?

1 A. Yes.

2 Q. And if you look at -- see at the top where it says
3 "Opening comments"?

4 A. Yes.

5 Q. If you look in the 8:40 to 9 o'clock slot, do you see
6 "Overview of best practices guidelines, Cathy Mittelstadt"?

7 A. Yes, I do.

8 Q. Does this appear to be a true and accurate copy of this?

9 A. Yes.

10 Q. I may have asked you that already.

11 MR. HARMON: At this time, Your Honor, I'd like to
12 move in Defendant's 87.

13 MR. KAPLAN: No objection.

14 THE COURT: Be received.

15 (Defendant's Exhibit 87 received into evidence.)

16 BY MR. HARMON:

17 Q. So talk, if you can -- September 10th, 2015, St. Johns
18 County School District, assistant principals' meeting, what was
19 this?

20 A. This was a monthly meeting in which all the assistant
21 principals in our county are invited to attend. It's about
22 communication and staying in the know with various initiatives
23 that our district is involved with.

24 At this particular meeting, I was providing all the
25 assistant principals with an overview of the best practices

1 guidelines that we had recently developed or we had recently
2 brought forward for communicating with all school employees.

3 So this would have been designated for the assistant
4 principals to receive this information.

5 Q. Did you speak at this meeting?

6 A. I did.

7 Q. And what did you speak about at this meeting?

8 A. I handed out the best practices, and I acknowledged
9 Sallyanne's team's efforts in computating [sic] this whole
10 process for us and giving us an opportunity to now have at our
11 school sites a best practices guidelines for all of our leaders
12 to work with our students who might have brought forward a
13 challenge in regarding the best practices guidelines that they
14 could utilize.

15 Q. As of September 10th, 2015, was -- were the best practices
16 guidelines final?

17 MR. KAPLAN: Objection. Leading.

18 THE COURT: Overruled. Well, you can go ahead.

19 THE WITNESS: They were final in how we distributed
20 them, yes.

21 BY MR. HARMON:

22 Q. Meaning did they -- from the time you had the meeting on
23 September 10, 2015, to now, have they changed?

24 A. No, they have not changed.

25 Q. Was there ever a time that you met with principals within

1 the district about the guidelines?

2 A. Yes, at a principals' meeting, I would have shared the
3 same information.

4 Q. Do you recall when that was?

5 A. Our principals' meetings are usually the week prior to the
6 assistant principal --

7 THE COURT: So does the cabinet vote on them? Or how
8 do they become final? You presented them to the cabinet in
9 August. When you say it became final, what process occurred
10 that let you know that?

11 THE WITNESS: The superintendent would acknowledge
12 that he agrees with the recommendations of district staff and
13 the efforts they brought forward and that this would be
14 something he would want all of our school leaders to have
15 access to the information on.

16 THE COURT: Okay. So you're in a cabinet meeting,
17 you present it, cabinet talks about it, and when the
18 superintendent says it's a go or we implement staff's
19 recommendations, that's when you know it's final?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 BY MR. HARMON:

23 Q. Do you recall approximately when that meeting was where it
24 was final?

25 A. It would have been prior to distribution of the

1 principals' meeting. And the principals' meeting, like I said
2 if we work back on the calendar, would have been prior to the
3 assistant principals' meeting. So before this September 10th
4 date.

5 Q. Okay. Do the best practices -- does that document in
6 front of you, Exhibit 33, apply to all students in the
7 district?

8 A. Yes.

9 Q. And do you see on that first page where it addresses
10 restrooms? Yours has -- it may be on the second page on yours.

11 A. Second page.

12 Q. Okay. Mine is a little different.

13 A. Yes.

14 Q. Okay. With respect to the best practices listed for
15 restrooms, did it change the district's unwritten bathroom
16 policy that you described earlier?

