

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

Plaintiffs,

December 1, 2017

vs.

10:32 a.m.

THE SCHOOL BOARD OF ST. JOHNS
COUNTY, FLORIDA,

Courtroom No. 10D

Defendant.

FINAL PRETRIAL CONFERENCE
BEFORE THE HONORABLE TIMOTHY J. CORRIGAN
UNITED STATES DISTRICT JUDGE

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(Proceedings recorded by mechanical stenography;
transcript produced by computer.)

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P R O C E E D I N G S

December 1, 2017

10:32 a.m.

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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. This is the case of *Drew Adams versus the School Board of St. Johns County, Florida*. The case is 3:17-cv-739. I'll start with the Plaintiff's side and I'll let everybody make their appearances, please.

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

MS. DOOLITTLE: Good morning, Your Honor. Kirsten Doolittle on behalf of the Plaintiff.

MS. RIVAUX: Good morning, Your Honor. Shani Rivaux, also with Pillsbury Winthrop Shaw Pittman on behalf of Plaintiff.

MR. LAPOINTE: Good morning, Your Honor. My name is Markenzy Lapointe. I'm here for Plaintiff as well. Same law firm.

MS. BORELLI: Good morning, Your Honor. Tara Borelli from Lambda Legal Defense and Education Fund on behalf of Plaintiff.

1 THE COURT: The last time you were over there, so...
2 All right. Let's have the Defendants enter their
3 appearances, please.

4 MR. HARMON: Good morning, Your Honor. Terry Harmon
5 with Sniffen & Spellman, PA, on behalf of Defendant.

6 MR. SNIFFEN: Good morning. Robert -- Your Honor,
7 Rob Sniffen of Sniffen & Spellman, PA, on behalf of the
8 Defendant.

9 MR. KOSTELNIK: Good morning, Your Honor. Kevin
10 Kostelnik of Sniffen & Spellman, PA, on behalf of the
11 Defendant.

12 MR. WYLIE: Trae Wylie, Sniffen & Spellman, on behalf
13 of the Defendant.

14 THE COURT: Is this the whole firm, or is everyone
15 here -- so...

16 All right. Okay. So we are here today for a final
17 pretrial conference preparatory to a non-jury trial that's
18 going to start on Monday, December the 11th.

19 I have read quite a volume of material. Y'all have
20 been very busy. Of course, I've read the joint final pretrial
21 statement. And we're going to go through that briefly, I
22 think, and talk about some things we need to talk about, and
23 then anything you want to talk about. And then I've got all
24 these raft of motions that got filed. And I did have an
25 opportunity to read the motions.

1 This morning, I think, right -- right before I came
2 out, I was given several responses to some of the motions,
3 which I read.

4 And in the meantime, we had an amici curiae try to
5 intervene. I allowed the motion to intervene to be docketed
6 and -- but I haven't ruled on whether I'm going to allow the
7 medical associations to intervene for purposes of filing a
8 brief.

9 But I did receive that on behalf of a number of
10 medical associations, including the American Medical
11 Association, American College of Physicians and others.

12 So I know the Defendants are opposed to that. I read
13 that this morning as well. And we'll either deal with that
14 this morning or I'll deal with it at some other point. But I
15 do have that in mind as well. So we're going to talk about all
16 this as much as we need to.

17 But I will tell you this, that -- and I may have
18 mentioned this to you the last time we got together. From my
19 perspective, a non-jury trial is -- provides me an opportunity
20 that you don't have in a jury trial to consider evidence or
21 allow evidence to be put forward without me having to make
22 necessarily a final determination as to its relevancy or -- or
23 what weight I should give to it.

24 Because at the end of the trial, I'm going to have to
25 go back and consider all that anyway. And the bad thing about

1 a non-jury trial, for me, is when there's a jury they just get
2 to say yes or no. When it's a non-jury trial, I have to, of
3 course, explain my reasons for what I -- what I'm doing.

4 And in that process, of course, I will make
5 determinations about what evidence I'm considering and whether
6 it's relevant or not and what weight I should give to it.

7 And so even though we have a number of motions
8 seeking to limit or exclude certain evidence -- I'm going to
9 talk about those, so that I can at least understand what y'all
10 are saying, because I'm having a little hard time understanding
11 some of what you're saying to me.

12 And I'm not saying I'm just -- I'm not saying I'm
13 going to open the door and anything gets to come in. Obviously
14 there are going to be limits.

15 But I will say that I do have some more flexibility
16 in a non-jury setting, because eventually I'll have to make a
17 final decision as to what evidence is relevant, what weight it
18 should be given, and so forth.

19 So -- and that's why I asked you to -- to file
20 *Daubert* motions, just so I would be teed up with what you were
21 thinking, in terms of the experts, but I would likely not rule
22 on them.

23 I would go ahead and hear from the experts. And then
24 I can make a determination as to whether, either as a matter of
25 law or as a matter of good cross-examination, I should

1 disregard that expert's testimony. So -- so that's what --
2 that's kind of the animating thing we're doing here.

3 Y'all are going to have to help me -- and I'm going
4 to ask some specific questions. But I am having a hard time
5 understanding what you-all are saying to me regarding medical
6 evidence.

7 I can't quite -- I feel like I'm hearing two
8 different things from both sides. And I can't quite figure out
9 what y'all are saying to me. And so you're going to have to
10 help me with that.

11 When the case was originally conceived at the
12 preliminary injunction phase, I thought that it was the
13 Plaintiff's position that -- that medical evidence was not
14 going to be relevant, we weren't going to have a discussion
15 necessarily about the medicine behind either transgender or
16 gender dysphoria or things like that.

17 And I thought I understood the Defendant to
18 essentially agree with that. I know that when we had the
19 dust-up about Dr. Josephson's deposition, the Defendant told me
20 they had essentially changed their mind about that, and so that
21 we might be getting into that.

22 In response to that, it looks like the Plaintiffs
23 have tried to develop some medical evidence. But both sides
24 are also saying to me that it may not be relevant.

25 I just am not understanding where we are on that.

1 And so somebody is going to have to explain it to me using
2 simple words.

3 Okay. So -- and you'll -- there will be
4 opportunities to do that -- actually, let's do it right now.

5 Ms. Altman --

6 MS. ALTMAN: Yes, Your Honor.

7 THE COURT: -- come talk to me about that. Tell me
8 what it is that you think we're trying, tell me what we're not
9 trying, tell me how your positions have been consistent in the
10 briefing. And I'm going to ask the Defendants the same thing.

11 MS. ALTMAN: Does Your Honor have a preference for
12 where I stand?

13 THE COURT: Right there.

14 MS. ALTMAN: At the podium?

15 Good morning again, Your Honor. And on behalf of
16 everyone, we very much appreciate the -- appreciate the Court's
17 time.

18 With respect to the medical evidence in particular --
19 let me start with I think what makes this maybe a little easier
20 to digest. And that is, the Defendants have refused to
21 stipulate to what we believe are very simple and obvious facts.
22 And, indeed, not just simple and obvious facts, facts that
23 their own witnesses, including the 30(b)(6) witness, has
24 testified under oath, as well as their own experts have
25 indicated they have no evidence to dispute the following facts.

1 Number one, that Drew is transgender.

2 Notwithstanding the fact that they have no record evidence to
3 dispute that, they have refused to enter into a stipulation
4 that would amount to that statement.

5 Number two, that Drew has been diagnosed with gender
6 dysphoria. They refuse to enter into a stipulation that
7 codifies that, notwithstanding the fact that they have no
8 record evidence to dispute it. In fact, their own experts have
9 indicated that they cannot dispute it.

10 So because of that -- and then adding in this third
11 layer, which is -- the Defendants have taken the position
12 through their experts and through their evidence that they
13 intend to submit that using the rest room associated with your
14 gender identity -- in this case male -- that that does not harm
15 in any way an individual in this case, Drew -- Drew Adams.

16 So by that, saying hopefully a little more
17 succinctly, that not only that it does not exacerbate his
18 gender dysphoria, but that effectively it would not cause him
19 any harm, the prohibition against using the sex segregated rest
20 room facilities.

21 And because of the Defendant's positions in this
22 case, which could have mitigated the need for all of this
23 evidence, the Plaintiff is now in a situation of having to put
24 on evidence in its case in chief to address these very issues,
25 which we think are really, frankly, indisputable.

1 THE COURT: So why, then -- if that's so, why in the
2 response to the request that amici -- amicus curiae be
3 permitted to intervene all these various medical associations
4 that want to intervene in the case on your side -- why are the
5 Defendants telling me that the things that these medical folks
6 are talking about are not relevant to the case, and they're
7 saying that you think they're not relevant to the case, too?
8 That's what I'm not understanding.

9 MS. ALTMAN: I understand your lack of understanding.
10 Because I believe the Defendants are conflating multiple issues
11 into medical testimony. And they're very different and
12 discrete issues.

13 One is, by example -- their experts have proffered in
14 their expert testimony issues relating to desistance. So, by
15 example, there is evidence out there that young children -- and
16 I'm not the medical expert, so I'm going to use simple terms,
17 that young children, by example, in the areas of two, three,
18 four often have questions about their gender identity.

19 And in those children, very, very young children,
20 there's frequently what they call desistance, which is, they
21 may associate with more male characteristics and then, of
22 course, resume a female characteristic for behavior or identity
23 as young children.

24 There's no evidence that they'll be able to introduce
25 to support that in adolescent teens, or little or no evidence

1 that would suggest that.

2 But when you look at their expert report, by example,
3 they talk about desistance as if it is somehow relevant to this
4 case.

5 So that's one example of an area where we think it
6 has absolutely to do with this case, because there's no dispute
7 that Drew is transgender and there's no dispute that he's
8 diagnosed with gender dysphoria, notwithstanding the fact that
9 they refuse to stipulate to it.

10 But there's certainly no evidence before this Court,
11 nor should any be introduced, that Drew is, will, ever desist,
12 and yet their experts have proffered in their expert reports
13 information about that.

14 They, likewise, have proffered information in their
15 expert reports about hormone therapy. There is no evidence in
16 this case that the treatment ascribed to Drew Adams, which
17 includes testosterone, the male hormone, is improper, medically
18 improper, unethical, not appropriate for Drew. In fact, the
19 experts have testified under oath that they cannot dispute that
20 the treatment that has been accorded to Drew Adams is not
21 medically appropriate. And yet they go on for pages and pages
22 in their expert reports talking about the use of hormone
23 treatment.

24 It's not relevant to this case. So the -- there are
25 different buckets of medical areas that need to be sort of

1 parsed out. They want to conflate them all. But they're very
2 discrete: desistance, hormone therapy.

3 Gender dysphoria, however, is a very different issue.
4 Drew has been diagnosed with gender dysphoria. Again,
5 notwithstanding the fact that they will not yield on that
6 point.

7 THE COURT: All right. So tell me -- all right. So
8 if you're -- and then I'm going to hear from them on this. But
9 if -- if you are worried about the fact that certain facts in
10 the case that you think are clear but which are not the subject
11 of a stipulation, meaning that you then feel the need to prove
12 them up, give me, in as short a period of time as you can --
13 give me a basic proffer of your case.

14 What -- what are the issues you're going to be giving
15 me testimony on?

16 MS. ALTMAN: Do you want me to limit my answer to the
17 medical issues that we're talking about?

18 THE COURT: Sure. We'll start with that.

19 MS. ALTMAN: Okay. So the -- again, what we think is
20 a discrete and important area for this Court to consider with
21 respect to the medical issues -- the first is as it relates to
22 gender dysphoria, and, in particular, that -- the refusal or
23 prohibition to allow Drew Adams to use a rest room associated
24 with his gender identity, i.e., the male rest room will
25 exacerbate or increase the symptomology of his gender

1 dysphoria. So, by example, our experts --

2 THE COURT: You don't need to give me examples. That
3 tells me that's one of the things you want to prove. What's
4 something else you want to prove?

5 MS. ALTMAN: Well, so Defendants have made an issue
6 in this case, notwithstanding the fact that it's not in any of
7 the statutes or the literature, of biologic sex, and that --
8 that the rest room policy that they've crafted, or
9 guideline -- however you want to characterize it -- is
10 associated with your biologic sex.

11 So one of the issues that our experts, and I believe
12 the amicus as well, will talk about is how your gender identity
13 is what defines, in large part, what your sex is, that your --
14 this biologic sex terminology that Defendants have crafted
15 really finds no place in the medical literature that's
16 relevant, or in the statutes or legislation or cases.

17 THE COURT: All right. I understand that issue.
18 What's another medical issue that you intend to prove?

19 MS. ALTMAN: We intend to discuss -- we have the
20 burden of proof to show that Drew was harmed. So to the extent
21 that any testimony elicited through Drew or his parents or his
22 treating physicians relate directly to that, we would utilize
23 our experts and our individual testimonies to talk about that.

24 THE COURT: Okay. All right. Let me talk to the
25 other folks. Thanks.

1 MS. ALTMAN: Thank you, Your Honor.

2 THE COURT: Who's going to talk here?

3 Mr. Harmon, can you come up and help me understand,
4 in terms of the medical evidence, what the Defendants believe
5 the issues to be and what the evidence is going to be about
6 that.

7 MR. HARMON: Absolutely, Your Honor. I wish we would
8 have had this conversation on Tuesday at 11:20 p.m., before we
9 filed the pretrial stipulation. And I want to kind of lay out
10 why.

11 At the injunction hearing, when we were before you
12 back in August -- and I think one of the things we talked about
13 was experts. And I think I may have said I don't think -- or
14 we may not have experts in this case.

15 THE COURT: Can you speak up a little bit, please.

16 MR. HARMON: Sure. I don't think I've ever been told
17 to speak up, but...

18 THE COURT: Well, we -- for some reason, that
19 microphone doesn't work as well as it ought to.

20 MR. HARMON: Okay. So at the injunction hearing --
21 at the time the complaint that was filed in the lawsuit sought
22 an injunctive and declaratory relief.

23 And as Your Honor found out, Plaintiff amended the
24 complaint to inject allegations of damages, exacerbation of
25 gender dysphoria, among other things.

1 Then we got into discovery in this case. And had
2 Your Honor been a fly on the wall of discovery, what Plaintiff
3 was representing to you to be at issue in this case today is
4 not what we discovered in this case.

5 The expert reports -- not the rebuttal expert
6 reports -- but Plaintiff filed two -- or served two expert
7 reports in this case back in October.

8 And the topics in the expert reports were gender
9 identity development and gender dysphoria, standards of care of
10 working with transgender youth, supporting the mental health of
11 transgender students, a psychological summary of Plaintiff,
12 meaning where he was in 2015 and how did he get here now, what
13 does it mean to be intersect, how do experts in the medical
14 field assign sex and what is biological sex.

