

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Anmarie Calgaro,

Plaintiff,

Court File No. 16-cv-3919 – PAM-LIB

vs.

**SECOND DECLARATION OF
ERICK G. KAARDAL**

St. Louis County; Linnea Mirsch, individually and in her official capacity as Interim Director of St. Louis County Public Health and Human Services; Fairview Health Services, a Minnesota nonprofit corporation; Park Nicollet Health Services, a nonprofit corporation; St. Louis County School District; Michael Johnson, individually and in his official capacity as Principal of the Cherry School, St. Louis County School District; and J.D.K.,

Defendants.

I, Erick G. Kaardal, declare that the following statements are true to the best of my recollection and knowledge:

1. I am the attorney of record for the Plaintiff, Anmarie Calgaro. I am familiar and have personal knowledge of the facts and procedural posture of the instant matter.
2. I am providing this Court with certain documents referenced in the Reply Memorandum of Law Supporting the Plaintiff's Motion for Summary Judgment. The documents are public I believe, but nonetheless were necessitated by the declarations submitted.

3. The following documents attached as exhibits are true copies of the originals and are marked continuous from my previous declaration submitted in this matter dated December 15, 2016:

Exhibit No.	Document
E	“What is Gender Dysphoria,” American Psychiatric Association, reviewed by Ranna Parekh, M.D., M.P.H. (Feb. 2016); www.psychiatry.org/patients-families/gender-dysphoria/waht-is-gender-dysphoria
F	Minnesota State Procedures – Dispute Resolution under McKinney-Vento Act

Under penalty of perjury, I believe each of my statements made in this declaration are true to the best of my recollection and knowledge.

Dated: January 12, 2016.

/s/Erick G. Kaardal
Erick G. Kaardal

EXHIBIT E



[Gender Dysphoria](#)

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Topic Information

What is Gender Dysphoria

Gender dysphoria involves a conflict between a person's physical or assigned gender and the gender with which he/she/they identify. People with gender dysphoria may be very uncomfortable with the gender they were assigned, sometimes described as being uncomfortable with their body (particularly developments during puberty) or being uncomfortable with the expected roles of their assigned gender.

People with gender dysphoria may often experience significant distress and/or problems functioning associated with this conflict between the way they feel and think of themselves (referred to as experienced or expressed gender) and their physical or assigned gender.

The gender conflict affects people in different ways. It can change the way a person wants to express their gender and can influence behavior, dress and self-image. Some people may cross-dress, some may want to socially transition, others may want to medically transition with sex-change surgery and/or hormone treatment. Socially transitioning primarily involves transitioning into the affirmed gender's pronouns and bathrooms.

People with gender dysphoria may allow themselves to express their true selves and may openly want to be affirmed in their gender identity. They may use clothes and hairstyles and adopt a new first name of their experienced gender. Similarly children with gender dysphoria may express the wish to be of the opposite gender and may assert they are (or will grow up to be) of the opposite gender. They prefer, or demand, clothing, hairstyles and to be called a name of the opposite gender. (Medical transition is only relevant at and after the onset of puberty.)

Gender dysphoria is **not** the same as gender nonconformity, which refers to behaviors not matching the gender norms or stereotypes of the gender assigned at birth. Examples of gender nonconformity (also referred to as gender expansiveness or gender creativity) include girls behaving and dressing in ways more socially expected of boys or occasional cross-dressing in adult men. Gender nonconformity is not a mental disorder. Gender dysphoria is also **not** the same being gay/lesbian.

While some children express feelings and behaviors relating to gender dysphoria at 4 years old or younger, many may not express feelings and behaviors until puberty or much later. For some children, when they experience puberty, they suddenly find themselves unable to identify with their own body. Some adolescents become unable to shower or wear a bathing suit and/or undertake self-harm behaviors.

■ Diagnosis

The *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5) provides for one overarching diagnosis of gender dysphoria with separate specific criteria for children and for adolescents and adults.

In adolescents and adults gender dysphoria diagnosis involves a difference between one's experienced/expressed gender and assigned gender, and significant distress or problems functioning. It lasts at least six months and is shown by at least two of the following:

1. A marked incongruence between one's experienced/expressed gender and primary and/or secondary sex characteristics
2. A strong desire to be rid of one's primary and/or secondary sex characteristics

3. A strong desire for the primary and/or secondary sex characteristics of the other gender
4. A strong desire to be of the other gender
5. A strong desire to be treated as the other gender
6. A strong conviction that one has the typical feelings and reactions of the other gender

In children, gender dysphoria diagnosis involves at least six of the following and an associated significant distress or impairment in function, lasting at least six months.