17 A. No, sir.

18 Q. What was the intent of having that in there?

19 MR. KAPLAN: Objection. Foundation.

20 THE COURT: Overruled.

21 THE WITNESS: Our goal was to recognize that when a
22 transgender student came forward to us, we wanted to allow for
23 restroom use that we felt within all of our schools provided
24 privacy and safety for our students. So we created this
25 opportunity for a transgender student to use a gender-neutral

1 restroom or continue to use the one of their biological sex.

2 BY MR. HARMON:

3 Q. And you mentioned privacy and safety. Can you describe
4 the -- some of the privacy issues that were addressed?

5 A. Discussions from our mental health counselors along the
6 way talked about in our sex-segregated restrooms, they're
7 multi-stalls, multiuse.

8 And so if there were multiple people in there who
9 wanted to protect the privacy -- if someone was to go and
10 perhaps undress or clean up a stain on their clothing or
11 something like that, they had that opportunity to enter that
12 area and receive that privacy.

13 Q. What about safety? You mentioned safety. Can you
14 describe that?

15 A. Our multiuse restrooms are grades four and up. So safety
16 in terms of ensuring -- particularly the secondary level, if
17 you have a 13-year-old student and an older student in a
18 restroom, there were some concerns regarding making sure --
19 because those areas are unsupervised, that we totally precluded
20 or dissuade any opportunity for any type of misbehavior to
21 occur.

22 Q. And when you were considering privacy and safety issues,
23 whose privacy and safety issues were you concerned about?

24 A. The privacy of all of our students.

25 Q. Do you know --

1 THE COURT: And what -- what were you thinking might
2 happen?

3 THE WITNESS: In a multi-stall restroom, when there's
4 multiple students going in and out of there, our restroom
5 policy as it exists ensures that only males will be in the male
6 restroom and only females will be in the female restroom. And
7 that guarded policy has proven very successful for us in my
8 time in St. Johns County.

9 THE COURT: And with respect to a transgender
10 student, you -- you consider -- for example, do you consider
11 Mr. Adams to be a girl or a boy?

12 THE WITNESS: He is transitioning as a boy, but
13 biologically, he is still a female.

14 THE COURT: And so your -- the policy then would
15 indicate that he should use the girls' restroom?

16 THE WITNESS: Or the gender-neutral restroom.

17 THE COURT: Go ahead.

18 MR. HARMON: I didn't want to interrupt, Your Honor.

19 BY MR. HARMON:

20 Q. I want to kind of change gears a little bit.

21 Do you know Drew Adams?

22 A. Only by way of this case.

23 Q. Okay. Do you remember the first time that you met Drew
24 Adams?

25 A. I met him in person at the end of his freshman year.

1 Q. Okay. Do you know Drew Adams' mom?

2 A. I do.

3 Q. Do you remember the first time you met her?

4 A. That would have been in November.

5 Q. Do you recall anything about that meeting?

6 A. That meeting was at my office and Mr. Asplen, my
7 supervisor, was in attendance. It was about an hour in length.
8 She discussed Drew's transitioning and asked us again about our
9 bathroom policy. And, again, we stood by the fact that we were
10 using our best practices guidelines and that Drew would need to
11 use the gender-neutral restroom or the one with his biological
12 sex.

13 Q. Do you recall anything specific that Ms. Adams said during
14 that meeting?

15 A. She just asked about the restroom policy. She brought
16 some materials with her referencing other districts and
17 resources from other cases regarding his request to use the
18 restroom.

19 THE COURT: Are you concerned at all about, if
20 Mr. Adams were to -- consistent with your policy, if he were to
21 use the girls' restroom, are you -- do you have any safety,
22 privacy, other concerns about that environment?

23 THE WITNESS: Which is his biological sex going to
24 his female --

25 THE COURT: Yes. Yes.

1 THE WITNESS: That would be his choice.

2 THE COURT: Right.

3 THE WITNESS: No, sir.

4 THE COURT: You don't?

5 THE WITNESS: No, sir.

6 BY MR. HARMON:

7 Q. Did you talk about privacy during that meeting?

8 A. We did.

9 Q. Do you recall specifics about what you discussed with
10 privacy?

11 A. Just similar -- in regards to my comments previously
12 regarding members of the opposite sex in a restroom, the
13 awkwardness, the privacy component to it, the fact that our
14 best practices guidelines prohibit any of that from potentially
15 occurring.