15 So I completely agree with the premise that Plaintiff
16 represented in the various motions that were filed that the
17 core issue in this case -- the primary issue of what this court
18 needs to determine is whether the policy enacted by St. Johns
19 County is discriminatory under Title IX.

20 The problem is, I don't -- or Defendant doesn't frame
21 the issues in the complaint. And what Plaintiff framed, in
22 terms of issues, was a medical debate about how sex is defined
23 in the medical community, how gender dysphoria is treated. And
24 but for Plaintiff going down that path, we would have preferred
25 to address this on policy, statutory interpretation, and pure

1 legal issues.

2 But I can't sit idle by in representing a client when
3 a plaintiff injects into a complaint pages and pages of expert
4 testimony about medical issues and not attempt to respond to
5 that in some way.

6 So I will say that what was filed two days ago, just
7 minutes before we filed the pretrial stip, is, again, not what
8 has happened in this case for four months.

9 So I appreciate now the fact that Plaintiff
10 represented, I think pretty staunchly, in the various motions
11 that -- I think it was -- it says, "At issue in this case is
12 narrow" -- "as such, the issue in this case is narrow, limited
13 solely to whether Defendant's policy prohibiting transgender
14 students, in this case a transgender boy, from using the rest
15 room consistent with their gender identity is discriminatory
16 and violates Title IX in the Equal Protection Clause."

17 So how the medical community defines sex, how gender
18 dysphoria is treated -- all of those issues that Plaintiff put
19 at issue in the complaint and through their affirmative experts
20 appear to be off the table from what Plaintiff is representing.

21 I wish that would have been the case throughout this
22 trial, but we've had to go to Louisville, we've had to -- it's
23 not -- excuse me, not Louisville -- North Carolina and
24 California to depose affirmative experts who are going to come
25 to the trial and talk about what the medical community's view

1 on this is, which I think, as we outlined in our response to
2 the briefing, from the amici, that we don't believe that's at
3 issue anymore.

4 And when I came up and said "I wish we would have had
5 this conversation two days ago," that's because the issues that
6 Plaintiff is saying are at issue now are not what has gone on
7 in four months.

8 I don't know why there is a sudden change in the
9 landscape. I don't know why there's an attempt to -- to
10 suggest that Defendant is the one who has created all these
11 issues, as I pointed out through the affirmative expert
12 reports.

13 So I'm glad we're able to -- it seems like today,
14 perhaps to define these issues to make it back to what
15 Plaintiff is now representing is the narrow limited sole issue
16 in this case.

17 So I think that would --

18 THE COURT: So if I ask them and they tell me you
19 started it, you're telling me they started it.

20 MR. HARMON: Well, I can only go by what's in the
21 complaint, Your Honor. And what's been disclosed in the
22 Rule 26 disclosures.

23 I mean, the initial Rule 26 disclosures had two
24 expert witnesses who were going to talk about Plaintiff's
25 treatment for gender dysphoria.

1 THE COURT: So when you told me when we were talking
2 about Dr. Josephson's deposition --

3 MR. HARMON: Right.

4 THE COURT: -- when you told me that the reason the
5 Defendant had changed their approach was because of the amended
6 complaint which sought damages --

7 MR. HARMON: Uh-huh (affirmative).

8 THE COURT: -- is this what you were referring to;
9 that is, that they not only sought damages, but that they had
10 added medical issues or testimony that wasn't previously there?

11 MR. HARMON: Yes. Because the original complaint in
12 the injunction hearing -- they submitted an affidavit from
13 Diane Ehrensaft, who -- I think one of the arguments I made at
14 the injunction was, "How can this person testify in an
15 affidavit about Plaintiff when they've never met Plaintiff?"

16 About -- in October, about a week after the amended
17 complaint was filed, Plaintiff disclosed an affirmative expert
18 report from Plaintiff's treating physician in North Carolina,
19 who is being offered to testify about the impacts on Plaintiff
20 and how it runs counter to treatment for gender dysphoria.

21 Like I said at the injunction hearing, this is --
22 this is more of a -- and what I believe now, this is more of a
23 policy legal issue framed in the way Plaintiff framed the issue
24 two days ago.

25 THE COURT: All right.

1 All right. Ms. Altman, I'm going to -- I want to
2 hear from you, briefly, so I can try to understand what y'all
3 are saying to me, and then we'll probably start talking about
4 something else.

5 But, I mean, this is an important issue in the case,
6 obviously. And I just -- I just need to -- so -- go ahead and
7 sit down.

8 MR. HARMON: Can I just raise one issue, Your Honor?

9 THE COURT: Yeah.

10 MR. HARMON: Bifurcation. If Plaintiff is saying
11 that nothing medical at all is relevant to the issue of whether
12 the policy is discriminatory, why get into that?

13 THE COURT: So, Ms. Altman --

14 MS. ALTMAN: Yes, sir.

15 THE COURT: -- I was told by -- I think Ms. Borelli.
16 I don't know who handled the Josephson telephone hearing. I
17 think it might have been Ms. Borelli.

18 MS. ALTMAN: It was me, Your Honor.

19 THE COURT: It was you?

20 MS. ALTMAN: For some of it. But, yes, Your Honor.

21 THE COURT: I was told at that time that you amended
22 your complaint. What I got out of it was that, based on an
23 Eleventh Circuit case, the name of which I can't remember, that
24 you amended your complaint to add a damages claim primarily to
25 avoid a mootness argument, and -- meaning that if for some

1 reason the Court didn't rule before Mr. Adams graduated, or
2 whatever, that -- that you wanted to still have a case.

3 If I misunderstood that, then you need to tell me.

4 And -- and so I know I was told that it was garden
5 variety, whatever that means. Why isn't it just nominal? In
6 other words, are you really -- are you really trying to,
7 through this case -- are you trying to get money damages above
8 nominal amounts for Mr. Adams in this case? If you are, that's
9 fine. But I want to understand what you're saying to me.

10 MS. ALTMAN: Okay. And I want to be very direct.
11 The reason why we didn't say nominal is because the case law
12 suggests that that's not sufficient to get us out of the
13 mootness issue.

14 And just to be even more clear, these are issues that
15 were discussed with Terry immediately upon the filing of the
16 amended complaint, and has been -- we have not hid this from
17 anyone. We've been very clear about the reason for it.

18 And, unfortunately, the case law has forced us into
19 the position of -- you know, we even toyed with whether we
20 could say that. And the case law, unfortunately, doesn't allow
21 us to do that.

22 But we've tried to make as clear as possible, in
23 every possible way, that this case is not about money.

24 THE COURT: Well, so --

25 MS. ALTMAN: Having said that, Your Honor --

1 THE COURT: I'm not -- I'm not sure I'm understanding
2 what the failure of the Defendants to stipulate to things --
3 you use that as your basis for saying this is why we have to
4 prove all these things, because they won't stipulate.

5 What is it that they're not stipulating to that you
6 wouldn't have to prove? If you're trying to get damages, then
7 what -- what is -- what would the stipulations do for you?

8 MS. ALTMAN: Well, so, by example, the policy that
9 they've instituted refers to biological sex. So in that regard
10 their experts have --

11 THE COURT: Well, I just -- stop right there.

12 MS. ALTMAN: Yes, sir.

13 THE COURT: Mr. Harmon says to me that your expert
14 talks about biological sex. Is that true or not true?

15 MS. ALTMAN: Our expert talks about biological sex
16 because that's what's in their policy. That's the basis of
17 their policy. So we are forced to deal with that issue, Your
18 Honor. They put that at issue by the policy that they
19 instituted.

20 THE COURT: And so what does your expert say?
21 Because I thought you told me a minute ago that biological sex
22 doesn't have anything to do with it?

23 MS. ALTMAN: We take the position that there is --
24 there is -- that biological sex is not a term of art in any of
25 the legislation, in any of the cases interpreting the

1 legislation, and, frankly, in medical science.

2 So you'll see in the amicus briefs, for example, and
3 in Dr. Adkins' testimony, that gender identity is really what
4 defines sex, and in particular for these transgender
5 individuals.

6 THE COURT: Okay.

7 MS. ALTMAN: So we are forced to talk about those
8 issues because it's in the policy itself. And they have
9 continued in their position throughout the litigation that Drew
10 is not a boy, is not male, and that he cannot use the male rest
11 room, because he was not essentially sex assigned at birth and
12 what's on his original birth certificate is female. And so
13 notwithstanding the fact that his birth certificate today says
14 male and his driver's license says --

15 THE COURT: All right. Here's what I want to do.

16 MS. ALTMAN: Yes, sir.

17 THE COURT: I don't want you -- I don't want you
18 proving something you don't feel like you have to prove, then
19 requiring them to respond to something because you've tried to
20 prove it, and we end up -- we end up spending a lot of time on
21 issues that are not the issue in the case.

22 And I just am having a hard time -- I'm -- maybe --
23 maybe I'm being slow, but, you know, I'm going to have to be
24 the one to decide this case. And before I can decide it, I'm
25 going to have to understand what the issues are.

1 MS. ALTMAN: Yes, Your Honor.

2 THE COURT: And I hear -- I hear words coming out of
3 your mouth, but I'm just not getting what you're saying to me.

4 MS. ALTMAN: Okay.

5 THE COURT: What is it that you're going to prove
6 that needs to be proven in this case? Tell me the five things
7 you need to prove to win the case.

8 MS. ALTMAN: Okay. That Drew is transgender --

9 THE COURT: All right.

10 MS. ALTMAN: -- something that they could stipulate
11 to.

12 THE COURT: Don't -- I don't want editorial.

13 MS. ALTMAN: Okay.

14 THE COURT: I want -- all right. Transgender.
15 What's the second thing you've got to prove?

16 MS. ALTMAN: Drew is diagnosed with gender dysphoria.
17 The policy at issue exacerbates or otherwise increases the
18 symptomatology of gender dysphoria.

19 THE COURT: Okay. What's next?

20 MS. ALTMAN: And that -- attendant to that --

21 THE COURT: Right.

22 MS. ALTMAN: Not just gender dysphoria. We have the
23 obligation of showing harm. So we'll be able to show harm in
24 other ways in addition, but that is one area of his harm.

25 THE COURT: All right. What's next?

1 This is an offer of proof. This is the -- these are
2 the things you have to prove in order to win. What's next that
3 you've got to prove?

4 MS. ALTMAN: That the policy instituted by the
5 Defendant is discriminatory based on sex. And their position
6 of sex is the biological sex issue, which is why that comes in.
7 Our position on sex is that a --

8 THE COURT: And is that an issue of law? In other
9 words, sex -- are we talking about -- because I'm looking at
10 their stipulation, and it says -- page 10 of their stipulation.

11 The Plaintiff asked this Court to make a policy
12 choice, one that expands the definition of sex beyond its plain
13 and ordinary meaning, to include gender identity, along with
14 transgender status and others.

15 To get there, Plaintiff must attempt to create an
16 issue of fact regarding the definition of sex, which
17 necessarily requires the Court to delve into how certain
18 segments of the medical community define sex.

19 While Defendant is prepared to offer evidence
20 contrary to the view of Plaintiff's experts, such an endeavor
21 is unnecessary.

22 As a matter of law, the term sex is unambiguous and
23 should be given its plain and ordinary meaning, both under
24 Title IX and -- I guess under the Constitution as well, but...

25 So are we going to have a trial about what sex means,

1 or -- is that an issue of law or is that an issue of fact?

2 MS. ALTMAN: We believe the case law interpreting
3 what sex means, as well as the statute itself which doesn't
4 refer to biologic sex, includes transgender as a gender-based
5 level of discrimination, including cases right out of this
6 Eleventh Circuit.

7 Having said that, the Defendant has taken a contrary
8 position, and, therefore, we believe we need to offer --

9 THE COURT: All right. I'm hearing an awful lot of
10 "we're doing it because that's what they're doing." And I'm
11 not really sure that's going to be a good way to try a case,
12 but -- on the other hand, I'm not -- you know, I don't want to
13 disable you from proving what you need to prove, so...

14 MS. ALTMAN: Let me offer this, Your Honor.

15 THE COURT: Yeah.

16 MS. ALTMAN: Not to interrupt. Certainly if
17 Defendant told us that they were not going to offer Dr. Hruz or
18 Josephson, we would re-evaluate --

19 THE COURT: You heard Mr. Harmon -- here's what --
20 you heard Mr. Harmon get up and say how happy he was to hear
21 that you now think the case means the same thing they do, but
22 you're not saying the same things, or at least -- if you are
23 saying the same things, I'm not understanding them to be the
24 same.

25 MS. ALTMAN: In fairness, Your Honor, I think if they

1 were willing to try the case that Mr. Harmon just suggested
2 they would be willing to try, there would have been no issue
3 with any of the stipulations that we've been requesting for a
4 long period of time that they make.

5 So, you know, I think -- I think it's a difficult
6 challenge for us. If they tell us now or after the hearing
7 that they would withdraw Hruz and Josephson, then we would have
8 an internal discussion about doing the same, notwithstanding
9 the fact that we will need to introduce evidence with regard to
10 harm.

11 THE COURT: Okay. All right. And I cut you off.
12 What else -- what else do you need to -- finish telling me what
13 else you need to prove to win.

14 MS. ALTMAN: Okay. I think I left off on harm.

15 THE COURT: Yeah.

16 MS. ALTMAN: And so we obviously will need to show
17 Your Honor that -- that the discrimination afforded to Drew is
18 consistent with what is protected under both Title IX and the
19 Equal Protection.

20 THE COURT: Okay.

21 MS. ALTMAN: I think that's --

22 THE COURT: And that's it and you win?

23 MS. ALTMAN: I think so, Your Honor.

24 THE COURT: All right. Thank you.

25 Mr. Harmon, I'm going to give you another opportunity

1 to make sure I'm understanding what you're saying to me. And
2 then I want to understand what the Defendant's case is.

3 And I don't mean to be fussing with you-all, but I
4 consider all this very difficult. It's difficult. It's a
5 difficult subject matter. It's difficult legally. It's asking
6 the Court to make some difficult decisions.

7 And if I'm going to do that, I'm (a) going to have to
8 understand what you-all are saying to me, and (b) at some point
9 you're going to have to meet somewhere. It can't be that
10 you're out here and they're over here, or we're not going to
11 get anywhere. And so help me out here.

12 MR. HARMON: Yes, Your Honor. I feel up to this
13 point it's been trying to -- it's been a little bit of like
14 nailing Jell-O to a wall.

15 But I think -- in light of this discussion, I do
16 think we can narrow this case down so this is not complicated.
17 I don't think it was complicated at the injunction level. I
18 don't think it's complicated now, based on Plaintiff's position
19 at 11 p.m. on Tuesday night.