1. A strong desire to be of the other gender or an insistence that one is the other gender
2. A strong preference for wearing clothes typical of the opposite gender
3. A strong preference for cross-gender roles in make-believe play or fantasy play
4. A strong preference for the toys, games or activities stereotypically used or engaged in by the other gender
5. A strong preference for playmates of the other gender
6. A strong rejection of toys, games and activities typical of one's assigned gender
7. A strong dislike of one's sexual anatomy
8. A strong desire for the physical sex characteristics that match one's experienced gender

For children, cross-gender behaviors may start between ages 2 and 4, the same age at which most typically developing children begin showing gendered behaviors and interests. Gender atypical behavior is common among young children and may be part of normal development. Children who meet the criteria for gender dysphoria may or may not continue to experience it into adolescence and adulthood. Some research shows that children who had more intense symptoms and distress, who were more persistent, insistent and consistent in their cross-gender statements and behaviors, and who used more declarative statements ("I am a boy (or girl)" rather than "I want to be a boy (or girl)") were more likely to become transgender adults.^{3,4}

■ Treatment

Treatment options for gender dysphoria include counseling, cross-sex hormones, puberty suppression and gender reassignment surgery. Some adults may have a strong desire to be of a different gender and to be treated as a different gender without seeking medical treatment or altering their body. They may only want support to feel comfortable in their gender identity. Others may want more extensive treatment including hormone treatment and gender reassignment surgery leading to a transition to the opposite sex. Some may choose hormone treatment or surgery alone.

Individual therapy can help a person understand and explore his/her/their feelings and cope with the distress and conflict. Couples therapy or family therapy may be helpful to improve understanding and to create a supportive environment. Parents of children with gender dysphoria may also benefit from counseling. Peer support groups for adolescents and adults and parent/family support groups can also be helpful.

A child's treatment typically involves a multi-disciplinary team of health care professionals, which may include a pediatrician, a psychiatrist, other mental health professionals, a pediatric endocrinologist (specialists in hormone conditions in children) and an advocate. Treatment may focus primarily on affirming psychological support, understanding feelings and coping with distress, and giving children a safe space to articulate their feelings. For many children the feelings do not continue into adolescents and adulthood.

A person may also address social and legal transition to the desired gender.

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■ Challenges and complications

Gender dysphoria is associated with high levels of stigmatization, discrimination and victimization, contributing to negative self-image and increased rates of other mental disorders. Transgender individuals are at higher risk of victimization and hate crimes than the general public. Adolescents and adults with gender dysphoria are at increased risk for suicide.

In adolescents and adults, preoccupation with cross-gender issues can interfere with daily activities and cause problems in relationships or in functioning at school or work. Children with gender dysphoria may experience teasing and harassment at school or pressure to dress more like their assigned gender. Children with gender dysphoria are at higher risk of emotional and behavioral problems, including anxiety and depression.

Transgender individuals may also face challenges in accessing appropriate health care and insurance coverage of related services.

Definitions and Pronouns

Definitions ^{1, 5, 6}

- **Gender** - denotes the public (and usually legally recognized) lived role as boy or girl, man or woman. Biological factors combined with social and psychological factors contribute to gender development.
- **Assigned gender** - refers to a person's initial assignment as male or female at birth. It is based on the child's genitalia and other visible physical sex characteristics.
- **Gender-atypical** - refers to physical features or behaviors that are not typical of individuals of the same assigned gender in a given society.
- **Gender-nonconforming** - refers to behaviors that are not typical of individuals with the same assigned gender in a given society.
- **Gender reassignment** - denotes an official (and usually legal) change of gender.
- **Gender identity** - is a category of social identity and refers to an individual's identification as male, female or, occasionally, some category other than male or female. It is one's deeply held core sense of being male, female, some of both or neither, and does not always correspond to biological sex.
- **Gender dysphoria** - as a general descriptive term refers to an individual's discontent with the assigned gender. It is more specifically defined when used as a diagnosis.
- **Transgender** - refers to the broad spectrum of individuals who transiently or persistently identify with a gender different from their gender at birth. (Note: the term transgendered is not generally used.)