16 Q. And you said Mr. Asplen was there during that meeting?

17 A. Yes, he was. He was my supervisor at the time.

18 Q. Do you recall Mr. Asplen at all talking about being
19 concerned about a transgender girl waving her penis around in a
20 bathroom?

21 MR. KAPLAN: Objection. Leading.

22 THE COURT: I'll let her answer.

23 THE WITNESS: We talked about privacy. He did not
24 use an anatomical part as you just described. Just again
25 making reference to the fact we were trying to keep our

1 sex-segregated restrooms as that.

2 BY MR. HARMON:

3 Q. Do you recall, I think you mentioned it, that the first
4 time you met Drew Adams was at the end of his freshman year?

5 A. Yes.

6 Q. Do you recall why you -- what the circumstances were
7 regarding that first meeting?

8 A. Sure. Going back to the first time I even met mom, I
9 acknowledged that I cared for his well-being as he progressed
10 through our school system, as I do all of our students, and
11 that I hoped that she kept in touch and shared with me along
12 the way how he's doing academically. And we discussed perhaps
13 at the end of the year myself following up. And so as the
14 course of the year transpired, we were able to make that
15 meeting occur at the end of his freshman year.

16 Q. And did you remain in touch with Ms. Kasper after that
17 meeting?

18 A. She would communicate with me via e-mail and we also had
19 a -- another meeting. I can't recall the exact day. Would
20 have been that spring prior to my meeting with Ms. Adams and
21 Drew at the school.

22 Q. Do you recall anything about that meeting?

23 A. Holly Arkin was in attendance at that meeting and, again,
24 mom was readdressing the bathroom concern and wanted Drew to
25 have access to the boys' restroom. And, again, we acknowledged

1 that this was our best practice. We're going to continue to
2 exercise what we put in place.

3 And, again, at the end of that meeting, that's when I
4 expressed the fact that I would love to get out to the school
5 and meet Drew, because I had not met him before, and sit down
6 and ask him how his freshman year had gone thus far.

7 Q. Do you know if plaintiff's official school records
8 identify -- if they say male or female on the official school
9 records?

10 A. In our student database right now, it says that Drew is a
11 female.

12 Q. Okay. Is there any way in the student records that Drew's
13 identified as male?

14 A. In our student database, there would be a pop-up window
15 that would pop up for our teachers to see acknowledging his
16 desire to be called upon with male pronouns.

17 MR. HARMON: Just one moment, Your Honor.

18 (Counsel confer.)

19 MR. HARMON: Your Honor, is there any way to have a
20 very brief recess to confer with counsel for just two to three
21 minutes -- five minutes?

22 THE COURT: Sure.

23 MR. HARMON: Thank you, Your Honor.

24 THE COURT: Let me -- let me ask -- are you handling
25 the --

1 MR. KAPLAN: Yes, Your Honor.

2 THE COURT: Do you have an estimate -- are you
3 getting close to being done?

4 MR. HARMON: Oh, yes. Yes.

5 THE COURT: Do you have an estimate of how long
6 you'll be?

7 MR. KAPLAN: Your Honor, I think it would be
8 difficult for me to say. There are certain 30(b)(6) topics
9 that I want to discuss directly with this witness, so I don't
10 want to be inaccurate.

11 THE COURT: So probably unlikely we're going to get
12 done with this witness today, I'm guessing.

13 MR. KAPLAN: I think that's an accurate statement.

14 THE COURT: Sorry about that. You may have to come
15 back. But I've got to come back, so...

16 All right. Five minutes.

17 COURT SECURITY OFFICER: All rise.

18 (Recess, 4:39 p.m. to 4:45 p.m.)