20 And here's what I mean by that.

21 THE COURT: I thought it was 11:20?

22 MR. HARMON: 11:20. Somewhere around 11:00. It was
23 late. We've -- admittedly, I think everyone in front of you
24 has been working tremendously hard on this case.

25 THE COURT: And I -- I appreciate that. And I can

1 tell by all of the volume of paper that you're giving to me
2 that you've been working hard. And I understand that preparing
3 to try a case in six months is hustling by litigation
4 standards.

5 I think everybody, I'm sure, worked hard at it. And
6 I want to give y'all a good trial. I've just got to understand
7 what I'm -- what we're trying.

8 MR. HARMON: Yeah. I can help with that.

9 THE COURT: You tell me what we're trying and I'll
10 give you a good trial.

11 MR. HARMON: Okay.

12 THE COURT: All right.

13 MR. HARMON: So I heard five things from Plaintiff as
14 to what needs to be proven.

15 THE COURT: Yeah.

16 MR. HARMON: So issue one was Drew is transgender.
17 All right. That's the first issue.

18 Defendant has proposed in a stipulation that we will
19 stipulate that Plaintiff self-identifies as transgender. He
20 came to us and said, "I am transgender." We agreed.

21 But we can't stipulate right now as to what he --
22 what his internal sense of gender is. But we will stipulate
23 for purposes of this case that he's a transgender plaintiff, he
24 has self-identified as being such.

25 THE COURT: And what's the difference?

1 MR. HARMON: Because the school district doesn't walk
2 around and point at students and say, "You're transgender or
3 you're not transgender."

4 The burden is on the student to represent to the
5 school district what they are. And he has represented to the
6 school district that he's transgender. And we're willing to
7 stipulate to that. So it's really a non-issue. I don't
8 know --

9 THE COURT: It kind of doesn't sound like quite a
10 non-issue. I mean, it -- I hear you saying -- what you're
11 saying is, "He says he's transgender and we're not disputing
12 that."

13 Is that different than him being transgender?

14 MR. HARMON: He's transgender. I don't think that
15 that's a dispute. But what we don't want to do is -- school
16 districts can't label students whose gender identity is
17 determined by the student in the student's mind.

18 But we will agree and stipulate when we go through
19 this trial, Plaintiff identified as transgender and was treated
20 as such. It's really a non-issue.

21 THE COURT: All right. Go ahead.

22 MR. HARMON: The second, whether Drew has gender
23 dysphoria. It's completely irrelevant to the issues in this
24 case. Whether a transgender individual has or does not have
25 gender dysphoria is completely irrelevant. It's a medical

1 diagnosis. It does not change their transgender status in this
2 case. The policy increasing the symptomatology of gender
3 dysphoria I believe goes to the claim of damages, which I
4 think, if we're dealing with a nominal damages claim here, two
5 and three are completely irrelevant.

6 If Plaintiff will stipulate to a dollar, as Plaintiff
7 has represented this case is not about the money, then we get
8 rid of item two, which is any medical issues about gender
9 dysphoria.

10 THE COURT: Ms. Altman said they can't do that
11 because the Eleventh Circuit case won't let them do it.

12 MR. HARMON: Well, I -- the Eleventh Circuit case,
13 from my reading of it -- and I'll be very brief on this -- was
14 a case -- I think it was involving adult toys in a city.

15 The city commission, I think, had passed -- this is
16 my memory from a couple of months ago -- passed an ordinance
17 that said "can't have these type of adult toys in our city,"
18 and they got sued.

19 And in the middle of the lawsuit, after a bunch of
20 injunction hearings, the city commission changed their policy
21 and it mooted the case.

22 So I think the issue of injecting damages into this
23 case and whether it's mooted only becomes an issue if we do
24 what they're asking -- Plaintiff is asking us to do, which is
25 to change our policy. Because if we changed our policy

1 in -- before trial, for instance, and you only had a nominal
2 damage claim, it's moot.

3 The injection of the money damages claim keeps the
4 proceeding alive even if we change our policy, which is the
5 very relief Plaintiff is seeking in this case.

6 So money damages --

7 THE COURT: You think they're just misreading the
8 case?

9 MR. HARMON: I think that there's reasonable dispute.
10 I don't want to say that it's a misreading. But I do think
11 that it only becomes an issue if the Defendant does what
12 Plaintiff is asking it to do, which is to change the policy.

13 I think the risk to Plaintiff there is, if we change
14 the policy tomorrow and then change it back the next day, we
15 have a live dispute. But if we can avoid getting into
16 diagnosis of gender dysphoria, the symptoms of gender dysphoria
17 and its exacerbation, if that all --

18 THE COURT: What about if it was as easy as this?
19 What about -- because I've had other cases of -- the
20 harm that -- potential harm to a person in Mr. Adams' position
21 in a case like this would likely be primarily emotional-type
22 harm.

23 And I've had cases both where there's actual expert
24 evidence of that, but I've also had cases where the person just
25 gets on the stand and they say, This was really upsetting to me

1 and I -- and it -- you know, it was -- it affected the way that
2 I handled things and so forth, or it can be more than that, but
3 that -- and then that's it. And you don't have to have expert
4 evidence.

5 So what's -- if that was it, if it's -- if the
6 testimony is that Mr. Adams testifies that because of the
7 bathroom policy I suffered emotional harm that I'm myself
8 describing, no expert is describing it, that can, in a proper
9 case, be enough.

10 And what if something like that happened?

11 MR. HARMON: If something like that happened, along
12 with a stipulation -- a stipulation from Plaintiff that
13 Plaintiff is not seeking money and Plaintiff's not going to use
14 two proposed experts to testify about the impacts of this
15 policy, then I think we're dealing with the only two issues
16 that are really, I think, at issue in this case, which is: Is
17 the policy discriminatory under Title IX of the Equal
18 Protection?

19 So I think that could be accomplished. I mean, items
20 one, four, and five are what should be before this court.

21 THE COURT: I take it that when you discussed this --
22 the mootness issue and the damages issue and so forth, and you
23 tied it to whether the policy gets changed or not -- for
24 example, you cited if the policy -- if we were to change the
25 policy before trial, that might create a mootness issue.

1 MR. HARMON: Yes.

2 THE COURT: But I don't have any sense you have any
3 intention of doing that.

4 MR. HARMON: We went to mediation two days ago and
5 we're still before you ready to go to trial, so I have no -- we
6 wouldn't be going to trial if we were changing our policy.

7 THE COURT: Well, you -- you actually already
8 anticipated a question that I was going to ask you, whether you
9 had mediated.

10 MR. HARMON: We did.

11 THE COURT: The answer is yes?

12 MR. HARMON: Yes, we did.

13 THE COURT: Okay. All right. And that was with?

14 MR. HARMON: Mr. Schmidt.

15 THE COURT: Terry Schmidt?

16 MR. HARMON: Yeah.

17 THE COURT: And did that -- did he declare an
18 impasse?

19 MR. HARMON: Yeah. I think that's -- I don't think
20 the word impasse was spoken. But it was an impasse, yes.

21 THE COURT: Okay.

22 MR. HARMON: I do think we can greatly narrow the
23 issues through a conversation today, to where this trial
24 doesn't need to be about Dr. Ehrensaft, Dr. Adkins, Dr. Hruz.
25 But we -- I just want to say again, Your Honor, this was not

1 the case two days ago. And I appreciate it's the case now.

2 THE COURT: All right. So, Mr. Harmon, let me ask
3 you, while I have you -- I know you went back. But I read to
4 Ms. Altman this section on page 10 of your -- your position in
5 the case.

6 What are you trying to say to me here, in terms of
7 this issue of definition of sex? What are you -- what's --
8 what are you --

9 MR. HARMON: Yeah. We're on page 10, middle of the
10 page?

11 THE COURT: It says -- you know, it starts with the
12 DOE's most recent guidance.

13 MR. HARMON: Yeah. I mean --

14 THE COURT: But what do we -- you say, "While the
15 Defendant is prepared to offer evidence contrary to the view,
16 it's unnecessary."

17 What are you trying to say here?

18 MR. HARMON: What I'm trying to say there is, when
19 we're looking at the term sex in Title IX, and determining
20 whether or not Defendant's policy discriminates on the basis of
21 sex, how that word is used and interpreted under Title IX, our
22 view is that is a legal issue, it's a policymaking issue, it's
23 a statutory interpretation issue, it's a plain ordinary meaning
24 issue, it's a case law issue.

25 What Plaintiff has done through the pleadings is

1 attempt to argue that we have violated Title IX, because the
2 word sex means gender identity, and that's because the medical
3 community over here says sex means gender identity.

4 So what I'm saying in that statement is we don't want
5 to get into a determination as to whether an endocrinologist in
6 Oakland, or in our case an endocrinologist in Missouri, says
7 what sex is. We think that's a legal issue.

8 But if Plaintiff is going to force us to go to trial
9 and get into a medical debate about what sex means --

10 THE COURT: Well, how do you -- how do you inform a
11 question as to whether transgender means sex within the meaning
12 of Title IX -- how do you inform that question without
13 discussing what transgender is?

14 MR. HARMON: Because you -- discussing what
15 transgender is, what it means to be transgender, is different
16 from somebody coming in and saying, "Transgender means sex
17 under Title IX," or --

18 THE COURT: So you're just saying that the experts
19 shouldn't be allowed to render what is essentially a legal --

20 MR. HARMON: I think it's -- I think we say it in --
21 on page 9, the first sentence under Title IX, "Plaintiff's
22 Title IX claim is primarily a legal question whether gender
23 identity is synonymous with sex."

24 And we think case law, DOE, which are the agencies
25 that interpret this, DOJ -- those are where -- the body of what

1 this issue has resolved, not an expert witness in -- you know,
2 pick the field -- coming before you and saying, "Well,
3 everybody knows what sex is, sex is this."

4 It's a -- it's a legal issue. And I don't think any
5 of the experts in this case are going to -- based on what
6 Plaintiff has argued two days ago are really going to offer
7 much of that.

8 You're going to have, I think, what is fair summary.
9 Plaintiff's going have doctors say and medical professionals
10 say, "Sex means gender identity."

11 We're going to have doctors and experts say, "Sex
12 doesn't mean gender identity."

13 I think that's the easy way to sum it up. And what
14 you're going to have is four experts flying in from around the
15 country to tell you that, when what we're trying to say is
16 it's -- Plaintiff has made it that, but we think it's a little
17 bit easier than that. It's purely a statutory interpretation.
18 It's a Congressional history issue. It's a legal issue.

19 THE COURT: Okay.

20 MR. HARMON: I just don't think medicine answers the
21 question, I guess is the best way to put it.

22 THE COURT: All right. Thank you.

23 Well, I'm going to go ahead and proceed with -- with
24 some more preparation for the trial in asking a few more
25 questions. It seems to me the discussion we've had today -- I

1 hope will allow me to better understand what the issues are.

2 I'm looking forward to receiving the findings of fact
3 and conclusions of law, because that is supposed to be the law
4 and the facts as each side expects them to turn out at trial.

5 And that is supposed to be a document that the --
6 because I'm going to have to write one at the end of the trial
7 anyway. So that's supposed to be what it is. And it will be
8 interesting to me to see if the twain meets at all.

9 But what will happen is, after the trial, for
10 whatever -- whatever iteration of the trial we have -- and I
11 will have to say, if I have a doubt about whether something is
12 going to be relevant or not, I'm probably going to let you
13 prove it up until -- until I can figure that out.

14 Then at the end of the trial, I'm going to have you
15 redo the findings. You can start with what you have, and --
16 and actually capture what the evidence at trial was and apply
17 the law, and give me a proposal as to what I ought to do.

18 And so that's how we're going to do it, and -- but in
19 the meantime, if the parties can agree that certain evidence
20 isn't necessary -- and I suppose it could even be -- you could
21 even be as simple as this, maybe.

22 The Plaintiffs could just put on the case the
23 Plaintiffs think they need to put on. And if they don't put on
24 certain evidence because -- if they're anticipating what the
25 Defendant is going to do and they say, "Well, we're not going

1 to put on evidence just to anticipate what they might do, we're
2 just going to put on the case that we think we need to put on
3 to win," and then the Defendants put on their case, and they
4 don't go into the issues that the Plaintiffs were worried
5 about, then we don't need it at all.

6 If the Defendants do go into certain issues that the
7 Plaintiffs haven't had a chance to address, I'll let them
8 address it in rebuttal.

9 And maybe that's a way to proceed. I don't know. I
10 hate to have people doing something that they don't think they
11 really need to do just because they think the other person is
12 going to do it.

13 And so -- so maybe -- and I know y'all dealt with
14 each other professionally. Maybe there can be a professional
15 conversation to see what we can do. I'm in a non-jury context,
16 so I've got a lot of flexibility on how we do things.

17 I don't know about bifurcation, but -- I don't think
18 that's probably a formal thing I would do. But if it makes
19 sense to have the Plaintiffs go and have the Defendants go and
20 see where we are, maybe everybody's happy, and then we don't
21 need to get into some things, that -- we can sure talk about
22 that.

23 So I don't know that we're going to be able to figure
24 that out on the fly here. But it's certainly something y'all
25 should be talking to each other about.

1 Okay.

2 MR. HARMON: Your Honor, may I address one issue?

3 THE COURT: Yeah. Sure.

4 MR. HARMON: And I really -- I want to -- if I may
5 approach, I promise to be brief.

6 THE COURT: Yeah.

7 MR. HARMON: The proposed findings of fact and
8 conclusions of law is going to be greatly impacted by what's
9 going to be tried in this case.

10 And I just want to state again that if we can -- if
11 Plaintiff will keep medicine out of this case, instead of
12 trying to nuance it in in various areas, which we got a little
13 today -- if we can take medicine out of this case, I think it
14 will greatly alleviate the issues that need to be briefed in
15 the findings of fact. We've got a cross-examination of an --
16 of a treating physician that's supposed to be done in North
17 Carolina next week.

18 Medicine is not relevant. And it's back to what
19 Plaintiff is saying is at issue in this case. We don't need to
20 do a cross-examination of a treating physician in North
21 Carolina.

22 And I -- I appreciate Your Honor saying that's
23 probably not something we can do on the fly. But I do think if
24 we can at least agree to keep medicine out of this -- if it's
25 purely an issue of whether our policy is discriminatory, like

1 Plaintiff has suggested, we will keep medicine out of this.

2 And the conclusions of law and the findings of fact
3 will focus on the issue that Plaintiff framed in the motions in
4 limine whether our policy is discriminatory.

5 I just think it would save a tremendous amount of
6 legal resources, expert fees, travel costs, judicial resources,
7 motion filing -- it would just save a lot if the only issue
8 really is our policy.