- **Transsexual** - refers to an individual who seeks, or has undergone, a social transition from male to female or female to male. In many, but not all, cases this also involves a physical transition through cross-sex hormone treatment and genital surgery (sex reassignment surgery).
- **Genderqueer** - blurring the lines around gender identity and sexual orientation. Genderqueer individuals typically embrace a fluidity of gender identity and sometimes sexual orientation.
- **Gender fluidity** - having different gender identities at different times.
- **Agendered** - 'without gender,' individuals identifying as having no gender identity.
- **Cisgender** - describes individuals whose gender identity or expression aligns with the sex assigned to them at birth.
- **Gender expansiveness** - conveys a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system.
- **Gender expression** - the manner in which a person communicates about gender to others through external means such as clothing, appearance, or mannerisms. This communication may be conscious or subconscious and may or may not reflect their gender identity or sexual orientation.

Preferred Gender Pronouns

Some transgender and gender-nonconforming people may prefer gender-neutral or gender-inclusive pronouns when talking to or about them. "They" and "their" are sometimes used as gender-neutral singular pronouns. Singular gender-neutral pronouns also include "ze" (or "zie") and "hir."

— References

1. Diagnostic and Statistical Manual of Mental Disorders (DSM-5), Fifth edition. American Psychiatric Association. 2013
2. Excerpted from DSM-5. Note: The term gender dysphoria replaced the term gender identity disorder used in an earlier version of DSM.
3. Sherer, I, et al. 2015. Affirming gender: Caring for gender-atypical children and adolescents. Contemporary Pediatrics.

4. Steensma, TD, et al. 2013. Factors associated with desistence and persistence of childhood gender dysphoria: A quantitative follow-up study. J Am Acad Child Adolesc Psychiatry, 52(6):582-90.
5. [PFLAG Glossary](#)
6. [Human Rights Campaign, survey](#)

Physician Review By:

Ranna Parekh, M.D., M.P.H.
February 2016

Q Resources

Explore More Topics

- [Warning Signs of Mental Illness](#) >
- [What Is Psychiatry?](#) >
- [What Is Mental Illness?](#) >
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EXHIBIT F

**NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY**

Minnesota State Procedures – Dispute Resolution under McKinney-Vento Act

According to the McKinney-Vento Homeless Assistance Act, a Local Education Agency (“LEA”) must continue educating the child or unaccompanied youth in the school of origin for the duration of homelessness when the homelessness occurs between or during an academic year; or for the remainder of the academic year if the child or unaccompanied youth becomes permanently housed during that academic year; or enroll the child or youth in any public school that non-homeless students who live in the attendance area in which the child or youth is living are eligible to attend (McKinney-Vento Act § 722(3)(A)(i)(ii)). If a dispute arises over school selection or enrollment, the LEA must immediately enroll the student in the school in which enrollment is sought pending resolution of the dispute (§ 722(3)(E)(i)). Similar provisions apply to the placement of unaccompanied youths.

Minnesota’s state education law is codified at Minn. Stat. § 120A.20. This statute guarantees homeless children the right to education. The Minnesota Department of Education (MDE) has issued further guidelines regarding the implementation of McKinney-Vento and the enrollment and education of homeless students.

According to these guidelines, Minnesota State schools must:

1. Designate a district homeless liaison and school point people. In doing so schools should use the expertise of the student support services team.
2. Identify policy and program barriers to student enrollment, attendance and success.
3. Build awareness among all school staff and parents; conduct outreach.
4. Link school and community efforts and resources.

Step One: School Enrollment

Minnesota requires that a student must be admitted to school even if a parent cannot provide an address or residence. School enrollment of a homeless child or youth shall be determined by the parent, guardian, student of lawful age, or unaccompanied youth. School stability and continuity of instruction are linked to school success including achievement, promotion and graduation. Therefore, placing the student in the ‘school-of-origin’ is high priority.

In a child/youth’s best interest, the local school district/charter school, to the extent feasible, must keep a homeless child or youth in their school-of-origin, if the parent agrees. The student may also enroll in the school in the district in which they are residing such as in a shelter or doubled-up with friends or family.