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

21 BY MR. HARMON:

22 Q. Ms. Mittelstadt --

23 A. Yes.

24 Q. -- how many students attend St. Johns County schools,
25 approximately?

1 A. Approximately 40,000.

2 Q. How many schools are in the district?

3 A. 36.

4 Q. Of those 36 schools, how many are elementary,
5 approximately?

6 A. Approximately? 20 or so.

7 Q. Okay. Approximately how many middle schools?

8 A. Six.

9 Q. So that would leave about 10 high schools?

10 A. No, sir. Less than that.

11 Q. Okay.

12 A. And then we have K-8 schools as well.

13 Q. Multiple middle, elementary, high schools?

14 A. Yes.

15 Q. Does this best practices document -- is it in use at all
16 schools in the district?

17 A. Yes. That's our expectation.

18 Q. Are you aware if any other students have complained -- any
19 other transgender students have complained about the best
20 practices?

21 A. Complained about the best practices? No, sir.

22 Q. In your experience as an educator, do you believe that the
23 maturity level of students range?

24 MR. KAPLAN: Objection, Your Honor. Vague.

25 BY MR. HARMON:

1 Q. Or some student --

2 THE COURT: I know what he means, but do you know
3 what he means?

4 THE WITNESS: The maturity level of the students? It
5 varies, absolutely.

6 BY MR. HARMON:

7 Q. How would you describe the demographics of the St. Johns
8 County School District?

9 A. Our student demographics -- do you want me to cite out how
10 that's split?

11 Q. Sure.

12 A. We approximately have 24 percent free and reduced lunch,
13 about 20 percent minority, about 25 percent of an ESE
14 population. Socioeconomics, that division falls along the line
15 of our free and reduced lunch, which is, again, around 25
16 percent.

17 (Counsel confer.)

18 BY MR. HARMON:

19 Q. In high school, what are the age ranges of students?

20 A. Traditionally, you'd find a freshman coming in age 13, 14,
21 varying all the way up to -- an ESE student can remain in our
22 school system through age 21, 22, based on their IEP. So at a
23 high school level, it's a pretty wide spectrum of ages.

24 Q. Between 13 and 21?

25 A. Yes, sir.

1 Q. What about in middle schools in St. Johns County?

2 A. In middle school, we are a sixth, seventh, and eighth
3 grade design. So a sixth grader typically comes in at -- gosh,
4 my age. I don't want to say for sure.

5 Q. Approximately.

6 A. 9, 10 is a sixth grader. Unfortunately, sometimes we have
7 sixth graders that might be overage because they've been held
8 back in a grade. So they might even be 15, 16 as a sixth
9 grader. That's unfortunate when that happens. And then eighth
10 graders from 13, 14.

11 Q. Okay. And then elementary school, do they start at age
12 five?

13 MR. KAPLAN: Objection, Your Honor. Relevance.

14 THE COURT: I'll let him do it.

15 BY MR. HARMON:

16 Q. What's the range of elementary school?

17 A. Our primary is prekindergarten through fifth grade, so
18 that would take it up to the transition age going into our
19 middle schools.

20 MR. HARMON: No further questions at this time, Your
21 Honor.

22 THE COURT: All right. I think, Counsel, if it's all
23 right with you, we'll break for the day and let you start with
24 cross tomorrow. Is that all right?

25 MR. KAPLAN: Yes, Your Honor.

1 THE COURT: Okay. So, ma'am, I'm sorry I'm going to
2 have to ask you to come back tomorrow. We've been starting at
3 9 o'clock, so if you could be back here ready for 9 o'clock.
4 Okay?

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Okay. Thank you. I appreciate it. And
7 you can go ahead and take your leave if you want to. I've got
8 to talk to the lawyers for a while.

9 (Witness temporarily excused.)

10 THE COURT: Okay. So we're going to finish the
11 cross-examination -- we're going to conduct the
12 cross-examination of the witness and then Mr. Harmon, what's --
13 what's the day look like tomorrow, please?