9 So I would actually plead with Plaintiff if we could
10 try to get to that, instead of going down this path that's
11 really -- what I hear both parties telling Your Honor, not
12 really pertinent to what needs to be proved at trial --

13 THE COURT: All right.

14 MR. HARMON: -- unless I'm missing something from
15 what Plaintiff is saying today, or briefed.

16 THE COURT: Okay. Thank you.

17 MR. HARMON: Thank you, Your Honor.

18 THE COURT: All right. Ms. Altman, I'll give you a
19 brief response to that. And then I'm -- I'll think what we're
20 going to do here.

21 Go ahead.

22 MS. ALTMAN: So just on the last point, we're
23 happy -- we have spoken to them all along. And we're happy to
24 continue to do whatever we can to narrow the case.

25 I think it helps the Court, but it helps the parties.

1 So we're always willing to do that and happy to meet with them
2 right after this hearing to try and narrow the issues. And
3 we've tried before this hearing.

4 So as I mentioned a moment ago, their policy
5 references biologic sex. So part of this sex question emanates
6 from the very policy that they've created, and have fostered
7 through the testimony of their experts, and -- along with what
8 they wrote on paragraph 10.

9 So I -- you know, I think it's very difficult to say,
10 "Well, we're willing to take it out of it, but except to the
11 extent that it helps us."

12 Right?

13 "Except to the extent that it fosters our position in
14 this case," which is that gender identity is -- Drew's gender
15 identity as male doesn't -- his sex is not male. And that is
16 their position.

17 And so we can't not deal with that issue. It's like
18 the big, you know, purple elephant in the room. We have to
19 deal with it, unless they want to stipulate to those facts and
20 stipulate to their experts not testifying, and stipulate
21 that -- that Drew is male. We are -- a transgender male.

22 We are happy to have that discussion with them. Thus
23 far, it has been unproductive. And that's why we are where
24 they are.

25 I would also say that, you know, one of the things

1 the Court is going to have to do is do that balancing test,
2 right?

3 And part of that, I think, in terms of the harm
4 and -- the harm to Drew and, you know, whether or not Drew, by
5 example, as a transgender male has experienced discrimination,
6 and at what level, is it a minority position, and, you know,
7 all of those different elements that go into the claim -- those
8 sort of five things we talked about.

9 So we do think that the amicus brief and hearing from
10 the medical community about -- by example, on the harm issue,
11 on gender dysphoria, what that affirmation means, how -- means
12 and how important is it as part of that affirmation process,
13 which is a treatment that has been prescribed to Drew -- how
14 important is that to have -- to be able to use the male rest
15 room and to be affirmed in being a boy, a real boy, right, just
16 like everybody else.

17 And so, you know, some of these issues are nuanced,
18 but we think some of them are black and white and we should
19 have been able to reach stipulations. And as I said a moment
20 ago, we're happy to discuss them.

21 I think -- I do think that on the mootness issue
22 we've been very clear that we believe that case requires us to
23 do what we've done. I think Defendant yielded the fact that it
24 can be read different ways.

25 We're not willing to risk on behalf of Mr. Adams to

1 have the case be mooted after everyone puts in so much time and
2 effort.

3 And so, you know, again, we're willing to try and
4 stipulate to a dollar amount, so that that issue is kind of off
5 the table, and certainly off the table with respect to medical
6 records, but thus far we've not been able to accomplish that.

7 THE COURT: All right. Thank you.

8 I'm going to take a brief recess to confer with my
9 lawyer over here. And I'll come back out and we'll continue.

10 COURT SECURITY OFFICER: All rise.

11 (Recess, 11:28 a.m. to 12:10 p.m.)

12 COURT SECURITY OFFICER: All rise.

13 THE COURT: Okay. So I'm happy that y'all are
14 talking. I'm happy to have you talk as long as you want to,
15 but -- you can have a seat. But -- but I can't wait around for
16 you any longer. I've got other things to do.

17 So here's -- here's what I can offer you. I know --
18 people have planes or whatever. I can adjourn us now and
19 reconvene us after lunch. I'm happy to do that. I'm happy to
20 reconvene us at 2 o'clock or something like that. If y'all
21 think that would be helpful, I would be happy to do that.

22 MR. HARMON: I think that would be fantastic.

23 MS. ALTMAN: I agree. But I do think that all of us
24 collectively are really going to need more time to sort of
25 marinate on this and talk today, and maybe even tomorrow, and

1 really talk to our clients and -- and we are trying to work
2 collectively.

3 THE COURT: So are you -- are you wondering -- are
4 you --

5 MS. ALTMAN: I'm wondering if it would be enough
6 time, just a lunch break -- I think we need to kind of talk
7 some more, and then I think we all need to speak to our -- I
8 would assume need to speak to our respective clients.

9 THE COURT: Well, that's fine with me. I'm happy
10 to -- I'm happy to turn you loose. We'd just have to figure
11 when I'm going to get you back.

12 And I also would need to figure out whether I would
13 require in-person appearance or -- I really -- we -- I really
14 don't like doing things on the phone that are serious, because
15 we just don't have good experience with it.

16 You would think in the 21st Century we would, but we
17 just have terrible experience with phone stuff. So I'm -- but
18 I hate to make people travel again. So I don't know.

19 MS. ALTMAN: We don't mind, Your Honor. We would
20 certainly come back on -- we know you have a busy calendar.

21 THE COURT: Yeah, I do.

22 MS. ALTMAN: So we would defer to what you ask us to
23 do. But we have no problem getting on a plane to come up here.
24 I do think we would all collectively -- I think we're making
25 incremental progress, but I do think we need to have more

1 robust discussions with each other, put things in writing, kind
2 of see what it looks like, to see if we can reach a consensus
3 on these issues.

4 And I don't know that an hour will give us -- or even
5 two hours is going to give us enough time to do that
6 meaningfully.

7 Although, Terry, maybe you have a --

8 MR. HARMON: I was just going to say that -- I feel
9 as if -- if we leave today and marinate -- I'm not trying to
10 attack the word, I promise.

11 MS. ALTMAN: I like the word.

12 MR. HARMON: -- over the weekend, we're not going to
13 get anything done. I feel like if it's at all possible that,
14 if the Court has later time available, 4 o'clock, to give the
15 parties five hours to look into these issues, we may be able,
16 at least at 4 o'clock, to present something to the Court, if we
17 can work things out, that will narrow the issues for trial.

18 And the reason why I'm pushing that, if I can use
19 that word, is there's so much to do in this case. And if this
20 is a dangling issue, we're still talking about spending the
21 majority of the weekend and our client's time and efforts
22 preparing for things that may get resolved.

23 I think at this stage of the case, this late hour of
24 the trial -- I mean, you know, we've got a deposition next
25 Wednesday in North Carolina, if we can try this afternoon.

1 THE COURT: Hold on one second.

2 MR. HARMON: That's all I would say.

3 (Judge confers with law clerk.)

4 (Counsel confer.)

5 THE COURT: Y'all can keep talking a second. We're
6 going to look at something here.

7 (Counsel confer.)

8 THE COURT: All right. I'm going to give you another
9 option here, and then I'm going to give you about 15 minutes to
10 tell me what you want to do, and then -- and then we're going
11 to do it.

12 I had given you an expedited trial date for good and
13 sufficient reason. I think y'all have been working really
14 hard. I do have some concern that we're passing each other in
15 the night a little bit. And I hate to have to try a case
16 that's not ready to be tried because the parties haven't joined
17 on the issues.

18 I don't want to delay it very long. But I can give
19 you the week of January the 8th, instead of the week we have
20 now. That's the only week I can give you that's close to what
21 we've got here right now, because I have another trial the next
22 week. And after that it gets busy again. But I do have that
23 week of January the 8th.

24 And if that would help the parties to try to resolve
25 these issues, take the pressure off, as Mr. Harmon said, of

1 running around and doing things to get ready for a trial that's
2 supposed to start in ten days or so, I would be willing to do
3 that.

4 I don't -- I'm not -- if you tell me you don't want
5 to do it, we'll try it when you -- we've got it scheduled. I
6 mean, I'm ready to go.

7 But I'm only -- y'all do need to remember that I'm
8 in -- I'm in the unique position of being the judge and also
9 the trier of fact. And what I was hearing today, I was having
10 trouble understanding what everybody was -- was trying to put
11 forward. So that is another option.

12 I'm not going to ask you to respond to it now. I'm
13 going to give you about ten minutes to talk to each other. I'm
14 willing to come back today as well. You know, I'm willing to
15 do any of that. But you tell me what you want me to do.

16 We're in recess for ten minutes.

17 COURT SECURITY OFFICER: All rise.

18 (Recess, 12:17 p.m. to 12:26 p.m.)

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

21 THE COURT: All right. We are back on the record.

22 All right. What do y'all want to do?

23 MR. HARMON: So I -- we did not have the most time to
24 chat, but here's what I'll say where we are and my proposal. I
25 think that we would like to try to spend some time today

1 talking through some of these issues to see if we might be able
2 to narrow a lot of the trial issues and the issues to be
3 addressed.

4 I would ask greatly -- and I know it's a Friday
5 afternoon. However, the Court's availability is -- this
6 afternoon, to see what we can do.

7 It may be that we -- and the reason I think -- what
8 Ms. Altman and I were just talking about is -- do we need to
9 come back to the judge?

10 And I was -- what my view would be is, if we can
11 narrow some of the issues today, I would rather get that stuff
12 done before heading into a weekend, because then we may not be
13 able to come back to the Court until Monday.

14 I also fear that anytime lawyers get together and we
15 start getting with our teams and we start writing stuff that we
16 start disagreeing with each other.

17 I think if we can have a professional conversation,
18 perhaps we can come back before the Court and, for purposes of
19 a pretrial conference, maybe narrow the issues. And if that
20 does not happen, that's perfectly fine. I'm just optimistic.
21 That's all.

22 THE COURT: So you -- you still prefer to try the
23 case in December, then, as opposed to January?

24 MR. HARMON: I think we'd like to see what happens
25 with this issue today. But I think most likely, yeah, just

1 because everybody has been -- all the witnesses -- I have no
2 idea about witness availability.

3 THE COURT: Okay. That's fine.

4 All right. Ms. Altman, what say you?

5 MS. ALTMAN: I think we agree by and large. I think
6 what we would propose -- we don't think we need to necessarily
7 burden the Court today with coming back. We can spend hours
8 with them today.

9 What I think is really going to -- to see whether we
10 can agree or not is putting these things in writing together,
11 and maybe we can have for -- so that we don't lose time, Monday
12 for an amended joint pretrial, that would include amended with
13 respect to any stipulations that we can reach, because it
14 really -- you know, we can talk in atmospherics about what we
15 agree to. But until the rubber meets the road, in terms of a
16 written stipulation, it's a lot of atmospherics without
17 substance.

18 So I think we can spend as much time as they want to
19 spend today. I think we need to hammer out language to see
20 what we can agree on. And hopefully we can agree on a lot of
21 things and provide those stipulations to the Court, which I
22 think would be more beneficial, frankly, than just coming
23 before the Court a few hours from now and telling you, "Yeah,
24 we've talked about a bunch of stuff, but we haven't put pen to
25 paper."

1 THE COURT: All right. Here's what I can -- here's
2 two things I can offer you. If we're going to stay on trial
3 for December -- and that's fine. We had already planned on
4 it -- I can reconvene today in the afternoon, at whatever time
5 makes sense, 3:30 or 4 o'clock, whatever makes sense.

6 I also -- I have a matter Monday morning that is
7 going to take my attention, but I could re- -- I could convene
8 us Monday afternoon, if -- if need be, to get it pre-tried.

9 I'd have to figure out exactly what time. But
10 sometime in the afternoon on Monday, we could -- we could
11 reconvene.

12 I've got a jury trial -- Judge Klindt is picking a
13 jury for me on Monday. I'm starting that jury trial on
14 Tuesday. It involves a Live Oak police officer. And we're --
15 that's all set.

16 So the only window of opportunity I would have would
17 be Monday afternoon. And so I'm willing to offer that as well.
18 So -- and so y'all tell me if you want to come back this
19 afternoon, if you want to come back Monday afternoon, if you
20 want to do both, either way, any of the ways.

21 MR. HARMON: I would like to ask, if it's not a
22 burden on the Court or any staff, bailiffs, or anybody else
23 involved, if we can come back at 3:30, or if sometime prior to
24 3:30 the parties -- I just feel like we're this close to
25 trial -- I'm being frank. I think if we're going to work this

1 out, four hours talking, with eight or so lawyers in a room --
2 it's either going to get resolved or it's not.

3 So I would prefer greatly that we can come back.
4 Because if it's not going to get resolved -- I don't think
5 they're that -- they're complicated issues, but I think the
6 parties' willingness to bend on each side -- it's either a yes
7 or a no at this point. And I think we could --

8 THE COURT: All right. Okay. I'm not going to --
9 okay.

10 MR. HARMON: All right.

11 THE COURT: So -- all right. Well, y'all are going
12 to be talking to each other anyway. So I'll go ahead and
13 reconvene at 3:30. And if -- if you tell me there's nothing to
14 know, then that's fine. But I'll reconvene court at 3:30.

15 COURT SECURITY OFFICER: All rise.

16 THE COURT: And you're welcome to use the court
17 facilities. Ms. Diaz can make sure you've got rooms or
18 whatever you need to get the job done.

19 MS. ALTMAN: Can we stay in the room we're in on the
20 right side?

21 THE COURT: Absolutely. Do y'all need a room or --
22 do you need a room?

23 MR. HARMON: A room would be great.

24 THE COURT: We'll get you a room.

25 MS. ALTMAN: Thank you, Judge.

1 MR. HARMON: Thank you, Your Honor.

2 (Recess, 12:34 p.m. to 3:38 p.m.)

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

5 THE COURT: All right. Where do we stand?

6 MR. HARMON: Ladies first.

7 MS. ALTMAN: We can go together, I think.

8 MR. HARMON: We can agree on one thing.

9 MS. ALTMAN: Right.

10 MR. HARMON: We could spend the entire time talking.
11 I don't think at this very moment we've reached a resolution.
12 But I do think there is enough dialogue that we're going to
13 continue to speak into the weekend.

14 If there are any stipulations between the parties
15 about how things may change, then I think we file those.
16 Otherwise, I don't know if there's anything that's changed --

17 THE COURT: Okay.

18 MR. HARMON: -- I think. But it was productive and
19 appreciated.

20 THE COURT: Well, my -- as I said, because I'm in a
21 non-jury context, I have the luxury of -- I think I'm basically
22 going to let you try the case you put on.

23 I mean, I'm not going to try to -- you know, I'm sure
24 people will be -- through these motions in limine -- I've
25 already looked at some of them. And if it's beneficial, we can

1 go through some of it today.

2 But I'm sure people will be making objections if they
3 feel like something is irrelevant, or they'll tell me why it
4 is, or they'll tell me why something ought not to be
5 considered.