If placement in the school of origin is not feasible, or against the wishes of the parent, guardian, student of lawful age, or unaccompanied youth, the student will be enrolled in the school serving

the community where the child or youth temporarily resides. In the case of an unaccompanied youth, the Local Homeless Education Liaison shall assist the youth in the school enrollment process.

Existing school district policy and past practice are not legitimate reasons to limit services to homeless children. The McKinney-Vento Act calls for school policy and programs to be altered if they present barriers to enrollment for homeless children and youth. The McKinney-Vento Act calls for each child's situation to be considered individually, using a child-centered approach.

Step Two: Enrollment Dispute and Appeals Process

The Minnesota Department of Education has set forth the following procedures for the prompt resolution of disputes regarding educational placement:

MDE will process complaints regarding the educational placement of homeless children and youths. The State Coordinator's telephone number can be found on the EHCY and Title I websites. The State Coordinator's telephone and program description is also posted with information distributed by the State Inter-Agency Taskforce on Homelessness. Every LEA has a designated "LEA Liaison." All funded LEAs will have a local enrollment disputes process in place. The SEA will also provide posters and other materials to inform families and youth of their educational rights to be posted in shelters, soup kitchens, centers, etc. (which will include SEA telephone number).

When MDE receives a complaint from the "LEA Liaison," a student or their advocate (Student's parent or guardian, shelter personnel, members of organizations serving people from homeless situations, neighboring LEA), MDE will implement the following steps:

(1) MDE, will assure that the child, youth on their own, parent, or guardian shall be immediately referred to the LEA Liaison designated under [Section 722(g)(1)(J)(ii)], who shall carry out the dispute resolution process as expeditiously as possible after receiving notice of the dispute [Section 722(g)(3)(E)(iii-iv)].

(2) MDE, will assure that the child or youth experiencing homelessness shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute [Section 722(g)(3)(E)(i)].

(3) MDE, will assure that the parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent to appeal the decision [LEA Liaison will provide within three school days; Section 722(g)(3)(E)(ii)].

(4) MDE, will assure that within three school days, the agency will contact the student(s), and/or their advocate, and the dissenting LEA (including the Liaison), to inform them of the complaint. Further, MDE will collect information and perspectives regarding a possible meeting to settle the enrollment dispute.

(5) MDE, will assure if necessary, a conference call or meeting within five school days to process the complaint. If a meeting is scheduled it will occur at an appropriate site for the family or youth experiencing homelessness.

(6) MDE, will encourage the local school district(s) in question [& designated LEA Liaison(s)] to resolve the issue prior to the scheduled meeting. To facilitate this, all McKinney-Vento funded districts are required to address enrollment disputes in their LEA Applications and Plans.

(7) MDE, will assure that if an agreement is not reached, the conference call or meeting will occur as scheduled. MDE will conduct the meeting and listen to both sides of the complaint. After the meeting, MDE will render a decision in accordance with the McKinney-Vento Education for Homeless Children and Youth Act. A written decision will be sent to the major parties within one week after the scheduled meeting [steps 4-7 are required under Section 722(g)(1)(C)].

Participants, if dissatisfied with the decision, could consider a court appeal.

Additional Resources

State Contact

Roberto Reyes
Homeless Education Specialist Division of Student Support
Minnesota Department of Education
1500 Highway 36 West
Roseville, MN 55113-4266
mde.esea@state.mn.us
651-582-8579
roberto.reyes@state.mn.us

<http://education.state.mn.us/MDE/SchSup/ESEA/HomelessMcKinneyVento/index.html>

Procedural Step:	Completed by:	Given to:	Due Date:
Enrollment or Residency Dispute	Initiated by parent, guardian, or LEA	Processed by LEA Liaison.	<p>None Specified.</p> <p>MDE, will assure that the parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent to appeal the decision [LEA Liaison will provide within three school days; Section 722(g)(3)(E)(ii)].</p>
Appeal of LEA decision	Aggrieved party	MDE	<p>None Specified.</p> <p>MDE, will assure if necessary, a conference call or meeting within five school days to process the complaint. If a meeting is scheduled it will occur at an appropriate site for the family or youth experiencing homelessness. MDE, will encourage the local school district(s) in question [& designated LEA Liaison(s)] to resolve the issue prior to the scheduled meeting.</p>