14 MR. HARMON: Yes, Your Honor. Giving you a best we
15 can, we had a little bit of a curve ball because of the expert
16 situation and Ms. Erh -- Dr. Ehrensaft not appearing. Our best
17 guess is starting -- finishing Ms. Mittelstadt and then moving
18 on to Mr. Upchurch and then possibly Mr. Dresback. We are
19 going to communicate with him this evening. Ms. Kunze after
20 that.

21 THE COURT: Who is she?

22 MR. HARMON: The current principal at Nease High
23 School.

24 THE COURT: Okay. Is the superintendent scheduled to
25 testify or not?

1 MR. HARMON: He would be last on our list if we were
2 to call the superintendent.

3 THE COURT: And would that be Superintendent Forson
4 or former Superintendent Joyner that's going to testify?

5 MR. HARMON: Superintendent Forson.

6 THE COURT: Superintendent Forson. Okay.

7 MR. HARMON: After Kunze, depending -- again, there
8 were some expert issues addressed today, would be Dr. Josephson
9 and Dr. Hruz, but that again is subject to change based on how
10 we play this out today. Followed by --

11 THE COURT: Subject to change whether you call them
12 at all or whether you --

13 MR. HARMON: Not only --

14 THE COURT: -- or whether you're going to call them
15 tomorrow?

16 MR. HARMON: Whether we call them. And the length of
17 them, too, may be dramatically reduced. But I would suspect
18 based on everything that we'd like to get them in here, I'll
19 tell you I think Mr. Upchurch is about the same as
20 Ms. Mittelstadt in terms of length. I think Mr. Dresback, if
21 we call him, is fairly quick and short. I do not believe
22 current Principal Kunze would be very long at all. Very quick.
23 Dr. Josephson and Director Hruz I just addressed.

24 THE COURT: And then the superintendent.

25 MR. HARMON: The superintendent. And we have two

1 impeachment witnesses that we may call tomorrow. And obviously
2 those impeachment witnesses would be -- we've already disclosed
3 them on the pretrial, but that would be Ms. Arkin and
4 Ms. Sterling. And if we were to call them, they would
5 obviously, as impeachment witnesses, be tremendously short.

6 THE COURT: Okay.

7 MR. HARMON: And then the last would be, if at all,
8 Superintendent Forson.

9 THE COURT: Okay. So that's a pretty full day and
10 it's possible it might not happen and it might bleed over into
11 Thursday, it sounds like. I mean, obviously it would be the
12 best if we can get it done tomorrow, but -- and we'll try to do
13 that.

14 MR. HARMON: Yes, sir.

15 THE COURT: But I guess we'll just wait and see.

16 MS. ALTMAN: Your Honor, can I ask --

17 THE COURT: Yes, ma'am.

18 MS. ALTMAN: Could I ask -- I apologize, but could I
19 just get some clarity because I think the expert issues
20 vis-à-vis Dr. Ehrensaft are resolved.

21 THE COURT: Right.

22 MS. ALTMAN: And I just am not clear from defense
23 whether they're calling Dr. Josephson and Dr. Hruz tomorrow or
24 not. And, obviously, we need to prepare. So we need to know
25 what their intentions are. I'm unclear as to whether they may

1 call them or if they are calling them.

2 THE COURT: It sounds like they may call them, to me.

3 MR. HARMON: Yes, Your Honor.

4 THE COURT: And if they do call them, they're going
5 to be short. That's what I got out of it.

6 I suspect that whoever is charge of those witnesses
7 ought to be prepared to talk to them, but, you know, I don't
8 know -- I mean, they obviously have broad range of opinions and
9 we'll see what the district decides to put on if they put them
10 on.

11 MS. ALTMAN: I understand. And maybe I misunderstood
12 the court's instruction. I thought they were required to give
13 us the day before who they are calling as opposed to sort of
14 this more amorphous "might call."

15 THE COURT: Well, I guess, ma'am, they are. They're
16 telling you they might call them. Would you prefer them to
17 assure you they're going to and then -- I mean, nobody is
18 required to put on a witness, so --

19 MS. ALTMAN: Okay.

20 THE COURT: -- you know, I -- I think -- my guess is
21 that it just kind of depends. And my further guess is they're
22 either not going to call them or they're going to call them for
23 just little bits of something, but we'll see.