6 But in the absence of being able to definitively
7 understand what I would be -- what that would lead to, I'm
8 likely to let the evidence be put on, subject to
9 cross-examination, and then I'll have to determine post trial
10 what's what and whether it was important or whether it wasn't.
11 And, of course, you'll have an opportunity to argue that to me
12 as well.

13 I think other- -- to do otherwise, I would be
14 probably arbitrarily eliminating evidence without being able to
15 have a full understanding of the context in which it's being
16 offered or -- and without really understanding what the
17 Defendant -- or what the other side, depending on who's putting
18 on the evidence -- what their position is going to be. So --
19 so I think that's just what we'll do.

20 Now -- and now, in the meantime, if y'all figure it
21 out and you want to stipulate, I'm, of course, happy to
22 entertain that.

23 But I am going to be relatively unlikely -- unless I
24 just see something -- now, when I actually get into trial and
25 you start to do something and somebody objects -- it might be

1 so obvious to me that it's not a good idea that I'm going to --
2 you know, I'll eliminate it.

3 But I think my operating assumption is going to be,
4 I'm going to let you put on the case you want to put on, I'm
5 going to let it be cross-examined, and then I will make my
6 final decisions based on the record that's developed.

7 I don't know what else to do. So I think...

8 All right?

9 MS. ALTMAN: Yes, Your Honor. We do have, I think,
10 some housekeeping items.

11 THE COURT: Yeah. No, I'm sure there's a few other
12 things we need to talk about. So let's talk about them.

13 MS. ALTMAN: So on our side, Your Honor, one of the
14 issues we wanted to raise with you is with respect to how you
15 want us to handle or treat confidential information, whether
16 it's testimony or documents, that will come into evidence.

17 THE COURT: Yeah. What -- tell me what -- what kind
18 of confidential information are we talking about?

19 MS. ALTMAN: Well, it could certainly involve --
20 certain medical testimony would be an example.

21 THE COURT: Is that going to be with respect to
22 the -- to Mr. Adams himself?

23 MS. ALTMAN: Yes.

24 THE COURT: Okay.

25 MS. ALTMAN: There may be other things, depending

1 upon what the Court does with respect to motions in limine on
2 the academic records and things of that sort, but we --

3 THE COURT: Well, I'm -- I'm sensitive to anybody's
4 medical history being put on public display. I -- what are you
5 suggesting to me?

6 I mean, you know, it's not uncommon that that -- when
7 you have a trial about medical issues that medical issues are
8 talked about in open court.

9 I don't have much desire to have anybody --
10 Mr. Adams' or anybody else's medical information be put into
11 the public domain unless it's necessary.

12 So how are you proposing to proceed?

13 MS. ALTMAN: Well, so, by example -- and I don't want
14 to argue the motions, because I sense that that's not where we
15 are. But I just want to highlight for the Court, some of these
16 issues are discussed in the various motions --

17 THE COURT: Right.

18 MS. ALTMAN: -- whether it be the motion regarding
19 the academic records or the motion regarding the medical
20 records.

21 We don't believe the information is relevant at all.
22 Obviously, we're not talking about Drew testifying that he's
23 transgender. That's out in the open.

24 But there are other issues that are contained within
25 the medical records that we don't believe have any bearing on

1 any of the issues that will be presented to you.

2 THE COURT: Mr. Harmon, what -- what -- so if you're
3 the sponsor of this testimony about Mr. Adams' medical
4 situation, it was not clear to me -- the motion in limine
5 addresses medical records. But it was not clear to me who's
6 going to be the witness that would talk about these things.

7 MR. HARMON: Right. And I'll try to explain it. It
8 kind of depends. That's the best way I can put it. From my
9 understanding -- and at this point, Plaintiff is going to put
10 on evidence of those medical issues.

11 Both of Plaintiff's proposed expert witnesses
12 provided expert reports that they reviewed and considered
13 Plaintiff's medical records in the case.

14 So to the extent those witnesses are going to testify
15 about the contents of them, or Plaintiff is going to testify
16 about any medical issues, or his mother, those are ripe for
17 cross-examination.

18 So in terms of the scope of what medical records are
19 going to be used, a lot of it, from a general perspective, is
20 dependent on the testimony of their experts and whatnot. It's
21 not an attempt to just walk in and put medical stuff in, but
22 it's --

23 THE COURT: And what about academic records? What's
24 the relevancy of it?

25 MR. HARMON: I've got my notes, but I'll go off --

1 off on it. One of the allegations in the amended complaint is
2 that the Defendant intentionally interfered with Plaintiff's
3 education, causing harm.

4 I believe one of Plaintiff's expert witnesses is
5 going to proffer evidence as to the impact on Plaintiff's
6 education.

7 And I think to the extent Plaintiff's education
8 records -- which ones we elect to actually use -- tell a
9 different story regarding the impact on Plaintiff's education
10 is certainly relevant.

11 But a lot of it is, again --

12 THE COURT: Is that to say that he did fine?

13 MR. HARMON: It's to say that he's, you know -- for
14 example, one of the issues is the Plaintiff is missing 25
15 percent of his classes. There's an allegation of that.
16 There's no academic records to show that.

17 One of the allegations is that it forces -- Plaintiff
18 has been forced to lose valuable class time, impacting his
19 ability to perform, but he's a really good student with really
20 good grades. And I think that is relevant -- it's certainly
21 not prejudicial, but relevant to allegations of an intentional
22 harm to a person's education.

23 So, again, it is kind of dependent, though.

24 THE COURT: Well, I think -- I think this. I think
25 that any -- you know, Mr. Adams is, what, 17 years old? Is

1 that right?

2 MS. ALTMAN: Yes, sir, Your Honor.

3 THE COURT: So -- so I don't have any interest in
4 having any more of his private information talked about in open
5 court or put out into the public than is absolutely necessary.

6 Having said that, it may be that some of it does turn
7 out to be either relevant to meet an objection -- to meet
8 testimony that the Plaintiff puts on, or for some other good
9 purpose.

10 And if that's so, you know, we'll probably have to
11 accommodate him, and -- but I just don't know what I can say
12 about it right now.

13 I mean, for example, if -- if the question is, "Isn't
14 it true you're a straight A student? Yes," I'm not too worried
15 about that.

16 And, you know, if it's something more personal, in
17 terms of medical history or whatever, we -- we'll have to
18 address it as it comes.

19 What I would say to both of you is that, I think
20 that -- I think that should be minimized to whatever extent is
21 possible. It should not be the default position that his
22 medical evidence, or any other, really, private information,
23 becomes part of the trial.

24 But to the extent it's necessary, I'll address at
25 that time whether to allow it and, if so, whether it rises to

1 the level of some type of in camera submission, or whether it
2 just needs to be talked about in open court, like every other
3 testimony. So we'll have to kind of take it as it goes. So
4 that's my answer to that.

5 And I think that will address a number of these
6 motions in limine that you-all filed. So -- so to that extent,
7 that's about as good as I can do on that right now.

8 What else?

9 MR. HARMON: On the motions in limine, does Your
10 Honor need Defendant to prepare --

11 THE COURT: I don't know.

12 MR. HARMON: I think there's five pending.

13 THE COURT: I'm going to go through them with y'all
14 in a second and see -- just make sure I'm understanding.
15 There's a couple of them I didn't really get.

16 MR. HARMON: Okay.

17 THE COURT: And some of this may be wrapped up in the
18 stuff we were talking about this morning. If it is, so be it.
19 But I -- I do plan to at least run through that with you. And
20 we'll talk about that in a second. How about that?

21 MR. HARMON: Okay.

22 THE COURT: All right. What else?

23 MR. HARMON: One of -- there's a pending motion that
24 was maybe filed Monday or -- Friday about the presentation of
25 one of Plaintiff's expert witnesses going out of order.

1 THE COURT: Out of turn, right.

2 MR. HARMON: We've since talked about that and came
3 up with what we think is a resolution to it, and wanted to
4 present it to the Court to make sure.

5 THE COURT: Sure.

6 MR. HARMON: I don't have it in front of me. So
7 please feel free to add if anybody's got the e-mail.

8 But I think that what we were looking at was that --
9 if we're scheduled from the 11th through the 13th, and it's our
10 case, our case in chief may start on the 12th -- if
11 Dr. Ehrensaft is only available on the 13th, we would be fine
12 with her going on the 13th, as long as she is the first witness
13 of the day, and as long as she does not communicate with
14 counsel about any of the testimony that predated her being
15 called as a witness, and as long as she doesn't review the
16 transcripts of any of the testimony that predated her, to the
17 extent any of Defendant's witnesses -- to the extent that any
18 testimony predates her.

19 Did I miss something? I just want to make sure.

20 THE COURT: Okay.

21 MR. HARMON: I know we sent an e-mail outlying the
22 specifics of --

23 THE COURT: What -- if y'all agreed on something --

24 MR. HARMON: We can submit it to the Court.

25 MS. ALTMAN: We did, Your Honor. I mean, even though

1 you can't invoke the rule as to experts in order to resolve the
2 issues, we came up with that plan.

3 MR. HARMON: That's correct.

4 THE COURT: If y'all have a plan, it's fine with me.
5 I mean, I'm -- you know, again, we're in a non-jury setting.
6 It's not uncommon for witnesses to be out of order. I'm fine
7 with it. Whatever y'all agree to in that score is fine with
8 me.

9 MR. HARMON: We'll just file a joint notice of the --

10 THE COURT: That's fine.

11 MR. HARMON: Okay.

12 THE COURT: That's fine.

13 MR. HARMON: If I may, I'm going to confer, Your
14 Honor, to see if I'm not missing anything.

15 MS. ALTMAN: And, Your Honor, while he's
16 conferring --

17 THE COURT. Yes, ma'am?

18 MS. ALTMAN: -- just -- the other issue is, as Your
19 Honor knows, there was a -- leave to file an amicus brief.

20 THE COURT: Yeah.

21 MS. ALTMAN: And we want to ensure that the -- that
22 the proponent of that is -- has the ability to respond. They
23 filed, I think, yesterday, a motion to strike.

24 THE COURT: Oh, I don't --

25 MS. ALTMAN: I think it was --

1 MR. HARMON: I think it was a response to the
2 motion --

3 MR. KOSTELNIK: And a motion to strike.

4 MR. HARMON: -- and a motion to strike.

5 THE COURT: Oh, I saw -- okay. I see it's styled as
6 a motion to strike.

7 MS. ALTMAN: Right. I think that's sort of a
8 response, and then --

9 THE COURT: Well, here's what I'm going to do about
10 the amicus. As I understand it, Ms. Altman, the amicus has
11 taken the position -- in other words, this is the amicus -- the
12 amicus brief that -- that you want me to consider. Right?

13 MS. ALTMAN: I -- I have horrible vision, but I would
14 assume that's what you're holding in your hand. Is that --

15 THE COURT: Take my word for it.

16 MS. ALTMAN: Okay.

17 THE COURT: So the only question -- I guess there's
18 two ways the Defendant could go with this. It can just seek to
19 get rid of it or it could respond to it in some way.

20 But my feeling about it is that it's not going to
21 affect the trial. And I would -- I'm not going to try to deal
22 with it right now.

23 I mean, I -- it can -- it can be a post-trial
24 decision whether I accept it or not. And so the amicus -- if
25 you're telling me that they filed a motion to strike it and

1 they cited reasons -- their reasons, I think, were it didn't
2 have anything to do with the case. And I think -- doesn't that
3 get us right back in the circle we were in this morning, or
4 not?

5 MS. ALTMAN: Yeah. I think they argued a bunch of
6 things in it. I think that we'll file something, with the
7 Court's permission.

8 THE COURT: That's fine.

9 MS. ALTMAN: Obviously understanding, based on what
10 you said, that you may not address it until later.

11 THE COURT: Right.

12 MS. ALTMAN: And we just want to make sure that the
13 proponents also have an opportunity.

14 THE COURT: I'm not going to rule on the request to
15 appear amici or -- nor am I going to rule on the motion to
16 strike -- probably until post trial.

17 So if you want to respond or if they want to respond
18 to the motion to strike, that's fine. And I'll probably just
19 leave -- let it sit over here and we'll deal with it post
20 trial. I'm not going to -- we've got plenty of other things to
21 do, so...

22 MS. ALTMAN: Yes, Your Honor.

23 THE COURT: Okay. What else?

24 MR. HARMON: I think for housekeeping --

25 THE COURT: Yeah.

1 MR. HARMON: -- that may be it at this time.

2 THE COURT: All right. Let me -- let me take a look
3 here.

4 MS. ALTMAN: The motion, you mean?

5 THE COURT: I'm going to go through the motions with
6 you, but let me make sure I have -- are we -- I'm assuming
7 we're going to be able to -- even if we tried the case -- the
8 longer case, that apparently is currently contemplated with the
9 experts and so forth, I'm assuming we're going to get it done
10 in the three days.

11 Has anybody got heartburn about that or not?

12 MS. ALTMAN: I'll speak for myself. I mean, we were
13 going to ask the Court -- I don't know if that happened yet,
14 whether -- if we needed to spill over into the 14th, whether or
15 not that day was available.

16 THE COURT: Let me see.

17 Not exactly. But I might be able to make it work.
18 Let me put it this way, I'm not going to arbitrarily cut the
19 trial off. If I feel like anybody is dragging their feet or
20 we're not getting anywhere, then that's a different story.

21 But if people are doing what they're supposed to be
22 doing and we're being -- we're using our time well -- if we
23 have to spill over, we have to spill over. I do have other
24 matters set that day, but -- but I can -- I want to be fair to
25 everybody.

1 And, for example, I don't want the Plaintiff to take
2 up too much time and then the Defendant not have enough time to
3 do what they wanted to do. So I may be able to -- I have a
4 commitment on Friday.

5 I might be able to avoid that commitment and move the
6 stuff that I had for Thursday to Friday, if we need to. So
7 I'll look into that. So the answer is that -- I want us to be
8 economical with our time. But if it turns out we just can't
9 get it done in the three days, I'll make it work.

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

11 THE COURT: Okay.

12 MR. HARMON: Thank you.

13 THE COURT: Y'all got me to extend the deadline for
14 filing *Daubert* motions. What *Daubert* motions are you going to
15 file?

16 First you, Ms. Altman.

17 MS. ALTMAN: We intend to file *Daubert* motions
18 directed to both of the Defendant's experts.

19 THE COURT: Let me guess.

20 MR. HARMON: Likewise.

21 THE COURT: Okay. Well, good. So as I told you,
22 because it's a non-jury setting, I'm not going to -- I'm not
23 going to exclude an expert in advance.

24 But certainly I will -- in my gatekeeper role under
25 *Daubert*, I will be evaluating the expert's testimony. And if I

1 determine that an expert, for whatever reason, under *Daubert* is
2 not a proper expert, I'll -- I'll do what I'm supposed to do.

3 But it will play out at trial as if -- as if the
4 person is testifying without a *Daubert* inhibition. And so
5 that's the way we'll do it. But at least it will sensitize me
6 to it, if y'all -- if that's what y'all want to do.

7 So I'll -- I'm not -- because of the timing, I'm not
8 looking for responses to the *Dauberts*, unless you -- I mean,
9 I'm not -- I guess I won't stop you from doing it, but I
10 really -- here's what's going to happen.

11 I'm going to read the *Daubert*. I'm going to say,
12 Okay. I see why they don't like this person. And then I'm
13 going to listen to the person's testimony and their
14 cross-examination.

15 And then I'm going to make a determination whether
16 it's so -- whether under the Court's gatekeeping role I should
17 completely exclude the expert, if that's what's being requested
18 of me, or I'm going to determine whether I should just judge
19 the expert on traditional criteria of cross-examination of
20 weight and credibility.

21 And so I don't know that a written response is
22 necessary. I'm not going to prohibit it, but I'm not -- it
23 seems to me y'all are going to have plenty to do. And I
24 don't -- I'm not looking for it. So I'll leave that up to you.

25 MS. ALTMAN: And, Your Honor --

1 THE COURT: Yeah. Go ahead.

2 MS. ALTMAN: I apologize. There's also -- there were
3 filed some requests for judicial notice.

4 THE COURT: I did see those.

5 MS. ALTMAN: So we just wanted to alert the --

6 THE COURT: I'll go through -- I was going to -- I'll
7 go through those when I go through the motions. Okay?

8 MS. ALTMAN: Okay.

9 THE COURT: I saw that was a long listing of
10 Mr. Adams' testimony by somebody. I guess that would be the
11 Defendants, Mr. Harmon?

12 MR. HARMON: Yes, Your Honor, it was.

13 THE COURT: Are you just viewing those as admissions?
14 Is that -- it looked like it was kind of his whole deposition.
15 And he's going to testify, I assume. So what's the deal there?
16 How are you intending to proceed there?

17 MR. HARMON: At the time that I filed the pretrial
18 stip -- I believe the Court's local rules said you don't have
19 to designate -- sorry, not the local rule. The Court's
20 scheduling order said you don't have to designate page and
21 line.

22 I just did it more as a -- I mean, more transparency
23 to the other side about what areas we may be looking to
24 introduce as admissions by party opponent, perhaps to cut down
25 some of the trial. But I don't know until Plaintiff puts on

1 its case in chief exactly which of the designated pages may
2 actually be used.

3 THE COURT: And are you talking about actually
4 putting them into -- I mean, reading them into evidence, or
5 what?

6 MR. HARMON: I haven't made that decision yet. It
7 may just be a fact of just going through a cross-examination
8 and not using any of it, or it may just be --

9 THE COURT: Okay. All right.

10 MR. HARMON: Yeah.

11 THE COURT: Next question I have for you, on page
12 22 -- and this may -- I guess this will involve Ms. Altman as
13 well. Page 22 of this stipulation -- I take it this has to do
14 with the parents of students and students that you were
15 discussing when we had the motion hearing several months ago;
16 is that right?

17 MR. HARMON: Yes.

18 THE COURT: Okay. So now the parties -- in lieu of
19 that type of testimony, the parties have stipulated that
20 certain parents of students and students in the district object
21 to a policy or practice that would allow students to use a
22 bathroom that matches their gender identity, as opposed to
23 their sex assigned at birth.

24 These individuals believe that such a practice would
25 violate the bodily privacy rights of students and raise privacy

1 safety and welfare concerns.

2 So the parties have stipulated that -- I take it what
3 this is designed to do is -- in lieu of testimony from these
4 parents or these students, the parties have stipulated that
5 this is what these parents would say if they were called to
6 testify.

7 I don't have any problem with that, as long -- you
8 know, for whatever value it will end up being. But I don't
9 have any problem with the stipulation.

10 The part I didn't understand was -- "Plaintiff
11 submits this stipulation does not apply to himself or his
12 parents." I read that and I -- is it so obvious that I'm
13 missing something? Or why would anybody think otherwise? I
14 didn't really understand it.

15 MR. HARMON: My understanding of it was we --
16 Plaintiff and Plaintiff's parents don't think that this
17 violates anybody's privacy rights, creates any safety or
18 welfare concerns. That's what I understood the --

19 THE COURT: Okay.

20 MR. HARMON: Which kind of goes with the point of why
21 we're all standing here today.

22 THE COURT: Okay.

23 MR. HARMON: Am I misreading that?

24 MS. ALTMAN: Correct. And didn't want the
25 implication to be that --

1 THE COURT: That Mr. Adams -- that Mr. Adams or his
2 parents agreed with that? That's what you didn't want the
3 implication to be?

4 MS. ALTMAN: Correct. And that they would be --

5 THE COURT: Okay. I just wouldn't -- I wouldn't have
6 thought there would have been any implication of that. But I
7 guess stating the obvious isn't always a bad thing.

8 MS. ALTMAN: Right. And, also, that they wouldn't be
9 precluded from testifying about their --

10 THE COURT: I understand. Okay.

11 MR. HARMON: Sure.

12 THE COURT: All right. I just wanted to make sure --

13 MR. HARMON: Yes.

14 THE COURT: -- I wasn't reading that there was more
15 to it than met the eye. But it turns out there's not. Okay.
16 Let me see if -- I'm going through the stipulation here. I had
17 a couple of other -- I think we may have covered most of this.

18 Originally I saw -- I couldn't quite -- again, I --
19 on these final exhibit lists -- on the original 26(a)
20 disclosures, there appeared to be tons of objections to each
21 other's exhibits.

22 When you get to the final list, if I'm reading it
23 correctly, are those objections withdrawn, or you just don't
24 list them in this objection --

25 MR. HARMON: I think I may be able to clarify. We

1 filed Plaintiff -- Defendant late discovered a document and
2 filed an amended final exhibit list -- I believe the 29th. And
3 then just a few hours later is when the parties filed the
4 pretrial stip with the attached objections.

5 So I think all of Plaintiff's objections to
6 Defendant's exhibits are incorporated in the pretrial stip, but
7 they're not contained within that --

8 THE COURT: Okay.

9 MR. HARMON: -- second amended list that we filed
10 late in the evening, I think on the 29th.

11 THE COURT: Okay. So there are lots of objections to
12 exhibits?

13 MR. HARMON: Yes. Yeah, on both sides.

14 MS. ALTMAN: Yes, Your Honor. But the parties are
15 going to work to try and resolve them. And, in fact, some of
16 those issues may fall to the wayside and we might decide to do
17 some of them at trial. Because to the extent that documents
18 that have been identified are actually admitted or even
19 proffered, then we won't need to address them.

20 THE COURT: All right. Here's what -- here's what
21 we're going to do with the exhibits. At the beginning of the
22 trial, I'm going to ask you to give me a list of exhibits as to
23 which there are no objection and that can be admitted right
24 away on both sides. And that way we will admit those exhibits.

25 With respect to exhibits as to which there will be an

1 objection, you can make the trial objection when the exhibit is
2 introduced. I will make a ruling on it.

3 If it's clear to me it either is in or it's out, I'll
4 say so. If -- if I'm not sure, I'll probably just allow it in,
5 subject to a final decision when I -- when I go look at it,
6 so...

7 But to the extent that there are -- is agreement on
8 exhibits on both sides, we'll put those in at the beginning,
9 and then you won't need to refer to them.

10 I will also tell you that -- just a couple of
11 courtesy things that are in the local rules that I don't think
12 we need to follow particularly in this case, and it saves a
13 little bit of time -- and that is this: Once an exhibit is
14 admitted, either at the beginning or over objection, you always
15 have permission to publish it.

16 So as soon -- you can't publish it until it's
17 admitted. But as soon as it's admitted, you can publish it.
18 You don't have to ask me.

19 And, secondly, as long as we're judicious about it,
20 you do not need to ask permission to approach a witness. You
21 can just do it. Don't stay any longer than you need to and
22 don't do it very often, but you don't have to ask in advance.
23 It just saves us a little bit of time.

24 MS. ALTMAN: Your Honor, on the objections, can I ask
25 a question?

1 THE COURT: Yeah.

2 MS. ALTMAN: Would it be okay for efficiency
3 purposes -- I know typically the parties that are directing and
4 crossing a witness argue the objection for the particular
5 document. For efficiency purposes, would it be okay if we just
6 designated one of our lawyers to handle all of them as they
7 arise?

8 THE COURT: Sure. Yeah. I don't -- it doesn't
9 matter to me.

10 MS. ALTMAN: Okay.

11 MR. HARMON: We probably won't do that.

12 THE COURT: All right.

13 MR. HARMON: Different lawyers on different stuff,
14 so...

15 THE COURT: That's fine. But you can -- you can do
16 whatever.

17 MS. ALTMAN: Okay.

18 THE COURT: I do adhere to the rule that -- one
19 lawyer per witness, right? So if you're -- if you're the one
20 handling a witness, I don't know that I'm going to have you --
21 I'm not going to have another lawyer objecting to exhibits. If
22 that's what you're saying, I'm not sure about that. I'm not --
23 you know, I think that any lawyer who's handling a witness
24 needs to deal with that witness.

25 MS. ALTMAN: Okay.

1 THE COURT: All right. So if I'm understanding --
2 because I'll be honest with you, I'm not all that accustomed to
3 the 26(a)(3) pretrial disclosure format here.

4 We usually just use the pretrial statement and people
5 attach exhibit and witness lists and we're off and running. So
6 I'm assuming -- but I guess in the Defendant's case that is
7 your witness list and your exhibit list.

8 Is that right?

9 MR. HARMON: Yes.

10 THE COURT: Okay. All right.

11 MR. HARMON: Yes. I think it's one and the same.
12 What's in the pretrial stip should match what's in the final
13 Rule 26.

14 THE COURT: Okay.

15 MS. ALTMAN: Does Your Honor want us to file a
16 separate document?

17 THE COURT: You will need to give Ms. Diaz an actual
18 exhibit list, not -- witness list I don't care about. But
19 exhibit list that has -- you know, that's in the format that we
20 have given. And it may be the same list.

21 But you will need to give that to her at the
22 beginning of trial. And usually I get copies -- I'm not
23 sure -- what kind of volume of material are we talking about
24 here? I can't quite tell.

25 MR. HARMON: I can at least speak for Defendant,

1 depending on the -- as listed, substantial, I think is the
2 neatest way to put it.

3 I would hope between now and trial, depending on
4 communications with Plaintiff, that the -- that the exhibit
5 list can be narrowed down. I will represent that part of the
6 issue in Defendant's list and why it is so substantial is just
7 not knowing for sure the case in chief Plaintiff is going to
8 lay out. And I hate to over-list exhibits. But we try to
9 cautiously list exhibits that may be used in response.

10 THE COURT: Okay. Well --

11 MR. HARMON: So we will try to limit it.

12 THE COURT: Well, here's why I'm asking. I usually
13 get a copy of the exhibits. But, frankly, sometimes it's just
14 more paper than I can deal with and I'm not able to readily
15 access it.

16 So I think -- I think that you've got to have an
17 original for Ms. Diaz. I think you should have a -- a copy --
18 I think you should have maybe two copies, one for me and one
19 for my law clerk.

20 But I don't think I want it in big notebooks or
21 anything. I think it ought to be -- I think they ought to be
22 either tagged or in a -- in a manila folder or something, so
23 that when you're -- when you're actually talking about specific
24 exhibits, somebody can hand it to me and I can be reading that
25 exhibit, rather than having a big notebook where I'm trying to

1 find the thing or whatever.

2 MR. HARMON: Okay.

3 THE COURT: Or if, for example, you're getting ready
4 to examine a witness and you know what exhibits you're going to
5 use, you can hand up the ones you're going to use so I can be
6 looking at them, something along those lines.

7 And I think we need the original with Ms. Diaz and we
8 need a copy for myself and Ms. Weisman, and -- but I don't
9 think I want them in notebooks. I think that ends up being
10 unwieldy, so -- and I may not even want them up here until
11 somebody actually wants to use one of them.

12 MS. ALTMAN: Does it change what Your Honor is
13 saying, the fact that we will have somebody be bringing up the
14 documents electronically, in terms of whether you receive the
15 paper copy? No?

16 THE COURT: No.

17 MS. ALTMAN: Or on a --

18 THE COURT: I'm sorry. I'm of a generation where
19 paper is what I look at.

20 MS. ALTMAN: Okay.

21 THE COURT: I mean, I'm not saying I can't look on
22 the computer screen. I suppose -- when you're saying you're
23 going to bring it up, where are you bringing it up?

24 MR. HARMON: He asked you where you were going to
25 bring it up.

1 THE COURT: Where are you going to -- when you say
2 you're going to bring it up, where are you --

3 MS. ALTMAN: On the screen.

4 THE COURT: On the screen? It depends. And I guess
5 that's all I've got for you.

6 MS. ALTMAN: All right.

7 THE COURT: I generally like to be able to preview or
8 see what I'm going to see or whatever. And so that's why I
9 need -- that's why I like the paper.

10 Now, if it's medical records like this, I don't want
11 it. I'm talking about, you know, manageable documents. And so
12 we can kind of proceed as we're advised a little bit.

13 But I'm just saying to you, remember -- just remember
14 that -- and sometimes people forget this in a non-jury trial.
15 There's nobody else to look at this stuff except me, and maybe
16 the witness. And so you need to make sure that I'm seeing what
17 I need to see.

18 And if it's on the screen, that's fine, but that's
19 probably -- I'm probably going to want to see it in my hand,
20 so -- unless it's bigger than a bread box. Okay.

21 MS. ALTMAN: Okay.

22 THE COURT: So y'all will figure it out, I'm sure.

23 Okay. Anything else until we get to the motions?

24 Anything else, Susanne?

25 All right. I'm going to run through this. I don't

1 know how much headway we'll make with these motions. Let me
2 make sure I --

3 MS. ALTMAN: And, Your Honor, one other thing -- I
4 don't know if you're going to address it at a later time. But
5 will the parties get openings, closings? If so, how long?

6 THE COURT: That's a good question. I don't -- I
7 don't usually do that in non-jury cases. And the reason I
8 don't is because you've already given me findings of fact and
9 conclusions of law, which, in my mind, is kind of your -- you
10 know, your opening.

11 And so I'm prepared just to get going. I think
12 that's what I'd prefer. If somebody really feels like they've
13 got some brilliant opening they're going to give me, that's
14 fine, but...