24 MS. ALTMAN: Right. No, I understand. But I wasn't
25 sure if they think they're getting to them tomorrow or

1 Thursday.

2 THE COURT: Well, who's in charge of them on your
3 side?

4 MS. ALTMAN: One of them is -- Natalie is doing
5 Dr. Josephson and I'm doing Dr. Hruz.

6 THE COURT: All right. Well, I don't know exactly
7 what to tell you --

8 MS. ALTMAN: Okay. Fair enough.

9 THE COURT: -- but I'd be -- I don't want to force
10 them to say we're going to call them to satisfy a rule when
11 they don't really want to call them.

12 MS. ALTMAN: I understand.

13 THE COURT: And I think it may be just a call that
14 they make. That would be my guess. And so I think you need to
15 be prepared for it.

16 MS. ALTMAN: Fair enough.

17 THE COURT: All right.

18 MS. ALTMAN: Your Honor, we do have, if you want to
19 take it now, or not, the docket numbers for those requests for
20 judicial notice. I know we had talked about them earlier. Or
21 if you prefer, I can just bring you copies of them.

22 THE COURT: We'll do it tomorrow. I actually --
23 Ms. Weisman told me I ruled on some of them already. I
24 deferred others. So we'll put together what we did before
25 already. If I've already ruled on it, I don't need to rule on

1 it again. So you should be prepared to advocate for that in
2 the morning, along with the -- with the admissions and the --
3 putting in Dr. Ehrensaft's deposition. Okay?

4 MS. ALTMAN: Thank you, Your Honor.

5 THE COURT: Thank you. Anything else we need to do
6 tonight?

7 MS. ALTMAN: One more question. I apologize.

8 THE COURT: Yes, ma'am.

9 MS. ALTMAN: I was not fast enough. We just wanted
10 to get, to the extent the court has thought about this yet,
11 whether -- what your intentions are with regard to closing
12 arguments. Obviously it would be our preference. We think it
13 would be helpful for the court to hear them. But we wanted to
14 get some guidance from you as to --

15 THE COURT: I don't know. I think, more likely --
16 more likely, what I -- I might -- I might talk to you after the
17 trial is over and just ask you some questions. I might -- I
18 might engage with somebody from each side for a little bit.

19 But I think probably more likely, I'm going to want
20 the findings of fact and conclusions of law to be updated to --
21 and take into account what actually happened at the trial.

22 And then -- for example, I know -- we're going to
23 give you a list of cases. There's -- you know, there's going
24 to be 10 or 12 cases we definitely want you-all to address.

25 They're either on point or they're not on point or

1 they're distinguishable or they're not. And so we're going to
2 want some of that going on, because there's a lot of case law
3 out there that's been kind of developing.

4 And so what I'd be more likely to do, if it was -- if
5 I thought it was helpful, understanding that -- I hate to make
6 people spend the time and the money, but what I'd be more
7 likely to do is to schedule closing arguments for after I get
8 the -- after I get the findings, not before, because then
9 I'll -- then I'll be ready to talk to you.

10 So rather than just do some kind of an ad hoc closing
11 at the end of the evidence, I think I'd rather do that. So I
12 reserve the right to ask you some questions by way of kind of a
13 closing argument, or things that I'm thinking about, even if --
14 even if all that does is help you-all as you're preparing your
15 findings of fact to know, kind of, what -- some questions that
16 I have.

17 But I'm more likely to require the findings of fact
18 and then, if I feel it's appropriate, to schedule an argument,
19 which would be in the nature of a closing argument, based off
20 of the findings of fact.

21 MS. ALTMAN: Okay.

22 THE COURT: That's what I'm more likely to do. Okay?

23 MS. ALTMAN: Yes. Thank you, Your Honor.

24 THE COURT: All right. We're in recess.

25 COURT SECURITY OFFICER: All rise.

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(The proceedings concluded at 4:58 p.m.)

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