15 MR. HARMON: I was going to say in the interest of
16 time, since it is a non-jury trial and the court is well aware
17 of the issues, that an opening is probably not needed, or
18 closing. We can always -- we're going to be submitting
19 post-trial --

20 THE COURT: Yes.

21 MR. HARMON: That, I would assume, would --

22 THE COURT: And I might -- I might hear from you by
23 way of closing. It's even possible that once I get the
24 findings of fact I may call you in for an argument. You know,
25 I mean -- I don't know. I don't know what I'm dealing with.

1 And so -- but I don't -- anyway, that's what I think.
2 I think that we probably don't need an opening statement
3 because I'll get the findings of fact and conclusions of law.
4 And then we can figure out closing at the end. Okay?

5 MS. ALTMAN: Okay.

6 THE COURT: Let me see. Are there any other issues
7 with witnesses or anything like that? The -- any other issues
8 with witnesses that we...

9 Okay. So we're going to be entering an order for the
10 media, who -- there have been several -- we've gotten several
11 phone calls about the case. We think it is going to be
12 covered. I see that Channel 4 is out there today.

13 And so we're going to be doing an order that allows
14 media to bring in their laptops so they can do their reporting.
15 We have rules about there can't be live transmissions from the
16 courtroom, but we still want to make sure we accommodate them.

17 We, of course -- if you're a member of the Bar, you
18 can bring your cell phone in. I'm not anxious to expand it
19 much beyond that. But if there's somebody on each side that
20 needs to have their phone with them or something, we can
21 include that in the order when we do the media order.

22 So is there anybody on your side, Ms. Altman, besides
23 the lawyers that you're concerned about?

24 MS. ALTMAN: Not that I'm aware of. But we would
25 request the opportunity just to confer with the family to make

1 sure it's not an issue.

2 THE COURT: That's fine. All right.

3 MS. ALTMAN: Thank you.

4 THE COURT: And Mr. --

5 MR. HARMON: From the Defendant's side, I would say
6 our firm's paralegal is not a member of the Bar.

7 THE COURT: All right. We'll let her do it.

8 MR. HARMON: It's Mr. Wylie.

9 THE COURT: Mr. Wylie. Sorry.

10 MR. HARMON: And the only other person that I could
11 think of potentially is if the Superintendent was called as a
12 witness -- in the event there's an emergency at the school, he
13 may need his phone.

14 THE COURT: Okay.

15 MS. ALTMAN: I apologize. Our vendor -- I think we
16 had already discussed with Ms. Diaz. But we're going to have
17 the electronic person bringing up exhibits. So that person may
18 require -- certainly their computer, and potentially a phone.

19 (Judge confers with courtroom deputy.)

20 THE COURT: All right. You can work with Ms. Diaz on
21 it. She says the court security officer will -- if you're with
22 the lawyers and you have reason to bring in your equipment,
23 then they'll do that. But we'll enter whatever appropriate
24 orders we need to enter.

25 And to the extent that anybody wants to learn the

1 technology or learn the courtroom logistics, you can make an
2 appointment with Ms. Diaz.

3 We're going to be in trial next week, but hopefully
4 we'll be done with that trial maybe Thursday or so, so you
5 might be able to get an appointment with her, if you need it.

6 All right. Let's look at these motions. I'm not
7 committing to trying to rule on any of them now, but I -- there
8 may be some good work we can do here. Let's see.

9 The Defendant's motion to dismiss, doc 54, we've
10 already said we're going to carry with the case.

11 Doc 98, the motion to allow the expert witness out of
12 turn, that's going to be mooted by the agreement of the parties
13 that's been announced.

14 The Defendant's motion to withdraw and amend the two
15 responses to the requests for admissions, I'm just going to
16 hold on to that. I don't know how big of a deal that is. But
17 I don't really want to spend time on it. And we'll -- we'll
18 deal with that post trial.

19 I think -- I mean, it's not going to change the
20 evidence, right?

21 MR. HARMON: No. I mean, the fact that we're going
22 from an admission to a denial, I think, telegraphs what we're
23 going to do with that.

24 THE COURT: No. But I meant from the Plaintiff's
25 standpoint --

1 MR. HARMON: Oh.

2 THE COURT: I'm asking you, Ms. Altman, is it -- is
3 there anything that's going to happen if I don't rule on this,
4 or not?

5 MS. ALTMAN: Well, we did file a response already,
6 Your Honor.

7 THE COURT: I saw that.

8 MS. ALTMAN: And, you know, from our perspective, all
9 of their witnesses were deposed effectively at the time that
10 they then made this --

11 THE COURT: I mean, we're talking about a statement
12 that transgender people represent a small and discrete group of
13 people within the United States. Response, admitted. Now they
14 want to say denied.

15 I'm not really sure -- I'm not really sure what issue
16 that goes to, but maybe it does go to something. And then if I
17 remember, Plaintiff's school records have been updated to
18 reflect a male gender marker. Response, admitted. Now they
19 want to say denied.

20 I'm not -- I'm not really sure -- I guess I don't
21 really know what --

22 MR. HARMON: I can explain it, Your Honor.

23 THE COURT: Yeah.

24 MR. HARMON: It's pretty quick. So the -- you log
25 into Plaintiff's education records on the school system, a

1 pop-up comes up that says, "Please refer to with male
2 pronouns."

3 But Plaintiff's official school records, by law, the
4 ones that are identified in the administrative rule, the gender
5 marker has not changed.

6 And so when that was admitted -- admitted originally
7 at the forefront, it was an error because his actual official
8 records don't have the gender marker change.

9 The 30(b)(6) witnesses, which were the -- which were
10 taken yesterday, were taken after that motion was filed. So to
11 the extent there was a concern about -- or inquiring into that
12 change, the only 30(b)(6) witnesses taken in this case by depo
13 were yesterday, and Plaintiff had a chance to inquire into that
14 stuff at that time, and actually did inquire. And the 30(b)(6)
15 witness did answer that question yesterday consistent with
16 what's contained in that motion.

17 THE COURT: All right. Ms. Altman, your position on
18 this is -- I guess I'm -- I was just going to put it off. But,
19 I mean -- I guess what I'm trying to figure out is whether I --
20 whether I -- whether I deem this to be admitted or whether I
21 deem it to be denied, is the trial going to change at all?

22 MS. ALTMAN: Well, I think it -- the answer to that
23 question, honestly, will depend on what stipulations, if any,
24 we're able to come together on over the next week.

25 THE COURT: Okay. All right. I'm just going to

1 leave it for now and we'll -- I'm not -- it doesn't sound like
2 I need to be too worried about it.

3 So, Mr. Harmon, I've now got doc 104 in front of me.
4 You want me to exclude the testimony of your people.

5 MR. HARMON: No, of Plaintiff's witnesses, three of
6 them.

7 THE COURT: Who are they?

8 MR. HARMON: Michaelle Valbrun-Pope and Michelle
9 Kefford are administrators in Broward County being offered to
10 testify as to whether there have been any issues in Broward
11 County schools with their policies on transgender.

12 THE COURT: Oh, this has to do with --

13 MR. HARMON: Yes.

14 THE COURT: -- that they have the policy in place
15 that the Plaintiffs want you to have?

16 MR. HARMON: Yes. And those two are going to speak
17 to how things are going in Broward and how that policy was
18 created, similar to Dr. Aberli in Louisville. He is going
19 to --

20 THE COURT: And why don't you want them to do that?

21 MR. HARMON: I'm just not sure of the relevance as to
22 what two school districts in the entire United States have on
23 how things are going in Louisville, Kentucky, and Broward
24 County, Florida.

25 THE COURT: All right. And, Ms. Altman, your

1 position is what?

2 MS. ALTMAN: Yes, Your Honor. So they're clearly and
3 directly relevant. It's not just for the testimony that
4 Mr. Harmon just indicated. But by example, they're going to
5 have to show, in our opinion, that the policy that was erected
6 by the Defendant is substantially related to some government
7 interest. We would use these --

8 THE COURT: I'm going to deny the motion in limine.
9 I'd like to hear what they have to say. And I'll determine
10 later whether it's -- whether I use it or not. But I'm not
11 going to -- I'm not going to rule them out. So the motion --
12 that motion in limine, which is doc 104 -- 104 is denied.

13 All right. The -- doc 107, isn't that wrapped up in
14 the -- the motion in limine to exclude evidence purporting to
15 dispute diagnosis -- isn't that wrapped up in the issues y'all
16 are talking about?

17 MS. ALTMAN: It is. We have not reached an
18 agreement --

19 THE COURT: I understand.

20 MS. ALTMAN: -- on whether or not they'll stipulate
21 to that.

22 THE COURT: I understand. But I'm going to --

23 MS. ALTMAN: But that particular one, there are two
24 that are associated with gender -- gender dysphoria.

25 THE COURT: Doc 108 is probably the other one, right,

1 which is the motion in limine to exclude evidence?

2 MS. ALTMAN: Yes.

3 THE COURT: Right. All right. I'm not going to rule
4 on those, hoping that something good will happen.

5 MS. ALTMAN: Okay.

6 THE COURT: Doc 109, Plaintiff's Motion in Limine to
7 Exclude Evidence Regarding the Plaintiff's Medical Records,
8 we've already had that discussion.

9 And the Court is sensitive to that issue and will
10 require that any proponent of medical records or academic
11 records, those types of things, need to clear it with the Court
12 before they venture into that. And the Court will make
13 whatever rulings are necessary and determine if the evidence
14 should come in and, if so, whether it is sensitive enough that
15 an in camera proceeding has to occur or not. So -- so I'm
16 going to simply defer on 109 and 110, pending discussion at
17 trial.

18 MS. ALTMAN: Your Honor, could I just add on those
19 two -- just one point of clarification?

20 THE COURT: Yes, ma'am.

21 MS. ALTMAN: We're not trying to exclude any records
22 that have any bearing on what we think are the issues in the
23 case. So I just wanted to be clear. We're not saying, by
24 example, a document relating to whether or not Drew has gender
25 dysphoria.

1 We're just talking about we produced, in an abundance
2 of hopefully cooperation, way early on all of his medical
3 records, dealing with all manner of things.

4 THE COURT: Well, I'm sure that Mr. Harmon isn't
5 going to be introducing or referring to any medical records
6 that don't have anything to do with this case, and --

7 MR. HARMON: That's absolutely accurate, Your Honor.

8 THE COURT: And so -- so if we get to a point where
9 we need to talk about this, we'll talk about it at that point
10 before we actually introduce it or put it up on the screen or
11 anything like that.

12 And the same thing will be for medical records.

13 Okay. Doc 111, which is to -- the Plaintiff's
14 request to limit evidence regarding Mr. Adams' social media
15 use -- I don't know what Mr. Adams said on social media. But
16 as a 17-year-old, I'm sure he says lots of things on social
17 media.

18 What is this, Mr. Harmon? Is there some -- did he
19 say some things that you think help your case? Is that what
20 we're doing here?

21 MR. HARMON: They help the defenses in this case,
22 yes.

23 THE COURT: And your position, Ms. Altman, is what?

24 MS. ALTMAN: Well, first of all, what they did was
25 just wholesale included his entire social media record. So I

1 don't know, in fairness to Mr. Harmon, how in good faith he
2 could suggest that every single post that Mr. Adams has ever
3 done has some bearing or relationship on this case, nor did it
4 enable us to properly object to these documents, because they
5 just wholesale included them all. That's as to the written,
6 sort of, postings.

7 THE COURT: Well, I'm sure he didn't mean that.

8 Mr. Harmon, I would think that -- I mean, I don't
9 know how many there are of these things. But I would think
10 that you would, at minimum, have to pick out the ones you
11 really want to use.

12 MR. HARMON: I am not going to stand before Your
13 Honor and try to introduce every post in this child's history.

14 THE COURT: I understand.

15 MR. HARMON: It's got to be relevant.

16 THE COURT: But they need to -- they need to know
17 which ones --

18 MR. HARMON: That's fair.

19 THE COURT: Yeah. And you need to do that. And that
20 needs to be done before the trial. And then we can have a
21 discussion about it. But -- what volume of documents are we --

22 MR. HARMON: With the written ones, I think Plaintiff
23 produced about 800 pages, give or take a few. I think of the
24 printed ones there's only a few.

25 I'm not sure, again, what Plaintiff's case is going

1 to be. But I can identify at least a couple up front that I
2 know we'll use.

3 There's about four videos. We did not list every
4 video. We only listed about four YouTube videos that are
5 directly pertinent. And those are easily identifiable by
6 Plaintiff right now. They're about two to eight minutes each.

7 THE COURT: Okay.

8 MR. HARMON: And they're definitely pertinent to the
9 issues in the case.

10 THE COURT: All right.

11 MS. ALTMAN: I don't know if Your Honor wants to hear
12 from -- we don't think they're pertinent. But we can -- if
13 Your Honor wants to address them as they try and offer them, we
14 can do that.

15 THE COURT: Let's do that. But I do think, Mr.
16 Harmon, to the extent that there's 800 pages of social media --
17 I think you need to identify those that you're interested in
18 and let Ms. Altman know, so that we -- we've narrowed it down
19 to what we're really talking about here.

20 MR. HARMON: Yes, Your Honor.

21 THE COURT: In the meantime, I'm not going to grant
22 the motion in limine. I'll reserve ruling on the admissibility
23 of social media as -- as it comes up to me.

24 Doc 112 is a request for judicial notice. And I
25 believe it was unopposed, this particular one. I know some of

1 them are opposed. But if -- if I'm reading correctly, these
2 are just -- oh, no. These are EEOC opinions, I guess.

3 And it says that the Defendant does not object. So
4 without objection, the motion in limine, doc 111 -- not --
5 sorry, motion in limine -- the request to take judicial notice
6 is granted.

7 Now, are you going to introduce those into evidence?
8 Or what -- what am I supposed to do with it now that I've
9 noticed them, Ms. Altman?

10 MS. ALTMAN: We would ask Your Honor that they be
11 introduced into evidence.

12 THE COURT: Okay.

13 MS. ALTMAN: Perhaps, in light of the agreement, we
14 can just put it with the group that are those that are no
15 objection.

16 THE COURT: Okay. All right. That's fine.

17 Doc 113 is a request for judicial notice on federal
18 decisions. My question about this is: Am I required to take
19 judicial notice of decisions? I mean, I think I'm allowed to
20 just read them, aren't I, I mean -- and rely on them. They're
21 just precedent. Why do I need to take specific judicial notice
22 of other court cases? That's not a familiar request to me.

23 MS. ALTMAN: So the case law says, Your Honor, yes,
24 you can read them. But the case law also says that you can
25 judicially notice that the fact that another court, whether

1 it's in Pennsylvania or in the Eleventh Circuit, or some -- any
2 other court made very specific factual findings.

3 And you can judicially notice that that court made
4 that finding based upon the evidence that was presented to that
5 court. And so that's essentially what we're asking the court
6 to do, in addition to reading the case.

7 THE COURT: Mr. Harmon, what's your --

8 MR. HARMON: So a couple of things. First, one of
9 the standards in providing the Court with a request for
10 judicial notice is that the proponent of the information
11 provide all necessary information.

12 And what was provided was snippets of sentences from
13 cases about what a court found in that particular proceeding
14 the facts were. And I think in the scenario where we're going
15 to a trial and some of these issues are contested in this
16 case --

17 THE COURT: All right. I'm not going to take
18 judicial notice of this, but I'll certainly be happy to read
19 the cases. I'm not sure what -- I'm not really sure what we're
20 talking about.

21 But I'll be happy to read the cases. And to the
22 extent they support one side or the other's view of things,
23 I'll be happy to take that into account, just like I would any
24 other precedent.

25 All right. No. 114, request for judicial notice

1 regarding reports documenting the history of discrimination.
2 These are like session laws, civil rights laws.

3 I think there was even -- no. I guess this isn't the
4 one. There was one where there were bills introduced in
5 Congress that I was being asked to notice.

6 MR. HARMON: Those are in Defendant's, I think, at a
7 later -- different motion.

8 THE COURT: Okay. So what are you trying to do here,
9 Ms. Altman?

10 MS. ALTMAN: Your Honor, one of the elements that
11 we'll prove or, you know, we're required to prove is that --
12 that this is a minority group with a history of discrimination,
13 and that -- separately that, you know, would -- would
14 otherwise, are otherwise, can be otherwise productive members
15 of society notwithstanding the transgender status.

16 And these documents go directly to that point, which
17 is that this particular segment of the population has a long
18 history of being treated differently than -- than those other
19 members of society.

20 THE COURT: Now, would you be -- are you asking me to
21 take notice and admit these as exhibits, but you're not
22 intending to have any witness talk about these documents? In
23 other words, they would just stand alone? Is that what you
24 have in mind?

25 MS. ALTMAN: Yes, Your Honor.

1 THE COURT: Okay. All right.

2 MR. HARMON: May I respond briefly?

3 THE COURT: Yes, please.

4 MR. HARMON: I think that's legal argument. The
5 other side of it is, it's -- I think it's really an improper
6 request, in the fact that what's being asked is to take
7 judicial notice that this is evidence of a history of
8 discrimination against transgender people.

9 And what really -- what really the documents are are
10 just statements by various committees in 2017 about transgender
11 service in the military, a proposed North Carolina law.

12 I don't know if that's fair to take judicial notice
13 of that as evidence of -- of history of discrimination against
14 transgender individuals.

15 So I would say that that's an improper attempt to
16 take judicial notice of a -- of a legal issue --

17 THE COURT: All right. And, Ms. Altman, if I don't
18 take judicial notice of this, you don't have any other way to
19 get it in? In other words, this is the way you're trying to
20 get it in; is that right?

21 MS. ALTMAN: We would have -- part of what
22 Dr. Ehrensaft will testify is about the history of
23 discrimination.

24 However, we would also, in lieu of these documents --
25 if they want to stipulate to the fact that this particular

1 class of individuals, again, which I think is undisputed, have
2 suffered tremendously and been discriminated against in
3 society, we would also consider such a stipulation.

4 THE COURT: All right. I'm going to defer on this
5 request. I'll -- I'll have to think about it. And I'll --
6 I'll let you know.

7 Doc 115, clinical guidelines, resolution, standard of
8 care, statements by major medical and mental health
9 organizations -- how does this, Ms. Altman, differ from -- I
10 guess I see.

11 I was wondering whether this -- is this -- are these
12 the same groups as are -- that are amicus, amici, or is this
13 different?

14 MS. ALTMAN: I believe they're not -- there may be
15 some overlap, but they're not -- they're not all the same.
16 And -- and it goes directly to the treatment that -- the
17 diagnosis of Drew, the treatment he's received, that it's in
18 accord with -- with what we think every legitimate medical
19 organization has proffered as the appropriate treatment. And
20 we think it's directly relevant to the issues that we're
21 required to prove in our case.

22 THE COURT: So I guess I'm -- I'm having a little
23 trouble -- I'm looking at this. There's 25 of these things.
24 And you want me to just take them in, take notice of them, take
25 them in, read them, and use them as a basis for decision in the

1 case, without any witness or context for me to -- or ability to
2 cross-examine or anything like that?

3 MS. ALTMAN: Well, I don't think it's -- so I don't
4 think -- I would not describe it that way, because --

5 THE COURT: I would guess you wouldn't, yeah, so...

6 MS. ALTMAN: So, obviously, Dr. Ehrensaft -- and, in
7 fact, I think both of Defendant's experts will have to concede
8 that every legitimate medical organization that has looked at
9 this issue --

10 THE COURT: Well, that's -- that's different. If you
11 have an expert that says, I -- you know, I read the Pediatric
12 Society's PDS statement promoting safety. And I relied upon
13 that in my opinions, that's a little different.

14 I guess I'm -- it may not matter today, because I'm
15 probably just going to think about it. But I do wonder about,
16 Okay, all of a sudden I've got this stack of medical literature
17 sitting over here, nobody -- no witness has talked about it,
18 nobody's cross-examined it, and I'm supposed to read it all and
19 take some point away from it?

20 MS. ALTMAN: No. And I understand what Your Honor is
21 saying. Actually, what we would do would be -- because it
22 would be too lengthy to have our experts -- or anyone, frankly,
23 go through the -- the litany of information contained in there,
24 we would condense that information and utilize it in our
25 findings of fact.

1 So we would direct Your Honor to very specific things
2 that are -- have bearing on this case. But otherwise it would
3 be tremendously cumbersome to make our expert walk through each
4 one of these things and point to each one of the specific
5 guidelines or protocols or policies that would be appropriate
6 here.

7 THE COURT: And, Mr. Harmon, you're against?

8 MR. HARMON: Your Honor, I think you hit the nail on
9 the head. This is an attempt to introduce committee statements
10 from various medical organizations as to their opinion of
11 things, not subjecting them to any cross-examination or the
12 ability to rebut it.

13 What it's being used for is to submit it as fact in
14 this case so that counsel can make legal arguments as it is
15 being fact, that is, that this is what you're supposed to do.
16 So I think if there's experts that are going to be offered to
17 testify to that, then they should go ahead and do that.

18 THE COURT: All right. I'm going to take that one
19 under advisement.

20 Mr. Harmon, did you --

21 MR. HARMON: We had one that's 106.

22 THE COURT: Oh, 106. I must have popped over it.
23 Hold on a second.

24 And that's the one that had the bills in it, right?

25 MR. HARMON: Yes, Your Honor.

1 THE COURT: Okay. Okay. 106. Here we go.

2 MR. HARMON: I think some of it is agreed to and some
3 of it is --

4 THE COURT: Oh, yeah. I wrote, Grant as to A, B, C,
5 and D, because that was agreed to. And then E, F, G are in
6 dispute. And E, F, and G are the bills. So these are bills
7 that have been introduced in Congress to --

8 MR. HARMON: These are --

9 THE COURT: -- do what?

10 MR. HARMON: So these are bills -- Your Honor can
11 take -- under the Federal Rules of Evidence, they're going to
12 come in as public records.

13 But what these bills show is Congress and -- I
14 believe it's 2015/2016 proposed legislation that would have
15 redefined the term sex under Title IX to include gender
16 identity. And it goes to show that this --

17 THE COURT: So you want me to think, Well, they
18 wouldn't be trying to change the law if it already was covered?

19 MR. HARMON: It goes into intent behind the statute
20 and the legal interpretation and how Congress has addressed
21 this, that this is a policy, congressional issue, not an issue
22 for the medical community to decide. And this goes to that
23 intent and legislative history of it.

24 THE COURT: But can't -- can't any congressman or
25 congresswoman file a bill on anything?

1 MR. HARMON: Yes.

2 THE COURT: I bet if you looked at some of the bills
3 that get filed, I bet you you'd be amazed.

4 MR. HARMON: I am amazed.

5 THE COURT: And -- and I'm just wondering what
6 evidentiary value that has.

7 MR. HARMON: It goes -- it goes, again, towards
8 Defendant's argument that how sex is defined under Title IX is
9 not an issue for the medical community, that it is a -- there's
10 a legislative history behind it, that there's policy decisions
11 behind it. It's a legal issue.

12 And I think that this goes to show that Congress has
13 taken steps to do what Plaintiff is asking this Court to do.
14 And Congress has not reached an agreement on doing that,
15 specifically to include gender identity under sex.

16 THE COURT: All right. And you don't agree with
17 that, Ms. Altman, I'm guessing?

18 MS. ALTMAN: I don't. And I would submit these are,
19 obviously, bills that were not enacted. And I would submit
20 that -- contrary to the sort of polar opposite view is -- the
21 reason they didn't need to amend the statute is because it
22 already meant what we say it means. And so there was no need
23 to do so.

24 THE COURT: Isn't -- isn't it also true that -- I
25 think I'm right about this. Under the Obama administration,

1 the Department of Education guidance went one way. And under
2 the Trump administration, the Department of Education guidance
3 has gone a different way.

4 Is that right?

5 MS. ALTMAN: Yeah. I don't know if I'd say it's gone
6 a different way. I think what the Trump administration said
7 was we're going to punt it to --

8 THE COURT: Make it a local issue?

9 MS. ALTMAN: Right. Correct.

10 THE COURT: But there's no longer national DOE
11 guidance on the transgender issue, right?

12 MS. ALTMAN: I think -- I mean, I think that there
13 was probably some, but not -- the ones that are germane here --
14 or directly germane -- and -- and I think -- I think with
15 respect to -- they want to introduce those things which we
16 don't think have any bearing in this case. So I guess we'll
17 confront that on a different day, but...

18 THE COURT: Yeah.

19 MR. HARMON: I think those were accepted, though,
20 right? Didn't your colleagues -- yeah.

21 MS. ALTMAN: All of them?

22 MR. HARMON: Yeah. Those were not opposed. So we
23 can just argue that.

24 MS. ALTMAN: All right.

25 THE COURT: All right. I'll grant the -- I mean,

1 I'll allow the motion on -- the judicial notice on -- let me
2 get it back here. I turned the page prematurely.

3 I will grant the motion for judicial notice as to
4 items A, B, C, and D. I will defer on E, F, and G. I'm a
5 little skeptical about those bills, just because a bill can
6 represent the view of one member of Congress.

7 I know there's co-sponsors on these. But I'm a
8 little dubious about that as being something I would be able to
9 rely on to give content to the meaning of a statute, almost by
10 negative implication, I guess is the argument.

11 I'm a little dubious about that. We'll see how that
12 goes. But I'm going to defer on that. But I'll -- I'll take
13 judicial notice of A, B, C, and D. And I -- you know, when you
14 take judicial notice of something, it doesn't mean you're going
15 to rely on it or you think it's good evidence. It just means
16 you're not -- there's no longer any need to show authenticity
17 and the -- the matter will be before the Court.

18 What the Court does with it and what the parties do
19 with it, that's a whole different -- a whole different kettle
20 of fish.

21 Anything else?

22 MR. HARMON: No.

23 MS. ALTMAN: I don't think so either.

24 Anything else, guys? No? No?

25 No, Your Honor.

1 MR. HARMON: No, Your Honor.

2 THE COURT: All right. So -- so I'll get *Daubert*
3 motions from you. I've ruled on as much as I can. We'll
4 record it somehow. I don't know if we'll do a clean-up order
5 or we'll do it in the minutes, but we'll -- we'll reflect what
6 we've ruled on and what we've deferred on. And we've had other
7 discussions about how we're going to do things.

8 And so we'll get *Daubert* motions from you. But I'm
9 not requiring written responses. I'm not prohibiting them, but
10 I'm not requiring them. And we'll get findings of fact from
11 you.

12 And if there are any stipulations, that's great. At
13 the beginning of trial, on -- a week from Monday, we will
14 introduce any exhibits that are all agreed to. We'll talk
15 about whatever else we need to talk about. And then we will go
16 right to the first witness for the Plaintiff.

17 I will tell you that -- even though we don't have a
18 jury, I still like to have the trains run on time. And I
19 want -- I want -- once we're done with a witness, I want to go
20 right to the next witness. I don't want there to be delays.

21 If you've got witness problems or people that aren't
22 where they're supposed to be, you need to get me another
23 witness to -- so that we're not wasting time.

24 I generally start -- I generally ask the lawyers to
25 be in places by 9:15 and I start at 9:30. And then we'll

1 figure out -- I usually stop for lunch about 12:30. And then
2 we finish up about 5:00 or so.

3 Now, that's when we have a jury. We can go a little
4 bit later, but, frankly, it gets dark and the -- and, also, the
5 building officially closes at 5:30, so I try to get you out of
6 here around 5 o'clock, so...

7 But during the time we're in session, I want to -- I
8 want us to be moving. I'm not -- I don't mean -- I don't mean
9 people need to hurry, but I mean we need to be efficient with
10 the time that we're using.

11 I don't want a lot of delay. I want exhibits to be
12 where they're supposed to be. I want people to be moving and
13 doing what they're supposed to be doing.

14 And you won't be offended if -- since I am on a
15 non-jury -- in a non-jury setting, if I feel like I've heard
16 enough of something, I'll just say, Okay. I've heard enough of
17 that. Let's talk about something else, and -- and we'll go
18 from there.

19 And I would require, Ms. Altman, for you, the Friday
20 before trial, to let Mr. Harmon know which witnesses you're
21 going to call and in what order on Monday.

22 And then the same thing, we -- it's the day before.
23 So if you -- at the end of the day on Monday, I'll ask who the
24 witnesses for Tuesday are going to be and so forth. And that
25 applies equally to both sides.

1 I know we've got this one witness we're taking out of
2 turn. And that's fine. Just remind me about that.

3 MR. HARMON: Thank you.

4 THE COURT: Okay. Mari, anything else?

5 COURTROOM DEPUTY: No.

6 THE COURT: Okay. Can y'all think of anything else?
7 Because this will be the last time we'll actually get together
8 until the trial.

9 Can you think of anything else?

10 MS. ALTMAN: Nothing.

11 THE COURT: Okay. All right. Well, I hope y'all can
12 work some things out. That would be great. But I'll await
13 with interest your findings of fact to see -- so I can see from
14 your perspectives what the case is really about and what I need
15 to be deciding. And then I'll just see you on Monday, the
16 11th. Okay?

17 MS. ALTMAN: Thank you, Your Honor.

18 THE COURT: All right. Thank you all. We're in
19 recess.

20 COURT SECURITY OFFICER: All rise.

21 (The proceedings concluded at 4:45 p.m.)

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